Eric Foner is the DeWitt Clinton Professor of History at Columbia University. His books include *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (first published 1970), *Reconstruction: America's Unfinished Revolution, 1863–1877* (1988), and *The Fiery Trial: Abraham Lincoln and American Slavery* (2010). This essay is based on Professor Foner's Boden Lecture, which was delivered at Marquette University Law School on October 18, 2012, and which annually remembers the late Robert F. Boden, dean of the Law School from 1965 to 1984. This year's lecture was part of Marquette University's Freedom Project, a yearlong commemoration of the sesquicentennial of the Emancipation Proclamation and the American Civil War.

The Civil War, Reconstruction, and the Origins of Birthright Citizenship

Eric Foner

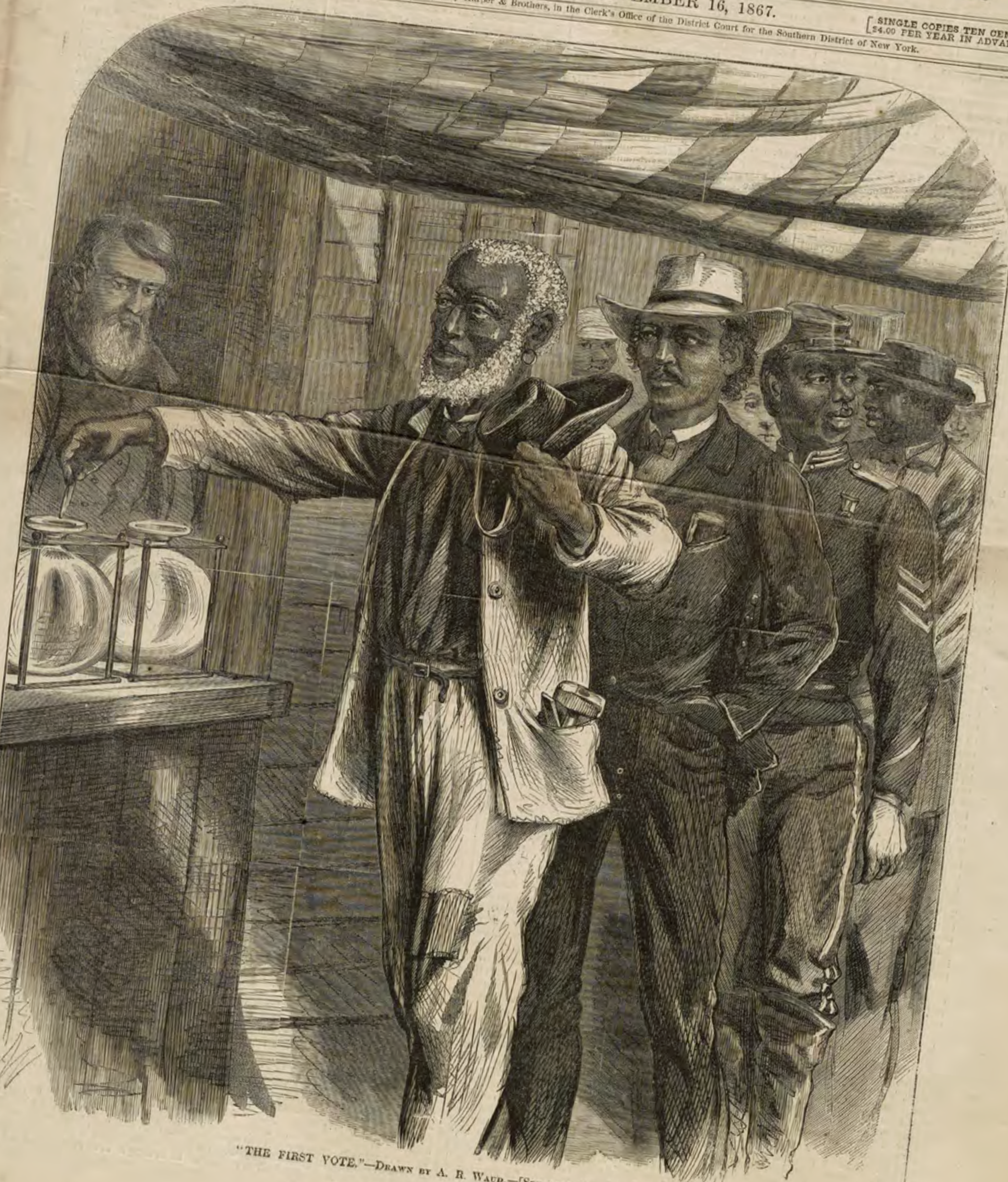
I want to begin by alluding to an idea I generally disdain as parochial and chauvinistic: American exceptionalism. Its specific manifestation here is the legal doctrine that every person born in this country is automatically a citizen. No European nation today recognizes birthright citizenship. The last to abolish it was Ireland a few years ago. Adopted as part of the effort to purge the United States of the legacy of slavery, birthright citizenship remains an eloquent statement about the nature of our society and a powerful force for immigrant assimilation. In a world where most countries limit access to citizenship via ethnicity, culture, religion, or the legal status of the parents, it sets the United States apart. The principle is one legitimate example of this country's uniqueness. Yet oddly, those most insistent on the validity of the exceptionalist idea seem keenest on abolishing it.

The First Vote. A. R. Waud. The illustration shows a queue of African-American men: the first, a laborer casting his vote; the second, a businessman; the third, a soldier wearing a Union army uniform; and the fourth, apparently a farmer. *Harper's Weekly*, November 16, 1867. Courtesy of the Library of Congress.

HARPER'S WEEKLY
A JOURNAL OF CIVILIZATION

VOL. XI.—No. 568.] NEW YORK, SATURDAY, NOVEMBER 16, 1867. [SINGLE COPIES TEN CENTS. $4.00 PER YEAR IN ADVANCE.

Entered according to Act of Congress, in the Year 1867, by Harper & Brothers, in the Clerk's Office of the District Court for the Southern District of New York.



"THE FIRST VOTE."—DRAWN BY A. R. WAUD.—[SEE NEXT PAGE.]

The debate over who is an American and what rights come along with citizenship is as old as the republic and as recent as today's newspapers. Rarely, however, does the discussion achieve any kind of historical understanding. Such understanding requires familiarity with the era of Reconstruction that followed the American Civil War, when the United States began the process of coming to terms with the war's two most important legacies: the preservation of the American Union and the destruction of slavery. One might almost say that we are still trying to work out the consequences of the end of slavery—and that the debate over birthright citizenship in part reflects this.

While I have devoted much of my career to the study of Reconstruction, I have to acknowledge that rather few Americans know much about it. Back in the 1990s, the U.S. Department of Education conducted one of these periodic surveys to ascertain how much Americans know about their history. This was a survey of about 16,000 graduating high school seniors; they were asked to say something about various historical themes or episodes, such as the westward movement or the civil rights struggle or the first use of the atomic bomb. Eighty percent could say something about the westward movement. But at the bottom of the list was Reconstruction. Only one-fifth of those graduating from high schools could say anything intelligible about Reconstruction. I had recently published a 600-page book on the era, so I found this disheartening.

But even if we are not aware of it, Reconstruction is part of our lives today—or to put it another way, some of the key questions facing American society are Reconstruction questions. These range from affirmative action to the relative powers of the state and federal governments to how best to respond to terrorism (in the case of Reconstruction, it was homegrown terrorism, in the form of the Ku Klux Klan and kindred organizations, which killed more Americans than Osama bin Laden). You cannot understand these questions without knowing something about that period nearly a century and a half ago.

Let me mention one small indication of how remarkable the era of Reconstruction was within the broad context of American history. Everyone in the world, I think, knows that Barack Obama is the first African-American president of the United States. One out of 44. More telling, however, is another statistic. Many hundreds of persons, well over a thousand in fact, have served in the U.S. Senate. But from the days of George Washington to the present, only eight black persons have served in the Senate. That is a far worse ratio than 1/44. Of those eight, two served in the Senate during the Reconstruction period, both of them elected from Mississippi. This example helps demonstrate that Reconstruction was a unique moment in terms of political democracy and the rights of African-American people in the long sweep of American history.

Eric Foner

The definition of American citizenship is also a Reconstruction question. But its origins are as old as the American republic. A nation, in Benedict Anderson's celebrated definition, is more than a political entity. It is also a state of mind, "an imagined political community," with borders that are as much intellectual as geographic. And those boundaries have been the subject of persistent debate in our history.

Americans' debates about the bases of our national identity reflect a larger contradiction in the Western tradition itself. For if the West, as we are frequently reminded, created the idea of liberty as a universal human right, it also invented the concept of "race," and ascribed to the concept or term predictive powers about human behavior. National identity, at least in America, is the child of both of these beliefs. Traditionally, scholars have distinguished between civic nationalism, which envisions the nation as a community based on shared political institutions and values with membership open to all who reside within its territory, and ethnic nationalism, which considers a nation a community of descent based on a shared ethnic and linguistic heritage. France, until recently at least, was said to exemplify the inclusive, civic brand of nationhood, and Germany the exclusionary, ethnic form. Most American scholars have identified the United States with the French model. Since the time of independence, they argue, our raison d'etre as a nation has rested on principles that are universal, not parochial: to be an American, all one had to do was commit oneself to an ideology of liberty, equality, and democracy.

In actual practice, however, American nationality has long combined civic and ethnic definitions. For most of our history, American citizenship has been defined

by blood as well as political allegiance. Both ideas can be traced back to the days when a new nation was created, committed to liberty yet resting substantially on slavery. Slavery was by far the most important economic institution in the United States. Slave owners had control of the federal government for most of the period before the Civil War. Slavery helped to shape the identity, the sense of self, of all Americans, giving nationhood from the outset a powerful exclusionary dimension. Slavery made the value of American citizenship, as the political philosopher Judith Shklar has argued, rest to a considerable extent on its denial to others. Constituting the most impenetrable boundary of citizenship, slavery rendered blacks all but invisible to those imagining the American community. When the revolutionary era's master mythmaker, Hector St. John Crèvecoeur, posed the famous question, "What then is the American, this new man?," he answered: "a mixture of English, Scotch, Irish, French, Dutch, Germans, and Swedes. . . . He is either a European, or the descendant of a European." And this was at a time when fully one-fifth of the population (the highest proportion in our history) consisted of Africans and their descendants.

Until after the Civil War, there existed no commonly agreed-upon understanding of citizenship or of the rights it entailed. The Constitution mentioned but did not enumerate the "privileges and immunities" of citizens. The individual states determined the boundaries of citizenship and citizens' legal rights. The Constitution does, however, empower Congress to create a uniform system of naturalization, and the naturalization law of 1790 offered the first legislative definition of American nationality. With no debate, Congress restricted the process of becoming a citizen from abroad to "free white persons." This limitation lasted a long time. For eighty years, only white immigrants could become naturalized citizens. Blacks were added in 1870, but not until the 1940s did persons of Asian origin become eligible.

Blacks formed no part of the imagined community of the early republic. And whether free or slave, their status became increasingly anomalous as political democracy (for white men) expanded in the nineteenth century. Indeed, in a country that lacked more-traditional bases of nationality—long-established physical boundaries, a powerful and menacing neighbor, historic ethnic, religious, and cultural unity—America's democratic political institutions themselves came to define the nation. Increasingly, the right to vote became the emblem of citizenship, if not in law (since suffrage was still a privilege rather than a right, subject to regulation by the individual states) then in common usage and understanding. Noah Webster's *American Dictionary* noted that the word *citizen* had, by the 1820s, become synonymous with the right to vote.

The relationship between inclusion and exclusion was symbiotic, not contradictory. Even as Americans' rhetoric grew ever more egalitarian, a fully developed racist ideology gained broad acceptance as the explanation for the boundaries of nationality. The rhetoric of racial exclusion suffused the political language. "I believe this government was made on the white basis," said Stephen A. Douglas, the most prominent politician of the 1850s, in his debates with Abraham Lincoln. "I believe it was made by white men for the benefit of white men and their posterity for ever, and I am in favor of confining citizenship to white men . . . instead of conferring it upon negroes, Indians, and other inferior races." Even as this focus on race helped to solidify a sense of national identity among the diverse groups of European origin that made up the free population, it drew ever more tightly the lines of exclusion of America's imagined community.

On the eve of the Civil War, no black person, free or slave, whether born in this country or not, could be a citizen of the United States. This was what the Supreme Court ruled in 1857 in the famous, or infamous, *Dred Scott* decision. During the 1830s, Dred

"Until after the Civil War, there existed no commonly agreed-upon understanding of citizenship or of the rights it entailed."

> "The crisis of the Union was, among other things, a crisis of the meaning of American nationhood, and the Civil War a crucial moment that redefined the boundaries of citizenship."

Scott, a slave of Dr. John Emerson of Missouri, resided with his owner in Illinois, where state law prohibited slavery, and the Wisconsin territory, from which it had been barred by the Missouri Compromise. He married another slave, Harriet Scott, and in 1846, after returning to Missouri, the Scott family, by now consisting of husband, wife, and two daughters, went to court claiming that residence on free soil had made them free. In time, the case made its way to the Supreme Court. Chief Justice Roger B. Taney, supported by six other members of the court, concluded that the Scotts must remain slaves. No black person, Taney declared, could be a citizen of the United States, and thus the Scotts had no standing to sue in court.

The case could have ended there. Taney, however, went on to argue that because the Constitution "distinctly and expressly affirmed" the right to property in slaves, slaveholders could bring them into the federal territories. The Missouri Compromise—repealed three years earlier by the Kansas-Nebraska Act—had therefore been unconstitutional.

Much of Taney's opinion consisted of an historical discussion purporting to demonstrate that the founding fathers had not recognized black persons as part of the American people. The framers of the Constitution, he insisted, regarded blacks, free and slave, as "beings of an inferior order, and altogether unfit to associate with the white race . . . and so far inferior, that they had no rights which the white man was bound to respect." (This statement, Thaddeus Stevens later remarked, "damned [Taney] to everlasting fame; and, I fear, to everlasting fire.") States could make free blacks citizens if they wished, but this did not require the federal government or other states to recognize them as such—in other words, the Constitution's comity clause did not apply to them. No state could unilaterally "introduce a new member into the political community created by the Constitution"—a community, according to Taney, limited to white persons.

Taney's denial of black citizenship did not lack for legal precedents. Before the Civil War, virtually every state, North as well as South, excluded free blacks from some fundamental rights. Only five states, all in New England, allowed blacks to vote on the same basis as whites. Outside New England, nearly every state court that ruled on the question before 1857 concluded that free blacks should not be considered citizens of either the state or the nation. Four attorneys general, including Taney himself during Andrew Jackson's presidency, had taken the same position.

Dred Scott may have been the law of the land, but it was not the only definition of citizenship circulating at the time. If slavery spawned a racialized definition of American nationality, the struggle for abolition gave rise to its opposite, a purely civic version of citizenship. The abolitionist crusade insisted on the "Americanness" of slaves and free blacks and repudiated not only slavery but the racial boundaries that confined free blacks to second-class status. Abolitionists, black and white, pioneered the idea of a national citizenship whose members enjoyed equality before the law protected by a beneficent national state. Having developed this alternative reading of the Constitution, abolitionists responded bitterly to the *Dred Scott* decision. James McCune Smith, a black physician, author, and antislavery activist, carefully dissected Taney's reasoning, citing legal precedents going back to "the annals of lofty Rome" to demonstrate that all free persons born in the United States, black as well as white, "must be citizens."

Many Republicans agreed. The Republican legislatures of New Hampshire, Vermont, New York, and Ohio adopted resolutions recognizing black citizenship in their states, joining Massachusetts, where state courts had long affirmed this position. Maine's legislators adopted a resolution declaring the *Dred Scott* decision "not binding, in law or in conscience, upon the government or citizens

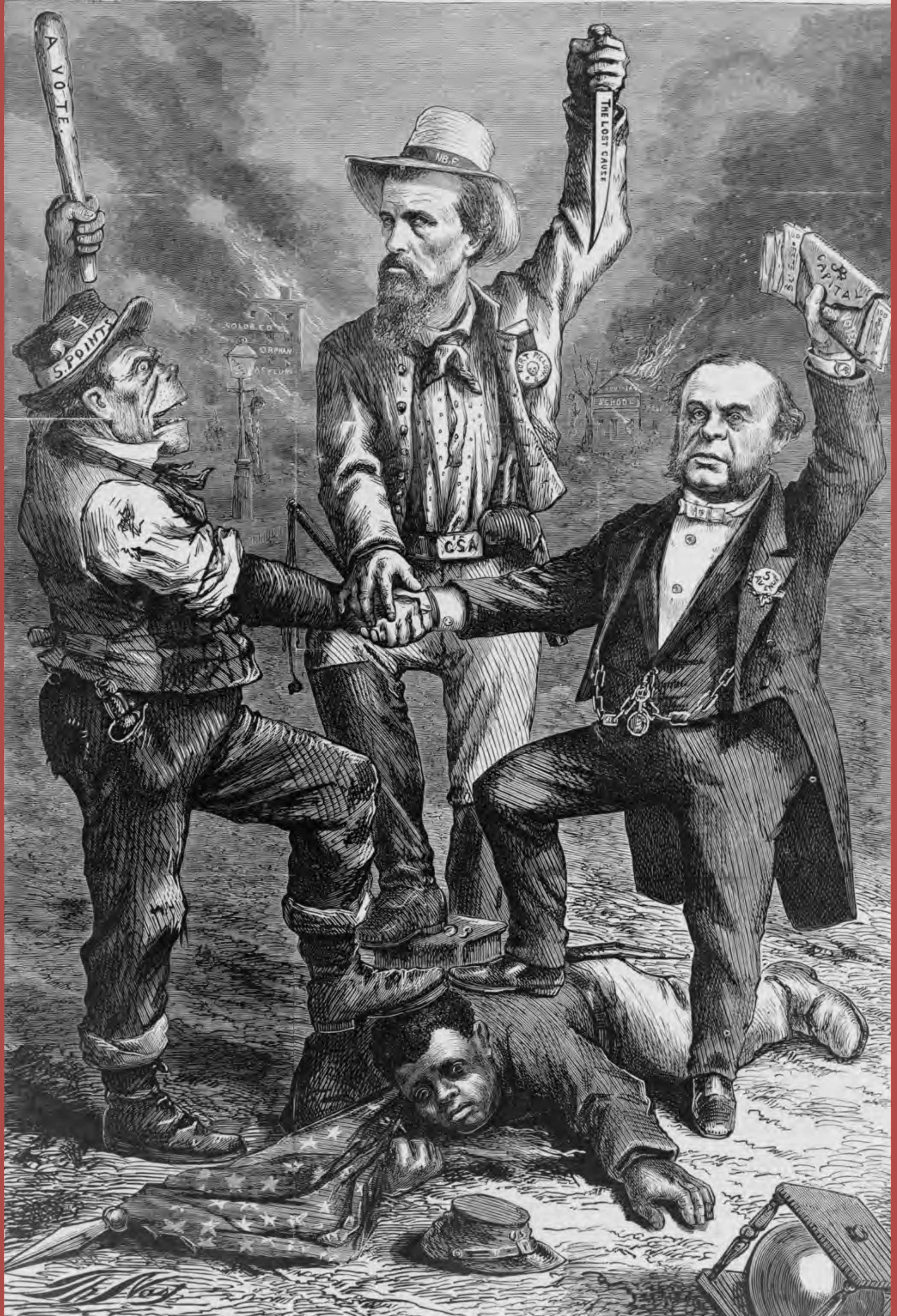
of the United States." When the U.S. State Department in 1858 refused to issue a passport to the black physician John Rock of Boston on the grounds that he was not an American citizen, the *Springfield Republican* condemned the action as an insult to the entire state of Massachusetts. This was a minority view before the Civil War. But as a result of the Civil War and Reconstruction, the abolitionist vision of a uniform national citizenship severed from race became enshrined in the laws and constitution.

This was a remarkable change in Anderson's "imagined community," the definition of America itself. How did it come about?

The crisis of the Union was, among other things, a crisis of the meaning of American nationhood, and the Civil War a crucial moment that redefined the boundaries of citizenship. Mobilization for warfare often produces an emphasis on national unity, and throughout our history wars have galvanized disempowered groups to lay claim to their rights. Women and American Indians received the right to vote in the aftermath of World War I; eighteen-year-olds did so during the Vietnam War. The Civil War created the modern American nation state. Inevitably, it propelled the question, "Who is an American?," to the forefront of public discussion. "It is a singular fact," Wendell Phillips wrote in 1866, "that, unlike all other nations, this nation has yet a question as to what makes or constitutes a citizen." The war produced the first formal delineation of American citizenship, a vast expansion of citizens' rights, and a repudiation of the idea that these rights attached to persons in their capacity as members of certain ethnic or racial groups, rather than as members of an undifferentiated American people.

The most important thing that put the question of black citizenship on the national agenda was, of course, the destruction of slavery. Indeed, late in 1862, Attorney General Edward Bates issued an opinion affirming the citizenship of free black persons born in the United States. Bates had asked the advice of the distinguished jurist and political philosopher Francis Lieber, who responded that there was "not even a shadow of a doubt" that American citizenship included blacks. Bates agreed. The *Dred Scott* decision, he boldly declared, had

Celebration of the Abolition of Slavery in the District of Columbia by the Colored People, in Washington, April 19, 1866. F. Dielman. Courtesy of the Library of Congress.



"We regard the Reconstruction Acts (so called) of Congress as usurpations, and unconstitutional, revolutionary, and void."—*Democratic Platform.*

"no authority" outside the specific circumstances of that case. Bates added that citizenship did not imply either equality before the law or political rights (women and children, after all, were citizens). Nonetheless, Secretary of the Treasury Salmon P. Chase, who had requested Bates's ruling, immediately dispatched it to Louisiana, where free black activists had been demanding civil and political rights. The opinion, a striking change in public policy, was published early in December 1862. "It properly precedes and ushers in," wrote Horace Greeley's *New York Tribune*, "that other great act which is to come from the president on the 1st of January"—the Emancipation Proclamation.

Of course the opinion of one attorney general can be modified or retracted by the next. Even more important in putting the question of black citizenship on the national agenda was the service of 200,000 black men in the Union army and navy during the final two years of the Civil War. By the end of the war, it had become widely accepted that serving in the army staked a claim to citizenship for African Americans. Lincoln himself, who though deeply hating slavery had never supported the political rights of black Americans, by the end of his life had changed his mind and was advocating the right to vote for some African-American men. In his last speech, in April 1865, he singled out as most deserving free blacks who had education ("the very intelligent") and the soldiers ("those who have served nobly in our ranks").

Lincoln, of course, did not live to put into effect a plan of Reconstruction. That task fell to his successor, Andrew Johnson, a strong contender for the title of the worst president in American history. Johnson lacked all of Lincoln's qualities of greatness. He was deeply racist; he was incompetent; he had no sense of public opinion; he was inflexible, incapable of dealing with criticism, and unable to work with Congress. Johnson thought black people now free should go back to work on the plantations and have nothing to do with public affairs. He set up new governments in the South in the months after the Civil War, controlled by white southerners, with blacks having no role whatsoever. They enacted a series of laws known as the Black Codes to define the freedom that African Americans now enjoyed.

These laws gave the former slaves certain rights, such as the right to have their marriages recognized in law and to own property, but no civil or political rights, and in fact they required adult black men at the beginning of each year to sign a labor contract to go work for the year for a white employer. If you did not do that, if you wanted to work for yourself, you would be deemed a vagrant, subject to arrest and fine and then being sold off to somebody who would pay the fine.

The significance of these Black Codes lies not in their effectiveness, for they were soon invalidated by the Civil Rights Act of 1866, but in their political impact. They turned northern public opinion against Johnson's plan of Reconstruction. They alarmed the victorious Republican Party, which controlled Congress, into thinking that the white South was trying to restore slavery in all but name. In 1866, Congress very quickly decided that Johnson's policy needed to be changed. It enacted one of the most important laws in American history, the Civil Rights Act of 1866. This law is the origin of the concept of civil rights as a point of law or jurisprudence. It is the first law to declare who is a citizen of the United States and to say what rights they are to enjoy.

The Civil Rights Act states that anybody born in the United States (except Indians, still considered members of their own tribal sovereignties) is a citizen of the United States—black people, of course, included, although this portion of the law says nothing explicitly about race. Then the law spells out the rights that these citizens are to enjoy equally without regard to race—making contracts, bringing lawsuits, and enjoying "full and equal benefit of all laws and proceedings for the security of person and property." The list did not include the right to vote, which remained a state prerogative. Essentially the law protected the rights of free labor, which the Black Codes had so egregiously violated. Its language establishing the principle of legal equality was interesting: all citizens were to enjoy the above rights

"We regard the Reconstruction Acts (so called) of Congress as usurpations, and unconstitutional, revolutionary, and void."—Democratic Platform. Thomas Nast. *Harper's Weekly*, September 5, 1868. Courtesy of the Library of Congress. The illustration shows a man with a belt buckle, "CSA" (Confederate States of America), holding a knife, "The Lost Cause"; a stereotyped Irish American holding a club, "A Vote"; and the man on the right wearing a button, "5 Avenue," and holding a wallet, "Capital for Votes." Their feet are on an African-American soldier sprawled on the ground. In the background, "A Colored Orphan Asylum" and a "Southern School" are in flames.

in the same manner "as enjoyed by white persons." In other words, the idea of whiteness, a strict boundary of exclusion before the Civil War, was now invoked as a foundation, a baseline, for the rights of others. Whiteness was suddenly no longer a privilege but a standard applicable to all. The law also states that no state law or, intriguingly, custom can deprive any citizen of these fundamental rights. And it authorizes federal district attorneys, Freedmen's Bureau officials, and aggrieved individuals to bring suits against violations.

The principle of equality before the law was a repudiation of the legal history of the United States for the first seven decades of the republic. Before the war, as Congressman James G. Blaine later remarked, only "the wildest fancy of a distempered brain" could envision an act of Congress conferring upon blacks "all the civil rights pertaining to a white man." Every state in the Union before the Civil War had laws that discriminated against black people. Even Massachusetts, which came closest to the ideal of equality, would not let blacks join the militia. Now those state laws were abrogated. President Johnson, of course, vetoed the bill, and singled out extending citizenship to black Americans as particularly offensive. It constituted, he claimed, discrimination against whites: "the distinction of race and color is by the bill made to operate in favor of the colored and against the white race." Congress thereupon passed the bill over Johnson's veto—the first important measure in American history to become law in this manner.

But of course a law can be repealed by the next Congress, so very soon Congress put these principles into the Constitution through the Fourteenth Amendment, the most important change in our Constitution since the Bill of Rights. The amendment is long and complicated. But its first section again announces this principle of birthright citizenship: that any person born in the United States and "subject to the jurisdiction thereof" is a citizen of the nation and of the state where he or she resides. Lately, there has been much debate over whether the children of undocumented immigrants are included—are they subject to the "jurisdiction" of the United States? Of course they are. The debates in Congress make clear that the language was meant to exclude Native Americans and two other tiny groups: children born in the United States to diplomats and children fathered by members of occupying armies (fortunately, the latter case has not arisen since the amendment's ratification). There was much talk from the amendment's opponents about whether it covered children of Chinese immigrants, since the parents could not become naturalized citizens, and of gypsies. One senator said he had heard more about gypsies during the debate than in his entire previous life. Lyman Trumbull, chair of the Senate Judiciary Committee, made it crystal clear that Chinese, gypsies, and anyone else one could think of were, in fact, included.

Glimpses at the Freedmen—The Freedmen's Union Industrial School, Richmond, Va.—From a Sketch by Jas E. Taylor. 1866. Courtesy of the Library of Congress.

The amendment goes on to guarantee these citizens legal equality. It bars the states from depriving them of "life, liberty, or property, without due process of law" or "the equal protection of the laws." This latter language had momentous consequences. The word *equal* is not in the original Constitution (except with regard to states having equal numbers of senators). It is introduced in the Fourteenth Amendment. The amendment makes the Constitution what it has become more recently but never was before: a vehicle through which aggrieved groups who believe that they lack equality can take their claims to court. For decades, the courts have used the Fourteenth Amendment to expand the legal rights of all sorts of groups, not just the descendants of the slaves. Most recent, perhaps, was *Lawrence v. Texas*,

in which the Supreme Court in 2003 overturned a Texas law criminalizing homosexual acts by consenting adults as a violation of the guarantee of "liberty" in the Fourteenth Amendment.

The language of the first section is vague, intentionally so. Unlike the Civil Rights Act, the amendment does not list specific rights. Its main author, Congressman John Bingham of Ohio, started this way and then stopped, fearing that he would inadvertently leave out important rights. Instead, he used the language of general principles, leaving it to future Congresses and courts to work out their precise meaning. But the underlying purpose was clear. As the Republican editor George William Curtis wrote, the Fourteenth Amendment was part of a process that changed the federal government from one "for white men" to one "for mankind."

The Fourteenth Amendment also marks a significant change in the federal system—that is, in the relationship between the federal government and the states. The Civil War had crystallized in the minds of northerners the idea of a powerful national state protecting the rights of citizens. What the Republican Carl Schurz called the "Constitutional revolution" of Reconstruction not only put the concept of equal citizenship into the Constitution but empowered the federal government to enforce it. You can see this if you compare the Fourteenth Amendment to the Bill of Rights, which begins with the words, "Congress shall make no law," and then lists the liberties Congress cannot abridge.

The Bill of Rights was meant to restrain the federal government. It was based on the idea that the main danger to liberty was a too-powerful national state. It had nothing to do with the state governments. States could abridge freedom of speech, and they did before the Civil War. One could hardly give an abolitionist speech in South Carolina. But such restriction by the state did not violate the First Amendment. Massachusetts had an established church into the 1820s. But the Bill of Rights is about the federal government. Only in the twentieth century would the Supreme Court embark on the process of "incorporating" the Bill of Rights to the states, on the grounds that most of the civil liberties guaranteed in the first ten amendments are included in the privileges and immunities of citizens that the Fourteenth Amendment bars states from abridging.

Now consider the final section of the Fourteenth Amendment: "The Congress shall have power to enforce this Amendment by appropriate legislation." From "Congress shall make no law" to "Congress shall have power." Now the federal government is seen as the protector of individual rights while the states are seen as more likely to violate them. (Slavery, after all, was a creature of state law.) The Fourteenth Amendment makes the federal government, for the first time in our history, what the great abolitionist senator Charles Sumner called "The Custodian of Freedom." The principle of birthright citizenship, establishing a single standard for membership in the national community, was part of this broader nationalization of political power and of national consciousness brought on by the Civil War.

The Fourteenth Amendment said nothing about the right to vote, but soon thereafter Congress decided that there had to be new governments in the South and that these governments had to be based on manhood suffrage. Before the Civil War, only a handful of black men could vote anywhere in the Union. Suddenly black men in the South were given the right to vote and to hold office, principles extended to the entire nation in the Fifteenth Amendment.

This inaugurates the period we call Radical Reconstruction, when new governments came to power in the South. They created public education systems, tried to rebuild the southern economy, passed civil rights legislation, and sought to protect the rights of black laborers on plantations. Black men held public office in Reconstruction at every level, from the two senators mentioned above to members of state legislatures, justices of the peace, sheriffs, school board officials, etc. Most power remained in the hands of white Republicans, but the fact that about 2,000 African-American men held elective office was a significant change in the nature of the American political system.

Reconstruction was a time of a remarkable experiment in democracy, but of course it was short-lived, and there followed a long period when the rights protected by the constitutional amendments were flagrantly violated in the South and indeed much of the rest of the nation. One part of this long process of retreat from the egalitarian impulse of Reconstruction was a sharp narrowing of the rights that came along ▸▸

> "Birthright citizenship is one legacy of the titanic struggle of the Reconstruction era to create a nation truly grounded in the principle of equality."

with being an American citizen. In this, the Supreme Court led the way.

Interestingly, one aspect of the retreat revolved around whether women could claim the full rights of citizenship. Reconstruction, declared the Universalist minister and suffrage leader Olympia Brown, offered the opportunity to "bury the black man and the woman in the citizen"—that is, to end the tradition of using accidents of birth to define citizens' rights. Yet when women tried to employ the Fourteenth Amendment to press their right to vote, they found the courts unreceptive. Citizenship, declared Chief Justice Morrison Waite in 1875, did not automatically bring with it the suffrage: it meant "membership of a nation and nothing more."

The Court's argument regarding women was part of a more general narrowing of the definition of citizenship. This began with the *Slaughter-House* decision of 1873 and continued with *United States v. Cruikshank* (1876), the *Civil Rights Cases* (1883), and eventually *Plessy v. Ferguson* (1896). There is no time to summarize these cases except to note that while blacks remained American citizens, that status did not prevent them, once Reconstruction ended, from being subjected to persistent violence without federal redress, being barred from places of public accommodation, being subjected to racial segregation in every aspect of their lives, and losing the right to vote in the southern states.

After the end of Reconstruction, the egalitarian impulse faded from national life, and the imagined community was reimagined once again. Indeed, what came to be seen as the "failure" of Reconstruction was widely attributed to "black incapacity," strongly reenforcing the racialist thinking that reemerged to dominate American culture in the late nineteenth century. The retreat from the postwar ideal of colorblind citizenship was also reflected in the resurgence of an Anglo-Saxonism that united patriotism, xenophobia, and an ethnocultural definition of nationhood in a renewed rhetoric of racial exclusiveness. America's triumphant entry onto the world stage as an imperial power in the Spanish-American War of 1898 tied nationalism more and more closely to notions of Anglo-Saxon superiority, displacing in part the earlier identification of the United States with democratic political institutions (or defining those institutions in a more and more explicitly racial manner).

While violated with impunity, however, the Fourteenth and Fifteenth Amendments and Civil Rights Act remained on the books, as what Charles Sumner called "sleeping giants" in the Constitution. They would awaken decades later to provide a legal basis for the civil rights revolution. Indeed, no significant change in the Constitution resulted from the civil rights revolution. What was needed was for the existing Constitution to be enforced. Eventually it was, a century after Reconstruction.

We Americans sometimes like to think that our history is a straight line of greater and greater freedom. We began perfect and have been getting better ever since. Actually, our history is a more complicated, more interesting story of ups and downs, of progress and retrogression, of rights that are gained and rights that are taken away to be fought for another day. As Thomas Wentworth Higginson, who commanded a unit of black soldiers in the Civil War, wrote when Reconstruction began, "Revolutions may go backward." Reconstruction was a revolution that went backward, but the fact that it happened at all laid the foundation for another generation, a century later, to try to bring to fruition the promise of a nation that had moved beyond the tyranny of race. Birthright citizenship is one legacy of the titanic struggle of the Reconstruction era to create a nation truly grounded in the principle of equality. We should think long and hard before altering or abandoning it. ■