Supplementary Material

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

The Repeal of Federal Election Laws (1893)[1]

Democrats campaigned against the Lodge Federal Elections Bill in the 1892 national election and won a major victory. The first substantive paragraph of the Democratic Party Platform of 1892 asserted:

> *We warn the people of our common country, jealous for the preservation of their free institutions, that the policy of Federal control of elections, to which the Republican party has committed itself, is fraught with the gravest dangers, scarcely less momentous than would result from a revolution practically establishing monarchy on the ruins of the Republic. It strikes at the North as well as at the South, and injures the colored citizen even more than the white; it means a horde of deputy marshals at every polling place, armed with Federal power; returning boards appointed and controlled by Federal authority, the outrage of the electoral rights of the people in the several States, the subjugation of the colored people to the control of the party in power, and the reviving of race antagonisms, now happily abated, of the utmost peril to the safety and happiness of all; a measure deliberately and justly described by a leading Republican Senator as "the most infamous bill that ever crossed the threshold of the Senate."*

That November, Democrats gained control of the White House, the House of Representatives, and the Senate for the first time since 1858. Shortly after gaining control of all elected branches of the national government, Democrats repealed the Enforcement Acts passed during the 1870s.

The following excerpts are taken from the majority and minority reports discussing the repeal of the Enforcement Acts. Why did Democrats believe the Enforcement Acts unconstitutional? To what extend do you believe Democrats were motivated by a longstanding antipathy to African-Americans or a longstanding antipathy to federal power? Did Republicans continue to rely on principles first articulated during Reconstruction or did Republican understandings of federal power to protect African-American voters evolve over time? Why do you think Democrats repealed the Enforcement Acts, but not the Civil Rights Act of 1866?

Majority Report

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Section 2002 declares in effect that no military or naval officer shall bring any troops or armed men to the polls unless "it be necessary to repel the armed enemies of the United States or to keep the peace at the polls." This act was passed in February, 1865, during the war, and the object and purpose for which it was enacted must have long since passed away. . . .

It is evident from [the guarantee] clause that the United States must guarantee to every State in the Union protection against "invasion." In order to do this it may be necessary for the Government to employ its army; but it is difficult to see, by any stretch of the imagination, for what purpose the enemies of the United States would invade a polling precinct in any State of the Union. . . . Where "domestic

[1] Excerpt taken from Committee on Privileges and Elections, "Report," 53rd Cong., 2d Sess. (1893), Sen. Rep. 113 (the Senate Committee adopted the report of the House Committee on Election of the President and Vice–President and Representatives in Congress).

violence has outrun State control, and the State government is unable to protect itself, this provision of the Constitution provides a direct and specific mode of action, on the application of the legislature of the State to the Government of the United States, or of the executive if the legislature can not be convened.

But this section 2002 provides an extra-constitutional mode of keeping the peace at the polls, in that it lodges an implied discretion *in the military or naval officer* of determining *when it is necessary* to repel the "armed enemies of the United States" or to "keep the peace at the polls,": whereas the determination of that question, under the Constitution, is left with the legislature of the State, or where it can not be convened, with the Executive. Surely no officer of the Army or of the Navy should be left to determine *when* it is necessary to bring troops to the polls, and the Constitution has impliedly prohibited it in the provision just referred to. This section 2002 was a war measure. Twenty-eight years after it was enacted, and twenty-eight years after the cessation of hostilities, as the last vestige of war legislation on this subject, it should be wiped from the statute books forever.

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The appointment of supervisors presumes *something* to supervise and the *right* of supervision. . . .

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We notice, first, "the time, places, and manner of holding elections, etc, is *primarily* confided to" the legislature of each State; *secondarily*, it is given to the Congress.

The language itself and the arrangement of the two clauses show this:

> The times, places, and manner, etc., shall be prescribed by the legislature of each State.
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> But the Congress may, by law, at any time make or alter, etc.

The first is *original* and *primary*, the second is *permissive* and *contingent*. The legislature and Congress can not both have original and primary power to act on the same subject at the same time. Such a conflict would never have been sanctioned. Nor can we believe that the men who drafted this section intended to distinguish it from every other in the Constitution in granting to two distinct and separate authorities co-equal power over the same subject at the same time. Nor can we conceive a greater absurdity than the grant of plenary power to the legislatures of the States in the first clause of the section, only to be abrogated and annulled in the second clause of the same section.

[The report then reviewed the debates over the framing and ratification of the Constitution.]

We conclude, therefore, that Congress has the power to "prescribe the times, places, and manner of holding elections" for members of Congress, but that such power is *contingent* and *conditional* only, not *original* and *primary*.

Under what conditions or upon what contingency?

If we accept the evidence of the States in their State conventions, ratifying the Constitution, and that of the men who made the Constitution, the conditions are—

First. Where the States refuse to provide the necessary machinery for elections; and

Second. Where they are unable to do so for any cause, rebellion, etc.

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For Congress to attempt to exercise this power now in this bill against the protests of a majority of the States that made the Constitution, and when those States only ratified it upon the faith and assurance that this and other powers would never be exercised except under certain conditions, which have not arisen, is a FRAUD upon the Constitution that should not be tolerated.

But conceding for the moment that section 4, Article I, gives to Congress the full powers claimed by the advocates of this bill, still it must be construed in the light of the subjection section (8) of the same article, which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." . . . In *Hepburn v. Griswold* [1870], Chief Justice Chase, in defining these words, says the words

> Necessary and proper were intended to have a sense . . . "at once admonitory and directory," and to require that the means used in the executive of an express power should be "bona fide appropriate to the end."

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The object of legislation should be to prevent conflicts between the State and Federal authorities. These statutes have been fruitful in engendering them. Enacted in reconstruction times, when it was deemed necessary to carry out these measures, the purpose for which they were framed having happily passed away, we feel that they can not be too quickly erased from the statute books.

But we regard these statutes as chiefly inimical to the best interests of the people because they are in effect *a vote of lack of confidence* in the States of the Union. The interference is irresistible that they were enacted because of a lack of confidence in the honesty if not in the ability of the States to conduct their own elections. With such an intention plainly on their face, with what consideration could they be med by the people for whom they were intended except that of distrust and suspicion? Would the United States Government suffer less by the prevalence of fraud in elections that the States whose officers we sent to represented it in the Government of the United States? Is fraud in elections any less contemptible because it emanates from the people of the States without Federal interference? Or is it any less dangerous to the people of the States because it lacks Federal supervision?

Let every trace of the reconstruction measures be wiped from the statute books; let the States of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used they will be the first to feel it. . . . In many of the great cities of the country and in some of the rural districts, under the force of these Federal statutes, personal rights have been taken from citizens and they have been deprived of their liberty by arrest and imprisonment. . . .

Finally, these statutes should be speedily repealed because they mix State and Federal authority and power in the control and regulation of popular elections, thereby causing jealousy and friction between the two governments; because they have been used and will be used in the future as a part of the machinery of a political party to reward friends and destroy enemies; because under the practical operations of them the personal rights of citizens have been taken from them and justice and freedom denied them; because their enactment shows a distrust of the States, and their inability or indisposition to properly guard the elections, which, if ever true, as now happily passed away; and last, but not least, because their repeal will eliminate the judiciary from the political arena, and restore somewhat, we trust, the confidence of the people in the integrity and impartiality of the Federal tribunals.

"Views of the Minority"

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We are certainly bound to oppose with all our might any attempt to over throw or destroy at the South the rights of American citizenship vindicated by the war, or protected by the measures of reconstruction which followed it. Now, however, we are resisting an attempt to do much more than that, an attempt to break down securities for honest elections throughout the entire country, securities needed quite as much and perhaps more in the States of the North than they are elsewhere.

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The laws are to be destroyed for the purpose of reasserting, in an offensive way, the old dogma of State sovereignty, under which the attempted dissolution of the Union was defended in 1861. The repeal will proclaim that the State, with its powers, is to be magnified and honored, while the Nation, with its powers duly exercised under express constitutional authority, is to be belittled and despised.

Moreover, such a reactionary assertion of State supremacy and aspersion of national power can not be passed by as harmless bravado. The effect will surely be to increase crime and dishonesty at the polls. Wherever, during the last quarter of a century, wicked and desperate men, making voting a mockery in the great cities, or defying the fifteenth amendment in the once slave States, have stuffed ballot boxes, falsified or forged returns, kept voters from the polls by threats and outrages, and tortured, mutilated and killed citizens on account of their politics, there the passage of the pending bill by the

Democratic Congress and its approval by President Cleveland will be received as an incitement to a renewal of all possible crimes against the suffrage, and as an assurance of safety from punishment to all the criminals.

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The carpetbag and negro governments, so called, have been the fruitful source of partisan denunciation. Fruits they had, but they were governments of freedom and education—the legitimate results of the war—and they were the best that could be secured. Between the plan of President Johnson—the government of the South and the nation by the late rebels, excluding the negro from the franchise and reenslaving him—and the plan of Congress—that of universal suffrage—there was no escape from the adoption of the latter. If such reconstruction proved injurious to the Southern States they have only themselves to blame, first, for their audacious attempt to rule the country against which they had so lately carried on destructive war, and, next, for their refusal to take part in organizing the governments which Congress had no alternative to establish.

But whether wisely or unwisely established were the Southern State governments, organized with manhood suffrage under the Congressional plan of 1867 in the place of the Johnson governments, there is no doubt that as soon as they were set up plans for their destruction were formed by the Southern white men so recently in rebellion and their Northern allies which were carried out with unrelenting purpose. The cause and justification of the national laws, the repeal of which is now demanded, were the Kuklux outrages at the South and the naturalization and elections frauds in New York City. . . .

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The Kuklux organizations began in 1868. Their secret and oath-bound obligation being to defeat the principles of the radical party meaning the reconstruction measures. Their methods were raids by disguised and armed whites upon the homes of the negroes and white Republicans, attended by whippings and other tortures, and by murders the most brutal and bloody told in history. . . .

[The minority report then detailed both Klan outrages in the South and the fraudulent activities of the Tweed Ring in New York, which routinely stuffed ballots.]

It was in view of the revolutionary plans and the wicked and desperate crimes of the Democrats of the South and New York City, . . . that Congress deemed it clearly wise and absolutely necessary to endeavor to prevent by legislation the recurrence of such atrocities. . . .

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It should be especially noticed and always borne in mind that *the national election laws do not interfere at any time by one hairsbreadth with the performance of their complete functions by the State election officers.* The State officers register the voters, they call the elections, they receive the ballots, they count the votes and certify the result absolutely untouched, unhindered, and uncontrolled by the Federal supervisors. The latter are merely witnesses of what is going on. They are only watchers. . . .

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The clamor for the repeal of the national laws would be more defensive if the local laws in all the States were suitable and sufficient. But, on the contrary, some of them are notoriously and grossly imperfect, in adequate, and unjust. . . .

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One of the most frequent arguments for the repeal of the national laws is that elections should not be controlled by a remote power but there should be "home rule," and that the citizens of each locality should be trusted under suitable State laws to conduct their elections.

But this idea is utterly set at naught in some of the Southern States. . . .

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It is, or soon will be, an undisputed historical fact that these results—the nullification of the fifteenth amendment by the suppression of the votes or the colored men and of the white Republicans and of all freedom of political action at the South—have been accomplished by all methods of crime known among men, the milder being tissue ballots, false countings, fraudulent returns, and other devices to falsify the actual result, and the stronger being social ostracism, persecution, intimidation, assaults and batteries, whippings, shootings, and hangings to keep Republicans from the polls.

[*The report then listed Klan and other atrocities in the South, and then discussed legal restrictions on voting in the South.*]

The question of suffrage at the South is more and more coming to be one not concerning the colored vote alone, but it vitally involves the freedom of the white voters, which is shamefully impaired by the unrepublican laws above described.

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The greatest power in a republican government is the popular branch of its legislature, and this is also the one which most quickly feels the will of the people. Our Congress has the power to secure full and fair elections of the members of the National House of Representatives. Shall it abdicate that power because its exercise will show a lack of confidence in States whose election laws are plainly so constructed as to prevent a full and fair expression of the popular will and to give free scope to election conspiracies and frauds of all kinds? When these States first cast out their own wrongful statutes they may perhaps ask for a withdrawal of the statutes of the nation which even now are inoperative, except when specially called into exercise in order to meet expected exigencies.

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It is argued in the report of the majority that national election laws are unconstitutional. The argument is hardly worthy of serious discussion. The grant of power is contained in the Constitution as follows:

> Article I, Section IV. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress *may at any time bylaw make or alter such regulations*, except as to the place of choosing Senators.

It would be difficult to contrive to express an absolute and unconditional grant of power in other language exceeding or even equally in clearness and distinctness that thus used in the Constitution. . . .

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. . . Like many powers, the one of making the regulations for the conduct of Congressional elections exists in the State legislatures until Congress chooses to act on the subject, but when it does act the national law is paramount and conclusive, whether it wholly supersedes or only alters in some particulars the State regulations.

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[W]e have shown that the Southern States, defeated in the civil war, sought to come back into the Union with increased power by reason of their rebellion, endeavored to remand the negroes to virtual slavery to their old masters, and after the reconstruction measures of Congress with manhood suffrage became necessary, resisted the inevitable results by Kluklux crimes and stupendous election frauds; and we think that we have also demonstrated that Democratic crimes against the elective franchise are neither sectional nor geographical, that they know no lines of latitude nor points of the compass, and that for all these wrongs the national-election laws are an appropriate and not justly obnoxious remedy.

These laws do not in the least hinder or interfere with State officials conducting the Congressional elections and certifying the results. The national supervisors are only lookers-on. The laws have never operated harmfully; they have worked beneficially whenever called into use. . . . If there are defects let them be pointed out and cured. But let them not be wholly wiped out merely because they are a trace of the reconstruction measures, and merely because the Democratic party, thirty years after the war, holds for the first time in a third of a century the power to enact a statute of the United States. The passage of the bill will convey to the people of the country this notice:

The Democratic party, controlled by the States of the solid South, has an ineradicable hostility to national power.

Do the majority of the Senate really wish to make such an announcement; to reopen sectional discussion; to intensify race and class animosity; and to notify the North not only that by the repeal of protective duties the industries of that section are to be stricken down, its factories and workshops closed, its workmen deprived of employment, and their wives and children of their daily bread, and

unprecedented poverty and distress forced upon the whole country by the solid South, but that the legitimate political contests in the Congressional elections which are to ensue over a policy that produces these results fraud and violence are to go unhindered and unpunished by national laws which were placed upon the statute book more than twenty years ago; and of which in 1892 no complaint was made, and that by any election methods, however wrongly, the political ascendancy thus acquired is to be retained.

A political party, in full control of the National Government in 1893, which is looking so constantly backward that its highest purpose is to wipe out every trace of the reconstruction measures of 1867 ought not to be allowed long to retain its misconceived and misused power.