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"A Bundle of Silences: Reimagining Interpretive Approaches to the Past" Webinar Transcript

Interpretive Theme: Political Participation

Webinar Title: The Puzzle of Citizenship: Black Americans and the Birthright Principle

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Webinar Transcript:

Twenty-first-century Americans become citizens by many routes, including naturalization after marriage and migration. The foremost way to citizenship is, however, the accident of birth. This is due to the first clause of the Fourteenth Amendment, ratified in 1868, which established that: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. This story of citizenship in the US begins in the decades of work done by Black activists, joined at times by some white antislavery allies, to define citizenship. Their efforts are reflected in the first sentence of the Fourteenth Amendment. In twenty-eight words, it made plain that Black Americans were not outsiders; they were citizens.

Black Americans had been exploring citizenship and how to secure it since the eighteenth century. They knew that the Declaration of Independence provided that "all men are created equal" and at one point speaks of "fellow citizens," but did not explain who was and was not a citizen. The Articles of Confederation, drafted in 1777 to govern the new loose assembly of former colonies, told them nothing about who was a citizen and instead promised that "the free inhabitants of each of these states, paupers, vagabonds and fugitives from Justice excepted, shall

be entitled to all privileges and immunities of free citizens in the several states.” It was not even clear who had the authority to rectify the oversight. The principle of federalism divided governance in the new nation between the states and the federal government, but neither had express authority over citizenship. Ambiguity and confusion followed.

In the years after the American Revolution, Paul and Jonathan Cuffe, men of African and Native descent, lived in Dartmouth, Massachusetts, where they were required to pay taxes but denied the right to vote. This, they argued, was a contradiction. If they were to be taxed like white citizens, they could not then be denied citizenship’s political rights. In a series of petitions in 1780 and 1781, the brothers demanded “to know . . . whether all free Negroes & mulattoes Shall have the same Privileges in this Town of Dartmouth as the white People have.” If they were equal to white men, the brothers allowed, they should pay their share of local taxes. But without the right to vote—without privileges equal to those of white taxpayers—they would not. The Cuffes eventually settled their dispute by paying a reduced tax. Still, they exposed an ambiguity in the new Massachusetts state constitution, which noted, “All men are born free and equal and have certain natural, essential, and unalienable rights.” No one could say for certain whether the Cuffes were included among “All men.”

Nowhere did the Constitution of 1787 define what made one a citizen. This ambiguity frustrated clergy member Absalom Jones and the men and women of Philadelphia’s Free African Society. In 1799, seventy-one Black Philadelphians lodged a formal claim and insisted on their entitlement to “Liberties and unalienable Rights” and likened themselves to “every other class of Citizen within the Jurisdiction of the United States.” The petition arrived in Congress in January

1800, where representatives managed to do little more than disagree. There was not even a consensus about whether Black Americans had a right to petition Congress in the first place, though the First Amendment guaranteed “the right of the people . . . to petition the Government for a redress of grievances.” When it came to the question of whether Black Americans enjoyed the rights of citizens, the House considered the petition only long enough to send it to a committee, where it quietly died.

Dissension—and contradiction—persisted into the 1820s. None among the country’s political and legal elite were willing to answer the citizenship question that stalked Black Americans. In 1821, an appeal from the collector for the Port of Norfolk, Virginia asked U.S. attorney general William Wirt: Could a free Black man command an American merchant vessel? Federal law, Lindsay understood, barred noncitizens from commanding such ships. Wirt’s answer confused as much as it clarified. The attorney general wrote: “I am of the opinion that the constitution, by the description of ‘citizens of the United States,’ intended those only who enjoyed the full and equal privileges of white citizens in the State.” Because free Black Virginians were not full and equal citizens of their state, they could not be citizens of the United States. But Wirt also left the door open: if a Black person’s home state deemed them a citizen—as did Massachusetts and New York—they *might* also be citizens of the United States. Wirt answered the Norfolk official’s question, but he did not settle much else.

Congress was similarly muddled in its thinking about Black citizenship. In 1820, the western territory of Missouri was admitted as a new state. In what became known as the Missouri Compromise, Congress decided that slavery would be permitted in Missouri but prohibited in all

other parts of the Louisiana Purchase north of the 36°30' parallel. But soon a second disagreement erupted when lawmakers in Missouri proposed a constitution that flat-out barred "free Negroes and mulattoes" from the state.

Debate on this restriction gave Congress a chance to say whether the Constitution guaranteed to Black Americans as citizens equal rights under the Privileges and Immunities Clause. It was clear that Missouri could not, for example, bar citizens from Ohio from entering. The proposed prohibition against Black migration to Missouri might violate this principle, but only if Black Americans were *citizens*. If Congress found Missouri's proposal to be in violation of the Privileges and Immunities Clause, it would be a roundabout way of affirming Black citizenship.

Members became mired in disagreement and deliberated for many weeks. In 1821, Representative Josiah Butler of New Hampshire and Representative John Floyd of Virginia faced off on the House floor. Butler argued that in Northern states such as Massachusetts, the "rights of the colored citizens . . . are as sacred as those of the white citizens." In Butler's view, Black Americans were unequivocally citizens of the state and, by implication, entitled to constitutional protection. Floyd deemed such a proposition unthinkable and mocked Butler: "Who is there that believes [Black Americans] ever had any rights but such as the indulgence of the States permitted?" He went so far as to assert that Black Americans' privileges could at any time be rescinded. Free Black people could even be enslaved, without cause or process. New Jersey's incoming Congressman, Samuel Southard, had not yet taken his seat. But in private deliberations, Southard sided with those who would leave Missouri at liberty to bar free Black migrants, at will.

Eventually Congress allowed the ban on Black migration to Missouri to remain but still admonished the new state that it must not pass any law that violated the rights of citizens. Still, life for prospective Black migrants to Missouri was, in the end, no less harrowing than it had been before congressional review.

Lawmakers again and again fumbled when called upon to settle the question of Black citizenship, leaving the country's elite politicians, merchants, lawyers, and philanthropists to devise their own approach. Their most popular solution was known as "colonization," a plan to remove Black Americans from the United States. The American Colonization Society, founded in 1816, committed to preserving the United States as a white man's country by ensuring that Black Americans would not become citizens. The ACS recruited supporters, raised funds, won public appropriations in some places, and built a network that made colonization one of the largest political movements of the time. Some colonizationists encouraged the abolition of slavery, while others agreed with the organization's open espousal of anti-Black racism. Some Southerners opposed colonization, fearing that it might succeed in manumitting enslaved people but then not live up to removing them from the country. Still, the ACS managed to attract supporters across lines of region and party.

In New Jersey, colonization was a constant companion to the state's 1804 act which provided for the gradual abolition of slavery. Presbyterian minister Robert Finley of Basking Ridge was responsible for fueling the national movement and the founding of New Jersey's own colonization society. In subsequent decades men as prominent as the state's US Senator

Theodore Frelinghuysen continued to stoke the fires of colonization. The movement's persistence, and its popularity, helped ensure that New Jersey officials worked by way of a gradual approach to slavery's abolition.

In 1822, the ACS established the West African colony of Liberia. Promising migrants economic independence, political autonomy, and citizenship, the society outfitted ships, organized expeditions, and did all it could to encourage Black people to leave the United States. The society worked with state lawmakers friendly to its cause; these legislators pressured free Black Americans into self-exile by enacting local statutes, termed Black laws, that restricted their work, movement, and public gatherings. With life in the United States too onerous, the thinking went, Black Americans might give in to the enticements of Liberia. In some states, lawmakers proposed new laws that would require free people of color to leave by threat of force, or which predicated manumission by owners on an enslaved person's agreement to leave the country once free. Over the next two decades, more than four thousand Black people would go to Liberia.

It fell to Black activists to fight for citizenship and resist colonization, and with that the Colored Convention movement was started. At the inaugural gathering in 1830, Black men came together from New England, the mid-Atlantic, and as far south as Virginia to discuss the rise of Black laws and the prospect of leaving the United States. Among them were delegates from Ohio who were being driven out of their state by discriminatory Black laws.

Baltimore delegate Hezekiah Grice returned home from the Philadelphia convention determined to fend off exile. He organized the Legal Rights Association, which aimed to prove that Black

Americans were citizens. They were sure about the ideal of “The Declaration of Independence” and aimed to learn whether “the Constitution of the U[nited] States secures to us those rights which the Declaration so freely accords.” Why, he asked, should we not enjoy those rights which all must confess have been wrested from us without the shadow of a crime? What evil could possibly accrue from the adoption, by the white people of this nation, of a liberal, just, and humane policy towards three hundred thousand of the home-born citizens of the United States?

But without political clout, even the text of much-revered documents could not carry the debate. Black Americans watched as the ground beneath them shifted again and again, even in Northern free-soil states. Slavery was well on its way to being abolished there, yet lawmakers were still excluding Black men from political rights. New York, in 1821, imposed a hefty \$250 property qualification on Black voters, while Pennsylvania disenfranchised Black men altogether in 1838.

Black activists returned to their own conventions, where the ideal of birthright citizenship galvanized them. They asserted that the Constitution recognized “natural born” and naturalized citizens and that U.S. law recognized citizens and aliens but no in-between rank. Birthright had always been the rule, as the Constitution’s requirement that the president be a “natural born” citizen suggested.

In 1849, when New Jersey’s Black activists convened in Trenton, they boldly assumed their status as citizens. The Reverend Joshua Woodland, representing Burlington County, presided. Their immediate purpose was to pressure the state legislature to extend to Black men voting rights with a petition campaign. They signed as “citizens of the State of New Jersey” a document

that urged lawmakers to “take the lawful measure to so amend the Constitution as to leave out the world “white” in Article 2d, Right of Suffrage, Section 1st of the Constitution of the State of New Jersey.” With this, they urged, New Jersey would join those states that had granted “the Right of Franchise of all citizens thereof, irrespective of color.” John Sweatt Rock, in that year an educator in Salem, was among the men who steered the deliberations and from his start in New Jersey, Rock would go on to train in medicine and law, and lead national colored conventions as a representative of Massachusetts.

On July 6, 1853, more than one hundred delegates took their seats in Corinthian Hall, the grandest meeting place in Rochester, New York. It was an apt site for a Black convention. From that city in western New York, one of the leading Black activists of the day, Frederick Douglass, published his independent newspapers, *The North Star* and *Frederick Douglass' Paper*. Papers like these reached the far corners of Black America with news, editorials, lively letters to the editor and reports on the ideas being generated during “colored convention” proceedings.

At the 1853 Rochester convention, Frederick Douglass took the floor as chair of the Committee on the Declaration of Sentiments and delivered a lesson on what it meant to belong in the United States. He wove together principles from founding documents like the Declaration of Independence and the Constitution with political history, moral philosophy, and Christian theology. His message was unequivocal: Black Americans were “by birth . . . American citizens; by the principles of the Declaration of Independence, we are American citizens; within the meaning of the United States Constitution, we are American citizens; by the facts of history; and the admission of American statesmen, we are American citizens; by the hardships and trials

endured; by the courage and fidelity displayed by our ancestors in defending the liberties and in achieving the independence of our land, we are American citizens.”

When Frederick Douglass spoke to the Colored National Convention in Rochester, everyone knew that his claim to be a citizen was tenuous. The seeds of doubt sprouted everywhere. In 1850, the newly adopted Fugitive Slave Act had put at risk the liberty of men like Douglass by authorizing federal officials, in collusion with enslavers, to capture fugitives who had escaped slavery. Citizenship was seen as a remedy to these ills.

But in Douglass’s audience that year were Black dissidents who had given up on making a future in the United States. Terming themselves emigrationists, they promoted a movement through which Black Americans could choose alternative lives *and* citizenship in Canada or the Caribbean. Among this movement’s most forceful advocates was Douglass’s former collaborator at *The North Star*, Martin Delany who did agree with Douglass on one principle: they *were* U.S. citizens by birth. Delany’s wrote in 1852: “We are Americans, having a birthright citizenship—natural claims upon the country—claims common to all others of our fellow citizens—natural rights, which may, by virtue of unjust laws, be obstructed, but never can be annulled.” Even as they disagreed about the way forward, Douglass and Delany pieced together a theory of birthright citizenship.

The colored conventions met on the margins of American politics, but the thinking promoted there was echoed in the deliberations of some of the nation’s most elevated institutions—including the U.S. Supreme Court. The chief justice of the United States, Roger Brooke Taney,

knew well how the aspirations of free Black Americans had been putting pressure on the question of citizenship for years. Back in 1832, as U.S. attorney general, Taney had penned an opinion that denied that Black people were citizens for the purpose of piloting ships along the nation's coastal waters. In the 1840s, in Supreme Court opinions, Taney asserted that Black Americans had no rights as citizens under the U.S. Constitution.

For Taney, the debate over Black citizenship came to a head in 1857 in *Dred Scott v. Sandford*, brought by an enslaved man in Missouri who claimed to be free. Dred Scott did not plan on claiming citizenship. His foremost concern was winning freedom for himself and his family. In 1846, Scott and his family had faced a crossroads. As enslaved people, they risked being separated and sold to line an owner's pockets. But Scott argued that he was free because he had, with his owner, resided on free soil in Illinois and the Wisconsin territory, today's Minnesota. The family filed a lawsuit in the Missouri state courts and, after losing there, appealed in federal court. This is where the problem of citizenship reared its head. Only if he was a citizen of Missouri could Scott sue in a federal court. When the case arrived at the U.S. Supreme Court, Taney directed his attention to the question that had long plagued Black Americans: could Scott—and, by implication, any Black American— sue as a citizen of the United States?

The court's decision dealt a blow to the Black American claim to citizenship: Taney ruled that Scott had no right to sue because as an enslaved person, he was not a citizen. Taney then went a step further. No Black American was intended to be a citizen of the United States by the framers. It was a powerful repudiation of the interpretation of the Constitution long promoted by Black

activists. The nation's highest court declared that Blackness rendered them unequivocally noncitizens.

But the decision was not unanimous. Associate Justices Benjamin Curtis and John McLean issued written dissents. Justice McLean affirmed that all those born in the United States were citizens by birth: "Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen." When it came to the Constitution and anti-Blackness, McLean quipped, "This is more a matter of taste than of law." Justice Curtis offered a more thorough analysis, one that aligned directly with the arguments that had been made in the colored conventions: "The free native-born citizens of each State are citizens of the United States [and] as free colored persons born within some of the States are citizens of those States, such persons are also citizens of the United States." Theoretically then, absent any showing that he was not a citizen of Missouri, Scott should be assumed to be a citizen of the United States with a right to bring suit in its courts. As for men like Frederick Douglass, those deemed citizens of the states in which they resided, as Douglass was in New York, were citizens of the United States by virtue of birth.

Justices Curtis and McLean never acknowledged having been influenced by the deliberations of the colored conventions. Still, the force of Black self-defense—which stretched back to the Cuffe brothers in Massachusetts—had pressed the justices, and many other lawmakers, to confront a question they might otherwise have avoided. Whether they were lonely ships pilots, westward migrants, or enslaved people seeking access to a federal forum in which to claim freedom, Black Americans had been insisting for decades that they were citizens of the United States. Were they

surprised when the justices echoed their arguments? It is not likely. The official deliberations over Black citizenship let them know that their ideas were being felt, even when they did not win the day.

In subsequent months, when lower federal courts and state courts alike were asked to enforce Taney's conclusions, they balked and then sided with the views expressed by Justices McLean and Curtis. Despite its intent, Taney's conclusion—that Black Americans were not citizens of the United States—went largely unenforced. Rather than settling the question, *Scott v. Sandford* further fueled debate.

Even before the Civil War's end in 1865, the tide had begun to shift on Black citizenship. A dispute in New Jersey played a critical role. The first sign came in November 1862 when Edward Bates, Abraham Lincoln's attorney general, was asked to render an opinion about a Black seaman who'd been discovered commanding a schooner off the coast of New Jersey. Federal law limited that role to citizens of the United States and Bates plainly stated the matter: "Who is a citizen? What constitutes a citizen of the United States?" He scoured court decisions and the "action of the different branches of our political government" and discovered no clear answer: "The subject is now as little understood in its details and elements, and the question as open to argument and to speculative criticism, as it was at the beginning of the government."

Bates then broke with the official past and instead echoed the thinking that had emanated from the deliberations of Black activists in the colored conventions. "Every person born in the country is, at the moment of birth, *prima facie* a citizen; and he who would deny it must take upon

himself the burden of proving some great disfranchisement strong enough to override the '*natural born*' right as recognized by the Constitution in terms the most simple and comprehensive, and without any reference to race or color, or any other accidental circumstance." Bates did not go so far as to deem enslaved Black people to be citizens, though he did not close the door on that possibility. But in the case of a free Black gentleman from **New Jersey**, Bates was unequivocal: he could rightly command the vessel in question as a citizen of the United States.

Two years later, the next National Convention of Colored Men met in Syracuse, New York. It was October 1864, fourteen months *before* the Thirteenth Amendment would abolish slavery, and yet delegates were already at work on questions of freedom and citizenship. The minutes report how Ohio delegate John Mercer Langston argued that with freedom came citizenship, and he reviewed Attorney General Bates's opinion, lauding it as "a complete answer to the arguments and cavils against us." Freedom—the closing of the door on the long, bloody chapter that had been enslavement—was but a first step for men and women who would now remake their worlds and the nation.

In the years that followed, lawmakers transformed the postwar Congress from an ineffectual and muddled body into a staunch promoter of Black citizenship. It was a struggle. In the wake of the Thirteenth Amendment's formal abolition of slavery in 1865, white Southerners got to work on imposing a slavery-like regime on the newly freed people. Congress responded by promulgating the Civil Rights Act of 1866, which opened with a declaration of citizenship as birthright: "All

persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.”

Black activists called for Radical Republican legislators to produce what would become the Fourteenth Amendment to the Constitution. Over many months in the winter and spring of 1866, the Joint Committee on Reconstruction wrangled over how to ensure equal protection, due process, and voting rights for Black men. The final amendment consolidated varied measures. It guaranteed to citizens privileges and immunities and to all persons due process and equal protection of the laws; penalized states that denied any male inhabitants the vote; limited the holding of federal offices to those who could take an ironclad oath to having supported the Constitution in the face of the recent rebellion; and repudiated the Confederate debt and barred compensation to former enslavers for the loss of their property in human beings. Finally, it empowered Congress to enforce the amendment.

Only late in its deliberations did the Senate add birthright citizenship to a new first section of the joint committee’s amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The principle was by now familiar, mimicking the terms of the Civil Rights Act of 1866. Still, opponents spun out what they deemed to be the clause’s regrettable effects: it would transform people of color into the constitutional equals of white Americans. They could not stop approval of the amendment’s new birthright provision, but their objections underscored how consequential a transformation it would bring.

In just over two years, in July 1868, the requisite twenty-eight states had approved the amendment, and it was ratified. Notably, however, three of the four slaveholding border states that had remained in the Union—Delaware, Maryland, and Kentucky—did not ratify the amendment until years later, in 1901, 1959, and 1976, respectively. Ambivalence about Black citizenship persisted.

When the 1869 National Convention of the Colored Men of America met in Washington, D.C., it did so under new terms. Over four days, men from twenty-one states and the District of Columbia moved between meetings at the Union League Hall and Israel Bethel Church. Among them were luminaries like Frederick Douglass. The new 14th amendment had finally affirmed the principles for which the colored conventions—dozens of them over nearly four decades—had stood: Black Americans were citizens of the United States by virtue of birthright. That and nothing more made them equals to all other Americans. Those who had instigated the 1869 meeting rooted their urgings in an expansive view of the Fourteenth Amendment: “Surely, citizenship . . . carries with it the rights of citizens.” That, they insisted, included the right to vote.

Delegates knew that while a guarantee of citizenship was a milestone, they would need to breathe meaning into their new status. What, they asked, did sweeping phrases such as “equal protection” and “due process” mean? While the Civil War and Reconstruction seemed to establish the unassailible belonging of Black Americans, persistent discrimination and organized violence required that they exercise renewed vigilance. In a short time, convention-goers had

already become veterans of struggles over landownership, labor conditions, family autonomy, mobility, public education, and armed self-defense.

The roll call of delegates reflected the new, far-ranging reach of Black politics, with activists from Northern states joined by those from the South. William T. Catto, a veteran of New Jersey's 1849 convention, an AME Church leader, and antislavery firebrand headed a delegation of 8 men who represented the state of New Jersey.

The deliberations eventually turned to voting rights—this was, delegates agreed, an essential instrument in the ongoing struggle for equal protection and due process. They resolved to demand an additional constitutional amendment, one that would go beyond the Fourteenth Amendment's penalty for states that denied voting rights. Black activists aimed to win a guarantee of access to the ballot box. As the convention discussions wrapped up, members organized into delegations and headed out from the meeting hall, crossing the nation's capital to lobby federal officials about what freedom and citizenship should entail—which, they believed, included access to the polls.

Isaiah Weir from Philadelphia spoke for his committee of men from Rhode Island, Maryland, Georgia, the District of Columbia, Illinois, Mississippi, and Pennsylvania when they appeared before the House Judiciary Committee to “claim, from this nation, protection in the exercise of all political rights belonging to us as American citizens.” Weir invoked the Declaration of Independence to suggest that they were men prepared “to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and Nature’s God entitle them.” He

drew upon the Constitution: “We, the people” had delegated to the federal government the obligation to “secure the blessings of liberty” for all Americans. Voting rights, which had long been controlled by the states, must now be a matter of federal concern. Individual states might try to reject Black men as voters, and Congress was obliged to override those race-based barriers. This was, in Weir’s view, required by the Thirteenth Amendment’s promise of freedom and the Fourteenth Amendment’s guarantee of citizenship: “Suffrage cannot be extended as a gratuity.” The vote belonged to Black men, and it was Congress’s job to ensure that no one kept them from it.

In a matter of weeks, at the end of February 1869, Congress sent the Fifteenth Amendment to the states for ratification: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” President Ulysses Grant endorsed the change. States in New England and the Midwest came on board easily. Congress held the key to readmission to the Union for those Confederate states that had not yet been readmitted and, as with the Fourteenth Amendment, made ratification a condition of statehood. Black men were citizens and the Constitution now protected their votes.

Frederick Douglass knew, of course, that no constitutional amendment alone would settle the nation’s long struggles over national belonging. In an 1867 lecture he had directed attention to related questions about the belonging of Chinese immigrants and their children. His position was unequivocal: they too must be made citizens. “Would you,” he asked, “have them naturalized, and have them invested with all the rights of American Citizenship? *I would.*” Douglass then

plunged into a broader debate: “I want a home here not only for the negro, the mulatto and the Latin races, but I want the Asiatic to find a home here in the United States, and feel at home here, both for his sake and for ours.”

Douglass was prophetic. In 1870, Congress for the first time opened the possibility of citizenship by naturalization to immigrants of African descent, but it declined to do the same for immigrants from China. In the 1880s, Chinese immigrants and their children found their standing in the United States sharply undercut by a series of exclusion acts that limited their entry and mobility in ways that echoed the Black laws that had decades before restricted free Black Americans. And in 1895 a man of Chinese descent born in the city of San Francisco, Wong Kim Ark, found himself detained in his home city’s port, refused entry by federal officials who deemed him a noncitizen. Officials there regarded men like Wong indelibly foreign by virtue of their parents’ status as noncitizen Chinese immigrants. It was a devastating deviation from the birthright principle. Only after the 1898 Supreme Court ruling in Wong Kim Ark’s case was it clear that Chinese Americans also enjoyed the same birthright protections that Black people had fought for decades to enshrine.

The colored conventions continued their work into the last decade of the nineteenth century. Even with questions about freedom and citizenship settled, giving meaning to these principles required vigilance. And in the years following the defeat of Reconstruction’s period of interracial governance, a push for white rule in the South—in politics, business, and everyday life—surged. Onetime federal allies of Black equality—the Supreme Court and Congress included—backed away from their commitments to a democracy led by Black and white men alike. The last

national colored convention on record was held in 1893. There, gathered in Cincinnati, Ohio, some five hundred Black activists upheld a tradition that had begun more than six decades earlier. Delegates stood firm in their belief that they were full and equal citizens before the Constitution. They decried the outrages of the day, including the rise of lynching. They were again among the despised. But now, as citizens, they were more fully equipped to demand that the nation stand up to its best ideals.