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South Carolina ratified the Thirteenth Amendment in November 1865, but it also declared that Congress had no power to enforce its provisions. Instead, legislators added a warning “that any attempt by Congress towards legislating upon the political status of the former slaves, or their civil relations, would be contrary to the Constitution.”¹⁷ Alabama followed suit three weeks later, declaring, “that [the Thirteenth Amendment] does not confer upon Congress the power to legislate upon the political status of freedmen in this state.”¹⁸ Black civil rights were a state matter, legislators insisted. Former slaves would get nothing but freedom. Eager to accomplish political reunification, Secretary of State William H. Seward failed to comment on such signing statements as he certified the constitutional ratification. Meanwhile, President Johnson rescinded Sherman’s Special Field Order 15 and with it the principle of redistributing ex-Confederate property.

Moderation gave way to a resurgent white supremacy. As Johnson pardoned ex-Confederates, the Democratic Party in former rebel states came roaring back, electing conservative white legislatures in 1865. The Louisiana Democratic convention pledged allegiance to the Union but resolved: “we hold this to be a [g]overnment of white people, made and to be perpetuated for the exclusive benefit of the white race; and . . . that people of African descent cannot be considered as citizens of the United States.”¹⁹ That language was taken from the 1857 *Dred Scott*

ruling, affirming that slavery may be gone, but African Americans had no hope of citizenship either.

In the face of such a turnaround, black leaders argued with renewed insistence that nothing but freedom amounted to no freedom at all. “Slavery is not abolished until the black man has the ballot,” Douglass argued in May 1865. “While the [l]egislatures of the South retain the right to pass laws making any discrimination between black and white, slavery still lives there.”²⁰ Douglass and other leaders argued that the gains won by nearly 200,000 black veterans were being suddenly lost by a Johnson administration that oversaw Reconstruction for the seeming benefit of rank-and-file ex-Confederates. Lincoln’s gamble on ex-Confederate cooperation had lost.

Even border slave states that had stayed loyal to the Union coupled emancipation with denial of black civil rights. Maryland, where Douglass was born and from where he escaped slavery, adopted a constitution in 1864 that ended slavery there but also confined citizenship to white men. Maryland punished rebels but also bound out some of the black children of poor parents under indentures that approximated slavery. At the same time, former enslavers cast off those too old to work. A “great number of aged and decrepit colored people [were] thrown upon the [g]overnment by their former masters,” came a report that summer.²¹ Maryland had ratified the Thirteenth Amendment almost immediately, on February 3, 1865. But Maryland legislators’ attitudes reflected an undercurrent of white racism that saw black freedom and African American citizenship as two separate things. There, Douglass argued: “If the negro knows enough to pay taxes, he knows enough to vote; if the negro can form an opinion respecting the claims of rival candidates and parties, and knows good from evil, as all [Maryland’s] laws concerning his conduct apply, he knows enough to vote.”²²

Freedmen did not wait for white legislators to come around on the issue. In Norfolk, Virginia, more than 1,000 African American men went to the polls in May 1865 to vote. But polling officials refused to count them, citing Virginia’s 1864 constitution, which – like Louisiana’s and Maryland’s – abolished slavery but restricted voting to white men twenty-

¹⁶ Benjamin F. Perry, cited in Eric L. McKittrick, *Andrew Johnson and Reconstruction* (New York, NY: Oxford University Press, 1960), 167.

¹⁷ *A Political Manual for 1866 . . . April 15, 1865 to July 4, 1866*, ed. Edward McPherson (Washington, DC: Philip and Solomons, 1866), 23.

¹⁸ W. E. B. Du Bois, *Black Reconstruction in America: Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880* (New Brunswick, NJ: Transaction Publishers, [1935] 2013), 185.

¹⁹ *Appletons’ Annual Cyclopædia and Register of Important Events of the Year 1865, Volume V* (New York, NY: Appleton and Company, 1866), 512.

²⁰ Frederick Douglass, “In What New Skin Will the Old Snake Come Forth?” May 10, 1865, *The Frederick Douglass Papers, Series 1, Vol. 4*, 83.

²¹ *Baltimore Sun*, July 24, 1865, 4.

²² Frederick Douglass, “A Friendly Word to Maryland,” November 17, 1864, in *The Frederick Douglass Papers, Series 1, Vol. 4*, 49–50.

one and over. (Although Virginia was the Confederate capital, Union-occupied Virginia adopted a Reconstruction constitution in 1864 pledging loyalty to the United States.) Undeterred, the African American voters marched from polling places to churches, recording their votes in order to contest the election later. Massachusetts senator Charles Sumner, writing to the Colored Union League in Wilmington, North Carolina, in May 1865, urged them to “insist on all the rights and privileges of a citizen.” “They belong to you,” he assured them. “They are yours; and whoever undertakes to rob you of them is a usurper and imposter.”²³

Radical Republicans like Sumner – those who supported African American civil rights – were alarmed that the Johnson administration seemed to be siding with ex-Confederates over black loyalists and African American Union veterans. The forces of reaction were gathering again in Southern statehouses, and the opposition Democratic Party was returning with potentially more power than before. The Constitution’s Three-Fifths Clause had been invalidated by the Thirteenth Amendment. Now African Americans were counted as five-fifths of a person for congressional representation. But in places where they were prevented from voting, conservative white Democrats were quickly shaping Reconstruction in their own image. Radicals realized by the end of 1865 that they needed a robust extension of civil rights to African Americans to safeguard the wartime victory against slavery. The sole hope of a continued Republican majority in Congress required black Republicans voting in the South. And while Radicals responded to presidential Reconstruction by developing a legislative civil rights program, African Americans struggled to build institutions promoting uplift and opportunity.

Freedpeople kept faith in Jubilee, building networks of support. In Charleston, South Carolina, Denmark Vesey’s son Robert Vesey constructed a new African Methodist Episcopal Church.²⁴ African Americans migrated to black-led congregations near instantaneously, while white Southern churches became hubs of charitable societies for returning Confederate veterans. Free of white supervision, African American churches sponsored schools and served as centers of community life and

²³ Charles Sumner to Colored Citizens of North Carolina, May 13, 1865, in Charles Sumner, *The Works of Charles Sumner, Vol. IX* (Boston, MA: Lee and Shepherd, 1875), 364.

²⁴ Douglas R. Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey* (Madison, WI: Madison House, 1999), xxiii–xxiv.

neighborhood protection. Christians who had never joined churches before flocked to them. Along with autonomy in religion, African-descended people sought opportunities for a better life on many fronts.²⁵

Freedmen’s schools were founded out of alliances with Northern charitable organizations, the Freedman’s Bureau, and local residents. Many were set up by Bureau agents, recruiting Northern teachers instructing African-descended students. Most focused on reading, writing, and practical mathematics. Some Northern volunteers treated black students as subjects of homilies on thrift and hard work, but schools founded by philanthropic Northerners were overseen in many cases by local African Americans with their own priorities. By the time the Freedmen’s Bureau expired in 1870, more than 4,300 schools had been founded with 9,500 teachers serving nearly 250,000 students. Many students attended for a short time, and schools tended to be clustered in places with resources, such as cities and towns. Some locations were well served, others were underserved, and many were bypassed because of geography or lack of transportation. After the Bureau closed, African American leaders took over. In Texas, African American teachers organized in 1884. Their attitudes and efforts had profound effects on African American literacy in the state. More than 60 percent of African American Texans over ten years old were literate by 1900, up from 25 percent in 1880, and as white Northern teachers returned home in the face of increasing violence, African American teachers took their places.²⁶

Work followed a similar pattern of transition. Rather than looking to whites for guidance, many self-freed African Americans earned high wages in a tight wartime market despite having no clear legal rights. Those who could avoid punishing labor contracts moved to where labor was in demand, along with their skills. In some places, freedmen formed mutual aid associations allocating land, seed, farm animals, and credit. “It has been practically demonstrated that the freed-men were able to manage by themselves cane and cotton plantations,” cheered a report on the Freedman’s Aid Association of New Orleans in the summer of 1865.²⁷

²⁵ Daniel W. Stowell, *Rebuilding Zion: The Religious Reconstruction of the South, 1863–1877* (New York, NY: Oxford University Press, 1998); James T. Campbell, *Songs of Zion: The African Methodist Episcopal Church in the United States* (New York, NY: Oxford University Press, 1995).

²⁶ Elizabeth Hayes Turner, *Women, Culture, and Community: Religion and Reform in Galveston, 1880–1920* (New York, NY: Oxford University Press, 1997), chap. 8; *The Freedmen’s Bureau and Reconstruction: Reconsiderations*, ed. Paul A. Cimbala and Randall M. Miller (New York, NY: Fordham University Press, 1999), introduction.

²⁷ *New Orleans Tribune*, July 11, 1865, 4.

By the time the Thirteenth Amendment was ratified in December, the landscape of opportunity for African Americans already had been severely constricted. After touring the Deep South during the summer of 1865, General Schurz warned, “it is of the highest importance that the people lately in rebellion be not permitted to build up another ‘peculiar institution’ whose spirit is in conflict with the fundamental principles of our political system.”⁴³ But by winter it seemed too late. Organized white Southern terrorist organizations like the Ku Klux Klan were already becoming an ugly appendage to state coercion.⁴⁴ Freedpeople protested. And when the 39th Congress met in December, Republicans faced the monumental task of arresting the process. It was time for repudiating the failed strategy of relying on moderates to temper the reactionary forces of slavery’s resurgence. It was a time for a radicalism not contemplated during the war that did the seemingly impossible work of making former slaves into full citizens.

By the end of 1865, congressional Republicans were realizing that African Americans in the South were the sole available political allies, and an important opportunity to enfranchise them had been missed. The year had seen a tumultuous process of Union victory and emancipation in the spring followed by a swift and bitter reaction in the summer and fall, abetted by President Johnson and led by resurgent ex-Confederates. Confederate armies disbanded only to regroup at statehouses, commemorating the Confederate Lost Cause by pledging allegiance to a version of white supremacy that kept African Americans in slave-like conditions. To stem that tide of postwar reaction, congressional Republicans went to war with their own president. They refused to seat congressional delegations from ex-Confederate states and seized control of Reconstruction from the president early in 1866, passing the Civil Rights Act of 1866 and reauthorizing the Freedmen’s Bureau over Johnson’s vetoes. The Civil Rights Act invalidated state Black Codes, but many Southern states ignored it based on their assertion that the Thirteenth Amendment left civil rights to states. To make up for the lack of civil rights protections in

⁴³ Schurz, “Report of Carl Schurz,” 46.

⁴⁴ Elaine Frantz Parsons, *Ku-Klux: The Birth of the Klan during Reconstruction* (Chapel Hill, NC: University of North Carolina Press, 2016).

the Thirteenth Amendment, Congress passed the Fourteenth Amendment in June 1866.

The Fourteenth Amendment contained the most sweeping civil rights provisions of any constitutional amendment to date. It guaranteed both US and state citizenship to “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof.” It nationalized the Bill of Rights, extending to the states what had been restricted to the federal government. “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This, combined with the Civil Rights Act, cut the legal heart out of Black Codes. Or so Radicals hoped.

Congress packed solutions to many festering postwar problems into the Fourteenth Amendment. It disqualified ex-Confederates from elective office and settled the issue of Confederate debt, denying any scheme to repay investors in the defunct Confederacy. Yet the Fourteenth Amendment stopped short of explicitly granting the right to vote to African Americans. It merely gave Congress the power to deny states that refused to extend the franchise to black men the corresponding proportion of their congressional delegation. If, for example, a state that was half African American barred African Americans from voting, then that state would lose half of its congressional representation. Even though the amendment swept away the Supreme Court’s *Dred Scott* decision and boldly asserted equal protection of the laws, it too was a compromise among Radicals who insisted that the ballot box was the surest way to ensure equality and moderates who persisted in efforts to recruit white supremacists into the Republican Party. Legislators sent the Fourteenth Amendment to states for ratification, and President Johnson urged states not to approve the measure. To Republicans there was political benefit in this kind of aggressive legislating: African Americans made up the largest bloc of Union-loyal Southerners during the war and were potential Republican voters. But even before the ink was dry on the 1866 Civil Rights Act, violence broke out in Tennessee.

The Memphis Massacre of May 1866 showed both the tentative accomplishments and gruesome limitations of Reconstruction. Three days of anti-black violence left forty-six dead and scores more injured. More than ninety buildings were burned and wrecked, whole African American neighborhoods were gutted, and black residents were terrified. Many scattered. Violence started with a rumor of black-on-white crime:

black soldiers stationed at Fort Pickering on the city’s south bluffs had allegedly killed white policemen attempting to arrest an African American soldier. The Civil Rights Act of 1866 ostensibly guaranteed citizens equal protection under the law and outlawed race-based discrimination. But in Memphis there was a lack of federal oversight. Murder, arson, rape, and assault were all state crimes, and even the presence of federal soldiers could not bring to heel determined ex-Confederates. Lack of federal oversight and enforcement can made a mockery of even the most robust civil rights laws.⁴⁵ The Memphis Massacre showed that progress did not prevent violence.

In many ways, Tennessee was a model of moderate reunification. The state had a Republican majority assembly and governor. Ulysses S. Grant would carry Memphis’s Shelby County in two presidential elections – 1868 and 1872 – aided by African American men, to whom the state extended voting rights in 1867, three years before the Fifteenth Amendment guaranteeing the right to vote for all male citizens. During the Civil War, Memphis was a beacon to freedpeople. Union forces had captured it in June 1862, and the city on the Mississippi River attracted thousands of formerly enslaved people. It was diverse, too: by 1866, Memphis was home to Yankees, Jews, and Germans. The city was roughly one-fifth Irish, including 90 percent of its police and 87 percent of its fire department.

But as in so many corners of the Confederacy, the camps where former slaves lived swelled with the hungry, the sick, and those seeking opportunity and family. The Memphis refugee or contraband camps bred suspicion and hatred among local whites. Black Memphians competed with the Irish for low-paying jobs. Following the war’s end – in Memphis as elsewhere in the former Confederacy – politicians prioritized peace with ex-Confederates over justice for African Americans.

⁴⁵ Stephen V. Ash, *A Massacre in Memphis: The Race Riot That Shook the Nation One Year after the Civil War* (New York, NY: Hill and Wang, 2013); Calvin Schermerhorn, “Civil-Rights Laws Don’t Always Stop Racism,” *The Atlantic*, May 8, 2016, online: www.theatlantic.com/politics/archive/2016/05/the-memphis-massacre-of-1866-and-black-voter-suppression-today/481737/, accessed: August 1, 2016.