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## Guns, Democracy, and the Insurrectionist Idea

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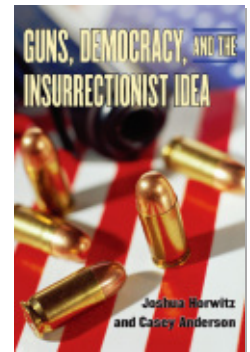
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## CHAPTER FIVE

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# THE CIVIL WAR AND RECONSTRUCTION

### The Civil War

Revisionist claims about the constitutional status of political violence emerged well before the gun rights movement adopted the Insurrectionist idea as a core rationale for opposition to the regulation of firearms. In fact, by the time the attack on Fort Sumter marked the beginning of the Civil War, advocates of secession, the forefathers of the modern Insurrectionists, had worked out elaborate theoretical justifications for their decision to take up arms against the United States. The states had never surrendered their sovereignty to the central government, the argument went, and therefore were free to dissolve the compact that bound them to the United States when they decided the Union no longer served their interests or represented their values. When Abraham Lincoln was elected president, many southerners felt they had no obligation to accept his mandate. Having lost the election, they set out to overturn it by force.<sup>1</sup>

In his first campaign for the presidency, Lincoln made it clear that he viewed secession as a violation of the compact among and between the states and the central government. While the states retained a large degree of sovereignty, their decision to join the Union was binding, and only a decision by a majority of states to rescind the contract could be

valid. As president, Lincoln acted on his view that insurrection was illegal and unconstitutional. He put the resources of the nation and the lives of its citizens on the line to assert that the United States is indivisible.

Lincoln's First Inaugural Address laid out a version of sovereignty and constitutionalism that identifies that there can be no right of revolution within the Constitution and shows the true folly of Insurrectionism. He did not deny a natural right to revolution but denied that it exists as a moral right that is "against the law."<sup>2</sup> In the inaugural address, delivered as he was trying to prevent the nation from splintering, he said,

I hold, that in contemplation of universal law, and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper, ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our national Constitution, and the Union will endure forever—it being impossible to destroy it, except by some action not provided for in the instrument itself. . . . It follows from these views that no State, upon its own mere motion, can lawfully get out of the Union,—that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary,<sup>3</sup> according to circumstances.<sup>4</sup>

In July 1861, after the Confederacy had already attacked Fort Sumter, Lincoln needed to justify sending the nation to war. In his July 4 message to Congress, he explained that he saw himself as forced to choose between

"immediate dissolution, or blood." And this issue embraces more than the fate of these United States. It presents to the whole family of man, the question, whether a constitutional republic, or a democracy—a government of the people, by the same people—can, or cannot, maintain its territorial integrity, against its own domestic foes. It presents the question, whether discontented individuals, too few in numbers to control

administration, according to organic law, in any case, can always, upon the pretences made in this case, or on any other pretences, or arbitrarily, without any pretence, break up their Government, and thus practically put an end to free government upon the earth. It forces us to ask: "Is there, in all republics, this inherent, and fatal weakness?" "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" So viewing the issue, no choice was left but to call out the war power of the Government; and so to resist force, employed for its destruction, by force, for its preservation.<sup>5</sup>

Lincoln excoriated those who twisted history to induce the people of the southern states to take up arms against the United States:

It might seem, at first thought, to be of little difference whether the present movement at the South be called "secession" or "rebellion." The movers, however, well understand the difference. At the beginning, they knew they could never raise their treason to any respectable magnitude, by any name which implies violation of law. They knew their people possessed as much of moral sense, as much of devotion to law and order, and as much pride in, and reverence for, the history, and government, of their common country, as any other civilized, and patriotic people. They knew they could make no advancement directly in the teeth of these strong and noble sentiments. Accordingly they commenced by an insidious debauching of the public mind. They invented an ingenious sophism, which, if conceded, was followed by perfectly logical steps, through all the incidents, to the complete destruction of the Union. The sophism itself is, that any state of the Union may, consistently with the national Constitution, and therefore lawfully, and peacefully, withdraw from the Union, without the consent of the Union, or of any other state. The little disguise that the supposed right is to be exercised only for just cause, themselves to be the sole judge of its justice, is too thin to merit any notice.

With rebellion thus sugar-coated, they have been drugging the public mind of their section for more than thirty years; and, until at length, they have brought many good men to a willingness to take up arms

against the government the day after some assemblage of men have enacted the farcical pretence of taking their State out of the Union, who could have been brought to no such thing the day before.

This sophism derives much—perhaps the whole—of its currency, from the assumption, that there is some omnipotent, and sacred supremacy, pertaining to a State—to each State of our Federal Union. Our States have neither more, nor less power, than that reserved to them, in the Union, by the Constitution—no one of them ever having been a State out of the Union.<sup>6</sup>

Lincoln staked everything on the indivisibility of the United States. He would allow no rebellion against the Constitution and sent hundreds of thousands of Union soldiers to their death to vindicate the idea that there is no constitutional right to take up arms against the government. Lincoln's words and deeds stand as a permanent rebuke to the self-serving and ahistorical claim that guns represent the tools of political dissent.

Saul Cornell summarizes the implications of the Civil War for the Insurrectionist idea: "The actions of the South Carolina militia took the antebellum states' rights interpretation of the Second Amendment to its logical conclusion. . . . After the defeat of the Confederacy the notion that a state or an individual might exercise such a right was simply no longer tenable."<sup>7</sup> If the political reality was not enough, the Supreme Court flatly rejected an Insurrectionist reading of the Constitution. In *Texas v. White*, the Court ruled that the state of Texas had no power under the Constitution to secede from the Union. "The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the Union between the original States," the opinion said. "There was no place for reconsideration, or revocation, except through revolution, or through consent of the states."<sup>8</sup>

## Reconstruction and "Redemption"

Insurrectionists did not invent the selective and oversimplified use of history in service of an ideological agenda. Still, the Insurrectionist interpretation of American history in the aftermath of the Civil War pro-

vides a particularly brazen example of how history can be contorted by ideologues. According to the Insurrectionists, the collapse of Reconstruction—and every tragic consequence that followed—could have been avoided if the newly freed slaves had had access to firearms. This explanation of events is a fantasy.

It is easy for Insurrectionists to identify incidents where the victims of racist violence might have defended themselves more effectively if they had been armed with guns. The idea that white racists could have been kept in check by ensuring widespread access to firearms among black southerners, however, is absurd. In fact, the American experience during and after Reconstruction illustrates that the core premise of the Insurrectionist idea—that private ownership of guns safeguards individual rights against the tyranny of the majority—is exactly backward in explaining the relationship between private force and state power in protecting individual rights. The lesson for gun rights and for our country is that private violence—especially when carried out with the acquiescence or even tacit approval of local government authorities—represents the most realistic danger to liberty in our society. Wherever mob violence threatens individuals' rights, a government that is both subject to democratic constraints *and* capable of maintaining a monopoly on the organized use of force is the only hope for the rule of law. A brief review of the broader historical context of Reconstruction will help us to understand why this is so.

Abraham Lincoln could easily have been forgiven in the spring of 1865 for allowing a measure of optimism to color his view of America's future. What had begun as a rebellion to tear the Union apart had set in motion a chain of events that created a stronger central government with new legal and political authority and a Union with a vitality that would have been inconceivable four years earlier. No one person is more responsible for the strengthening of the power of the federal government than Lincoln. Today it is fashionable in many quarters to deride the federal government as overbearing and inefficient. Whatever its shortcomings in our time, Lincoln understood that the central government had to be strong enough to defend the rule of law when private groups—or even the states—defy democratic institutions or trample minorities' rights. The federal government serves this function today be-

cause Lincoln consciously strengthened centralized authority as a means to a noble end—that is, to extend and protect freedom throughout the land. Lincoln employed the might of the federal government against the seceding states not only to save the Union but also to advance the cause of individual liberty.

Lincoln believed that only a more powerful federal government could protect the democratic process that was and remains the foundation of political freedom in the United States. In a letter to James C. Conkling, Lincoln wrote, "Among free men, there can be no successful appeal from the ballot to the bullet; and that they who take such an appeal are sure to lose their case, and pay the cost."<sup>9</sup> Conkling did not miss the significance of Lincoln's lucid words, replying, "It indicates another step in the onward progress of our government towards its only true position, and that which it ought always to have occupied viz the establishment and protections of universal Liberty."<sup>10</sup>

In the period following the Civil War, the nation moved in fits and starts toward "universal liberty" for all men. The project ultimately fell far short of its goal. What might have been was lost to history when, on April 14, 1865, John Wilkes Booth used a concealed, single-shot .44-caliber pistol to assassinate Lincoln.<sup>11</sup> Booth could not abide Lincoln's use of federal authority, against the wishes of recalcitrant states and their citizens, to enforce the formal rights recently granted to freed slaves by the government of the United States. As Booth escaped from Ford's Theatre, at least one person heard him scream, "Sic semper tyrannis" (Thus always to tyrants) and then, "The South shall be free." Others thought Booth said, "Revenge for the South."<sup>12</sup>

Whatever his exact words, Booth was deeply committed to the Confederate cause and to the idea that the South had the right to reject the will of the voters regarding slavery—as expressed in the victories of President Lincoln in the national elections of 1860 and 1864—by using armed force to secede from the Union. He viewed Lincoln's expansive use of federal power, especially in Booth's home state of Maryland (which did not secede but whose people were largely sympathetic to the Confederacy), as an affront to freedom. Booth despised Lincoln and after the 1864 elections lamented that Lincoln would turn the presidency into a monarchy and destroy the republic. In a letter to his mother dis-

covered after the assassination, Booth wrote, "I have not a single selfish motive to spur me on to this, nothing save the sacred duty, I feel I owe the cause I love, the cause of the South. The cause of liberty and justice."<sup>13</sup> In his conviction that an armed individual has the right—and even an obligation—to take up arms against democratic government, Booth foreshadowed the logic of Insurrectionism.

If Lincoln had not been assassinated, Reconstruction might well have put the nation on a much more direct path to the goal of civil equality. In *Forever Free*, Eric Foner and Joshua Brown call it "inconceivable" that Lincoln would have botched things as badly as Andrew Johnson did after assuming the presidency.<sup>14</sup>

In any event, Reconstruction was all but dead by 1877. Former slaves were only marginally closer to full legal and political equality than had been the case under formal bondage. Johnson, the man Booth propelled to the presidency, was a Tennessee Republican and the only U.S. senator from a seceding state to pledge his support for the Union and keep his seat. He was nominated as part of the 1864 Republican ticket to reflect "Republicans' determination to extend their organization into the South once the war had ended."<sup>15</sup>

Johnson had supported Lincoln's call to emancipate the slaves but viewed the role of the federal government in a starkly different light. Where Lincoln believed that the central government had an obligation to defend the integrity of the Union, individual rights, and the rule of law, Johnson was an unyielding proponent of states' rights and tight limits on federal power. He argued that the federal government should not interfere in local politics, even if the failure to do so left the freedmen disenfranchised. This perspective is, of course, far closer to Booth's than to Lincoln's.<sup>16</sup>

In 1866, the notoriously stubborn new president sent a message to Congress after vetoing a bill that would have extended the Freedmen's Bureau. (Congress overrode the veto in July of that year.) As Foner puts it,

In appealing to fiscal conservatism, raising the specter of an immense federal bureaucracy trampling on citizen's rights, and insisting self-help, not dependence upon outside assistance, offered the surest road to eco-



conomic advancement, Johnson voiced themes that to this day have sustained opposition to federal intervention on behalf of blacks.<sup>17</sup>

Johnson and Lincoln's views on the role of government in protecting freedom and individual rights are part of a debate that is as old as the republic and has raged on to the present day. As we have explained, the Insurrectionists share with Johnson the belief that robust federal power should be equated with tyranny. The Insurrectionists fail to account for the major contributing factors in the rise of Jim Crow laws—the development of *private* militias and the *diminished* role of federal power. Whether they find these factors ideologically inconvenient or simply have never bothered to study the history they are so quick to appropriate in the name of gun rights advocacy, the Insurrectionists have spun a tale so misleading and incomplete that it is essentially a lie.

Of course, a few scholars have argued that gun control was an integral part of the system of control imposed by whites on slaves and later on freedmen and -women. These writers assert that the federal government's unwillingness or inability to protect former slaves during Reconstruction demonstrates that private access to guns was and is crucial to safeguarding democratic rights and that gun control therefore originated in racist impulses. They further claim that without gun control legislation, the waves of political violence perpetrated by white southern Democrats during Reconstruction would have been prevented and that Reconstruction itself would have been dramatically more successful. To take but one example, in "Of Holocausts and Gun Control," Daniel Polsby, dean of the George Mason University School of Law and a beneficiary of grant funding from the National Rifle Association (NRA), and Don B. Kates Jr. baldly assert that

over a period of two centuries gun control laws played an indispensable part in Southern control of slaves and—after the Civil War—of freedmen. This legacy to the Second KKK from the triumph of the first Klan was enlarged when in 1911 New York followed Southern states by conditioning handgun ownership on obtaining a police license. The purpose of this requirement was to disarm Italians, Jews, and other supposedly criminous immigrant groups.<sup>18</sup>

Polsby and Kates draw a straight line from gun restrictions on slaves to the Holocaust, without pausing to examine the other circumstances and factors contributing to these events.

Another illustrative article, Robert J. Cottrol and Raymond T. Diamond's "The Second Amendment: Toward an Afro-Americanist Reconsideration," argues,

The willingness of blacks to use firearms to protect their rights, their lives, and their property, alongside their ability to do so successfully when acting collectively, renders many gun control statutes, particularly of Southern origin, all the more worthy of condemnation. This is especially so in view of the purpose of these statutes, which, like that of the gun control statutes of the black codes, was to disarm blacks.<sup>19</sup>

And of course David Kopel, writing for the lay audience of the magazine *Reason*, details a litany of southern gun control laws passed to perpetuate Jim Crow.<sup>20</sup>

We are tempted at this point to paraphrase the NRA's favorite aphorism, "Gun control laws don't lynch people, people lynch people," and leave it at that, but a closer analysis is required. Not only is the claim that gun rights could have stopped the Jim Crow system a falsehood, but it covers up the even more important insight that the Insurrectionist construct is a continuation of a concerted effort, born and nurtured in the antebellum South, to limit the federal government's effectiveness in protecting the democratic rights of the most vulnerable Americans.

Before we examine the historical claims raised by the Insurrectionists in academia, it is important to remember that the "racist" character of any public policy choice depends on its context. In a racist society, all sorts of policies may be racist in their intent and effect—vagrancy laws, zoning restrictions, school boundary decisions, and even livestock-fencing regulations.<sup>21</sup> During Reconstruction and the era of Jim Crow, state legislatures enacted a wide variety of laws designed to deny black Americans political, legal, economic, and social equality. For example, a series of state laws mandated segregated public schools for blacks and whites. It does not follow, however, that all laws governing public education are racist. It simply means that a racist state

legislature is capable of using a wide range of public policy choices to achieve the same nefarious ends. Gun laws are no different, and it is ludicrous to contend that the Brady background-check law is racist simply because an unrelated gun control law from another era was passed with the intention of preventing blacks from defending themselves.

None of this is to say that gun control laws designed to leave blacks defenseless against racist violence are not worthy of condemnation. Any use of state power that seeks to leave unpopular minorities more vulnerable to mob violence than is already the case is an affront to human rights and democracy. Gun control laws, however, were far from the worst affront to democratic values that arose during Reconstruction and Jim Crow. Far more destructive was the rise of private militias, including the Klan, the Knights of the White Camellia, and local rifle clubs that became de facto agents of the Democratic Party and state and local governments in the South. These armed terrorists did not need or wait for racist gun control schemes to do their dirty work. They killed, maimed, raped, pillaged, and yes, disarmed former slaves; they operated in many cases without fear of prosecution or even the opprobrium of their communities. Only the federal government had the capability to address the situation, although its commitment to use this capability proved lacking even in the best of times.

Reconstruction was a complicated patchwork of policies and programs that worked differently in each region of the South. Immediately after the Civil War, President Johnson used his executive authority to craft a set of policies now known as Presidential Reconstruction, which in effect differed little from de jure slavery. Former slaves were required to sign labor contracts and were still restricted in all aspects of their lives. According to Foner, "The entire complex of labor regulations and criminal laws was enforced by a police apparatus and judicial system in which blacks enjoyed virtually no voice whatever. Whites staffed urban police forces as well as state militias, intended, as a Mississippi white put it in 1865, to 'keep good order and discipline amongst the negro population.'"<sup>22</sup>

Even as laws that explicitly singled out blacks for disparate treatment fell by the wayside beginning in 1866, blacks remained excluded from the institutions of power, including service in militias and on ju-

ries. As the first wave of Klan violence started, "sheriffs, justices of the peace, and other local officials proved extremely reluctant to prosecute whites accused of crimes against blacks."<sup>23</sup> Johnson had no interest in changing the antebellum social order that included a strong emphasis on states' rights. Yet it became clear soon after the cessation of hostilities that the states themselves were unable or unwilling to give meaning to emancipation and that the federal government would have to step into the breach. This discovery was not lost on the former slaves: "Presidential Reconstruction reinforced blacks' identification with federal authority. Only outside intervention could assure the freedmen a modicum of justice."<sup>24</sup> The nation as a whole would have to protect the rights of the former slaves.

In response to the failures of Presidential Reconstruction and because of the crisis caused by rising violence in the South, congressional Republicans pushed to enact Radical Reconstruction. The radicals believed that traditional principles of federalism and states' rights should not be allowed to stand in the way of a national effort to secure the former slaves' rights and had no qualms about using the full resources of the federal government to make the effort succeed.<sup>25</sup>

Gaining power after the elections of 1866, the radical Republicans overrode a Johnson veto to pass the Reconstruction Act of 1867, which provided the means for former slaves to exercise their political rights. Although the measure did not disenfranchise the rebels and created only temporary enforcement provisions, the radicals pinned great hope on the ballot's ability to transform the South without having to resort to a massive, long-term federal military presence in the region.<sup>26</sup> To a large extent, black suffrage was a revolutionary occurrence. Foner notes, "Alone among the nations that abolished slavery in the nineteenth century, the United States, within a few years of emancipation, clothed its former slaves with citizenship rights equal to those of whites."<sup>27</sup> Suffrage transformed southern black life, with newly freed slaves energetically engaging in the trappings of public life, seeking elected office, and building the institutions of what we today call civil society, including political organizations and self-improvement societies.

Southern Democrats, acutely aware of their lost power and influence, responded with all of the legal and extralegal tools at their

disposal to undo what the radicals had achieved. Steven Hahn argues that the Klan and other groups committed to violence were part of a long tradition of the use of brutality to maintain political power in the South: "Paramilitary organization had been fundamental to the social and political order of slavery; it remained fundamental to the social and political order of freedom."<sup>28</sup> In effect, these organizations served as the armed wing of the Democratic Party, and their role was to force the former slaves and their allies out of the political process through violence and intimidation.<sup>29</sup>

They achieved their goal. The Klan and its allies intimidated or killed Republican elected officials at all levels of government and devastated the leaders of the emerging grassroots organizations that supported black political participation. Starting with the elections of 1868, the paramilitary groups suppressed Republican voting, especially in areas where the states did not have federal troops at their disposal.<sup>30</sup>

The Camilla Riot in southwestern Georgia in the fall of 1868 was among the best-known of thousands of acts of intimidation throughout the South that led to voter suppression. The incident began when a lightly armed group of freedmen, "led by a wagonload of musicians playing fifes and drums," tried to enter the town of Camilla to hear Republican congressional candidate William P. Pierce speak at a rally. Racial tensions were high. Whites had harassed Pierce a few days earlier at a rally in a nearby town. As the procession entered Camilla, a local drunk fired on the group and then was joined by white townspeople organized in rifle squads. The freedmen tried to escape, but the white mob followed. The violence continued for days, and nine blacks were killed and many others wounded. More telling, on Election Day, "Only two Republicans bothered to cast ballots in Camilla, and the turnout was so low elsewhere in the district that the Democrats, despite being greatly outnumbered among eligible voters, registered an official victory."<sup>31</sup>

In response to this violence, the federal government put its resources to work. Congress passed the Ku Klux Klan Act of 1871, which provided for federal prosecutions of individuals who deprived former slaves of their civil rights and even called for military intervention if necessary.<sup>32</sup> Under the recently established Department of Justice, hundreds of Klansmen were prosecuted, and the Union Army was used to

root out the Klan in South Carolina. The results were impressive. As Foner explains,

Judging by the percentage of Klansmen actually indicted and convicted, the fruits of "enforcement" seem small indeed, a few hundred men among thousands guilty of heinous crimes. But in terms of its larger purposes—restoring order, reinvigorating the morale of Southern Republicans, and enabling blacks to exercise their rights as citizens—the policy proved a success. "The law on the side of freedom," Frederick Douglass would later remark, "is of great advantage only where there is power to make that law respected." By 1872, the federal government's evident willingness to bring its legal and coercive authority to bear had broken the Klan's back and produced a dramatic decline in violence throughout the South.<sup>33</sup>

Some Republican governors in the South also mounted serious offensives against the Klan, especially where they had a base of white Republicans on whom to rely.<sup>34</sup> According to Foner, the former slaves generally exercised remarkable restraint and preferred to rely on democratic processes to vindicate their rights.<sup>35</sup> But as Hahn points out, the freed bondspersons also organized and took up arms because they knew from bitter experience how politics in the South worked. Even as blacks were deeply committed to democracy, they understood that in the South, "the rites of democracy had been built on the rituals of violence."<sup>36</sup> Hahn chronicles many examples of former slaves organizing and arming in efforts that successfully if temporarily vindicated their political rights. He details how blacks drove the Klan out of Wilmington, North Carolina, in 1868 by taking up night patrols on the streets with guns and fence rails. "Four 'tempestuous' nights later, they had ended the career of the Ku Klux Klan in Wilmington."<sup>37</sup> Blacks exercised their voting rights freely in the fall elections.<sup>38</sup> Blacks in state militias also were part of successful efforts to suppress political violence. The decline in violence made the 1872 elections the most peaceful of Reconstruction.<sup>39</sup>

These small victories were short-lived, however, and proved impossible to maintain after the federal government withdrew its assistance

during President Ulysses S. Grant's second term. During Grant's first administration, he went along with Congress and used the power of his office to ease the plight of the former slaves. It was here that the benefits of a strong national government were recognized. "The antebellum, Civil War, and early Reconstruction experiences had proved that various states could be just as tyrannical as many Americans at the Founding had feared the federal government might be. These recent events had also shown that the central government—aided by a national army of both volunteers and draftees—could at times be freedom's best friend."<sup>40</sup>

But during his second term, amid rising Republican political losses, Grant backed off from his support of blacks and left the southern Republicans without federal backing. Asked why he had not sent troops to Mississippi to stop brutal political violence in 1875, Grant maintained that northern Republican leaders had pressured him, insisting that there was no sense in trying to save Mississippi if it meant losing Ohio. The results were disastrous. The Democratic paramilitary apparatus used violence and election fraud to "redeem" the South. Black and white Republicans were again killed and intimidated and prevented from voting or exercising other political rights. "Unlike crimes by the Ku Klux Klan's hooded riders, those of 1875 were committed in broad daylight by undisguised men, as if to underscore the impotence of local authorities and Democrats' lack of concern about federal intervention."<sup>41</sup>

Hahn shows how the former slaves valiantly fought the "redemption" plans by organizing and taking up arms. In late 1874, in Vicksburg, Mississippi, Sheriff Peter Crosby, a black Republican, organized a posse to protest his forcible removal from office by a group of "White-Liners" who had been organized in close association with the Democratic Party and were dedicated to excluding blacks from the political process. Crosby brought together several hundred troops and had the backing of the Republican governor, yet when he attempted to reenter Vicksburg, his men were gunned down by armed whites, who then attacked blacks for another ten days, killing twenty-nine and wounding and intimidating many more. Federal troops finally stepped in to stop the carnage and reinstate Crosby. The White-Liners' tactics spread the

following year, however, part of the attempts to intimidate Republican voters throughout the state. "Paramilitary squads terrorized rural districts, county seats, and other polling places, sometimes with the help of counterparts from Louisiana and Alabama, on election eve and election day in most places where an organized Republican constituency was still to be detected." When the White-Liners' campaign was complete, Republicans had lost control of the state legislature, and many Republican holders of local offices were either defeated or forced out.<sup>42</sup>

This pattern was repeated throughout the South, even in South Carolina, which had well-organized and -armed black militias. Hahn estimates that as many as one hundred thousand black men served in the South Carolina Militia.<sup>43</sup> Ultimately, however, the determined plans of the Democratic paramilitary organizations, buttressed by massive election fraud, pushed the Republicans out of South Carolina, leaving a trail of blood. By 1874, "armed whites sought direct confrontations with black militiamen" even in areas with large majorities of former slaves.<sup>44</sup> In Hampton, South Carolina, a clash between a drilling black militia company and two white men who demanded the right of way led to an armed confrontation between the militiamen and the local rifle clubs. Before the fight was over, the town marshal and a militia lieutenant had been killed, and thirty militiamen had been captured, with five of them summarily executed. The reign of terror continued, with whites determined to destroy the former slaves' political power.

Hahn quotes a white paramilitary man to sum up the situation: "By God we are going to take your guns [and] the United States Government hain't got anything to do with it. . . . [T]he Constitution is played out, and every man can do just as he pleases."<sup>45</sup> Foner observes that "the practical obstacles to armed resistance were immense." Not only did blacks tend to have inferior weapons, but those "with military experience were far outnumbered in a region where virtually every white male had been trained to bear arms."<sup>46</sup> During the Colfax Massacre, these obstacles became painfully apparent. In the single-most-devastating incident of Reconstruction, a dispute over a contested election in Louisiana led to a standoff between armed black Republicans and an assortment of white paramilitary groups over the control of local government. The Republicans held the paramilitary forces at bay for several days before be-



ing flushed out by the whites' superior force, which included the use of a cannon. When it was over, hundreds of blacks were dead.<sup>47</sup>

While Hahn cautions against underestimating the "extent and tenacity of black resistance," Foner reminds us that "ultimately, of course, the responsibility for suppressing crime rests not with the victim but with the state." Foner and Hahn agree that federal troops were the most important factor in protecting Republican political participation in the South. In the words of members of the Alabama Union League, "Only a standing army in this place can give us our right and life."<sup>48</sup>

For purposes of evaluating the Insurrectionist account of Reconstruction, the salient point is that where federal power was brought to bear, former slaves could exercise their political rights fully and enjoy many benefits of full citizenship, but when federal power waned and political will drained away, blacks—despite their personal bravery and willingness to defend themselves—were overcome by larger and more powerful white paramilitary organizations.

The facile arguments made by Pilsbury and like-minded right-wing academics assume that an armed populace best protects liberty and that a weak government is less capable of becoming tyrannical. Reconstruction, however, showed something else entirely: a well-armed populace is capable of enforcing its will at the expense of the rights of minorities if the federal government lacks the political or military strength to intervene. When the federal government pulled out of the South, Reconstruction-era state governments lacked sufficient loyal militia or law enforcement resources to protect black citizens and safeguard the rule of law. The crime of Reconstruction, therefore, is not enactment of a few gun control statutes but the fact that under the camouflage of states' rights, southern Democrats were permitted to turn the clock back on freedom and civil rights. The federal power that Lincoln had zealously developed to protect and support former slaves was quickly relinquished after his death. Almost a century would pass before another Republican president's troops stepped in to protect the rights of black Americans in the South.

Former slaves tried to protect their rights—some by using guns—but were overwhelmed by their opponents. Governors who called out state

militias quickly learned that white citizens who only recently had fought a war to preserve the institution of slavery were not eager to fight for the civil rights of newly freed slaves. The events leading to the “redemption” of the southern states showed that an uncontrolled mob is just as capable of tyranny as any consolidated government. Yet the Insurrectionist fantasy blames gun control laws—not the despicable conduct of southern Democrats, not the ballot fraud that forced Republicans from power, and not the states’ rights ideology of Johnson and Booth—for the repressions of civil rights. Insurrectionists build on this fantasy—the very antithesis of Lincoln’s view—even now.

The former slaves should indeed have had the same right to bear arms as their white counterparts. But the Insurrectionists’ revisionist history, which puts gun control laws at the center of the struggle against the Ku Klux Klan, misidentifies the real villains—the southerners who put the rights of the states ahead of the rights of their fellow citizens. The revisionist myths about Reconstruction attempt to explain a complex set of events through the prism of a simple slogan for true believers: guns make us free. A more nuanced understanding of history shows otherwise. Not until the federal government acted to fulfill Lincoln’s promise of freedom were black Americans able to participate fully as citizens in our democracy. The Insurrectionist claim that restrictive gun laws bore at least partial responsibility for the rise of political violence against blacks after the Civil War may be correct in the narrow sense that some African Americans were left without an effective means of defending themselves when Klansmen arrived at their doorsteps but is 180 degrees from the truth on the broader—and far more important—question of the relationship between centralized power and the rights of the individual in the Reconstruction era.

Indeed, while Reconstruction ultimately failed to deliver on the promise of equality for African Americans in the short term, it achieved legal changes that built the foundation for the protection of a much broader range of rights for all Americans over the long term. As Foner observes, Reconstruction-era changes to the Constitution represented a fundamental reordering of the relationship between the state and federal governments, giving the federal government a primary role in the defense of individual rights. In 1789, it was assumed that the central

government's power represented the most important threat to liberty, and powerful state governments were viewed as a buffer to protect the rights of the people against overreaching by the federal government. By 1865, however, it had become clear that that states—or groups of citizens acting with the acquiescence or approval of state and local officials—were at least as likely to oppress unpopular minorities and trample the rights of individuals. In adopting the Thirteenth, Fourteenth, and Fifteenth Amendments, Congress changed the structure of the Constitution to reflect this new understanding, making the federal government the guarantor of individual rights.

The Reconstruction Amendments, and especially the Fourteenth, transformed the Constitution from a document primarily concerned with federal-state relations and the rights of property into a vehicle through which members of vulnerable minorities could stake a claim to substantive freedom and seek protection against misconduct by all levels of government. The rewriting of the Constitution promoted a sense of the document's malleability, and suggested that the rights of individual citizens were intimately connected to federal power. The Bill of Rights had linked civil liberties and the autonomy of the states. Its language—"Congress shall make no law"—reflected the belief that concentrated power was a threat to freedom. Now, rather than a threat to liberty, the federal government, declared Charles Sumner, the abolitionist Senator from Massachusetts, had become "the custodian of freedom." The Reconstruction Amendments assumed that rights required political power to enforce them. They not only authorized the federal government to override state actions that deprived citizens of equality, but each ended with a clause empowering Congress to "enforce" them with "appropriate legislation." Limiting the privileges of citizenship to white men had long been intrinsic to the practice of American democracy. Only in an unparalleled crisis could these limits have been superseded, even temporarily, by the vision of an egalitarian republic embracing black Americans as well as white and presided over by the federal government.<sup>49</sup>

The implications of these changes were not limited to the question of race and slavery. The Fourteenth Amendment, with its explicit au-

thorization for a sweeping expansion of the power of the federal government to enforce the rights of individual citizens to due process and to equal protection of the laws, represented an entirely new understanding of the role of the central government in the protection of liberty. Instead of interposing the states as a shield between individual citizens and a central government assumed to be remote, unresponsive, and unaccountable, the Reconstruction amendments gave the federal government the right and responsibility to enforce individual rights in the face of a wide range of abuses by state and local authorities and even private individuals—armed or not—who pose a threat to individuals' rights. The failure of Insurrectionist theorists and their allies in right-wing politics to come to terms with the post-Reconstruction Constitution reflects a basic logical weakness in their conception of the federal government as a menace to be kept in check by armed citizens capable of resisting its decisions with violence.