

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Equality/Race/The Abandonment of Reconstruction

Attorney General Alphonso Taft on Voting Rights (1876)

Alphonso Taft (1810–91) was the attorney general in the Grant Administration (and father of President William Howard Taft). Taft was responsible for implementing Reconstruction laws protecting African-American voters. When doing so, he had to keep in mind declining congressional support for the rights of persons of color and a series of Supreme Court decisions, most notably United States v. Reece (1876), that sharply curtailed federal power to oversee southern elections.

We have excerpted two speeches Taft gave on federal power to oversee elections, including the orders he gave to federal marshals in the south. Under what conditions did Taft believe that the federal government could protect persons of color? What were the limits of that protection? To what extent do you believe that Taft remained committed to the ideals of more radical Republicans during Reconstruction, but was forced to accommodate them to changing legal and political circumstances? To what extent was his commitment to racial equality substantially less than the previous generation of racial egalitarians? Could Taft's vision have been successfully implemented or did he offer merely a Band-Aid unlikely to do more than achieve a few symbolic convictions? What policy might have achieved racial equality in the post-Reconstruction South?

Taft, "The Southern Elections"¹

In the present condition of legislation, the United States occupy a position toward voters and voting which varies according as the election is for State and other local officers only, or for members of Congress and Presidential Electors. In elections at which members of the House of Representatives are chosen, which by law include elections at which the Electors for President and Vice President are appointed, the United States secure voters against whatever in general hinders or presents them from a free exercise of the elective franchise, extending that care alike to the registration lists, the act of voting, and the personal freedom and security of the voter. As well as against violence on account of any vote he may intend to give as against conspiracy because of any that he may already have given. The peace of the United States, therefore, which you are to preserve and whose violation you are to suppress, protects among others, the rights specified in the last paragraph, and any person who by force violates those rights, breaks the peace and renders it your duty to arrest him, and to suppress any riots incident thereto, or that threaten the integrity of the registration or election, to the end that the will of the people in such election may be ascertained and take effect, and that offenders may be brought before the courts for punishment. Notorious events in several States which have recently and in an unusual manner have been publicly reprobated, render it a grave duty of all Marshals who have cause to apprehend a violation of the peace of the United States connected as above with the elections to be held upon the Tuesday after the first Monday in November next, to be prepared to preserve and to restore such peace. As the chief executive officer of the United States in your district, you will be held responsible for all breaches of the peace of the United States which diligence on your part might have prevented, and for the arrest and securing of all persons who violate that peace in any of the points above enumerated.

¹ "The Southern Elections," *The New York Times* (September 5, 1876), 1.

Diligence in these matters requires of course that you be and continue present in person or by deputy at all places of registration or election at which you have reason to suppose that the peace is threatened, and that whenever an embodiment of the *posse comitatus* is required to enforce the law, such embodiment be effected.

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... In discharging the duties above mentioned you will doubtless receive the countenance and support of all good citizens of the United States in your respective districts. It is not necessary to say that it is upon such countenance and support that the United States mainly rely in their endeavors to enforce the right to vote which they have given or have secured. The present instructions are intended only to counteract that partial malice, wrong-headedness, or inconsideration which sometimes triumphs at critical moments over the conservative and in general prevailing forces of society, and to which the present and passing condition of the country gives more than ordinary strength, and therefore requires the Government to particularly observe and provide against.

In this connection I advise that you and each of your deputies, general and "special," have right to summon to your assistance in preventing and quelling disorder "every person in the district above fifteen years of age, whatever may be their occupation, whether civilians or not, and including the military of all denominations—militia, soldiers, marines—all of whom are alike bound to obey you. The fact that they are organized as military bodies, whether of State or of the United States, under the immediate command of their own officers, does not in any way, affect their legal character. They are still the *posse comitatus*." ... I need hardly add that there can be no State law or State official in this country who has justification to oppose you in discharging your official duties under the laws of the United States.

"Speech of Hon. Alphonso Taft"²

The greatest phenomenon of the present political campaign is the fact, that the old Democratic Party of 1860 has continued to the present day, and now assumes the garb and bearing of a reformer. The standard bearers selected for the present campaign by that party are typical of the *Bourbon regime*. They were prominent members of that organization when it went out of power sixteen years ago, and have been identified with the anti-war, anti-war measures, anti-constitutional amendments, anti-reconstruction, and generally, anti-greenbacks, when greenbacks were needed to carry on the war, and anti-resumption, when greenbacks are no longer necessary as a legal tender. In the series of disguises which the party is now practicing by its platform and otherwise, it is wonderful that there should be no disguise in the candidate.

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... And now, as we draw nearer to the election, the plans of the dominating race become more manifest. They have formed "rifle clubs" in all the counties of the State ... and these "rifle clubs" are intended to awe and terrify the colored race to such an extent as to prevent them from voting any other than the Democratic ticket. These "rifle clubs" consist of great numbers of men armed and mounted, and they pass from town to town, or from precinct to precinct, and the purpose is to prevent any Republican meeting from being held, or to control it if held. They come mounted and armed to every Republican meeting that is appointed, demand half the time, surround the stand with these horsemen armed and in a threatening attitude, demand half the time at the point of the musket, and when they obtain it allowing the Democratic side to harangue the negroes who are there assembled, but forbidding and preventing any free speech on the part of the Republicans, the purpose being by every means to intimidate and prevent any free conference of the Republicans previous and preparatory to election; to inspire the negroes with fear and terror by their constant presence at every meeting, riding up and down in the country. Everywhere their presence on horseback armed is a menace; and however they may smile and pretend that they do not mean to intimidate the very fact that they are riding about armed at public

² "Speech of Hon. Alphonso Taft," *The New York Times* (October 26, 1876), 1–2.

meetings called by Republicans, demanding halftime and creating great disturbances so as to prevent any useful effect from the discussion, is evidence of their violent, unlawful, insurrectory, and outrageous character. The State government is wholly unable to restraint them. They are forbidden by statute law. They have been forbidden by the Governor of the State. They defer all attempts to try them. The number of negroes that have been slain by these men is pretty large; but no one has every been held to any accountability to the United States Courts on the ground that murder and assault and battery, as well as robbery and most other felonies, are State wrongs, and that those who commit them are not responsible to the United States Government; that they are offenders against the Government of the State, and that therefore it is only in the courts of the State that they offenders are responsible; and it has never been known that any man in any of those States has been held responsible or convicted for killing a negro. The result is that they negroes are in a pitiable condition. They are like sheep exposed to the ravages of wolves. Unless they defend themselves, or have the United States Government to defend them, they have no chance of escape by any other means than agreeing to vote the Democratic ticket, for whatever white man chooses to kill them is free from all responsibility. It is far worse now than in the time of slavery, because if these negroes were owned there would be a sort of protection to them, as property of their owners, against the violence and destruction of murderers. But, now, as they are owned by nobody, they are the property of nobody, and nobody is interested to protect them. But, as they can vote, the members of the Democratic Party, against which they would naturally vote, are interested to kill them, unless they can intimidate them and keep them from the polls. . . .

. . . The result of this whole discussion is, "Shall the fifteenth amendment be given up?" Shall the right of suffrage be taken away from the negro? Shall the Southern white men, who formerly owned the negroes and wielded a political power on account of such ownership, limited by three-fifths of their number, be allowed now, by the suppression of the colored votes, to wield two-fifths more power on their account than they could have done before the war, holding them as slaves? It is the simple question, shall we give it up, and let the principle that this is the white man's Government be carried out in the South by ignoring and overturning the rights of the colored man? We are brought to that question now in this crisis. If the Democratic Party can seize by force the political power in South Carolina, as it has already done in Mississippi, and possess all the machinery of the State Government, with the purposes which that party have, it is clear that the right of the negro to suffrage is gone. And it comes to be a great question, both what the effect of such a consummation of villainy will be upon the destiny of this Nation in the future, and what steps the present Government ought to take to prevent it.

. . . Some complaints have been made of the order to the United States Marshals. I have not thought it necessary to respond to these patriotic criticisms. Perhaps I have been under an hallucination in supposing it to be a very good order, and that it carried its justification on its face. It is clear that the order does not authorize or encourage a Marshal to interfere with any honest citizen while voting or performing any other duty. These are only to prevent unlawful breaches of the peace of the United States. They are not to intimidate any voter. They are to prevent intimidation. . . . But these political critics claim that the order conflicts with the recent decision of the Supreme Court, and are concerned for the credit of the bar. If they had read the order and the decision, they would have seen that there was no conflict. The case decided by the Supreme Court arose upon an election of State officers only, and this order relates to the election of Federal officers only. Besides, the Supreme Court in its opinion . . . went out of its way to say expressly that the decision had no bearing on the clause of the Constitution relating to the election of members of Congress. The Thirteenth Amendment made slaves freemen; the Fourteenth Amendment made them citizens and gave them civil right; the Fifteenth Amendment provided that no citizen should be denied the right to vote "on account of race, color, or previous condition of servitude," and that "Congress should have the power to enforce this article by appropriate legislation." Congress passed an act which, it was supposed, would enforce this amendment. A case arose in Kentucky at an election of State officers only, for denying the right of voting to a negro. The Court held that the Act of Congress, as passed, was not appropriate legislation for the premises of that suit. The reason can be concisely stated thus: Independent of the Fifteenth Amendment, Congress has nothing whatever to do with the election of

State officers. By that amendment its only power is to prevent the denial to citizens of the right to vote “on account of race, color, or previous condition of servitude”; but this act provides a punishment for a denial of the right of voting to any citizens, white or black. This transcended the right of Congress as to State elections, and was not therefore appropriate legislation. The Act should have been confined to a denial of the right of voting on account of race, etc., but the Court said they were not considering the effect of the fourth section of the first article of the Constitution. As to the election of Senators and Representatives, the effect, of that section is to enable Congress to make or alter any or all the regulations as to the times, places, and the manner of holding elections for Senators and Representatives in Congress. These instructions relate to the election of Federal officers, the very thing which the Supreme Court say was not involved in their decision of the Kentucky case. The order also says that “the judgments of the Supreme Court did not concern Federal elections. That looks reasonably plain. If any man fails to understand that, I commend him to the common school system for future instruction. . . .

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