

The Unspoken Truth of
Our Racial Divide



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BLOOMSBURY

To Those Who Aspired and Paid the Price

WHITE RAGE

*The Unspoken Truth of
Our Racial Divide*

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Prologue

Kindling

Although I first wrote about “white rage” in a *Washington Post* op-ed following the killing of Michael Brown and the subsequent uprising in Ferguson, Missouri, the concept started to germinate much earlier.¹ It was in the wake of another death at the hands of police: that of Amadou Diallo, a West African immigrant, who, stepping out of his apartment building in New York City, was mowed down in a hail of NYPD bullets on February 4, 1999.²

Though the killing was horrific enough—forty-one bullets were fired, nineteen of which hit their target—what left me truly stunned was the clinical, antiseptic policy rationale espoused by New York City mayor Rudy Giuliani. On the news show *Nightline*, the mayor, virtually ignoring Diallo’s death, glibly and confidently spouted one statistic after the next to demonstrate how the NYPD was the “most restrained and best behaved police department you could imagine.” He touted policies that had reduced crime in New York and dismissed African Americans’ concerns about racial profiling, stop-and-frisk, and police brutality as unfounded. If the NYPD weren’t in those poorer neighborhoods, he asserted, the police would be accused of caring only about the affluent. Giuliani then countered that the real issue was the “community’s racism against the police” and unwillingness to take responsibility for the issues plaguing their neighborhoods.³

But restrained and behaved police don’t fire forty-one bullets at an unarmed man. Moreover, New York’s aggressive law enforcement policy appeared to expend most of its energy on the groups bringing the smallest yield of criminal activity. In 1999, blacks and Hispanics, who made up 50 percent of New York City’s population, accounted for 84 percent of those stopped and frisked by the NYPD; while the majority of illegal drugs and weapons were found on the relatively small number of whites detained by police.⁴

There obviously was so much more going on here with Amadou Diallo’s death than was actually being discussed throughout the media, more than

Giuliani was letting on, and more than even the outraged discussions in the beauty shops and barbershops managed to pinpoint.⁵ Only I didn't know what to call it, what to name the unsettling and disturbing performance by Giuliani that I had just witnessed.

Fifteen years later, I experienced that same feeling, although the circumstances this time were somewhat different. In August 2014, Ferguson, Missouri went up in flames, and commentators throughout the print and digital media served up variations of the same story: African Americans, angered by the police killing of an unarmed black teen, were taking out their frustration in unproductive and predictable ways—rampaging, burning, and looting.

Framing the discussion—dominating it, in fact—was an overwhelming focus on black rage. Op-eds and news commentators debated whether Michael Brown was surrendering to or assaulting a police officer when six bullets took him down. They wrangled over whether Brown was really an innocent eighteen-year-old college student or a “thug” who had just committed a strong-arm robbery. The operative question seemed to be whether African Americans were justified in their rage, even if that rage manifested itself in the most destructive, nonsensical ways. Again and again, across America's ideological spectrum, from Fox News to MSNBC, the issue was framed in terms of black rage, which, it seemed to me, entirely missed the point.

I had previously lived in Missouri and had seen the subtle but powerful ways that public policy had systematically undercut democracy in the state. When, for example, the *Brown v. Board of Education* (1954) decision came down, the state immediately declared that all its schools would be integrated, only to announce that it would leave it up to the local districts to implement the Supreme Court decision. Movement was glacial. It took another generation of black parents fighting all the way up to the U.S. Supreme Court in search of some relief.⁶ In the final analysis, however, Missouri's schools remained separate and unequal. Thus, in the twenty-first century, Michael Brown's school district had been on probation for fifteen years, annually accruing only 10 out of 140 points on the state's accreditation scale.⁷ It was the same with policing, housing, voting, and employment, all of which carried the undercurrents of racial inequality—even after the end of slavery, the triumphs of the Civil Rights Movement, and the election of Barack Obama to the presidency.⁸ The policies in Missouri were articulated as coolly and analytically as were Giuliani's in New York.

That led to an epiphany: What was really at work here was *white* rage. With so much attention focused on the flames, everyone had ignored the logs, the

kindling. In some ways, it is easy to see why. White rage is not about visible violence, but rather it works its way through the courts, the legislatures, and a range of government bureaucracies. It wreaks havoc subtly, almost imperceptibly. Too imperceptibly, certainly, for a nation consistently drawn to the spectacular—to what it can see. It's not the Klan. White rage doesn't have to wear sheets, burn crosses, or take to the streets. Working the halls of power, it can achieve its ends far more effectively, far more destructively. In my *Washington Post* op-ed, therefore, I set out to make white rage visible, to blow graphite onto that hidden fingerprint and trace its historic movements over the past 150 years.

The trigger for white rage, inevitably, is black advancement. It is not the mere presence of black people that is the problem; rather, it is blackness with ambition, with drive, with purpose, with aspirations, and with demands for full and equal citizenship. It is blackness that refuses to accept subjugation, to give up. A formidable array of policy assaults and legal contortions has consistently punished black resilience, black resolve.⁹

And all the while, white rage manages to maintain not only the upper hand but also, apparently, the moral high ground. It's Giuliani chastising black people to fix the problems in their own neighborhoods instead of always scapegoating the police. It's the endless narratives about a culture of black poverty that devalues education, hard work, family, and ambition. It's a mantra told so often that some African Americans themselves have come to believe it. Few even think anymore to question the stories, the “studies” of black fathers abandoning their children, of rampant drug use in black neighborhoods, of African American children hating education because school is “acting white”—all of which have been disproved but remain foundational in American lore.¹⁰

The truth is that enslaved Africans plotted and worked—hard—with some even fighting in the Union army for their freedom and citizenship. After the Civil War, they took what little they had and built schools, worked the land to establish their economic independence, and searched desperately to bring their families, separated by slavery, back together. That drive, initiative, and resolve, however, was met with the Black Codes, with army troops throwing them off their promised forty acres, and then with a slew of Supreme Court decisions eviscerating the Thirteenth, Fourteenth, and Fifteenth Amendments.

The truth is that when World War I provided the opportunity in the North for

blacks to get jobs with unheard-of pay scales and, better yet, the chance for their children to finally have good schools, African Americans fled the oppressive conditions in the South. White authorities stopped the trains, arresting people whose only crime was leaving the state. They banned a nationally distributed newspaper, jailed people for carrying poetry, and instituted another form of slavery under the ruse of federal law. Not the First Amendment, the right to travel, nor even the basic laws of capitalism were any match.

The truth is that opposition to black advancement is not just a Southern phenomenon. In the North, it has been just as intense, just as determined, and in some ways just as destructive. When, during the Great Migration, African Americans moved into the cities, ready to work hard for decent housing and good schools, they were locked down in uninhabitable slums. To try to break out of that squalor with a college degree or in a highly respected profession only intensified the response: Perjured testimony was transmuted into truth; a future Nuremberg judge ran roughshod over state law; and even the bitterest newspaper rivals saw fit to join together when it came to upholding a lie.

The truth is that when the *Brown v. Board of Education* decision came down in 1954 and black children finally had a chance at a decent education, white authorities didn't see children striving for quality schools and an opportunity to fully contribute to society; they saw only a threat and acted accordingly, shutting down schools, diverting public money into private coffers, leaving millions of citizens in educational rot, willing even to undermine national security in the midst of a major crisis—all to ensure that blacks did not advance.

The truth is that the hard-fought victories of the Civil Rights Movement caused a reaction that stripped *Brown* of its power, severed the jugular of the Voting Rights Act, closed off access to higher education, poured crack cocaine into the inner cities, and locked up more black men proportionally than even apartheid-era South Africa.

The truth is that, despite all this, a black man was elected president of the United States: the ultimate advancement, and thus the ultimate affront. Perhaps not surprisingly, voting rights were severely curtailed, the federal government was shut down, and more than once the Office of the President was shockingly, openly, and publicly disrespected by other elected officials. And as the judicial system in state after state turned free those who had decided a neighborhood's "safety" meant killing first and asking questions later, a very real warning was sent that black lives don't matter.

The truth is, white rage has undermined democracy, warped the Constitution,

weakened the nation's ability to compete economically, squandered billions of dollars on baseless incarceration, rendered an entire region sick, poor, and woefully undereducated, and left cities nothing less than decimated. All this havoc has been wreaked simply because African Americans wanted to work, get an education, live in decent communities, raise their families, and vote. Because they were unwilling to take no for an answer.

Thus, these seemingly isolated episodes reaching back to the nineteenth century and carrying forward to the twenty-first, once fitted together like pieces in a mosaic, reveal a portrait of a nation: one that is the unspoken truth of our racial divide.

One

Reconstructing Reconstruction

James Madison called it America's "original sin."¹ Chattel slavery. Its horrors, Thomas Jefferson prophesied, would bring down a wrath of biblical proportions.² "Indeed," Jefferson wrote, "I tremble for my country when I reflect that God is just: that his justice cannot sleep forever."³

In 1861, the day of reckoning came. The Southern states' determination to establish "their independent slave republic" led to four years of war, 1.5 million casualties, including at least 620,000 deaths, and 20 percent of Southern white males wiped off the face of the earth.⁴

In his second inaugural address, in 1865, Abraham Lincoln agonized that the carnage of this war was God's punishment for "all the wealth piled by the bondsman's 250 years of unrequited toil."⁵ Over time the road to atonement revealed itself: In addition to civil war, there would be the Emancipation Proclamation, three separate constitutional amendments—one that abolished slavery, another that defined citizenship, and the other that protected the right to vote—and, finally, the Freedmen's Bureau, with its mandate to provide land and education. Redemption for the country's "sin," therefore, would require not just the end of slavery but also the recognition of full citizenship for African Americans, the right to vote, an economic basis to ensure freedom, and high-quality schools to break the generational chains of enforced ignorance and subjugation.

America was at the crossroads between its slaveholding past and the possibility of a truly inclusive, vibrant democracy. The four-year war, played out on battlefield after battlefield on an unimaginable scale, had left the United States reeling. Beyond the enormous loss of life to contend with, more than one million disabled ex-soldiers were adrift, not to mention the widows seeking support from a rickety and virtually nonexistent veterans' pension system.⁶ The mangled sinews of commerce only added to the despair, with railroad tracks torn apart; fields fallow, hardened, and barren; and bridges that had once defied the

physics of uncrossable rivers now destroyed. And then this: Millions of black people who had been treated as no more than mere property were now demanding their full rights of citizenship. To face these challenges and make this nation anew required a special brand of political leadership.

Could the slaughter of more than six hundred thousand men, the reduction of cities to smoldering rubble, and casualties totaling nearly 5 percent of the U.S. population provoke America's come-to-Jesus moment? Could white Americans override "the continuing repugnance, even dread" of living among black people as equals, as citizens and not property?⁷ In the process of rebuilding after the Civil War, would political leaders have the clarity, humanity, and resolve to move the United States away from the racialized policies that had brought the nation to the edge of apocalypse?

Initially, it appeared so. Even before the war ended, in late 1863 and early 1864, Representative James M. Ashley (R-OH) and Senator John Henderson (D-MO) introduced in Congress a constitutional amendment abolishing slavery. The Thirteenth Amendment was, in important ways, revolutionary. Immediately, it moved responsibility for enforcement and protection of civil rights from the states to the federal government and sent a strong, powerful signal that citizens were first and foremost U.S. citizens. The Thirteenth Amendment was also a corrective and an antidote for a Constitution whose slave-owning drafters, like Thomas Jefferson, were overwhelmingly concerned with states' rights. Finally, the amendment sought to give real meaning to "we hold these truths to be self-evident" by banning not just government-sponsored but also private agreements that exposed blacks to extralegal violence and widespread discrimination in housing, education, and employment.⁸ As then-congressman James A. Garfield remarked, the Thirteenth Amendment was designed to do significantly more than "confer the bare privilege of not being chained."⁹

That momentum toward real freedom and democracy, however, soon enough hit a wall—one that would be more than any statesman was equipped to overcome. Indeed, for all the saintedness of his legacy as the Great Emancipator, Lincoln himself had neither the clarity, the humanity, nor the resolve necessary to fix what was so fundamentally broken. Nor did his successor. And as Reconstruction wore on, the U.S. Supreme Court also stepped in to halt the progress that so many had hoped and worked for.

Lincoln had shown his hand early in the war. Heavily influenced by two of his intellectual heroes—Thomas Jefferson, who advocated expulsion of blacks from the United States in order to save the nation; and Kentuckian Henry Clay, who

had established the American Colonization Society, which had moved thousands of free blacks into what is now Liberia—Lincoln soon laid out his own resettlement plans. He had selected Chiriquí, a resource-poor area in what is now Panama, to be the new home for millions of African Americans. Lincoln just had to convince them to leave. In August 1862, he lectured five black leaders whom he had summoned to the White House that it was their duty, given what their people had done to the United States, to accept the exodus to South America, telling them, “But for your race among us there could not be war.”¹⁰ As to just how and why “your race” came to be “among us,” Lincoln conveniently ignored. His framing of the issue not only absolved plantation owners and their political allies of responsibility for launching this war, but it also signaled the power of racism over patriotism. Lincoln’s anger in 1862 was directed at blacks who fully supported the Union and did not want to leave the United States of America. Many, indeed, would exclaim that, despite slavery and enforced poverty, “We will work, pray, live, and, if need be, die for the Union.”¹¹ Nevertheless, he cast *them* as the enemy for wickedly dividing “us” instead of defining as traitors those who had fired on Fort Sumter and worked feverishly to get the British and French to join in the attack to destroy the United States.¹²

From this perspective flowed Lincoln’s lack of clarity about the purpose and cause of the war. While the president, and then his successor, Andrew Johnson, insisted that the past four years had been all about preserving the Union, the Confederacy operated under no such illusions. Confederate States of America (CSA) vice president Alexander H. Stephens remarked, “What did we go to war for, but to protect our property?”¹³ This was a war about slavery. About a region’s determination to keep millions of black people in bondage from generation to generation. Mississippi’s Articles of Secession stated unequivocally, “Our position is thoroughly identified with the institution of slavery ... Its labor supplies the product which constitutes by far the largest and most important portions of commerce of the earth.”¹⁴ In fact, two thirds of the wealthiest Americans at the time “lived in the slaveholding South.”¹⁵ Eighty-one percent of South Carolina’s wealth was directly tied to owning human beings.¹⁶ It is no wonder, then, that South Carolina was willing to do whatever it took, including firing the first shot in the bloodiest war in U.S. history to be free from Washington, which had stopped the spread of slavery to the West, refused to enforce the Fugitive Slave Act, and, with the admission of new free-soil states to the Union prior to 1861, set up the numerical domination of the South in Congress. When the Confederacy declared that the “first duty of the Southern

states” was “self-preservation,” what it meant was the preservation of slavery.¹⁷

To cast the war as something else, as Lincoln did, to shroud that hard, cold reality under the cloak of “preserving the Union” would not and could not address the root causes of the war and the toll that centuries of slavery had wrought. And that failure of clarity led to a failure of humanity. Frederick Douglass later charged that in “the hurry and confusion of the hour, and the eagerness to have the Union restored, there was more care for the sublime superstructure of the republic than for the solid foundation upon which it alone could be upheld”—the full rights of the formerly enslaved people.¹⁸

Millions of enslaved people and their ancestors had built the enormous wealth of the United States; indeed, in 1860, 80 percent of the nation’s gross national product was tied to slavery.¹⁹ Yet, in return for nearly 250 years of toil, African Americans had received nothing but rape, whippings, murder, the dismemberment of families, and forced subjugation, illiteracy, and abject poverty. The quest to break the chains was clear. As black residents in Tennessee explained in January 1865:

*We claim freedom, as our natural right, and ask that in harmony and co-operation with the nation at large, you should cut up by the roots the system of slavery, which is not only a wrong to us, but the source of all the evil which at present afflicts the State. For slavery, corrupt itself, corrupted nearly all, also, around it, so that it has influenced nearly all the slave States to rebel against the Federal Government, in order to set up a government of pirates under which slavery might be perpetrated.*²⁰

The drive to be free meant that 179,000 soldiers, 10 percent of the Union Army, (and an additional 19,000 in the Navy) were African Americans. Humanity, therefore, cried out to honor the sacrifice and heroism of tens of thousands of black men who had gallantly fought the nation’s enemy. That military service had to carry with it, they believed, citizenship rights and the dignity that comes from no longer being defined as property or legally inferior.²¹

To be truly reborn this way, the United States would have had to overcome not just a Southern but also a national disdain for African Americans. In New York City, for example, during the 1863 Draft Riots:

Black men and black women were attacked, but the rioters singled out the men for special violence. On the waterfront, they hanged William Jones and then burned his body. White dock workers also beat and nearly drowned Charles Jackson, and they beat Jeremiah Robinson to death and threw his body in the river. Rioters also made a sport of mutilating the black men’s bodies, sometimes sexually. A group of white men and boys mortally

*attacked black sailor William Williams—jumping on his chest, plunging a knife into him, smashing his body with stones—while a crowd of men, women, and children watched. None intervened, and when the mob was done with Williams, they cheered, pledging “vengeance on every nigger in New York.”*²²

This violence was simply the most overt, virulent expression of a stream of anti-black sentiment that conscribed the lives of both the free and the enslaved. Every state admitted to the Union since 1819, starting with Maine, embedded in their constitutions discrimination against blacks, especially the denial of the right to vote. In addition, only Massachusetts did not exclude African Americans from juries; and many states, from California to Ohio, prohibited blacks from testifying in court against someone who was white.²³

The glint of promise that had come as the war ended required an absolute resolve to do what it would take to recognize four million newly emancipated people as people, as citizens. A key element was ensuring that the rebels would not and could not assume power in the newly reconstructed United States of America. Yet, as the Confederacy’s defeat loomed near, Lincoln had already signaled he would go easy on the rebel leaders. His plan for rebuilding the nation required only that the secessionist states adopt the Thirteenth Amendment and have 10 percent of eligible voters (white propertied males) swear loyalty to the United States. That was it. Under Lincoln’s plan, 90 percent of the power in a state could still openly dream of full-blown insurrection and consider themselves anything but loyal to the United States of America.

As one South Carolinian explained in 1865, the Yankees had left him “one inestimable privilege ... and that was to hate ’em.” “I get up at half past four in the morning,” he said, “and sit up till twelve midnight, to hate ’em.”²⁴ *The Liberator* reported that in South Carolina, “there are very many who ... do not disguise the ... undiminished hatred of the Union.”²⁵ The visceral contempt, however, extended far beyond the Yankees to encompass the formerly enslaved. One official stationed in the now-defeated South noted, “Wherever I go—the street, the shop, the house, or the steamboat—I hear the people talk in such a way as to indicate that they are yet unable to conceive of the Negro as possessing any rights at all.” He further explained how murder, rape, and robbery, in this Kafkaesque world, were not seen as crimes at all so long as whites were the perpetrators and blacks the victims. Given this poisonous atmosphere, he warned, “The people boast that when they get freedmen affairs in their own hands, to use their own classic expression, ‘the niggers will catch hell.’ ”²⁶

To stop this descent into the cauldrons of racial hate, African Americans had to have access to the ballot box. The reasoning was simple. As long as blacks were disfranchised, white politicians could continue to ignore or, even worse, trample on African Americans and suffer absolutely no electoral consequences for doing so. The moment that blacks had the vote, however, elected officials risked being ousted for spewing anti-black rhetoric and promoting racially discriminatory policies.²⁷ But, in 1865, that was not to be. Suffrage was a glaring, fatal omission in the president's vision for Reconstruction—although one that was consistent with the position Lincoln had taken early in his political career when he “insist[ed] that he did not favor Negroes voting, or,” for that matter, “Negroes serving on juries, or holding public office, or intermarrying with whites.”²⁸

“I am not,” Lincoln had said, “nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races.”²⁹

The situation only worsened with the presidency of the man who stepped in after Lincoln's assassination.³⁰ To be sure, during the war, Andrew Johnson, a Tennessee Democrat, had blasted the Confederate leadership and plantation owners as “traitors” who “must be punished and impoverished.”³¹ But his resentment was rooted in the class envy of an embittered man who had grown up achingly poor, hardscrabble, and illiterate, utterly unlike the Southern gentry who had challenged the Union. Johnson's antipathy, however, did not translate into support for black equality or the abolitionists, whom he disdained.³² Indeed, the contempt this sometime slave owner felt for black people was palpable. Addressing a regiment of African American soldiers who had just returned from a tour of duty in October 1865, the president lectured them. “Freedom is not simply the principle to live in idleness,” he chided the men. “Liberty does not mean merely to resort to the low saloons and other places of disreputable character.”³³ Never mind that these were men in uniform, men who had honorably served the United States. In this president's estimation, blacks—despite years of service to the nation and a willingness to put their lives on the line (forty thousand had died during the war)—were just immoral, drunken sluggards. How, then, could the epic violence that had consumed the United States have been about the nation recognizing the very humanity and citizenship of these beings? The new president, just like Lincoln, had convinced himself instead that the Civil War was only about preserving the Union. No more. No less. And therefore, he set about stitching the rebel South back into the fabric of the nation.

First, within weeks after taking office, Johnson pardoned scores of former Confederates, ignoring Congress's 1862 Ironclad Test Oath that expressly forbade him to do so, and handed out full amnesty to thousands whom, just the year before, he had called "guerrillas and cut-throats" and "traitors ... [who] ought to be hung." Beneficiaries of his largesse included the head of the Confederate Army, Robert E. Lee, and even CSA vice president Alexander Stephens.³⁴ Even more shocking, given Johnson's decades-long resentment against and vilification of the "damnable aristocracy," his generosity and forgiveness extended to the plantation owners themselves.³⁵

Still, there was hope of progress. In March 1865, Congress created an organization, the Bureau of Refugees, Freedmen, and Abandoned Lands, commonly known as the Freedmen's Bureau, which had a range of responsibilities including the reallocation of abandoned Southern land to the newly emancipated. The bureau's charge was to lease forty-acre parcels that would provide economic self-sufficiency to a people who had endured hundreds of years of unpaid toil. Already, in January 1865, Union general William Tecumseh Sherman had issued Special Field Order No. 15, which, to take some of the pressure off his army as thousands of slaves eagerly fled their plantations and trailed behind his troops, "reserved coastal land in Georgia and South Carolina for black settlement." Less than a year after he issued the order, forty thousand former slaves had begun to work four hundred thousand acres of this land.³⁶ Then, in July of the same year, the head of the Freedmen's Bureau, General Oliver O. Howard, issued Circular 13, fully authorizing the lease of forty-acre plots from abandoned plantations to the newly freed families. "Howard was neither a great administrator nor a great man," noted W.E.B. Du Bois, "but he was a good man. He was sympathetic and humane, and tried with endless application and desperate sacrifice to do a hard, thankless duty."³⁷ Howard made clear that whatever amnesty President Johnson may have bestowed on Southern rebels did not "extend to ... abandoned or confiscated property."³⁸

Johnson, however, immediately rescinded Howard's order, commanding the army to throw tens of thousands of freedpeople off the land and reinstall the plantation owners.³⁹ While this could have come from a simple ideological aversion to land redistribution, that was not the case and, for Johnson, not the issue; *who* received it was. Beginning in 1843, when he was first elected to the U.S. Congress, and over the next nineteen years, Johnson had championed the Homestead Act, which would *give*, not *lease*, 160 acres in the West to citizens

who were “without money”—meaning poor whites. The intended beneficiaries were clear because from 1843 through 1862, when the law was finally passed, most African Americans were not citizens and therefore, regardless of how impoverished, were ineligible.⁴⁰ Doggedly pushing back on those who argued that a land giveaway program was unfair to those who had actually saved their hard-earned dollars and purchased their plots, he made no apologies for “standing by the poor man in getting him a home that he could call his.”⁴¹ Nor was it just acreage out West that Johnson eyed. In 1864, two years after the Homestead Act passed, he advocated taking the plantation owners’ land as well and distributing it to “free, industrious, and honest farmers,” which again was Johnson’s way of helping poor whites, whose opportunities, he felt, had been denied and whose chances had been thwarted by the enslaved and masters alike.⁴² In fact, he reveled in the charge that he was “too much of the poor man’s friend.”⁴³ But even his core constituency, first impoverished under the old plantocracy and then treated as cannon fodder, became readily expendable when it seemed that the only way to keep blacks as labor without rights was to reinstate the leadership of the old Confederacy.

Johnson’s rash of pardons had the desired effect. The new congressional delegations looked hauntingly like those from the Old South: CSA vice president Stephens and cabinet officers, as well as ten Confederate generals, a number of colonels, and nearly sixty Confederate Congress representatives, were ready to be ensconced, once again, in the nation’s capital.⁴⁴ The reigning leaders of the Confederacy, who had rightfully expected to be tried and hung as traitors, now were not only poised to sail back into power in the federal government but also, given Johnson’s amnesty, allowed to regain control of their states and, as a consequence, of the millions of newly emancipated and landless black people there. As he welcomed one “niggers will catch hell” state after the next back into the Union with no mention whatsoever of black voting rights and, thus, no political protection, he effectively laid the groundwork for mass murder.⁴⁵

One of the president’s emissaries, Carl Schurz, recoiled as he traveled throughout the South and gathered reports of African American women who had been “scalped,” had their “ears cut off,” or had been thrown into a river and drowned amid chants for them to swim to the “damned Yankees.” Young black boys and men were routinely stabbed, clubbed, and shot. Some were even “chained to a tree and burned to death.” In what can only be described as a travelogue of death, as he went from county to county, state to state, he conveyed the sickening unbearable stench of decomposing black bodies hanging

from limbs, rotting in ditches, and clogging the roadways.⁴⁶ White Southerners, it was obvious, had unleashed a reign of terror and anti-black violence that had reached “staggering proportions.” Many urged the president to strengthen the federal presence in the South.⁴⁷ Johnson refused, choosing instead, to “preside over ... this slow-motioned genocide.”⁴⁸ The lack of a vigorous—or, for that matter, *any*—response only further encouraged white Southerners, who recognized that they now had a friend in the White House.⁴⁹ One former cabinet member in the Confederacy “later admitted that ... the white South was so devastated and demoralized it would have accepted almost any of the North’s terms. But ... once Johnson ‘held up before us the hope of a white man’s government,’ it led ‘[us] to set aside negro suffrage’ and to resist Northern plans to improve the condition of the freedmen.”⁵⁰ Thus emboldened, Virginia’s rebellion-tainted leaders planned to “accomplish ... with votes what they have failed to accomplish with bayonets.”⁵¹

Like a hydra, white supremacist regimes sprang out of Mississippi, Alabama, Georgia, and the other states of a newly resurgent South. As they drafted their new constitutions, the delegates were defiant, dismissive of any supposed federal authority, and ready to reassert and reimpose white supremacy as if the abolition of slavery and the Civil War had never happened.⁵² They praised their newfound ally on Pennsylvania Avenue, who saw things, it seemed, much as they did. The delegates at Louisiana’s Constitutional Conference in October 1865 were so confident in the president’s support and their reclaimed power that they resolved, “We hold this to be a Government of white people, made and to be perpetuated for the exclusive benefit of the white race; and in accordance with the constant adjudication of the United States Supreme Court”—specifically, the infamous *Dred Scott* decision of 1856, wherein Chief Justice Roger B. Taney had stated explicitly that black people have “no rights which the white man is bound to respect.” The Louisiana delegates concluded “that people of African descent cannot be considered as citizens of the United States.”⁵³

In this reconstruction of the Reconstruction, with the reassertion of *Dred Scott*, the exclusion of blacks from the ballot box, and the rescission of forty acres and a mule, African Americans now had neither citizenship, the vote, nor land. Johnson, who saw black empowerment as a nightmare, insisted, “This is ... a country for white men, and by God, as long as I’m President, it shall be a government for white men.”⁵⁴ Therefore, Louisiana’s declaration that “people of African descent cannot be considered citizens of the United States” aligned perfectly with Johnson’s. One Georgia plantation owner agreed as he asserted

that white Southerners now had “the right and power to govern our population in our own way.” And, as Louisiana emphasized, that meant “getting things back as near to slavery as possible.”⁵⁵

Mississippi showed the way. In the fall of 1865, the state passed a series of laws targeted and applicable only to African Americans (free and newly emancipated) that undercut any chance or hope for civil rights, economic independence, or even the reestablishment of families that had been ripped apart by slavery. As noted by Du Bois, the notorious Black Codes “were an astonishing affront to emancipation” and made “plain and indisputable” the “attempt on the part of the Southern states to make Negroes slaves in everything but name.”⁵⁶ The codes required that blacks sign annual labor contracts with plantation, mill, or mine owners. If African Americans refused or could show no proof of gainful employment, they would be charged with vagrancy and put on the auction block, with their labor sold to the highest bidder. The supposed contract was beyond binding; it was more like a shackle, for African Americans were forbidden to seek better wages and working conditions with another employer. No matter how intolerable the working conditions, if they left the plantation, lumber camp, or mine, they would be jailed and auctioned off. They were trapped. Self-sufficiency itself was illegal, as blacks couldn’t hold any other employment besides laborer or domestic (unless they had the written consent of the mayor or judge) and were also banned from hunting and fishing, and thus denied the means even to stave off hunger. More galling yet was a provision whereby black children who had been sold before the war and hadn’t yet reunited with their parents were to be apprenticed off, with the former masters having the first right to their labor. Finally, the penalty for defiance, insulting gestures, and inappropriate behavior, the Black Codes made clear, was a no-holds-barred whipping.⁵⁷

Mississippi’s success in reinscribing slavery by another name was undeniable. Nine of the other former Confederate States quickly copied the Black Codes, sometimes verbatim. These laws, despite their draconian nature, were not the work of extreme secessionists. Some of the South’s most respected judges, attorneys, and planters crafted the Black Codes. From the cool marble halls of the statehouses, white opposition had done its job with the mere stroke of a pen. “If you call this Freedom,” wrote one black veteran, “what do you call Slavery?”⁵⁸

Not even Union general (and future president) Ulysses S. Grant saw anything wrong. Under Florida’s Black Codes, disobedience or impudence was a “form of

vagrancy and a vagrant could be whipped.” In Louisiana black adults had to sign labor contracts within “the first ten days of each year that committed them and their children to work on a plantation.” In North Carolina “orphans were sent to work for the former masters of their families rather than allowing them to live with grandparents or other relatives.” But Grant, despite all brutal evidence to the contrary, was convinced that white Southerners had adjusted well to losing the Civil War. If African Americans resisted and complained bitterly about the Black Codes, this meant only that the Freedmen’s Bureau was “encouraging unrealistic expectations among the former slaves.” Grant did not attribute the turmoil in the South to the incredible levels of violence unleashed on the newly freed or to the barbaric Black Codes to which they were now subject; General Howard’s staff, he felt, must be the source of the problem. Bureau and federal oversight were, in Grant’s mind, “unnecessary, even harmful.”⁵⁹

One Philadelphia newspaper, a hair more realistic, acknowledged the odiousness of the Black Codes. Still, the article continued, the codes were necessary. Perhaps the form they took was a touch too severe, but the Black Codes, it argued, were not about trying to re-establish slavery. The Southern states “just wanted to stop vagrancy and put an end to the undeniable evils of idleness and pauperism arising from the sudden emancipation of so many slaves.” By compelling them to work, the argument went, this measure prevented the newly freed from becoming a “burden upon society.” What the paper failed to recognize was that black people’s willingness to work had never been the problem. Having to work for free, under backbreaking conditions and the threat of the lash, was the real issue.

Nor did Johnson’s policies or the Black Codes ensure that African Americans would not be a “burden upon society.” If anything, they guaranteed the opposite. Blacks were denied access to land, banned from hunting and fishing, and forbidden to work independently using skills honed and developed while enslaved, such as blacksmithing. Under such conditions, self-sufficiency could never have been achieved.

The bottom line was that black economic independence was anathema to a power structure that depended on cheap, exploitable, rightless labor and required black subordination. But instead of honing in on this fundamental reality, the Philadelphia newspaper simply bemoaned the unforeseen and unfortunate consequences of the Black Codes for whites, complaining that, since “planters refuse to pay wages at all” to blacks, due to the landowners’ claims that “negroes are so lazy as not to be worth paying,” there was a downward pressure on overall

wages that left poor whites unable to find work that provided enough “to keep soul and body together.” And yet, even when the constituency for whom Andrew Johnson swore he served got caught in the blowback of these ruthless laws, he did not lift a finger to stop it.⁶⁰

As another article in the paper asserted, the South was in much better shape than could have been expected, and this was because of the president’s policies, which were “worthy of our admiration.” Johnson understood, the paper contended, that the “war was for the Union, and the Union has been restored beyond our most sanguine expectations.” The president, then, was to be commended for a “job well done.”⁶¹

Andrew Johnson could not have agreed more. His message to Congress in December 1865 had that same upbeat, triumphal cadence: The war was over. The South was repentant. New governments had been formed. The federal government, he concluded, had done what it had set out to do and done it beautifully. He had heard some rumblings about voting and civil rights for the freedpeople, but any lingering questions about rights, despite the enforcement clause in the Thirteenth Amendment, Johnson felt, were matters for the states.⁶²

This congratulatory, rose-colored vision of the State of the Union ignored the brutal conditions that greeted four million people by the war’s end. Johnson dismissed the numerous reports of mutilated black bodies piled up like logs, did not hear the incessant crack of the whips tearing into black flesh, and found in the draconian Black Codes that reinstalled slavery by another name nothing but progress. How stunning, too, that such a prideful, stubborn man could swallow his dignity over and over again when the states he had just welcomed back into the fold defied even the very low standards he had set to rejoin the United States of America. South Carolina ratified the Thirteenth Amendment only after the state had attached a declaration with its own series of “if, then, but” clauses nullifying any federal right to enforce the anti-slavery provision. To make its point perfectly clear, the state also refused to renounce its Articles of Secession. Louisiana and Alabama attached their own addenda negating congressional authority over the status of slavery within their borders.⁶³ Florida held out against ratification until nearly the bitter end, December 28, 1865, and had to do it again in 1868; Texas held out even longer (1870). Mississippi, whose governor, a Confederate general pardoned three days *after* winning the gubernatorial election, just flat out refused to ratify the amendment.⁶⁴ Indeed, such was Mississippi’s obstinacy that it delayed ratification of the Thirteenth Amendment until 2013.⁶⁵ But despite at least half the old Confederacy mocking

and treating contemptuously his olive branch, Johnson was pleased with what he had done. Not only had the Union been preserved, but also the ratification of the Thirteenth Amendment, no matter how halfhearted or tarnished, meant that the existence of chattel slavery would never threaten the sanctity of the nation again. As the president surveyed all that he had accomplished, he was satisfied. He simply could not fathom that Northern Republicans, concerned about the complete deprivation of rights for freedpeople, would criticize or try to undo what he had so painstakingly stitched together.⁶⁶

For many Northern congressmen, the Black Codes sparked a general sense of outrage. Even some Southern whites thought the codes were just a bit too audacious and precipitous. “ ‘*We showed our hand too soon,*’ a Mississippi planter conceded. ‘We ought to have waited till the troops were withdrawn, and our representatives admitted to Congress; then we could have had everything our way.’ ”⁶⁷ He was right. Voluminous testimony about whippings, killings, and virtual slavery were all too much for Congress to stomach. The sight of unrepentant leaders of the Confederacy, such as Gettysburg General Benjamin Humphreys, now Mississippi governor, fully ensconced in state governments, as if the war had never happened, was infuriating. The smugness of Andrew Johnson—who was president, as some said, only because of John Wilkes Booth—rebuilding the nation without even the advice and counsel of the legislative branch was unacceptable. For Congress, the core issue was the newly emancipated; without any rights, without any citizenship, they would be left without any hope. They would be at the mercy of the same slavocracy that had left more than six hundred thousand dead.

If the Radical Republicans, led by Representative Thaddeus Stevens (R-PA) and Senator Charles Sumner (R-MA), sought for African Americans a sweeping agenda—land, citizenship, and the vote (and that is what made them “radical”)—the majority of Congress was unwilling to go that far.⁶⁸ Moderate Republicans did believe, however, that Johnson had not gone far enough. At a bare minimum, citizenship needed to be fully acknowledged and the Freedmen’s Bureau, which by law was set to shut its doors in April 1866, had to continue setting up schools for the newly freed, because at the time of emancipation, just a little more than 3 percent of four million formerly enslaved were literate. Congress, therefore, passed both the Freedmen’s Bureau Bill and the Civil Rights Act of 1866, which defined as citizens all persons born in the United States, except for Native Americans. The moderates believed they had stripped out the most objectionable clauses from the legislation—the right to vote and widespread land distribution

—so that President Johnson could now easily sign both bills into law.⁶⁹

They were wrong. So venomous was Johnson's veto of the Freedmen's Bureau Bill that it left even his supporters in Congress stunned. He railed against the unconstitutionality of the legislation, given that eleven rebel states, despite their newly formed governments, were not represented in Congress. He denounced the creation of a judicial system under the Freedmen's Bureau when there were perfectly good courts already in existence in the South. He raged against the beginnings of a bloated federal bureaucracy designed to tend to the needs of "one class of people" while ignoring "our own race." He demanded to know why the government would build schools for blacks when it did not even do that for whites. Johnson further lectured that the modest land provision still in existence from Sherman's Special Field Order No. 15 was just plain wrong and set a horrible precedent. The government "never deemed itself authorized to expend the public money for the rent or purchase of homes for the thousands, not to say millions, of the white race who are honestly toiling from day to day for their subsistence," so why would it do so for the freedmen?⁷⁰

This bill, he was convinced, was designed to set up black dependency on the federal government. And he was having none of it. Negroes, he insisted, should have the wherewithal to fend for themselves. The president, despite evidence to the contrary, concurred with his advisers that "the current condition of a freedman was 'not so bad.' "

His condition is not so exposed as may at first be imagined. He is in a portion of the country where his labor cannot well be spared. Competition for his services from planters, from those who are constructing or repairing railroads, or from capitalists in his vicinage, or from other States, will enable him to command almost his own terms. He also possesses a perfect right to change his place of abode, and if, therefore, he does not find in one community or State a mode of life suited to his desires, or proper remuneration for his labor, he can move to another where labor is more esteemed and better rewarded.

Johnson insisted that the "laws that regulate supply and demand will maintain their force, and the wages of the laborer will be regulated thereby." Moreover, given these very highly favorable conditions, the president asserted, blacks could build their own schools and buy their own land instead of waiting for a handout from the government. "It is earnestly hoped that instead of wasting away, they will, by their own efforts, establish for themselves a condition of respectability and prosperity."⁷¹

Even as he complained bitterly that Congress would not recognize the duly

elected representatives from the eleven rebel states he had welcomed back into the Union, Johnson ignored the fact that seven of those states had either refused to ratify the Thirteenth Amendment or stated that they would do so only with clauses that negated any federal authority, and ten of them had instituted the Black Codes, which strongly suggested that slavery was alive and well in the Confederate South. Like Louisiana, those states proudly trumpeted the systematic exclusion of millions of African-descended people from the government.

Similarly, while the president supposedly fretted about government intrusion into the economy, he voiced no concern whatsoever when the leaders of the Confederacy, whom he had just pardoned, used the power of the state, via the Black Codes, to derail the very market forces he touted as the cure for the post-slavery blues. Government intervention ensured that African Americans could not take their labor to the best employer; could not move “to another abode” for fear of being arrested on vagrancy charges and auctioned off; could not use their skills for anything but cleaning the plantation owners’ houses, picking cotton, chopping sugarcane, or planting tobacco and rice. The laws of supply and demand, Johnson’s alleged panacea, could not operate. His determination to ensure that this was “a white man’s government” had undercut not only democracy but the basic tenets of capitalism as well.

That same hypocrisy was evident in Johnson’s vision of landownership. While claiming that the government had never provided access to land for “hard toiling whites,” Johnson simply erased the nineteen years that he had worked for the passage of the Homestead Act to ensure that his constituency was given 160 acres wrested or browbeaten from Native Americans. Meanwhile, he cringed that the formerly enslaved would lease forty acres abandoned by those whom he had once called “traitors.” Perhaps this disparity in treatment reflected Johnson’s wish to reward those who embodied the “good old American work ethic.” The truth was much more complicated.

Mississippi’s Article of Secession, for example, while extolling the enormous wealth generated from planting and picking cotton, contended that the environmental conditions were too harsh in the Magnolia State for whites to actually do that work.⁷² When, as a teenager, future president of the Confederacy Jefferson Davis had refused to go to school, his father sent him into the cotton fields. But he did not last long. “After the boy spent two days stooping under the Mississippi sun, the classroom became more appealing.”⁷³ Shortly after the war, a Philadelphia newspaper reported that “all northern men visiting” the South had

one “universal complaint”: “White men are as averse to labor as ever. Rich or poor, they all ignore work.”⁷⁴ Similarly, Carl Schurz reported that in his conversation with a plantation owner, who was beside himself that emancipation had left him without any slaves to do the heavy lifting, the man dismissed the idea of working the land himself. “The idea that he would work with his hands as a farmer seemed to strike him as ludicrously absurd. He told me with a smile that he had never done a day’s work of that kind in his life.”⁷⁵ U.S. Supreme Court justice Samuel Miller was equally astounded by the “pretence ... that the negro won’t work without being compelled to do so,” especially when the charge was being “made in a country and by the white people, where the negro has done all the work for four generations, and where the white man makes a boast of the fact that *he will not labour*.”⁷⁶ Nonetheless, Johnson had absolutely no qualms about using the power of government to ensure that plantation owners and poor whites gained or regained title to millions of acres of land, whereas those who had actually labored hard in the vast fields were treated as criminals and vagrants who needed the threat of the whip in order to work.⁷⁷

The president’s concerns about a proposed judicial system where freedpeople might be able to find some justice for the violence raining down on them proved a similar Janus-faced sophistry. Johnson insisted that the existing court structure was fair, equitable, and fully functioning. Southern courts, in fact, were “racist, biased, obstructionist, and oblivious to northern opinion. Southern judges and law enforcement officials ... looked the other way when ex-rebels committed violent crimes against blacks and white Unionists. State courts forbade testimony by blacks, making crimes against African Americans nearly impossible to prove. Black veterans of the Union army were particular targets of unpunished violence,” and the pile of corpses and dismembered bodies, whose perpetrators were walking around scot-free, showed that Johnson had misrepresented what Southern courts were in fact designed to do: provide legal cover for terror.⁷⁸ A second function came into sharper focus with the ramping up of an expanded and aggressive penal system reconfigured to capitalize on the economic potential of the recently emancipated and newly imprisoned.⁷⁹ In effect, Southern courts transferred full control of black people from the plantation owner to a carceral state.⁸⁰ The instrument of re-enslavement was a brutal deployment of sheriffs, judges, and hard-labor punishment for black-only offenses such as carrying a firearm, making an insulting gesture, or stealing a pig. African Americans were then swept into the prison system to have their labor fill the coffers of the state and line the pockets of the plantation, mine, and

lumber mill owners.⁸¹

In fact, the authors of the Black Codes crafted the South's criminal justice system to enforce these brutal new laws to extract labor under the harshest conditions and provide wholly inadequate sustenance to the convicted. Those who died working the fields or in the mines could be easily replaced by more black bodies charged with vagrancy and handed a death sentence. As the flow of convict labor poured through the system, states either built or expanded the jurisdiction of their courts to handle the surge of cases.⁸² Justice, however, contrary to anything the president said, was never on the docket.

Education, as well, received the Johnson treatment, with the president voicing utter disbelief at the suggestion of the government building schools for blacks. To be sure, the South did not have a tradition of public schooling for anyone, least of all poor whites or blacks. The "planters believed that state government had no right to intervene in the education of children and, by extension, the larger social arrangement." As in most oppressive societies, those in power knew that an educated population would only upset the political and economic order. Indeed, in the antebellum South, the enslaved were actively forbidden from learning to read and write. Many paid dearly for their literacy. One man "endured three brutal whippings to conceal his pursuit" of education. "In another instance a slave by the name of Scipio was put to death for teaching a slave child how to read and spell and the child was severely beaten to make him 'forget what he had learned.' "⁸³

The South's defeat had little to no effect on that power dynamic. General Howard's appointee in Louisiana warned him that whites had made clear that all that stood between them and stripping blacks of any hope of land and education was a thin line of Union troops. Then he ominously added that if the soldiers were removed, black schools would be the first thing to vanish.⁸⁴ Indeed, one Louisiana legislator, when first seeing a school opened by the Freedmen's Bureau, exclaimed, "What? For niggers?"⁸⁵ Johnson was right in line with these attitudes. If blacks wanted schools, the president was clear, they would have to build their own.

In fact, African Americans did not wait for Johnson's blessing, let alone for government support or a white benefactor. One Freedmen's Bureau official recorded, "Throughout the entire South ... an effort is being made by the colored people to educate themselves." He identified "at least 500 schools" built, staffed, and run by black people. In Georgia, for example, by the fall of 1866, African Americans "financed entirely or in part 96 of the 123 day and evening schools."

Harriet Beecher Stowe remarked, “They rushed not to the grog-shop but to the schoolroom—they cried for the spelling-book as bread, and pleaded for teachers as a necessity of life.”⁸⁶

Although many poor whites languished, refusing to attend schools built under the supposed “nigger programs” of the Freedmen’s Bureau, the formerly enslaved emerged “with a fundamentally different consciousness of literacy ... that viewed reading and writing as a contradiction of oppression.”⁸⁷

Instead of offering any support to those who embodied the self-reliance he said he valued, Johnson was blind to the herculean and impressive effort that blacks had mounted in the South, and he demanded that they do even more without any help.⁸⁸

The Civil Rights Bill of 1866 also came under attack by the president. In vetoing the proposed legislation, Johnson raised several telling objections. He argued that blacks had to earn their citizenship, reminding Congress that African Americans had just emerged from slavery and, therefore, “should pass through a certain probation ... before attaining the coveted prize.” There was to be no born-on-American-soil-lottery, he intoned; instead, they had to “give evidence of their fitness to receive and to exercise the rights of citizens.”⁸⁹ For Johnson, nearly 250 years of unpaid toil to build one of the wealthiest nations on earth did not earn citizenship. And so, by his veto, he rendered the Civil Rights Bill null and void, fearing it would “establish for the security of the colored race safeguards which go infinitely beyond any that the General Government has ever provided for the white race. In fact,” he continued, “the bill [is] made to operate in favor of the colored and against the white race.”⁹⁰ This, a simple injunction against discriminating against blacks, was labeled as favoritism, and that is what made the proposed legislation so patently unacceptable. The Civil Rights Bill, Johnson complained, was just the opening salvo in the Radical Republicans’ efforts “to protect niggers.”⁹¹

Congress overrode both his vetoes and hoped that there might be some way to work with the president. But in the spring and summer of 1866, the South’s descent into an orgy of anti-black violence signaled the final break between Johnson and the Republicans. In New Orleans, nearly fifty African Americans were slaughtered and more than a hundred injured for meeting to discuss voting. When one of the killers, who had just bludgeoned a black man to death, was warned that “he might be punished,” he scoffed. “Oh, hell! Haven’t you seen the papers?” he said. “Johnson is with us!”⁹² In Memphis, there was another gory bloodbath, and another round of silence from the White House.⁹³ In Texas, from

1865 to 1868, nearly one thousand African Americans were lynched.⁹⁴

A woman pleaded with President Johnson “to do something about the plight of the ‘poor negro ... their masters are so angry to loose [sic] them that they are trying to persecute them back into slavery.’ ” Justice Miller was livid with Southern leaders, who sat in silence while the violence raged around them. “Show me,” he demanded, “the first public address or meeting of Southern men in which the massacres of New Orleans or Memphis have been condemned.” The “single truth is undenied that not a rebel or secessionist was hurt in either case, while from thirty to fifty negroes and Union white men were shot down,” which removed “all doubt as to who did it and why it was done.” As the black body count mounted, with justice nowhere to be found, least of all from the president of the United States, the Reconstruction era descended into nothing less than an age of violence and terror.⁹⁵

Congress, therefore, moved to provide some level of protection, passing the Reconstruction Acts of 1867, which divided the South into five military districts and tried to put U.S. troops between a still-smoldering, vengeful rebel population and the freedpeople. Then, in response to the rise of the Ku Klux Klan and organized, terrorist violence, Congress issued the Enforcement Acts. It also passed and the states subsequently ratified the Fourteenth and Fifteenth Amendments, weaving citizenship for all those born in the United States, except Native Americans, as well as the right to vote, into the Constitution.

Johnson did everything in his power to stop constitutional recognition of black people’s citizenship and voting rights, including convincing most of the Southern states not to ratify the Fourteenth Amendment and launching a breathtaking and ultimately disastrous political campaign to unseat Radical Republicans in Congress.⁹⁶ Nevertheless, despite Johnson’s wild fulminations about the “Africanization” of the South and the tyranny of “negro domination,” the Fourteenth Amendment was ratified on July 9, 1868, followed by the Fifteenth on February 3, 1870.⁹⁷ Congress had just created a legal structure to begin to atone for America’s “original sin.”

The U.S. Supreme Court, however, stepped in and succeeded where Johnson had failed. Frederick Douglass lamented that by the time the justices had finished, “in most of the Southern States, the fourteenth and fifteenth amendments are virtually nullified. The rights which they were intended to guarantee are denied and held in contempt. The citizenship granted in the fourteenth amendment is practically a mockery, and the right to vote ... is literally stamped out in face of government.”⁹⁸

The Supreme Court justices gave the aura of being “strict constitutionalists” whose job was not to interpret or create but merely to distinguish between the rights the federal government enforced and those controlled by the states.⁹⁹ But the supposedly legally neutral interpretations had profound effects. And the court, just like Johnson, demonstrated an uncanny ability to ignore inconsistencies and to twist rules, beliefs, and values to undermine the solid progress in black people’s rights that the Radical Republicans had finally managed to put in place. The court declared that the Reconstruction amendments had illegally placed the full scope of civil rights, which had once been the domain of states, under federal authority. That usurpation of power was unconstitutional because it put state governments under Washington’s control, disrupted the distribution of power in the federal system, and radically altered the framework of American government.¹⁰⁰ The justices consistently held to this supposedly strict reading of the Constitution when it came to African Americans’ rights.

Yet, this same court threw tradition and strict reading out the window in the *Santa Clara* decision. California had changed its taxation laws to no longer allow corporations to deduct debt from the amount owed to the state or municipalities. The change applied only to businesses; people, under the new law, were not affected. The Southern Pacific Railroad refused to pay its new tax bill, arguing that its rights under the equal protection clause of the Fourteenth Amendment had been violated. In hearing the case, the court became innovative and creative as it transformed corporations into “people” who could not have their Fourteenth Amendment rights trampled on by local communities.¹⁰¹ So, while businesses were shielded, black Americans were most emphatically not.

The ruling that began this long, disastrous legal retreat from a rights-based society was the 1873 *Slaughterhouse Cases*. New Orleans had passed a law not only to confine butcher shops, with their blood, entrails, and inevitable disease, to a discrete section of town but also to allow only city-authorized stores to operate. The butchers went to court, pleading that their right to due process under the Fourteenth Amendment had been violated. The justices ruled that that was impossible because the amendment covered only federal citizenship rights, such as habeas corpus and the right to peaceful assembly. Everything else came under the domain of the states.¹⁰² As a result, “citizens still had to seek protection for most of their civil rights from state governments and state courts.”¹⁰³

Even the right to vote, despite the Fifteenth Amendment, was not federally

protected. In *Minor v. Happersett* (1874), Chief Justice Morrison R. Waite wrote, “The Constitution of the United States does not confer the right of suffrage upon anyone,” because the vote “was not coexistent with citizenship.”¹⁰⁴ This was reaffirmed in *United States v. Reese* (1875). In Lexington, Kentucky, a black man, William Garner, had tried to vote. The registrars, Hiram Reese and Matthew Foushee, refused to hand Garner a ballot because he had not paid a poll tax. Yet, the black man had an affidavit that the tax collector had refused to accept his payment. The registrars scoffed. With one wing of local government demanding proof of payment and the other flat out refusing to accept the funds, Garner knew his right to vote had been violated. The U.S. Supreme Court, in an 8–1 decision, disagreed. In another opinion, Waite wrote that the Fifteenth Amendment did not guarantee the right to vote but “had merely prevented the states from giving preference to one citizen over another on account of race, color, etc.” To emphasize the point, Waite reiterated, the “right to vote ... comes from the states.”¹⁰⁵

In quick succession, the court had undermined citizenship, due process, and the right to vote. Next was the basic right to life. In 1873, Southern Democrats, angered that African Americans had voted in a Republican government in Colfax, Louisiana, threatened to overturn the results of the recent election and install a white supremacist regime. Blacks were determined to defend their citizenship rights and occupied the symbol of democracy in Colfax, the courthouse, to ensure that the duly elected representatives, most of whom were white, could take office. That act of democratic courage resulted in an unprecedented bloodbath, even for Reconstruction.¹⁰⁶ Depending on the casualty estimate, between 105 and 280 African Americans were slaughtered. Their killers were then charged with violating the Enforcement Act of 1870, which Congress had passed to stop the Klan’s terrorism. Chief Justice Waite, in *United States v. Cruikshank* (1876), ruled that the Enforcement Act violated states’ rights. Moreover, the only recourse the federal government could take was the Fourteenth Amendment, but, he continued, that did not cover vigilantes or private acts of terror, but rather covered only those acts of violence carried out by the states. The ruling not only let mass murderers go free; it effectively removed the ability of the federal government to rein in anti-black domestic terrorism moving forward.¹⁰⁷

But the rollback of rights was not over yet; next on the list were dignity and equality. In the *Civil Rights Cases* (1883), the justices ruled that the 1875 Force Act that banned discrimination in public accommodations was also

unconstitutional because the Fourteenth Amendment could be enforced only by the states, not the federal government. Moreover, in a wicked one-two punch, the justices added that the Thirteenth Amendment's ban on "badges of servitude" did not extend to discrimination in public accommodations, such as in hotels, restaurants, and railcars.¹⁰⁸ U.S. Supreme Court justice Joseph Bradley was exasperated with African Americans consistently seeking legal redress and laws to fend off the violence, state-sponsored discrimination, legalized terror, and the reimposition of "crypto-slavery" and a "netherworld of rightlessness" that had come to define their lives after the Civil War. He barked that "there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws."¹⁰⁹ Like Andrew Johnson, Bradley saw equal treatment for black people as favoritism.

Unequal treatment, however, became the law of the land. In *Hall v. DeCuir* (1877), the justices ruled that a state could not prohibit racial segregation.¹¹⁰ Then, in a series of decisions, *Strauder v. West Virginia* (1880), *Ex parte Virginia* (1880), and *Virginia v. Rives* (1880), the U.S. Supreme Court provided clear guidelines to the states on how to systematically and constitutionally exclude African Americans from juries in favor of white jurors.¹¹¹ The crowning glory was *Plessy v. Ferguson* (1896). Homer Plessy, a black man who looked white, thought his challenge to a Louisiana law that forced him to ride in the Jim Crow railcar instead of the one designated for whites would put an end to this legal descent into black subjugation. He was wrong. The justices, in an 8–1 decision, dismissed the claims that Plessy's Fourteenth Amendment rights to equal protection under the law were violated. Justice Henry Brown unequivocally stated, "If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane." And when Plessy argued that segregation violated the Thirteenth Amendment's ban against "badges of servitude," the Supreme Court shot down that argument as well, noting: "We consider the underlying fallacy of [Plessy's] argument ... to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."¹¹² Despite more than a generation of irrefutable evidence of widespread racial discrimination in the aftermath of the Civil War, the court created the mythic "separate but equal" doctrine to confirm racial segregation as the law of the land. The court then followed up with a ruling in *Cumming v. Richmond County Board of Education* (1899) that even ignored Plessy's separate

but equal doctrine by declaring that financial exigency made it perfectly acceptable to shut down black schools while continuing to operate educational facilities for white children.¹¹³

Just prior to that, the court had sanctioned closing off the ballot box. In a unanimous 9–0 decision in *Williams v. Mississippi* (1898), the justices approved the use of the poll tax, which requires citizens to pay a fee—under a set of very arcane, complicated rules—to vote.¹¹⁴ Although the discriminatory intent of the requirement was well known prior to the justices’ ruling, the highest court in the land sanctioned this formidable barrier to the ballot box. In fact, Justice Joseph McKenna quoted extensively from the Mississippi Supreme Court’s candid admission that the state convention, “restrained by the federal Constitution from discriminating against the negro race,” opted instead to find a method that “discriminates against its [African Americans’] characteristics”—namely, poverty, illiteracy, and more poverty.¹¹⁵

The repercussions were harrowing for American democracy; the poll tax not only ensnared black voters but also trapped poor whites. As late as 1942, for instance, only 3 percent of the voting-age population cast a ballot in seven poll tax states.¹¹⁶ Just 3 percent of an electorate in these states decided who would sit in the U.S. Senate and House of Representatives to shape federal policy. This, in turn, strengthened the years of seniority and thus the stranglehold on federal law of these officials, who accordingly rose in the ranks to assume or hold on to key leadership positions, such as chairing the Foreign Relations Committee, judiciary committees, and others.

Senator Walter George (D-GA) was proud of how states like his beloved Georgia were able to legally disfranchise millions of voters. “Why apologize or evade?” he asked. “We have been very careful to obey the letter of the Federal Constitution—but we have been very diligent in violating the spirit of such amendments and such statutes as would have a Negro to believe himself the equal of a white man.”¹¹⁷

From 1873, with the *Slaughterhouse Cases*, *Cruikshank*, *Plessy*, *Williams*, and others, the U.S. Supreme Court had systematically dismantled the Thirteenth, Fourteenth, and Fifteenth Amendments and rendered the Enforcement and Force Acts dead on arrival. For strict constructionists, the court willfully ignored congressional intent and the history behind the laws and amendments. At the onset of the twentieth century, in *Giles v. Harris* (1903), Justice Oliver Wendell Holmes wrote that “the federal courts had no power, either constitutional or practical, to remedy a statewide wrong, even if perpetrated by the state or its

agents.”^{[118](#)}

The Supreme Court thus identified states as the ultimate defenders of rights, although Southern states had repeatedly proven themselves the ultimate violators of those rights. Through antiseptic, clinical, measured language, the learned jurists had entrusted the protection of life, liberty, and the pursuit of happiness for African Americans to the very same states that bragged “this is a white man’s government”; that yearned for the moment to regain control of the freedmen and then “the niggers will catch hell”; whose citizens fretted, “*We showed our hand too soon*” with the Black Codes, which allowed Mississippi and its brethren to criminalize, auction off, and whip black people; and that were determined to “get things back as close to slavery as possible.” The result was not lost on African Americans. One black man from Louisiana summed it up this way: “The whole South—every state in the South—had got into the hands of the very men that had held us as slaves.”^{[119](#)}

So while the United States may have won the Civil War, and blacks may have tasted freedom, the white opposition that ruled from the White House and the Supreme Court all the way down through every statehouse in the South meant that real change was infinitesimal at best. To quote one historian’s paraphrase of Frederick Maitland: “The slave law of the South may have been dead, but it ruled us from the grave.”^{[120](#)}