



The eager attention of the listeners, and the evidently glib tongue of the speaker, reveal that remarkable adaptability and readiness so observable in the colored race. They take naturally to peaceful and lawful forms; they are naturally eloquent, and instead of scoffing lightly at them as incompetent, their white brethren will find it necessary to bestir themselves, or the "incompetent" class will be the better educated and more successful.

The patronizing tone of the text notwithstanding, such images bespeak a new public presence for freedpeople that broke from the older ways of seeing and depicting African Americans. But as much as they were powerful markers of change, these Reconstruction-era pictures also served as a red flag to those forces dedicated to halting the altered relations of life and art.

*Forever, Eric, Forever Free! The Story of*

*Emancipation and Reconstruction,*

*Alfred A. Knopf, New York, 2005.*

## CHAPTER FOUR



### AN AMERICAN CRISIS

**B**ETWEEN 1865 AND 1868, the United States confronted one of the greatest political crises in its history: the battle between President Andrew Johnson and Congress over Reconstruction. The crisis arose from the intersection of three developments: the militancy of the former slaves in demanding substantive freedom; white southern reluctance to accept the reality of emancipation; and Johnson's intransigence in the face of growing northern concern over a series of momentous events in the South. The ensuing struggle resulted in far-reaching changes in the structure of constitutional authority and the nature of American citizenship. For the first time, the principle of equality before the law for all Americans, regardless of race, was written into the nation's laws and Constitution. For the first time, the federal government was empowered to override state actions that violated this new principle of equal civil rights. The era of Reconstruction lasted only a bit more than a decade, but the rewriting of the laws and the Constitution during those years continues to affect American life to this day. In contemporary debates over affirmative action, the rights of citizens, and the meaning of equality, Americans still confront issues bequeathed to our generation by the successes and failures of Reconstruction.

As in any historical era, unanticipated events profoundly shaped the crisis. Abraham Lincoln died without having formulated a clear Reconstruction policy. It is almost impossible to imagine Lincoln, an astute politician with a keen sense of public opinion, allowing himself to become isolated from his party and the northern electorate, as happened to his successor. It is inconceivable that Lincoln would have so alienated Congress that he would have found himself placed on trial before the Senate, coming within a single vote of being removed from office. More likely, Lincoln and the Republican Congress would have worked out a Reconstruction plan more attuned to protecting the rights of the former slaves than the one

Johnson envisioned, but less radical than the one Congress eventually adopted. Backed by a united Republican North, such a plan might have gained greater white southern acquiescence. But would a smooth transition to Reconstruction have served the nation's interests, and especially those of the former slaves? The crisis created by Johnson's intransigence and incompetence was, in a sense, the creative element of the situation. It pushed members of Congress into uncharted political waters, eventually leading them to embark on a wholly unprecedented experiment in interracial democracy.

The answers to "what if" questions, of course, are purely speculative. What is certain is that the assassination of Lincoln brought into the White House a man who lacked the personal qualities and political sagacity to provide the nation with enlightened leadership when it was most needed. Johnson was a lonely, stubborn man with few confidants, who seemed to develop his policies without consulting anyone, and then stuck to them inflexibly in the face of any and all criticism. He lacked Lincoln's ability to conciliate his foes and his capacity for growth, which was illustrated by Lincoln's evolving attitude toward black suffrage during the Civil War. Unlike Lincoln, Johnson had no real standing in the Republican Party and no sensitivity to the nuances of northern public opinion. Moreover, as noted earlier, Johnson held deeply racist views regarding blacks, and

proved unable to envision their playing any role in the South's Reconstruction, except as a dependent laboring class returning to work. "White men alone," he told one visitor to the White House, "must manage the South." Taken together, Johnson's beliefs, prejudices, and personality traits were a recipe for disaster at a time when an unprecedented national crisis put a premium on the capacity to think in new and creative ways.

The Thirty-eighth Congress adjourned in March 1865, as the Civil War hastened to its conclusion. The Thirty-ninth did not assemble until the following December. In the interim, Johnson enjoyed a free hand in shaping and implementing Reconstruction policy. He used it to set in motion Presidential Reconstruction. During the summer and fall of 1865, new southern governments were established, elected by whites alone, and Johnson ordered lands on which the army and the Freedmen's Bureau had settled former slaves returned to their former owners.

Johnson's policies initially won considerable support from a war-weary North. Not only did his promise of a quick restoration of the Union appeal to the widespread desire for a return to normalcy, but in support of his initiatives the president invoked traditions and beliefs deeply rooted in the American experience. Johnson's insistence that the federal government could not dictate how the states treated the former slaves appealed both to the tradition of federalism, which accorded state governments control over most local affairs, and to racism. The cry "this is a white man's government" had a potent appeal throughout the country. Moreover, businessmen anxious to invest in the South or to restore prewar connections with southern planters and merchants welcomed the prospect of quick sectional reconciliation. No one relished the prospect of a battle between Congress and the president. "We ought to do all in our power to avoid a break with him," wrote one Republican senator in November 1865. But Johnson's policies, and his unwillingness to consider any modification to accommodate criticism, would soon throw the political system into turmoil.

Events in the South in 1865 profoundly affected the political climate in the North. The freedpeople's unexpected militancy in demanding civil rights, the vote, and land appears to have thoroughly alarmed Johnson, propelling him into an alliance with the planter class he at first hoped to marginalize during Reconstruction. Reports of atrocities against the freed people—murders, whippings, the burning of schools and churches—and the enactment of the Black Codes by the new state governments Johnson had created led many northern Republicans to doubt whether the white South was genuinely prepared to accept the reality of emancipation.

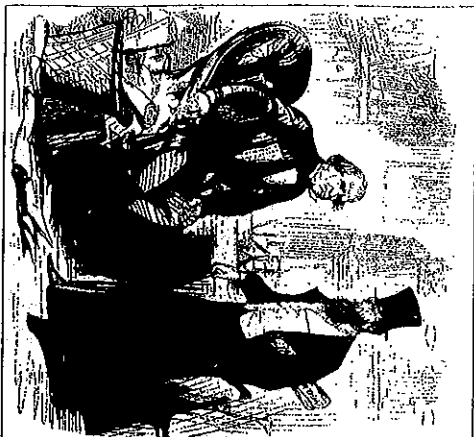
Johnson had hoped to place southern Reconstruction in the hands of men, like him, who had always been loyal to the Union. He believed



An October 1866 Harper's Weekly cartoon views Andrew Johnson's Reconstruction policy—a betrayal of northern sacrifices during the Civil War.

his initial exclusion of wealthy planters from individual pardons would allow ordinary white farmers—the group for whom he considered himself a spokesman and most of whom, he believed, had been dragged unwillingly into secession—to take control of southern government. But when the South's white electorate went to the polls in the fall of 1865, as noted earlier, it filled the region's offices with former Confederate generals and public officials. William W. Holden, whom Johnson had appointed governor of North Carolina, warned the president that his "leniency" had "emboldened [the] rebellious spirits" of the South. Johnson himself worried that the elections seemed to reflect a spirit of "defiance, which is all out of place at this time." But he did not reconsider his Reconstruction policies.

Few northerners harbored vindictive attitudes toward the defeated Confederacy. Indeed, overall, Reconstruction was marked by amazing leniency. Johnson ordered nearly all confiscated property restored to its owners, and swiftly demobilized the Union army. Northern authorities arrested a handful of southern leaders, but most were quickly released. Jefferson Davis spent two years in prison but never stood trial for treason. His vice president, Alexander H. Stephens, served a brief imprisonment, returned to Congress in 1873, and died ten years later as governor of Georgia. Only one important Confederate was executed—Henry Wirz, the



"Look here, Andy," says a recently reinstated southerner to Andrew Johnson poised over a basket overflowing with pardons for former Confederate officials, "if you want Reconstruction, you had better set me over the whole thing down in our state."

commander of Andersonville prison, where more than ten thousand Union prisoners of war had died.

More than 360,000 men had died fighting for the Union. It is possible to imagine a different scenario in 1865—flushed with victory and horrified by Lincoln's assassination, the North arrests and puts on trial Confederate leaders, exiles leading planters, and subjects the South to years of bayonet rule. Nothing of the sort happened, though, even after Congress supplanted Johnson's plan of Reconstruction with its own. Indeed, pro-British Loyalists during the American Revolution, many of

whom were driven from their homes and lost their property, suffered a far harsher fate than Confederates. What motivated the North's turn against Johnson's policies was not a desire to "punish" the South, but the evident inability of the region's white leaders to accept the twin realities of Confederate defeat and slave emancipation. Johnson would never quite understand that, whatever their views regarding race, most Republicans emerged from the Civil War convinced that the freedpeople had earned a claim upon the conscience of the nation.

Most adamant during 1865 in their criticism of Johnson's policies were the Radical Republicans, representatives within national politics of the antislavery impulse that had grown so markedly in the wartime North. Although they differed on many issues, such as the tariff and fiscal policy, Radicals shared the conviction that slavery and the rights of black Americans were the preeminent questions facing nineteenth-century America. Southern aggressions, they believed, had caused the Civil War, and the war's outcome presented a golden opportunity for the nation to remake itself in accordance with the principle of equal rights for all, regardless of race.

For decades, Radical leaders such as Thaddeus Stevens and Charles Sumner had defended the unpopular cause of black suffrage and equality before the law for black Americans. Now they viewed the enfranchisement of blacks as the sine qua non of a successful Reconstruction. Stevens, as we have seen, was the most outspoken Radical in the House of Representatives, an advocate of black suffrage before the war, of the arming of black soldiers during it, and of the confiscation and redistribution of planters' land in 1865. Sumner, a senator from Massachusetts, was closer to the abolitionists than any major political figure. In 1851, he had represented a black parent in Boston who unsuccessfully sued to desegregate the city's public schools. Sumner's argument—that laws requiring black children to attend separate schools were inherently unequal—anticipated by more than a century the Supreme Court's decision in *Brown v. Board of Education*, which outlawed school segregation. Without black suffrage, Sumner told Johnson soon after Lincoln's assassination, freedom for blacks "is a mockery." Sumner had little influence on the details of legislation, but his eloquent speeches advocating equality before the law attracted increasing support. "You have hundreds of believers in your doctrine in this State," a Californian wrote him, "where you had not one four years ago." More than other Republicans, as well, the Radicals embraced the expanded powers of the federal government born of the Civil War. Traditions of federalism and states rights, they insisted, must not obstruct a sweeping national effort to protect the equal rights of all citizens. The Radical vision was of citizens enjoying equal polit-



*A contemporary print denounces South Carolina congressman Preston S. Brooks's assault on Massachusetts senator Charles Sumner on May 22, 1856. The attack on the floor of the Senate was in retaliation for Sumner's speech accusing South Carolina senator Andrew P. Butler (Brooks's distant cousin) of having taken "the harlot slavery" as a mistress.*

ical and civil rights, secured by a powerful national state. "The same national authority," declared Sumner, "that destroyed slavery must see that this other pretension [racial inequality] is not permitted to survive."

Although hardly typical of all Radicals, Stevens was Johnson's fiercest antagonist. The floor leader of House Republicans, he was a master of parliamentary procedure and impromptu debate. The South, Stevens insisted, was a "conquered province," which Congress could govern as it saw fit. While he strongly advocated black suffrage, Stevens's most cherished goal was his proposal to divide land confiscated from disloyal planters into forty-acre plots for former slaves and northern migrants to the South. "The whole fabric of southern society," he declared, "must be changed, and never can it be done if this opportunity is lost. Without this, this Government can never be, as it has never been a true republic." Stevens's plan to make "small independent landholders" of the former slaves proved too radical even for most of his Radical colleagues, who remained wedded to the free-labor idea that blacks should move up the social ladder by slowly accumulating wealth while working for wages. But Stevens did shepherd to passage in the House the key legislation and constitutional amendments between 1865 and 1868.

The Radicals hardly controlled Congress, as historians hostile to Reconstruction would later claim. Nonetheless, they did enjoy considerable power. Their influence lay both in the strength of their commitment to the ideal of equal rights, and in the fact that in a time of crisis, they alone seemed to have a coherent sense of purpose. Time and again, Radicals had staked out unpopular positions only to see them vindicated by events. Uncompromising opposition to slavery's expansion, emancipation of the slaves, the arming of black troops—all these ideas were radical when first proposed, but had entered the political mainstream. The same, Radicals were convinced, would happen with black suffrage.

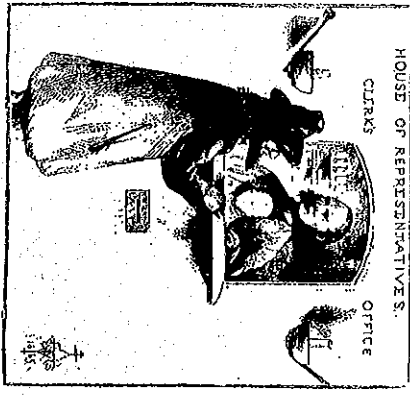
Occupying the political terrain between the Radicals and Johnson was the moderate majority of the Republican Party, led in Congress by senators such as Lyman Trumbull of Illinois and John Sherman of Ohio. Moderates remained unenthusiastic about black suffrage, which they viewed as a political liability in the North and an experiment whose outcome could not be predicted in the South. When the Civil War ended, only five northern states allowed blacks to vote on the same terms as whites. Indeed, in referenda in 1865, voters in Connecticut, Wisconsin, and Minnesota turned down proposals to enfranchise their states' tiny black populations (although the number of supporters, ranging from 43 to 47 percent of those voting, was far higher than in similar prewar ballots on the issue). Could the North, moderates asked, require of the South what it was not prepared to do itself? Nonetheless, moderates were fully committed to ensuring "loyal" government in the Confederate states and protecting the basic rights of the former slaves in a free-labor economy.

Moderate Republicans tended to view Reconstruction as a set of practical problems, not, as many Radicals believed, as an invitation to a social revolution. In the moderates' view, the states of the old Confederacy were neither conquered territory, as Stevens insisted, nor states retaining all their rights, as Johnson held. Having rebelled against the Union, they could temporarily be held in the "grasp of war" until the federal government decided on what terms to restore them to the full exercise of their rights and powers. In 1865, the moderates sincerely hoped to work with Johnson to devise a just and lasting plan of Reconstruction. But Johnson's policies and the actions of the state governments created under his supervision eventually drove moderates into the Radicals' arms, uniting the entire Republican Party against the president. Congress also contained a contingent of northern Democrats, but in numbers so small—in both houses Republicans outnumbered them by better than three to one—that they had no real influence on events.

When Congress assembled in December 1865, Johnson announced that

Reconstruction effectively was over. Governments led by men loyal to the Union had been established in the South, he declared, and all Congress had to do to complete "the work of restoration" was to seat their elected representatives. In response, Radicals such as Stevens and Sumner called for the abrogation of the Johnson governments and the establishment of new ones based on equality before the law and male suffrage. The more numerous moderates, however, still hoped to work with Johnson, and these proposals got nowhere. Nonetheless, the moderates were not prepared to embrace the president's Reconstruction plan without modifications. Congress refused to seat the representatives and senators elected from the southern states; many of whom had been leading officials in the Confederate government and army. It established a Joint Committee on Reconstruction, and set about debating the proper course of action.

Much of the ensuing discussion revolved around the problem, as Trumbull put it, of defining "what slavery is and what liberty is." "We must see to it," announced Senator William Stewart of Nevada, "that the man made free by the Constitution of the United States is a freeman indeed." To the Radicals, freedom was "a right so universal," in the words of another congressman, that it must apply to all



In a December 1865 cartoon called "No Accommodations," a southern congressman is denied his old seat in the House of Representatives. "I am very sorry, Sir," reports the House Clerk, "but we cannot accommodate you. All the Old Seats were broken up, and are now being thoroughly Reconstructed."

Americans and no longer be limited by race. Moderate Republicans believed that further federal measures were necessary to protect blacks' civil rights. "Their present nominal freedom is nothing but a mockery," wrote Illinois Republican leader Jesse Fell shortly after Congress assembled. Equality before the law, enforced if necessary by national authority, had become the moderates' requirement for restoring the South to full participation in the Union.

Two bills reported to the Senate soon after the New Year by Lyman Trumbull, chairman of the Senate Judiciary Committee, embodied the moderates' policy of leaving Johnson's governments in place but adding federal protec-

tion of the freedpeople's rights. The first bill extended the life of the Freedmen's Bureau, scheduled to expire within a few months. The second, the Civil Rights Bill, was a far more important measure that for the first time offered a legislative definition of American citizenship. The bill declared all persons born in the United States (except Indians) national citizens, and went on to spell out the rights they were to enjoy equally without regard to race. Equality before the law was central to the measure—no longer could states enact laws such as the Black Codes declaring certain actions crimes for black persons but not white. So too were free-labor values: no state could deprive any citizen of the right to make contracts, bring lawsuits, or enjoy equal protection of the security of person and property. Although the bill addressed primarily discrimination by state officials, it also contained the intriguing word *custom*, suggesting that private acts also fell within its purview. No state law or custom could deprive any citizen of what Trumbull called the "fundamental rights belonging to every man as a free man." The bill allowed federal marshals and district attorneys to bring suit against violations—with cases to be heard in federal, not state, courts—and allowed aggrieved individuals to sue for civil damages.

In constitutional terms, the Civil Rights Bill represented the first attempt to give concrete meaning to the Thirteenth Amendment, which ended slavery; to define in legislative terms the essence of freedom. If states could deny blacks the rights specified in the measure, asked one congressman, "then I demand to know, of what practical value is the amendment abolishing slavery?" The bill said nothing of the right to vote. Nonetheless, it reflected how profoundly the Civil War had altered traditional federal-state relations and weakened traditional racism. A mere nine years earlier, the U.S. Supreme Court, in the Dred Scott decision, had decreed that no black person could be a citizen of the United States. Before the war, Congressman James G. Blaine later wrote, only "the wildest fancy of a dis-tempered brain" could have envisioned a law of Congress according blacks "all the civil rights pertaining to a white man." Although clearly directed against the South, the bill had a national scope, and it invalidated many discriminatory laws in the North as well. "I admit that this species of legislation is absolutely revolutionary," declared Senator Lot M. Morrill of Maine. "But are we not in the midst of a revolution?"

Although most of his cabinet urged him to approve these measures, Johnson vetoed both the Freedmen's Bureau and Civil Rights bills. He insisted that Congress pass no Reconstruction legislation until the southern states were fully represented—a position, as one senator correctly predicted, that meant that "he will and must . . . veto every other bill we pass."



Scenes outside the galleries of the U.S. House of Representatives during the passage of the Civil Rights Bill

In the Freedmen's Bureau Bill veto, Johnson claimed that he, not Congress, represented the will of the people. "This is modest," one Republican remarked, "for a man made president by an assassin."

Johnson's vetoes deployed arguments opposing federal action on behalf of African Americans that have been repeated ever since, including in our own time, by critics of civil rights legislation and affirmative action. He appealed to fiscal conservatism, raised the specter of an immense federal bureaucracy trampling on citizens' rights, and insisted that self-help, not dependence on government handouts, was the surest path to individual advancement. Congress, he insisted, had neither the need nor the authority to protect the freedpeople's rights. Assistance by the Freedmen's Bureau would encourage blacks to believe that they did not have to work for a living, thereby encouraging them to lead a "life of indolence." Johnson called the civil rights measure a "stride toward centralization of all legislative powers in the national Government." Although he did not use the modern term "reverse discrimination," the president somehow persuaded himself that by acting to secure the rights of blacks, Congress would be discriminating against white Americans—"the distinction of race and color is by the bill made to operate in favor of the colored and against the white race." John also delivered an intemperate speech to a crowd at the White

House in February 1866 condemning the Radicals and hinting that they were responsible for Lincoln's assassination. Singling out Stevens, Sumner, and abolitionist Wendell Phillips by name, he asked, "does not the murder of Lincoln appease the vengeance and the wrath of the opponents of this government?" But more significant than Johnson's intemperate language, his vetoes ended all chance of cooperation with Congress. Although the Senate failed by a single vote to override the Freedmen's Bureau Bill veto (another measure, enacted in July, extended the bureau's life to 1870), Congress mustered the two-thirds majority to pass the Civil Rights Act. For the first time in American history, a significant piece of legislation became law over a president's veto.

Johnson's intransigence also impelled Republicans to devise their own plan of Reconstruction, and to write their understanding of the consequences of the Civil War into the Constitution, there to be secure from shifting electoral majorities. The result was the Fourteenth Amendment, approved by Congress in 1866 and ratified two years later. It enshrined for the first time in the Constitution the ideas of birthright citizenship and equal rights for all Americans. The amendment, Stevens told the House, gave a constitutional foundation to the principle that state laws "shall operate *equally* upon all." "I can hardly believe," he added, "that any person can be found who will not admit that . . . [it] is just." Unlike the Civil Rights Act, which listed specific rights all citizens were to enjoy, the Fourteenth Amendment used far more general language. It prohibited states from abridging any citizen's "privileges and immunities" or denying them "due process" or the "equal protection of the law."

This broad language opened the door for future Congresses and the federal courts to breathe meaning into the guarantee of legal equality, a process that occupied the courts for much of the twentieth century. The amendment also struck a blow against the Johnson governments in the South by prohibiting leading Confederate officials from holding office unless granted amnesty by Congress.



In this cartoon, "Extract Cont. Amend," Uncle Sam in the guise of a druggist exhorts President Johnson to accept the Reconstruction amendments: "Now, Andy, take it right down—More you look at it, worse you'll be!"

None of the measures of 1866 accorded black men the right to vote. The Fourteenth Amendment fessed that issue by leaving suffrage qualifications to be determined by the states but providing that if a state deprived any group of men of the franchise, it would lose some of its representatives in Congress. (The penalty did not apply, however, if the state denied women the right to vote.) The Fourteenth Amendment was a moderate measure, not a creation of the Radicals. Rather than forging a "perfect republic" from the ruins of slavery by purging American institutions of "inequality of rights," Stevens told the House on the eve of its passage, "I find we shall be obliged to be content with patching up the worst portions of the ancient edifice, and leaving it, in many of its parts, to be swept through by the storms of despotism." Nonetheless, Stevens said, he would vote for passage. Why? "Because I live among men and not among angels."

Stevens realized that whatever their limitations, the Civil Rights Act and the Fourteenth Amendment embodied a profound change in the federal system and the nature of American citizenship. The abolitionist doctrine of equal citizenship as a birthright had now been written into the Constitution. The principle of equality before the law, moreover, did not apply only to the South or to blacks. Like the Civil Rights Act, the Fourteenth Amendment invalidated many northern laws that discriminated on the basis of race. And, as one congressman noted, it affected the rights of "the millions of people of foreign birth who will flock to our shores."

With the passage of the Fourteenth Amendment, the Republican majority in Congress prepared to do battle with the president. Already thoroughly alienated from the Republican Party, Johnson found his position further weakened by incidents of violence in the South. In May, an altercation that began when two horse-drawn hacks, one driven by a white man, the other by a black, collided on a Memphis street, escalated into three days of racial violence. White mobs, aided and abetted by the city police, assaulted blacks on the streets and invaded their neighborhoods. By the time order had been restored, at least forty-eight persons, nearly all of them black, had been killed and hundreds of dwellings, schools, and churches looted or destroyed.

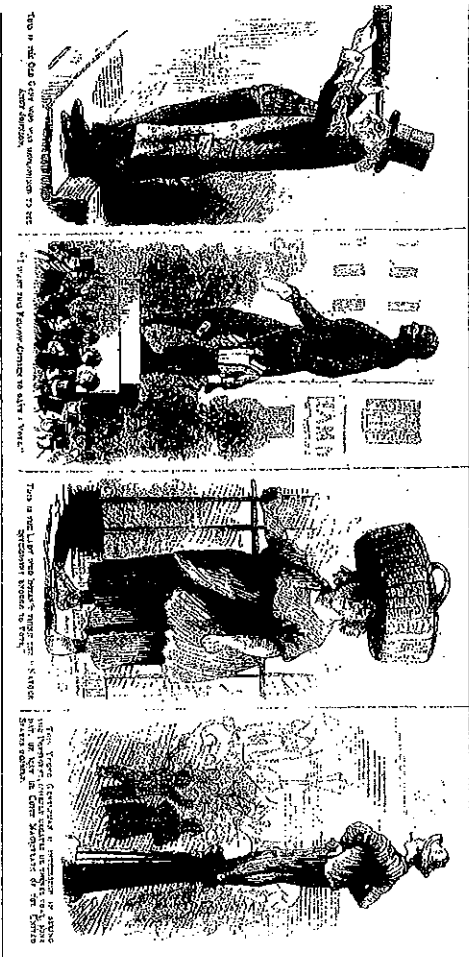
Three months later, another violent outbreak took place in New Orleans. Governor James M. Wells, a Johnson appointee, had become more and more alarmed at ex-Confederate control of the Louisiana legislature and local government in New Orleans. He decided to reconvene the Constitutional Convention of 1864, which had recessed but never adjourned, in order to press for black suffrage. On July 20, 1866, when the gathering was set to assemble, a white mob led by local police descended on

a march of several hundred black supporters of the convention. In the melee that followed, some thirty-eight persons were killed and 146 wounded, mostly blacks. After investigating the affair, General Philip H. Sheridan called it "an absolute massacre." The New Orleans riot did more than any other single event to arouse northern public opinion against the president. The role of the city police in contributing to the violence rather than restoring order suggested that the southern governments of Presidential Reconstruction were unwilling or unable to protect the basic rights of citizens.

The events of 1866 also roused white southern Unionists to political action. Some broke with their region's racial heritage to support black suffrage. A small minority in most states, whites who had supported the Union cause during the war were numerous enough in areas such as the hill country of North Carolina, Georgia, Tennessee, and Arkansas to have hoped that Reconstruction would place them in power. Johnson's policies had dealt a severe blow to this ambition. During 1866, more and more southern Unionists gravitated to the congressional side in the Reconstruction debate. They pressed for Congress to bar leading Confederates from power, sometimes urging the wholesale disenfranchisement of "rebels."



A panoramic painting by Thomas Nast shows Andrew Johnson indifferent to the murder of freedpeople during the July 1866 New Orleans riot.



*A satirical report on New Yorkers' reactions to President Johnson's visit to the city during his fall 1866 campaign tour*

Some, reluctantly, began to embrace the idea of black suffrage, if only to oust ex-Confederates from power. William G. Brownlow—the “fighting parson” of the East Tennessee mountains who had been elected as the state’s governor in 1865 after Johnson, then military governor, had barred supporters of the Confederacy from the polls—said “one more law” was needed to complete Reconstruction, “a law enfranchising the negroes . . . to weigh down the balance against rebellion.” The growing outspokenness of southern Unionists helped to persuade Congress that the possibility existed of creating a biracial Republican Party in the South.

The Fourteenth Amendment became the central issue in the Congressional elections of 1866. In the fall, the president broke with tradition by embarking on a speaking trip across the North, the “swing around the circle,” intended to drum up support for candidates who supported his Reconstruction policies and opposed ratification of the Fourteenth Amendment. The tour was a political disaster. Johnson could not refrain from responding in kind to hecklers and launching tirades against his congressional opponents. On one occasion, he intimated that divine intervention had removed Lincoln and elevated *him*, Johnson, to the White House. In St. Louis, he compared himself to Jesus Christ, with Thaddeus Stevens as his Judas. The spectacle further destroyed his credibility and contributed to a sweeping Republican victory in the fall elections. But the main cause of the outcome was popular disaffection from Presidential Reconstruction and the widespread conviction that further steps had to be taken to protect the rights of former slaves and place the South under the control of men

genuinely “loyal” to the Union. Despite the results, however, and egged on by Johnson and the northern Democratic press, all the southern states except Tennessee refused to ratify the Fourteenth Amendment.

Once again, the intransigence of Johnson and the white South played into the Radicals’ hands. When Congress reassembled in December 1866, Republicans set out to fashion a completely new plan of Reconstruction. They ignored Johnson. The president, declared the *New York Herald*, previously his supporter, “forgets that we have passed through the fiery ordeal of a mighty revolution, and that the pre-existing order of things is gone and can return no more.” Numerous proposals circulated in Congress—reducing the southern states to territories, disenfranchising former Confederates, confiscating property, impeaching the president.

After much debate, Republicans coalesced around a new Reconstruction Act, passed over Johnson’s veto early in March 1867. The act rested on the premise that lawful governments did not exist in the South, and that Congress could govern the region until acceptable ones had been established. It turned the political clock back to “the point where Grant left off the work, at Appomattox Court House,” declared one member of Congress. The Reconstruction Act temporarily divided the South into five military districts and outlined how new governments, based on male suffrage (with the exception of leading Confederate officials, who could not vote in forthcoming elections), would be established. The southern states must



*As this March 1867 cartoon shows, with his veto of the Reconstruction Act overridden by Congress, President Johnson and his southern allies angrily watch African Americans vote.*



ratify the Fourteenth Amendment and adopt new constitutions embodying the principle of manhood suffrage without regard to race. Interracial democracy, the dream of abolitionists, Radical Republicans, and the former slaves, had finally come to the South. Thus began the period of Radical, or congressional, Reconstruction, which lasted until the fall of the last southern Republican governments in 1877.

The laws and amendments of Reconstruction reflected the intersection of two products of the Civil War era—a newly empowered national state and the idea of a national citizenry enjoying equality before the law. Rather than a threat to liberty, the federal government, declared Charles Sumner, had become “the custodian of freedom.” What Republican leader Carl Schurz called “the great Constitutional revolution” of Reconstruction transformed the federal system, and with it, the language of rights so central to American political culture. Before the Civil War, disenfranchised groups were far more likely to draw inspiration from the Declaration of Independence than the Constitution. (The only mention of equality in the original Constitution, after all, had occurred in the clause granting each state an equal number of senators.) But the rewriting of the Constitution during Reconstruction suggested that the rights of individual citizens were intimately connected to federal power.

The Bill of Rights had linked civil liberties and the autonomy of the states. Its language—“Congress shall make no law”—reflected the belief that concentrated power represented a threat to freedom. The three Reconstruction amendments assumed that individual rights required political power to enforce them. They not only authorized the federal government to override state actions that deprived citizens of equality, but each ended with a clause empowering Congress to “enforce” the amendment with “appropriate legislation.” Thus began the process—which continues to this day—by which the states have, little by little, been required to abide by the protections of civil liberties inscribed in the Bill of Rights. The Reconstruction amendments transformed the Constitution from a document concerned primarily with federal-state relations and the rights of property into a vehicle through which members of vulnerable minorities could stake a claim to substantive freedom and seek protection against misconduct by all levels of government.

It is tempting to view the expansion of citizens’ rights during Reconstruction as the logical fulfillment of a vision originally articulated by the founding fathers. Yet, boundaries of exclusion—essentially, limiting the privileges of citizenship to white men—had long been intrinsic to the practice of American democracy. Reconstruction represented less a fulfillment of the Revolution’s principles than a radical repudiation of the nation’s

actual practice of the previous seven decades. Racism, federalism, and belief in limited government and local autonomy—Reconstruction challenged these deeply rooted elements of nineteenth-century political culture. Only in an unparalleled crisis could they have been superseded, even temporarily, by the vision of an egalitarian republic embracing black Americans as well as white, and presided over by a powerful and beneficent federal government. Indeed, it was precisely because of their radicalism that the era’s laws and constitutional amendments roused such bitter opposition. The underlying principles—that the federal government possessed the power to define and protect citizens’ rights, and that blacks were equal members of the body politic—represented striking departures in American law. It is not difficult to understand why President Johnson, in one of his veto messages, claimed that federal protection of blacks’ civil rights, together with the broad conception of national power that lay behind it, violated “all our experience as a people.”

That the United States was a “white man’s government” had been an article of political faith before the Civil War. “We are not of the same race,” insisted Senator Thomas Hendricks of Indiana during congressional debates over Reconstruction. “We are so different that we ought not to compose one political community.” Reconstruction Republicans rejected this reasoning, but their universalism, too, had its limits. In his remarkable “Composite Nation” speech of 1869, Frederick Douglass condemned prejudice against immigrants from China, insisting that America’s destiny was to transcend race by serving as an asylum for people “gathered here from all corners of the globe by a common aspiration for national liberty.” Any form of exclusion, he continued, contradicted the essence of democracy. A year later, Charles Sumner moved to strike the word *white* from naturalization requirements. Senators from the western states objected vociferously. They were willing to admit blacks to citizenship, but not persons of Asian origin. At their insistence, the naturalization law was amended to add Africans to the “whites” already eligible to obtain citizenship when migrating from abroad. The ban on Asians remained intact; the racial boundaries of nationality had been redrawn, but not eliminated. The juxtaposition of the Fourteenth Amendment and the 1870 naturalization law created a strange anomaly: Asian immigrants remained ineligible for citizenship, but their native-born children automatically became Americans.

Advocates of women’s rights likewise encountered the limits of Reconstruction’s egalitarianism. “The contest with the South that destroyed slavery,” wrote the Pennsylvania lawyer Sidney George Fisher in his diary, “has caused an immense increase to the popular passion for liberty and equality.” Women joined in the era’s intense focus on equal rights. The

movement for women's suffrage, which had more or less suspended operations during the war to join in the fight for Union and abolition, saw Reconstruction as a golden opportunity to claim for women their own emancipation. Antebellum rhetoric equating the condition of women with slavery took on new value as a vocabulary of protest. No less than blacks, proclaimed Elizabeth Cady Stanton—who had organized the Seneca Falls Convention to demand equal rights for women two decades earlier—women had arrived at a "transition period, from slavery to freedom." The rewriting of the Constitution, declared suffrage leader Olympia Brown, offered the opportunity to sever the blessings of freedom from race and sex—two "accidents of the body" that did not deserve legal recognition—and to "bury the black man and the woman in the citizen." Women should now enjoy not only the right to vote, but also the economic opportunities of free labor. The Civil War had propelled many women into the wage labor force and left many others without a male provider, adding increased urgency to the argument that the right to work outside the home was essential to women's freedom. Women, wrote Susan B. Anthony, desired an "honorable independence" no less fully than men, and working for wages was no more "degrading" to one sex than the other.

At feminism's most radical edge, emancipation inspired demands for the liberation of women from the "slavery" of marriage. The same "law of equality that has revolutionized the state," declared Stanton, was "knocking at the door of our homes." Property in slaves had been abolished, but "the right of property in women" remained intact (since by law, marriage deprived women of their independent legal identities). If "unpaid" labor had become illegitimate on southern plantations, how could it be justified within free households? In Stanton's writings and speeches, demands for liberalizing divorce laws (which generally required evidence of adultery, desertion, or extreme abuse to terminate a marriage) and recognizing "woman's control over her own body" (including protection against domestic violence and what later generations would call birth control) moved to the center of feminist concerns. These questions, she found, struck a "deeper chord" among her female audience than the right to vote. "Women respond to my divorce speech as they never did to suffrage," Stanton said. "Oh! How they flock to me with their sorrows." Susan B. Anthony, who remained unmarried her entire life, believed "an epoch of single women" was fast approaching: "the woman who will *not* be ruled, must live without marriage."

In the end, talk of liberating women from the bonds of matrimony found few sympathetic listeners. Former slaves, as noted earlier, rushed to inscribe marital status in law, and congressional Republicans saw

emancipation as restoring to blacks the natural right to family life, in which men would take their place as heads of the household and women theirs in the domestic sphere from which slavery had unnaturally excluded them. Several members of Congress explicitly rejected the idea that the Thirteenth Amendment's prohibition of "involuntary servitude" applied to relations within the family. "A husband has a right of property in the service of his wife," said one, which the abolition of slavery was not intended to destroy. Along with the right to "personal liberty," declared Republican John Kasson of Iowa, the male-headed family, embodying the "right of a husband to his wife" and of a "father to his child," comprised the "three great fundamental natural rights of human society."

When it came to the suffrage, few in Congress, even among Radical Republicans, responded sympathetically to feminists' demands. Reconstruction, they insisted, was the "Negro's hour" (the hour, that is, of the black male). "The removal of the political disabilities of race is my first desire, of sex my second," declared abolitionist Gerrit Smith. But, he claimed, pressing the latter demand would torpedo the former: "If put on the same level and urged in the same connection, neither will be soon accomplished." Therefore, Smith concluded, votes for women would have to wait. Even Charles Sumner, the Senate's most uncompromising egalitarian, feminist Francis Gage lamented, fell "far short of the great idea of liberty," so far as the rights of women were concerned.

The passage of the Fourteenth Amendment, which introduced the word *male* into the Constitution in its clause allowing states to disenfranchise women without political penalty, and of the Fifteenth, outlawing discrimination in voting based on race but not gender, produced a bitter split in feminist circles. Some leaders, such as Stanton and Anthony, denounced their erstwhile abolitionist allies and moved to sever the women's rights movement from its earlier moorings in antislavery egalitarianism. Woman, wrote Stanton, "must not put her trust in man" in seeking her own rights. In search of a new constituency outside antislavery circles, Stanton began to speak of limiting the suffrage not on the basis of gender, but by "intelligence and education," so that ignorant blacks and immigrants would not be making laws for the daughters of the native-born middle class. Other veterans of the struggle, such as abolitionist-feminist Abby Kelley, insisted that despite their limitations, the constitutional amendments were steps in the direction of truly universal suffrage and should be supported as such. The result was the creation of two bitterly divided national women's rights organizations. They would not reunite until the 1890s.

Despite its limitations, the Reconstruction Act of 1867 was indeed a radical departure in American history. A variety of mo- some



A cartoon called "The Fifteenth Amendment Illustrated" in an 1870 edition of Die Vehmte (The Star Chamber), a short-lived St. Louis satirical weekly, supports women's suffrage at the expense of African Americans, Chinese, and illiterate immigrants.

pragmatic, some idealistic, combined to produce the advent of black male suffrage—demands by the former slaves for the right to vote, the egalitarianism of the Radicals, disgust with Johnson's policies, the desire to fortify the Republican Party in the South, and the insistence of northerners and southern Unionists that ex-Confederates be removed from power. The effort to create an interracial democracy in the aftermath of slavery was an unprecedented experiment.

Alone among the nations that abolished slavery in the nineteenth century, the United States, within a few years of emancipation, clothed its former slaves with citizenship rights equal to those of whites. The implications of this decision were indeed profound. In a democracy, the ballot defined a collective national identity—which was why African Americans and women felt their exclusion so painfully. Therefore, the coming of black suffrage redrew the boundaries of American nationality—and raised the

specter of further changes in economic, social, and political arrangements within the South. On the horizon lay further unprecedented events—the political mobilization of the southern black community, the coming to power of the Republican Party throughout the South, and efforts to build a new social order from the ashes of slavery. The era of Radical Reconstruction was at hand.