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**MISSISSIPPI EXPECTATIONS AND
FEDERAL BAYONETS:
THE BLACK CODE AND ITS AFTERMATH**

BY

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Preface

I undertook this project in the fall semester of 1989 with the hope of learning more about the era of Presidential Reconstruction. I was confused about the actions of President Johnson and the ex-Confederate states from Lee's surrender in April to the convening of the thirty-ninth Congress in December 1865. Now, nine months later, I am still somewhat confused, but at least I have stepped into the shoes of white Southerners and can begin to sympathize with their situation. I have also learned a great deal about the United States of America in 1865.

I chose Mississippi as a representative of the Southern states because its legislature passed the first of the infamous Black Codes. It was also considered one of the most severe. In addition, antebellum Mississippi produced the most cotton in the Union, which meant two things: One, Mississippi was the state with the most slaves; and two, Mississippi society would probably be affected most by the postwar situation. Mississippi was also the home of the President of the Confederacy, Jefferson Davis. All these factors contributed to my decision to study Mississippi during the time of Presidential Reconstruction.

Many people have encouraged and assisted me throughout this endeavor. I would like to thank the following individuals: Mrs. Mary Spence, the undergraduate History advisor, for suggesting that I research and write a thesis in my senior year; my friends who constantly checked on my progress and voiced their support, especially John Heintz, Tom McGrath, and David Patrick Marti; and Nicole Mac Laughlin, who not only volunteered to read various parts of the manuscript and offered valuable insights, but also helped me through the many times when I felt that I would never finish this project.

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Chapter One: The Aftermath of War

As Whitelaw Reid surveyed the former plantation of Jefferson Davis in June of 1865, he witnessed the dramatic and overwhelming consequences wrought by the Civil War. Travelling through the defeated Confederacy in an attempt to assess the conditions, attitudes, and opportunities for Northern investment in the war-torn Southern states, the Northern journalist saw recently freed runaway slaves tilling the ground "on their own account," and black Union soldiers standing guard. Inside the Confederate president's plundered mansion, dedicated Northern schoolteachers reported that the sons and daughters of the freedmen were learning as quickly as white children. In another reference to the Davis plantation, the *Vicksburg Journal* declared:

The very place where days and nights had been spent in devising means for the overthrow of the government and the rivetting firmer the fetters of the slave, was taken possession of by that strong, firm government, and men there first stood up in the manhood that freedom alone can give.

This serene, optimistic scene, however, was not as utopian as it initially appeared. If not for the presence of the Union soldiers, Reid noted, white Mississippians living nearby would have beaten the freedmen and destroyed the school. In fact, the situation at the Davis plantation, represented the virtual antithesis of antebellum Mississippi economy and society.¹

¹Whitelaw Reid, *After the War: a Southern Tour* (Cincinnati, 1866), 280-84; *Vicksburg Journal*, Aug. 3, 1865, quoted in *New York Times*, Aug. 22, 1865.

In the spring of 1865, Mississippi was a defeated state in every aspect. Not only had its citizens lost a four-year conflict to preserve their unique lifestyle, but their cities and farms had been destroyed, their labor supply had been dissolved, and economic stability had been replaced by poverty and disease. As a consequence, bands of thieves were roving the countryside in search of plunder. To most Mississippians, the cost of secession had been high indeed.

The physical destruction was phenomenal, and towns and villages along lines of communication suffered extensive, and often irreparable, damage. When General Sherman's Union forces blazed through Mississippi in early 1864, they razed nearly everything from Vicksburg to Meridian. While surveying the damage inflicted upon one town, Union officers noticed one gentleman trying to get someone to sign an affidavit that a town had actually existed before the invasion. In June of 1865, a *New York Times* correspondent described Jackson, Mississippi's capital city:

Once a beautiful city, it is now a mass of ruins. Piles of brick and mortar cover the once famous retreats of wealth and fashion. Numerous columns, shattered and charred, have suggested for the name of the place "chimneyville."²

In addition to the destruction of businesses, hotels, and restaurants, transportation in Mississippi was at a standstill. Not only were the railroad companies deep in debt, but they had also lost over ninety percent of their engines and cars, mostly due to an 1863 raid by Union Brigadier General Benjamin J. Grierson, whom Mississippians named the "railroad wrecker."

²William C. Harris, *Presidential Reconstruction in Mississippi* (Baton Rouge, 1967), 18-19.

By 1865, the only trains operating were controlled by the federal army. The lack of transportation nullified opportunities for merchants to revive former commercial activities. The editor of the *Natchez Democrat* sadly admitted, "With no means to recommence life now, with credit destroyed, and defrauded of their old debts, they must stand aside and let Northern men and Northern capital come in and do the business of the country."³

But the two classes in Mississippi most affected by the Civil War were the planters and the former slaves. In antebellum days, the planters occupied the top echelon of Mississippi society. When their slaves were freed, the planters lost not only an efficient labor force, but also valuable collateral for credit. As a result, they were forced to pay incredible interest rates on loans, and many quickly found themselves in debt. In addition, when Union forces had invaded Mississippi in 1863, many planters had abandoned their property. After the war, they returned to their farms, only to find that the federal military had leased their lands to Northerners and freedmen. "Respect for the rights of absent property owners has nowhere been a very marked characteristic of the movements of the Northern armies," Whitelaw Reid observed. Although President Johnson eventually restored most of the plantations to their former owners, it was already too late to plant crops in 1865. In addition, Mississippi's most fertile fields, located in the Delta basin, were untenable in 1865. Because the levees had been neglected and destroyed, the Mississippi River had flooded the plains and created a swampy wilderness.⁴

³*Ibid.*, 18-19, 22, 33.

⁴Reid, *After the War*, 283; Harris, *Presidential Reconstruction in Mississippi*, 20-21, 34.

At the war's end, the freedmen, previously cared for by their former masters, lived in abject poverty. Ever since General Grant's invasion of Mississippi in 1862, thousands of slaves had run to the protection of the Union lines. As a result, Vicksburg became a haven for the refugees. In addition, by 1864, many freedmen had journeyed to Mississippi's biggest cities to celebrate their new freedom. Living on scanty government rations, the former slaves inhabited makeshift shanty towns, which were infested with disease. Commenting on the extremely high death rate which plagued the city-dwelling freedmen, Provisional Governor William Sharkey told the Congressional Joint Committee on Reconstruction that the Negro race was "destined to extinction." Most of the freedmen, however, remained on their plantations, and some successfully bargained with their former owners for a share of the autumn harvest. According to one Northern observer, there were no signs "in the operations of the negro farmers ... to warrant a doubt as to their capacity for supporting themselves and managing their own affairs, when once fairly started." In early 1865, the immediate fruits of emancipation proved mixed to Mississippi freedmen. And although the freedmen probably suffered the most, according to the *New Orleans Times*, "extreme poverty rule[d] in almost every household" in the state.⁵

Despite the destruction wrought on their state at the hands of the Union army, most Mississippians accepted the defeat of the Confederacy without protest. As Sharkey later told Congress, in June of 1865, Mississippians

were perfectly reconciled to the condition of things, and very anxious to be restored to their former position in the Union. I think that they were sincerely and honestly so; that was the current sentiment beyond all doubt at that time.

⁵Harris, *Presidential Reconstruction in Mississippi*, 29-30; Reid, *After the War*, 285.

Another Union sympathizer wrote that "no good citizen will now seek a controversy with his Government under any pretext whatever. Public sentiment is in favor of a speedy resumption and restoration of Civil law and authority." As former secessionists and Confederate leaders returned to their homes and resumed their antebellum activities, many Mississippians displayed a cautious optimism. The *Natchez Weekly Democrat* declared:

The gloom of night has been upon the land. But we should remember that darkness shows us worlds of light we never saw by day. We should banish all repinings; utter no murmurings [sic]; leave sighs to the imbecile; take things as they are; recognize the hand of providence in all things; give our hearts to our work, and our shoulders to the wheel, and the watchman will yet be heard to cry, All is well! All is well!

Although their entire society had been destroyed by the war, many Mississippians displayed "an honest determination to return to their peaceful occupations, and to restore the prosperity that once blessed our state."⁶

Despite the acceptance of the military defeat, however, most Mississippians still exhibited an extreme hatred of Northerners. One visiting journalist noted that many hotels would either refuse to accommodate "damned Yankees" or charge them exorbitant rates. And in several parts of the state, "the life of an avowed Northern radical would hardly be worth a straw hat but for the presence of the military."⁷

⁶Harris, *Presidential Reconstruction in Mississippi*, 37-39.

⁷Reid, *After the War*, 390-401; Sidney Andrew, "Three Months Among the Reconstructionists," *Atlantic Monthly* 17 (Feb., 1866), 238-40.

A similar attitude was expressed toward the recently freed black population. Before the Emancipation Proclamation, Southerners had always boasted of the loyalty of their slaves. Now, many hated the blacks and the societal threats which their freedom imposed. The *Meridian Daily Clarion* noted the common concern of white Mississippians in its issue of June 22, 1865:

[The Freedman's] right to vote, his right to hold office, his right to enter our homes and hearts, his right to marry our daughters and, in fact, his right to do everything that a white man is supposed to have the right to do is demanded by the admirers of amelioration, regeneration and miscegenation.

Many planters, reluctant to lose their labor supply, believed that the Emancipation Proclamation was unconstitutional and could not be enforced. Colonel Samuel Thomas, the assistant commissioner of the Freedmen's Bureau for the district of Mississippi, suspected that the planters retained "the hope that some change will be made, by which they will be allowed the work of these people free of charge, or that some new form of slavery will be substituted for the old, in the reorganization of the State." Finding a substitute for their lost labor supply became the major concern for many Mississippians concerned with the economic revival of the state.⁸

Because one-fourth of Mississippi's white males had been killed in the war, and thousands more had suffered crippling injuries, the prospects of the labor force relied more on the Negro population than it had under slavery. Few white Mississippians, however, were hopeful that the freedmen would

⁸Reid, *After the War*, 417; *Meridian Daily Clarion*, June 22, 1865; Harris, *Presidential Reconstruction in Mississippi*, 40.

function effectively in a free labor market. Many were convinced that "free niggers would never make cotton without a system of peonage." One disgruntled planter wrote, "I have but little faith in Negro labour unless our states can make sufficient laws to require the negro to remain at one place and labour." Several of the more pessimistic Mississippi planters made a serious, albeit futile, attempt to import Chinese coolie labor. Mississippians, however, soon realized that their economic fortunes were closely intertwined with the labor of the freedmen.⁹

As the winter of 1865-66 grew near, the labor crisis reached its highest point. Disillusioned by the dismal crops of 1865 and the inability or refusal of their masters to pay them for the previous year's work, many freedmen hesitated to contract with planters for the coming season. Rumors also abounded that the federal government planned to distribute forty acres and a mule to each freedman at Christmas. If a freedman contracted for the following year, he would forfeit his chances for gaining his own land. As the new year rapidly approached, the Mississippi press declared that one-half of the available land would lie dormant in 1866. In addition to being short on labor, planters feared that the freedmen would revolt if they were not granted their own property. Although Christmas passed and no insurrection occurred, the numerous rumors and fears sweeping the state profoundly affected the actions taken by the soon-to-be-established provisional government.¹⁰

⁹Harris, *Presidential Reconstruction in Mississippi*, 80; Eric Foner, *Reconstruction: 1863-1877* (New York, 1988), 198; Reid, *After the War*, 290-91, 417.

¹⁰Harris, *Presidential Reconstruction in Mississippi*, 89-91.

By the time that Presidential Reconstruction got underway in Mississippi in late May of 1865, the *New York Times* reported, "the Confederate authority is not recognized --the Federal Government has not been established -- and thus the country is suffering all the grief of an interregnum, or more properly, of anarchy." Soon after, when Federal Major General Peter J. Osterhaus reached Mississippi, he said, "This poverty-stricken and utterly subjected people are now only anxious for the restoration of authority of whatever description." Responding to the lawlessness overrunning the state, Mississippians in the coming months would draw upon their familiar beliefs, laws, and customs in an effort to establish order out of uncertainty.¹¹

¹¹*Ibid.*, 35.

Chapter Two: The Formation of Presidential Reconstruction

President Abraham Lincoln had pondered the restoration of the seceded states to the Union long before Lee's surrender at Appomattox in the spring of 1865. In fact, Lincoln had officially initiated the process of reconstruction in December 1863, when he issued his "Proclamation of Amnesty and Reconstruction." Under Lincoln's moderate program, Southern rebels and their supporters would receive full Presidential pardons in exchange for pledging complete loyalty to the United States Constitution. In addition, the forgiven Confederates would regain all their property except former slaves. Only high Confederate officials and individuals who had resigned positions in the Union to serve the Confederacy were excluded from taking the amnesty oath. Individuals who chose to take the oath could participate in restoring civil government in their respective state. According to Lincoln, when only one-tenth of a state's citizens who had been qualified to vote in 1860 were granted pardons, they could then call a convention in order to re-establish a civil government loyal to the United States. Although it demanded no specific requirements for a state's re-entry to the Union the proclamation added that any state action designed to aid the freedmen would "not be objected to by the national Executive."¹

Republican congressmen were infuriated by Lincoln's assumption of power over reconstruction and his ambiguous, easy terms for the restoration

¹ Abraham Lincoln, "Proclamation of Amnesty and Reconstruction, December 8, 1863," in Robert W. Johannsen, *Reconstruction, 1865-1877* (New York, 1970), 24-26. For more information on Lincoln's reconstruction plans, see William B. Hesseltine's *Lincoln's Plan of Reconstruction* (Tuscaloosa, Alabama, 1960).

of the defeated states. In response, in July of 1864 Congress passed the Wade-Davis Bill, which required at least fifty-percent of a state's eligible voters to take the amnesty oath before a new government could be established. However, Lincoln greeted the bill with a pocket-veto, thus scoring an early victory for the executive branch in the battle over Reconstruction. Lincoln's Ten Percent Plan was established in Louisiana, Tennessee, and Arkansas, the states already under Union control. Less than a week after Lee's surrender to Grant, however, Lincoln was assassinated, and his ultimate reconstruction plans were never realized. His successor, Andrew Johnson, continued his forerunner's program, while adding his own, less-forgiving elements. Johnson introduced his more stringent plan in two proclamations issued on May 29, 1865.

The first proclamation referred to the amnesty oath developed by Lincoln. Johnson's version required the Southerners to support all laws dealing with the emancipation of slaves. In addition, "all persons who [had] voluntarily participated in said rebellion and the estimated value of whose taxable property [was] over \$20,000" were now excluded from taking the oath. However, special applications for pardons could be made directly to the President. In the second proclamation of May 29, Johnson appointed a provisional governor for North Carolina. The governor was instructed to call a convention for the purpose of amending the state constitution and restoring North Carolina's relations with the United States government. Delegates to the convention were to be elected by the loyal people of the state who had taken the amnesty oath. Johnson also ordered the federal armies occupying the state to assist the governor in complying with the proclamation. This proclamation became the model for the remaining

Southern states not already undergoing Presidential Reconstruction, which included Mississippi.²

On June 13, 1865, barely a month after the Confederate Governor of Mississippi, Charles Clark, had surrendered the state's records to Captain J. Warren Miller and a squad of Federal troops, President Johnson appointed William L. Sharkey as the state's provisional governor. Sharkey was considered one of the finest legal minds in the history of the state. Born in Tennessee and a veteran of the Battle of New Orleans, he had emigrated to Mississippi and served in the state legislature. In addition, Sharkey had been chief justice of the state High Court of Errors and Appeals for over twenty years. A Whig before the war, Sharkey had expressed Union sympathies, and when Mississippi joined the Confederacy in 1861, he retired from political life and did not participate in the conflict. The appointment of Sharkey was generally accepted by the people in the North.³

The President's proclamation for Mississippi was identical to the one for North Carolina, and Sharkey immediately began steps to reorganize the state government. On July 1, he issued his first proclamation as the provisional governor of Mississippi. For the sake of expediency, the governor restored to office the county officials who were active when the state surrendered in May. These officers were required to take the amnesty oath to resume their duties, and those officials ineligible for pardons were to be replaced. The county officials were directed to hold an election for delegates to a constitutional

²Both of Andrew Johnson's May 29, 1865 proclamations are located in Johansen, *Reconstruction, 1865-1877*, 27-32.

³Harris, *Presidential Reconstruction in Mississippi*, 3; James Garner, *Reconstruction in Mississippi* (New York, 1933), 75.

convention on Monday, August 7.⁴

In addition to calling a reconstruction convention, Sharkey addressed other important issues. Some Mississippians were reluctant to take the amnesty oath, because they argued that the Emancipation Proclamation was unconstitutional. Although most of these individuals recognized that the institution of slavery was dead, they felt that, by signing the oath, they would forfeit any hopes of compensation for their former slaves. This complaint was especially maintained by loyal slaveholders who had not supported the Confederacy. In response, Sharkey urged everyone who was eligible to take the oath and "to submit without a murmur." Slavery was a dead issue, the governor declared, and only the United States Supreme Court had the power to rule on emancipation's constitutionality. By addressing the emancipation issue, Sharkey forecast the heated debates that would soon consume the convention and the legislature.⁵

The Mississippi Reconstruction Convention was the first to assemble under President Johnson's plan. Both North and South focused their attention on the city of Jackson, the site of the convention and the state's capital. According to the *New York Times*, Mississippi's convention was extremely important because the state was the home of Jefferson Davis, because it was the second state to secede, and because it produced the most cotton, which meant it contained the largest number of slaves.⁶

⁴*Meridian Daily Clarion*, June 22, 1865; *Journal of the Proceedings and Debates in the Constitutional Convention of the State of Mississippi, August, 1865* (Jackson, Mississippi, 1865), 3-5. Hereafter cited as *Convention Journal*.

⁵*Convention Journal*, 6-7.

⁶Garner, *Reconstruction in Mississippi*, 84.

Mississippi's greatest impact, however, would be in its influence on following state conventions. An influential New York paper declared:

If Mississippi moves into her place in the Union with a constitution that will meet the approval of the government, we shall be able to dismiss all further apprehension concerning the action of any other Southern state.

President Johnson also recognized that the success of his reconstruction program depended upon Mississippi. In a letter to Sharkey dated August 15, 1865, the day after the reconstruction convention convened, Johnson wrote:

I hope that without delay your convention will amend your state constitution abolishing slavery and denying to all future legislatures the power to legislate that there is property in man; also that they will adopt the amendment to the Constitution of the United States abolishing slavery. If you could extend the elective franchise to all persons of color who can read the Constitution ... and write their names ... and to all persons of color who own real estate valued at not less than \$250, ... you would ... set an example for the other states to follow.⁷

For a variety of reasons, voter turnout was incredibly low for the August 7 election. Former Whigs, a helpless minority to the Democrats in antebellum days, saw the opportunity to dominate the new state government. Because they had opposed secession (and several had avoided the war), most Whigs were able to take the oath or receive early Presidential pardons. In the bigger counties such as Adams and Warren, which included the cities Natchez and Vicksburg, respectively, no Democratic opposition developed to rival the Whigs, and voter participation declined more than sixty percent from the

⁷*Ibid*, 84; Eric L. McKittrick, *Andrew Johnson and Reconstruction* (Chicago, 1960), 56n.

1860 election. Despite vigorous campaigning by competing Whig factions in Hinds County, in which Jackson was located, voter returns dropped sixty-eight percent from 1860. In fact, only the central portion of the state experienced no major loss in election returns. Many factors contributed to the dismal election returns. Bitter Confederates and former secessionists refused to take the oath and recognize the results of the war, and others were too concerned with their economic plights to bother with politics. Furthermore, twenty-five thousand Mississippi soldiers had died on the battlefield. But the main reason, according to one scholar, for the low voter turnout was the scarcity of time in which to take the oath before the election. Besides confusion in the administration of the oath and the late arrivals of the forms to many counties, Mississippians often had to travel great distances to take the oath. Apparently, Whigs, mainly planters who feared confiscation of their property and individuals who expressed a history of Union sentiments, were more willing than Democrats to face rugged, war-torn roads.⁸

The Whigs, the party associated with Union sympathies and outnumbered in the secession convention of 1861 by eighty-four to twenty-five, dominated the delegates of 1865, capturing seventy of the ninety-seven seats. Professionally, the convention consisted of thirty-five lawyers and thirty-eight planters. Only eleven of the members had been born in Mississippi. Thirty delegates had served in the state legislature, and seven had been delegates to the 1861 convention (six had opposed secession.). Although reports vary, between two and thirteen delegates had not been pardoned when the convention opened.⁹

⁸Harris, *Presidential Reconstruction in Mississippi*, 49.

The question of the abolition of slavery was the most important and most discussed issue confronting the reconstruction convention. In the month preceding the election, candidates and the press declared their positions on the status and constitutionality of emancipation. In Hinds County, convention candidates published their answers to the following question:

Whether that Convention shall declare by a direct vote the total and final abolition of slavery in the State, and the total extinction of all right to property in slaves held by any and all classes of our people whatever, including minors, women, insane, those who have and those who have not participated in the rebellion, as well as those who have opposed it; and by their action to cut off all parties from all recourse, right or claim for indemnity upon the Government of the United States for property of which they may be so invested.

Although the leading candidates in Hinds County had all been Union Whigs before the war, they clashed in their responses to the emancipation question.¹⁰

The Hinds County candidates formed two distinct factions, which generally applied to the rest of the state as well. Influential Whigs such as Judges William Yerger and Amos R. Johnston endorsed complete cooperation with the President, who demanded that each convention abolish slavery and nullify secession. Supporters of this view, called conservatives, agreed with Governor Sharkey that demands for compensation for the loss of

⁹*Convention Journal*, 283; Winbourne M. Drake, "The Mississippi Reconstruction Convention of 1865," *Journal of Mississippi History* 21 (October, 1959), 233; Garner, *Reconstruction in Mississippi*, 84.

¹⁰*Chicago Tribune*, August 2, 1865; *Convention Journal*, 278-83.

slaves were dubious, ill-timed, and unwise. Johnston declared, "If we obstinately hold on to the dead body of slavery, in any manner . . . we shall thus close and bar the only door left open for the readmission into the Union." The conservatives hoped to accept the present conditions imposed by the President in order to establish self-rule as quickly as possible. Full compliance, however, was not to be confused with devotion to or sympathy for the freedmen of the state. These men merely sought the speedy return of civil government in order to prevent Negro suffrage, for which the radical Republicans in the North were clamoring. In fact, Yerger even refused to rule out compensation at some future date, when "an era of good feeling" might exist between the North and the South.¹¹

Candidates who opposed an acceptance of the President's conditions for restoration became known as Potterites, named for the fiery Whig lawyer George L. Potter, another candidate from Hinds County. The Potterites contended that Mississippi was a sovereign state that had "never forfeited any of its rights" under the Constitution. These men demanded "unconditional admission into Congress" and compensation for loyal slaveowners. Potter even declared that if Mississippi were denied its seats in Congress, then its citizens were exempt from paying federal taxes. These two groups foreshadowed the future factions which would clash in the state legislature in November.¹²

The Mississippi press was just as vocal as the candidates on the issue of emancipation. Of the seventeen newspapers functioning in the state, only the *Brandon Republican* and the *Jackson News* supported the opinions of

¹¹Chicago *Tribune*, August 2, 1865.

¹²*Ibid.*

the Potterites. The rest favored the total abolition of slavery and ridiculed Potter and his followers. For example, the July 20 Jackson *Mississippian* called the Potterites the "Rip Van Winkle Party," which had slept through the war and awoke "crying most lustily for slavery." Two days before the opening of the convention, the *Meridian Daily Clarion* echoed that sentiment and summed up the view of the conservatives:

We hear of candidates for the convention who talk either of ignoring this question [of abolition] or protecting against emancipation and demanding compensation. Such a course, however proper it might be under other circumstances, at the present would inevitably result in the prolongation of military rule in the South and would very probably lead to the reorganization of the states on the basis of Negro suffrage.

The duty of the convention, the editor continued, was to "at once change the Constitution to harmonize with this new order of things; declare that slavery shall no longer exist in Mississippi, and let it be done in good faith, without protest or remonstrance."¹³

The Mississippi Reconstruction Convention convened in Jackson on Monday, August 14, 1865. J. S. Yerger, elected president of the convention, administered the amnesty oath to each delegate, and according to the *Convention Journal*, "all the members qualified accordingly." On the next day, the president appointed a committee of fifteen members "to inquire into such alternatives and amendments of the Constitution as may be proper and

¹³Drake, "The Mississippi Reconstruction Convention," 227-30; *Meridian Daily Clarion*, August 13, 1865, quoted in Garner, *Reconstruction in Mississippi*, 82-83.

expedient to restore the State of Mississippi to its constitutional relations to the Federal Government." These "alternatives and amendments" mainly concerned the abolition of slavery. The committee, chaired by James T. Harrison of Lowndes County, submitted its report on August 17 and recommended the insertion of the following provision into the state constitution:

That neither slavery nor involuntary servitude . . . shall hereafter exist in this State; and the Legislature at its next session, and thereafter as the public welfare may require, shall provide by law for the protection of the person and property of the freedmen of the State, and guard them and the State against any evils that may arise from their sudden emancipation.

This provision, entitled Section Two of the committee's report, sparked heated debates between the conservatives and the Potterites for the next four sessions.¹⁴

Both factions admitted that slavery was definitely a thing of the past. However, the Potterites wanted to hold the federal government solely responsible for its demise. Immediately following the committee's report, Hugh Barr, a delegate from Lafayette County, proposed to insert the following clause preceding Section Two: "Slavery having been abolished in this State by the action of the Government of the United States . . ." Others echoed Barr's opinion, claiming that the abolition of slavery by Mississippi was an involuntary act demanded by the powers in Washington.¹⁵

The Potterites' arguments rested upon the U. S. Constitution. Mississippi

¹⁴*Convention Journal*, 10-14, 20-21, 29-30. The qualifications of several delegates have been disputed by some scholars.

¹⁵*Ibid.*, 44-48.

was a sovereign state, they argued, and neither the President nor Congress had the power to compel a state to pass a law. On Friday, August 18, Potter himself criticized Section Two and denounced the federal government for not compensating loyal slaveholders. To those delegates who supported a free state constitution in order to end military rule, Potter pointed to Tennessee, whose people had abolished slavery over a year ago, yet was still occupied by federal troops. Potter concluded by stating that if Mississippi refused to acknowledge abolition, then the Union would be responsible for financially supporting the freedmen it had emancipated.¹⁶

Although recognizing the complaints of the Potterites, the supporters of Section Two urged the political necessity of compliance with the federal government. Amos R. Johnston stated that the constitutionality of the Union's demands was irrelevant. "[I]t seems to me as clear as the beams of the sun that shine upon us today, that the course recommended by the Committee is the only course that can conduct us to the end which we desire to obtain." That goal was the restoration of home rule. If the convention failed to abolish slavery, the horrors of prolonged military rule and Negro equality and suffrage would ensue. William Yerger, a member of the committee, felt that obstinance on the part of the convention "would create useless discussions, North and South, and would prejudice hereafter the condition of the State, by ceaseless wrangling over an immaterial issue, which should be left to the historian." On the eve of surrender, in an attempt to display Mississippi's eagerness to return to normal relations with the Union, Confederate Governor Clark had sent Yerger and Sharkey to Washington to

¹⁶*Ibid.*, 56-70.

request the President's moderation and leniency toward the state. Recalling his interview with Johnson to the convention, Yerger recounted what the President had stated: "In the proposed Constitution, so as to restore your State to its relations with the Federal Government, there ought to be incorporated an amendment abolishing the institution of slavery." Yerger maintained that although the President was merely advising, not ordering, the convention, he stressed that federal troops would not be removed from Mississippi soil unless the state constitution formally recognized emancipation.¹⁷

After four days of deliberations, chairman Harrison offered a compromise, in which Section Two would begin, "The institution of slavery having been destroyed in the State of Mississippi," to be followed by the original provision. The delegates resoundingly accepted the provision with the amendment by a vote of eighty-seven to eleven. Although the preamble was ambiguous about the cause of emancipation, Mississippi had now complied with President Johnson's request.¹⁸

The assembly then tackled other pressing issues, the most important of which was the ordinance of secession from 1861. The Committee on Ordinances and Laws urged to declare the secession ordinance "null and void." Opponents argued that if they declared the secession was illegal, then Confederates and their supporters could be prosecuted for treason. These delegates wanted to simply repeal the ordinance. After much debate, the convention easily adopted the committee's original draft.¹⁹

¹⁷*Ibid.*, 45, 86, 146-47; Harris, *Presidential Reconstruction in Mississippi*, 40.

¹⁸*Convention Journal*, 164-5; Harris, *Presidential Reconstruction in Mississippi*, 54.

¹⁹*Convention Journal*, 34-38.

The members also authorized all laws passed by the legislature since 1861 which did not conflict with federal statutes or aid the rebellion. Although other resolutions dealing with the freedmen were proposed (such as vagrancy and colonization), the convention members felt that those issues were the responsibility of the upcoming legislature, which, along with state officers and Congressional representatives, were to be elected in early October. On Thursday, August 24, the convention adjourned, and four days later Governor Sharkey submitted the amended constitution and adopted ordinances to Secretary of State William H. Seward for the President's approval.²⁰

The Mississippi Reconstruction Convention was a limited conservative success. It abolished slavery and nullified secession, but failed to ratify the proposed 13th Amendment. However, in an August 21 telegram to Governor Sharkey, the President had stated, "Your convention can adopt the amendment to the Constitution of the United States, or recommend its adoption by the legislature." Apparently, most delegates felt that the legislature should tackle that problem. The convention also ignored the President Johnson's request to grant a limited suffrage to the freedmen. The President expressed little concern, however, because the day the convention adjourned, he sent Sharkey a dispatch praising the work of the convention and promising to remove the federal troops and restore the writ of *habeas corpus* as soon as the state was restored to the Union via Congress. The President also expressed confidence that the remaining Southern states would follow Mississippi's example.²¹

²⁰Drake, "Mississippi Reconstruction Convention," 246; *Convention Journal*, 30-31, 277; Garner, *Reconstruction in Mississippi*, 93.

Outside the executive branch, Northern reactions to the convention were mixed. Conservative elements in the North applauded the work of the convention. The *New York Times* declared that, since the convention had followed the Presidential plan, "Mississippi . . . has earned the right of being the exemplar for the sister [Southern] states. . ." And the Washington, D. C. based *National Intelligencer* announced that Mississippi had resumed its place in the Union.²²

On the other hand, many Republicans were disappointed that the convention refused to grant the freedmen any political rights. Senator Charles Sumner, a radical Republican and advocate of black suffrage, called the convention "a rebel conspiracy to obtain political power." The *Chicago Tribune* called the proceedings "as unsatisfactory as they could be," and charged that only "one member of the convention . . . uttered anything that would pass at the North for Unionism."²³

Some Northern reporters were so skeptical of the convention's motives that they criticized the delegates for things they had not done. For example, many newspapers rebuked the assembly for memorializing the President to free Jefferson Davis and to remove all Negro troops from the state. Actually, both proposals were voted down by the delegates.²⁴

The true nature of the convention was rather conservative. Although

²¹McKittrick, *Andrew Johnson and Reconstruction*, 200; *New York Times*, Aug. 26, 1865.

²²*New York Times*, Sep. 19, 1865; *Washington National Intelligencer*, Sep. 1, 1865.

²³*New York World*, Sep. 16, 1865, quoted in Garner, *Reconstruction in Mississippi*, 94n; *Chicago Tribune*, Aug. 29, 1865.

²⁴Drake, "Mississippi Reconstruction Convention," 250.

some members of the convention displayed rebellious and defiant attitudes, most delegates were driven by the desire to restore law and order and regain control of their political affairs as speedily as possible. In addition, the threat of federal troops and the heat of the Northern limelight probably helped to moderate the members even further. The *New York Times* warned that what "hinders the South from being embraced again is the doubt of the sincerity of its repentance," and the Mississippi convention attempted to openly display that sincerity.²⁵

Early in the convention, convention member John W. C. Watson, in response to Northern doubts and preconceptions, requested that the proceedings and debates be published. "I believe that the spirit breathed by the members of this Convention will be of such a character as to vindicate the State from the aspersions that are constantly being cast on her," he declared. Another delegate agreed, saying, "It is also necessary . . . that we should show . . . that it is a mistake to suppose that in surrendering . . . we merely did it to gain . . . time . . . to carry on the war against . . . the Federal Government." The resolution to publish the proceedings was quickly adopted.²⁶

In another display of openness, the delegate invited Major General Osterhaus, the federal Commandant of the District of Mississippi, to sit at the convention. He accepted. According to an important Southern newspaper, nearly all the members of the convention were slaveowners. Because they had voted to abolish slavery, they were obviously sincere. "[The Convention] is the voice of the real people of Mississippi," the editor declared.²⁷

²⁵*Ibid.*, 233; *New York Times*, Sep. 6, 1865.

²⁶*Conventions Journal*, 26-27.

²⁷*Ibid.*, 25, 43; *New Orleans Daily Picayune*, Aug. 23, 1865.

With the firm approval of President Johnson and conservative Northerners, the Mississippi Reconstruction Convention was a successful initial step toward the restoration of civil government in the state. Mississippians believed that their elected representatives would join Congress and that their state government would regain its sovereignty over state concerns. Perhaps they should have paid more attention to the cautionary, albeit optimistic, advice of the August 28 *New York Times*, written on the heels of the convention's adjournment:

We trust that the Legislature will utterly demolish the old black code, and that all its new enactments, respecting the freedmen, will be such as will satisfy all their reasonable friends and the government at Washington. This will be realized if the Legislature performs in good faith what the convention has enjoined upon it.²⁸

²⁸*New York Times*, Aug. 29, 1865.

Chapter Three: The Passage of The Black Code

Before the convention had adjourned, on August 23, most of the delegates met in a caucus to choose conservative candidates for the coming elections. Their gubernatorial nominee was Ephraim S. Fisher, a Union Whig who had served on the state's High Court of Errors and Appeals in the 1850s. Fisher had avoided the war until 1864, when he accepted the position of colonel in the home guard. Thus, he was not tainted as a secessionist. One of the most influential postwar Whigs, Fisher received the support of William Yerger, provisional Governor Sharkey, and President Johnson himself. The convention caucus also nominated Unionist candidates for four congressional seats, although they failed to choose a candidate from the fifth district. Though three of the four nominees had served in the Confederacy, they all had opposed secession. Because the caucus chose conservative Whig candidates, the selections reflected the attitudes of the convention.¹

By the time of the election on October 2, 1865, Mississippi was in a state of hysteria. The freedmen, uncertain of their status and hopeful of acquiring land via the Freedmen's Bureau, were not returning to their former masters' fields. Therefore, the planters faced severe labor shortages, and the prospects for the following year's crops were becoming questionable. In addition, rumors of a Negro insurrection at Christmas were sweeping the state. The

¹Harris, *Presidential Reconstruction in Mississippi*, 104-5.

duty of the new state government would be to quell these fears by restoring effective civil government in the state. The people of Mississippi were demanding levee and railroad repairs, a compensation for the debts owed Mississippians by the Confederacy, and, most importantly, a new definition of the Negro's role in Mississippi society, economically, politically, and socially. The editor of the *Meridian Daily Clarion* voiced the anticipations of the state:

Before this body will be brought the most momentous issues ever imposed upon a legislature in the Southern States. It is for them to preserve intact the leading features of our new constitution, and qualify the state for immediate representation in the national council. Hitherto the course pursued by Mississippi has met the approbation of the President and his cabinet, and has been viewed by other states as a criterion to shape their political destiny. We feel proud in the assurance that this august assemblage is actuated by one aim and desire.²

Two candidates opposed Fisher in the race for governor. Benjamin G. Humphreys, also a Whig, had opposed secession, but he later became a brigadier general in the Confederate army. Later, when questioned by the Congressional Joint Committee on Reconstruction, Sharkey defended Humphreys, declaring, "There was no man in the State of Mississippi more opposed to secession than he was." Although he never announced his candidacy, Humphreys was popular, especially among the Confederate veterans. This alone would provide enough support for Humphreys to compete effectively with Fisher for the gubernatorial seat. Under the terms

²*Ibid*: *Meridian Daily Clarion*, Oct. 17, 1865.

established by President Johnson, however, Humphreys was not eligible for the office, and he had not yet been pardoned. The final candidate was William S. Patton, a Union Democrat with popular support from the eastern part of the state, commonly called the Piney Woods area. Although Patton had served as the speaker of the house in the state legislature from 1852 to 1854, he was not well known outside the Piney Woods region.³

Due to the lack of effective communication throughout most of the state, the gubernatorial campaign was somewhat confusing. In several northeastern counties, Humphreys' candidacy was unknown until after the election. In addition, rumors abounded that Humphreys had withdrawn from the election because of his ineligibility. Nevertheless, and despite the fact that several newspapers attempted to "keep him off track," Humphreys was elected governor, polling 19,000 votes. Fisher finished second with 15,500. None of the candidates actively campaigned, and apparently the only difference between Humphreys and Fisher was the degree of support each had given to the Confederacy. Humphreys' record as a brigadier general who had defended the state was more impressive. As in the elections for other state offices, Mississippians tended to vote for the candidate who had opposed secession yet actively supported the Confederacy during the war. Ironically, an overwhelming majority of Union officers and soldiers who had chosen to reside permanently in Mississippi voted for Humphreys.⁴

Immediately following his election, Humphreys wrote President Johnson

³Garner, *Reconstruction in Mississippi*, 95; Harris, *Presidential Reconstruction in Mississippi*, 106.

⁴Harris, *Presidential Reconstruction in Mississippi*, 106-7, 110-12; *Meridian Daily Clarion*, Oct. 6, 1865.

that a "majority of my fellow citizens, believing clemency would be extended to me, and in view of my political antecedents, elected me to the office of Governor." Despite angry reaction from the Northern press, Johnson, at the advice of provisional Governor Sharkey, pardoned Humphreys, and the new governor was inaugurated on October 16.⁵

Unlike the race for governor, the campaigns for the other state offices featured debatable issues, mostly concerning the freedmen. Nearly all white Mississippians felt that regulation of Negro labor was a necessity. The major difference between two candidates was often their stand on Negro testimony in court. On September 25, only one week prior to the elections, provisional Governor Sharkey issued a proclamation allowing blacks to sue, be sued, and testify in the state civil courts. Previously, all cases involving the freedmen had been tried in federal military courts, in which blacks and whites were treated equally. Colonel Samuel Thomas, the assistant commissioner of the Freedmen's Bureau in the district, proposed to Sharkey to transfer all cases involving freedmen to the civil courts, as long as both races would be accorded equal treatment under the law. Governor Sharkey, believing that the new constitution abolished all policies contingent upon slavery and authorized the protection of the property and person of the freedmen, promptly accepted Colonel Thomas' proposal. He issued a proclamation requiring the judiciary to "allow negroes the same rights and privileges as are accorded to white men before the courts." Although Negro testimony was a controversial and volatile campaign issue in counties along the lines of

⁵Harris, *Presidential Reconstruction in Mississippi*, 112; Garner, *Reconstruction in Mississippi*, 95.

communication, the fact that there were only seven days between Sharkey's proclamation and election day prevented its importance throughout most of the state.⁶

In the counties in which Negro testimony affected the election, two factions formed. The anti-testimony party, led by convention delegates George L. Potter and Edward M. Yerger, both Whigs from Jackson, cautioned against granting the freedmen any civil rights whatsoever. The editor of the *Jackson News* announced the fear behind the anti-testimony platform: "Negroes as a class must be excluded from the witness stand. If the privilege is ever granted, it will lead to greater demands, and at last end in the admission of the negro to the jury box and the ballot box." The anti-testimony party sought to keep the freedmen "in the position which God almighty intended him to occupy; *a position inferior to the white man* [italics sic]."⁷

The candidates supporting Negro testimony, the conservatives, hoped to carry further the work of the convention. To them, "protection" in the new constitution implied the right to testify in court. Anyway, conservatives argued, Negro testimony was already a policy initiated by Governor Sharkey, and the federal government would not allow it to be removed. This moderate stance was supported by the influential *Jackson Daily Clarion* (which had moved from Meridian, Mississippi on November 4). Its editor

⁶Harris, *Presidential Reconstruction in Mississippi*, 107; *Meridian Daily Clarion*, Oct. 1, 1865.

⁷Harris, *Presidential Reconstruction in Mississippi*, 107; *Jackson News*, quoted in Garner, *Reconstruction in Mississippi*, 94; *Jackson News*, Nov. 14, 1865, quoted in Harris, *Presidential Reconstruction in Mississippi*, 124.

stated:

We do not believe that unusual and rigorous legislation to this class of population will promote our true interests. It is evidently the better policy to stimulate their industry, show that we desire their improvement, and satisfy the most skeptical that our laws afford them protection and security.

The conservatives wanted to support President Johnson's program and mollify the radical Republicans in the Congress. The editor of the *Quitman Messenger* stated bluntly, "How are we to escape Negro evidence, when the President himself demands it, and if the state do not yield, will force it upon us by the bayonet?" Incidentally, both leading candidates for governor, Humphreys and Fisher, supported Negro testimony.⁸

Like the convention two months before, the Whigs triumphed in the election. In addition to the position of governor, Whigs won all five congressional seats. Every one had opposed secession, but four had occupied important positions within the Confederacy. The Whigs also secured a majority in the state legislature. In the senate, there were seventeen Whigs and fourteen Democrats. Of the ninety-eight seats in the lower chamber, fifty-two were Whigs, thirty-nine were Democrats, and seven belonged to other parties.⁹

Only four of the legislators had been delegates to the secession convention

⁸Harris, *Presidential Reconstruction in Mississippi*, 107-8; *Jackson Daily Clarion*, Nov. 12, 1865; *Quitman Messenger*, quoted in *Meridian Daily Clarion*, Oct. 4, 1865.

⁹Harris, *Presidential Reconstruction in Mississippi*, 109-14.

of 1861; of these, three had voted for the Union. Sixteen of the thirty-one senators had served in past Mississippi legislatures, while only one-fourth of the representatives possessed any legislative experience. Surprisingly, only fourteen of the new lawmakers had participated in the reconstruction convention. Apparently, most of the delegates felt that they had performed their duties and now wanted to re-establish their businesses and plantations. However, several leaders from the convention sought higher offices. Three were elected Congressmen, and George L. Potter lost in his bid for the High Court of Errors and Appeals. William Yerger simply returned to his lucrative private law practice. Despite the victory of the conservative Whigs, according to one historian, the anti-testimony party secured a majority in the legislature. Like the election for the convention, the voter turnout was down forty-two percent from the 1860 presidential election. Once again, the public tended to refrain from choosing secessionists, but they also avoided wholehearted Unionists. The Whigs, who generally occupied the middle ground between these two extremes, capitalized and prevailed in the election.¹⁰

When a joint session of the legislature convened on October 16, 1865, the lawmakers' first goal was to elect two United States Senators. This proved to be no easy task. Several legislators, elected on a platform opposed to Negro testimony, offered a resolution to block Sharkey's election to the Senate. The popular governor had announced his candidacy months before. Angered by Sharkey's recent proclamation, which guaranteed the freedmen's rights in

¹⁰Garner, *Reconstruction in Mississippi*, 94-95; Harris, *Presidential Reconstruction in Mississippi*, 109-14.

court, the group declared:

That we, the Senators of the State of Mississippi, will support no man for the United States Senate, who is or shall be in favor of giving to the slaves thus manumitted, any rights, civil, political or social, further than was vouchsafed unto the person and property of the domesticated free negro by the statutes of the State prior to the late revolution.

This motion, however, was tabled by a vote of 21-8 in the senate. Sharkey then promptly defeated Fulton Anderson, an influential Whig lawyer, by a vote of 100-26.¹¹

The second seat, however, took four ballots before James E. Alcorn, a former slaveowner and Confederate general who also favored Negro testimony, was elected. Democrats, determined to elect a fellow party member to the Senate, had united behind Samuel J. Gholson, a leader of the anti-testimony party. The thought of Gholson, a former fire-eating secessionist, representing Mississippi in Washington, appalled the Whigs, who feared hostile reactions and reprisals from the North. Consequently, the Whigs combined to select Gholson as speaker of the house, thereby disallowing his chances for a position in the Senate. The Mississippi press praised the seven men elected for the Congressional delegation, all representatives of the Whig party. Many editors were confident that their newly elected representatives would be accepted by Congress.¹²

¹¹Meridian *Daily Clarion*, Oct. 22, 1865; Harris, *Presidential Reconstruction in Mississippi*, 118-20.

¹²Harris, *Presidential Reconstruction in Mississippi*, 118-20.

The split in the legislature remained throughout the fall term. Democrats, led by speaker Gholson and H. R. Taylor, formed the basis of the anti-testimony party. As stated earlier, these men were opposed to granting any rights to the freedmen. Indifferent to the sentiments in the North, the anti-testimony group sought to place the freedmen on the same level as prewar free blacks. In antebellum Mississippi, the rights of free Negroes were severely restricted. Although they possessed full property rights, free blacks could not own firearms, engage in selling groceries or liquor, or move freely outside their home county. They were not allowed to vote, serve on a jury, or testify in a case involving a white person. Some Mississippi newspapers echoed the sentiments of the anti-testimony party, warning the members of the legislature that their duty was to save the freedmen from injustice by forcing them back to the plantations.¹³

On the other hand, conservatives in the legislature proposed moderate laws reflecting the intent of the new constitution. By guaranteeing the civil rights of the freedmen, conservatives hoped to appease the North and satisfy the freedmen. However, the conservatives were not motivated by a generous regard for the former slaves. They merely wanted a speedy restoration of civil government and a return to economic stability. The *Natchez Democrat* proclaimed:

It will only require kind treatment, a fair recompense for faithful labor, and a disposition to make the Negroes happy and comfortable, to restore a healthy and permanent system of labor. Negroes under this system will become

¹³*Ibid*, 121-24; Charles S. Sydnor, "The Free Negro in Mississippi Before the War," *American Historical Review*, 32 (1927), 770.

permanent fixtures of the plantations.

The main argument behind the conservatives' position was one of political expediency. To the editor of the *Friars Point Coahomian*, Negro testimony was "not as nauseating a dose as negro equality in all political privileges. If we reject it, it may be forced upon us at the point of the bayonet."¹⁴

Most of the lawyers in Mississippi supported Negro testimony, and according to the *Meridian Daily Clarion*, "the most influential papers of the State are now in favor of granting the negro the right to appear before the law." The *Clarion's* editor lectured that "a few months more will convince them all that we were only preparing the public mind for 'coming events' -- for measures we cannot avoid, no matter what our wishes may be." A course of moderation toward the freedmen, however, should not instill fear into white Mississippians. A united press maintained that "ours will ever be a government of white people, and under no circumstances can there be equality between the races in the South." If the freedmen were unhappy in Mississippi, they were welcome to "seek asylum in some other land."¹⁵

In addition to most of the press, several prominent statesmen encouraged moderation toward the freedmen. Sharkey cautioned the legislature to follow the new constitution by fully protecting the property and person of the freedmen. And former U. S. Senator Walker Brooke expressed his confidence

¹⁴Harris, *Presidential Reconstruction in Mississippi*, 126-27; *Natchez Democrat*, Nov. 18, 1865, quoted in Harris, *Presidential Reconstruction in Mississippi*, 126; *Friars Point Coahomian*, Oct. 27, 1865.

¹⁵Carver, *Reconstruction in Mississippi*, 94; *Meridian Daily Clarion*, Oct. 1, 10, 1865.

that the state would fully guarantee Negro rights. In his inaugural address, Governor Humphreys, albeit somewhat vaguely, cautioned that the freedmen must be allowed to progress as high as they could, which required the protection of their rights and property. Humphreys declared, however, "The purity and progress of both races require that caste be maintained."¹⁶

The most pressing concern to the legislature was the status of the thousands of freedmen living in the state. A Joint Committee on Freedmen was established to study and recommend any laws necessary

for the protection and security of the person and property of the Freedmen of this State, including their social relations toward each other, that of husband and wife, and parent and child; and what laws are necessary to make their labor available to the agricultural interests of the State, and to protect the State from the support of minors, vagrants and paupers.

Speaker Gholson, despite his opposition to Negro testimony, apparently appointed more conservatives to the committee.¹⁷

The pressures on the Joint Committee were tremendous. As freedmen hesitated to contract for work for the following year, and rumors of insurrections swept the state, demands for rigorous laws increased. Former Mississippi governor William McWillie urged the legislature to force the freedmen back to the fields and to punish severely lawbreakers of both races. Some members of the press concurred with McWillie. The *Jackson Notes* declared, "We are with him too for erecting the cheaper and quicker engines

¹⁶Harris, *Presidential Reconstruction in Mississippi*, 126-28.

¹⁷*Ibid.*, 123.

of punishment, the gallows, whipping post and pillory for all offenders of all colors." Evidently, people were most concerned with establishing law and order, regardless of race.¹⁸

The Joint Committee on Freedmen was chaired by Horatio F. Simrall, a conservative Whig lawyer and planter from Wilkinson County. Simrall was called the ablest man in the house. He had served in the Kentucky legislature before the war, and he had occupied a chair of law at the University of Louisville. He had recently moved to Mississippi, where he participated in the Confederate "council" for Kentucky.¹⁹

Before considering any legislation, the Joint Committee heard the suggestions of a committee created by the convention to recommend any laws or changes needed to accommodate the new constitution. Chaired by Whig Judge Robert S. Hudson, the convention committee suggested no specific laws, but urged the legislature to:

deny the freedmen some unbridled privileges for the present, not from any apprehension or sense of danger to the white population, but from the clear conviction that such denial and restrictions will be for their present and ultimate good in the suppression of vice, idleness, vagrancy, impositions and poverty, the promotion of industry, and the diminution of crime and its long train of baneful consequences and monstrous evils.

The committee admitted imperfections in its recommendations, but declared their confidence that if harsh measures were adopted, order would be

¹⁸*Ibid*, 124; *Jackson News*, quoted in *New Orleans Daily Picayune*, Nov. 1, 1865.

¹⁹Harris, *Presidential Reconstruction in Mississippi*, 124-25.

established, business would be stimulated, and both races could be satisfied. The report added, almost apologetically, "While some of the proposed legislation may seem rigid and stringent to the sickly modern humanitarians, they [the proposals] can never disturb ... the good and true ... of either race." Anyway, the legislation proposed was of a temporary nature.

By timely and thorough legislation now, such healthy improvements in the habits ... of both races will soon result, as to enable the State to modify her laws and proclaim to all her people the generous plaudit of 'well done good and faithful servants.'

Apparently to fool the North, the convention committee proposed to limit severely the rights of the freedmen only until they were "fully qualified" for their freedom, whenever that would be.²⁰

After debating for over two weeks, the Joint Committee on Freedmen presented its report on November 6. The most controversial proposal was titled "An Act to confer Civil Rights upon the Freedmen and Other Measures." Divided into twelve sections, this bill, which formed the basis of what became known as the "Black Code," was intended to define the role of blacks in postwar Mississippi society. Section one granted the freedmen the right to sue in Mississippi state courts. It also allowed blacks to acquire property just as whites did,

Provided, That the provisions of this section shall not be so construed as to allow any freedmen, free negro, or mulatto to rent or lease any lands or

²⁰Chicago *Tribune*, Oct. 26, 1865.

tenements except in incorporated cities or towns, in which places the corporate authorities shall control the same.

This section was adopted with little debate by the legislature. Although the bill did allow blacks to purchase land freely, it restricted them from renting or leasing, which aroused great hostility in the North. Obviously, few blacks would have the resources to buy farmland, and by barring them from renting, the bill would keep blacks on farms only as laborers.²¹

Southerners agreed on the bill's intent. The *Friars Point Coahomian*, describing the act, declared that blacks were prohibited from purchasing farmland. And Giles Hillyer, a representative from Adams County, supported the bill because he believed it kept blacks from purchasing land. Apparently, the legislature, fearing that nests of idle freedmen would congregate on farms and engage in crime, sought to keep the freedmen on white plantations. However, at the same time, they hoped to appease the North with vague language which technically did allow blacks to own property. When Commissioner Howard of the Freedmen's Bureau learned of the section, he instructed district commander Colonel Thomas to ignore the proviso.²²

Section two of the bill allowed free Negroes, freedmen, and mulattoes to intermarry legally, and section three legalized previous black common law

²¹"An Act to confer Civil Rights on the Freedmen and other Measures," in Walter L. Fleming, *Documentary History of Reconstruction*, (2 vols., Gloucester, Massachusetts, 1960), 1: 286.

²²*Friars Point Coahomian*, Dec. 1, 1865; Harris, *Presidential Reconstruction in Mississippi*, 130-31.

marriages. This section also made intermarriage between the races a felony carrying a penalty of imprisonment for life. Section four, however, caused the greatest debate in the legislature. The committee proposed to allow Negro testimony in civil cases in which freedmen, free blacks, or mulattoes were parties. The fate of the civil rights act hinged on the success of this section, because many legislators had been elected on a pledge of no Negro testimony. These men vowed to defeat the bill.²³

Gholson immediately denounced the proposal. The speaker of the house declared that provisional governor Sharkey had been appointed without constitutional authority, and that the action of the convention was forced "under the pressure of negro bayonets." Now, the legislature was pandering to the North while ignoring the best interests of the state. He then proceeded to chastise several Mississippi newspapers for "threatening" the legislature.²⁴

In response to Gholson's accusation, the *Jackson Daily Clarion* retorted:

We think it is clear that there is no way by which we can be restored to Congress, military domination superseded by civil authority, order and industry established, the resources of the country developed, but in our cordial and earnest support of the programme for restoration laid down by President Johnson. The responsibility of accepting or rejecting these conditions of union in a great degree rests with the present Legislature.

Simrall, as chairman of the Joint Committee, also spoke in support of the

²³"An Act to confer Civil Rights," 286-87; Harris, *Presidential Reconstruction in Mississippi*, 132.

²⁴*Jackson Daily Clarion*, Nov. 14, 1865; Harris, *Presidential Reconstruction in Mississippi*, 132-33.

proposed bill. Defending the entire bill, he stressed the proposal's potential to "stimulate drooping and despondent energy, to revive industry, and to put the idle to labor." To Simrall, the legislature had a "moral obligation" to extend "remedial justice" to the freedmen by opening the courts to their testimony. Simrall concluded his speech, which was reprinted in several newspapers, by stressing that Negroes would never be citizens of the United States. Therefore, Negro testimony would not be the first step to political equality.²⁵

Many conservatives felt that their admission to Congress depended mainly on the success of section four. The *Clarion* implored the legislature to adopt Negro testimony, using precedence as persuasion. In Louisiana before the war, free blacks possessed the same rights as whites in court. The editor recalled no complaints of "negro equality" in Louisiana. Therefore, the *Clarion* urged, the state should grant the freedmen civil rights and shatter the radical Republicans' hopes to deny their admittance to Congress.²⁶

After two days of ferocious debate, the house defeated section four by a vote of fifty to forty. Reactions by the press and the President were similar. C.B. Manlove, a former Confederate colonel and the current editor of the *Vicksburg Journal*, lectured the house. "We tell you, plainly, gentlemen, that in less than a year you will be compelled to do that which you have refused voluntarily to do," he predicted. The editor continued, "The negro

²⁵Jackson *Daily Clarion*, Nov. 14, 18, 1865; Harris, *Presidential Reconstruction in Mississippi*, 133.

²⁶Jackson *Daily Clarion*, Nov. 8, 1865.

has to be protected by the laws of Mississippi or by Federal bayonets. Our legislature has chosen the latter." President Johnson also expressed his disappointment. On November 17, the President wired Governor Humphreys and warned that federal troops would remain in Mississippi until the freedmen were protected under the law. Simultaneously, Johnson dispatched General George Thomas, district commander of the Freedmen's Bureau, to urge the legislature to pass measures protecting the freedmen.²⁷

On November 20, Governor Humphreys, who had previously been silent on the controversies occupying the legislature, finally addressed the problems created by emancipation. Apparently persuaded by the President's telegram, Humphreys spoke to a joint session of the legislature:

We must now meet the question as it is, and not as we would like to have it. The rule must be justice. The negro is free, whether we like it or not; we must realize that fact now and forever. To be free, however, does not make him a citizen, or entitle him to political and social equality with the white man. But the constitution and justice do entitle him to protection and security in his person and property, both real and personal.

The governor declared that no man can be protected except through "an independent and enlightened judiciary." Therefore, the courts must be open to the freedmen and their testimony.²⁸

Humphreys, however, was not completely cooperative with the wishes of the President. In his speech he lambasted the Freedmen's Bureau. The war

²⁷*Ibid*, Nov. 19, 1865; Harris, *Presidential Reconstruction in Mississippi*, 133.

²⁸Humphreys' address to the legislature is located in Johannsen, *Reconstruction*, 40-42.

was not as horrible or destructive, Humphreys intoned, as the "last six or eight months from the administration of this black incubus." According to the governor, the Freedmen's Bureau did not protect the rights of white men. In Humphreys' mind, this fact should further motivate the legislature to adopt Negro testimony and rid the state of this federal menace. In concluding, Humphreys announced three important recommendations. First, the legislature should add Negro testimony to protect the freedmen and society. Second, laws should be established to encourage the freedmen to work to support their families. And third, Humphreys suggested passage of a law allowing the state militia to suppress riots.²⁹

The speech was received favorably in the North, but many doubted the sincerity of the Mississippi governor. The *New York Times* stated:

The recommendations are sensible and practicable, but were made with a wry face and with bad grace. He accepts the abolition of slavery fully and without reserve, but could not avoid saying it was done under pressure of Federal bayonets.

The state legislature was also responsive to the speech. On November 22, the house, with Gholson's support, agreed to reconsider the bill.³⁰

But the anti-testimony party was not easily converted. Senator M. D. I. Stephens offered a substitute for the entire act, entitled, "An act to protect freedmen, free negroes or mulattoes." Under this restrictive proposal, blacks

²⁹*Ibid.*

³⁰*New York Times*, Dec. 3, 1865, quoted in Garner, *Reconstruction in Mississippi*, 112n; Harris, *Presidential Reconstruction in Mississippi*, 134-35.

would have no rights or privileges. Instead, they would be represented by members of the county police. These guardians would oversee the contracts and work performance of their "clients." To avoid Negro testimony, the bill authorized that all legal suits for the freedmen would be handled through their respective agents. This blatant attempt to sidestep the original bill was tabled by the senate, and the legislature promptly returned to the previous proposal.³¹

Apparently swayed by Governor Humphreys' speech, on November 21 the house of representatives passed the civil rights bill with section four intact, by a vote of 56-30. The bill also narrowly passed the senate, 16-13. According to the *Jackson Daily Clarion*, "Many members who came here opposed to the measure, on reflection and after hearing the question fully discussed, have given it their support." In addition to the expected split by the Whigs and the Democrats, a clear sectional pattern emerged in the vote. The river counties, consisting mostly of planters, totally supported the bill, while the southern counties, made up of small farmers and poor whites, opposed the measure.³²

On November 25, Governor Humphreys signed the civil rights act into law. In addition to the four sections concerning civil rights, eight sections were devoted to the economic aspects of the freedmen's new position. Section five required all blacks (including mulattoes) to have written evidence of homes and occupations by the second Monday of January, 1866, and each year thereafter. If the individual was engaged in irregular work of

³¹Harris, *Presidential Reconstruction in Mississippi*, 134-35.

³²*New Orleans Daily Picayune*, Nov. 28, 1865; *Jackson Daily Clarion*, Nov. 22, 1865; Harris, *Presidential Reconstruction in Mississippi*, 136.

any kind, he must possess written permission from the mayor or the board of police in his county. Section six specified that if a Negro quit his job without good cause, "he shall forfeit his wages for that year up to the time of quitting."³³

The next three sections were designed to ensure that freedmen complied with the rules of their contracts. Any citizen was authorized to arrest a wandering worker and return him to his employer. The arrester would be compensated according to the distance travelled. However, if the freedman could prove that he had left due to good cause, the employer would be fined accordingly. In addition, anyone attempting to persuade any black to desert his place of legal employment would be charged with a misdemeanor and fined from twenty-five to two hundred dollars.³⁴

The tenth section made it legal for any black to charge anyone, white or black, "with a criminal offense against his or her person or property." Therefore, the freedmen were granted full civil rights in the courts. However, in a supplementary bill passed a few days later, the legislature directed that if any black was found making a false affidavit against any white, that individual was responsible not only to pay a fine of up to fifty dollars, but also to cover the costs of the case. In addition, the offender could be imprisoned for up to twenty days, and if he could not afford the fines, he could be hired out by auction to pay the all the costs, including jail fees.³⁵

³³"An Act to confer Civil Rights," 287-88.

³⁴*Ibid.*

³⁵*Ibid.*; Theodore B. Wilson, *The Black Codes of the South* (University, Alabama, 1965), 67.

In addition to the civil rights act, several other laws were passed which constituted the "Black Code" of Mississippi. Also on November 22, the legislature approved "An Act to regulate the relation of Master and Apprentice, as relates to Freedmen, Free Negroes, and Mulattoes." Under this measure, probate courts were authorized to apprentice any black orphans or minors whose parents could not support them to a suitable white guardian. The act stated "that the former owner of said minors shall have the preference when, in the opinion of the court, he or she shall be a suitable person for that purpose." The ward of each apprentice was directed to supply "sufficient food and clothing; to treat ... humanely; furnish medical attention in case of sickness; [and] teach ... him or her to read and write, if under fifteen years old." The guardian was allowed to use moderate corporal punishment on the child, but "in no case shall cruel or inhuman punishment be inflicted." The provisions concerning apprentices who abandoned their masters were similar to the above conditions for workers. According to the new state Attorney General, Charles E. Hooker, the apprentice law was designed to "give protection and direction to that large class of black minors who have been recently freed and to prevent this class of persons from becoming a tax upon the public treasury."³⁶

A new vagrant law was enacted to ensure that the freedmen would contract for the following year. Under this provision,

all rogues and vagabonds, idle and dissipated persons, jugglers, or persons

³⁶"Mississippi Apprentice Law," in Fleming, *Documentary History of Reconstruction*, 1: 282-83; Harris, *Presidential Reconstruction in Mississippi*, 137-38.

practicing unlawful games or plays, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn, or do not provide for the support of themselves or their families, or dependants [*sic*], and all other idle and disorderly persons

would be considered vagrants, liable to be fined up to one hundred dollars and imprisoned up to twenty days. Blacks unemployed on the second Monday of every January or found meeting illegally would be considered vagrants. White persons caught assembling with blacks would also be deemed vagrants. Ironically, whites guilty of this offense could be imprisoned for six months, while blacks could be held for only ten days. For most equal offenses, blacks faced much more severe penalties than did whites.³⁷

The vagrant act also instituted a one dollar poll tax created specifically for blacks. The money collected would constitute a Freedmen's Pauper Fund, which would help support indigent freedmen and free blacks. Any black refusing to pay the poll tax was considered a vagrant, and if unable to pay the fine, could be hired out to the lowest-bidding employer. This applied to all vagrants.³⁸

On paper, the vagrant law applied to both races, but it was specifically designed for the freedmen. For instance, only blacks could be hired out if they failed to pay the fine for vagrancy. Also, whites were not required to show

³⁷"Mississippi Vagrant Law," in Fleming, *Documentary History of Reconstruction*, 1: 283-84

³⁸*Ibid.*

evidence of employment each January. And poor whites were not slapped with a poll tax, as were the freedmen. Each of the above laws was a deliberate effort by the legislature to restrict severely the economic freedom and mobility of the black population. The simple aim of white Mississippians was to compel the freedmen to return to the plantations.

To account for any oversight, the legislature enacted "An Act to punish certain offences therein named, and for other purposes." This final law forbade blacks from possessing firearms, ammunition, or knives. In addition, any Negro

committing riots, routs, affrays, trespasses, malicious mischief, cruel treatment to animals, seditious speeches, insulting gestures, language, or acts, or assaults on any person, disturbance of the peace, exercising the function of a minister of the Gospel without a license ..., vending spirituous or intoxicating liquors, or committing any other misdemeanor, the punishment of which is not specifically provided for by law

could be fined up to ten dollars and imprisoned for thirty days. The vague language allowed Mississippi police to arrest any black for nearly any behavior they disliked. Once again, any black convicted who refused to pay the accompanying fines could be hired out to any white person willing to pay the costs.³⁹

Although the Mississippi laws were severely restrictive to the freedmen, the Black Code was not a unique document of extreme harshness. The

³⁹"Certain Offenses of Freedmen," in Fleming, *Documentary History of Reconstruction*, 1: 289-90.

vagrancy law resembled those in states such as Wisconsin, New York, Maine, Indiana, Connecticut, and even Massachusetts, the bastion of abolitionism. Five Northern states forbade Negro testimony in cases involving whites, and Oregon prohibited blacks from acquiring real estate and making contracts. The *Meridian Daily Clarion* happily informed its readers that the Indiana state constitution prevented blacks from selling anything in the state. Clearly, the Mississippi legislature had several precedents to draw from Northern states.⁴⁰

The Freedmen's Bureau had instituted other precedents for the state to follow. For example, the Bureau created a pass system to regulate the movement of the freedmen and approved the enforcement of written contracts between planters and freedmen. And General Howard, the Commissioner of the Freedmen's Bureau, recommended the institution of rigid vagrant laws to Colonel Samuel Thomas, the assistant commissioner in Mississippi. Although Thomas emphasized that no law limiting the freedmen's rights to testify or obtain property would be recognized, the Bureau implicitly approved a strict code regarding the freedmen's economic rights.⁴¹

Mississippi's refusal to provide for Negro suffrage was also not unique. In 1865, only four Northern states granted blacks equal suffrage, while seventeen others allowed only white suffrage. In addition, despite the fact that the Republican party controlled each state, three state referendums permitting

⁴⁰Garner, *Reconstruction in Mississippi*, 118-19; Harris, *Presidential Reconstruction in Mississippi*, 128; *Meridian Daily Clarion*, Aug. 17, 1865.

⁴¹Harris, *Presidential Reconstruction in Mississippi*, 129-30.

black suffrage failed. When Connecticut voters defeated black suffrage by one thousand votes in mid-1865, the *Meridian Daily Clarion* ran the story under the title "As We Expected." The editor predicted, "This will be a heavy blow to the republicans, and will be of material benefit to the South." The ex-Confederates failed or refused to recognize the fact that their situation was not analogous to the Northern states. According to Republicans, Northerners were entitled to decide on Negro suffrage. However, in the South, black suffrage was required to ensure the defeated section's loyalty to the Union and the ascendancy of the Republican Party. According to the Republican Party platform of 1868, black suffrage was "demanded by every consideration of public safety, of gratitude, and of justice." A Republican-dominated Congress was not about to allow Mississippi to escape Negro suffrage before Reconstruction had run its course.⁴²

Before adjourning in early December, the state legislature made one more decision which in time it would regret. In August, President Johnson had urged the convention to ratify the Thirteenth Amendment abolishing slavery, but it had failed to do so. When it appeared that the legislature might also ignore the amendment, the President wired Sharkey in November: "I trust in God that the legislature will adopt the amendment, and thereby make the way clear for the admission of senators and representatives to their seats in the present Congress." The legislators, however, were unconvinced. The *Jackson Daily Clarion* remarked, "Viewed in any way we please, it is nothing less than a perfect Pandora's Box." Mississippians accepted the first section of

⁴²Wilson, *Black Codes of the South*, 64; Eric Foner, *Reconstruction: 1863-1877* (New York, 1988), 222; *Meridian Daily Clarion*, Oct. 6, 1865; C. Vann Woodward, "Equality: America's Deferred Commitment," *The American Scholar*, 27 (Autumn 1958), 469.

the amendment, which abolished slavery, but refused to endorse section two, which would enable Congress to pass laws enforcing the first section. According to the *Clarion*, Mississippians wanted to

show the whole world that we intend to keep our faith inviolate by abolishing slavery forever, but we cannot accede to the demand for the surrender into the hands of Congress of all the rights pertaining to our domestic concerns, which come properly within the limits of, and belong *exclusively* to State laws and State Administration.

Despite the President's pleas, on December 4, the legislature chose not to ratify the amendment.⁴³

When the state legislature adjourned on December 6, Mississippi had thus enacted the first of the Black Codes of the South. In fact, Mississippi's laws defining the status of the freedmen formed the basis of the Black Codes of other Southern states. It is clear that white Mississippians wanted to regain economic stability, and by compelling the freedmen to return to the plantations, they felt their labor problems would cease to exist. Mississippi, the largest cotton-producing state prior to the Civil War, could return to its former glory. However, white Mississippians were not only concerned with economics. The legislature passed many acts designed to limit the freedmen's social mobility as well. In fact, a move to outlaw black immigration into the state nearly passed the house. This indicates that the lawmakers were not merely concerned with solving their labor shortage. Furthermore, it

⁴³McKittrick, *Andrew Johnson and Reconstruction*, 200; Jackson *Daily Clarion*, Nov. 8, 1865; Wilson, *Black Codes of the South*, 65.

discounts several historians' assertions that the passage of Black Code was due solely to economic reasons. But whether the motives of Mississippians in passing the Black Code were economic, political, racial, or a combination of all three, responses from the North were nearly unanimous, and the hostile reactions sparked by Mississippi's actions contributed to the rapid breakdown of presidential reconstruction.

Chapter Four: Reactions and Responses to the Black Code

Most white Mississippians were initially pleased with the actions of the state legislature. Mississippi newspapers either praised the legislation or remained uncharacteristically silent on the issue. The Friars Point *Coahomian* commended the legislature: "The laws enacted on the all absorbing negro question, are as good, we conceive, as could be framed at this time." Few editors questioned the wisdom of the Black Code or anticipated a negative Northern reaction. The editor of the Vicksburg *Journal* confidently wrote:

We trust that the advocates of negro suffrage and equality are satisfied. The Legislature of Mississippi has provided freely and fully for the protection of the Freedman in his person and property -- and that these provisions will be faithfully and conscientiously carried out, no sane man will doubt. We have met the issue presented us, in good faith, and in Mississippi today, the Freedman is as well protected as he is in any State in the Union.

Ironically, the usually vocal Jackson *Daily Clarion* failed to comment on the Black Code.¹

A few Mississippians, however, opposed the Black Code from its inception. A convention of freedmen in Vicksburg urged President Johnson to nullify the new state laws. They wrote, "it will be virtually returning us to

¹Friars Point *Coahomian*, Dec. 1, 1865; Vicksburg *Journal*, Nov. 12, 1865, quoted in Harris, *Presidential Reconstruction in Mississippi*, 143.

slavery again. To this we will not submit in any form, and you may know what that means." Others begged Northern Congressmen to repeal the discriminatory laws. In late November, former slaveowner Robert Flourney wrote radical Republican Thaddeus Stevens, a Congressman from Pennsylvania, that the President's plan had ruined "whatever genuine Union sentiment was forming and would in time have grown up." He encouraged Stevens to "let these rebellious states know and feel that there is a power left that can reach and punish treason." These dissidents composed only a small minority, however, and despite Sharkey's later claim to the Congressional Joint Committee on Reconstruction that the Black Code never had the support of the state's citizens, it appears that most white Mississippians did originally endorse the legislation.²

The early approval and confidence exhibited by white Mississippians, however, soon rapidly dissipated. The Black Code provoked responses of disbelief and outrage in the North. Radical Republican newspapers particularly attacked the actions of the state legislature. The *Chicago Tribune* declared:

we tell the white men of Mississippi that the men of the North will convert the state of Mississippi into a frogpond before they will allow any such law to disgrace one foot of soil in which the bones of our soldiers sleep and over which the flag of freedom waves.

The more conservative *New York Times* also blasted the Mississippi Black Code. Referring to the Mississippi legislature, a *Times* correspondent wrote,

²Harris, *Presidential Reconstruction in Mississippi*, 144-45n, 146; Foner, *Reconstruction*, 226.

"These men did a greater wrong than merely doing wrong. There can be no excuse for them, for they maliciously did wrong."³

Not only did the Northern press express hostility to Mississippi's Black Code, the first one passed by a Southern legislature, but several Northern editors also exaggerated the harsh provisions, making the laws appear more extreme than they actually were. For example, the *New York Times* announced:

The Cincinnati Commercial has a letter from a correspondent traveling through Mississippi, who states that the barbarous vagrant law recently passed by the Rebel State Legislature is rigidly enforced, and under its provisions the freed slaves are rapidly being re-enslaved. No negro is allowed to buy, rent, or lease real estate; all minors of any value are taken from their parents and bound out to planters; and every freedman who does not contract for a year's labor is taken up as a vagrant.

Such inaccuracies appeared in many Northern newspapers. Because the Northern press rarely printed the actual laws, Northerners received only the interpreted versions which their newspapers provided. Therefore, with its already harsh features supplemented by Northern distortions, the Mississippi Black Code was attacked as an attempt to reinstate slavery under a new name.⁴

Even Northern Democrats, eager to restore their party's prominence with the help of the ex-Confederates, were distressed by the Mississippi laws.

³Chicago *Tribune*, Dec. 1, 1865; *New York Times*, Feb. 4, 1866.

⁴*New York Times*, March 1, 1866; Wilson, *The Black Codes of the South*, 117-18.

Congressman S. S. Cox later wrote:

It is surprising that the intelligent men of Mississippi could have persuaded themselves, after the terrible experience through which they had passed, that the triumphant North, now thoroughly imbued with the anti-slavery sentiment, would for a moment tolerate this new slave code.

Mississippians first awakened to this reality when General O. O. Howard, the Commissioner of the Freedmen's Bureau, instructed Colonel Thomas to ignore the Black Code's discriminatory property restrictions. In addition, on December 5, the thirty-ninth United States Congress convened in Washington and refused to recognize the recently-elected Southern Senators and Representatives. When news of these events reached the state, the attitudes of the Mississippi press and legislators abruptly changed. The *Jackson Daily Clarion*, previously silent on the issue, suddenly criticized the state legislature for "its insane proclivity to strain at gnats after having swallowed the camel." The editor blamed the Black Code, which had "succeeded in fastening upon us indefinitely the negro bureau, placed us in imminent danger of another provisional government, and doubtless secured the rejection of our members in Congress." The *Clarion* now declared that the vagrant law was slavery "restored in far worse form than it was before," because if a freedman was "unable to find a white man to hire him, ... [he] would be compelled to labor for nothing." Another newspaper called the state legislature:

[a] shallow-headed majority more anxious to make capital at home than to

propitiate the powers at Washington. They are as complete a set of political G. o. l. d. as were ever turned loose to work destruction upon a state. The fortunes of the whole South have been injured by their folly.⁵

Many prominent Mississippians, now fearing another year of federal military rule, suddenly regretted the passage of the Black Code, and several hoped that the legislature might reconvene "for the purpose of having the late hasty and impolitic Legislation repealed." State senator William D. Lyles, a leader of the anti-testimony group, had reversed his opinions by late December. He wrote Governor Humphreys, "We can now begin to understand the defects of our recent legislation. If you do not think of calling us together for several months, I would be glad to know it, as I am thinking seriously of going to Mexico." A former Confederate congressman was even more despondent. He told the Mississippi Governor, "I wish that Legislature had never assembled, or that you had closed their acts in mass and vetoed the whole concern." In February 1866, Humphreys told the *New York Times* that at least one-half of the legislators had written him letters detailing their constituents' discontent with the Black Code and their desire to call a convention to amend the laws. Governor Humphreys told the *New York Times* that he disapproved of the civil rights bill and only signed it because Sharkey told him that it was better than nothing. Sharkey, however, when testifying before the Congressional Joint Committee on Reconstruction, declared that he always felt the property restrictions were unconstitutional.⁶

⁵Garner, *Reconstruction in Mississippi*, 117n; Jackson *Daily Clarion*, Dec. 9, 1865, quoted in Harris, *Presidential Reconstruction in Mississippi*, 144, 144n; Columbus *Sentinel*, quoted in Garner, *Reconstruction in Mississippi*, 116.

But in spite of the statewide regret over the legislature's actions, white Mississippians had not suddenly converted to the doctrine of racial equality. They simply desired the state's restoration in the Union. For example, one editor wrote, "We do not propose to discuss the right or wrong attached to the laws, but what we do propose is to show that their repeal or modification is necessary if Mississippi would regain her position in the Union." And a few editors continued to support the Black Code. The *Natchez Democrat* proclaimed, "We are not disposed to find fault with the members of our legislature. As pioneers they approximated wonderfully near to full justice to the negro." Despite the appeals by the legislators, the press, and the public to repeal or amend the Black Code, Governor Humphreys refused to reconvene the legislature.⁷

Only a week after Mississippi enacted the first Black Code, the thirty-ninth Congress convened in Washington, D. C., and the focus of reconstruction shifted to the national level. For the first time since the end of the war nearly seven months earlier, the legislative branch of the federal government came into session. As Mississippians waited in earnest to see whether Congress would seat their recently elected Senators and Representatives, the Republican majority made two things clear: the President's plan needed modification, and Congress would play the leading role in effecting the necessary changes.

⁶Friars Point *Coahomian*, Jan. 26, 1866; Harris, *Presidential Reconstruction in Mississippi*, 145-6; *New York Times*, Feb. 4, 1866.

⁷Harris, *Presidential Reconstruction in Mississippi*, 145-6.

By prior arrangement with Republican leaders, the clerk of the House of Representatives, Edward McPherson, omitted the names of the Southern Representatives during the calling of the roll. Although James Brooks, a New York Democrat, attempted to force the recognition of representatives from Tennessee and Virginia, Thaddeus Stevens, "through brisk parliamentary legerdemain," managed to avoid a prolonged debate, and the Southerners were excluded. After Indiana Republican Schuyler Colfax was re-elected Speaker of the House, Stevens then proposed the formation of a Joint Committee on Reconstruction, which would "inquire into the condition of the States which formed the so-called confederate States of America, and report whether they or any of them are entitled to be represented in either House of Congress." The motion passed the House, 133-36, and a week later the Senate concurred. On the first day of the session, the Republican majority had determined that changes in the President's program were needed and had affirmed the power of Congress to determine those changes.⁸

The early developments on Capitol Hill, however, did not indicate disapproval of President Johnson's policies. Most Republicans, except the radicals, continued to express their support for the President. But by the end of the Civil War, these moderates required more from the former Confederates than just the nullification of secession and the abolition of slavery. In addition to endorsing a free labor ideology, influential Republican leaders such as Illinois Senator Lyman Trumbull and Speaker of the House

⁸*Congressional Globe*, 39th Congress, 1st session (Washington, D. C., 1866), 1-6; McKittrick, *Andrew Johnson and Reconstruction*, 258-59.

Colfax, by no means radicals, demanded that the freedmen be granted basic civil rights. Despite the apparently minor differences, as long as the President cooperated, most Republicans believed that a speedy restoration of the Southern states would ensue.⁹

Cause for hope of a harmonious settlement seemed legitimate in early December. The Joint Committee on Reconstruction, for example, was tempered by moderates such as Senator William Pitt Fessenden, and Charles Sumner, the radical Senator from Massachusetts, despite his desires to chair the committee, was completely left off. In addition, efforts by radicals like Stevens and Timothy Howe of Wisconsin demanding political equality for the freedmen failed miserably in both Houses. In his annual message to Congress, delivered on December 5, President Johnson was conciliatory. He indirectly criticized the Black Code when he declared, "it is equally clear that good faith requires the security of the freedmen in their liberty and in their property, their right to labor, and their right to claim the just return for their labor." And although he intimated that reconstruction had been completed by the ratification of the Thirteenth Amendment, he admitted that Congress possessed the right to judge the qualifications of its own members. At this point, conciliation seemed highly possible between the executive and legislative branches. Unfortunately, the period of cautious optimism rapidly dissipated.¹⁰

⁹Foner, *Reconstruction*, 22^d-27, 242-44.

¹⁰*Ibid.*, 240; Johnson's message to Congress is located in Edward McPherson, *The Political History of the United States of America During the Period of Reconstruction*, 2nd edition (New York, 1969), 64-66.

The Mississippi Black Code was soon under siege by Republicans, both radical and conservative. According to Senator Henry Wilson of Massachusetts, "the law of Mississippi makes every one of these men whom we have made free practically a slave, and he is in worse condition today than he was when he was a slave." Jesse Fell, an influential Republican from Illinois, urged Congress "to adopt measures for the safety and elevation of the African race. Their present nominal freedom is nothing but a *mockery*." As the Joint Committee on Reconstruction gathered evidence of the cruelty and virtual re-enslavement of the freedmen under the provisional governments, most Republican Congressmen greeted with skepticism President Johnson's claim that "measures have been adopted or are now pending, to confer upon the freedmen rights and privileged which are essential to their comfort, protection, and security." While Johnson seemed to be supporting the Black Codes, most Republicans endorsed the views espoused by the *Springfield Republican*, which declared that the protection of the freedmen's basic rights "follows from the suppression of the rebellion. The party is nothing, if it does not do this -- the nation is dishonored if it hesitate in this." As Christmas approached, signs of a break with the President over the freedmen existed, but the course of Reconstruction still remained undetermined.¹¹

When Congress reconvened on January 5 after a brief holiday, the influential Trumbull introduced two bills which embodied the policy of the Republican party. Both proposals were designed to curb "local legislation or a prevailing public sentiment in some of the States [in which] persons of the

¹¹*Cong. Globe*, 39th Cong., 1st sess., 39-41; Mark M. Krug, *Lyman Trumbull: Conservative Radical* (New York, 1965), 236; McPherson, *A Political History of the United States ...*, 66-67; Foner, *Reconstruction*, 251.

African race ... continue to be oppressed and in fact deprived of their freedom." When proposing the two bills, the Illinois Senator referred to the Black Codes passed by Mississippi and South Carolina, and declared, "The purpose of the bill[s] is to destroy all these discriminations."¹²

The first proposal, known as the Freedmen's Bureau Bill, intended to extend indefinitely the life of the Freedmen's Bureau and provide land, education, and general relief for indigent freedmen. In addition, Bureau agents were authorized to take jurisdiction over any cases in which Southern state officials denied freedmen the "civil rights belonging to white persons." The bill easily passed both Houses.¹³

The second proposal, called the Civil Rights Bill, marked the first attempt by the federal government to define citizenship. Under this act,

all persons born in the United States ... are hereby declared to be citizens of the United States; and such citizens of every race and color, without regard to any previous condition of slavery ... shall have the same right in every State ... to make and enforce contracts; to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold, and convey real and personal property; and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens.

Any violation of a freedman's civil rights was considered a misdemeanor under the jurisdiction of federal district courts. The Civil Rights Bill also passed both Houses with ease.¹⁴

¹²*Cong. Globe*, 39th Cong., 1st sess., 77, 474.

¹³McPherson, *A Political History of the United States ...*, 72-74. The Freedmen's Bureau Bill was passed in the Senate, 37-10, and in the House, 137-33.

When the House approved the Freedmen's Bureau Bill on February 6, most Republicans felt confident that President Johnson would sign the measure. In late January, Fessenden had given a speech defending the bill. He dismissed the rumors of a breach with the President and guaranteed Johnson's support of Congress. Trumbull, who had met with the President several times to discuss both bills, also believed the Freedmen's Bureau Bill had the support of the chief executive. The President, however, had other aims.¹⁵

President Johnson had been looking for an opening by which he could isolate the radicals in Congress and thereby form a new Union Party with himself as its leader. Because he found the Freedmen's Bureau Bill unconstitutional, the President saw a perfect opportunity. In early February, Senator-elect Sharkey had met with the President and assured him that "by taking the initiative you make no issue with any party, but simply discharge a duty required by law. If Congress should not sustain you, it is that body that makes the issue with you, not you with them." Apparently heeding Sharkey's advice, on Monday, February 19, the President vetoed the bill. The President saw no need for the extension. The act would cost the government too much money, and it would damage the freedmen's chances to become independent. In addition, the military tribunals would be an invasion of civil judicial proceedings.¹⁶

¹⁴*Ibid.*, 78-80. The Civil Rights Bill was passed in the Senate, 33-12, and in the House, 111-38.

¹⁵McKittrick, *Andrew Johnson and Reconstruction*, 280-84.

¹⁶Michael Perman, *Reunion Without Compromise* (New York, 1973), 186; McPherson, *A*

Republicans were astonished. Because he refused to address the Black Codes in his veto, the President implied his approval of these discriminatory laws. A *Chicago Republican* editorial indicated most Republicans' dismay:

The President refuses to give his consent to a measure so just and necessary. He will give the luckless freedmen, no matter though they may have borne arms and suffered wounds for the nation, no other protection than that of the ferocious clutches from which they have just been snatched. They shall have no safeguard, no law, no administration of justice, except such as the Rebel States will afford them.

Replying to the President's veto, Trumbull declared, "I believe [the freedmen] will be tyrannized over, abused, and virtually reenslaved without some legislation by the nation for his protection."¹⁷

Despite the fact that the Freedmen's Bureau Bill was passed by a two-thirds majority in both Houses, the President was convinced that it was the work of a radical cabal led by Stevens and Sumner. He hoped the veto would expel the radicals from political favor, and the moderates and conservative Republicans would unite and join with him. What the President failed to realize was that the idea of civil rights for the freedmen was not a radical notion. By early 1866, it was an important aspect of mainstream Republican party ideology. If the President had united with Congress on granting the freedmen their civil rights, conflict could have been avoided, and the radicals might have been ostracized on the idea of black suffrage. Instead, Johnson

Political History of the United States ..., 76-78.

¹⁷McKittrick, *Andrew Johnson and Reconstruction*, 289, 292.

chose to fight the party that elected him on a more moderate issue, a battle which proved impossible to win.¹⁸

Because the President was still popular at the time, the attempt to override the veto in the Senate failed by five votes. Republicans, however, began mobilizing to assure that future bills would not suffer the same fate. Amazingly, Republicans felt that reconciliation with Johnson was still a possibility, and most Congressional delegates felt that the President would surely sign the Civil Rights Bill. On March 24, however, Johnson vetoed the measure. To nearly all Republicans, any hope for cooperation with the President had died. Both Houses promptly overrode the veto, and with the passage of the Civil Rights Act in April 1866, the Mississippi Black Code had been nullified. Presidential Reconstruction was essentially over.

¹⁸Perman, *Reunion Without Compromise*, 189.

Epilogue

The airy gentlemen who think that half a nation can be alienated from the other half for forty years, and after appealing to a tremendous civil war, which rages for four years, tearing up the industrial and political system of half a continent by its roots, and after one part is vanquished in the field ... can conjure a settlement and reunion in a few weeks or months by a free use of the word "conciliation," will have an opportunity of learning wisdom from events.

This was the advice given by *Harper's Weekly* in February of 1866, and in hindsight it remains true. After four years of bloody war, there was no way that the lenient terms of Presidential Reconstruction would have appeased the North and the Republican Congress. Just the same, probably no attempt by Congress to claim the fruits of the victory could have changed abruptly the attitudes of Southerners, whose entire society was based upon slavery, and in the absence of that, the assumption of Negro inferiority. Looking back, it seems highly unlikely that Reconstruction on the state level could have turned out differently.¹

To Mississippians, the Black Code was an honest attempt to solve the economic and social problems created by emancipation. Fearing that the freedmen would refuse to work unless compelled to do so, the Mississippi legislature sought to harness the labor the state so desperately needed by forcing the freedmen back to the plantations of their former owners. Most legislators had no desire to return the freedmen to slavery, as some

¹*Harper's Weekly*, Feb. 10, 1866, quoted in Wilson, *The Black Code of the South*, 148.

Northerners contended, but they did desire to keep the black population from "becoming a permanent burden upon the state treasury." The contract and vagrancy laws were an attempt to prevent this malady. It must also be noted that Mississippi's Black Code was passed in a time of economic crisis. The freedmen, uncertain of their new position in Southern society, were reluctant to contract as laborers for the coming year, 1866. In addition, many blacks were convinced that the federal government intended to distribute "forty acres and a mule" to them, and they were excited at the chance to become landowners. In an effort to urge the freedmen to work, and under fears that freedmen across the state were planning an insurrection, Mississippians responded with the Black Code.

Despite its severity and the hostile response it received in the North, the Black Code, was not enacted without an acknowledgement of Northern attitudes. In fact, many elements of the Black Code, including the contract laws, had been approved by the Union army and the Freedmen's Bureau. Most important of all, white Mississippians thought that their actions were sanctioned by the highest officer in the United States: the President himself. In the absence of Congress at the war's end, it was the President's duty to apply early terms for reconstruction and to guarantee that those terms were being met.

From Johnson's early Reconstruction proclamations until the convening of Congress in December of 1865, Mississippians relied solely on the chief executive when attempting to rebuild their shattered society. When asked by whose authority that Reconstruction would proceed, President Johnson replied, "It shall proceed by my authority, and mine alone." And at one

point, the President told the Southerners:

There may be speeches published from various quarters, that may breathe a different spirit. Do not let them trouble or excite you, but believe that it is ... the great object of the Government to make the union of these United States more complete and perfect than ever ...

In essence, Johnson was telling Mississippians to ignore the warnings in the Northern press that the South must accept gracefully the results of the Civil War. When the North refused to seat the Southern Congressmen in December, 1865, the President must bear a great deal of the responsibility.²

Not only did the Black Code arouse suspicion and hostility in the North and further discredit the President's plan, but the President himself chose to fight Congress on the basis of these laws. Both the Freedmen's Bureau Bill and the Civil Rights Bill, introduced and approved by the most conservative Republicans, represented attempts to invalidate the Black Code and to guarantee federal protection of the civil rights of the freedmen. But Johnson, in spite of the fact that both bills passed by large majorities in both Houses, vetoed the legislation. When Congress overrode the veto of the Civil Rights Bill in April of 1866, Johnson's break with Congress was permanently sealed. Congressional Reconstruction ensued. It was thus the Black Codes which caused the breach in the federal government and determined the path that Reconstruction would follow. The enduring legacy of the Black Code was established in 1867, when Congress proposed the Fourteenth Amendment,

²McKittrick, *Andrew Johnson and Reconstruction*, 189-90.

which made the Civil Rights Act a permanent part of the Constitution. It is a testament to the confusing and chaotic years of Reconstruction that the Fourteenth Amendment continues to be interpreted and enforced in various ways today.

Bibliography

Primary Sources

Documents

Congressional Globe. 39th Congress 1st session. Washington, D. C., 1866.

Journal of the Proceedings and Debates in the Constitutional Convention of the State of Mississippi. Jackson, Mississippi, 1865.

Books and Articles

Andrew, Sidney. "Three Months Among the Reconstructionists."

Atlantic Monthly 17. February, 1866. 237-45.

Fleming, Walter, ed. *Documentary History of Reconstruction*. 2 volumes. Reprint. New York, 1966.

Johannsen, Robert W., ed. *Reconstruction, 1865-1877*. New York, 1970.

McPherson, Edward. *The Political History of the United States of America During the Period of Reconstruction, from April, 1865, to July 15, 1870*. Reprint. New York, 1969.

Reid, Whitelaw. *After the War: A Southern Tour*. Cincinnati, 1866.

Newspapers

Chicago Tribune, 1865.

Friars Point Coahomian, 1865-1866.

Jackson Daily Clarion, 1865-1866.

Meridian Daily Clarion, 1865.

New Orleans Daily Picayune, 1865-1866.

New York Times, 1865-1866.

Washington National Intelligencer, 1865.

Secondary Sources

Books and Articles

Drake, Winbourne M. "The Mississippi Reconstruction Convention of 1865." *Journal of Mississippi History* 21, October, 1959.

Foner, Eric. *Reconstruction, 1863-1877*. New York, 1988.

Garner, James Wilford. *Reconstruction in Mississippi*. New York, 1901.

Harris, William C. *Presidential Reconstruction in Mississippi*. Baton Rouge, Louisiana, 1967.

Krug, Mark M. *Lyman Trumbull: Conservative Radical*. New York, 1965.

McKittrick, Eric L. *Andrew Johnson and Reconstruction*. Chicago, 1960.

Perman, Michael. *Reunion without Compromise: the South and Reconstruction, 1865-1868*. New York, 1973.

Sydnor, Charles S. "The Free Negro in Mississippi Before the Civil War." *American Historical Review* 32. 1927.

Wilson, Theodore B. *The Black Codes of the South*. University, Alabama, 1965.

Woodward, C. Vann. "Equality: America's Deferred Commitment." *The American Scholar* 27. Autumn, 1958.