WHEN FREE MEN LOST THE RIGHT TO VOTE

Twenty-three years before the Civil War's outbreak, legislators in a certain state changed their constitution, taking away African American citizens' right to vote.

By Clarke Thomas


Yes, this happened in a place where, at a protest meeting in Germantown on April 18, 1688, Quakers initiated their long battle against slavery in a province founded just seven years earlier by William Penn. Furthermore, a state that on March 1, 1780, passed Act 34-21 creating the gradual abolition of slavery by providing that black and mulatto children born to a slave mother would become “servants,” freed when 28 years of age.

Yet, on October 9, 1838, Pennsylvania legislators ratified the work of a constitutional convention, which in its Article III carried a new clause specifically listing “white freemen” as the only persons entitled to vote.

From 1838 until the passage of the Fourteenth Amendment to the U.S. Constitution in 1868, African American men in the Keystone State could not vote. Indeed, that right was not officially nailed into the Pennsylvania Constitution until the 1874 state constitutional convention. (Note: women of any color didn't have federally-supported voting rights until 1920 with the Nineteenth Amendment’s passage.)

First, let it be said that Pennsylvania was not alone among northern states in this matter. Southern states at this time, of course, didn’t allow blacks, slave or free, to vote. Interestingly though, three slave states which had originally permitted black voting later amended their constitutions to exclude it: Delaware (1792), Kentucky (1799), and Maryland (1809). But by 1840, some 93 percent of the northern free black population lived in states that either completely or practically excluded them from the right to vote. Only in Massachusetts, New Hampshire, Vermont, and Maine could blacks vote on an equal basis with whites. In New York, they could vote only if they met certain property and residence requirements.

The worst was that in three states where they once had enjoyed the ballot, they were now completely disenfranchised—Connecticut (1818), New Jersey (1820), and Pennsylvania (1838). Moreover, new states entering the union adopted constitutions explicitly denying black men the right to vote.

Yet, how did this disenfranchisement come about in Pennsylvania, a state previously noted for its tolerance? For one, the Keystone State was caught in the Panic of 1837, the
nation’s first great depression. This downturn emphasized the growing economic competition in a society industrializing, with immigration from Europe surging, and northern workers scapegoating blacks, including emancipated slaves and refugees escaping from southern slavery via the Underground Railroad. Pennsylvania’s proximity to the Mason-Dixon Line slave territory made for particular anxiety. Between 1832 and 1849, there were a series of anti-black riots in Pennsylvania, including five alone in Philadelphia with its growing immigrant population, and a particularly violent uprising in Columbia, Lancaster County, in August 1834. White labor feared not only the competition of blacks in the skilled trades but also the loss of social status that resulted from associating with them. Another factor, the 1831 Nat Turner Rebellion in Virginia, was fresh in the minds of whites, northern and southern, as the 1830s progressed.

Politics, whether for economic or racial reasons, inevitably entered the matter as the Jacksonian Democrats, the Whigs, and the Anti-Masons sparred for governmental control. A confluence of all these factors contributed to the overall atmosphere of the constitutional convention, which opened in Harrisburg May 2, 1837, the result of years of efforts by the state’s Jacksonian Democrats, (that Fall, the convention moved to Philadelphia). Initially, they used the onset of the Panic of 1837 to prompt populist moves to curb banking and business by regulating their charters.

The Democrats also pushed to curtail the power of the governor by requiring election, rather than appointment, of several state officials, and they wanted to water down the residency and property qualifications in order to allow poor whites to vote. The Whigs and Anti-Masons, successors to the original Federalists of the Washington-Adams era, supported property qualifications for both races and vigorously opposed black disenfranchisement.

In the constitutional convention, the Jacksonians made up about one-third of the 133 delegates; the Whigs, including Anti-Masons, had a majority of one; with the remainder divided among those who wanted no amendments and those who were amenable to reasonable amendments desired by the people.

While the black suffrage question was not on the original agenda, it came to the fore in an early debate on deleting tax requirements for voters. As the arguments focused on the meaning of “freeman,” Democratic delegate John Sterigere of Montgomery County proposed inserting the word “white” in the right-to-vote phrase. On June 21, a Bucks County delegate, E. T. McDowell, raised the specter of widespread black voting if the specter of widespread black voting if taxing qualifications were lifted, warning that “all the Negroes in the Commonwealth would be turned loose ... on election days, five thousand in Philadelphia alone.” The Doylestown Democrat printed letters condemning three of the four Bucks County delegates who had advocated black suffrage.

Into this volatile mix, add two lawsuits—in Luzerne and in Bucks counties—that brought to public attention the question of what then was called “Negro suffrage.” Although this inquiry wasn’t on the agenda, African American organizations must have sensed trouble ahead, with Pittsbughers taking the lead before Philadelphians acted. First came two 1837 “Memorials” from “the free citizens of color in Pittsburgh and vicinity,” with the first signatures those of members of the Vigilance Committee. The first name was that of bathhouse owner and barber John B. Vashon, described as the richest black man in Pittsburgh. Also on the committee writing the memorial were Lewis Woodson and Samuel Ranyolds, both of Pittsburgh; and Joseph Mahonney of Allegheny and Thomas Knox of Arthursville, two municipalities later merged into Pittsburgh. They were secretly black agents for the Underground Railroad, a loosely knit network of trails and hideouts that became a system through which abolitionists worked their plan to rescue and aid runaway slaves.

The first Pittsburgh Memorial, on June 26, noted with “surprise and alarm” the news that the convention was contemplating making the right of suffrage dependent upon “complexion, whether dark or fair.”

The second, on July 8, listed at length the achievements of the 2,500 citizens of color in the Pittsburgh region, including a common day school, a flourishing Sunday school, a temperance society, “total property and poll tax paid, $322, total water tax paid, $400,” and a listing of “colored mechanics—carpenters, blacksmiths, bricklayers.”
The memorial contended that there was:

less idleness and drunkenness among the colored people who actually live in the city, than among any other class of her population. Whatever ignorance or degradation there is among us owes its existence chiefly to our former condition of life ... slavery, that unrighteous, and unnatural state in which many of us were raised. The fathers of the Commonwealth abolished this wicked system.

Abolitionist societies in the state, as in New York, joined the fray in fighting these disenfranchisement moves.

All of this activity resulted in Whigs, Anti-Masons, and some Democrats working together just before the 1837 Summer adjournment to defeat the proposed effort to insert the word “white” before “freeman.”

However, a milestone event came in July 1837, with a Pennsylvania Supreme Court decision in the first of the lawsuits mentioned above. The Luzerne County case, Hobbs v. Fogg, had been working its way through the courts. The suit originated as Fogg v. Hobbs because William Fogg, a black man, challenged the election of Hiram Hobbs as township elector because he, Fogg, had been refused the right to vote. At issue was whether Fogg was a freeman entitled to the ballot. A local jury found for Fogg, a verdict that Hobbs appealed to the Pennsylvania Supreme Court, which at a crucial time during the deliberations of the constitutional convention, overturned the lower court’s action, thus affirming that Fogg, as a black man, had no right to vote.

The opinion wandered all over the landscape seeking justifications for its denial of black rights. It referred to a 1726 statute which contained a “denomination” of blacks as “an idle and slothful people,” and “directed magistrates to bind out free negroes for laziness or vagrancy.” Therefore, the court declared that “it is difficult to discern a degree of magic” in subsequent constitutions to change matters. The decision said that during the 1790 constitutional convention, delegate Albert Gallatin struck out the word “white” before “freemen” because “it was feared that respectable men of dark complexion would often be insulted at the polls.” (See a paragraph on this matter later in this article.) Finally, the court declared that the 1787 federal constitution’s acceptance of slavery presented liabilities for blacks that “every

The Democratic organization in Bucks County, feeling its power threatened, took various political steps, such as repeatedly challenging election counts, sometimes on grounds that blacks had voted illegally.

In December, delegate Sterigere, ever persistent, introduced three memorials from Bucks County citizens urging that the convention change Article III of the constitution “expressly providing that no one

Despite being a free state, papers like The Pittsburgh Gazette nonetheless ran ads like these from June 27, 1834, for owners in pursuit of runaway slaves. History Center Archives.
white men exclusively, and that colored persons of Africa blood, were not contemplated by that Constitution. That the latter have no, and never had any chartered or Constitutional rights...."

Clearly, the Fox ruling coming atop the Hobbs v. Fogg decision had a major impact on the convention as it started the new year of 1838. The great debate on the subject came in apparent to every well judging person, that the elevation of the black, is the degradation of the white...."

Ebenezer Sturdevant of Luzerne County argued, "I am satisfied that it not the desire of the black to enjoy the right of suffrage. They, sir, would have been silent on this subject, but that they have been goaded on by the mistaken zeal of deluded philanthropists."

January and consumed 40 pages in the Convention’s “Proceedings and Debates” journal. Benjamin Martin of Philadelphia County led off the discussion on Jan. 17, declaring: “[T]he divisionary line between the races, is so strongly marked by the Creator, that it is unwise and cruelly unjust, in any way, to amalgamate them, for it must be

But Thomas Earle of Philadelphia County asked if his opponents meant to imply “that the Creator of the universe, committed a radical error, when he made men of different complexions....”

In a 1937 article, Frank B. Sessa noted that “race sentiment or at least race consciousness developed in the convention, and many members were not willing to put the free Negro on a par, politically, with themselves.” However, the subject of Sessa’s article, delegate Walter Forward, was an exception: a Whig chosen by Jacksonian Democrats who championed the rights of the black man, perhaps because of the influence of his earlier connection with the African colonization movement. He indicated that many Negroes owned property and were industrious yet were forced to be obedient to the same laws, though they had no part in their enactment. In conclusion he stated that no vote of his would exclude a man from exercising the privilege of the franchise because he belonged to a so-called inferior race."

Part of the discussion centered on what the writers of the 1790 state constitution had intended on the subject. A letter had been sent to one of the remaining surviving delegates, the illustrious Albert Gallatin, onetime resident of Pennsylvania’s Fayette County. Gallatin was Secretary of the Treasury in the Jefferson administration and went on to a distinguished diplomatic career as U.S. minister to France and then Great Britain. In a written reply, Gallatin apologized for an inexact memory at 77 years of age but then wrote forthrightly: “Yet I have a lively recollection that, in some stages of the discussion, the proposition pending before the convention, limited the right of suffrage to ‘free white citizens,’ &c, and that the word ‘white’ was struck out on my motion.”

Nevertheless, in the final action on the proposed constitution on February 22, 1838, the word “white” was incorporated into the voting qualifications, with at least 57 of the Democratic delegates voting “yes.” That, of course, set off public discussion leading up to the October referendum vote by Pennsylvania’s voters. Black suffrage was but a part of the debate over what historian Rosalind Branning has called the “compromise constitution of 1838.” She writes: “The conservative majority
in the convention had prevented a revision on the thoroughgoing basis desired by the Jacksonian Democrats and thus forced a compromise. But this is not to say that the new fundamental law introduced no significant change." She particularly stresses the "resumption of power by the people in taking from the Executive nearly all his patronage, and making more offices elective." So neither side was happy with the result.11

As to the black suffrage question, a Philadelphia newspaper, the Pennsylvania, as early as January 20, 1838, declared: "We are at least tolerably sure that nine tenths of the people of Pennsylvania are opposed to granting equal political privileges to the negro race...."

Across the state, the Mercury, a Democratic newspaper in Pittsburgh, had this to say on February 28, in a comment on suffrage changes in general: "They are, we conceive, great improvements—they extend the right of suffrage considerably beyond its present allowance, and they put an end to the claim of those who are not entitled to political equality with white freeman."

The Whiggish Pittsburgh Gazette did not comment editorially on this matter or any other, choosing instead on February 26 to print a "Message from Convention Leaders" that explained in neutral fashion the proposed constitutional revisions. Finally, on the eve of the October vote, the Gazette carried an article opposing the revisions, but did so rather opportunistically on grounds that the Hobbs v. Fogg decision had already settled the issue so that the proposed revision of Article III would not actually alter the constitution. Thus the Gazette was not too far along the path from the early days after its 1786 founding when it printed advertisements for runaway slaves to the time in the 1850s when it became a strong anti-slavery journal.12

All of these factors may have contributed to the fact that the constitutional alterations were approved in October by a narrow margin of state voters—113,971 for and 112,759 against. The chief support came from the northern and western counties and the opposition from the so-called "German counties" in the east central region, plus the large cities. Allegheny County, for example, opposed the new Constitution, 4,460 for and 5,049 against.

Albert Gallatin favored striking the word "white" from voting requirements. He served the Pennsylvania State Legislature and the United States Senate, and as Secretary of the Treasury. History Center Archives.

Historian Kirk H. Porter has nailed down the significance for the nation of the 1838 vote in observing: "[T]he action of Pennsylvania in excluding the Negro marks a turning point in the development of the Negro suffrage controversy.... [I]t put an end to changes in the Negro suffrage situation until the Fourteenth Amendment was passed [ratified in 1868]."13

A final cry of anguish from the black community came from a State Convention of Colored Freemen of Pennsylvania, held in Pittsburgh in August 1841. It mourned that "a restriction in the third article of the Constitution of Pennsylvania deprives us, as colored men, of the right of suffrage ... [a] restriction impolitical, oppressive, and wrong.... It is wrong because it inflicts punishment on the innocent.... But what is our crime, that this excessive punishment should be inflicted upon us?"

A different kind of response came in 1842 with one more riot in Philadelphia. Mobs attacked a black parade commemorating the abolition of slavery in the West Indies.14

However, that is not the whole story. During the ensuing two decades, Pennsylvania was a breeding ground for sentiments that led to the Republican Party's founding and strong support for the Union and anti-slavery cause during the Civil War. Largely forgotten, though, in the annals of history is the fact that during that same period, black men were not allowed to vote in the Keystone State.

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1 Leon F. Litwak, North of Slavery (Chicago: University Of Chicago Press, 1961), 75.
3 Litwak, 100, 101.
4 Litwak, 158.
5 Smith and Trotter, 286.
6 Litwak, 82.
7 Smith and Trotter, 288.
8 Smith and Trotter, 289, 290.
9 Litwak, 85.
12 Clarke M. Thomas, Front-Page Pittsburgh: Two Hundred Years of the Post-Gazette (Pittsburgh: University of Pittsburgh Press, 2005), 51.
14 Litwak, 102.