

The Role of the Supreme Court in the Downfall of Reconstruction

Stuart Scamehorn

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Instructor: Dr. Andrew Sturtevant

Cooperating Professor: Dr. Joanne Jahnke-Wegner

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ABSTRACT

Following the Civil War, the Supreme Court considered several cases, mainly revolving around whether the federal government had the ability to overrule state authority when it came to protecting Civil Rights. The role of the court has been a well-discussed subject within the historiography of Reconstruction; early writings framed the court as upholding the true values of the white citizenry against tyrannical acts of the federal government, while more modern approaches view the actions of the court as part of a larger obstacle to the success of the advancement of Black Civil Rights following the Civil War. However, current scholarship tends to relegate the Supreme Court to a secondary role in the failure of Reconstruction, instead focusing on other political, social, or military factors. However, this essay contends that it is impossible to discuss the failures of the Reconstruction movement without highlighting the central role the judiciary played in curtailing its success. Looking at the justices' arguments in their official decisions as well as their personal writings on each case through both a legal and political lens, this essay argues that the Supreme Court of the United States acted as a primary antagonizing force against the advancement of Black Civil Rights. It did so by upholding vagrancy and segregationist laws, such as in the *Williams v. Mississippi*, and by dismantling federal attempts to secure Black Civil Rights, such as with their blocking of the Civil Rights Act of 1875 in the case of *United States v. Murray Stanley*, and in the case of *United States v. Harris*, which removed the Force Act of 1871.

INTRODUCTION

Why did the Reconstruction movement fail to secure basic rights for Black Americans, especially when the 14th Amendment extended Constitutional rights regardless of race? When the Civil War ended in 1865, the nation faced two important challenges. One was rehabilitating former Confederate states and leaders for their reintroduction back into the union, while the other was securing the rights of Black Americans whose rights had been extended by the 14th Amendment of the US Constitution. However, the latter goal was more challenging than initially anticipated, as the Supreme Court under three separate Chief Justices ruled time and time again against federal attempts to secure rights and protect these groups from discrimination, making the already uphill battle even steeper. By analyzing political institutions such as governments and power structures, as well as how these institutions applied and interpreted laws both locally and federally, this essay seeks to argue that, although early litigation showed hope that the goals of the Reconstruction movement could be implemented, the Supreme Court of the United States acted as an immovable bulwark against the advancement of Black Civil Rights. It did this by hampering the power of the federal government to enforce the Reconstruction Amendments, thus preventing the second goal of Reconstruction from being achieved. This was done through the Court's upholding of vagrancy laws, such as in the *Williams v. Mississippi*, their blocking of the Civil Rights Act of 1875 in the case of *United States v. Murray Stanley*, and their removal of the Force Act of 1871 in the case of *United States v. Harris*.

Compared to our modern understanding of the role and powers of the Supreme Court, the Reconstruction Era of United States history requires some background to fully understand. Beginning in the long shadow of the Civil War, Reconstruction is generally regarded as beginning in 1865 with the military occupation of the former Confederate States of America and

ending in 1895 with the court's decision in the landmark case of *Plessy v. Ferguson*. As Paul Kens states in *The Supreme Court under Morrison R. Waite, 1874-1888*, "the years between 1874 and 1888 experienced racial violence and continued sectional rivalries,"¹ as feuding over racial rights continued long after the Confederacy died. Heather Cox Richardson argues that this period of clashing between freed people and whites was based on not only racist ideologies that existed since before the Civil War, but also due to the rapid industrialization of the North during the Civil War, where a growing workforce driven by the freeing of enslaved people drew anxiety over an expanded government and the enactment of welfare legislation.² This period of racial violence and discrimination is important to consider, as it happens to be the period during which the majority of civil rights cases made it to the doorstep of the Supreme Court and further highlights the continued divide among Americans as to the issue of equality for freedmen.

Another critical factor necessary to understanding the Supreme Court during the Reconstruction era relates to how American people viewed the federal government and its role in society. Most Americans at this time would reference "'these united states' rather than 'the United States,'"³ identifying more fully with their individual states rather than a federal authority. In fact, the federal government had almost no involvement in the day-to-day lives of most Americans, as its role was relegated to policing the actions of state governments rather than the actions of private individuals. Legal precedent at this time also further curtailed the power the federal government held; the Supreme Court's unanimous ruling in *Barron v. Baltimore* held that the Bill of Rights only applied to the actions of the federal government, not those of states. This case at face value seems to have little to do with Reconstruction, as the amendments passed following the Civil War were not within the Bill

¹ Paul Kens, *The Supreme Court under Morrison R. Waite, 1874-1888* (University of South Carolina Press, 2010), 2.

² Richardson, *The Death of Reconstruction*.

³ Kens, *The Supreme Court under Morrison R. Waite*, 3.

of Rights. However, Chief Justice Marshall authored that “the Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States.”⁴ He goes on further to argue that “each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated... They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes.”⁴ This phrasing by Marshall would be later cited by many future Supreme Court Justices during the Reconstruction period, usually in the context of degrading the abilities and protections the Reconstruction Amendments extended to Black Americans.

Before diving fully into Reconstruction literature, there are several contextual elements that played a significant role during the Reconstruction Era. The first of these elements is the concept of habeas corpus. In the US court system, a writ of habeas corpus is used to bring a prisoner or other detained individual before a federal court to determine whether or not their imprisonment or detainment is lawful.⁵ This idea dates back to Magna Carta in England and was later incorporated into the American judicial system in 1789. Habeas Corpus played a significant role during Reconstruction, when President Abraham Lincoln suspended habeas corpus during the Civil War. He argued that “we have a case of rebellion, and the public safety does require’ suspension of the writ.”⁶ This action prompted the Taney Court to rule that only Congress had the authority to suspend the writ of habeas corpus, which Lincoln ignored, arguing

⁴ *Barron v. Baltimore*, 32 U.S. 243 (1833). <https://supreme.justia.com/cases/federal/us/32/243/>.

⁵ “Habeas Corpus,” Legal Information Institute. https://www.law.cornell.edu/wex/habeas_corpus.

⁶ James E. Dueholm, “Lincoln’s Suspension of the Writ of Habeas Corpus: An Historical and Constitutional Analysis,” *Journal of the Abraham Lincoln Association* 29, no. 2 (2008). <http://hdl.handle.net/2027/spo.2629860.0029.205>.

that the power to do so became the President's as the Civil War could disrupt Congress's ability to meet. This decision was met with significant backlash, including by his Secretary of the Treasury, and later Supreme Court Chief Justice, Salmon Chase. Though a bit obscure in modern times, habeas corpus is a fundamental cornerstone of the US judicial system, and as a result several of the cases brought before the court dealt with writs of habeas corpus.

The Enforcement Act of 1870 is another important element in the Reconstruction Era. Centered on combatting attacks on the voting rights of freedmen, the Enforcement Act, and later the Second Enforcement Act of 1871, prohibited state-sponsored and individual acts of discrimination against Blacks.⁷ Specifically, the Enforcement Act ruled that "all citizens of the United States who are ... qualified by law to vote at any... shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude."⁸ This was further built upon by the Second Enforcement Act, more commonly referred to as the Force Act, a year later. This act ruled that "any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject... any person... to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States," would be "prosecuted in the several district or circuit courts of the United States . . . under the provisions of [*The Enforcement Act of 1870*]."⁹ This was done in response to the fact that many states "were so lax in protecting those rights that they allowed domestic crimes against freed slaves and union men to go unpunished and even

⁷ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Perennial Classics, 2002), 454.

⁸ *The Enforcement Act, 1870*, Statutes at Large, Forty First Congress, Second Session, May 31, 1870, 140-46. https://www.loc.gov/resource/llsalvol.llsal_016/?st=gallery.

⁹ *The Second Enforcement Act, 1871*, Statutes at Large, Forty Second Congress, First Session, April 20, 1871, 13-15. https://www.loc.gov/resource/llsalvol.llsal_017/?st=gallery.

uninvestigated.”¹⁰ It accomplished this by granting federal courts the ability to directly enforce the Fourteenth and Fifteenth Amendments upon the general public, a noted shift from both previous legislative and judicial rulings. Though eventually cast down by the Supreme Court, these acts represented the federal government’s initial eagerness to pursue the protection of Black civil rights in the wake of the Civil War.

Another important piece of federal legislation necessary to understand the Reconstruction Era is the Civil Right Act of 1875. Introduced initially in 1870 by Republican senator Charles Sumner, the Civil Rights Act of 1875 “guaranteed all citizens, regardless of color, access to accommodations, theatres, public schools, churches, and cemeteries.”¹¹ The act went on further to “forbid the barring of any person from jury service on account of race, and provided that all lawsuits brought under the new law would be tried in federal, not state, courts.” This act was a clear expansion of federal power, now requiring that individuals who violate the constitutional rights of anybody to be subject to trial in federal court. Similar to the Enforcement Act and Force Act, the Civil Rights Act of 1875 was deemed unconstitutional, mainly for its unprecedented extension of constitutional law to the actions of individual citizens. Though it was ultimately cast down, this act represented the greatest federal achievement of the Reconstruction Era and would later serve as a framework for the Civil Rights Act of 1964.

Another concept that requires explanation before discussing the Supreme Court is the structure of the court itself. One major aspect of the court that requires explanation is the role that the Chief Justice of the United States. While the various eras of the Supreme Court are often

¹⁰ “Transcription of The Enforcement Acts,” Teaching American History, July 8, 2022.
<https://teachingamericanhistory.org/document/the-enforcement-acts/>.

¹¹ “Landmark Legislation: Civil Rights Act of 1875,” U.S. Senate.
<https://www.senate.gov/artandhistory/history/common/generic/CivilRightsAct1875.htm#:~:text=The%20bill%20guaranteed%20all%20citizens,schools%2C%20churches%2C%20and%20cemeteries.>

divided based on the tenure of the Chief Justice, as this paper will do, the role itself does not carry with it any special powers with regards to the decisions of the court. First and foremost, the Chief Justice serves as “the administrative head of the entire federal judiciary,” presiding over the entirety of the federal judiciary.¹² In the modern era, the Chief Justice also serves on several policy-making committees and specialized courts; however, this was not necessarily the case during the 1700s and 1800s. In fact, earlier on, the Chief Justice position was not viewed with the same respect it is today. Notably, “John Jay, the first chief justice, was unenthusiastic about the job because he regarded the job (and the Supreme Court) as politically powerless.”¹³ In Supreme Court proceedings, the primary power of the Chief Justice is determine who will write the Court’s majority opinion only if the Chief Justice votes in the majority. Otherwise, they can decide who will write the minority opinion of the court, as Salmon Chase does in *The Slaughterhouse Cases*. It is important to remember that, while that courts are referred to by their Chief Justice, the holder of this position does not enjoy any special powers or privileges over other members of the court when it comes to the institutions rulings. Thus, the court’s decisions are often more a reflection of the current makeup of the court, which is dictated to a reasonable degree by the temperament of the general public, rather than the personal values of the Chief Justice.

HISTORIOGRAPHY

The Reconstruction Era of the late-nineteenth century is one of the most controversial parts of American history when it comes to historical interpretations. Its initial historiographies painted it as an era of Northern and federal vengeance, “dominated by a ‘traditional’

¹² “The Role of Chief Justice: ACLU.” American Civil Liberties Union, February 27, 2023.
<https://www.aclu.org/news/speakeasy/role-chief-justice>.

¹³ Ibid.

interpretation that portrayed the years following the Civil War as ones of unrelieved sordidness in political and social life.”¹⁴ Newer works, such as Eric Foner’s “Reconstruction Revisited,” and Claire Parfait’s “Reconstruction Reconsidered: A Historiography of Reconstruction, from the Late Nineteenth Century to the 1960s,” cite the disinterest of Northern voters and the conservative, white-supremacist leanings of Federal policy-makers as the downfall of the post-Civil War struggle for Black Civil Rights.¹⁵ Further works also seek to categorize different historical thought processes surrounding Reconstruction. Brooks D. Simpson in his work “Mission Impossible: Reconstruction Policy Reconsidered” divides Reconstruction analysis into three schools: Dunningites, who view Reconstruction as a misguided experiment that engaged in irresponsible social engineering that resulted in racial separationism, Revisionists, who viewed Reconstruction as a lost opportunity for equality that failed due to a lack of strong federal policy, and Post-Revisionists, who stress that it was conservative tendencies of policymakers and institutions that doomed Reconstruction before it ever began.¹⁶ This essay highlights the role the Supreme Court played in dismantling the Reconstruction movement and paving the way for the Jim Crow Era of discrimination, segregation, and violence. Notably, this historiography will address three themes present among more modern scholarly works on Reconstruction: Northern anxiety to secure Black Civil rights, the role legislation, both federally and locally, played in preventing Black Americans from exercising their constitutional rights, and the ineffectiveness of various federal authorities, including the legislature, Supreme Court, and military, to secure the rights of Black men following the Civil War. Additionally, this section will also briefly

¹⁴ Eric Foner, “Reconstruction Revisited,” *Reviews in American History* 10, no. 4 (1982): 82-100.

¹⁵ Claire Parfait, “Reconstruction Reconsidered: A Historiography of Reconstruction, from the Late Nineteenth Century to the 1960s,” *Études Anglaises* 62, no. 4 (2010): 440–454.

¹⁶ Brooks D. Simpson, “Mission Impossible: Reconstruction Policy Reconsidered,” *The Journal of the Civil War Era* 6, no. 1 (March 2016): 85–102.

discuss how current scholarship views the Chief Justices of the Supreme Court, highlighting how they modeled their legal framework for deciding cases during the Reconstruction Era.

One major theme in Reconstruction scholarship is that of Northern anxiety to secure Black Civil rights for a number of reasons. Heather Richardson in *The Death of Reconstruction: Race, Labor, and Politics in the Post-Civil War North, 1865-1901*, surmises that clashes between freed people and white Northerners post-Civil War were not based only on racist ideologies, but also on a direct contrast between the two concepts of political economy, namely the concept of free labor from before the Civil War to a shift into an opposing idea that labor and capital naturally conflicted after the war.¹⁷ This animosity between freed people and Northerners created a significant amount of anxiety among Northern whites, who saw the expanding government and workforce as threats to the newfound productivity in a recently industrialized landscape. Along a similar vein, Claire Parfait in “Reconstruction Reconsidered: A Historiography of Reconstruction, from the Late Nineteenth Century to the 1960s” argues that alongside the withdrawal of federal troops from the South, it was Northerners losing interest in securing the rights of freed people that led to their acquiescence of racist and segregationist policy in the name of national unity.¹⁸

Another major theme from Reconstruction scholarship is the role legislation, both federally and locally, played in preventing Black Americans from exercising their constitutional rights as outlined in the Fourteenth Amendment. C. Vann Woodward, who authored the cornerstone Reconstruction work *The Strange Career of Jim Crow*, argues that the idea that segregation was the “natural order” was a faulty one; in fact, Woodward argues that, contrary to

¹⁷ Heather Cox Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the Post-Civil War North, 1865-1901* (Cambridge: Harvard University Press, 2004).

¹⁸ Parfait, “Reconstruction Reconsidered.”

popular belief, segregation only dated to the 1890s in America, and was by no means the historical norm anywhere in the world.¹⁹ In “Rights and the Constitution in Black Life during the Civil War and Reconstruction,” Eric Foner looks at federal law, as well as the Constitution, in order to study how a constitutional extension of civil rights to Black men failed on a national level despite the passage of the Reconstruction Amendments, as well as how the societal role for Black Americans, especially Black men, changed following the Civil War.²⁰ On a more local level, Julian Maxwell Hayter and George R. Goethals look at vagrancy laws, including those in Virginia and Mississippi, and how they were weaponized against Black Americans in order to subvert their ability to exercise their newfound rights.²¹ These vagrancy laws targeted things such as loitering or being poor or being unemployed to give legal authority to harass and arrest Black Americans for existing, and force them back into servitude through an exception written in the Thirteenth Amendment. Furthermore, Mary Ellen Snodgrass’s *The Civil War Era and Reconstruction: An Encyclopedia of Social, Political, Cultural and Economic History* analyzes various federal laws and how they impacted various facets of the Reconstruction Era society, including businesses, industry, and labor.²² Snodgrass’s work argues that these laws proved ineffective at curbing the rising anti-Black sentiments across the nation, and at quelling the anxieties of Northerners regarding the rapidly growing labor force. The attempts of legislation on both a national and state level were met with disinterest and a generally conservative legislature, resulting in most of the pro-Reconstruction laws being struck down.

¹⁹ C. Vann Woodward, *The Strange Career of Jim Crow* (London: Oxford Univ. Pr., 1966).

²⁰ Eric Foner, “Rights and the Constitution in Black Life during the Civil War and Reconstruction,” *The Journal of American History* 74, no. 3 (1987): 863-883.

²¹ Julian M. Hayter and George R. Goethals, ed., *Reconstruction and the Arc of Racial (in)Justice* (Cheltenham: Edward Elgar Publishing Ltd, 2018).

²² Mary Ellen Snodgrass, *The Civil War Era and Reconstruction: An Encyclopedia of Social, Political, Cultural and Economic History. The Civil War Era and Reconstruction*. 1st ed. (Armonk: Routledge, 2011).

The third theme among pieces of Reconstruction literature is the ineffectiveness of various federal authorities, including the legislature, Supreme Court, and military, to secure the rights of Black men following the Civil War. An important piece of the Federal authority was the Supreme Court, which Eric Foner addresses in his work “The Supreme Court and the History of Reconstruction - and Vice Versa,” Foner analyzes several court rulings and argues that modern historians utilize an over-inflated influence from the Supreme Court and ignore the Court’s unwillingness to overturn flawed precedents that continued to hinder the advancement of Black Civil Rights.²³ Foner adds more to his analysis in *Reconstruction: America’s Unfinished Revolution, 1863-1877*, where he looks at various pieces of legislation, both federal and state, as well as state governors’ manuscripts to determine that Southern states staunchly stood against extending constitutional rights to Black Americans.²⁴ Pamala Brandwein continues this theme in *Reconstructing Reconstruction: the Supreme Court and the Production of Historical Truth*. In this book, Pamala Brandwein analyzes how the Civil War shifted from a war of armies to a war of words; legislation and historical narrative suddenly became the battlefield where the question of equality would be settled. She argues that the Warren Court’s interpretation of the Reconstruction Amendments and the destruction of slavery was a Northern Democratic one, and that while the federal government did have the power to prohibit slavery in law, it held that property rights were the main issue with slavery.²⁵ She furthers this idea of federal ineptitude in *Rethinking the Judicial Settlement of Reconstruction*, arguing that contrary to much existing scholarship, Black Americans were not abandoned by the court, but rather by the rest of the

²³ Eric Foner, “The Supreme Court and the History of Reconstruction - and Vice Versa,” *Columbia Law Review* 112, no. 7 (2012): 1585–1606.

²⁴ Eric Foner, *Reconstruction: America’s Unfinished Revolution*.

²⁵ Pamela Brandwein, *Reconstructing Reconstruction: The Supreme Court and the Production of Historical Truth* (Durham, NC: Duke University Press, 1999).

federal government who stopped working to secure their rights through legislation. She argues that a “lost legacy of jurisprudence” exists that protected Black rights as well as expanded possibilities for protecting the physical safety and electoral participation of Black Americans, even as it left protections of public accommodation undefended.²⁶

Another author who builds on the theme of federal ineptitude is Aderson Bellegarde Francois in “A Lost World: Sallie Robinson, the ‘Civil Rights Cases’, and Missing Narratives of Slavery in the Supreme Court’s Reconstruction Jurisprudence.” In this article, Francois recounts the story of Sallie Robinson, an enslaved woman, and how her story fits into the greater Reconstruction movement. Francois argues that the Supreme Court’s interpretations during the Reconstruction Era lacked an understanding that people like Sallie existed and had lived experience that the Court’s opinions often completely disregarded in their decisions.²⁷ Similarly, John R. Howard’s *The Shifting Wind: The Supreme Court and Civil Rights from Reconstruction to Brown* traces a pattern spanning over several different Chief Justice’s tenures points to a disregard for protecting the rights of Black Americans by shredding the legislative efforts that sought to defend their safety from violence.²⁸

A final section of Reconstruction historiography to consider for this topic is the historical consensus around the Chief Justices of the Supreme Court themselves. In *The Chief Justiceship of Melville W. Fuller, 1888-1910*, James W. Ely follows the Chief Justiceship of Melville W. Fuller, who served during the later part of Reconstruction. While Ely covers Fuller’s full tenure of cases and subjects, from economic to Civil Rights, Ely argues that Fuller’s constitutional interpretations, while

²⁶ Pamela Brandwein, *Rethinking the Judicial Settlement of Reconstruction* (Cambridge: Cambridge University Press, 2011).

²⁷ Aderson Bellegarde Francois, “A Lost World: Sallie Robinson, the ‘Civil Rights Cases’, and Missing Narratives of Slavery in the Supreme Court’s Reconstruction Jurisprudence,” *The Georgetown Law Journal* 109, no. 5 (2021): 1015–1079.

²⁸ John R. Howard, *The Shifting Wind: The Supreme Court and Civil Rights from Reconstruction to Brown* (Albany: State University of New York Press, 1999).

never having a fully set theory, followed the themes of limited government and state autonomy. These tenets, Ely argues, are clearly visible in his rulings in cases such as *Plessy v. Ferguson* and *Williams v. Mississippi*.²⁹ Similarly, Paul Kens analyzes the Chief Justiceship of Morrison R. Waite, who served during the bulk of the Civil Rights related court cases during the Reconstruction Era in *The Supreme Court under Morrison R. Waite, 1874-1888*.³⁰ Kens identifies Waite's framework as traditionalist, where the Court sought to decide cases based on a narrow interpretation of the Constitution and previous judicial precedent while also accounting for the national political, economic, and social situation existing at the time.

The Reconstruction Era of American history has been the subject of ever-changing scholarship, with its themes and significance to the greater historical narrative being questioned. Overall, Reconstruction marks a failure on the part of the United States government to protect the rights guaranteed by the 14th Amendment, in no small part due to the actions of the Supreme Court in cases such as *United States v. Murray Stanley* and *Plessy v. Ferguson*. Most current scholarship relating to Reconstruction nods to the role failed legislative attempts played in the overall failure of the movement but cite legitimized violence or Northern disinterest as the main pieces of Reconstruction's downfall. However, this project focuses more on the Supreme Court, and how its striking down of federal attempts to secure the rights enshrined in the 14th Amendment while upholding state-level discriminatory actions played a far larger role in the downfall of Reconstruction.

²⁹ James W. Ely, *The Chief Justiceship of Melville W. Fuller, 1888-1910* (University of South Carolina Press, 1995), <https://doi.org/10.2307/j.ctv6wgcxx>.

³⁰ Kens, *The Supreme Court under Morrison R. Waite*.

THE CHASE COURT: 1864-1873

The first Chief Justice of the Supreme Court that served during Reconstruction was Salmon P. Chase, who served from 1864 until his death in 1873. A former Senator from Ohio, Chase was a decidedly progressive politician for his time, opposing the Kansas-Nebraska Act and the Compromise of 1850, both of which sought to extend slavery westward during the lead-up to the Civil War. He was also a wholehearted supporter of emancipation, backing the policy from the moment Lincoln initially proposed it in 1862.³¹ Chase further made it clear that he “considered black suffrage not only the right and proper approach to Reconstruction but the allimportant first step in protecting the freedmen from their former masters.”³² These tendencies helped shape Chase’s ruling framework for his tenure as Chief Justice, but he often found himself firmly thwarted by his fellow justices. Chase routinely balanced his own personal beliefs regarding protecting the civil rights of Southern Blacks with his ideal of the “inviolability of habeas corpus,” which he held “with a tenacity akin to reverence.”²³ This precarious balancing can be seen in several of the cases his court ruled on.

One such example is Supreme Court Case 71 U.S. 2, more commonly referred to as *Ex Parte Milligan*. This case centered on Lambden P. Milligan, an Indiana citizen who was arrested and sentenced to death for engaging in acts of disloyalty during the Civil War. His arrest, as well as other arrests of peace Democrats, were done under Lincoln’s suspension of habeas corpus when the defendants were obstructing the war effort.²⁰ Milligan petitioned for release under a writ of habeas corpus, and the Chase Court ruled in his favor unanimously. Justice David Davis wrote for the court, arguing that trials of civilians by military tribunals are unconstitutional,

³¹ Salmon Portland Chase, and John Niven, ed. *The Salmon P. Chase Papers* (Kent, Ohio: Kent State University Press, 1993).

³² Niven, *Chase Papers*, xlv-xlvi.

unless there is no civilian court available.³³ In this case, Chase argues in line with his ideal of the inviolability of habeas corpus, referencing that such military tribunals explicitly violate an individual's right to be tried by their peers. This case helped Chase to begin exercising his own judicial framework and establish a precedent for him to base future cases on.

A second case that was foundational to Chase's ruling style is in Supreme Court Case 73 U.S. 50, nominally referred to as *Georgia v. Stanton*. This case centered on whether the military occupation of the former Confederate States of America unconstitutionally deprived them of their sovereignty. In this case, the State of Georgia brought suit against the Secretary of War under the idea that the military occupation restrained states from "issuing any order or doing or permitting any act or thing within or concerning the State of Georgia."³⁴ However, the court refused to rule on the case, citing that "the matters involved, and presented for adjudication, are political and not judicial, and therefore not the subject of judicial cognizance," citing precedent found in the case of *Rhode Island v. Massachusetts*. This case served as another foundational block for the Chase Court's ruling style, this time defining the scope under which the Supreme Court could actually argue cases.

Another example of Chase's jurisprudence is Supreme Court Case 174 U.S. 506, nominally referred to as *Ex Parte McCardle*. This case, similar to *Ex Parte Milligan*, centers on habeas corpus and the rights of citizens, but with one critical twist; McCardle lived in Mississippi, a region under military occupation as a result of its secession during the Civil War. McCardle was arrested by the military for criticizing Reconstruction and appealed under an 1867 congressional statute which was repealed before his case was decided. The court ruled against

³³ *Ex Parte Milligan*, 71 U.S. 2 (1866). <https://supreme.justia.com/cases/federal/us/71/2/#tab-opinion-1965696>.

³⁴ *Georgia v. Stanton*, 73 U.S. 50 (1868). <https://supreme.justia.com/cases/federal/us/73/50/>.

McCardle, supporting the withdrawal of the Court's jurisdiction when Congress repealed its statute. Chase, however, made a point to specify that the repealing of this jurisdiction "does not affect the jurisdiction which was previously exercised."³⁵ In this case, Chase solidifies his court's position as to the scope under which the Supreme Court can operate, citing that "this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal, and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer." Although this case is similar to *Ex Parte Milligan*, Chase makes an exception to his usually bullet-proof ruling on cases involving habeas corpus by firmly establishing the former Confederate States of America as under military jurisdiction and not under the purview of the Supreme Court.

Chase further supports his ruling style, although in the dissenting opinion, in Supreme Court Case 83 U.S. 36, the *Slaughterhouse Cases*. After the Louisiana State Legislature passed a law that granted a single corporation a monopoly on slaughterhouse operation, a group of butchers sued the state under the guise that the monopoly created involuntary servitude and denied them of liberty and property without due process, violating the Thirteenth and Fourteenth Amendments. The court ruled 5-4 in favor of the state's actions, citing that the amendments mentioned were passed with a narrow intent of granting full equality to former slaves, and did not apply to all citizens under the idea that "it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished as far as constitutional law can accomplish it."³⁶ Chief Justice Chase was among the dissenting justices, arguing that the case "is nothing less than the question whether the recent

³⁵ *Ex Parte McCardle*, 74 U.S. 506 (1868). <https://supreme.justia.com/cases/federal/us/74/506/>.

³⁶ *Slaughterhouse Cases*, 83 U.S. 36 (1872). <https://supreme.justia.com/cases/federal/us/83/36/>.

amendments to the Federal Constitution protect the citizens of the United States against the deprivation of their common rights by State legislation.” In Justice Stephen Johnson Field’s argument, “the Fourteenth Amendment does afford such protection, and was so intended by the Congress which framed and the States which adopted it.”³⁷ In this case, Chase dissented from his court’s ruling, arguing instead in favor of a broad interpretation of the Constitution rather than examining the circumstances of when it was written. He pushed that a narrow interpretation of the Constitution would inevitably render the document useless, and only applicable in extremely specific circumstances.

Although Salmon P. Chase’s tenure as Chief Justice was briefer than his successors during the Reconstruction Era, his attempts to promote a broader interpretation of the Constitutional amendments passed to protect civil rights stand as an idealistic image of what Reconstruction could be. His attempts at securing the civil rights of Black Americans are also a basis for Pamela Brandwein’s *Rethinking the Judicial Settlement of Reconstruction*, which argues the existence of a lost legacy of jurisprudence protecting rights that expanded possibilities for protecting the physical safety and electoral participation of Black Americans, even as it left rights protecting public accommodation undefended.³⁸ For his efforts, Chase did begin a process for achieving this protection of rights for Black Americans. However, Chase’s relatively liberal rulings on social cases would quickly be eclipsed by his successor, who argued the majority of the civil rights related cases during Reconstruction.

THE WAITE COURT: 1874-1888

Salmon P. Chase’s successor as Chief Justice of the Supreme Court was Morrison Waite, an Ohio lawyer and a relatively obscure figure within national legal and political circles.

³⁷ *Slaughterhouse Cases*.

³⁸ Brandwein, *Rethinking Judicial Settlement*.

Nominated after Chase's death in 1873, Waite looked to previous precedent in *Barron v. Baltimore* to begin to shape his judicial framework as that of narrow constitutional interpretation and limiting the growing power of the federal government.³⁹ Consequentially, this interpretation would come into conflict with the recently-passed Reconstruction Amendments, whose "vague and sweeping language not only left open questions about what practical protections the amendments offered to blacks but also about what else the amendments did."⁴⁰ This question helped Waite to finalize his court's primary judicial framework; the Reconstruction Amendments, in particular the Fourteenth Amendment, only had the power to prevent discrimination as a result of state action, not the actions of private citizens. Waite's framework is evident in many of the cases his court presided over, beginning with *United States v. Cruickshank* and *United States v. Reece* and ending with *Yick Ho v. Hopkins*.

The first civil rights cases the Waite Court faced were *United States v. Cruickshank* and *United States v. Reece*. *Cruikshank* occurred following the Colfax Massacre, when a group of Whites killed roughly 100 Black Americans who were attempting to vote in the 1872 Louisiana Gubernatorial election. Charged under the Enforcement Act of 1870, William J. Cruickshank, one of the white members of the mob who had been arrested for his role in the killings, sued the federal government. Writing for the majority, Chief Justice Waite reversed the convictions of the killers, arguing that the Bill of Rights and the Constitution do not apply to the actions of private citizens, only the actions of government. He cites "the Government of the United States is one of delegated powers alone... No rights can be acquired under the Constitution or laws of the United States except such as the Government of the United States has the authority to grant or secure."⁴¹

³⁹ Kens, *The Supreme Court under Morrison R. Waite*.

⁴⁰ *Ibid*, 4.

⁴¹ *United States v. Cruikshank*, 92 U.S. 542 (1875). <https://supreme.justia.com/cases/federal/us/92/542/>.

Waite argues that the federal government oversteps its bounds when trying to enforce constitutional law on individuals, as “no direct power over [constitutional rights] was granted to Congress, it remains... subject to State jurisdiction.” *Reece* dealt with a similar questioning of the Enforcement Act, this time centering on William Garner, an African American in Kentucky who was turned away at a polling place for failing to pay the \$1.50 poll tax, despite his attempts to pay the tax. He was turned away by Hiram Reece and Matthew Foushee who, after Garner returned with an affidavit, were arrested for violating the Enforcement Act after turning him away again. Reece filed suit against the federal government, arguing that the Enforcement Act was unconstitutional. In an 8-1 ruling, the court ruled that the Enforcement Act of 1870 was too broad to qualify as a viable enforcement agent for the Fourteenth and Fifteenth Amendments. Chief Justice Waite authored the majority opinion, citing that the Fifteenth Amendment “does not confer the right of suffrage upon any one,”⁴² but rather “prevents the states, or the United States, however, from giving preference ... to one citizen of the United States over another on account of race, color, or previous condition of servitude.” Both of these cases established a clear precedent early on that the Waite Court would severely limit the powers the federal government had been collecting since the end of the Civil War.

Another case that furthered the pattern of narrow interpretation utilized by the Waite Court came in 1880 with *Strauder v. West Virginia*. The case involves a West Virginia law that declared that non-Whites were unable to serve on juries, which posed the question of whether state law violated the Fourteenth Amendment to the Constitution. The Supreme Court resoundingly shot down the law, with Justice Strong stating that “it is practically a brand upon them, affixed by law; an assertion of their inferiority, and a stimulant to that race prejudice which

⁴² *United States v. Reece*, 92 U.S. 214 (1876). <https://supreme.justia.com/cases/federal/us/92/214/#tab-opinion-1968885>.

is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.”⁴³ *Strauder* represents another facet of the Waite Court’s judicial lens; though their interpretive strategy was decidedly narrow, the Waite Court still stuck to the concept that the Reconstruction Amendments applied directly to state actions, making laws such as the West Virginia one illegal under the court.

In 1883, the Waite Court faced another pair of influential cases in Reconstruction’s fight to protect civil rights: *United States v. Harris*, and the *Civil Rights Cases*. *Harris* centers on the case of Sheriff R.G. Harris, who was being charged under Section 2 of the Force Act of 1871 after he and nineteen others entered a Tennessee Jail, removed four prisoners, and killed one. Following deliberations, the Supreme Court ruled that the Force Act of 1871 was unconstitutional because the Fourteenth Amendment only authorizes the federal government to prosecute states that violate the amendment, not individual citizens. *Harris* followed the precedent established by *Cruikshank*, citing the case directly with Waite stating, “the duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the states, and it remains there.”⁴⁴ Waite further argues that “the only obligation resting upon the United States is to see that the states do not deny the right. This the amendment guarantees, and no more. The power of the national government is limited to this guarantee.”⁴⁴ *United States v. Harris* represented the Waite Court standing its ground on its previous interpretations, further striking down acts of Congress that it viewed as federal overreach. Along a similar vein, the *Civil Rights Cases* dealt with the question of federal overstep, this time with respect to the Civil Rights Act of 1875. The *Civil Rights Cases* were a collection of several cases, namely those of

⁴³ *Strauder v. West Virginia*, 100 U.S. 303 (1880). <https://supreme.justia.com/cases/federal/us/100/303/>.

⁴⁴ *United States v. Harris*, 106 U.S. 629 (1883). <https://tile.loc.gov/storage-services/service/ll/usrep/usrep106/usrep106629/usrep106629.pdf>.

defendants Murray Stanley, Michael Ryan, Sallie Robinson, and Samuel Nichols. These cases, although separate in their situations, all called into question the broad language of the 1875 Civil Rights Act, and whether the precedent the Waite Court had been creating applied to this law as well. In this joint 8-1 decision, the court again argued that the Civil Rights Act was unconstitutional because “[the Supreme Court] are of opinion that no countenance of authority for the passage of the law in question can be found in either the Thirteenth or Fourteenth Amendment of the Constitution, and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned.”⁴⁵ Waite’s doubling-down on his rejection of federal overreach clearly articulated for private citizens that, if they wished to discriminate against freedmen, they could do so by circumventing their own state’s judicial systems, rather than face the federal government.

Another case that continued to build on Waite’s pattern of fighting state-sanctioned discrimination came in 1884 with *Ex Parte Yarbrough*. This case explored the Enforcement Act of 1870, when eight Georgian men were charged under it for intimidating Berry Saunders, a Black man, while he attempted to vote in the 1882 election. Following their prison terms, the men filed petitions for writs of habeas corpus on the grounds that Congress was acting unconstitutionally when it passed the Enforcement Act. The court ruled unanimously against Yarbrough, citing that the federal government “must have the power to protect the elections on which its existence depends from violence and corruption,” as well as determining that “this fifteenth article of amendment does ... substantially confer on the negro the right to vote, and

⁴⁵ *The Civil Rights Cases*, 109 U.S. 3 (1883) (Consolidating: *U.S. v Stanley*; *U.S. v Ryan*; *U.S. v Nichols*; *U.S. v Singleton*; *Robinson and wife v Memphis & Charleston Railroad Company*).
<http://blackfreedom.proquest.com/wp-content/uploads/2020/09/unitedstatesvmurray1.pdf>.

Congress has the power to protect and enforce that right.”⁴⁶ This case built upon the *Strauder* decision, further establishing the Waite Court as one that would fight openly discriminatory laws crafted by states, but also as one that would turn a blind eye towards the private actions of individuals.

The final major civil rights challenge under the Waite Court came in 1886, with *Yick Ho v. Hopkins*. This case centered on an 1880 city of San Francisco ordinance that required laundries in wooden buildings to obtain a permit from the city’s Board of Supervisors. However, not a single Chinese operator was granted any such permit, despite making up roughly 89 percent of the laundry businesses in the city. After Yick Wo and Wo Lee were each arrested for refusing to pay a fine for not holding a permit, they both sued the Sheriff, Peter Hopkins, arguing that the unequal enforcement of the city ordinance violated the Equal Protections Clause of the Fourteenth Amendment. In a unanimous opinion, the Waite Court sided with Yick Wo, with Justice Stanley Matthews citing that although the law was impartial at face value, “if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.”⁴⁷ This decision, though at face value combatted the idea that an individual could unequally apply the law to negatively impact non-Whites, instead resulted in a separate problem entirely. *Yick Ho v. Hopkins* solidified that a state government or agency could have no hand in discriminatory

⁴⁶ *Ex Parte Yarbrough*, 110 U.S. 651 (1884). <https://supreme.justia.com/cases/federal/us/110/651/>.

⁴⁷ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). <https://supreme.justia.com/cases/federal/us/118/356/>.

practices, including unequal enforcement, but still allowed for the possibility of a form of reverse jury nullification to result in the violation of non-White civil rights.⁴⁸

The Waite Court represented a huge roadblock for Reconstruction efforts to secure civil rights for non-White Americans. Though focused primarily on curbing federal overreach under the precedent of *Barron v. Baltimore*, Waite's jurisprudence resulted in a swift eroding of the protections passed by the United States legislature, citing that these matters should instead be enforced by the same states that had less than a quarter century before openly rebelled against the government to keep Blacks as second-class citizens. Modern historians such as Aderson Bellegarde Francois have criticized Waite's framework as if, "through *Blyew v. United States*, and *United States v. Cruikshank*, and *United States v. Reese*, and the *Civil Rights Cases*, the Court treated slavery as something to be slowly but inexorably sloughed off, cast aside, and left behind ... until by the end of Reconstruction, almost nothing of it remained in the Court's jurisprudence."⁴⁹ Further, the manner by which Waite and his court restricted federal authority when it came to civil rights created a legal opening for reverse jury nullification to occur, essentially making discrimination legal so long as the values of the Confederacy continued to exist. This pattern of judicial ruling would be continued by Morrison Waite's considerably more conservative successor, Melville W. Fuller.

THE FULLER COURT: 1888-1910

The final Chief Justice to serve during the Reconstruction Era was Melville W. Fuller, who was appointed to the Chief Justice role following Waite's death in 1888. Fuller was a

⁴⁸ *Reverse Jury Nullification* inverts the concept of Jury Nullification, where a jury refuses to follow the law and acquits a defendant despite sufficient evidence to point towards a guilty verdict. Instead, a jury ignores the facts of a case and returns a guilty verdict based on their own personal prejudices and values, despite evidence that points towards a reasonable doubt existing.

⁴⁹ Francois, "A Lost World: Sallie Robinson, the 'Civil Rights Cases', and Missing Narratives of Slavery in the Supreme Court's Reconstruction Jurisprudence."

staunch conservative, due mainly to his tutelage under his grandfather Judge Weston, a supporter of Jacksonian policies that Fuller adopted.⁵⁰ Although Fuller, unlike his predecessors, never really adopted a set judicial policy, he did keep some themes amongst his rulings. He continued Waite's legacy of limited government and state autonomy, both of which would prove crucial barriers to the protection of civil rights under Reconstruction.⁵¹ Two cases under the Fuller Court stand out as the final blows against Reconstruction: *Plessy v. Ferguson*, and *Williams v. Mississippi*.

The first major civil rights case that the Fuller Court faced was *Plessy v. Ferguson*. This case centered on challenging the Louisiana Separate Car Act, which established segregation within public transport in the state, when Homer Plessy, who was seven-eighths white, refused to vacate a whites-only car and was arrested. The Fuller Court argued that while the Fourteenth Amendment intended to establish legal equality between races, separate accommodations for races did not imply the inferiority of African Americans and was therefore constitutional. The Court cited that it was a question of whether the law was a "reasonable regulation," determining that "we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures."⁵² The decision in *Plessy* marked a distinct blow against Reconstruction, with the Fuller Court upholding segregation as perfectly legal due to the fact that it exists elsewhere in the country without being challenged. The Fuller Court goes farther to state that

⁵⁰ Ely, *The Chief Justiceship of Melville W. Fuller*, 4.

⁵¹ *Ibid*, 1.

⁵² *Plessy v. Ferguson*, 163 U.S. 537 (1895). <http://blackfreedom.proquest.com/wp-content/uploads/2020/09/plessy1.pdf>.

“the argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races... If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals.” Fuller’s stance is one of non-action; in order for discriminatory behavior to cease, it must happen socially, with no help from governmental action. However, this “voluntary consent of individuals” would likely never happen due to the lingering racism found across the nation.

The final nail in the coffin for Reconstruction came two years after the *Plessy* decision with the case of *Williams v. Mississippi*. Similar to the Waite-era case of *United States v. Reece*, *Williams* also centers on disenfranchisement, this time focusing on jury formation. Henry Williams, an African American, was indicted for murder by an all-white jury in Mississippi. He then filed suit against the state, arguing that the sections of the Mississippi State Constitution dealing with suffrage were an attempt to circumvent the voting rights of African Americans, notably clauses dealing with poll taxes, literacy tests, grandfather clauses, and jury formation rules. In a unanimous decision, the Waite Court rejected Williams’ assertions, with Justice McKenna stating in the court’s opinion “the constitution of Mississippi and its statutes do not on their face discriminate between the races, and it has not been shown that their actual administration was evil; only that evil was possible under them.”⁵³ The Fuller Court’s decision in this case essentially ended all hope for a successful Reconstruction with regards to integrating Black Americans into American society. Moreover, the *Williams* decision gave legal protection to newly crafted Jim Crow Laws across the country, cementing segregationary and discriminatory practices that would last until the 1960s.

⁵³ *Williams v. Mississippi*, 170 U.S. 213 (1898). <https://supreme.justia.com/cases/federal/us/170/213/>.

Melville Fuller stood at the end of an ever-increasingly conservative list of Chief Justices to rule over Reconstruction cases. Though he faced fewer civil rights related challenges than his predecessor, his jurisprudence was decidedly narrower in its interpretation of the scope of federal government and the protections the Reconstruction Amendments provided. Fuller's actions also marked a change in the court, becoming more openly vocal in social issues and including more personal opinions in decisions. Fuller's decisions in *Plessy v. Ferguson* and *Williams v. Mississippi* stand as two stark examples where the ever-growingly conservative Supreme Court removed protections for the civil rights of non-White Americans, and established precedent protecting discriminatory and segregationary ideals that was the exact situation Chief Justice Chase attempted to avoid a quarter century earlier.

CONCLUSION

Throughout the roughly thirty-year span of Reconstruction, three separate Chief Justices brought distinct legal frameworks to the numerous civil rights related cases facing the judicial branch. While the process to secure the rights enshrined in the Reconstruction Amendments dragged longer and longer, the Supreme Court began to grow increasingly concerned with the growing power the federal government was amassing and less concerned with the protection of Black rights. As Morrison Waite and Melville Fuller acted to curb this federal overreach, their actions came at the expense of the protection of the rights of Black Americans. This happened notably through their discarding of the Enforcement Act of 1870 and the Civil Rights Act of 1875, and later on their upholding of discriminatory vagrancy laws. These decisions gave legal precedent to anti-Reconstruction advocates, allowing them to further push freedmen back into a second class of citizenry while the Court turned a blind eye. This gradual retreat from the protection of Black rights during the mid-to-late 1800s would stand as legal precedent until the

1950s, when the Civil Rights movement began to push for a fulfillment of Reconstruction's ideals.

Although the Supreme Court did not act alone in the fight against Reconstruction, it is impossible to discuss the failure of the movement without highlighting the central role the institution played. Arguments such as those of a growing Northern disinterest or anxiety regarding Reconstruction or an unwillingness by Congress to act further to secure the equality of freedmen, such as those posited by Mary Snodgrass and Claire Parfait, fall at the idea that without the critical decisions made by the Waite and Fuller courts, the precedent established by Chase would have allowed the federal government to adequately secure and defend the rights established in the Reconstruction Amendments. As Eric Foner states in "The Supreme Court and the History of Reconstruction - and Vice Versa," "the Supreme Court 'systemically undermined Congress's powers to enforce the Reconstruction Amendments.' ... These decisions reflected a resurgence of racism, North and South, and an emerging national ... consensus that Reconstruction had been a serious mistake."⁵⁴ Consequently, relegating the Supreme Court to a secondary antagonistic force in the post-Civil War era denies a proper grasp of just how influential the actions of the Court were in hampering the efforts of Reconstruction leaders. Thus, the Supreme Court must be observed as a primary force in the downfall of Reconstruction through its upholding of vagrancy laws, such as in the *Williams v. Mississippi*, and its dismantling of federal attempts to secure Black Civil Rights in the cases of *United States v. Murray Stanley* and *United States v. Harris*.

⁵⁴ Foner, "The Supreme Court and the History of Reconstruction - and Vice Versa," 1589.

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