

3

The National Commitment to Civil Equality, 1861–1870

On August 21, 1872, seven years after the Civil War had ended, Mary Cogger, a teacher from Quincy, Illinois, prepared to return home after visiting friends in Keokuk, Iowa. Although her complexion was fair, Cogger had one black grandparent, making her a Negro in the eyes of race-conscious nineteenth-century American whites. When she went to the office of the North West Union Packet Company to purchase a ticket for passage aboard the Mississippi River steamer, *S.S. Merrill*, the agent detected her African ancestry and refused to sell her a first-class ticket. Following company policy, he offered her passage without a private sleeping berth or access to the dining room. Cogger demanded first-class passage and initially refused to purchase a ticket when the agent refused. She finally relented, accepting a ticket entitling her to separate and unequal accommodations.

Aboard the steamer, Cogger continued to encounter demeaning treatment. When she sent the ship's chambermaid to purchase a dinner ticket for her, she received a pass marked "colored girl," not "lady," the term of respect universally applied to middle-class white women, and was informed that she would be served in the pantry. Refusing to accept such treatment, she persuaded a white traveler to purchase a first-class dining ticket for her. When dinner was announced, she entered the cabin, took a seat at a table reserved for ladies traveling without male escort, and refused to move when a waiter ordered her to the pantry. The dining room abuzz over the confrontation, the captain appeared, demanded that Cogger leave the ladies' table, and attempted to remove her. Cogger resisted "so

that considerable violence was necessary to drag her out of the cabin, and, in the struggle, the covering of the table was torn off and dishes broken, and the officer received a slight injury."¹

Determined to challenge such degrading treatment, Mary Cogger filed suit in state district court, seeking damages from the company for the assault on her by its employees. She alleged that the Iowa Constitution, which declared that "All men are, by nature, free and equal," entitled her to colorblind service on the *Merrill*, which had a common law obligation to serve the public. She also claimed that changes in federal law and the United States Constitution growing out of the abolition of slavery and the postwar effort to protect the rights of the former slaves reinforced this right. The Fourteenth Amendment, ratified in 1868, not only conferred national and state citizenship on blacks, but prohibited discrimination, stipulating that no state "shall deny . . . any person . . . equal protection of the laws." Moreover, Cogger pointed out that Congress's Civil Rights Act of 1866 provided that all citizens were entitled to "the same right . . . to make and enforce contracts . . . as is enjoyed by white persons." Because a steamboat ticket was a contract, she contended, the company was obligated to offer her the same ticket and service that it offered white women.²

The state courts sustained Cogger's position. In his charge to the jury, the trial court judge explained that, while the company might make reasonable rules and regulations, it could not make distinctions among passengers on the basis of race. When the jury returned a verdict for Cogger, the company appealed to the Iowa Supreme Court, which upheld the lower court. Chief Justice Joseph M. Beck's opinion indicated that he was not free of racial stereotypes, noting that Cogger's "spirited resistance . . . exhibited evidence of the Anglo-Saxon blood that flows in her veins." He nonetheless rejected the company's claim that it was free to practice racial segregation. Dismissing as irrelevant arguments concerning Cogger's race, Beck paid tribute to the radical transformation brought about by emancipation and postwar constitutional change. "However pertinent to such a case the discussion may have been, not many years ago . . . the doctrines and authorities involved in the argument are obsolete, and have no longer existence or authority, anywhere within the jurisdiction of the federal constitution, and most certainly not in Iowa," Beck explained. Equality before the law, "the very foundation principle of our government," had been expressly extended to include blacks by the Fourteenth Amendment and the Civil

Rights Act of 1866. "If the negro must submit to different treatment, to accommodations inferior to those given to the white man, when transported by public carriers," Beck concluded, "he is deprived of the benefits of this very principle of equality."³

Although it had authority only within Iowa, Beck's opinion suggested how far the revolutionary upheaval of the Civil War and Reconstruction had moved the nation. Only a dozen years before, the United States Supreme Court's holding that blacks were not citizens had stood as the supreme law of the land, and Republican critics of slavery had been tentative in their support for black rights. Under the pressure of Civil War, however, Lincoln and the Republican leadership in Congress embraced emancipation as a war goal and recruited 180,000 black troops to help subdue the Confederacy. In the war's aftermath Republican leaders, determined to secure the fruits of victory, were pulled inexorably toward abolitionist constitutionalism. They not only removed the incubus of *Dred Scott* and admitted blacks to citizenship, but expanded federal responsibility for protecting individual rights from violation by states and individuals, thereby significantly altering the antebellum federal system. Furthermore, they moved beyond antebellum distinctions between civil (or legal) rights and political rights, extending to blacks the full rights of citizenship, including the right to vote. Well might Daniel Corbin, a South Carolina Republican, remark in 1871, "we have lived over a century in the last ten years."⁴

War, Emancipation, and Equal Rights

In the spring and summer of 1861, few predicted the revolutionary consequences of the Civil War for American constitutionalism and the rights of blacks. Lincoln and Republican leaders in Congress made it clear that they prosecuted the war in order to preserve the Union, not to extirpate slavery. Although hostile to slavery, they entered the war clinging to the time-honored notion that slavery was a local institution and that the national government lacked constitutional authority to interfere with it in any state that chose to sanction it. More to the point, expediency militated against antislavery action. Republicans needed support from their Democratic opponents if they were to unite the nation (or what remained of it) behind the war effort, and many northern Democrats were willing to support a war to preserve the Union but not an

antislavery crusade. Then, too, four border slave states—Delaware, Maryland, Kentucky, and Missouri—remained in the Union despite pressure from secessionists. Embracing emancipation as a war aim might drive these states and their considerable resources into the Confederacy. In a message to Congress on July 4, 1861, Lincoln explained that his administration had "no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists." Several weeks later Congress, with little dissent, passed a joint resolution declaring that the United States government had no intention of "overthrowing or interfering with the rights or established institutions" of the rebel states, but sought only "to defend and maintain the supremacy of the Constitution and to preserve the Union."⁵

Although impatient with such timidity, abolitionists rallied to support the war effort, perceiving that, for the first time in the nation's history, the exigencies of preserving the Union would promote black liberty. From the outset, northern blacks, abolitionists, and Republican radicals argued that the Union could be saved only by abolishing slavery. Because slavery had pushed the nation to war, restoration of the Union without abolition, they claimed, would prove illusory. "Slavery is the disease, and its abolition in every part of the land is essential to the future quiet and security of the country," argued Frederick Douglass in early 1861. They also pointed out that, as an integral part of the southern economy, slavery supported the rebellion. Slave laborers in southern fields and factories—not to mention the tens of thousands of blacks who built fortifications and roads for the Confederate army—provided crucial support to the rebellion and freed white men for combat service. A forthright policy of emancipation would not only weaken the Confederacy's ability to fight, but, coupled with an aggressive program of recruiting black troops, would strengthen Union forces. "[M]ore effective remedies ought now to be *thoroughly* tried, in the shape of warm lead and cold steel," a meeting of New York blacks urged, "duly administered by two hundred thousand black doctors."⁶

Prodded by abolitionists, Republican leaders soon began to reassess the government's policy with respect to slavery. Aware that victory would not be achieved quickly or easily and that slavery supported the Confederacy, Republicans began to find antislavery action more attractive. Expediency alone did not drive Republicans to act, however. Democrats like Horatio Seymour and George B. McClellan were no less committed to preserving the Union than Republicans, but their proslav-

ery attitudes led them to balk at antislavery measures as a means to that end. Because Republicans had entered the war opposed to slavery on moral grounds, they were more inclined to equate antislavery action with military necessity. Indeed, the expediency of antislavery measures complemented Republican antislavery inclinations. By linking antislavery policies with preservation of the Union, Republicans were able to deflect the charge that they were fanatics willing to sacrifice white soldiers for black liberty. The military necessity argument also permitted Republicans to invoke the Constitution's war powers to attack slavery, helping them transcend concerns about the constitutionality of antislavery action. As LaWanda Cox has explained in her analysis of the Republican president, "Lincoln was alert to the expanding potential created by war. Military needs . . . did not force him upon an alien course but helped clear a path toward a long-desired but intractable objective."⁷

During the first half of 1862, Republicans invoked the concept of military necessity and the war powers to justify radical antislavery action. After abolishing slavery in the District of Columbia and the territories, areas clearly within Congress's jurisdiction, Republicans turned on slavery in the states, something that even moderate abolitionists had admitted to be unconstitutional fifteen months before. The war had changed things, Republicans argued. By giving Congress the power to declare war, to raise and make regulations for armies and navies, and to provide for calling out the militia to suppress insurrection, the Constitution conferred on it broad war powers that it might use to enact legislation, even antislavery legislation, necessary to prosecute the war. In July 1862, Congress invoked this power to pass a Confiscation Act that authorized seizure of property owned by persons who aided or abetted the rebellion.⁸ With respect to human property, it stipulated that slaves owned by rebels "shall be forever free of their servitude" on entering Union lines, thus providing a legal claim to freedom for tens of thousands of slaves who had fled to Union forces by the summer of 1862.⁹

At the time Congress passed the Confiscation Act, Lincoln initiated sweeping action against slavery. On July 21, 1862, he informed members of his cabinet that, under his constitutional authority as commander-in-chief, he would issue a proclamation freeing all slaves in areas that were in rebellion against the United States. Heeding the advice of Secretary of State William H. Seward, who argued that recent Union military defeats would make the proclamation look like a desperate appeal for European support, Lincoln agreed to await a Union victory. On September 22, after

Union troops turned back a Confederate invasion of Maryland, he promptly issued a preliminary proclamation, promising that if the rebellion continued on January 1, he would free all slaves in states and parts of states under rebel control. On New Year's Day, 1863, as northern blacks and abolitionists crowded churches and public halls throughout the North in celebration, Lincoln proclaimed the Jubilee.

Many historians have characterized the Proclamation as an act of expediency or even a meaningless sham. Because it applied only to slaves within rebel lines and not to those in the border states or parts of the Confederacy occupied by Union troops on January 1, 1863, they argue that it actually freed no slaves. Critics have also claimed that the text appealed to military necessity, not moral principle, and had "all the moral grandeur of a bill of lading."¹⁰ These charges distort the Proclamation by taking it out of its political and constitutional context. While Lincoln hoped to cripple the Confederacy, he equally welcomed the opportunity to act on antislavery principles he had espoused for years. He couched the document in terms of military necessity because his constitutional authority as commander-in-chief permitted him to free slaves as an act of war, but not to strike at slavery as a moral evil. This also helps explain why Lincoln did not free slaves within Union lines. To have done so could not have been justified as an act of war aimed at weakening the enemy, and it would have opened Lincoln to charges of usurpation and provided critics ammunition to attack the Proclamation's constitutionality. Moreover, Lincoln used the military necessity argument to assuage conservatives who supported the war effort but opposed black liberty. By tying emancipation to preservation of the Union, he created a broader base of popular support for black freedom, transforming the war into a struggle for liberty and Union. Finally, while the Proclamation freed no slaves at the moment it was promulgated, it brought freedom to hundreds of thousands of slaves in the ensuing months as Union troops pushed deeper into the Confederacy.

Because the Proclamation left many slaves—including most of those in the border states—in bondage and was almost certain to be challenged in the courts, Republicans employed the amendment process to make emancipation universal and irreversible. Senate Republicans mustered enough votes to pass an antislavery amendment in early 1864, but despite solid Republican support, the House fell several votes shy of the two-thirds majority necessary to pass it. On January 31, 1865, however, with Lincoln promising patronage to gain votes from the opposition, Congress

passed an amendment prohibiting slavery and involuntary servitude in the United States and giving Congress authority to enforce the prohibition. Before the year was out, three-fourths of the state legislatures had given their assent, and the Thirteenth Amendment became part of the Constitution.

The amendment significantly altered the American constitutional order. Prior to its adoption, most judges, lawyers, and politicians had agreed that slavery was beyond the reach of the national government and that states possessed almost unlimited authority to define and protect individual rights. By banning slavery and giving Congress enforcement power, the new amendment expanded national power and limited the authority of the states, although the extent to which it did so depended on how slavery was defined. If it merely meant chattel slavery—ownership of one person by another—Congress's newly won authority was quite narrow. But if slavery included such vestiges of slavery as racially discriminatory laws and customs or denial of rights essential to freedom, the amendment gave Congress extensive authority.

Debating the amendment, supporters in Congress did not argue expressly that it went beyond elimination of chattel slavery. Perhaps they feared that articulating a broader interpretation of the amendment would alienate conservative Republicans and Democrats whose votes were needed for passage. Or perhaps with chattel slavery still alive, they simply focused on the most immediate problem. Congressional silence, however, did not necessitate a narrow reading of the amendment. During the Civil War, Republicans had developed what the historian Harold Hyman has described as "adequacy constitutionalism."¹¹ They did not view the Constitution negatively, as simply a list of restrictions on government, but as an instrument that empowered government to pursue certain broad objectives and gave it discretion to choose the means most suitable to achieve those ends. To Republicans, the Constitution was organic, a document capable of meeting new exigencies. Viewed through this prism, the Thirteenth Amendment offered Congress authority to root out slavery and all of its vestiges and to guarantee former slaves the rights essential to freedom.

Republicans' understanding of those rights sharpened considerably as the war progressed. During the 1850s Republicans had invoked the Declaration of Independence to criticize slavery, charging that it violated the principle of equality on which the Republic had been founded. As Union war aims expanded to include emancipation, and 180,000 black

men shouldered the obligations of citizenship by serving in the Union Army, Republicans became more vigorous in their support for equality. Indeed, by 1865, the war to preserve the Union had become for most Republicans a war to create a more perfect Union, one that guaranteed the equality of all citizens.

Republicans' commitment to equality was reflected in policy as well as rhetoric. By 1865, California and Illinois Republicans had repealed all discriminatory state statutes except those denying blacks the ballot. In Massachusetts, Republicans pushed further, enacting a public accommodations law that prohibited racial discrimination by operators of inns, places of public amusement, common carriers, and public meeting places. Congressional Republicans likewise demonstrated a clear commitment to civil equality for blacks. In 1862 they repealed the ban on black mail carriers. Two years later, they permitted blacks to testify against whites in federal courts and granted black soldiers equal pay and benefits. Congressional Republicans underscored their growing commitment to equality when they created the Freedmen's Bureau, in March 1865. Aware of the myriad problems faced by newly emancipated blacks, Republicans saw the necessity of a federal agency to assist them in their transition from slavery to freedom. Carefully avoiding any suggestion that the former slaves were a separate class incapable of full freedom and subject to restraints not applicable to other free persons, they marked the bureau as a temporary agency, locating it in the War Department and limiting its existence to one year after the war. They also carefully pruned language giving the bureau authority to make special regulations for blacks and provided that the agency was to assist white refugees as well as emancipated slaves. As Representative Robert Schenck of Ohio explained, the law made "no discrimination according to color—a favorite phrase . . . in these days among us all."¹²

Reconstruction and National Protection for Civil Rights

Although the pace of constitutional change during the war years was dramatic, it accelerated during the years after Appomattox. Conflict between black and white southerners over the meaning of freedom was the driving force behind this change, spurring Republicans to translate their support for equality into bold measures that dramatically expanded national protection for individual rights. Although tens of thousands of

blacks had won their freedom during the war, most slaves first tasted liberty in the weeks and months after Confederate forces surrendered and Union troops occupied the Confederacy. Blacks viewed emancipation as a providential act of deliverance, "the work of Almighty God," one former slave later recalled. Indeed, it was such a pivotal event that seventy years later, many elderly ex-slaves gave vivid accounts of the day they learned that they were free, conveying the sense of joy and excitement they had felt. "I won't never forget dat day," recalled Lydia Jefferson in 1937. "... Yes suh, de freedom sun shine, and de black times all gone." For men and women whose family life, work, religion, and physical well-being had been subject to white control, emancipation offered a new beginning free of white domination. "Glory, halleluyer, dere ain't no marster and dere ain't no slave!," a black minister informed a meeting of Florida blacks. "From now on my brudders an' my sisters, old things have passed away an' all things is bekum new."¹³

Blacks had clear expectations of the new order. They placed a premium on freedom of movement, not only because it allowed them to break the master-slave relationship by leaving their former owners, but because it enabled them to search for husbands, wives, and children from whom they had been separated forcibly as slaves. Indeed, black's greatest expectation of freedom was that it would permit them to reunite families and protect them from interference by whites. In the predominantly agricultural society of the South, landownership was also a high priority. Land would enable former slaves to become independent farmers and permit them to escape supervision by plantation owners and overseers, affording heads of household greater control over their own work and also removing wives and children from white authority. Blacks' hopes for land were whetted as word spread across the South that wartime legislation authorized confiscation of land owned by rebels and distribution of it to former slaves.

There was also a nascent demand for equality among blacks. During 1865 southern blacks organized a number of state conventions that, like the antebellum conventions of northern blacks, demanded that the nation live up to the promise of the Declaration of Independence. These conventions reflected the views of the literate urban free men who dominated them. Yet former slaves also became politically conscious, as black army veterans, black teachers from the North, and agents dispatched by the conventions spread the gospel of republicanism among them.

Black's aspirations clashed with southern whites' determination to

maintain control over their former slaves. Planters and farmers feared that emancipation would destroy their operations unless they could impose on black workers restrictions that would enable them to maintain a cheap, tractable labor force. But whites' concerns rested on far more than economic considerations. Products of a deeply racist culture that viewed blacks as incapable of living in a civilized society without white guidance and control, they assumed that freed blacks would refuse to labor and would turn to crime, transforming southern society into a hell for whites. Fear of retribution by former slaves was also widespread among whites, sparking rumors of a bloody uprising that swept the white South like a wildfire during the last months of 1865.

Given the stakes, southern whites quickly mounted an informal campaign to minimize the consequences of emancipation. Although the threat of confiscation hung over them, whites nevertheless controlled the land. In a predominantly agricultural society, this conferred considerable economic leverage against blacks. Whites refused to rent land to blacks, fearing that to do so would encourage black independence. Instead, they used their control of the land to compel blacks to work as plantation laborers under white supervision. Planters frequently colluded to hold wages down and—in order to restrict blacks' movement—sometimes refused to hire those who could not produce references from their former owners. In many areas whites formed vigilante groups to shore up their control. Occasionally vigilantes beat or murdered those who attempted to leave their former owners and, more commonly, compelled blacks to work on terms favorable to planters. They also frequently visited blacks' cabins, seizing firearms and beating and driving away those perceived as encouraging black assertiveness—especially black veterans and teachers. Moreover, in day-to-day encounters between whites and blacks, white men frequently beat or even murdered blacks who were insufficiently deferential. As an Arkansas Freedmen's Bureau agent noted in informing his superiors of the appalling number of assaults on blacks, "in nine cases out of ten" whites attacked blacks simply because they "dared to refute a charge prejudicial to their character as false; and have been impudent enough to take a stand for their rights as men."¹⁴

Southern whites also used the power of the state to reassert control over blacks, a benefit made possible by President Andrew Johnson's program of Reconstruction. Johnson was a Unionist Democrat from Tennessee who had been selected as Lincoln's running mate in 1864 to strengthen the Republican ticket's appeal among Democrats. When he came to the

White House in April 1865 after Lincoln's murder, Johnson turned his attention to Reconstruction. A state's rights advocate who shared white southerners' views on race, Johnson quickly adopted policies that speedily restored self-government to southern whites and gave them authority to define the legal status of blacks. He freely offered amnesty and pardon to former rebels, thereby restoring their political rights. He also recognized the white Unionist governments Lincoln had established during the war in Louisiana, Arkansas, Tennessee, and Virginia and appointed provisional governors for the other seven rebel states. These men were to conduct elections (in which only whites could vote) for delegates to state constitutional conventions. After these conventions drafted new constitutions, the governors would hold another round of elections to choose state officials and members of Congress. When this process was complete, Johnson expected Congress to seat southern senators and representatives, completing the process of Reconstruction.

Johnson's program seriously threatened the newly won rights of the freedmen. By the summer of 1865, the Freedmen's Bureau—which was authorized to take possession of land seized under the confiscation laws and to lease it to the freedmen—held 800,000 acres of land taken from Confederate supporters during the war. But Johnson ruled that his pardons entitled the recipients to restoration of their property rights, and ordered bureau officials to surrender this land to owners who had received pardons. Furthermore, the president prevented further seizure of land by forbidding United States attorneys to institute new cases under the confiscation laws. These directives protected southern planters, dashed blacks' hopes of obtaining land, and reinforced whites' economic leverage against blacks.

As state legislatures elected under Johnson's program met during the winter of 1865–1866, they passed repressive measures known as *black codes*. Designed to reinforce white power, these laws attempted to guarantee whites a cheap and tractable labor force and to compel blacks to remain on plantations and farms where they would live and work under close supervision by whites. In some states, blacks who wished to live in towns and cities were required to obtain permits from local officials, and in all southern states blacks were subjected to harsh vagrancy laws. These measures authorized local officials to fine persons who were not gainfully employed. Those who could not pay the fines, which combined with court costs, typically totaled \$100 or more (an amount far beyond the means of impoverished blacks), were sentenced to labor without com-

pensation for as much as one year for anyone who would pay their fines. This not only subjected blacks to forced labor, but undermined their bargaining power as well. If blacks withheld their labor in an effort to force planters to offer better wages and working conditions, local officials could use threats of prosecution for vagrancy to break blacks' resistance and compel them to work on terms favorable to planters.

Other provisions of the black codes further extended white control over blacks. Apprenticeship laws authorized state judges to apprentice orphans and children whose parents failed to support them adequately, thereby making black families vulnerable to white interference. Judges used the discretionary authority conferred by these laws to order thousands of black children removed from their families and apprenticed to labor-starved white planters, ostensibly to learn agricultural and domestic service trades. The criminal law provisions of the codes undercut blacks' chances of securing justice. Although they did allow them to testify in cases in which at least one party was black, this was of little practical benefit because all-white juries—which were notoriously hostile to black witnesses, plaintiffs, and defendants—decided the cases. The black codes also enabled judges to impose harsher criminal punishments on blacks than on whites, virtually guaranteeing that black convicts would be executed more frequently and receive longer prison terms than whites found guilty of comparable crimes.

Republicans, firmly in control of both houses of Congress, were appalled by the results of Johnson's program. Clearly, southerners had demonstrated that they were intent on preserving the essence of slavery even as they surrendered formal claims to ownership of blacks. Congressional acceptance of Johnson's program, Republicans believed, would permit white southerners to restore through politics what they had lost on the battlefield. In the eyes of Republicans and a majority of northerners this would deny the nation one of the most important fruits of victory and mean that 400,000 Union soldiers had died in vain. If Congress recognized the Johnson governments, senators and representatives from the South would join forces with northern Democrats, who were strident foes of black rights. Together they would not only threaten Republican hegemony, but would have sufficient power to block legislation necessary to ensure black liberty. Consequently, when Congress met in December 1865, Republican leaders quickly agreed that they would not seat representatives from the rebel states until Congress devised measures to protect black freedom.

Radicals, most notably Pennsylvania's Thaddeus Stevens, advocated new confiscation legislation to reverse the effect of Johnson's pardon policy and provide land to the freedmen. Former slaves, they argued, would remain vulnerable to control by whites as long as they remained propertyless laborers. The vast majority of Republicans, however, rejected confiscation, viewing legal equality, not grants of land, as the best means to protect black freedom. In part, this perspective was a legacy of the antislavery movement. Because slavery had rested on the systematic denial of rights to slaves and free blacks, its critics had attacked legal restrictions on blacks and had invoked Christian principles and the Declaration of Independence in arguing that blacks were entitled to equal rights. The fixation on equal rights that grew out of antislavery agitation was reinforced by the widespread appeal of what the historian Eric Foner has called the *free labor ideology*.¹⁵ As products of a rapidly expanding, highly competitive capitalist economy that was dominated by small-scale producers, most nineteenth-century Americans believed that theirs was an open society in which individuals could advance by hard work and careful planning. Accepting this belief, Republican leaders assumed that if blacks were not restrained by artificial legal barriers and enjoyed the same rights as whites, they would rise according to their merits. Indeed, they argued that by giving blacks land, the government would discourage self-reliance, undercutting blacks' chances of success in a competitive society. Although these ideas were naive and ill-suited to the needs of impoverished former slaves, they were accepted as conventional wisdom by nineteenth-century Americans and exerted a powerful influence on Republican policy.

Republican leaders also rejected radicals' call for black suffrage. They realized that by extending the franchise to blacks, Congress would repudiate the presidentially reconstructed governments (which had been elected by white voters) and necessitate beginning the reconstruction process anew. This not only guaranteed conflict between Congress and the president, but risked alienating conservative Republican senators and representatives as well as many northern voters. Unwilling to accept the political risks inherent in supporting black suffrage, Republican leaders settled for a program that permitted presidentially reconstructed governments to stand but compelled them to grant blacks equality before the law.

Lyman Trumbull of the Senate Judiciary Committee introduced two pieces of legislation designed to provide national protection for the rights

of blacks. The first offered temporary protection by extending the life and expanding the power of the Freedmen's Bureau. Trumbull argued that Congress's war powers "do not cease with the dispersion of the rebel armies," but "are to be continued and exercised until the civil authority of the Government can be established firmly."¹⁶ With the war power still in force, he asserted that Congress could provide summary protection for black rights in the rebel states. Thus the bureau bill stipulated that blacks were entitled to equal rights in state law and authorized bureau officials to establish military tribunals to enforce these rights when state authorities failed to do so. Persons accused of enforcing discriminatory laws and regulations were subject to prosecution in bureau courts and fines of as much as \$1,000 and imprisonment for up to one year. Moreover, bureau courts might try cases involving blacks—cases involving contract disputes, property rights, violations of criminal law, and the like—who were denied or unable to enforce their rights because of any "State or local law, ordinance, police, or other regulation, or custom or prejudice."¹⁷

Because the Freedmen's Bureau's judicial authority rested on the war power, it extended only to the rebel states and would cease there as soon as Congress restored those states. In order to provide long-term protection throughout the nation, Trumbull introduced the Civil Rights Act of 1866. Resting on the Thirteenth Amendment, which Republicans viewed as authorizing Congress to eradicate the vestiges of slavery, the Civil Rights Act declared that blacks were citizens and guaranteed them legal equality throughout the nation. Carefully excluding political rights, the bill provided that blacks "shall have the same right in every State . . . to make and enforce contracts, to sue, be parties, give evidence, to inherit, purchase, lease, hold, and convey real and personal property . . . as is enjoyed by white citizens. . . ." They were also entitled to "full and equal benefit of all laws and proceedings for the security of person and property" and liable to the same criminal laws as whites. Persons denied these rights might seek redress in the federal courts. Anyone acting "under color of any law, statute, ordinance, regulation, or custom" to deny a citizen's civil rights was subject to prosecution in federal court and, on conviction, a fine of \$1,000 and imprisonment for one year. Persons who were "denied or cannot enforce" their rights in state courts might have their cases tried in federal courts, giving them impartial forums in which to obtain justice.¹⁸

The Freedmen's Bureau and civil rights legislation represented a

radical departure in American constitutional history. By declaring that all persons born in the United States were citizens regardless of race, the Civil Rights Act ended decades of uncertainty over the definition of national citizenship and repudiated the Supreme Court's *Dred Scott* ruling. Both measures asserted broad national authority to define the rights essential to freedom and, if necessary, to protect them through federal courts, matters over which the states had enjoyed almost exclusive authority in the antebellum era. Thus they embraced ideas of colorblind citizenship and national protection of individual rights that only abolitionists had dared assert a few years earlier. Speaker of the House Schuyler Colfax, a Republican moderate, reflected this in his assessment of the Civil Rights Act. "Wasn't yesterday a glorious day," he inquired the day after the bill was enacted. "Our birthday being born on American soil means something now for everyone. . . ." Democrats made the point more directly, denouncing the bill as a revolutionary measure "designed to take away the essential rights of the States."¹⁹

Nevertheless, as the historian Michael Les Benedict has demonstrated, Republicans did not break completely with antebellum constitutionalism.²⁰ They valued the decentralized federal system because it permitted local self-government and obviated the need for a vast national bureaucracy. Therefore they wanted states, not the national government, to continue to exercise primary responsibility for defining individual rights. The bureau and civil rights bills compelled states to grant blacks the same legal rights they conferred on whites, but left them free to define these rights. The bills also left with state courts primary authority to protect civil rights; only if they failed to guarantee equal rights would national courts have authority to act.

As Trumbull pushed his bills through the legislative process, Congress's Joint Committee on Reconstruction hammered out a constitutional amendment designed to settle a variety of problems arising from the war. Although committee members were primarily concerned about political matters, they could not escape settling the issue of civil rights. A few Republicans, believing that the Thirteenth Amendment did not authorize the Civil Rights Act, demanded that the new amendment provide clear constitutional support for it. Others, aware that Democrats would repeal the act if they regained control of Congress, wanted to write civil rights guarantees into the Constitution, putting them beyond the reach of transient congressional majorities. Section 1 of the Fourteenth Amendment reflected these concerns. It declared that all persons born or

naturalized in the United States were United States citizens and citizens of the state in which they resided. This offered a clear definition of United States citizenship and prevented states from excluding blacks from the benefits of state citizenship. Section 1 also established constitutional guarantees for individual rights reminiscent of those championed by abolitionist legal writers. It forbade states to "make or enforce any law which shall abridge the privileges and immunities of citizens of the United States," to "deprive any person of life, liberty, or property without due process of law," or to deny persons "equal protection of the laws." Section 5 of the amendment authorized Congress to enact "appropriate legislation" to enforce these guarantees.

The language of section 1 was sweeping and majestic, but what did it mean? What were the privileges and immunities of citizens of the United States? What guarantees did the due process clause encompass? When Congress debated the amendment, senators and representatives offered different interpretations and frequently demonstrated confusion about the amendment's implications. John A. Bingham of Ohio, the author of section 1, asserted that the privileges and immunities and due process clauses must be read broadly to "protect . . . the inborn rights of every person . . . whenever the same shall be . . . denied by the unconstitutional acts of any State."²¹ But what precisely were these "inborn rights?" Senator Jacob Howard of Michigan, another member of the Joint Committee, was more specific, asserting that whatever these provisions meant, they clearly included the rights enumerated in the first eight amendments. Other influential Republicans, however, denied that the amendment reached as far as Bingham and Howard suggested, and most did not comment on the issue, leaving the precise meaning of these phrases shrouded in uncertainty.

The framers of the Fourteenth Amendment also created uncertainty by wording section 1 as a series of restrictions on the states. If state officials themselves did not deny persons the rights guaranteed by section 1, but were unable or unwilling to punish private citizens who assaulted, robbed, murdered, or discriminated against blacks, did the amendment authorize congressional action? If one read the amendment narrowly, it did not. It authorized Congress to provide remedies against state action, not against the acts of private citizens. A broader reading was not only possible, but truer to Republican principles. By failing to bring wrongdoers to justice, state officials as effectively denied persons equal protection as if they enforced blatantly discriminatory laws. Because the

amendment authorized Congress to provide appropriate remedies when states denied persons equal protection, it might therefore be construed to authorize federal law enforcement officials and federal courts to provide the protection that state officials were unwilling or unable to offer. Indeed, such an interpretation was consistent with the determination that Republicans repeatedly expressed during 1866 to guarantee former slaves genuine freedom and legal equality, not merely their forms. Nevertheless, in debates on the Fourteenth Amendment Republicans did not define precisely the extent of congressional power to provide remedies against private (as opposed to state) action. Like the meaning of the privileges and immunities clause, therefore, it would be determined in the future by Congress and the courts.

Regardless of these uncertainties, Republican leaders believed that the Freedmen's Bureau and civil rights bills, along with the Fourteenth Amendment, constituted a program that would guarantee black freedom. Most assumed that if the southern states signaled their acceptance of the war's outcome by ratifying the amendment, Congress would complete restoration. (When Tennessee ratified in June 1866, Republicans voted to seat the state's senators and representatives.) Republican expectations, however, were quickly dashed. Before the Joint Committee completed work on the amendment, President Johnson announced his unqualified opposition to Congress's program, vetoing both the Freedmen's Bureau and civil rights bills. Both measures, he charged, gave preferential treatment to blacks and usurped powers that the Constitution reserved to the states. Republicans had sufficient strength to override the vetoes. In April they mustered the two-thirds majority necessary to enact the civil rights bill, and after an initial failure to override the Freedmen's Bureau veto, they passed an almost identical bill over Johnson's veto in July. Nevertheless, Johnson's opposition was not without effect. By encouraging southern politicians to reject the Fourteenth Amendment, he helped delay ratification (the amendment remained unratified until 1868), ensuring that the Republican program remained incomplete.

Despite conflict between the president and Congress, former slaves eagerly attempted to avail themselves of the remedies offered by recently enacted congressional legislation. Aware of the Civil Rights Act's guarantee of equality, they pressed federal officials to prosecute whites who discriminated against them. When the trustees of a Catholic church in Louisiana denied blacks the right to rent church pews, for example, black parishioners demanded that the trustees be tried for violation of the

act. Under threat of prosecution the trustees relented and reserved one side of the sanctuary for blacks. Most frequently, blacks sought justice in informal hearings before local Freedmen's Bureau agents. "My office is so crowded . . . with freedmen coming to complain of not being settled with [by their employers] that . . . it takes four of us from 9 o'clock in the morning to 5 o'clock in the evening doing scarcely anything else but trying to adjust cases of cheating and stealing," noted a typical bureau agent in early 1867.²²

Blacks' experience in seeking redress from federal officials had important consequences. As slaves, they had lived under the personal authority of their owners, whose arbitrary decisions had affected every aspect of their lives. Through contact with bureau agents and northern teachers, however, former slaves learned that law—a body of impersonal rules defining individual rights and obligations—existed as a restriction on arbitrary personal authority. Granted, these men and women, fearful that former slaves might confuse liberty with license, emphasized the obligations imposed as well as the rights conferred by the law. Nonetheless, they did stress that law was a restraint on personal will and was essential to ordered liberty. Although it was alien to their experience, former slaves quickly grasped the concept of law, finding in it a means of curbing arbitrary white authority. A group of Newberry, South Carolina blacks reflected this understanding when, in asking the Freedmen's Bureau to afford them protection from "a reign of terror" established by local whites, they complained, "We have no law."²³

Congressional civil rights legislation had other important consequences as well. The Civil Rights Act and debates surrounding its adoption had a powerful influence on black consciousness, convincing the former slaves that they were citizens who were entitled to equal rights and impartial justice. In October 1866, for example, a Freedmen's Bureau agent stationed in Staunton, Virginia noted that blacks in his district were well informed on the civil rights question, adding that "news of that kind spreads through the country very quickly." "I am acquainted with one colored man who takes the 'Washington Chronicle,'" he explained, "and regularly imparts the news to his color."²⁴ The presence of federal officials encouraged former slaves to demand their rights and to challenge arbitrary white authority. Indeed, the records of bureau agents, which contain tens of thousands of complaints that blacks brought against whites during the three years after the war, demonstrate that black men and women understood their rights and were

not reluctant to defend them. The informal procedure that bureau agents used in adjudicating these complaints was also important. It enabled blacks, most of whom were illiterate and had no experience with judicial proceedings, to become familiar with the legal process as a means of asserting their rights.

Nevertheless, the bureau's authority was fragile. Because it was an agency of the War Department, its officials fell under the authority of the president. Convinced that the rebel states had legitimate governments and were entitled to restoration, Johnson used his authority to limit the bureau's power to try cases involving blacks. In 1865, he had restricted bureau judicial authority, preventing it from adjudicating cases unless state officials persisted in denying blacks the right to testify. As state governors and legislatures relaxed restrictions on black testimony during late 1865 and early 1866, Johnson pressed the bureau to surrender to state courts jurisdiction over blacks. By mid-1866, bureau officials in most states had complied.

The Freedmen's Bureau Act of 1866, which became law in July, offered some hope, giving the bureau authority to intervene when state officials denied blacks their rights. The act provided that the bureau should exercise this authority under regulations approved by the president. When Bureau officials drew up such regulations, however, Johnson refused to approve them. Lacking authority to try cases involving blacks, bureau agents resorted to bluff. They cajoled local officials, demanding that they attend to complaints made by blacks, and threatened to intervene if they refused to guarantee blacks justice. When blacks complained that employers had cheated them, agents investigated, conducted hearings, and frequently ordered offending employers to pay their workers. Without legal authority to try cases and impose penalties, however, most were reluctant to take further action when local officials or private citizens refused to comply.

The Civil Rights Act also offered blacks limited protection. Bureau officials initiated several successful prosecutions against state officials who enforced laws that expressly discriminated against blacks. Although few in number, these prosecutions deterred most state functionaries from enforcing discriminatory statutes. Where officials persisted in enforcing discriminatory laws, bureau officials succeeded in having cases involving blacks removed from state to federal courts. In Kentucky, for example, most judges persisted in enforcing the state law that prohibited blacks from testifying against whites, clearly denying blacks one of the

rights guaranteed by the Civil Rights Act. Invoking its authority under the act to try cases involving persons who were denied equal rights in state law, the United States District Court in Louisville assumed jurisdiction over hundreds of cases in which whites were accused of murdering, assaulting, robbing, and otherwise mistreating blacks, thereby giving blacks access to impartial justice.

In most states, however, antebellum testimony statutes had been modified to permit black testimony, and most officials refrained from enforcing the discriminatory provisions of the black codes. Moreover, throughout the South, state law made it a crime to murder, assault, or rob any person, regardless of race, and permitted all persons to recover damages for breach of contract, trespass, personal injury, and the like. In theory, therefore, blacks "enjoyed full and equal benefit of all laws and proceedings for the security of persons and property," as demanded by the Civil Rights Act. They were denied justice, not by enforcement of discriminatory laws, but rather by discriminatory law enforcement. Prejudiced local officials refused to prosecute whites who beat, murdered, raped, robbed, or cheated blacks, or, if they did, all-white juries refused to convict white defendants, regardless of the evidence against them. Nevertheless, many conservative United States district judges and district attorneys—men who had been appointed by Johnson—read the act narrowly. They refused to take jurisdiction over cases involving blacks unless they were denied justice by enforcement of a blatantly discriminatory law.

Other problems hampered enforcement. Because the federal courts had previously possessed limited jurisdiction, there were few of them; in fact, no southern state had more than two United States district judges assigned to it. Consequently, federal courts were not easily accessible. The Civil Rights Act anticipated this problem, authorizing federal judges to appoint a United States commissioner for each county in their district. Although commissioners were not authorized to try cases, they could hold preliminary hearings and order offenders to appear before district courts, making it easier to initiate proceedings under the act. Yet this offered no panacea. Commissioners were usually white southerners who had little sympathy for blacks and were reluctant to risk their neighbors' wrath by initiating cases against whites. None of these problems were irreparable. A president more sympathetic to the act than Johnson could have directed his attorney general to press district attorneys to interpret the act more favorably to blacks. A Supreme Court decision sustaining a

broad interpretation of the act would have brought conservative district judges into line. But as things stood throughout 1866, justice remained elusive for African-Americans.

The consequences were disastrous. Realizing that blacks had little chance of winning redress, planters took advantage of the situation. Their widespread cheating of workers, combined with a poor harvest, meant that most black agricultural workers remained impoverished and economically dependent on white landowners. It was not uncommon for a black family to end the year's labor breaking even or owing the planter for food and supplies advanced over the course of their year's employment. Moreover, throughout the southern countryside whites terrorized blacks without fear of punishment by local officials. "Murders and all sorts of depredations are committed by the wholesale," noted a Freedmen's Bureau agent from Arkansas. "You cannot imagine how terrified the [black] people are. They are aware in case . . . murderers are arrested the criminal laws are so defective that in most cases they get clear, revenging themselves on those who have testified against them."²⁵

From Legal Rights to Political Equality

In early 1867, Republican leaders agreed to extend to southern blacks the right to vote, embracing a policy that they had rejected as too radical one year earlier. The events of 1866 had convinced Republicans that whatever rights states might formally extend to blacks, state officials could easily nullify in practice. But if blacks possessed the ballot, Republicans believed that they could elect state and local officials who would be more responsive and would enforce the law impartially. Republican leaders also aimed to minimize the need for intrusive federal involvement in state affairs by giving the freedmen the ability to protect themselves through state political and legal institutions. In many ways the Republican position was terribly naive. As radicals pointed out, it offered an impoverished people recently freed from slavery a paper shield to protect themselves from former masters who controlled the region's economic resources, rejected blacks' claim to civil equality, and remained committed to white supremacy. Republican support for black suffrage was, nevertheless, a radical step. In no other slave society in the world did former slaves win the ballot so quickly. In addition, blacks would use the

ballot with remarkable effectiveness, altering the political and social landscape of the South and challenging white hegemony.

Republicans embodied their new program in the Reconstruction Act, which they passed over a presidential veto in March 1867. Resting on the war power (which Republicans claimed Congress might exercise within the rebel states until they were restored), the act divided the ten unreconstructed states into five military districts and directed the president to appoint a major general to command each. District commanders might permit existing state officials to maintain law and order, but, if necessary, might use military personnel to make arrests and try offenders in military courts. Military authority would be short-lived, however. States were to hold elections for delegates to constitutional conventions, and black adult males would be permitted to vote in these contests. After the conventions had met and drafted new constitutions enfranchising black men, voters had ratified these documents, and state legislatures elected under the new constitutions had ratified the Fourteenth Amendment, Congress would seat southern senators and representatives, thereby restoring the rebel states to the Union.

A political revolution swept the South during 1867, as military officials registered voters in preparation for election of convention delegates. Blacks viewed the ballot as both an emblem of first-class citizenship and a means of breaking the chains that officials of the presidentially reconstructed governments had forged to limit their freedom. Consequently, they joined political clubs like the Union League, where they learned about the political process and debated political issues, and registered to vote at a rate that alarmed white southerners. With the political mobilization of the black community, a powerful Republican party emerged across the Confederate South. Although blacks made up the overwhelming majority of the party's rank and file, Republican organizers, aware that black majorities existed in only three states, also wooed white voters. They attracted northerners who had settled in the South after the war (*carpetbaggers*), as well as a significant number of southern whites (derisively known as *scalawags*), most of whom had been wartime Unionists. Native whites constituted perhaps twenty percent of the party's supporters (although their strength varied considerably from state to state), making them crucial to Republican success.

Because they denied the legitimacy of black suffrage, most southern

whites not only spurned the Republican party but refused to vote in elections for constitutional conventions held in the late summer and fall of 1867. Consequently, Republicans won overwhelming majorities in the conventions, gaining control over the process of constitution-making, and were able to write into state constitutions provisions asserting the equality of all men, guaranteeing equality before the law, establishing universal male suffrage, and repealing property-holding requirements for jury service and office holding. They also mandated establishment of public schools, a step viewed as essential to black advancement. Except in the South Carolina and Louisiana conventions, radicals failed to win acceptance of provisions prohibiting segregation in schools or public accommodations. Nevertheless, none of the new constitutions condoned racial segregation. Only the South Carolina convention took meaningful action to help blacks become landowners, establishing a state land commission to purchase land and to sell it on liberal terms to the landless. Elsewhere Republican constitution makers clung to free labor orthodoxy, empowering state government to promote economic growth, thereby hoping to attract more white supporters and to expand economic opportunity for blacks and whites alike. Like the party's congressional leaders, then, southern Republicans defined equality primarily in civil and political rather than economic terms.

During the first half of 1868, southern voters went to the polls to ratify the new constitutions and to elect state officials and congressional representatives. In seven of the ten unrestored states, the constitutions received a majority of the votes cast, and newly elected Republican legislatures ratified the Fourteenth Amendment. In June 1868, with a presidential election at hand, congressional Republicans, eager to show progress toward restoration, voted to restore all seven states. Only Mississippi (where a provision calling for widespread disfranchisement of former rebels led voters to reject the new constitution) and Virginia and Texas (where intraparty divisions slowed constitution-making) remained unrestored by summer's end. Within eighteen months, these three had also ratified new constitutions and gained restoration.

Although white Republicans won the lion's share of the offices in most states, white southerners viewed the new regimes as revolutionary. As leaders of a party that relied on black votes, white office holders supported civil and political equality for the freedmen, drawing the wrath of most of their white neighbors. While black Republicans did not win a share of offices equal to their strength in the party, some were elected to

serve as United States senators and representatives, state legislators, sheriffs, county commissioners, and justices of the peace. Thus for the first time African-Americans were elevated to positions of prestige and power, a phenomenon most whites viewed as intolerable. And as blacks' assertiveness and political sophistication increased, they gained a stronger voice in party affairs and won a greater share of offices.

The Republican revolution also produced a significant shift in public policy that affected the ongoing struggle between the races over the meaning of emancipation. During the early years of Reconstruction, southern whites had mobilized the power of the state to reassert their dominance over the former slaves and to guarantee white planters and farmers a continued cheap, tractable labor supply. But Republican legislatures denied whites this weapon, repealing the remnants of the black codes and giving blacks a voice in the legal process by admitting them to the jury box. They also attempted to strengthen the position of the vast majority of blacks who worked as agricultural laborers, sharecroppers, and tenant farmers. Republicans gave agricultural laborers and sharecroppers more effective legal means to secure payment of their wages and also afforded tenants greater protection against landlords. In addition, Republican homestead laws exempted small amounts of personal property (farming tools and livestock, for example) from seizure by creditors. This afforded at least some protection to poor sharecroppers and tenants who relied on planters and merchants for credit while making their crops and who were thus in danger of losing everything in the event of a poor harvest.

Practice changed as well as policy, a fact that was brought home to blacks and whites by their day-to-day experiences. When they attended trials in the county courthouse—a recreation popular among persons of both races—they were struck by the presence of black jurors. Because jury service was a mark of respect in rural communities in the nineteenth century and jurors made decisions that directly affected the well-being of the community, nothing conveyed more graphically the revolutionary nature of Reconstruction. But the presence of blacks on juries was not merely symbolic. By giving blacks a voice in matters that directly affected their lives, jury participation broke another of the bonds of white authority that had circumscribed their lives. With blacks present, juries were more likely to consider seriously black testimony and cases initiated by freedmen. And they were less likely to indict or convict blacks merely because whites accused them of crimes. This made blacks less vulnerable

to white authority, shielded them from capricious prosecutions that threatened their liberty, and afforded them greater personal security.

Planters had to deal with local officials—sheriffs, district attorneys, judges, and justices of the peace—who were responsive to blacks. Under Republican rule, arrests and prosecutions of blacks for vagrancy were almost unheard of, and planters and farmers lost an effective tool for compelling blacks to enter contracts on terms favorable to employers. They also found that local officials no longer automatically prosecuted black workers at the behest of their employers. When a group of planters in Greenwood, South Carolina brought charges against blacks who took discarded fence rails to use for firewood, for example, a Republican justice of the peace dismissed the case, noting that the rails “are of no use to any but to assist the poor in the way of fuel.” “I believe in justice,” he explained, “and if they [the planters] do not like it they can lump it.”²⁶ For planters accustomed to rely on law and government to reinforce their control over workers, the presence of such officials was a devastating blow.

Planters were also outraged when local officials proved responsive to blacks’ complaints against them. Republican justices of the peace frequently fined employers who assaulted their employees and offered black workers redress against planters and farmers who attempted to defraud them of the fruits of their labor. Whites expected deference from blacks and bitterly resented being called to account by their former slaves. Unwilling to admit that their former slaves had a right to obtain redress against them, they denounced Republican officials as troublemakers who needlessly encouraged blacks to challenge their employers. “If a negro [sic] should sustain any ill feelings against a white man and can muster the slightest shadow of a case against him,” seethed one wealthy South Carolinian, “he rushes off immediately to Beaufort [the county seat] and there he finds a ready and willing mill to grind the respectable portion of the community to ashes.” Local officials’ responsiveness to former slaves, complained another planter, led to loss of control over workers and “the disorganization of labor.”²⁷

Bewildered by a world turned upside down and angered by growing black influence that threatened their dominance, the vast majority of southern whites denied the legitimacy of the new order. They contended that black suffrage—on which the Republican state constitutions and governments rested—had been imposed unconstitutionally on the South by Congress and had given political power to “ignorant, stupid, demi-

savage paupers.” The natural result, they charged, was that scheming Republican politicians—the *Daily Arkansas Gazette* characterized them as men whose “putridity stinks in the nostrils of all decency”—won office through demagogic appeals to ignorant black voters. This, they argued, guaranteed corrupt, rapacious governments that rode roughshod over the rights of upstanding citizens like themselves. Indeed, when Republican legislators raised taxes significantly to fund public education and economic development projects, white Democrats claimed that white property holders, who paid most of the taxes but who were politically impotent, were being “robbed by the no-property herd.” And when evidence of corruption surfaced in a number of southern governments, their rage became white-hot. “This is the rule of the proletariat,” Mississippi Democrats shrieked, “it is naked communism—and negro communism at that.”²⁸

Because most southern whites considered the Republican regimes bogus and viewed black political power as a threat to the social order, many were willing to condone violence as a legitimate means to throw off the Republican yoke. Between 1867 and 1870 paramilitary groups, most notably the Ku Klux Klan, surfaced in virtually every southern state. Directed from the grass roots rather than by national or state leaders, these organizations unleashed a campaign of terror designed to deter blacks from voting, to destroy the Republican party, and to reestablish white dominance. Aware that leadership was necessary to mobilize black voters and to deliver the vote, the Klan singled out local Republican leaders for special attention, beating and killing them, assaulting members of their families, and burning their homes. But it did not stop there. Klan members also brutalized thousands of rank-and-file Republicans, hoping to convince them to sever their ties with the party, and frequently lashed out at blacks who challenged the authority of their employers or who were insufficiently deferential to whites.

Klan violence finally helped convince Republican leaders that a constitutional amendment was needed to protect the voting rights of blacks. Because the Reconstruction Act applied only to the states of the former Confederacy, it left blacks in the border states and in most of the North without the franchise. Abolitionists, northern blacks, and Radical Republicans, having long argued that suffrage was an inherent right of citizenship, repeatedly called attention to the inconsistency of conferring suffrage on southern blacks while denying it to their northern counterparts. Mainstream Republicans were sensitive to such charges, finding it

increasingly difficult to reconcile tolerance of discriminatory voting laws with their commitment to equal rights. In the four years following the war, Republicans in eight northern states had placed before the voters state constitutional amendments establishing equal suffrage. Although these amendments were approved by voters in only two states (Minnesota and Iowa), the vast majority of Republican voters in the other six states supported them. Yet party leaders, unwilling to jeopardize their chances of winning the White House, held back a strong effort to include a plank supporting a suffrage amendment in the party's 1868 platform. But events in the South during the campaign made the demand for an amendment irresistible. Klan terror decimated the Republican turnout in most of the South, putting Georgia and Louisiana in the Democratic column. If this trend continued, Republicans feared, southern Democrats would regain dominance and repeal state constitutional provisions guaranteeing black suffrage.

By early 1869, congressional Republicans agreed that a suffrage amendment was necessary. But as they proceeded, they disagreed sharply over how to word the amendment. Many supported a narrow amendment barring the United States or the states from denying any person the right to vote on the basis of race, color, or previous condition of servitude. Radicals and many moderates sharply criticized this formulation, arguing that states could easily circumvent it by adopting property and literacy requirements that would effectively disfranchise most former slaves, who were poor and illiterate. These Republicans championed a broader version prohibiting state and national officials from denying persons the ballot on the basis of nativity, property, education, creed or race. Although this attracted substantial support, many Republicans feared that it would not win approval by the requisite number of states. Massachusetts and Connecticut had enacted literacy requirements to prevent immigrants from voting, and Rhode Island had established a property requirement for naturalized (but not native-born) citizens. In the Far West, where anti-Chinese sentiment ran deep, the nativity provision would almost certainly result in rejection. In February 1869, after bitter debate, congressional Republicans finally adopted an amendment prohibiting the states or the United States from denying anyone the right to vote on the basis of race and authorizing Congress to enforce this guarantee. Within a year it won the approval of three-fourths of the states and became the Fifteenth Amendment.

Adoption of the suffrage amendment brought to a fitting end a tur-

bulent decade of revolutionary changes in the American Constitution. Because of a complex interplay of principle and expediency, Republicans had transformed a war for the Union into a war to create a more perfect Union, a Union free of the blight of slavery. Identifying the war effort and their party with freedom, Republicans were pressed by events during and after the war to explore the meaning of freedom. Radicals complained that the party moved too cautiously, yet they succeeded in convincing moderates that blacks were entitled to civil and political equality. Although intent on preserving federalism, mainstream Republicans had supported a series of constitutional amendments and a Civil Rights Act that gave the national government broad authority to guarantee equality. In many respects, then, by 1870 the demands made by blacks and abolitionists in the antebellum years had been incorporated into American constitutionalism, an achievement few had thought possible at the beginning of the decade. Nevertheless, bitter resistance to the new order continued, suggesting that even more sweeping changes were necessary to secure the fruits of the Reconstruction revolution.