

### The Strange Career of African American Voting and Office-Holding

African Americans' rights—to vote and to hold office—have had a strange career.<sup>1</sup> A sudden, large increase in rates of black voting and office-holding has taken place *twice* over the course of American political evolution. The meaning of that fact, as we will see, is disturbing. From a social science standpoint it is also deeply interesting.

The first large expansion in African American voting rights took place after the Civil War. It was so sweeping that in 1874, when Congress revised the United States Code, the revisors were able to take forty-seven separate regulatory provisions from the federal elections statutes enacted between 1870 and 1872 and place them in the code. But inclusion eventually gave way to thorough disenfranchisement of African Americans at the state level. In the late 1890s, southern governments set up poll taxes and literacy tests to push blacks out of the voting booth. This process affected federal law as well. Congress threw out the Reconstruction-era elections statutes. A House report from the Fifty-third Congress (1893–1895) demanded that “every trace of reconstruction measures be wiped from the books.” By 1911, this goal was effectively met. About 94 percent of a once-elaborate federal electoral-regulatory code was repealed.<sup>2</sup>

A “second reconstruction” was therefore required for America to become fully democratic and for its inegalitarian race relations to again change accordingly. And therein lies the startling nature of America's two reconstructions. *No* major social group in Western

history, other than African Americans, ever entered the electorate of an established democracy and then was extruded by nominally democratic means such as constitutional conventions and ballot referenda, forcing that group to start all over again. Disenfranchisements certainly took place in other nations, for example, in France, which experienced several during the nineteenth century. But such events occurred when the type of regime changed, not under formally democratic conditions. In Europe, Latin America, and elsewhere, liberal democracies never sponsored disenfranchisement. Once previously excluded social groups came into any established democratic system, they stayed in.<sup>3</sup>

This is an extraordinary datum about the United States. We often think of America as exceptional—but never in quite this way. Before discussing this phenomenon, it helps to take a closer look at it. Abraham Lincoln's discussion of black suffrage during his last speech is a good place to start. It was the first time a U.S. president brought up black suffrage and posed it as a national issue.

Speaking from a White House balcony on April 11, 1865, Lincoln shared several pregnant thoughts about “the elective franchise for the colored man” with an assembly gathered below him on the White House lawn. He said that he backed suffrage for “the very intelligent” (by which Lincoln probably meant African American men with property and formal education) and for “those who serve our cause as soldiers” (which then referred to about 150,000 black male army veterans).<sup>4</sup>

The “colored man” to whom Lincoln referred was a prominent part of life both in the border states of Delaware, Kentucky, Maryland, and Missouri and in the eleven states of the former Confederacy—altogether about 46 percent of the Union. But African Americans did not have the right to vote in any of these states. Indeed, when Lincoln spoke these words very few black men—and no black women—had the right to vote. When the states joined the Union after ratification of the Constitution in 1789, only three permitted blacks to vote: Maine, Tennessee, and Vermont. As the Union grew, original and new states consciously disenfranchised blacks. By 1865 free African American men voted only in Maine, Massachusetts, New Hampshire, Vermont, and Rhode Island.<sup>5</sup>

Lincoln's plan of extending voting rights to a large number of the recently emancipated black men plainly foretold a new national politics. Listening to Lincoln, his assassin, John Wilkes Booth, swore in fury that he would “put him through.” He did just that a few days later.<sup>6</sup>

African American suffrage might at this moment have died stillborn, for President Andrew Johnson, Lincoln's successor, soon revealed a deep hostility

to black voting rights, indeed black rights of any sort. Yet Congress moved to establish widespread black suffrage despite Johnson's opposition. Between December 1866 and December 1867, the percentage of all black adult males eligible to vote suddenly shot up from .5 percent to 80.5 percent, with all of the increase in the former Confederacy. By 1870 the Constitution featured two new amendments, the fourteenth and the fifteenth, enshrining the right to vote. The first reconstruction, as it is sometimes called, was well under way.<sup>7</sup>

Black office-holding emerged very rapidly. About half of the lower house of South Carolina's legislature during the first reconstruction was black, 42 percent of Louisiana's lower house and 19 percent of its upper house was black, and Mississippi's house was 29 percent black and its senate 15 percent black. Even Virginia, which did not experience a "radical" phase in its reconstruction, had for a brief period a lower house that was 21 percent black and an upper house that was 6 percent black.<sup>8</sup>

But in the 1890s, a generation after the great expansion in black voting and office-holding, legislatures and constitutional conventions controlled by white southern Democrats disenfranchised the South's black adult males, extinguishing voting rights for the great majority of African Americans. When women's suffrage arrived in 1920, it did not alter black disenfranchisement in the former Confederacy. Black women did not vote. Not until the 1940s did black voter registration drives in the South eventually reemerge and experience some success. And one more generation of fierce struggle was still required before Congress enacted the 1965 Voting Rights Act. That statute was the turning point in the second reconstruction.

The 1965 act fundamentally recast the legal and administrative context for voting in the South. Previously what might be called "wholesale shrinkage" of the electorate had been accomplished with literacy tests, poll taxes, stringent residency requirements, requirements that registration occur months before elections, and inconvenient hours and arrangements for registration. African Americans who sought to participate anyway were met by "retail shrinkage": rejection at the discretion of local electoral administrators.

Simply by ending this older legal and administrative context, the Voting Rights Act created a new, far freer one. Section 4 of the act applied the statute to any state or county that maintained a voting test or device on November 1, 1964, and where the census showed voter registration or turnout for the 1964 presidential election to be below 50 percent of the voting-age population. These tests or devices were now suspended for five years. The act thus covered all of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, Virginia, twenty-six North Carolina counties, three Arizona

counties, one Hawaii county, and one Idaho county. The act also prevented the state of New York from enforcing its English-language competence test against voting-age Puerto Ricans residing in New York. Section 6 of the act authorized appointment of federal examiners in jurisdictions covered under section 4. They reviewed “applicants’ qualifications for voting and placed the names of those qualified to vote on a list of eligible voters . . . local officials were then obligated . . . to place the names of those persons listed by federal examiners on the official voting lists.”<sup>9</sup> Section 5, creating a mechanism called “preclearance,” required the submission of any planned changes in voting rules in the covered jurisdictions to either the attorney general or the three-judge district court of the District of Columbia for prior approval.

After President Lyndon Baines Johnson signed the Voting Rights Act on August 6, 1965, sharp increases in black voter registration occurred where the act was initially applied in the former Confederacy and in states where it stimulated further struggle. For the Peripheral South (Arkansas, Florida, Tennessee, and Texas), black voter registration jumped from about 60 percent in 1964 to about 71.4 percent by 1968, roughly a 19 percent increase that reflected compliance by state and local officials with the Voting Rights Act and the impact of continued black activism. In the Deep South (Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia), where Jim Crow politics had historically tended to mean greater repression, registration jumped from about 33.8 percent of all black adults in 1964 to 56.6 percent in 1968, or a 67 percent increase, again apparently due to compliance by state and local officials with the commands of the act and continued civil rights activism.<sup>10</sup>

Even so, America today is still struggling over black voting rights. Large numbers of African American adults are blocked from voting by state felony disenfranchisement laws. Felony disenfranchisement too often rests on legal provisions that were enacted with racial intent. Further, several southern states—Florida, Virginia, Alabama, Texas, and Mississippi—disenfranchise ex-felons at very high rates. Provisions of these states’ criminal codes shrink the number of potential black voters considerably. About 31 percent of all black men in Florida and Alabama, for instance, are permanently barred from voting.<sup>11</sup>

Also, startling episodes occur and recur. The best known of these happened in November 2000, when many of Florida’s black voters found that their presidential ballots were rejected or not counted by election officials at disproportionately high rates.<sup>12</sup>

Finally, increases in black office-holding since passage of the Voting Rights Act have critically depended on federal involvement. In the early

1980s, Congress found it necessary to add a new section to the act intended to press state and local legislative bodies to make black and minority office-holding easier. The new section 2 held that there is a “denial or abridgement of the right to vote” if electoral processes are not “equally open to participation” by “members of a protected class” and if such members “have less opportunity . . . to elect representatives of their choice.” The policy directive was clear: government should focus on the mechanisms and processes that impede the election of blacks to public office.

By the early 1990s the House of Representatives had the largest number of black legislators it had ever had—thirty-eight. In southern states that were completely covered by the Voting Rights Act (Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia), the average percentage of all local elected officials who were black was 3.6 percent in 1974 but had grown to 13.3 percent by 1993, a 269 percent increase. Yet black office-holding is not completely normalized, in or outside the South. Subtle signs of white resistance abound. In 2003, the following was reported in an opinion of a federal district court:

[A]fter the 2000 Charleston County School Board elections, for the first time in the history of the County, five of the nine school board members were African-American persons. After African-American school board members became a majority on that governing body, the Charleston County Legislative Delegation to the South Carolina General Assembly sponsored several pieces of legislation. . . . [L]egislation was introduced to remove control of the budget of the school system from the School Board and place it under the jurisdiction of the County Council.<sup>13</sup>

Such resistance by whites to black office-holding may, indeed, be covertly inscribed on the Fifteenth Amendment (the second of the two Reconstruction-era amendments constitutionally regulating black voting rights). The amendment contains no explicit provision for office-holding. That is because Congress chose to drop such a stipulation so that the amendment could be ratified quickly.

But the 1982 amendment of the Voting Rights Act (stipulating that minorities be free to vote into public office candidates whom they wish to support) openly acknowledges the significance of black office-holding. This is quite correct. The United States is not a direct democracy; it is a representative system. It cannot be anything other than a representative polity, given its size. For that reason, voting in and of itself has not been and is not sufficient to create a fully democratic public sphere in this country. It is necessary. But group access to office-holding is also necessary.

Black office-holding has always been in part a matter of “civic status.” Social standing in America, Judith Shklar cogently argued, has two great emblems: the right to vote and the “opportunity to earn.” She might well have added that free access to public office, regardless of class, gender, ethnicity, or race, also entitles a group defined by such divisions to general respect. According to Shklar, “to see just how important [civic standing] has always been, one has to listen to those Americans who have been deprived of it through no fault of their own.”<sup>14</sup> Listen, then, to Tom McCain, one of the first blacks elected to local office in Edgefield County, South Carolina, in the 1980s, after a century of lily-white government: “There’s an inherent value to office-holding. . . . A race of people who are excluded from public office will always be second class.”<sup>15</sup> McCain clearly speaks in the language of social standing.

Or listen to Reverend Henry McNeal Turner, a state senator protesting his expulsion from the Georgia legislature in 1868 on the ground that blacks could vote but were not entitled to hold public office: “I am here to demand my rights, and to hurl the thunderbolt at the men who would dare to cross the threshold of my manhood.” Later in his speech of protest, Turner exclaimed: “Congress, after assisting Mr. Lincoln to take me out of servile slavery, did not intend to put me and my race into *political* slavery. If they did, let them take away my ballot—I do not want it, and shall not have it. I don’t want to be a mere tool of that sort. I have been a slave long enough already.”<sup>16</sup> Denial of access to the political good of holding public office was tantamount to slavery; it made the ballot worthless. Worse, it turned the ballot into an instrument of extreme political dependence, Turner suggested.

With characteristic pungency Turner grasped an additional rationale for black office-holding. It is about an equal place at the table in important policy-making settings: “We are told that if black men want to speak, they must speak through white trumpets . . . through white messengers who will quibble and equivocate, and evade as rapidly as the pendulum of the clock.”<sup>17</sup> But, Turner said, white trumpets were not good enough. Black citizens had clear policy needs. They needed jury representation to prevent their being “sent to the Penitentiary in perfect caravans,” a school bill for “the rising youths of our State,” a civil rights law to prevent black passengers on common carriers from being forced to pay first-class fare only “to be thrust into Jim-Crow cars, for white men to insult their wives, and blackguard our daughters, and smoke them to death,” and a laborers’ lien to prevent their being “driven away penniless.”<sup>18</sup>

True, some analysts deny that the “equal place” proposition requires extensive black office-holding. Survey research conducted by Katherine Tate

suggests that for most blacks the “equal place” idea is quite compelling. But, say critics of this view, white politicians and judges can and do represent black voters quite well. Of course they can. Yet Kerry Haynie has shown that increased office-holding by African Americans in state legislatures *by itself* changes states’ expenditures on health, education, and welfare. Simple change in the number of black legislators, and nothing more, impacts public spending in the states. Although white politicians of the same party can represent black constituents, there seems to be a significant “extra” that comes from racially integrating a major decision-making body such as a legislature, and the same may well be true of the judiciary.<sup>19</sup>

Finally, the making of black office-holding is a matter of democratic fraternity. Amos Akerman—later a U.S. attorney general—put this point well in argument before the Georgia Supreme Court in 1869, closing as follows:

Counsel says that the Code was made when this was a white man’s country. . . . No matter whose the country was when the Code was made, it is now the country of every citizen in it—the country of the white man and of the black man together. They are bound together politically by a common fortune. . . . Here they must both live. Here they must both labor. Here they may both vote. And here, if I am right in this argument, either may hold office when his fellow-citizens choose to trust him with office.<sup>20</sup>

The epic of black electoral inclusion is not simply about black voting; it is a tale of a double dualism: two reconstructions, each with two dimensions: voting and office-holding.

## WHAT NEEDS TO BE EXPLAINED AND HOW

With basic facts in hand, the problem of explanation now confronts us. Why did one effort end in disenfranchisement? Why is the second effort, despite its frictions and weak spots, still a relative success?

In what follows I seek answers by systematically comparing the two reconstructions as if they were two independent cases—that is, as if the course of the first case did not determine the dynamics of the second.<sup>21</sup> Is this assumption too strong? Perhaps. Historically inclined political scientists often emphasize “path dependence.” The idea refers to the way actual historical sequence will narrow or even determine the range of things that can happen later. There is some truth to this idea. During the second reconstruction, for instance, federal policymakers worried about lessons concerning southern resistance to federal intervention that they took from the first reconstruction.<sup>22</sup>

The case for treating the two reconstructions as effectively independent rests, however, on fully appreciating the disenfranchisement of black southerners around 1900. William A. Dunning, a contemporary historian, foresaw the “completion” of the “undoing of Reconstruction.” During the process, as the historian Michael Perman has emphasized, prominent southern politicians and editorialists repeatedly thought and spoke in such terms as “final settlement,” “elimination,” and acting “to remove the negro as a factor.” The chair of the 1900 Democratic state convention in Alabama told the delegates that “the great question of the Elective Franchise must be settled. The white line was formed in 1874 and swept the white men of Alabama into power. The white line has been re-formed in 1900 to keep them in power forever.” These ambitions were realized for several decades. Black voting and office-holding were reduced to zero, as we shall see.<sup>23</sup>

Disenfranchisement also had a structural effect on national politics that reinforced the utter reversal of black voting and office-holding. Section 2 of the Fourteenth Amendment reduces congressional representation of states that deny the suffrage on racial grounds, but this section was never enforced. Democrats thus had an Electoral College bonus that they would not have had otherwise. Also, southern Democrats enjoyed about twenty-five extra seats in Congress for each decade between 1903 and 1953. Their added presence, in turn, altered about 15 percent of roll call outcomes in the House during this period. There was little or no representation of black interests in Congress. Instead, white supremacist interests were not only entrenched but overrepresented.<sup>24</sup>

It is rather telling that when government lawyers in the Johnson administration evaluated policy options for black voting rights in the first two months of 1965, they seriously considered recommending to the president that he instead propose a new constitutional amendment—as if the Fourteenth and Fifteenth Amendments inscribed on the Constitution during the first reconstruction were dead letters for the purpose of establishing black voting rights. *They* evidently saw themselves as starting all over. In an important sense they were.<sup>25</sup>

A comparison of the two reconstructions is aided by a wealth of evidence about the American experience. Between 1868 and the present, questions of inclusion were either openly acknowledged issues or the uninvited guests in about two million national, state, and local elections in the United States. Electoral inclusion surfaced in the courts and in law enforcement. Finally, voting rights and the merits of reform or inaction were discussed in Congress, in newspapers appealing to black and white subscribers, in the streets of white and black residential areas, in citizens’ homes, in predominantly black

and predominantly white churches, in schools, colleges, and universities, in books, and in magazine articles.<sup>26</sup>

Most of what happened in this myriad of moments cannot be straightforwardly recovered or investigated, to be sure. Also, accurate individual-level data on all of the relevant voter behavior—registration and election-day turnout compiled by race and gender for all of the relevant jurisdictions—are not available. Still, enough aggregate data have been published for enough jurisdictions, and there are enough reliable descriptions in primary and secondary sources of campaign-related events and legislative, administrative, executive, and judicial behavior, to permit in-depth comparison across time. But the matter hardly ends there. Which kind of explanation will get us through the historical comparison in a satisfying, useful way?

To aid in understanding African American electoral inclusion, this book takes cues from historical institutionalist scholarship, particularly from the variant that attends to the interplay between political parties and formal institutions. Stephen Skowronek's inspired description of American national government as a "state of courts and parties" is especially useful. The concept refers to defining elements of the political order in the United States. The pioneering work of J. Morgan Kousser concerning black voting rights policy, politics, and law has shown why the notion is apt. Kousser has demonstrated that during both reconstructions the incorporation of African Americans was deeply influenced by the courts and by political parties. My own ideas about courts and parties were greatly stimulated by his research.<sup>27</sup>

But this book also owes much to the literature concerning social movements. I consider contentious and nonparty politics—protest movements, broad-based social movements, and voluntary associations—at length. Such extrapartisan forces are generally missing from the work of scholars dealing with parties and formal institutions. Yet protest and contention have always regulated the politics of African American electoral inclusion.<sup>28</sup>

Finally, this book owes a great deal to what "rational choice" political science advises, which is to concentrate on strategic and goal-defined behavior. It therefore treats party politicians, federal judges, and the leaders of and participants in social movements as highly entrepreneurial. Such actors often tried to do new things, despite the odds.

In short, I focus on how a national political order—defined by the activities of the federal courts and by national party system structure—influenced the prospects of coalition and movement politics. I prefer this way of addressing the puzzles of African American electoral inclusion because the alternatives to it are insufficiently institutional or place too much weight on broad,

impersonal forces. To show what I mean, let me describe these other theories briefly before laying out how my approach works.

One school of thought would draw from the entire story the proposition that race relations are especially troubled arenas of social conflict owing to the great strength and persistence of racial attitudes among a white majority. A society mired in racism cannot avoid taking a lot of time and effort to work out decent race relations. The long struggle for African American electoral inclusion has therefore been fundamentally a case of gradual social change.<sup>29</sup> The first reconstruction failed, this perspective implies, because change in race relations could not take place faster than change in society would naturally occur. Trying to do so only guaranteed white backlash. William Graham Sumner, a founder of American sociology, put the point memorably with his aphorism that “stateways cannot change folkways.” The placement of black electoral inclusion on the political agenda at the national, state, and local levels bothered most whites and triggered resistance from many. The violent streak in the South’s political culture augmented the reaction. White “veto movements” such as the Ku Klux Klan of 1868 emerged and swept through the American South in response to black enfranchisement or its possibility.<sup>30</sup> White southerners, and ultimately white northerners, simply would not accept the political equality of blacks no matter what the Constitution said. The second reconstruction’s greater success with African American voting and office-holding came, therefore, only in the wake of a broad attitudinal change among whites.<sup>31</sup>

Another perspective, however, holds that the crux of the matter was and is not attitudinal change among whites or the South’s political culture. What mattered was the entrapment of African Americans in economic backwardness. This view insists on the political importance of economic weakness among largely landless nineteenth-century blacks. They depended on white landholders, “furnish” merchants, and white-controlled railroads for their access to agricultural markets. They therefore lacked the means to prevent white supremacy. But urbanization and labor shortages in manufacturing north of the Mason-Dixon line steadily chipped away at their marginal status. Black southerners came off the land into different, less oppressive economic settings, north and south, and thus acquired greater political sophistication and resources. In using them to press for civil rights they were able finally to force the issue of their electoral inclusion.<sup>32</sup>

A third analysis also treats political economy and sociology but more explicitly emphasizes the skills and history of an elite class. Black electoral

inclusion threatened the labor supply of white landholders sitting at the apex of a quasi-feudal system. Voting by blacks would promote black education, freedom of movement, and legal protections against labor exploitation. According to this account the critical factors were therefore the dexterity and unity of purpose among “a relatively small minority,” that is, “the whites of the areas of heavy Negro population.” Their “extraordinary achievement” was repeated in seminationalist and ethnic mobilization of other whites. They also gained the respect of Northern capitalists and political reformers who distrusted the lower classes. With such tactics they overthrew Reconstruction, triumphed over the threat of agrarian radicalism (which proposed to substitute class antagonism for racial conflict as the South’s organizing force), and developed legal disenfranchisement and a one-party system to preempt challenges to white supremacy.<sup>33</sup>

Until these landed economic elites themselves changed, black electoral inclusion was impossible. Scholars have invoked two specific mechanisms of elite transformation. The advent during World War II of new technology for mechanizing the southern cotton harvest undergirds one version of the theory. Another rendition emphasizes the role of crop production control, first instituted during the New Deal. It displaced cotton tenants on a scale that was sufficient to “prime” the plantation owners to want and adopt machine pickers. Either way, the “need” to control black labor vanished. According to this “laborlords-become-modern-farmers” view, African American electoral inclusion sprang from the metamorphosis of an entrenched, landed ruling class into modern commercial farmers.<sup>34</sup>

Yet another analytical approach comes from efforts to make sense of what the international context of a racially divided nation means for its domestic politics. Scholars working in this vein have deemphasized social structure and highlighted “raison d’état” as a variable. For them, fundamental advances in black rights have depended on war and geopolitical threats to the United States that invited national policymakers to forge social unity. African American electoral inclusion has therefore been a case of geopolitical threat requiring internal democracy. The implication of this view is clear: once the United States aspired to offer a political model to the world after World War II, Congress and the executive branch promoted black electoral inclusion.<sup>35</sup>

Finally, it has been proposed, by me and by Anthony Marx, that central governmental control of the means of coercion was a key variable. During the first reconstruction the federal government was unable to control violence against blacks, but it had much more success during the second. Electoral

inclusion came from increased federal control of private violence in the United States, the result of a long state-building process.<sup>36</sup>

In short, there are, by my count, five alternatives to this book's rational choice—historical institutional account, and each has much to offer. Indeed, each “explains” the puzzle of African American electoral inclusion. But I have never been quite satisfied with them. Focusing on attitudes, class, modernization, geopolitics, and the like assumes away the real world of political institutions and of people's struggle with the constraints and opportunities created by formal and informal institutions.

### COALITIONS AND PARTY CRISIS

One major emphasis in this book, therefore, is on coalition-making strategy and behavior within the context of a two-party system. I track the actions of national party politicians—of politicians bound by a sense of shared fate to their party's larger interests or, alternatively, yoked to the interests of a faction.

During both reconstructions, one set of party actors was in conflict with another set—either a rival party or a rival faction within the same party. The first set of politicians needed to expand their electoral coalition in order to defeat the second set. In other words, more powerful, established members of the system needed the incorporation of new voters in order to win conflicts that had emerged at some point before they responded to demands for inclusion. *This* aspect of the two reconstructions was a kind of “revolution from above”: one set of political actors moved to bring in lots of new people all at once to advance its own interests.

In other words, I borrow—but also adapt—William Riker's notion of the “minimum winning coalition.” The sociologist William Gamson independently arrived at a similar formulation, the “cheapest winning coalition.” The idea, in Riker's words, is that “[i]n social situations similar to n-person, zero-sum games with side-payments, participants create coalitions just as large as they believe will ensure winning and no larger.”<sup>37</sup> In this book, however, Riker's and Gamson's emphasis on a tight linkage between specific change in coalition size and the relative generosity of the side payments is dropped. It is difficult to see how elites can be so masterful as to precisely allocate the side payments and thus fine-tune the optimal coalition size, yet be so in need of allies that they must expand their coalitions in the first place.

“Zero-sumness” is instead the most important feature of the pre-coalition situation. Elites reach out because they are in a crisis. David Waldner has thus recommended attention to the depth and relative intractability of elite con-

flict as progenitors of coalition formation. As he puts it, coalition formation results if elites believe that “their long-term capacity to reproduce their elite status” is plainly and unmistakably jeopardized, that is, if “the threatened elite feels that it will be unable to compete . . . in the future.”<sup>38</sup>

Chapters 2, 7, and 8 further explore this logic. Chapter 2 shows that Republicans pushed for a new coalition in 1867, adding seven hundred thousand new citizens to their existing electoral coalition, because they believed that their future as a party—then only in existence less than two decades—was at stake. If they did nothing, they would be ruined. Chapters 7 and 8 consider analogous cases in 1948 and from 1961 to 1965. In these moments the Democratic Party’s survival was hardly on the line. But such party leaders as Harry Truman and his advisors, and later John F. Kennedy and Lyndon Johnson, worried nonetheless about the costs of inaction. If they did not make coalitions, they would experience painful political losses.

### BLACK POLITICAL WILL IN COALITION-MAKING

In short, the concept of coalition formation can unravel the reasons why party politicians did what they did during major episodes in the making of African American voting and office-holding. But its emphasis on political agency also requires extension to the full range of relevant actors. In the original formulation, only elites are agential. New coalition partners simply take the deal they are offered. In fact, *both* partners in coalition formation are highly purposive. The outsiders are just as savvy as the insiders.

With respect to the role of African Americans—and the way they seized political opportunities—I generally portray what might be called *black political will*, a term akin to such cognate ideas as Michael Dawson’s “black counterpublic” or Taeku Lee’s “activated public opinion.” My stress on black group agency undoubtedly stylizes the actual history of this group. The new black history (as opposed to the history of race relations) reveals many intellectual, political, social, and economic tensions and divisions among African Americans over time. They have never formed a phalanx or a monolith, all for one and one for all.

Thus, in his compelling autobiography, Reverend John H. Scott often notes his disappointment in his own community during his time as a leader of the NAACP in the 1940s, 1950s, and 1960s in Lake Providence, a small city in northeastern Louisiana that abutted the Mississippi delta. He writes, “We had a group problem that required group action. We didn’t have the luxury of exerting our individualism.” But he encountered foot-dragging from “the same scared Negroes. ‘Scott, now you know I can’t get involved

in no voting. You know I'll lose my job.' 'Mr. Charlie owns the plantation I live on and he'll put me off the place if I get involved.'" Scott observes philosophically, "I tried to make them see that they had to stand up some time. . . . But I knew it was hard for the people."<sup>39</sup>

Similarly, the civil rights historian J. Mills Thornton III cautions against seeing the civil rights movement as a "mounting crescendo" of forceful collective action. He notes that it "actually proceeded through tiny revelations of possible change" and was distinguished by very modest local demands. Indeed, in communities where there had always been a strong black leader—someone like John H. Scott, in fact—black citizens were perhaps *less* likely to contemplate conflict simply because there was already some white accommodation of a local leader's persistent activism.<sup>40</sup>

Still, the idea of a consequential black political will is within shouting distance of the facts. As Katherine Tate, a leading scholar of African American political behavior, observes, "The majority of Blacks believe that what happens to the group affects them personally." Michael Dawson, who was co-investigator for the 1993–1994 National Black Politics Study, administered by the University of Chicago, reports that 68 percent of African American respondents in the early 1990s saw their individual fates as "linked to that of black people." In a nation famous for its liberal individualism, this is unusual. Strong group consciousness is (and was) a vital constant of black political life—and persistently contentious action.<sup>41</sup>

Thus, in chapter 2 I describe all-black marching companies in the former Confederacy and group travel to the polls in 1866 and 1867. In chapter 4 I describe armed black militia and their actions in several of the states during the first reconstruction. Frequently, I stress the persistence of efforts by ordinary African Americans to vote in the face of frightening personal costs. These sorts of descriptions I take to be *prima facie* evidence of coordinated, solidaristic behavior. But they constitute, of course, only indirect evidence of a sense of racial group identity and of strong political consciousness. When I can offer survey evidence indicating the existence of such mental states I use it, but that is fairly rare simply because major surveys of African Americans did not begin until late in the twentieth century. I also must draw inferences from aggregate data and from people's own words. I let well-known (and not so well-known) individuals speak in these pages as a way to reveal the way they think about themselves and their place in history and politics. This has the drawback of treating them as stand-ins for large numbers of African Americans, which is obviously risky business. But the voices help convey the role of black political will.

### COALITIONAL AFTERMATH: PARTY-BUILDING AND JURISPRUDENCE-BUILDING

To recapitulate, coalitional *interaction* between threatened party and a useful outgroup was a major mechanism in African American enfranchisement. But it was only an initial dynamic. What followed during both reconstructions was just as critical. The aftermath reinforced African American enfranchisement in the second case but did not reinforce it in the first.

A flaw in the Riker-Gamson formulation of coalition formation is the inarticulate premise that it is a fairly easy way to triumph over those who threaten the partners in a coalition. How do you beat the other side? Simple: make your side bigger. But numbers, though important, are not wholly dispositive in politics. If they were, the first reconstruction would have been an instant and stable success.

Coalitional expansion portended a change in power relations between groups, between parties, and between those who subscribed to competing visions of American politics. Those who opposed coalitional expansion would not sit still, and in a democratic context they acted as effectively as they could to turn the tables. Successfully establishing equality required the architects of reform and democratic change to have good institutional technology, so to speak. To begin with, they needed battle-tested, resilient political party machinery—or the prospect of making it in short order.<sup>42</sup>

Political parties can be potent when they are seasoned, resilient organizations that generate loyalty among their full-time cadres and their electoral followers and when they are animated by socially useful ideas. Parties attract, channel, and harness the ambition of talented political entrepreneurs. Parties mobilize and sustain the participation of ordinary citizens on a regular basis. They thus organize and regularize electoral processes, from which comes the authority to accumulate and use governmental resources. These general properties make parties highly useful to those who wish to reorder power relations without arbitrary coercion and to perpetuate that reordering.

During both reconstructions, the architects of the new racial and political order also needed public policies that were supple and appropriate to the political problems at hand. In the voting rights area that has meant new jurisprudence, often with major implications for federalism and national regulation of electoral processes. A vital aspect of jurisprudence-building during both reconstructions was change in the legal aspects of electoral federalism. Electoral federalism has been the chief instrument for defining the rights to

vote and to hold office in the United States. Under the Constitution of 1787, the determination of voting rights fell to state and local governments. But the Civil War and Reconstruction, and the ensuing massive program of African American electoral inclusion, recast the constitutional responsibilities for establishing and protecting voting rights by means of ratification of the Fifteenth Amendment and passage of several implementing statutes. These legal initiatives posed an enormous challenge to widely held conceptions of American federalism. The same thing happened in 1965 with passage of the Voting Rights Act.

The political party (Republicans in the first reconstruction) or the party faction (liberal Democrats in the second) interested in bringing voter blocs into electoral politics preferred to remove responsibility for voting rights to the national government so that national democratic norms could be allowed to influence voting rights policy and law. This resulted in centralized electoral regulation. The opposition, less interested in inclusion, or preferring exclusion, sought instead to place or to keep responsibility for voting rights in state and local government, separating the use of these rights from the influence of national democratic norms. This implied decentralized electoral regulation.

Regulating the division over these two constitutional perspectives were federal judges and Supreme Court justices. Because federalism is a division of policy responsibilities between governmental tiers that do not seek to abolish or overwhelm each other, questions of institutional balance and equipoise were inevitable. American judges often sought to set the balance one way or another. Judicial review of statutory initiatives affecting African American electoral inclusion, and of the Constitution's relevant commands (principally the Fourteenth and Fifteenth Amendments), meant that judges regularly framed electoral inclusion—or exclusion—in terms of its implications for the balance between national norms concerning rights and the requirements of maintaining federalism.

Jurisprudence-building could therefore go in two directions. It had the potential to complement party-building. But jurisprudence-building was not entirely under the control of biracial coalitions. If federal judges or a Supreme Court majority were worried about the dynamic implications of jurisprudence-building for institutional balance, they could weaken the impact of party-building.

Thus institutional enfranchisement could and did vary in strength. I link the grand historical puzzles of African American electoral inclusion—why twice? did the first reconstruction have to fail? why has the second proceeded so differently?—to differences between the reconstructions in their party- and

jurisprudence-building processes. During and after the first reconstruction, enfranchisement was not secured by these mechanisms. African Americans were left terribly vulnerable. When northern Republicans finally cut them loose (see chapter 6), their action sealed a shocking, thorough disenfranchisement. During the second reconstruction, in contrast, these processes institutionalized enfranchisement to a greater degree. There are certainly *new* issues concerning inclusion, such as elections administration and felony disenfranchisement. But the biracial coalition is entrenched today in ways that the biracial coalition of the first reconstruction never was.

### WHY THE DIFFERENCES IN PARTY- AND JURISPRUDENCE-BUILDING?

But why the differences in these processes? Were they due to differences in skill or political will within the biracial coalitions? To factionalism within these coalitions? Or to external constraints imposed by society or the economy? The essential fact about party- and jurisprudence-building during both reconstructions is that *they took hard work*. The ultimate success of either reconstruction depended—not solely, but significantly—on how hard participants were forced to work. Whether the work was easy or hard, however, was not up to the coalition-makers. Instead, the work depended on historically received circumstances, namely, on the party system's structure and on how the federal courts were likely to be led by a majority of the Supreme Court.<sup>43</sup>

During the first reconstruction, stabilizing the new biracial coalition required the “crash” construction of eleven new Republican parties within the former Confederate states, where the Republican Party had of course never existed. In contrast, during the second reconstruction, the coalition-making between the Democratic Party's New Deal faction and black southerners demanded no more than a takeover of long-standing organizations. The biracial coalition displaced the southern racial reactionaries and conservatives from their ancestral organization. This was a hard job, and doing it took time. But, as a political task, it was easier than building eleven new state-level parties overnight.

Furthermore, party-building during the first reconstruction was strongly resisted by an opposing party. Here, too, the structure of the party system played a key role. As political dissent and competition withered in the South before and during the Civil War, the idea that two-party competition was legitimate also died. The region's white conservatives (essentially the Democratic party's southern wing) therefore regarded competition from Republican interlopers as illegitimate. But southern Democrats, and

Democrats generally, also had a structural incentive to attack their opponents as often and as harshly as they could. They needed to dominate the South in order to remain *nationally* competitive. Picturing their opposition as unnatural and deeply threatening to whites was politically necessary. Thus their inexorable resistance to Republican party-building made such innovation all the more difficult and all the more likely to be flawed. Crash party-building could not be avoided; neither could fierce obstruction and hindrance from Democrats.

In contrast, during the second reconstruction, there was really no opposing party on site, as it were, ready to impede the internal reconstruction of the South's Democratic parties into biracial organizations. White supremacist third parties were attempted, but they were fragile and short-lived. In addition to never facing hampering tactics from an established force, the new coalition actually had help from the opposition. The Republican Party had an inducement to actively support the reconfiguration of the southern Democratic parties. Their increasingly biracial nature also made it easier for the Republican Party to grow in the South as a "white" alternative. It became a home for white conservative voters. These included defectors from the Democratic Party, younger whites entering the electorate, and people who thought of themselves as Independents but often voted Republican.

As for jurisprudence-building during the two reconstructions, the key factor, in my view, was the basic stance toward the political process taken by the Supreme Court when the jurisprudential results of coalition-making *first* received Court scrutiny. But, given the Court's short-term insulation from partisan pressures, there was no guarantee of a confluence between its first ruling and the new biracial coalition's jurisprudence-building needs.<sup>44</sup>

Informed observers at these moments understood very clearly how suspenseful the initial judicial review was. In a telling remark in private correspondence in March 1871, a little more than a year before the first Court test of Reconstruction constitutional jurisprudence, Representative James A. Garfield wrote, "We are working on the very verge of the Constitution . . . exposing us to the . . . danger of having our work overthrown by the Supreme Court."<sup>45</sup>

Consider, too, the letter that an Alabama Democratic Party official, Frank Mizell, wrote to Governor George Wallace to describe a strategy session concerning Supreme Court review of the 1965 Voting Rights Act. "Pursuant to our conversation of October 17, 1965, I went to Washington, D.C., for the purpose of attending a conference relative to coordination of and mutual cooperation in efforts to contest the Voters [sic] Rights Act by judicial means with the ultimate objective of having it declared unconstitutional and void."

The conference included a representative of Judge Leander Perez of Louisiana, the chair of the Louisiana State Sovereignty Commission, the assistant attorney general of Louisiana, representatives of the governor and the attorney general of Mississippi and of Senator James O. Eastland of Mississippi, representatives of the governor of South Carolina, the assistant attorney general of Virginia, and Senator Sam Ervin of North Carolina. Ervin “remarked that bad laws often get through the legislative mills, and that, under our system, bad legislation *must be contested and defeated in the courts.*” Mizell predicted that the Supreme Court would quickly accept review of a challenge to the Voting Rights Act from South Carolina, and he thus proposed a follow-up planning session in Montgomery or Birmingham.<sup>46</sup>

In other words, because biracial coalition-making during both of America’s reconstructions generated new, uncertain constitutional and statutory law, a judicial stance in favor of or against the coalition was a resource for one side or the other. All sides worried about the first Supreme Court test. They sought to shape it.

When the Court hears a “case or controversy” under its Article III power, one side has to lose. The Court gives a rationale for its rejection of one of the two parties to a dispute. That there must be a rationale indeed deepens the binary nature of the decision. “Here are all the reasons for why this side is wrong,” the opinion necessarily says. Dissenters from the opinion can explain why they think the *per curiam* opinion is incorrect, but their voices of course only heighten the yes-no clarity of the majority’s signal. Furthermore, because of the defining weight of precedent, an initial stance commits the time and energy of future Supreme Court majorities, judges in the lower federal courts—and members of Congress. Depending on the upshot, the Court invites either elaboration and strengthening of the new jurisprudence by other actors or further legal and political resistance to the new coalition.

If the first decision or set of decisions is unfavorable, the Court’s stance thus becomes a new strategic problem for a biracial coalition. The number and difficulty of political tasks that it has to perform suddenly increases. The Court’s unfavorable stance will have to be addressed and solved by the new biracial coalition, either with new litigation strategies that will reframe the issues for the hostile majority in a way that permits favorable decisions or by changing the Court’s composition if and when important vacancies appear. The coalition seeking to incorporate itself by means of policy and law faces a near-term future of conflict with the Court. Adjusting to or taming Court opposition takes time and energy, and it requires living uncertainly with other possible setbacks in the courts.

In summary, the central assignment for reformers—coalitional expansion—was intrinsically quite contentious. It portended a major change in power relations. Those who opposed it were certain to react. The question both times became: How easy or hard would it be to institutionalize enfranchisement by means of party-building and jurisprudence-building? During the first reconstruction it was very hard; during the second it was relatively easier.

The time and energy that each of the two great biracial coalitions could spend instituting reform accorded with the relative difficulty of their additional institutional and jurisprudential projects. Yet the level of difficulty was not decided by the two coalitions explored in this book. It depended instead on the options inherent in the particular configuration of the national party system and in the composition and inclinations of the Supreme Court.

#### INSTITUTIONS, ENFRANCHISEMENT, AND RACE RELATIONS

In arguing this, I do not mean to deny other ways to understanding the two reconstructions. I offer instead a two-part claim. The first part is that an analytical marriage offers good answers to the great historical puzzles that motivate this book, namely, why two reconstructions? why diverging outcomes? The partners being joined are rational choice theorizing—which explains the genesis of the biracial coalitions—and comparative historical institutionalism—which illuminates party- and jurisprudence-building.

The second part of my claim is that the answers provided by this analytical marriage are at least as satisfying as the answers that are furnished by other leading approaches. What social scientists must strive for is an increasingly refined sense of the *weights* that we ought to attach to the different kinds of variables at work in important historical processes and outcomes. No political science theory can fully resolve the causal complexity of the real world of politics. My analysis is meant only to significantly refine our knowledge of the two reconstructions.

But even apparently modest refinement has considerable rewards. The change that I am urging in our understanding of these two epic cycles has striking implications. It recalibrates how one thinks about the course of American race relations since the Civil War. We know that the first reconstruction failed—but for a very long time, of course, the people in its biracial coalition did not know that it would end in the total disenfranchisement of black southerners. Likewise, we now have a fairly firm sense that the second reconstruction is irreversible. But for a time it was far from obvious, as chapters 9 and 10 show, that it would stabilize.

If the second reconstruction's biracial coalition had had the same kinds of daunting political tasks as its predecessor, then perhaps it too would be rather troubled even today. It might be some sort of success. But it would certainly be less of a success than it has actually been. Similarly, if the first reconstruction's biracial coalition had faced the easier sorts of political tasks that occupied its twentieth-century successor, then we would, I firmly believe, be living in a different country today.

The overall course of American race relations has been fundamentally influenced, in short, by the institutional options available to the great biracial coalitions that launched the two reconstructions. Many Americans, black and white, think that the main problem in U.S. race relations has been white attitudes—and they are not wrong that these attitudes have, on the whole, blocked better race relations. But such a view ignores institutions. What if the progress in race relations that has characterized the United States in the past forty years had instead been achieved much earlier, via the first reconstruction? What if, in other words, the first reconstruction had not been smashed to bits by 1900? Black and white Americans would not have been forced to endure our country's colossal and costly delay in achieving political fraternity across the racial divide. Likewise, what if the second reconstruction were in a truly shaky state today? Institutions, in other words, have governed our common political fate—more than we sometimes acknowledge.

## OUTLINE OF THE BOOK

To appreciate the importance of party- and jurisprudence-building and the institutional foundations of these processes, one has to absorb the remarkable events and dynamics of America's two reconstructions. The upcoming chapters are about verifying the mechanisms and processes for which my coalitional and institutional theory cues us to look. Consequently, only *relevant* aspects of political history are treated. The two reconstructions have generated vast monographic literatures. But to advance our understanding of the reconstructions, their relation to each other, and their impact, I sharply narrow my focus.

Hence chapter 2 considers the coalition formation that occurred between 1865 and 1868 but most particularly between 1867 and 1868. Chapter 3, however, “flashes forward” to the state of the coalition about a decade and a half later. Why was the coalition both resilient and in trouble? We see there that electoral inclusion was not institutionalized, even though both sides of the biracial coalition signaled continuing commitment to each other.

Chapters 4 and 5 therefore consider party- and jurisprudence-building during the first reconstruction.

Chapter 6 carefully traces what happened when northern Republicans grasped that they really no longer needed the coalition of 1867–1868. The full drama and stakes of the second reconstruction become much clearer if the reader also knows something about disenfranchisement itself. The story is quite stunning. Chapters 7 and 8 then consider coalition formation in the making of the second reconstruction. Chapter 9 considers how its party- and jurisprudence-building processes became quite promising. Chapter 10 explores the other chapters' implications for understanding whether and how new coalitions in a polity entrench themselves.

You will notice that there is necessarily more coverage of black voting than of office-holding. Periods with high rates of black office-holding have been briefer than those with black voting. Black enfranchisement has two dimensions, but one simply takes up less history than the other.