

STONY THE ROAD

RECONSTRUCTION,
WHITE SUPREMACY, AND
THE RISE OF JIM CROW



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GATES, JR.

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Excerpted from Chapter One: Antislavery / Antislave

A LOOK AT RECONSTRUCTION

The eruption of the expression of white supremacist ideology in what increasingly appears to be a determined attempt to roll back the very phenomenon of a black presidency is just one reason that the rise and fall of Reconstruction and the surge of white supremacy in the former Confederate states following the end of the Civil War are especially relevant subjects for Americans to reflect upon at this moment in the history of our democracy. In fact, I'd venture that few American historical periods are more relevant to understanding our contemporary racial politics than Reconstruction. Think of the fundamental questions that the study of the period forces us to consider: Who is entitled to citizenship? Who should have the right to vote? What is the government's responsibility in dealing with terrorism? What is the relationship between political and economic democracy? These are all Reconstruction questions. Reconstruction—when the country intended to institutionalize for its black citizens what President Lincoln had called “a new birth of freedom”—saw the passage of the country's first civil rights laws and the amending of the Constitution, forming the basis of the rights revolution of the modern era that continues to this day, most recently in the ruling that established the right to marry without discrimination based on gender or sexual preference.¹¹

One of the most shocking things to realize about Reconstruction is how painfully short it was, compared to the dreadfully long duration of slavery. Though scholars differ on when Reconstruction began—whether in 1861 or 1863 or 1865—it was clearly on the road to ending by the Panic of 1873, the first “Great Depression” in post–Civil War America, and suffered a devastating political blow just four years later, with the Compromise of 1877, which, in the most stripped down of terms, secured the election of Republican Rutherford B. Hayes by giving him the electoral votes of Democratic South Carolina and Louisiana in exchange for a promise to withdraw the remaining federal troops from those statehouses. Regardless of its brevity, Reconstruction remains one of

the most pivotal eras in the history of race relations in American history—and probably the most misunderstood.

When the Civil War began in 1861, Reconstruction was really a process question: If and when the Union was saved, how would the eleven states that had seceded to form the Confederacy be reabsorbed? On that the US Constitution was silent. Improvisation would prove unavoidable.

As the rebellion dragged on and the war hardened, the definition of Reconstruction changed. There could be no “reconstructing” the Union as it had been. With the aim of the struggle eventually expanding from saving the Union alone to saving it by emancipating the Confederacy’s slaves (and with the arming of those brave black men among them willing to fight and die for the cause), Reconstruction took on a double meaning: both of readmitting the conquered Confederate states to the Union and of granting freedom, citizenship, and a bundle of political, civil, and economic rights to African Americans—both those free *before* the war and those freed *in* it. Reconstruction, in this sense, meant repairing what the war had broken apart while simultaneously attempting to uproot the old slave system and the ideology underpinning it that had rationalized the process of making property of men a “black and white” issue. As the historian David Blight says, Reconstruction at once called for both “healing” and “justice,” and those competing ends would not only remain in tension throughout the period; they would also prolong an enormous amount of racial violence until Reconstruction itself was overthrown.¹²

The process of Reconstruction involved nothing less than the monumental effort to create a biracial democracy out of the wreckage of the rebellion. Though that effort ultimately was thwarted, Reconstruction saw the passage of a vast array of legislation aimed at transforming the status of the formerly enslaved, beginning with Congress’s passage of the Civil Rights Act of 1866, the nation’s first federal civil rights law. The ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments in 1865, 1868, and 1870, respectively, permanently altered the status of African Americans under the US Constitution. And, after seizing control of Reconstruction policy from President Andrew Johnson, who had called for a speedy readmission of the former Rebel states (as

they hastily set about imposing a series of harsh “Black Codes” on the freedmen and freedwomen almost as soon as the war ended), Congress, between March 1867 and March 1868, passed four successive Military Reconstruction Acts that carved the defeated Southern states (save Tennessee) into five military districts and required them to hold elections for new constitutional conventions, which wouldn’t be deemed legitimate unless black men were given the vote. They also had to ratify the Fourteenth Amendment, which, among other things, established “birthright citizenship and prohibited any state from “abridg[ing] the privileges or immunities of citizens of the United States,” “depriv[ing] any person of life, liberty, or property, without due process of law,” or “deny[ing] to any person within its jurisdiction the equal protection of the laws.”

During the longer Reconstruction era, including the Redemption period that followed it, an estimated two thousand black men served in office at every level of government, including two US senators and twenty congressmen, from Hiram Revels (Republican from Mississippi), who took office in the Senate on February 25, 1870, and Joseph Rainey (Republican from South Carolina), who joined the House on December 12 of that same year; to George Henry White (Republican from North Carolina), who took office in “the US House of Representatives on March 4, 1897, and left office on March 3, 1901.

White was the last African American to serve in either house of Congress until Oscar Stanton De Priest, a Republican from Chicago, took office in the House on March 4, 1929, in the midst of the New Negro movement. His election reflected Chicago’s changing demographics resulting from the influx of black people from the former Confederate states during the Great Migration. In other words, the black people who had been impoverished by the South’s agricultural economy and disenfranchised by white supremacist state constitutions and legislation not only migrated to cities in the North for work, but voted when they did so, effectively fighting back from their new homes against the dismantling of their rights in their old homes. The South would wait even longer to see the return of black representation post-Reconstruction. It wasn’t until 1972 that Georgia and Texas elected Andrew Young and Barbara Jordan, respectively, to the US House of Representatives. For North Carolina, it would be another twenty years from this milestone, with the electoral victory of Eva Clayton in 1992.”

With the aid of the Freedmen’s Bureau, created shortly before the Civil War’s end, on March 3, 1865, to assist former slaves in matters relating to education, health, contracts and legal dealings, and often elusive land ownership, African Americans reconstituted families torn apart by the slave system, exercised their right to marry, and navigated the transition to the contract-based free labor system. They pursued land for farming, and, even when that promise was betrayed, they persevered, building businesses, churches, schools, and other legacy institutions. They attained literacy, educated their children, and created art, literature, and other cultural forms to express the African American experience, including singing the spirituals that bonded them to generations of their ancestors for whom freedom was, in the words of Langston Hughes, the ultimate “dream deferred.”¹³



“The First Colored Senator and Representatives,” lithograph, Currier & Ives, New York, 1872.

In the broadest terms, Reconstruction was a revolutionary time in American life—a time of national renewal extended out from four years of Civil War, death, and destruction that narrowed the gap between the country’s ideals and laws and advanced racial progress. Yet it was also a turbulent and brutally violent period, one marked by rapid economic change and new forms of white resistance that included everything from organized paramilitary assaults and political assassination to night rides and domestic terror.

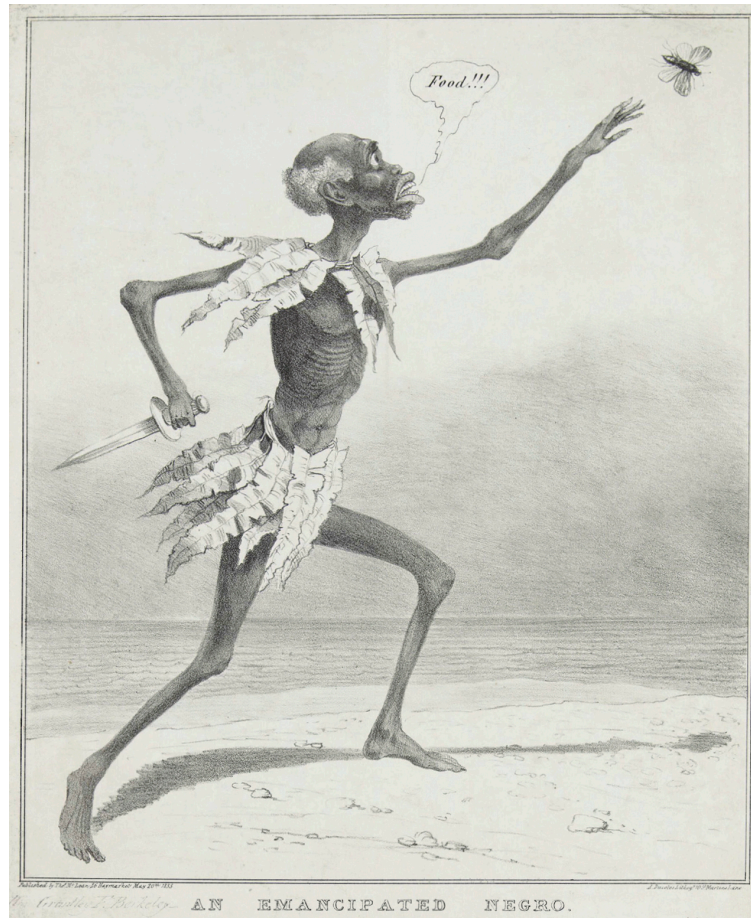
Over time, the federal military occupation that enabled the nation’s bold experiment in what could be called biracial democracy lost support among the cost-conscious and war-weary parts of the political and economic leadership in the North. The Panic of 1873 and the economic depression that followed it further sapped the civic will and led many voters to cast blame on the party in charge in Washington since the Civil War: the Republican Party, without whom Reconstruction would have been a dream without a policy or a prayer. Year after year, election after election, the counterrevolution led by white Southern Democrats only intensified until their crusade to “redeem” the former Confederate states knocked down every last domino. By 1877, Redemption governments enveloped the South in what was euphemistically described as “home rule” (as opposed to the federal military occupation, which Southerners had derided as “bayonet rule”). Eventually these governments paved the way for a spate of Jim Crow segregation laws and the wholesale disenfranchisement of black voters “at the end of the nineteenth century that would bring the African American people to what Rayford Logan called “the nadir”—the rock-bottom lowest point in American race relations—during which time, Logan argued, African Americans suffered a “continued decline, in recognition of [their] political and legal rights.”¹⁴ Moreover, he continued, in the last decade of the nineteenth century, “the South launched a counterattack that further curtailed the already diminished rights of the Negro,”¹⁵ a counterattack perhaps best exemplified—certainly most dramatically exemplified—in the film *The Birth of a Nation*, with its depictions of ignorant, unqualified, venal black elected officials whose most ardent desire seems to have been to rape white women. Images like this would dominate, both consciously and unconsciously, the popular image of Reconstruction for most Americans until the necessary process of revision began

in earnest with W. E. B. Du Bois's *Black Reconstruction in America* in 1935. The book would take its place as a canonical work in the long struggle by historians to recapture Reconstruction from Redemption's apologists, a process realized by Eric Foner's monumental study, *Reconstruction: America's Unfinished Revolution, 1863–1877*, published more than half a century later, in 1988. This process of revision continues in remarkable detail and subtlety to this day.¹⁶

Reconstruction revealed a fact that had been true but not always acknowledged even before the Civil War: that it was entirely possible for many in the country, even some abolitionists, to detest slavery to the extent that they would be willing to die for its abolition, yet at the same time to detest the enslaved and the formerly enslaved with equal passion. As Frederick Douglass said, "Opposing slavery and hating its victims has become a very common form of abolitionism."¹⁷ Being an advocate of the abolition of slavery was not the same thing as being a proponent of the fundamental equality of black and white people, or the unity of the human species (as we shall see in chapter 2 of this book), to say nothing of equal citizenship rights and equal protection under the law. A dismaying example is Abraham Lincoln himself, hailed by so many African Americans, after the Emancipation Proclamation, as our Moses. Learning that Abraham Lincoln, who undoubtedly deplored slavery, reportedly used the N-word can be every bit as jarring for some black people as learning that there's no Santa Claus.¹⁸ Similarly, Lincoln's ambivalent attitudes about race and the colonization of freed black people either in South America or back to Africa can be difficult to reconcile. Lincoln's views, however, were in the process of evolving positively as the Union headed to victory over the Confederacy, in part because of his relationship with Frederick Douglass, and in part because of the crucial role that the heroism of the black soldiers of the US Colored Troops played in the Union's victory; in fact, by 1864, Lincoln was referring to them as his "black warriors."¹⁹

The distinction between supporting the abolition of slavery and supporting—indeed, even *believing in*—equal rights for the formerly enslaved emerged well before the Civil War. The *New York Times*, just two days following the signing of the Emancipation Proclamation, noted one of the concerns arising from slavery's abolition: "If the Proclamation makes the slaves actually free, there will come the

further duty of making them work. . . . All this opens a vast and most difficult subject.”²⁰ A political cartoon printed soon after the abolition of slavery in the British Empire in 1833 had raised the same concern.



“An Emancipated Negro,” George Cruikshank, lithograph, 1833.”

The odd notion that an enslaved black person would work and that a free black person would not was only one example of a deeper racist ideology that emerged in debates over abolition and the future of free black citizens. (“Whence comes the assertion that the ‘nigger won’t work’?” an Alabama freedman asked, ironically noting, “We used to support ourselves and our masters too when we were slaves and I reckon we can take care of ourselves now.”)²¹ In fact, the well-known Boston abolitionist Wendell Phillips (whose written endorsement of Frederick Douglass appeared in his original 1845 slave narrative) no doubt spoke

for many when he publicly worried about this aspect of the Emancipation Proclamation, concerned that it “frees the slave and ignores the negro.”²²

Phillips had reason to be anxious. Consider the case of Andrew Johnson, then the military governor of Tennessee. Johnson declared his support for the abolition of slavery at the end of 1863, but, as Eric Foner writes, “his conversion . . . was based less on concern for the slave than hatred of the Confederacy and of the slaveholders he believed had dragged poor whites unwillingly into rebellion. As he remarked to General Palmer, ‘Damn the Negroes, I am fighting those traitorous aristocrats, their masters.’”

By war’s end, the connection between being antislavery and antislave would become patently apparent. “Slavery is dead,” the *Cincinnati Enquirer* proclaimed when the war concluded; but “the negro is not, [and] there is the misfortune.” Foner notes that at the Maryland Constitutional Convention during the middle of the Civil War, delegates celebrated a “free and regenerated” Maryland; “however, little concern was evinced for the fate of the former slaves. Many delegates,” Foner adds, “felt compelled to deny that voting for abolition implied ‘any sympathy with *negro equality*.’” A Maryland Unionist remarked, after the constitution won narrow approval in a referendum held in the fall of 1864: “There has been no expression, at least in this community, of regard for the negro—for human rights.” As the diarist and self-described gentleman from Philadelphia Sidney George Fisher stated bluntly: “It seems our fate never to get rid of the Negro question. No sooner have we abolished slavery than a party, which seems [to] be growing in power, proposes Negro suffrage, so that the problem—What shall we do with the Negro?—seems as far from being settled as ever. In fact it is *incapable* of any solution that will satisfy both North and South.”²³ Despite the presence of antiblack racism in the North, many white Northerners were willing to accept black legal and political equality as very few in the South were. That included, in a few Northern states, the right to vote.²⁴

It is important to remember that there were those in the North, such as Charles Sumner and Thaddeus Stevens, who were both antislavery and, as it were, “pro-slave,” without whom Reconstruction would never have happened. Of course, there were many who were neither. White supremacist beliefs certainly

predated the Civil War and Reconstruction, in both the North and the South. Frederick Douglass frequently excoriated Northern racism as a sort of evil twin of proslavery sentiment in the South, and he suffered a considerable amount of jeering, harassment, and even physical abuse during abolitionist rallies at which he was a speaker. In fact, he once wrote, he “could not remember to have made a single antislavery tour [during which he had] not been assailed by this mean spirit of caste.”²⁵ In “Prejudice against Color,” an essay that he published on June 13, 1850, in his paper the *North Star*, he provided a definition of “prejudice” that could easily have been one of white supremacy as well: “Prejudice against color does not exist in this country,” he began ironically. “The feeling (or whatever it is) which we call prejudice, is no less than a *murderous, hell-born hatred* of every virtue which may adorn the character of a black man.”²⁶ The roots of antiblack racism extend much further back beyond the nineteenth century, of course; but it’s fair to say that white supremacist ideology, which evolved to justify the enslavement of black human beings, assumed new forms and changed in tune and timbre almost as soon as the Civil War ended and freedmen and freedwomen began to assert their rights, especially the right of black males to register and vote in 1867. Charting how white supremacy evolved during Reconstruction and Redemption is crucial to understanding in what forms it continues to manifest itself today.

In other words, the Civil War ended slavery, but it didn’t end antiblack racism. Proslavery rhetoric and white supremacist ideology had naturally marched arm in arm. But when the South lost the Civil War—at a staggering cost in blood and treasure—white supremacist ideologies continued, unbridled and disengaged from the institution of slavery.

One could make the case that, with the emergence of black male suffrage in 1867 in the Southern states, where black male voters were either a majority or close to a majority, antiblack racist discourse only intensified, because it was forced to do so, in what amounted to a rhetorical and martial terrorist campaign to reestablish white supremacy as the unofficial law of the land. This movement used as its weapons, in addition to lynching, mutilation, rape, beatings, and mayhem, a surfeit of verbal and visual imagery to debase the popular image of the Negro in every way that it could. Meanwhile, antiblack racism in the North,

even among those who had opposed slavery, continued to grow in some quarters, as the reactionary forces against Reconstruction in the South increased in strength. Clearly the North was a safer place for a black person to be living, but the region was never free of antiblack racism.

The difference between being antislavery and, as it were, pro-Negro (or even neutral about racial difference and the fiction of racial essences) manifested itself dramatically during the Civil War and especially after the signing of the Emancipation Proclamation. But the French traveler and writer Alexis de Tocqueville had raised the issue as early as 1835. “I am obliged to confess that I do not regard the abolition of slavery as a means of warding off the struggle of the two races in the Southern states,” he wrote in *Democracy in America*. “The Negroes may long remain slaves without complaining; but if they are once raised to the level of freemen, they will soon revolt at being deprived of almost all their civil rights; and as they cannot become the equals of the whites, they will speedily show themselves as enemies.” Tocqueville went on to say that “I can discover only two modes of action for the white inhabitants of [the South]: namely, either to emancipate the Negroes and to intermingle with them, or, remaining isolated from them, to keep them in slavery as long as possible.” Obviously, those Southern “white inhabitants” chose the latter, never entertaining even the possibility of the former.

But there was a third path that Tocqueville apparently didn’t imagine: the emancipation of the slaves, followed by their virtually complete subjugation after they were “emancipated,” which is precisely what happened to the free Negro in the Redeemed South, culminating in the institutionalization of Jim Crow. Call it quasi-freedom or quasi-slavery: a state of being trapped in a nether zone, between a state of being and nothingness, painted as unworthy of citizenship rights granted prematurely by contemporaries eager to justify the implementation of neo-slavery, and perhaps not surprisingly by early historians of Reconstruction whose work was used to justify Jim Crow.²⁷ (Even Tocqueville himself had predicted, quite problematically, “If liberty be refused to the Negroes of the South, they will in the end forcibly seize it for themselves; if it is given, they will before long abuse it,” which is precisely how the exercise of black political power would be denigrated by journalists and scholars alike.)

Deep-seated antiblack racism was the challenge that black people faced after their emancipation from slavery and during Reconstruction. And its elimination, we know painfully, did not occur, for a complex of reasons: because of the stubborn history and momentum of white supremacy; because of the Redeemed South's political economy, especially the continuing importance of the production of and profit from commodities such as cotton; because of the signal role of cheap black labor in the economy; and because of the need to neutralize, if not erase, the startling manifestation of black political power beginning in 1867, virtually as soon as black men were allowed to register and vote. Redemption was a war to emasculate the early manifestations of what we might think of as "Black Power," as it expressed itself both politically and, to a much lesser extent, economically in the glory years of Reconstruction. The proverbial genie had to be put back in the bottle, and the Redeemed South went about that process with unmatched passion and vengeance.



HOW DID RECONSTRUCTION FAIL?

Given the enormity of the sacrifice of lives in the Civil War to abolish slavery, how was Reconstruction—the program of transitioning those four million slaves into citizenship—allowed to fail? The dismantling followed a few different tracks, principally in the court system and the state legislature. We can approach this question from three vantage points: the political, the economic, and the legal. Politically, a combination of violence, fraud, the aftershocks of the Panic of 1873, and dissipating will and a shift in priorities in the North allowed Democrats (then the "white man's party") to take back control of the various state governments in the South, really from 1869 on. South Carolina, for example, was nicknamed Negro Country during slavery and was the "blackest" of all the states in terms of the relative size of the black voting population. After the election of 1876, in which the "Redeemer" government was ushered in, the new slate of Democrats in the state legislature closed the state university, which had been integrated—in fact, Harvard's first African American graduate, Richard T. Greener, taught in its law school—and reopened it in 1880, for white students only. It remained that way until it was finally desegregated close to a century later, in 1963.

Economically, implementation of the redistribution of the land owned by the traitorous planter class would have effected the single most dramatic change conceivable within the Southern economic landscape. As early in the war as 1861, a writer in the *Weekly Anglo-African*, a leading African American outlet in New York, had this to say about the importance of the ownership of land:

What course could be clearer, what course more politic, what course will so immediately restore the equilibrium of commerce, what course will be so just, so humane, so thoroughly conducive to the public weal and the national advancement, as that the government should immediately bestow these lands upon those freed men who know best how to cultivate them, and will joyfully bring their brawny arms, their willing hearts, and their skilled hands to the glorious labor of cultivating as their OWN, the lands which they have bought and paid for by their sweat and blood?⁵⁸

Just three years later, the National Convention of Colored Men in Syracuse, New York, urged the freedmen to pursue “the accumulation of property.”⁵⁹ White people also knew the importance of land ownership to African Americans. As A. Warren Kelsey wrote to a group of Northern textile manufacturers who had hired him “to investigate prospects for the resumption of plantation agriculture”: “The sole ambition of the freedman at the present time appears to be to become the owner of a little piece of land, there to erect a humble home, and to dwell in peace and security at his own free will and pleasure. . . . That is their idea, their desire and their hope.”⁶⁰

Two days after this meeting, Sherman issued Special Field Order No. 15, which proclaimed lands in coastal South Carolina and Georgia “reserved and set apart for the settlement of the negroes now made free by the acts of war and the proclamation of the President of the United States.” It granted freed people “possession of which land military authorities will afford them protection until such time as they can protect themselves or until Congress shall regulate their

title.”⁶² Forty thousand freed people settled on four hundred thousand acres of this land by June. One of the ministers at the Savannah meeting, Ulysses Houston, established a community on Skidaway Island, Georgia. All told, the federal government held possession of about 850,000 acres of confiscated Southern land after the war.⁶³

It is difficult to imagine any act more revolutionary than the redistribution of land from the planters to the slaves in the former Confederacy. By the fall of 1865, Andrew Johnson, keenly aware of the fundamental transformation this would cause in the structure of the economy in the South and in the relations between black and white, reversed any plans for land redistribution. Only former slaves who had paid for their land were allowed to remain on it. Rumors of “forty acres and a mule” for all freed slaves proved unfounded. Still, African Americans continued to make land ownership a priority. As the freedman Bayley Wyat (also spelled Wyatt) put it succinctly in his “Freedman’s Speech,” delivered in 1866: “We has a right to the land where we are located. For why? I tell you. Our wives, our children, our husbands, has been sold over and over again to purchase the lands we now locates upon; for that reason we have a divine right to the land.”⁶⁴

Judges and legislators, on the federal and state levels, dismantled black rights in a number of overlapping ways. The Supreme Court played a crucial role. In *United States v. Reese* (1876), the court struck down key sections of the Enforcement Act of May 1870, which had attempted to outlaw any interference with a citizen’s voting rights. The court said the Fifteenth Amendment did not guarantee any citizen the right to vote; it only prevented setting racial limitations on the vote. Otherwise, the states had the power to establish qualifications for voting as they saw fit. In *United States v. Harris* (1883), the court struck down a key section of the Ku Klux Klan Act of 1871, ruling that the Thirteenth and Fourteenth Amendments did not allow Congress to punish acts of private persons, only the actions of states.

In the *Civil Rights Cases* (1883), the court applied similar reasoning to strike down the Civil Rights Act of 1875, which had banned racial discrimination in the access to all manner of services and public accommodations. On October 19,

1883, John Mercer Langston delivered a powerful address in Washington, DC, surrounded onstage by luminaries, all of whom were in opposition to the ruling, among them Frederick Douglass, Richard T. Greener, Mississippi's former US senator Blanche K. Bruce, and Jeremiah Eames Rankin, a white abolitionist and the minister of Washington's First Congregational Church who would soon be named the sixth president of Howard University. Langston noted the impossibility of getting protections from Democratic state governments:

The Supreme Court would seem desirous of remanding us back to that old passed condition. It advises that we appeal to the legislatures of the States for protection and defense of our rights. But let us be patient. Wait a little while, some one counsels. My God! How long a time are we to wait! . . . We need and demand protection, and if States should not protect us against abuse, against insults, against violation of our rights, Congress should and must. Hence the Civil Rights bill. . . . How is it possible for the Supreme Court then, able as its members are, learned in the law, to have reached the conclusion that the Civil Rights Act, under the circumstances, is unconstitutional? This is incomprehensible.⁶⁵

Three days later, Douglass spoke in the nation's capital as well, but in terms of grief much more visceral than Langston's:

We have been, as a class, grievously wounded in the house of our friends, and this wound is too deep and too painful for ordinary measured speech. . . . [W]hen a deed is done from slavery, caste and oppression, and a blow is struck at human progress, the heart of humanity sickens in sorrow and writhes in pain. It makes us feel as if some one were stamping upon the graves of our mothers, or desecrating our sacred temples of worship. . . .

The cause which has brought us here to-night is neither common nor trivial. Few events in our national history have surpassed it in magnitude, importance and significance. It has

swept over the land like a moral cyclone, leaving moral devastation in its track. . . .

While slavery was the base line of American society, while it ruled the church and the state, while it was the interpreter of our law and the exponent of our religion, it admitted no quibbling, no narrow rules of legal or scriptural interpretations of Bible or Constitution. . . . But now slavery is abolished. Its reign was long, dark and bloody. Liberty now, is the base line of the Republic. Liberty has supplanted slavery, but I fear it has not supplanted the spirit or power of slavery. Where slavery was strong, liberty is now weak. . . .

It is said that this decision will make no difference in the treatment of colored people; that the Civil Rights Bill was a dead letter, and could not be enforced. There is some truth in all this, but it is not the whole truth. . . . [The Civil Rights Bill] was a banner on the outer wall of American liberty, a noble moral standard, uplifted for the education of the American people. There are tongues in trees, books, in the running brooks—sermons in stones. This law, though dead, did speak. It expressed the sentiment of justice and fair play, common to every honest heart. Its voice was against popular prejudice and meanness. It appealed to all the noble and patriotic instincts of the American people. It told the American people that they were all equal before the law; that they belonged to a common country and were equal citizens. The Supreme Court has hauled down this flag of liberty in open day. . . .

The whole essence of the thing is a studied purpose to degrade and stamp out the liberties of a race. It is the old spirit of slavery, and nothing else.⁶⁶

Judges also narrowed the scope and meaning of laws and amendments, especially the Fourteenth Amendment, so that they offered fewer and fewer protections. Though the facts of the *Slaughterhouse Cases* (1873) do not take on Reconstruction policy explicitly, the court, split 5–4, narrowed the application of the Fourteenth Amendment, holding that it only protects the rights derived from national citizenship—not state citizenship—and defined those rights as so narrow as to be almost meaningless. In *United States v. Cruikshank* (1876), which flowed out of the Colfax Massacre in Louisiana three years earlier, the court ruled that the Due Process and Equal Protection Clauses of the Fourteenth Amendment applied only to state civil rights violations, not civil rights violations by individuals.

The most notorious example of the Supreme Court restricting civil rights was, of course, *Plessy v. Ferguson* (1896). Homer Plessy, a mixed-race man, was removed from a whites-only train car after he told the conductor he was one-eighth black when asked for his ticket—and jailed as a result. Plessy sued. The Louisiana Railway Accommodations Act of 1890 stated that railroad companies must “provide equal but separate accommodations for the white and colored races.” Plessy and his team argued that the law violated the Fourteenth Amendment and awarded railroad employees too much power in determining the race of an individual. In his brief in favor of Plessy, Albion Tourgée—the novelist, newspaper editor, civil rights activist, and attorney and courageous judge in Reconstruction North Carolina, who worked on the Plessy case for free—wrote, “Justice is pictured blind and her daughter the Law, ought at least to be color-blind.”⁶⁷

In his majority decision, however, Justice Henry Billings Brown wrote: “Laws permitting, and even requiring, [the races’] separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children.” In his remarkable dissent, Justice John Marshall Harlan, the son of Kentucky slaveholders and once an opponent of emancipation, warned: “But in view of the Constitution, in the eye of the law,

there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. . . . In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*.” Harlan did make a distinction when it came to Chinese people, whom he called “a race so different from our own.”⁶⁸

As the federal government signaled it would not interfere in the affairs of Southern states, and the Supreme Court overturned or defanged Reconstruction civil rights legislation, Southern Democrat lawmakers took the next logical step. Spurred on by the blueprint set by Mississippi in 1890, redeemed state governments created new constitutions. Virtually all of the former Confederate states threw out their Reconstruction-era constitutions—those that black people helped draft and which they voted to ratify—and wrote new ones that included disenfranchisement provisions, antimiscegenation provisions, and separate-but-equal Jim Crow provisions. Though “race neutral” in language, these new constitutions solidified Southern states as governed by legal segregation and discrimination.

And yet, despite its relative brevity and the enormous power and vitriol of the forces mounted against it, Reconstruction achieved remarkable historical precedents. Before examining in the next two chapters how Reconstruction was attacked and ultimately dismantled, it is useful to compare summaries of the period’s most important accomplishments by two historians, Allen Guelzo and Eric Foner, whose approaches are markedly different. Guelzo argues that birthright citizenship stands out as its great achievement, even more important than the Equal Protection Clause of the Fourteenth Amendment.

While the due process protections in the Fourteenth Amendment were tremendously important in the quest to ensure black rights, Guelzo says that Chief Justice Roger Taney had attempted to use the Due Process Clause in the Fifth Amendment (one of the tools for protecting slave owners’ property) as the justification for the *Dred Scott* decision, so it was already present in the Constitution, as applied to the federal government, not the states; the

Fourteenth Amendment did the latter. However, the clarification that citizenship in the United States is based on location of birth (*jus soli*), not heredity (*jus sanguinis*), was revolutionary. Guelzo explained to me that “Taney had tried to assert *jus sanguinis* in *Dred Scott*, too, because the Constitution simply didn’t offer a working definition of citizenship, either at the state or federal level. This is what entitled black people to vote, since their citizenship could now be based on the inarguable fact that they were born on US soil.”⁶⁹

Guelzo contends that even Webster’s definition of “citizenship” entailed the right to vote. Webster had written in 1828 that a US citizen was “a person, native or naturalized, who has the privilege of exercising the elective franchise, or the qualifications which enable him to vote for rulers, and to purchase and hold real estate.”⁷⁰ This definition alone, in Guelzo’s reading, “did substantially more than any emancipation anywhere else” in the Western Hemisphere in the nineteenth century.⁷¹ (Citizenship, despite Webster’s definition, did not automatically confer upon an individual the right to vote. For example, women were citizens but could not vote until the ratification of the Nineteenth Amendment in 1920.)⁷²

Furthermore, states Guelzo, Reconstruction “restored the Union without destroying federalism, without triggering a second civil war or a genocidal race war, and without punitive waves of executions for treason. Instead, it is one of the monumental ironies of Reconstruction that the victors—freed slaves, Northern whites—were more often the *targets* of violence and murder than the vanquished.” That was most certainly a dramatic departure in the history of civil conflicts.⁷³

One could say that there was a “double consciousness” in Guelzo’s conclusions about Reconstruction, to adapt a concept articulated by W. E. B. Du Bois. While Reconstruction laid the groundwork for the large-scale embrace of white supremacist ideology in this country, it also, according to Guelzo, laid the groundwork for continued black resistance to it.

Eric Foner’s summary of the significance of Reconstruction stresses a related point:

Reconstruction provided space for the creation of key institutions of Black America—the independent church, schools and colleges, and stable families, which became the springboards for future struggle. Its [state] laws and Constitutional amendments [the 13th, the 14th, and the 15th] remained on the books, insuring that the Jim Crow system that followed, at least as a matter of law, remained a regional, not a national, system. The amendments, while flagrantly violated, remained, to quote [Massachusetts Senator Charles] Sumner, “sleeping giants” that could be awakened by subsequent generations. That blacks retained the right to vote in the North became crucial when the Great Migration took place. Reconstruction was followed by a dire retreat, but it forestalled even worse outcomes, such as the system close to slavery envisioned by the Black Codes. One should not minimize the setback that Redemption represented, but we should not simply declare Reconstruction a failure and leave it at that.⁷⁴

Foner concluded in his 2015 essay “Why Reconstruction Matters”:
“Citizenship, rights, democracy—as long as these remain contested, so will the necessity of an accurate understanding of Reconstruction. More than most historical subjects, how we think about this era truly matters, for it forces us to think about what kind of society we wish America to be.”⁷⁵

To some, it may seem that black people somehow went underground in 1877 and didn’t appear again until 1954, the year that the US Supreme Court ended legalized segregation in public schools in *Brown v. Board of Education*. But Reconstruction initiatives continued to assert themselves even past *Plessy v. Ferguson*. There is a constant thread between the end of Reconstruction and the reemergence of the civil rights movement of the 1950s.⁷⁶

The court cases and acts of legislation that enshrined Jim Crow as the law of the land did not unfold in a vacuum. The larger context for them was the

ideology of white supremacy, the set of beliefs and attitudes about the nature of black people that arose to justify their unprecedented economic exploitation in the transatlantic slave trade. Following the Civil War, this ideology evolved in order to maintain the country's racial hierarchy in the face of emancipation and black citizenship. Anything but unmoored or isolated, white power was reinforced in this new era by the nation's cultural, economic, educational, legal, and violently extralegal systems, including lynching. Among its root and branches were the paired mythology of white women's rape and black men's brutality, the convict-lease system, disenfranchisement, and the choking off of access to capital and property ownership. In many ways, this ideology still roams freely in our country today. The next two chapters of this book seek to explain how this process unfolded between the end of Reconstruction and the release of *The Birth of a Nation* in 1915, as antiblack racism effectively deconstructed the image and status of the so-called Old Negro, while the fourth examines the form of black agency inherent in successive attempts to define a New Negro in the face of the rise of the New South, a Negro perhaps better armed to do battle with the hideous forces inscribed in our nation's cultural psyche, forces poised to erupt spontaneously as they would do on so many occasions in American history since Reconstruction, as they did so gruesomely on June 17, 2015, within the sacred confines of Charleston, South Carolina's Mother Emanuel African Methodist Episcopal Church.

Notes

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12. David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, MA: Harvard University Press, 2001), 2.
13. Langston Hughes, *Montage of a Dream Deferred* (New York: Henry Holt and Company, 1951).
14. Rayford W. Logan, *The Betrayal of the Negro: From Rutherford B. Hayes to Woodrow Wilson* (New York: Collier Books, 1954; 1965), 62.
15. Logan, *The Betrayal of the Negro*, 52.
16. See, for example, Brook Thomas, *The Literature of Reconstruction* (Baltimore, MD: Johns Hopkins University Press, 2017); Gregory P. Downs, *After Appomattox: Military Occupation and the Ends of War* (Cambridge, MA: Harvard University Press, 2017); and Richard White, *The Republic for Which It Stands: The United States during Reconstruction and the Gilded Age, 1865–1896* (New York: Oxford University Press, 2017).
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18. For a comprehensive discussion on Lincoln's use of the N-word, with examples, see Henry Louis Gates, Jr., and Donald Yacovone, eds., *Lincoln on "Race and Slavery* (Princeton, NJ: Princeton University Press, 2009), xxi.
19. Abraham Lincoln, interview with John T. Mills, August 15, 1864, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=591> [inactive].
20. *New York Times*, January 3, 1863; Foner, *Reconstruction: America's Unfinished Revolution*, 50.
21. Foner, *Reconstruction: America's Unfinished Revolution*, 103.
22. Foner, *Reconstruction: America's Unfinished Revolution*, 36.
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24. Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: W. W. Norton, 2010), 119; "Exclusion of Free Blacks," Slavery in the North, <http://slavenorth.com/exclusion.htm>.
25. David W. Blight, *Frederick Douglass: Prophet of Freedom* (New York: Simon & Schuster, 2018), 205.

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26. Frederick Douglass, "Prejudice against Color," *North Star*, June 13, 1850, in *The Portable Frederick Douglass*, eds. John Stauffer and Henry Louis Gates, Jr. (New York: Penguin, 2016), 422.
27. Douglas A. Blackmon's *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York: Doubleday, 2008) offers an excellent analysis of what he calls "a nascent industrial slavery" in which black labor is controlled by such horrors as the convict-lease system. Black labor, and therefore black bodies, were trapped in a "cynical optimum of economic harmony, knitting together the interests of capitalists, white farmers, local sheriffs and judges, and advocates of the most cruel white supremacy—all joined and served by an unrelenting pyramid of intimidation."
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29. Gene Dattel, *Cotton and Race in the Making of America: The Human Costs of Economic Power* (Lanham, MD: Ivan R. Dee, 2009), 293, 331.
30. Pete Daniel, "Sharecropping and Tenantry," *Oxford Companion to United States History* (New York: Oxford University Press, 2004), <http://www.oxfordreference.com.ezp-prod1.hul.harvard.edu/view/10.1093/acref/9780195082098.001.0001/acref-9780195082098-e-1393>.
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42. Quoted in Foner, *Reconstruction: America’s Unfinished Revolution*, 285.
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45. Foner, *Reconstruction: America’s Unfinished Revolution*, 291.
46. Ira V. Brown, “An Antislavery Journey: Garrison and Douglass in Pennsylvania, 1847,” *Pennsylvania History: A Journal of Mid-Atlantic Studies* 67, no. 4 (2000): 536, www.jstor.com/stable/27774292.
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