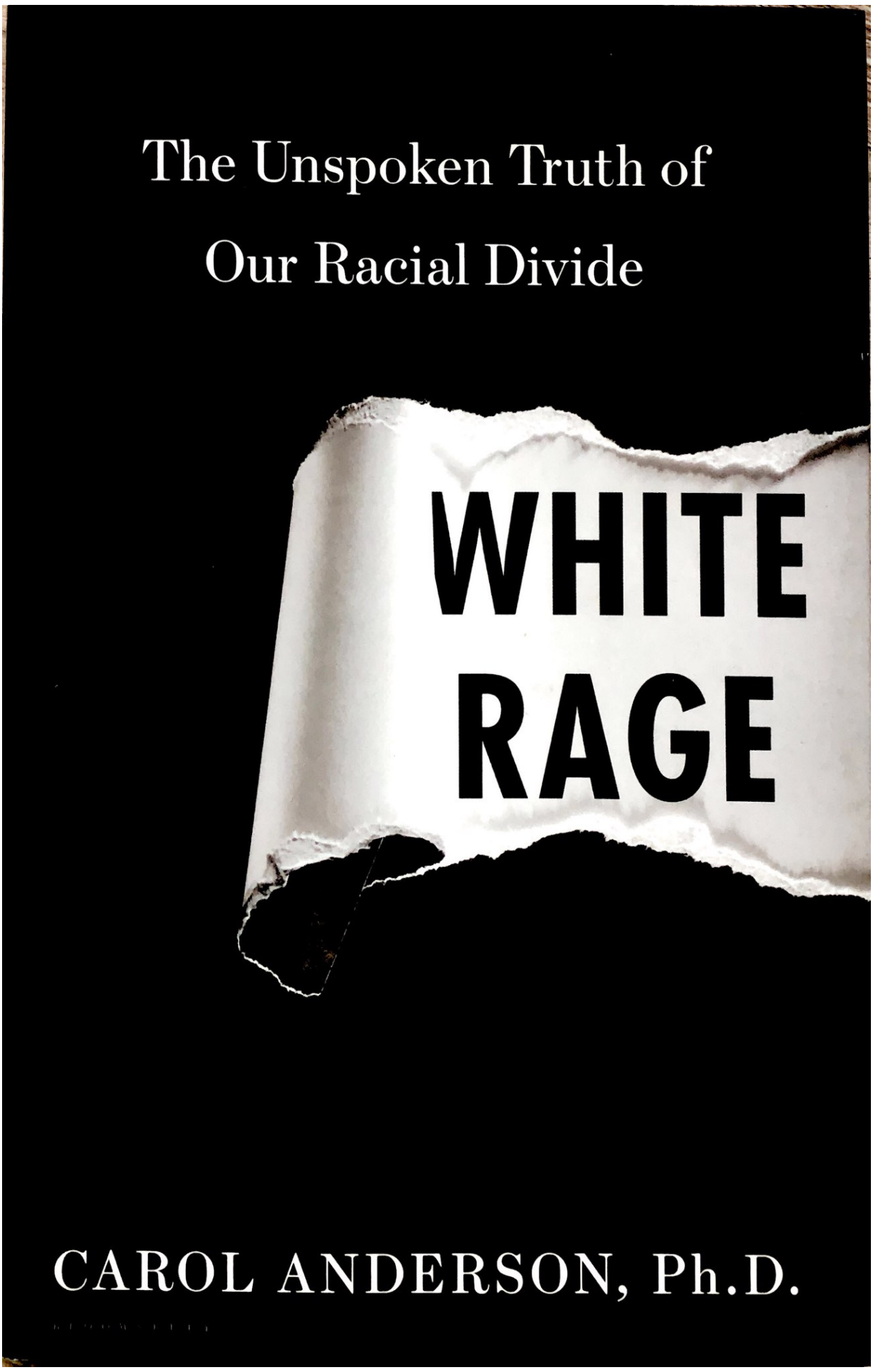
The Unspoken Truth of
Our Racial Divide



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Prologue

Kindling

Although I first wrote about "white rage" in a *Washington Post* op-ed following the killing of Michael Brown and the subsequent uprising in Ferguson, Missouri, the concept started to germinate much earlier.[1] It was in the wake of another death at the hands of police: that of Amadou Diallo, a West African immigrant, who, stepping out of his apartment building in New York City, was mowed down in a hail of NYPD bullets on February 4, 1999.[2]

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

But restrained and behaved police don't fire forty-one bullets at an unarmed man. Moreover, New York's aggressive law enforcement

policy appeared to expend most of its energy on the groups bringing the smallest yield of criminal activity. In 1999, blacks and Hispanics, who made up 50 percent of New York City's population, accounted for 84 percent of those stopped and frisked by the NYPD; while the majority of illegal drugs and weapons were found on the relatively small number of whites detained by police.[4]

There obviously was so much more going on here with Amadou Diallo's death than was actually being discussed throughout the media, more than Giuliani was letting on, and more than even the outraged discussions in the beauty shops and barbershops managed to pinpoint.[5] Only I didn't know what to call it, what to name the unsettling and disturbing performance by Giuliani that I had just witnessed.

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

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

I had previously lived in Missouri and had seen the subtle but powerful ways that public policy had systematically undercut

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

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

The trigger for white rage, inevitably, is black advancement. It is not the mere presence of black people that is the problem; rather, it is blackness with ambition, with drive, with purpose, with aspirations, and with demands for full and equal citizenship. It is

blackness that refuses to accept subjugation, to give up. A formidable array of policy assaults and legal contortions has consistently punished black resilience, black resolve.[9]

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

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

The truth is that when World War I provided the opportunity in the North for blacks to get jobs with unheard-of pay scales and, better yet, the chance for their children to finally have good schools, African Americans fled the oppressive conditions in the South. White authorities stopped the trains, arresting people whose only crime was leaving the state. They banned a nationally distributed newspaper,

jailed people for carrying poetry, and instituted another form of slavery under the ruse of federal law. Not the First Amendment, the right to travel, nor even the basic laws of capitalism were any match.

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

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

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

The truth is that, despite all this, a black man was elected president of the United States: the ultimate advancement, and thus the ultimate affront. Perhaps not surprisingly, voting rights were

severely curtailed, the federal government was shut down, and more than once the Office of the President was shockingly, openly, and publicly disrespected by other elected officials. And as the judicial system in state after state turned free those who had decided a neighborhood's "safety" meant killing first and asking questions later, a very real warning was sent that black lives don't matter.

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

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

One

Reconstructing Reconstruction

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

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

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

America was at the crossroads between its slaveholding past and the possibility of a truly inclusive, vibrant democracy. The four-year war, played out on battlefield after battlefield on an unimaginable scale, had left the United States reeling. Beyond the enormous loss of life to contend with, more than one million disabled ex-soldiers were adrift, not to mention the widows seeking support from a rickety and virtually nonexistent veterans' pension system.[6] The mangled sinews of commerce only added to the despair, with railroad tracks torn apart; fields fallow, hardened, and barren; and bridges that had once defied the physics of uncrossable rivers now destroyed. And then this: Millions of black people who had been treated as no more than mere property were now demanding their full rights of citizenship. To face these challenges and make this nation anew required a special brand of political leadership.

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

Initially, it appeared so. Even before the war ended, in late 1863 and early 1864, Representative James M. Ashley (R-OH) and Senator John Henderson (D-MO) introduced in Congress a constitutional amendment abolishing slavery. The Thirteenth Amendment was, in important ways, revolutionary. Immediately, it moved responsibility for enforcement and protection of civil rights from the states to the federal government and sent a strong, powerful signal that citizens were first and foremost U.S. citizens. The Thirteenth Amendment was also a corrective and an antidote for a Constitution whose slave-owning drafters, like Thomas Jefferson,

were overwhelmingly concerned with states' rights. Finally, the amendment sought to give real meaning to "we hold these truths to be self-evident" by banning not just government-sponsored but also private agreements that exposed blacks to extralegal violence and widespread discrimination in housing, education, and employment.[8] As then-congressman James A. Garfield remarked, the Thirteenth Amendment was designed to do significantly more than "confer the bare privilege of not being chained."[9]

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

Lincoln had shown his hand early in the war. Heavily influenced by two of his intellectual heroes—Thomas Jefferson, who advocated expulsion of blacks from the United States in order to save the nation; and Kentuckian Henry Clay, who had established the American Colonization Society, which had moved thousands of free blacks into what is now Liberia—Lincoln soon laid out his own resettlement plans. He had selected Chiriquí, a resource-poor area in what is now Panama, to be the new home for millions of African Americans. Lincoln just had to convince them to leave. In August 1862, he lectured five black leaders whom he had summoned to the White House that it was their duty, given what their people had done to the United States, to accept the exodus to South America, telling them, "But for your race among us there could not be war."[10] As to just how and why "your race" came to be "among us," Lincoln conveniently ignored. His framing of the issue not only absolved plantation owners and their political allies of responsibility for launching this war, but it also signaled the power of racism over

patriotism. Lincoln's anger in 1862 was directed at blacks who fully supported the Union and did not want to leave the United States of America. Many, indeed, would exclaim that, despite slavery and enforced poverty, "We will work, pray, live, and, if need be, die for the Union."[11] Nevertheless, he cast *them* as the enemy for wickedly dividing "us" instead of defining as traitors those who had fired on Fort Sumter and worked feverishly to get the British and French to join in the attack to destroy the United States.[12]

From this perspective flowed Lincoln's lack of clarity about the purpose and cause of the war. While the president, and then his successor, Andrew Johnson, insisted that the past four years had been all about preserving the Union, the Confederacy operated under no such illusions. Confederate States of America (CSA) vice president Alexander H. Stephens remarked, "What did we go to war for, but to protect our property?"[13] This was a war about slavery. About a region's determination to keep millions of black people in bondage from generation to generation. Mississippi's Articles of Secession stated unequivocally, "Our position is thoroughly identified with the institution of slavery . . . Its labor supplies the product which constitutes by far the largest and most important portions of commerce of the earth."[14] In fact, two thirds of the wealthiest Americans at the time "lived in the slaveholding South."[15] Eighty-one percent of South Carolina's wealth was directly tied to owning human beings.[16] It is no wonder, then, that South Carolina was willing to do whatever it took, including firing the first shot in the bloodiest war in U.S. history to be free from Washington, which had stopped the spread of slavery to the West, refused to enforce the Fugitive Slave Act, and, with the admission of new free-soil states to the Union prior to 1861, set up the numerical domination of the South in Congress. When the Confederacy declared that the "first duty of the Southern states" was "self-preservation," what it meant was the preservation of slavery.[17]

To cast the war as something else, as Lincoln did, to shroud that hard, cold reality under the cloak of "preserving the Union" would

not and could not address the root causes of the war and the toll that centuries of slavery had wrought. And that failure of clarity led to a failure of humanity. Frederick Douglass later charged that in "the hurry and confusion of the hour, and the eagerness to have the Union restored, there was more care for the sublime superstructure of the republic than for the solid foundation upon which it alone could be upheld"—the full rights of the formerly enslaved people.[18]

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

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

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

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

> *Black men and black women were attacked, but the rioters singled out the men for special violence. On the waterfront, they hanged William Jones and then burned his body. White dock workers also beat and nearly drowned Charles Jackson, and they beat Jeremiah Robinson to death and threw his body in the river. Rioters also made a sport of mutilating the black men's bodies, sometimes sexually. A group of white men and boys mortally attacked black sailor William Williams—jumping on his chest, plunging a knife into him, smashing his body with stones—while a crowd of men, women, and children watched. None intervened, and when the mob was done with Williams, they cheered, pledging "vengeance on every nigger in New York."*[22]

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

The glint of promise that had come as the war ended required an absolute resolve to do what it would take to recognize four million newly emancipated people as people, as citizens. A key element was ensuring that the rebels would not and could not assume power in the newly reconstructed United States of America. Yet, as the Confederacy's defeat loomed near, Lincoln had already signaled he would go easy on the rebel leaders. His plan for rebuilding the

nation required only that the secessionist states adopt the Thirteenth Amendment and have 10 percent of eligible voters (white propertied males) swear loyalty to the United States. That was it. Under Lincoln's plan, 90 percent of the power in a state could still openly dream of full-blown insurrection and consider themselves anything but loyal to the United States of America.

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

To stop this descent into the cauldrons of racial hate, African Americans had to have access to the ballot box. The reasoning was simple. As long as blacks were disfranchised, white politicians could continue to ignore or, even worse, trample on African Americans and suffer absolutely no electoral consequences for doing so. The moment that blacks had the vote, however, elected officials risked being ousted for spewing anti-black rhetoric and promoting racially discriminatory policies.[27] But, in 1865, that was not to be. Suffrage was a glaring, fatal omission in the president's vision for Reconstruction—although one that was consistent with the position

Lincoln had taken early in his political career when he "insist[ed] that he did not favor Negroes voting, or," for that matter, "Negroes serving on juries, or holding public office, or intermarrying with whites."[28]

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

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

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

Still, there was hope of progress. In March 1865, Congress created an organization, the Bureau of Refugees, Freedmen, and Abandoned Lands, commonly known as the Freedmen's Bureau, which had a range of responsibilities including the reallocation of abandoned Southern land to the newly emancipated. The bureau's charge was to lease forty-acre parcels that would provide economic self-sufficiency to a people who had endured hundreds of years of unpaid toil. Already, in January 1865, Union general William Tecumseh Sherman had issued Special Field Order No. 15, which, to take some of the pressure off his army as thousands of slaves eagerly fled their plantations and trailed behind his troops, "reserved coastal land in Georgia and South Carolina for black settlement." Less than a year after he issued the order, forty thousand former slaves had begun to work four hundred thousand acres of this land.[36] Then, in July of the same year, the head of the Freedmen's Bureau, General Oliver O. Howard, issued Circular 13, fully authorizing the lease of forty-acre plots from abandoned plantations to the newly freed families. "Howard was neither a great administrator nor a great man," noted W.E.B. Du Bois, "but he was a good man. He was sympathetic and humane, and tried with endless application and desperate sacrifice to do a hard, thankless duty."[37] Howard made clear that whatever amnesty President Johnson may have bestowed

on Southern rebels did not "extend to . . . abandoned or confiscated property."[38]

Johnson, however, immediately rescinded Howard's order, commanding the army to throw tens of thousands of freedpeople off the land and reinstall the plantation owners.[39] While this could have come from a simple ideological aversion to land redistribution, that was not the case and, for Johnson, not the issue; *who* received it was. Beginning in 1843, when he was first elected to the U.S. Congress, and over the next nineteen years, Johnson had championed the Homestead Act, which would *give*, not lease, 160 acres in the West to citizens who were "without money"—meaning poor whites. The intended beneficiaries were clear because from 1843 through 1862, when the law was finally passed, most African Americans were not citizens and therefore, regardless of how impoverished, were ineligible.[40] Doggedly pushing back on those who argued that a land giveaway program was unfair to those who had actually saved their hard-earned dollars and purchased their plots, he made no apologies for "standing by the poor man in getting him a home that he could call his."[41] Nor was it just acreage out West that Johnson eyed. In 1864, two years after the Homestead Act passed, he advocated taking the plantation owners' land as well and distributing it to "free, industrious, and honest farmers," which again was Johnson's way of helping poor whites, whose opportunities, he felt, had been denied and whose chances had been thwarted by the enslaved and masters alike.[42] In fact, he reveled in the charge that he was "too much of the poor man's friend."[43] But even his core constituency, first impoverished under the old plantocracy and then treated as cannon fodder, became readily expendable when it seemed that the only way to keep blacks as labor without rights was to reinstate the leadership of the old Confederacy.

Johnson's rash of pardons had the desired effect. The new congressional delegations looked hauntingly like those from the Old South: CSA vice president Stephens and cabinet officers, as well as

ten Confederate generals, a number of colonels, and nearly sixty Confederate Congress representatives, were ready to be ensconced, once again, in the nation's capital.[44] The reigning leaders of the Confederacy, who had rightfully expected to be tried and hung as traitors, now were not only poised to sail back into power in the federal government but also, given Johnson's amnesty, allowed to regain control of their states and, as a consequence, of the millions of newly emancipated and landless black people there. As he welcomed one "niggers will catch hell" state after the next back into the Union with no mention whatsoever of black voting rights and, thus, no political protection, he effectively laid the groundwork for mass murder.[45]

One of the president's emissaries, Carl Schurz, recoiled as he traveled throughout the South and gathered reports of African American women who had been "scalped," had their "ears cut off," or had been thrown into a river and drowned amid chants for them to swim to the "damned Yankees." Young black boys and men were routinely stabbed, clubbed, and shot. Some were even "chained to a tree and burned to death." In what can only be described as a travelogue of death, as he went from county to county, state to state, he conveyed the sickening unbearable stench of decomposing black bodies hanging from limbs, rotting in ditches, and clogging the roadways.[46] White Southerners, it was obvious, had unleashed a reign of terror and anti-black violence that had reached "staggering proportions." Many urged the president to strengthen the federal presence in the South.[47] Johnson refused, choosing instead, to "preside over . . . this slow-motioned genocide."[48] The lack of a vigorous—or, for that matter, *any*—response only further encouraged white Southerners, who recognized that they now had a friend in the White House.[49] One former cabinet member in the Confederacy "later admitted that . . . the white South was so devastated and demoralized it would have accepted almost any of the North's terms. But . . . once Johnson 'held up before us the hope of

a white man's government,' it led '[us] to set aside negro suffrage' and to resist Northern plans to improve the condition of the freedmen."[50] Thus emboldened, Virginia's rebellion-tainted leaders planned to "accomplish . . . with votes what they have failed to accomplish with bayonets."[51]

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

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

had "the right and power to govern our population in our own way." And, as Louisiana emphasized, that meant "getting things back as near to slavery as possible."[55]

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

Mississippi's success in reinscribing slavery by another name was undeniable. Nine of the other former Confederate States quickly

copied the Black Codes, sometimes verbatim. These laws, despite their draconian nature, were not the work of extreme secessionists. Some of the South's most respected judges, attorneys, and planters crafted the Black Codes. From the cool marble halls of the statehouses, white opposition had done its job with the mere stroke of a pen. "If you call this Freedom," wrote one black veteran, "what do you call Slavery?"[58]

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

One Philadelphia newspaper, a hair more realistic, acknowledged the odiousness of the Black Codes. Still, the article continued, the codes were necessary. Perhaps the form they took was a touch too severe, but the Black Codes, it argued, were not about trying to reestablish slavery. The Southern states "just wanted to stop vagrancy and put an end to the undeniable evils of idleness and pauperism arising from the sudden emancipation of so many slaves." By compelling them to work, the argument went, this measure prevented

the newly freed from becoming a "burden upon society." What the paper failed to recognize was that black people's willingness to work had never been the problem. Having to work for free, under back-breaking conditions and the threat of the lash, was the real issue.

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

The bottom line was that black economic independence was anathema to a power structure that depended on cheap, exploitable, rightless labor and required black subordination. But instead of honing in on this fundamental reality, the Philadelphia newspaper simply bemoaned the unforeseen and unfortunate consequences of the Black Codes for whites, complaining that, since "planters refuse to pay wages at all" to blacks, due to the landowners' claims that "negroes are so lazy as not to be worth paying," there was a downward pressure on overall wages that left poor whites unable to find work that provided enough "to keep soul and body together." And yet, even when the constituency for whom Andrew Johnson swore he served got caught in the blowback of these ruthless laws, he did not lift a finger to stop it.[60]

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

Andrew Johnson could not have agreed more. His message to Congress in December 1865 had that same upbeat, triumphal

cadence: The war was over. The South was repentant. New governments had been formed. The federal government, he concluded, had done what it had set out to do and done it beautifully. He had heard some rumblings about voting and civil rights for the freedpeople, but any lingering questions about rights, despite the enforcement clause in the Thirteenth Amendment, Johnson felt, were matters for the states.[62]

This congratulatory, rose-colored vision of the State of the Union ignored the brutal conditions that greeted four million people by the war's end. Johnson dismissed the numerous reports of mutilated black bodies piled up like logs, did not hear the incessant crack of the whips tearing into black flesh, and found in the draconian Black Codes that reinstalled slavery by another name nothing but progress. How stunning, too, that such a prideful, stubborn man could swallow his dignity over and over again when the states he had just welcomed back into the fold defied even the very low standards he had set to rejoin the United States of America. South Carolina ratified the Thirteenth Amendment only after the state had attached a declaration with its own series of "if, then, but" clauses nullifying any federal right to enforce the anti-slavery provision. To make its point perfectly clear, the state also refused to renounce its Articles of Secession. Louisiana and Alabama attached their own addenda negating congressional authority over the status of slavery within their borders.[63] Florida held out against ratification until nearly the bitter end, December 28, 1865, and had to do it again in 1868; Texas held out even longer (1870). Mississippi, whose governor, a Confederate general pardoned three days *after* winning the gubernatorial election, just flat out refused to ratify the amendment.[64] Indeed, such was Mississippi's obstinacy that it delayed ratification of the Thirteenth Amendment until 2013.[65] But despite at least half the old Confederacy mocking and treating contemptuously his olive branch, Johnson was pleased with what he had done. Not only had the Union been preserved, but also the ratification of the

Thirteenth Amendment, no matter how halfhearted or tarnished, meant that the existence of chattel slavery would never threaten the sanctity of the nation again. As the president surveyed all that he had accomplished, he was satisfied. He simply could not fathom that Northern Republicans, concerned about the complete deprivation of rights for freedpeople, would criticize or try to undo what he had so painstakingly stitched together.[66]

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

If the Radical Republicans, led by Representative Thaddeus Stevens (R-PA) and Senator Charles Sumner (R-MA), sought for African Americans a sweeping agenda—land, citizenship, and the vote (and that is what made them "radical")—the majority of Congress was unwilling to go that far.[68] Moderate Republicans did believe, however, that Johnson had not gone far enough. At a bare minimum, citizenship needed to be fully acknowledged and

the Freedmen's Bureau, which by law was set to shut its doors in April 1866, had to continue setting up schools for the newly freed, because at the time of emancipation, just a little more than 3 percent of four million formerly enslaved were literate. Congress, therefore, passed both the Freedmen's Bureau Bill and the Civil Rights Act of 1866, which defined as citizens all persons born in the United States, except for Native Americans. The moderates believed they had stripped out the most objectionable clauses from the legislation—the right to vote and widespread land distribution—so that President Johnson could now easily sign both bills into law.[69]

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

This bill, he was convinced, was designed to set up black dependency on the federal government. And he was having none of it. Negroes, he insisted, should have the wherewithal to fend for themselves. The president, despite evidence to the contrary, concurred

with his advisers that "the current condition of a freedman was 'not so bad.'"

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

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

Even as he complained bitterly that Congress would not recognize the duly elected representatives from the eleven rebel states he had welcomed back into the Union, Johnson ignored the fact that seven of those states had either refused to ratify the Thirteenth Amendment or stated that they would do so only with clauses that negated any federal authority, and ten of them had instituted the Black Codes, which strongly suggested that slavery was alive and well in the Confederate South. Like Louisiana, those states proudly trumpeted the systematic exclusion of millions of African-descended people from the government.

Similarly, while the president supposedly fretted about government intrusion into the economy, he voiced no concern whatsoever

when the leaders of the Confederacy, whom he had just pardoned, used the power of the state, via the Black Codes, to derail the very market forces he touted as the cure for the post-slavery blues. Government intervention ensured that African Americans could not take their labor to the best employer; could not move "to another abode" for fear of being arrested on vagrancy charges and auctioned off; could not use their skills for anything but cleaning the plantation owners' houses, picking cotton, chopping sugarcane, or planting tobacco and rice. The laws of supply and demand, Johnson's alleged panacea, could not operate. His determination to ensure that this was "a white man's government" had undercut not only democracy but the basic tenets of capitalism as well.

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

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

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

The president's concerns about a proposed judicial system where freedpeople might be able to find some justice for the violence raining down on them proved a similar Janus-faced sophistry. Johnson insisted that the existing court structure was fair, equitable, and fully functioning. Southern courts, in fact, were "racist, biased, obstructionist, and oblivious to northern opinion. Southern judges and law enforcement officials . . . looked the other way when ex-rebels committed violent crimes against blacks and white Unionists. State courts forbade testimony by blacks, making crimes against African Americans nearly impossible to prove. Black veterans of the Union army were particular targets of unpunished violence," and the pile of corpses and dismembered bodies, whose perpetrators were walking around scot-free, showed that Johnson had misrepresented what Southern courts were in fact designed to do: provide legal cover for terror.[78] A second function came into

sharper focus with the ramping up of an expanded and aggressive penal system reconfigured to capitalize on the economic potential of the recently emancipated and newly imprisoned.[79] In effect, Southern courts transferred full control of black people from the plantation owner to a carceral state.[80] The instrument of re-enslavement was a brutal deployment of sheriffs, judges, and hard-labor punishment for black-only offenses such as carrying a firearm, making an insulting gesture, or stealing a pig. African Americans were then swept into the prison system to have their labor fill the coffers of the state and line the pockets of the plantation, mine, and lumber mill owners.[81]

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

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

the name of Scipio was put to death for teaching a slave child how to read and spell and the child was severely beaten to make him 'forget what he had learned.'"[83]

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

In fact, African Americans did not wait for Johnson's blessing, let alone for government support or a white benefactor. One Freedmen's Bureau official recorded, "Throughout the entire South . . . an effort is being made by the colored people to educate themselves." He identified "at least 500 schools" built, staffed, and run by black people. In Georgia, for example, by the fall of 1866, African Americans "financed entirely or in part 96 of the 123 day and evening schools." Harriet Beecher Stowe remarked, "They rushed not to the grog-shop but to the schoolroom—they cried for the spelling-book as bread, and pleaded for teachers as a necessity of life."[86]

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

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

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

Congress overrode both his vetoes and hoped that there might be some way to work with the president. But in the spring and summer of 1866, the South's descent into an orgy of anti-black violence signaled the final break between Johnson and the Republicans. In New Orleans, nearly fifty African Americans were slaughtered and more than a hundred injured for meeting to discuss voting. When one of the killers, who had just bludgeoned a black man to death, was warned that "he might be punished," he scoffed. "Oh, hell! Haven't you seen the papers?" he said. "Johnson is with us!"[92] In Memphis, there was another gory bloodbath, and another round of silence from the White House.[93] In Texas, from 1865 to 1868, nearly one thousand African Americans were lynched.[94]

A woman pleaded with President Johnson "to do something about the plight of the 'poor negro . . . their masters are so angry to

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

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

Johnson did everything in his power to stop constitutional recognition of black people's citizenship and voting rights, including convincing most of the Southern states not to ratify the Fourteenth Amendment and launching a breathtaking and ultimately disastrous political campaign to unseat Radical Republicans in Congress.[96] Nevertheless, despite Johnson's wild fulminations about the "Africanization" of the South and the tyranny of "negro domination," the Fourteenth Amendment was ratified on July 9, 1868, followed by the Fifteenth on February 3, 1870.[97] Congress had just created a legal structure to begin to atone for America's "original sin."

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

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

Yet, this same court threw tradition and strict reading out the window in the *Santa Clara* decision. California had changed its taxation laws to no longer allow corporations to deduct debt from the amount owed to the state or municipalities. The change applied only to businesses; people, under the new law, were not affected. The Southern Pacific Railroad refused to pay its new tax bill, arguing that its rights under the equal protection clause of the Fourteenth Amendment had been violated. In hearing the case, the court

became innovative and creative as it transformed corporations into "people" who could not have their Fourteenth Amendment rights trampled on by local communities.[101] So, while businesses were shielded, black Americans were most emphatically not.

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

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

the point, Waite reiterated, the "right to vote . . . comes from the states."[105]

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

But the rollback of rights was not over yet; next on the list were dignity and equality. In the *Civil Rights Cases* (1883), the justices ruled that the 1875 Force Act that banned discrimination in public accommodations was also unconstitutional because the Fourteenth Amendment could be enforced only by the states, not the federal government. Moreover, in a wicked one-two punch, the justices added that the Thirteenth Amendment's ban on "badges of servitude" did not extend to discrimination in public accommodations, such as in hotels, restaurants, and railcars.[108] U.S. Supreme Court

justice Joseph Bradley was exasperated with African Americans consistently seeking legal redress and laws to fend off the violence, state-sponsored discrimination, legalized terror, and the reimposition of "crypto-slavery" and a "netherworld of rightlessness" that had come to define their lives after the Civil War. He barked that "there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws."[109] Like Andrew Johnson, Bradley saw equal treatment for black people as favoritism.

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

a generation of irrefutable evidence of widespread racial discrimination in the aftermath of the Civil War, the court created the mythic "separate but equal" doctrine to confirm racial segregation as the law of the land. The court then followed up with a ruling in *Cumming v. Richmond County Board of Education* (1899) that even ignored *Plessy*'s separate but equal doctrine by declaring that financial exigency made it perfectly acceptable to shut down black schools while continuing to operate educational facilities for white children.[113]

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

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

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

From 1873, with the *Slaughterhouse Cases*, *Cruikshank*, *Plessy*, *Williams*, and others, the U.S. Supreme Court had systematically dismantled the Thirteenth, Fourteenth, and Fifteenth Amendments and rendered the Enforcement and Force Acts dead on arrival. For strict constructionists, the court willfully ignored congressional intent and the history behind the laws and amendments. At the onset of the twentieth century, in *Giles v. Harris* (1903), Justice Oliver Wendell Holmes wrote that "the federal courts had no power, either constitutional or practical, to remedy a statewide wrong, even if perpetrated by the state or its agents."[118]

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

So while the United States may have won the Civil War, and blacks may have tasted freedom, the white opposition that ruled

from the White House and the Supreme Court all the way down through every statehouse in the South meant that real change was infinitesimal at best. To quote one historian's paraphrase of Frederick Maitland: "The slave law of the South may have been dead, but it ruled us from the grave."[120]

Two

Derailing the Great Migration

It was 1918. The United States was in the midst of a global war "to make the world safe for democracy."[1] But in Georgia, it was anything but safe for black people. In the southern part of the state near Valdosta, a white plantation owner, Hampton Smith, had become notorious for his brutal treatment of black laborers on his farm. Because his standard employee management practices included beatings, theft of wages, and whippings, he had considerable difficulty hiring anyone to willingly work his land. With fields to plow and a crop to harvest, he turned to an old trusty labor supply. Drawing on the peonage system set up after the Civil War, the planter routinely went to the local jail, paid the fine of a black person, and then had the African American work on the plantation until the debt was paid. At least that was the way it was supposed to be. But Smith, although only thirty-one years old, was already a mean, hard man. He ruthlessly worked African Americans far past the point of any debt payoff and then refused to provide any compensation for the additional work. If challenged, he would pull out his whip.[2] In May 1918, he did that to the wrong black man.

After a dispute over work, Hampton Smith gave Sidney Johnson, an African American laborer whose thirty-dollar fine the plantation owner had paid, an unforgettable and unforgivable thrashing. Within a week after the beating, Johnson took out a rifle and put two bullets into the planter's chest. Smith died instantly. White retribution was swift, indiscriminate, and merciless. In a "five days lynching orgy,"

Five

How to Unelect a Black President

On November 4, 2008, the United States seemed to be crossing the racial Rubicon. For a brief moment, the mirage of hope hung in the air, mesmerizing those not just in the United States but also around the world. Barack Obama's historic presidential victory led an observer in Tehran to note, "The country that they called 'the great Satan,' [declaring] it the symbol of all kinds of tyranny, has enough respect for democratic values that [it has] allowed a black candidate to come this far and even become a president." And from Moscow: "The U.S., that is a country that is really majestic . . . I feel it is a country where everything is possible."[1] Nobel Peace Prize winner Desmond Tutu agreed. Obama's victory, he said, told "people of color that for them, the sky is the limit."[2] CHANGE HAS COME TO AMERICA blazed the headline in the *Philadelphia Inquirer*.[3]

Not everyone was ecstatic. As the Republican postmortems on the election poured in, it immediately became apparent that the voting patterns spelled trouble for the GOP. Obama had captured a significantly higher share of the white vote than John Kerry had managed to secure in the 2004 election. Moreover, 66 percent of Hispanics voted overwhelmingly for Barack Obama, not to mention 62 percent of Asians, 56 percent of women, 66 percent of voters under thirty years of age, and 95 percent of African Americans.[4] The last of these, in some ways, was to be expected. What wasn't anticipated, however, was that for the first

time in history, the black voter turnout rate nearly equaled that of whites.[5]

The only demographics John McCain could claim to have run away with were the elderly white and evangelical Christian vote.[6] And therein lay the problem; for those sectors of the American voting population are not growing. Republican South Carolina senator Lindsey Graham, taking stock of the nearly inevitable demographic apocalypse, put it best: "We're not generating enough angry white guys to stay in business for the long term."[7]

This dawning of demographic extinction was all the more troubling because the largest percentage of eligible voters in forty years had cast a ballot in the 2008 election.[8] It was not only a record turnout; it was one that delivered an 8.5 million vote differential in Obama's favor, with 15 million new voters overall. "It's a bad thing for Republicans when you drill down into all these states, and see lots of new voters, newcomers," groaned Rich Lowry, editor of the conservative *National Review*. "It's like, where did all the Republicans go? Did they move to Utah?"[9]

This was no idle question either, because the surge in voters came from all across the racial and ethnic ranks—blacks, Latinos, and Asians—of which only 8 percent identified as Republican.[10] While the number of whites who voted remained roughly the same as it had been in the 2004 election, two million more African Americans, two million additional Hispanics, and six hundred thousand more Asians cast their ballots in 2008.[11] Even more unsettling to the GOP was the youth and relative poverty of those who had now joined the ranks of voters. Those making less than fifteen thousand dollars a year nearly doubled their turnout to the polls, going from 18 percent in 2004 to 34 percent in 2008. And naturally these new voters had a policy agenda that favored a greater role for government in making education affordable and accessible, using the might of the federal government to institute a program to rebuild the nation's infrastructure, and raising the minimum wage to begin to put in

place elements that could increase the quality of life for millions of Americans.[12]

The ardent supporters of McCain were simply not, as census projections soon enough confirmed, on the demographic ascendant. As a consequence, they were on the verge of losing both their electoral clout and the ability to control key public offices that could maintain the status quo.[13] Meanwhile, first-time voters cast almost 69 percent of their ballots for Obama. While that reality could have—or more to the point *should* have—signaled an opportunity for the GOP to reexamine its platform, the sclerotic hardening of the "conservative" notions that moved the Republican Party from centrist right to right-wing made it increasingly difficult if not impossible to adapt the GOP's policies to address the overriding concerns of this wave of newly engaged voters.[14] One party official, while offering assurances that racism wasn't the driving motivation, admitted, "It's simply that the Republican Party gave up a long time ago ever believing that anything they did would get minorities to vote for them."[15] Trapped between a demographically declining support base and an ideological straitjacket that made the party not only unresponsive but also unpalatable to millions of Americans, the GOP reached for a tried and true weapon: disfranchisement.

Once it became clear that the voter turnout rate of blacks had nearly equaled that of whites, as Penda Hair of the progressive Advancement Project has noted, "Conservatives were looking at it and saying 'We've got to clamp things down.' They'd always tried to suppress the black vote, but it was then that they came up with new schemes."[16] Those efforts hid the anger and determination behind a legitimate-sounding, noteworthy concern: protecting the integrity of the ballot box from voter fraud. Still, Paul Weyrich, a conservative activist and the founder of the American Legislative Exchange Council (ALEC), was explicit early on: "I don't want everybody to vote," he said, noting that the GOP's "leverage in the elections

quite candidly goes up as the voting populace goes down."[17] But with fifteen million new voters already and with African Americans exercising their citizenship rights at rates virtually equal to whites, something had to be done. That is where ALEC stepped in to draft "model voter-ID legislation . . . that . . . popped up in very similar form in states like Pennsylvania and Texas and Wisconsin."[18] These laws require, among other things, particular types of identification that—properly and mercilessly applied—make it difficult for African Americans and others to vote.

Hans von Spakovsky, a former George W. Bush appointee to the Federal Election Commission and one of the primary catalysts behind the new intensified wave of voter suppression, actually took umbrage that anyone would call the nationwide efforts to crack down on supposed irregularities at the polls a "restoration of Jim Crow."[19] Just as African Americans' so-called genetically induced moral and intellectual failings provided the rationale for Jim Crow, the GOP created a similar series of hypotheses to rationalize voter suppression. The Southern Strategy's long-term efforts to link the Democratic Party with blacks and to make African American synonymous with crime, thus made tying Democrats to widespread fraud a simple, logical leap. "Corruption, election fraud, and Democrats," one man noted, "they went hand-in-hand-in-hand."[20]

Obama's victory, by this line of interpretation, was not the result of a brilliant strategy, that had already outmaneuvered the Clinton juggernaut by energizing the youth and the poor to believe that they had an actual stake in America, but rather the sordid outcome of a brazenly stolen election tied directly to all those new voters. Key to this charge was the Association of Community Organizations for Reform Now (ACORN), a community-based group that had launched extensive voter registration drives throughout the country. Even before the first vote was cast, McCain accused ACORN of "perpetrating one of the greatest frauds in voter history in this country, maybe destroying the fabric of democracy."[21] By the time

the election was over, as *Newsweek*'s Katie Connolly reported, "a 52% majority of GOP voters nationally [thought] that ACORN stole the presidential election for Barack Obama last year, with only 27% granting that he won it legitimately."[22]

ACORN was many things, but a well-oiled machine able to pull off nationwide voter fraud was not one of them. In this case, it was terribly sloppy, lacking either rigorous oversight or a check-and-balance system for those the organization had hired. ACORN had in its ranks several employees who, wanting a paycheck but not willing to do the hard work of registering voters, chose the path of least effort and faked voter registration cards. The law nonetheless requires that all cards be submitted to local election officials, which meant that even those obviously bogus ones could not be thrown in the trash. Hence, Mickey Mouse apparently wanted to vote, as did Jive Turkey. This debacle was tailor-made to fuel the narrative of widespread voter ID fraud. Stoking the flames further yet was Obama's previous work, years earlier, with an affiliate of ACORN.[23]

Oddly enough, ACORN had already been investigated extensively by the George W. Bush administration, which had pressured U.S. attorneys to find evidence of fraud. No matter how hard they tried, though, they simply couldn't. And when some of the attorneys in the Department of Justice refused to throw suspicion on Democratic candidates by filing half-baked or trumped-up charges of voter registration fraud, especially before an election, they were summarily fired.[24]

There have been proven instances of vote fraud in the past, but those cases involved election officials' wrongdoing or the manipulation of absentee ballots. The kind of voter registration fraud that seized the imagination of GOP activists, on the other hand, which is based on stealing someone's identity or creating a fake persona to cast a ballot, thus altering the results of an election, is in fact very rare. The convoluted scheme is not used because "it is an

exceedingly dumb strategy."[25] To have real impact would require an improbable conspiracy involving millions of people. Robert Brandon, president of the Fair Elections Legal Network, notes, "You can't steal an election one person at a time. You can by stuffing ballot boxes—but voter I.D.s won't stop that."[26]

Protecting the integrity of the ballot box, however, is not nor has it ever been the issue. Rather, the goal has been to intimidate and harass key populations to keep them away from the polls. It is a bit more sophisticated than in the days of Mississippi senator Theodore Bilbo's 1946 call to arms to get a rope and a match to keep blacks away from the voting booth, but the intent is the same.[27]

Over time, disfranchisement has become more subtle, more palatable, and more sophisticated. In 1962, while in Arizona, William Rehnquist, who was subsequently appointed by Nixon to the Supreme Court and, under Ronald Reagan, elevated to chief justice, had begun to perfect new methods of voter intimidation—elements of which gained widespread usage in the twenty-first century. First, Rehnquist's group of Republican stalwarts sent "do not forward" mail to residents in Democratic strongholds. Then, based on the faulty premise that returned cards meant the person was no longer in the district, on Election Day his troops questioned the legitimacy of the voter based on nothing more substantial than returned mail, and demanded that the mostly black and Hispanic population prove that they could read and write by interpreting portions of the Constitution.[28]

Obama's election sent similar efforts into overdrive. The pillorying of ACORN, in particular, allowed the fearful specter of voter fraud to be raised, leading to a bevy of "protect the ballot box" initiatives. In Wisconsin, for instance, a rigorous voter ID law was passed in the wake of charges of rampant fraud at the polls. But in a state with more than 3.4 million registered voters, the 10 to 12 people convicted of voter fraud each year were usually ex-felons, who simply sought to cast a ballot before their voting rights had been restored.[29] Even

the Bush campaign's concerted drive to find rampant voter fraud throughout the nation uncovered that out of the 197 million votes cast for federal candidates between 2002 and 2005, all of 26 convictions or guilty pleas were registered—roughly .00000013 percent of the tallied ballots.[30]

Each restriction and requirement crafted and pushed through Republican-dominated state legislatures and signed off by Republican governors was carefully aimed at the population of voters who had helped put a black man in the White House. The goal, as one Mitt Romney supporter expressed in 2012, was to "Put the White Back in the White House."[31] And those efforts turned poor whites, students, and the elderly into collateral damage that got caught in the blowback.

One of the most onerous if innocuous-sounding changes is the requirement for government-issued photo IDs in order to vote. In Texas, that makes more than one million student IDs ineligible while concealed weapons permits are valid. Missouri congressman Emanuel Cleaver could only say in disgust, "You have to be a very mean-spirited and ideologically warped person to believe that this is right and that this is fair." The Brennan Center for Justice estimates that as "many as 12 percent of eligible voters nationwide may not have government-issued photo ID," and that "percentage is likely even higher for students, seniors and people of color."[32] In fact, a joint report by the NAACP and the NAACP Legal Defense and Educational Fund emphasized the "alarming" impact of the law. The ID requirement would eliminate more than six million African American voters and nearly three million Latinos. And while that is roughly 25 percent of black and 16 percent of Latino voters, "only 8% of whites are without a current government-issued photo ID."[33]

Nor is the obvious solution of securing an ID that simple. Georgia's laws, for instance, are instructive about the economic impact of proving one's right to vote. The state requires three

separate categories of documentation to secure a government-issued photo ID. The first is proof of citizenship, which overwhelmingly requires either a birth certificate or a passport, but the cost of the latter (which for the working poor is roughly 10 percent of one month's take-home pay) puts that out of reach for many.[34] Up to 13 million American citizens do not have ready access to citizenship documents, the Brennan Center reports, and this phenomenon is highly correlated with minorities, the poor, and the elderly.[35]

Second, Georgia requires documentation of the prospective voter's social security number, which is either the card itself or a W-2, the latter of which requires a job. In 2011, black unemployment in Georgia was 16.4 percent. In the capital city of Atlanta, nearly one fourth of all African Americans were unemployed, compared with just 3.1 percent of whites.[36] Access to a W-2, then, bears strong and fairly obvious racial implications.

Finally, Georgia requires for proof of residence two addressed items of mail, generally, a bank statement and a utility bill. More than 20 percent of African Americans, as compared with 3 percent of whites, do not have a bank account.[37] Due to the changes in the economy and the need to pool limited resources, almost 6 percent of all families in the United States are in multigenerational households. African Americans, those younger than thirty-five years old, as well as Asians and Latinos, are overly represented in this type of living arrangement.[38] Regardless of the number of adults in a home, only one name appears on the utility bills, making it difficult for the others to prove they actually live there.

Wisconsin took another tack when Republican governor Scott Walker championed a bill requiring a government-issued photo ID to vote, and then proceeded to close the Department of Motor Vehicles in areas with Democratic voters while simultaneously extending the hours in Republican strongholds. And "this in a state in which half of blacks and Hispanics are estimated to lack a driver's license and a quarter of its DMV offices are open less than

one day per month." In Texas, there are no ID-issuing offices in fully a third of its counties.[39] Alabama, while enacting a voter ID law in 2011, subsequently shut down DMV offices in its Black Belt counties, the very ones that overwhelmingly voted for Obama in the 2012 election. Facing a national uproar after announcing the closures, Governor Robert Bentley backtracked, but ever so slightly. Alabama agreed to allow the DMV offices in the Black Belt counties to be open at least one day a month.[40]

The Republicans in Pennsylvania pushed through a rigorous voter ID law and then failed to follow through on a pledge to provide free IDs for those who couldn't afford them. Nor did Pennsylvania establish enough mobile units to get to residents, particularly those in rural areas. Issuing a stinging rebuke, state judge Bernard McGinley declared that since Pennsylvania required the IDs, it now needed to provide the means for the state's citizens to obtain what had essentially become the passport to the vote. The judge noted the scarcity of mobile units and the fact that many of the license offices were open only a few days a week, which had created lengthy wait times and virtual inaccessibility and, therefore, placed "an unreasonable burden on people trying to exercise their right to vote."[41]

In another ploy toward disfranchisement, efforts were made to eliminate or greatly curtail early voting, essential for those unable to leave work on a Tuesday to vote. This has created significant difficulties for people who have jobs where one must punch the clock, take no more than an hour for lunch, and travel miles away from where one resides, and where one's polling place is therefore located. On Election Day, moreover, the lines at the voting precincts in key neighborhoods have been notoriously long. Six- to twelve-hour waits in line were reported in the 2008 election, and, as a recent Brennan Center study found, predominately African American and Latino precincts experienced longer wait times because the government allocated fewer operable machines and staff to those polling places.[42]

Early voting had provided one important and demonstrably successful solution—and that was the problem.

Once Florida governor Rick Scott took office in 2011, he and a group of GOP consultants discerned the pathways African Americans used to exercise the right to vote and promptly set out to shut those routes down. In Atwater-esque language, Scott explained that this was about protecting the integrity of the ballot box and democracy by making it more difficult to commit "voter fraud." Scott not only slashed early voting from two weeks to eight days; he also eliminated the opportunity to vote the Sunday immediately before Election Day. This was a calculated hit. Statewide in 2008, blacks made up more than one third of those who voted on the preceding Sunday. And, in Palm Beach County, more than 60 percent of those voting early were African Americans, many of whom had boarded buses right after church to cast their ballots. Eliminating that pathway to the polls was high on the priority hit list, one Republican remarked: "I know that the cutting out of the Sunday before Election Day was one of their targets only because that's a big day when the black churches organize themselves," he said, giving lie to Scott's insistence that this was about eliminating "voter fraud."[43]

Another device in the disfranchisement tool kit was a tactic that Rehnquist had used years earlier in Arizona: sending out mass mailings to minority neighborhoods, waiting for the "return to sender" cards to come back, then checking those names against public voting rolls in order to demand a purge of those names. Florida has been one of the most aggressive states to adopt this procedure, using records from the Department of Motor Vehicles to identify and scrub 180,000 names from the voter rolls. More important, it began this purge just months before the upcoming 2012 presidential election, limiting the opportunity for individuals to verify the reliability of the redacted list. Voters showed up at the polls only to find that their names were nowhere to be found. They had been

disfranchised. Indeed, after the election, Florida's secretary of state identified only 85 names (out of the original 180,000) that should have been removed from the list.[44]

Such voter-roll purges were fully supported by the updated version of Rehnquist's Army of Challengers. The modern incarnation, True the Vote, was founded in Texas—born of the Tea Party—and defines itself as a citizen-based group committed to "free and fair elections for all Americans."[45] Using a flawed database and even Facebook, True the Vote members pore over public lists of registered voters, identify those whose names or addresses don't match up perfectly with their own records, and then set out to challenge those marked on their list as frauds to cast a ballot. They often target the multigenerational households that are more common in African American, Hispanic, and Asian families, arguing that an address with a number of adults who have registered to vote has to be bogus. True the Vote poll watchers have been conspicuously present in black precincts on Election Day, taking notes, ruffling feathers, challenging voters, clogging the lines, causing delays, frustrating voters who then leave without casting a ballot, ignoring warnings from election officials, and looking for any evidence of supposed ACORN-like fraud.[46]

Barack Obama's election was a catalyst for a level of voter suppression activities that had not been seen so clearly or disturbingly in decades. Nowhere was this more apparent than in the Supreme Court's 2013 gutting of the Voting Rights Act. The case began in 2008. Shelby County, Alabama commissioners, though required by Section 5 preclearance of the VRA to receive approval from the U.S. Department of Justice before making any changes in election procedures, voting qualifications, or district boundaries, annexed several subdivisions to the city of Calera, and then, in direct violation of the VRA, redrew the district boundaries of the lone black

councilman, Ernest Montgomery, reducing the percentage of African Americans in his precinct from 69 to 29 percent. He lost the election. Attorneys from the NAACP Legal Defense Fund alerted the Department of Justice, which then required Shelby County to hold another election using the original district boundaries. The commissioners balked. "Federal oversight was no longer needed," they asserted. "We've made progress."[47]

In 2010, Shelby County filed suit in federal district court, charging that Section 5 of the Voting Rights Act was unconstitutional because Congress did not have the authority to reauthorize the act in 2006. The district court disagreed, as did the U.S. Court of Appeals in 2011. The judges were unequivocal:

> *Congress drew reasonable conclusions from the extensive evidence it gathered and acted pursuant to the Fourteenth and Fifteenth Amendments, which entrust Congress with ensuring that the right to vote—surely among the most important guarantees of political liberty in the Constitution—is not abridged on account of race. In this context, we owe much deference to the considered judgment of the People's elected representatives.*[48]

The U.S. Supreme Court looked at Shelby County's clear violation of the law and, in a 5–4 decision penned by Chief Justice John Roberts, came down squarely on the side of the commissioners. In *Shelby County v. Holder* (2013), Roberts and four other justices treated the rationale for the Voting Rights Act as now obsolete. They conceded the past terror and the pernicious laws that had resulted in millions of African Americans being disfranchised. But it was a new day in the South, Roberts wrote confidently. "Largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African Americans attained political office in record numbers." Although that success should have led the court

to conclude that, without the protections of the VRA, those changes could easily be erased, that success instead led Roberts and four of his colleagues, including the lone black justice on the court, Clarence Thomas, to veer in the opposite direction, asserting that because the law has worked so well, and because other states aren't held to the same scrutiny, the act, as reauthorized by Congress in 2006, was out of sync with modern times. With that, the justices kept Section 5 but declared unconstitutional Section 4 of the act, which provides the conditions under which the Department of Justice may place a jurisdiction under the oversight stipulated by the statute.[49]

How the court arrived at that decision is a testament to twisted facts and ignored evidence. Roberts, for example, contended that the VRA placed burdens on jurisdictions because of past misdeeds that could not be justified by "current needs." The so-called burdens he alluded to, however, were borne only by those jurisdictions with a long, well-documented history of discrimination and a systematic pattern, after the initial passage of the Voting Rights Act in 1965, of trying to craft laws that violated the basic right to vote for all citizens. Locales that required Department of Justice scrutiny had a nearly fifty-year history after the VRA of continued attempts to discriminate. In fact, the act contains a "bail out" provision, wherein the federal government no longer needs to monitor what a jurisdiction does; indeed, the bar to achieve "bail out" status is not all that high, requiring a jurisdiction to abide by the law for an appreciable length of time, following which the extra scrutiny of the Voting Rights Act no longer applies. Numerous counties in Virginia, as well as North Carolina's Wake County, Georgia's Sandy Springs, Texas's North Austin, and Alabama's Pinson, having met the standard, have been thus "bailed out." The fact that the majority of other locales in the old Confederacy, in the heart of what is now GOP country, have not says more about the tenuousness of the right to vote than it does about the rigors of the Voting Rights Act.[50]

Moreover, the court's depiction of the Voting Rights Act as unduly discriminatory against the South and static is wrong on both counts. First, over the years the Department of Justice has had to "bail in" other districts throughout the United States because of racially discriminatory laws and policies that have blocked equal access to the ballot box. This includes eight counties in Arizona, one in Idaho, four jurisdictions in Alaska, two in California, three counties in New York, and one in Wyoming, as well as towns in Connecticut, Massachusetts, Maine, and New Hampshire.[51] Discrimination has never been just a Southern phenomenon, and the VRA has recognized that. In short, the vigorous use of bail-in and bail-out provisions utterly undercut Roberts's contention that the law is an ancient artifact that somehow does not address "current needs."

Moreover, the court's overriding concern that the law is somehow anti-South, while sounding strangely similar to John Mitchell's argument in 1970, willfully overlooks the region's continuing attempts to silence black voters. Discrimination did not stop in 1965, nor in 1975, nor in 2005. Since 2011, nine out of the twelve states of the old Confederacy, according to the NAACP, have adopted or proposed two or more requirements to tighten access to the polls, such as placing restrictions on voter registration drives and requiring a government-issued photo ID to vote.[52] The only thing keeping the wolves at bay during that time was the Voting Rights Act's preclearance provision. The Supreme Court's ruling in *Shelby County v. Holder*, however, turned the dogs loose.

Immediately following the ruling, Arizona, Arkansas, Florida, Iowa, Kansas, Mississippi, North Carolina, Texas, and Virginia all passed a compendium of voter suppression laws. By the following year, right before the 2014 midterm elections, thirteen additional states had passed voter restriction statutes. All were under the guise of protecting the "integrity" of the ballot box, but all had the intent of limiting and frustrating voting by African Americans and, now, Latinos too.[53] The only recourse available was to take these states to

court and demonstrate the discriminatory intent and effect of their electoral policies. This is exactly how Richard Nixon and his attorney general had hoped to gut the VRA in 1970. The long, litigious delays meant that, unlike the days of a robust and fully functioning Voting Rights Act, which prevented discrimination before it could do damage, the courts would now come in only after the fact.

Texas is a case in point. Almost the moment *Shelby County v. Holder* was announced, the Republican legislature put through a highly restrictive voter ID law, S.B. 14. A phalanx of civil rights organizations, including the NAACP and the League of United Latin American Citizens, minority voters, and Mexican American legislative and Hispanic judges associations, immediately sued the state of Texas. During the two-week trial in the fall of 2014, the attorney general of Texas, Greg Abbott, argued that the law was necessary to stop and prevent rampant voter-identification fraud. Yet, out of ten million votes, he could produce only two documented cases of voter impersonation. On the other hand, it became clear that nearly six hundred thousand Texans, mainly poor, black, and Hispanic, didn't have the newly required IDs and often faced financial and bureaucratic obstacles in obtaining them. Thus, in September 2014, in a stinging dressing-down of the state, district court judge Nelva Gonzales Ramos ruled that Texas's voter-ID law "creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African-Americans, and was imposed with an unconstitutional discriminatory purpose." Texas, she emphasized, had levied "an unconstitutional poll tax" on its citizens.[54]

Ramos's ruling, which declared that Texas had deliberately created discriminatory voting requirements, was a trip wire to reinstate the Voting Rights Act's Section 5 preclearance statute in Texas. The state, therefore, intended to fight the decision. The first order of business, though, was to seek immediately a judicial delay to allow the voter ID law to remain in place during the upcoming

midterm election. Chaos would reign at the polls, argued Texas attorney general Abbott before the Fifth Circuit Court of Appeals, were the law changed this close to an election. He also assured the court that keeping the voter ID law in place would not "substantially injure" the plaintiffs.[55]

On October 14, 2014, the Fifth Circuit judges agreed and granted Texas's request to allow a deliberately discriminatory law to operate during the all-important midterm election. As the judges saw it, "This is not a run-of-the-mill case" and Ramos's ruling "substantially disturbs the election process of the State of Texas just nine days before early voting begins. Thus, the value of preserving the status quo here is much higher than in most other contexts."[56]

The U.S. Department of Justice, civil rights groups, and individual voters then joined together and raced to the U.S. Supreme Court, seeking to overturn the Fifth Circuit's ruling. While the U.S. Supreme Court, led by Justice Antonin Scalia, ruled in favor of the state without any comment on the merits of S.B. 14, Justice Ruth Bader Ginsburg's dissent was incisive, tearing away at the supposed chaos that might occur in the election if the discredited voter-ID law was suddenly jettisoned. There "is little risk," she wrote, of disrupting the election process. All Texas needed to do was "reinstate the voter identification process it employed for ten years (from 2003 to 2013) and in five federal general elections." After all, she observed, the new requirements for voter ID had only been used in three state elections where the voter turnout ranged from 1.48 percent to 9.98 percent. While those Texas primaries were relatively low stakes, Ginsburg noted, the November 2014 election "would be the very first federal general election conducted" under the new voter-ID regime. And that was the problem. The Supreme Court, she wrote, could not allow a "purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters" to be used in a federal election. But that is precisely what the U.S. Supreme Court did.[57]

After the election, the case went back to the Fifth Circuit Court of Appeals, as the U.S. Department of Justice, civil rights groups, and a number of voters sought to invalidate S.B. 14 once and for all. In August 2015, the federal appeals court panel's deliberations focused on whether the legislature had actually intended to create a statute so blatantly discriminatory. The question of intent was central in determining whether Texas would have to undergo Section 5 preclearance scrutiny again. In a decision that fully satisfied neither of the parties, the panel of federal judges ruled that the Texas legislature had not set out, in fact, to write a law that discriminated so clearly against Hispanics and African Americans. However, the jurists continued, S.B. 14, the state's voter ID law, did violate what was left of the Voting Rights Act.[58]

Confronted with being chastised for massive disfranchisement, Greg Abbott, the newly elected governor and former attorney general, continued the fiction that this law was about the sanctity of the ballot box. "Texas will continue to fight for its voter ID requirement to ensure the integrity of elections in the Lone Star State," he declared. Attorney General Ken Paxton, for his part, defiantly stated that the ruling would not undermine the "fundamental question of Texas' right to protect the integrity of our elections," adding that "our state's common-sense voter ID law remains in effect." Despite all this bluster about the "integrity of elections," however, there wasn't any. It was clear that between Judge Ramos's decision and the Fifth Circuit's ruling, as one civil rights advocate noted, "we've now gone through a federal election with this discriminatory voting law in place."[59]

In addition to blocking access to the polls, the GOP's strategy is to make the very function of government so distasteful and haphazard that only the most diehard idealists or craven partisans would even bother to vote. Congressional Tea Party members have bottled up legislation, confirmation hearings, and deliberations on pressing

issues such as the economy—all to demonstrate how government does not and cannot function.[60] Casting Obama as uncompromising and irrational, a Republican Congress shut down the federal government at a cost to the nation of $24 billion.[61] They then blamed the president.[62] Obama, one pundit declared, "is betting that the Republicans will have to fold under the pressure that he creates. He is betting that they have picked the wrong issue, and that he will win by holding his breath. Understand the terms of the president's bet: Americans lose until he wins."[63] These 'public servants' seemed not to care what damage they did—even to their own reputations. Indeed, that was just the point: Government—least of all under a black president—just does not function. As public approval of Congress plummeted to the single digits—indeed, one survey found that "Congress is less popular than hemorrhoids, jury duty and toenail fungus"—the result was that in the 2014 midterm elections, the United States had the lowest voter turnout since 1942.[64] So many of those who had been mobilized and energized in 2008 were now disillusioned, demoralized, and, in many cases, disfranchised, and most simply stayed home.

The vitriol heaped on Obama was simply unprecedented—not least given the sheer scale of challenges he found himself confronting, and the measurable success he achieved in doing so. Obama came to office with the nation perched on the edge of a financial abyss as foreclosures and the subprime mortgage crisis consumed twenty-two trillion dollars in net wealth; the nation engaged in two endless, futile wars that had already caused thousands of American deaths (let alone the hundreds of thousands of Iraqi and Afghani ones), and even more injuries, and were running up a four- to six-trillion-dollar price tag; and the nation having 16 percent of its population lacking health insurance.[65] Obama's centrist solutions and utter lack of radicalism in the face of a recalcitrant and obstructionist Congress should have made him a hero to traditional Republicans. But just the opposite happened; by the end

of his first term, the president had an 85.7 percent disapproval rating among the GOP.[66] One progressive wrote, "You hate Obama with a passion, despite the fact that he is a tax cutting, deficit reducing war President who undermines civil rights and delivers corporate friendly watered down reforms that benefit special interests just like a Republican. You call him a Kenyan. You call him a socialist. You dance with your hatred, singing it proudly in the rain like it was a 1950's musical."[67]

That hatred started early. When Obama was just a candidate, the racially motivated threats to his life led to Secret Service protection well before he was even a front-runner for the nomination.[68] After he became the Democratic nominee, "there was a sharp and very disturbing increase in threats to Obama in September and early October, at the same time that the crowds at [GOP vice presidential candidate Sarah] Palin rallies became more frenzied." The heated, virulent rhetoric led Michelle Obama to ask, "Why would they try to make people hate us?"[69]

In Obama's first year in office alone, there was a 400 percent increase in death threats, as compared to those received by one of the least popular presidents in American history, George W. Bush.[70] Facebook eventually shut down a page where hundreds answered yes to the question "Should Obama be killed?"[71] The president's Twitter account was inundated with death threats such as "Kill yourself you tree swinging nigger" and "POTUS you can count on me waiting for you in the parking lot."[72]

Nor was it just the "crazies." Respectable elements in American society actively tilled the hate-filled ground, lending an aura of authority to this campaign of terror. During the 2008 campaign, John McCain's strategists deliberately demonized not just Obama's policies but also the man himself, who mystically morphed into this Muslim, black nationalist, socialist, foreign, Arab, Kenyan, un-American immigrant monstrosity straight out of *The Manchurian Candidate*.[73] So vilified was Obama that the very office

of the president ensured no respect. Breaking every rule of decorum and receiving millions of kudos for doing so, South Carolina congressman Joe Wilson shouted at Obama, "You lie!" during a 2009 joint session of Congress.[74] In another unceremonious and unprecedented slap in the face, Speaker of the House John Boehner (R-OH) invited Israeli prime minister Benjamin Netanyahu, who has had a contentious relationship with the president, to address Congress but didn't inform the White House until hours before the speech. Boehner admitted "keeping President Obama in the dark": "I frankly didn't want them [the Obama administration/White House] getting in the way and quashing what I thought was a real opportunity," he explained.[75]

Somehow many have convinced themselves that the man who pulled the United States back into some semblance of financial health, reduced unemployment to its lowest level in decades, secured health insurance for millions of citizens, ended one of our recent, all-too-intractable wars in the Middle East, reduced the staggering deficit he inherited from George W. Bush, and masterminded the takedown of Osama bin Laden actually hates America.[76] One woman noted that there was a billboard on the interstate near her town that read, "The U.S. Seals took out one threat to America, let's vote out the other in November."[77] Former New York mayor Rudy Giuliani told an audience, "I do not believe, and I know this is a horrible thing to say, but I do not believe that the president loves America . . . He wasn't brought up the way you were brought up and I was brought up through the love of this country."[78] Similarly, John Sununu, the former New Hampshire governor and an ally of Obama's 2012 presidential opponent, Mitt Romney, declared that he wished that "this president would learn to be an American."[79]

The hatred of Obama even seeped into those sworn to serve and protect. One white Florida police chief joked, "At first, I felt a swell of pride and patriotism while Barack Obama took his oath of office.

However, all that pride quickly vanished as I later watched 21 Marines, in full dress uniform with rifles, fire a 21-gun salute to the President. It was then that I realized how far America's military had deteriorated. Every damn one of them missed the bastard."[80] One New Hampshire police commissioner was observed sitting in the local diner glaring at the TV as he kept calling Obama a "fucking nigger."[81] A dispatcher in Ohio proudly sent e-mails that Air Force One's new call letters were NI66ER.[82] And in response to a friend's text that "all niggers must fucking hang," a San Francisco police officer replied, "Ask my 6 year old what he thinks about Obama."[83] Then there's Ferguson, Missouri, where the second in command of the police force exchanged a series of e-mails with his lieutenant and a court official in which one "depicted Barack Obama as a chimpanzee, another doubted his ability as a black man to hold a job for four years, while a third labeled a photograph of a black tribal gathering 'Michelle Obama's high school reunion.'"[84]

Jelani Cobb wrote poignantly about the "paradox of progress."[85] Sadly, the ascent of a black man to the presidency of the United States did not, despite all the talk of hope and a post-racial society, signal progress. Instead, it has led to a situation, not so unlike the era of Jim Crow, where a sense of physical vulnerability is shared across classes in the black community.[86]

A woman driving to her new job at a Texas college is pulled over for not using a turn signal, jailed, and then found dead in her cell.[87] A former college football player is injured in a car accident, seeks help, and is shot dead by the police.[88] A high school boy goes out of his house to purchase Skittles and iced tea, only to be stalked through the neighborhood by a man with a criminal record who is carrying a loaded weapon. The unarmed child ends up dead, while the grown man is acquitted.[89] A twelve-year-old is playing in the park with a toy gun; police kill him within two seconds of their arrival.[90] A man merely makes eye contact with a police officer, and by the time he arrives at the jail, is nearly dead, neck broken.[91] A twenty-two-year-old woman is out with some friends when an off-duty police officer, thinking he sees something suspicious, fires into the crowd. The bullet slams into her skull and she dies. He is later acquitted.[92]

Even where the wound is not fatal, it is grievous. An endowed professor at Harvard is arrested for being in his own house.[93] New York attorney and author Lawrence Otis Graham thought that teaching his children all the rules of respectability—dress, clothes, hair, behavior in public places—and showering them with all the education, vacations, and stable home life that money could afford would provide protection. He was wrong. His son's routine walk to class at a boarding school in New England became something much more as a carload of whites drove by and sliced through the child with the epithet "nigger" as if it were a machete.[94]

Black respectability or "appropriate" behavior doesn't seem to matter. If anything, black achievement, black aspirations, and black success are construed as direct threats. Obama's presidency made that clear. Aspirations and the achievement of these aspirations provide no protection. Not even to the God-fearing.

On June 17, 2015, South Carolinian Dylann Roof, a white, unemployed twenty-one-year-old high school dropout, was on a mission to "take his country back." Ever since George Zimmerman had walked out of the courthouse a free man after killing Trayvon Martin, and a racially polarized nation debated the verdict, Roof had looked to understand the history of America. Trolling through the Internet, he stumbled across the Council of Conservative Citizens (CCC), the progeny of the 1950s White Citizens' Council that had terrorized black people, closed schools, and worked hand in hand with state governments to defy federal civil rights laws. Its intentions on the web were cleverly masked, skewing the facts, rewriting history, and draped in the flag to lend an aura of authority and respectability.[95]

The White Citizens' Council had tapered off during the late 1950s, but it had a rebirth in the 1980s and, in its new incarnation,

became one of the go-to destinations for ambitious Republicans. The CCC's core values center on a Christianity that justifies slavery, embraces racially homogenous societies, and emphasizes blacks as a "retrograde species of humanity." But despite the group's avowed racist belief system, in the mid to late 1990s, as the Southern Poverty Law Center reports, "the group boasted of having 34 members who were in the Mississippi legislature and had powerful Republican Party allies, including then-Senate Majority Leader Trent Lott of Mississippi." By 2004, Mississippi governor Haley Barbour, the chair of the Republican National Committee, and thirty-seven other powerful politicians had all attended CCC events in the twenty-first century. In 2013, it was discovered that Roan Garcia-Quintana, a Tea Party stalwart on South Carolina governor Nikki Haley's reelection steering committee, was a CCC board member. Moreover, the Council of Conservative Citizens' webmaster, Kyle Rogers, was a member of the GOP executive committee in Dorchester County, South Carolina, as recently as 2013. In addition, the Council of Conservative Citizens' chair, Earl Holt III, gave "$65,000 to Republican campaign funds in recent years," including donations to the 2016 presidential campaigns of Rand Paul (R-KY), Rick Santorum (R-PA), and Ted Cruz (R-TX).[96]

The CCC, then, enjoyed precisely the cachet of respectability that racism requires to achieve its own goals within American society. And its website of hatred and lies provided the self-serving education Dylann Roof so desperately craved. He drank in the poison of its message, got into his car, drove to Charleston, entered Emanuel AME Church, and landed in a Bible study with a group of African Americans who were the very model of respectability. Roof prayed with them. Read the Bible with them. Thought they were "so nice." Then he shot them dead, leaving just one woman alive so that she could tell the world what he had done and why.[97]

"You're taking over our country," he said, and he knew this to be true.[98]

Epilogue

Imagine

Not even a full month after Dylann Roof gunned down nine African Americans at Emanuel AME Church in Charleston, South Carolina, Republican presidential front-runner Donald Trump fired up his "silent majority" audience of thousands in July 2015 with a macabre promise: "Don't worry, we'll take our country back."[1]

It's time instead that we take our country forward into the future, a better future.

More than a century and a half of anger and fear have undermined American democracy, trampled on the Constitution, and treated some citizens as chattel and others as collateral damage.

This didn't have to be. The Land of Opportunity did not have to be the Land of Missed Opportunities. We, as a nation, have a choice. We've always had those choices, but instead of seizing the moment and moving forward, we have been diverted by the rage and the fear that have kept us spiraling in recurring themes of racism, discrimination, disfranchisement, illiteracy, and a thoroughly inequitable criminal justice system.

It is time to defuse the power of white rage. It is time to move into that future. It is a future where the right to vote is unfettered by discriminatory restrictions that prevent millions of American citizens from having any say in their own government. A poll tax in 1942 that led to only 3 percent of the voting-age population in seven Southern states choosing elected officials was never a democracy. And neither, in this decade, is a voter turnout of 1.48 percent in

Texas's statewide election. Moreover, the millions of dollars that Republican governors and legislators have spent on new voter suppression laws—purportedly to stop a voter fraud problem that never existed—while gutting health care, mental health, and education funding in already strained state budgets, suggests that the cost of subverting democracy extends far beyond the ballot box.[2]

The future is one that invests in our children by making access to good schools the norm, not the exception, and certainly not dependent on zip code. We know the consequences of dysfunctional school systems. We see the wasted lives, just as clearly as Eisenhower and Congressman Carl Elliott saw them during the Sputnik crisis. At that time, the political leaders chose to look away, to avert their eyes, as if leaving millions of children in segregated, decrepit schools did not undermine the hopes of America's smallest citizens while also undercutting the strength of the nation as a whole. We can choose not to listen to the rage and, instead, craft a stronger, more viable future for this nation. We can ask tough questions such as: Why use property taxes as the basis for funding schools when that method rewards discriminatory public policy and perpetuates the inequalities that undermine our society?

The future is one that takes seriously a justice system whose enormous powers are actually used to serve and protect. The misuse is storied—from the convict-lease labor system, to one that allowed known murderers to walk around scot-free, to one that is now employed to undercut the gains of the Civil Rights Movement.[3] A program that stops and frisks predominantly those who are the least likely to have illegal contraband is not law enforcement.[4] A war on drugs that uses race and ethnicity as the litmus test for crime is not justice.[5] Millions of black citizens recognize this and, therefore, question the very legitimacy of this key pillar in American democracy.[6] Meanwhile, state budgets have cracked under the strain of bloated, unsustainable prison systems.[7] Mayors worry that their cities will ignite when yet another black person, who is more likely than not unarmed, is killed by police.[8] The costs of the continued misuse of the criminal justice system are more than the United States can bear—morally, politically, and financially.

It is time to rethink America.

Imagine if Reconstruction had actually honored the citizenship of four million freedpeople—provided the education, political autonomy, and economic wherewithal warranted by their and their ancestors' hundreds of years of free labor. If, instead of continually re-fighting the Civil War, we had actually moved on to rebuilding a strong, viable South, a South where poor whites, too—for they had been left out as well—could gain access to proper education.

Imagine the educational prowess our population might now boast had *Brown* actually been implemented. What a very different nation we would be if all the enormous legal and political efforts that went into subverting and undermining the right to education had actually been used to uphold and ensure that right. If all those hundreds upon hundreds of millions of federal dollars poured into science education had actually rained down on those hungry for education, regardless of race, ethnicity, or income. Think about what a different national conversation we might be having, even as the economy turns ever more surely to knowledge-based, rather than watching our share of the world's scientists and engineers dwindle.

Imagine if the Civil Rights Movement had really resulted in Martin Luther King's "Beloved Community," instead of in a society that, to this day, willfully celebrates the very presidential administration that launched a war on drugs against its own people, who were neither mobilized nor addicted to begin with—a war on drugs that was manufactured out of whole cloth for devious and self-serving ends. Think about how different our cities and our rural areas would be without the scourge of drugs that has decimated families and communities. What if all the billions of dollars that have been diverted into militarizing police for a phony war and

building prison after prison had been devoted instead to education, to housing, to health care?

Imagine if, instead of launching into spurious attacks about his citizenship and filling the blogosphere with racist simian depictions, the United States had been able to harness the awe-inspiring symbolism of our first black president, which had already led an Iranian and a Russian, among others, to see something in the spirit of America that surpassed even its material wealth.

We shouldn't have to imagine.

Full voting rights for American citizens, funding and additional resources for quality schools, and policing and court systems in which racial bias is not sanctioned by law—all these are well within our grasp. Visionaries, activists, judges, and politicians before us saw what America could be and fought hard for that kind of nation. This is the moment now when all of us—black, white, Latino, Native American, Asian American—must step out of the shadow of white rage, deny its power, understand its unseemly goals, and refuse to be seduced by its buzzwords, dog whistles, and sophistry. This is when we choose a different future.

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