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# Freedmen with Firearms: White Terrorism and Black Disarmament During Reconstruction

## **Abstract**

The outcome of the Civil War brought freedom to over six million slaves of African descent. These Freedmen communities remained a critical source of labor for the agrarian based economy of the southern U.S. Conflicts erupted because former slaves sought to exercise their new freedoms against the restrictions placed on them by local authorities. New laws, mob actions and acts of organized white terrorism were used to subjugate free citizens and return them to their former stations of labor. Political activities and participation in the electoral process were violently discouraged. Vocal opponents of the new system were often targeted for murder along with their families. A vital component to this oppressive movement was a concerted effort among local southern governments to disarm African American citizens. Radical Republicans attempted to intercede with new laws based on 2nd amendment protections, but Northern indifference to the plight of former slaves made this politically futile. Unconstitutional firearm restrictions in the reconstruction south ensured that the subjugation of Freedmen would continue indefinitely. Without political agency, or the means of an organized community militia to generate such power, the realization of freedom and the rights of citizenship for African Americans remained unobtainable for nearly 100 years.

## **Keywords**

Black Power, Firearms, Weapons, Terrorism, Jim Crow, White Supremacy, Black Militias, Reconstruction, Second Amendment rights, Lynchings, Racism, African Americans, Civil War

## **Freedmen with Firearms: White Terrorism and Black Disarmament During Reconstruction**

David H. Schenk

Common American History 101 narratives of post-Civil War Reconstruction have generally included docile and helpless former slaves, who quietly adjusted to the oppressive governance and terror of white Southern peoples for nearly a century. This established narrative, however, obscures another possible reason why organized Freedmen gave up their fight for suffrage and basic civil rights. Congressional records describe the early years of Reconstruction with armed Freedmen communities successfully defending their rights against white Southern authorities and terrorist organizations. At the same time these records also reveal efforts by these same white Southern entities to systematically disarm African American citizens.

African Americans fought hard for their political and civil rights as new United States citizens, during a time when they were reasonably well-armed and could organize a viable resistance. In what could be described as the *disarmament period*, these firearms were confiscated through various means of violence and coercion. As a result, the political agency of Freedmen was greatly diminished, and the consequences are clearly represented by reduced Freedmen poll numbers during the later years of Reconstruction. Freedmen were largely willing to fight and die for their rights as new U. S. citizens as long as defiance remained a course of rational action. Disarmed and overpowered by the weaponry of their oppressors,

African Americans grudgingly resigned themselves to the politics of basic survival.

### I. Voices of Authority and Insight

Nearly a month after the end of the Civil War in May of 1865, Frederick Douglass addressed the American Anti-Slavery Society on the future of emancipated slaves. His tone was pessimistic because he understood the challenges that lay ahead, and he warned those in attendance that their work was not yet completed. Douglass expressed his greatest fear for former slaves living under white Southern authorities, explaining that “The black man has never had the right either to keep or bear arms; and the legislatures of the states will still have the power to forbid it.”<sup>1</sup> What Douglass expressed here just weeks after the cessation of hostilities is the premonition of another conflict on the horizon. Freedom, citizenship, and the ability to vote were not enough to assuage Douglass’ worst fears, because without the political agency of black firearm ownership, and by extension the threat of an organized uprising, the actions and policies of white authorities would have little restraint.

The Federal government fell extremely short of securing the rights of freedmen, and Douglass saw this future reality far in advance. Perhaps he understood all too well the attitudes and indifference of the Northern public, and that, for political reasons, Washington could

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<sup>1</sup>Frederick Douglass, “The Need for Continuing Anti-Slavery Work Speech,” in *the Life and Writings of Frederick Douglass*, ed. Philip S. Foner (New York: International, 1975), 168.

not possibly fulfill the Reconstruction visions put forward by Radical Republicans like Thaddeus Stevens.<sup>2</sup> Of course, Douglass' eloquent speaking ability and political pragmatism would preclude him from saying directly that white northerners essentially just did not care about the fate of Freedmen.

The closest Douglass comes to this statement is so eloquently spoken that the meaning could be reasonably misconstrued. "I think the American people are disposed often to be generous rather than just," he declared, then proceeded to list benevolent organizations that have assisted African Americans. The questionable duration of this aid was tied to a post-war public sentiment and Douglass asked for something much more sustainable: "What I ask for the Negro is not benevolence . . . but simply justice."<sup>3</sup> The great cause of the hour was peacetime philanthropy directed at millions of freed slaves, but the benefactors of these organizations were part of the same tiny minority of Abolitionist whites; the

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<sup>2</sup>Eric Foner, "Thaddeus Stevens, Confiscation, and Reconstruction," in *Major Problems in the Civil War and Reconstruction*, ed. Michael Perman. 2nd ed. Boston: Houghton Mifflin, 1998. Excerpt from *The Hofstadter Aegis: A Memorial*. Edited by Stanley Elkins and Eric McKittrick. N.p.: Alfred A. Knopf, 1974.

<sup>3</sup>Frederick Douglass, "Frederick Douglass States the Freedmen's Demands, April 1865," in *Major Problems in the Civil War and Reconstruction*, ed. Michael Perman, 286-87. 2nd ed. Boston: Houghton Mifflin, 1998. Excerpt from "From Frederick Douglass, Address to the Massachusetts Antislavery Society, April 1865," in *Negro Social and Political Thought: Representative Texts, 1850 - 1920*, ed. by Howard Brotz (Basic Books, 1966), 286-287.

same handful of people who would actually consider inviting Douglass into their homes as an honored guest.

Douglass asked for the same constitutional protections given to all Americans, such as the right to assemble, speak, vote and own firearms. He stressed this key to the black citizen's autonomy in his April speech when he declared that, "If the Negro cannot stand on his own legs, let him fall . . . all I ask is, give him a chance to stand on his own legs."<sup>1</sup> The truth was that either through the Federal retreat from Reconstruction, or a growing condition of indifference, without the guarantee of justice former slaves would soon be completely defenseless in the former Confederacy. Organized citizens with firearms were the only protection against oppressive Southern authorities, and Douglass knew this long before Reconstruction ended and the last Freedmen's Bureau closed shop in 1877. The eventual creation and implementation of Jim Crow laws, through which discriminatory exclusions and restrictions controlled nearly every facet of African American life, embodied Douglass' worst-case outcomes for unarmed black communities.

The post-Reconstruction South became the social nightmare Douglass had envisioned, and black journalist and activist Ida B. Wells reiterated his belief in armed black communities nearly thirty years later. Contemporary scholars consider Wells to be the mother of the Civil Rights movement because of her innovative and relentless approaches to racial violence and injustice.

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<sup>1</sup> Ibid.

She publicized the horrors of epidemic lynching, led successful economic boycotts of white businesses, and revealed through her writings the harsh realities of late 19<sup>th</sup> century Southern racism. In *Southern Horrors: Lynch Law In All Its Phases*, Wells describes the only defense available for black citizens:

The only case where the proposed lynching did not occur, was where the men armed themselves in Jacksonville, Fla., and Paducah, Ky., and prevented it. The only times an Afro-American who was assaulted got away has been when he had a gun and used it in self-defense.<sup>5</sup>

Wells had extensive knowledge of white terrorism throughout the whole of the U.S., and she concluded that an armed black population was the only means of immediate justice.

Wells' primary mission was spreading the truth through the press and educating both the national and global public, but the extensive amount of violence and death demanded a far more archaic solution. Changes would come—that was the heart of her crusade for justice—but the life of a single black citizen was precious and irreplaceable. Wells assessed that “a Winchester rifle should have a place of honor in every black home. . . . When the white man . . . knows he runs as great a risk of biting the dust every time his Afro-American victim does, he will have a greater respect for Afro-American

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<sup>5</sup> Ida B. Wells, "Southern Horrors: Lynch Law in All Its Phases," 1892, in *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900*, ed. Jacqueline Jones Royster (Boston: Bedford Books, 1997), 70.

life.”<sup>6</sup>This violent conclusion reveals the realities of Wells’ lifetime, where black citizens were dehumanized by much of white American society. This is evident in Wells’ detailed accounts of lynching where the victims were treated in the most horrific and torturous manner. Postcards from photographs of public lynching were widely produced, marketed and sold to the general public.<sup>7</sup>The attitudes of white Americans are conveyed through their general indifference to these images that were widely available at the time through the activism of Wells and others.

A question emerges from the thirty years between Douglass’ and Wells’ statements; what happened to all the firearms that were in the homes of Freedmen and former Union soldiers? Congressional testimony reveals substantial amount of firearm ownership among African American communities during the early years of Reconstruction and a population willing to brandish them in protest and self-defense.

The importance of firearms that Douglass and Wells stress is insightful because quiet, helpless, and docile black communities—those commonly found in mainstream Reconstruction narratives—would never dream of pointing loaded weapons at their white neighbors. The will among blacks to resist and fight back, however, was strong before and during the Civil War, and

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<sup>6</sup> Ibid.

<sup>7</sup> Without Sanctuary: Photographs and Postcards of Lynching in America, <http://withoutsanctuary.org/main.html>, Dec. 4, 2013.

the period of Reconstruction and beyond was no different.

During the antebellum period, slave uprisings did occur, such as the highly publicized 1831 Nat Turner revolt and John Brown's raid on Harpers Ferry. Because of informants, however, most revolts were typically prevented while still in the planning stage, with deadly consequences for the conspirators. Slaves regularly risked life and limb to escape to freedom in the North, and when the opportunity to enlist in the Union Army and Navy arose, 179,000 black soldiers and 10,000 black sailors joined the fight.<sup>8</sup>In fact the fear of slave uprisings was so great that in antebellum Louisiana the penalty for a white person caught speaking or writing anything promoting a slave revolt could be imprisoned for decades or even executed.<sup>9</sup>These laws were generally aimed at white northern abolitionists who had intentionally brought their religious and moral crusades directly into the slave holding states.

If millions of slaves were as docile and helpless as current scholarship contends, it would take far more than a white Yankee orator to instigate a full-scale uprising. The often-violent backlash against abolitionist speech in the antebellum South may have simply been an overreaction, but on the other hand slave patrols and local militias, which stood as a defense against mass slave

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<sup>8</sup>James M. McPherson, *Ordeal by Fire: The Civil War and Reconstruction*, 3rd ed.(Boston: McGraw-Hill Higher Education, 2001), 383.

<sup>9</sup>*Ibid.*, 52.

insurrections, were very common throughout the South in this pre-Civil War period.

Four million slaves were a powder keg of discontentment both before and during the Civil War, and it will be demonstrated that this African American spirit of rebellion did not simply end during Reconstruction. The body of evidence to this effect resides in congressional records and other various written documents. In Africa, traditions and histories are generally oral and hereditary in their storage and transmission, unlike the meticulous systems of Western recordkeeping, with books, libraries, and archives.<sup>10</sup> These traditional oral histories also exist in North American black communities, and run a quiet and parallel path to the mainstream collections of written scholarship.

One such example is revealed in the famous autobiography of Ralph Ellison, entitled *Invisible Man*, which reveals a hidden story pertinent to the disarmament of Freedmen. Ellison opens his narrative as a child at the deathbed of his grandfather, who in his younger years was an emancipated slave in the Deep South. Ellison focuses on the dying words of his grandfather, which confess an unforgivable cowardice and betrayal against his own African American peoples. Speaking his last words to Ellison's father he asks him to do what he was never able to do in a lifetime: Son, after I'm gone I want you to keep up the good fight. I never told you, but our life is a war and I have been a traitor all my borndays, a spy in the

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<sup>10</sup> Aran S. MacKinnon, *The Making of South Africa: Culture and Politics* (Pearson:Boston, 2004), 330-333.

enemy's country ever since I gave up my gun back in the Reconstruction. Live with your head in the lion's mouth. I want you to overcome 'em with yeses, undermine 'em with grins, agree 'em to death and destruction, let 'em swoller you till they vomit or bust wide open.<sup>11</sup>

After disarmament the politics of basic survival replaced the active fight for real freedom, and Ellison's grandfather never forgave himself for this surrender. These were not simply the incoherent ramblings of a dying old man, because the family reaction clearly demonstrated a buried truth among the African American descendants of Reconstruction. Ellison was extremely bothered by his grandfather's last words because they established a strong motivational basis for his later introspections on black manhood. According to Ellison, the effect on his parents was equally potent, and he explains that these last words had a greater effect on them than the actual death of his grandfather. Ellison recalls, "I was warned emphatically to forget what he had said and indeed, this is the first time it has been mentioned outside the family circle."<sup>12</sup> Ellison reveals a well-kept family secret, which may in fact be an isolated incident with merely one Freedman giving up his firearm to white authorities, but it may also present a rare glimpse into a larger hidden story of Reconstruction.

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<sup>11</sup> Ralph Ellison, *Invisible Man*, 1994 Modern Library ed. (New York: Random House, 1994), 15-16.

<sup>12</sup> *Ibid.*

The reaction by Ellison's parents suggests there is a substantially negative aspect to this confession, one that might be very harmful to either family pride, or traditional community narratives concerning the Reconstruction period. There is nothing particularly shameful about a single Freedman giving up his firearm to overpowering Southern authorities. There would be little alternative to do so in the face of such certain and deadly circumstances, and this event would leave little if anything to ponder and regret years later on one's deathbed. A more reasonable conclusion is that Ellison's grandfather was one Freedman among many who realized too late what was happening on a larger scale. The opportunity for armed resistance quickly passed away one firearm at a time, until the only remaining action was to be a traitorous black man like Ellison's grandfather saw himself as: forever smiling and acquiescing to the enemy just to survive.

The confession from Ellison's grandfather is not significant in itself, but it does lend credibility to the congressional testimony that will follow. A family secret revealed through the rare autobiography of a mid-twentieth century African American author might prove to be as equally scarce. Yet, if the mass disarmament of Freedman has been buried in the collective closet of the African American consciousness, then Ellison's recollection becomes merely the tip of the iceberg. The only evidence to this effect exists in congressional testimony compiled directly during the middle of the twelve-year Reconstruction period (1865-1877).

## II. Terror and Disarmament: The Official Record

The 42<sup>nd</sup> U.S. Congress conducted extensive hearings in 1871-1872 because of the growing threat of terror organizations such as the Ku Klux Klan.<sup>13</sup> The 13 volume published report is called *Affairs In the Late Insurrectionary States*, and it records the detailed testimony of victims, perpetrators, and witnesses. The findings reveal the attitudes and actions of African Americans living under the constant threat of violence and intimidation. Black citizens were not alone because white Republicans, Yankee businessmen, and schoolteachers at black schools were also terrorized. Testimony from the state of Mississippi reveals these tangled lines of intimidation as Southern Democratic powers worked to regain full control of their home state.

African American voices are largely absent from the hearings, and this is simply the product of their low standing in the nineteenth century U.S., but the testimony of white associates and neighbors reveal an angry and active black community. Joseph F. Galloway, a white schoolteacher at St. Mary's Academy near Caledonia, Mississippi, had regular encounters with the Ku Klux Klan and testified about reactions from the black community. The Klan believed that Galloway influenced the political thoughts of his black pupils, and they wanted him to stop teaching and leave the area. He refused to do so and gained a position of leadership among the black community.

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<sup>13</sup>McPherson, *Ordeal by Fire*, 609.

Terrorism had been increasing lately and a group of local black leaders approached him and asked him “if there is not some way to get rid of these Ku Klux,” and he replied that they would have to rely on government forces to do that.<sup>14</sup> The men were not satisfied with his answer and one angrily replied that “they had waited on the Government of the United States a good while now, and were getting killed and whipped and abused all around. . . . They would have to take it into their own hands.”<sup>15</sup> These Freedmen were not cowering like frightened children from the regular Klan raids, but rather they were very anxious to fight back somehow. They approached the educated schoolteacher for guidance or a plan of action, because they had the will to resist and the weapons to do so. What they needed, however, was good strategy from someone who could reasonably formulate such things. Galloway refused to condone violence and continued to discourage armed resistance, but eventually he did admit that a firearm served as a strong deterrent against Klan attacks.

The inquiry of terror continued along the lines of resistance and the chairman of the committee asked a leading follow up question to Mr. Galloway: “These ghostly fellows are afraid of arms, are they?” Galloway replied, “Yes, sir; very much so,” and he described an incident where Klan members learned that their intended victim was carrying a pistol. “They went up to Caledonia

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<sup>14</sup>*The Condition of Affairs in the Late Insurrectionary States: Mississippi, Vol. II*, S. Rep. No. 42<sup>nd</sup>-No. 41, pt. 12, 2d Sess. (1871), 670.

<sup>15</sup>*Ibid.*, 671.

and left. They found that he had his arms that night and went back and told them that it would not do any good to whip him, so they let him off.”<sup>16</sup>This line of questioning was intended to either learn the mettle of Klansmen, or to showcase their cowardice to a larger audience. The clear point in either case was that the Klan was afraid of armed Freedmen, and this may explain the focused acts of disarmament that are revealed in later testimony.

The targeting of isolated and unarmed individuals becomes apparent throughout later testimony, but this does not mean that these white terrorists remained static in their approach. Defenseless individuals would remain the primary victims, but the systematic disarmament of not so helpless Freedmen would become the first order of business on nightly raids. Testimony from Captain George W. Yates of the U.S. 7<sup>th</sup> Calvary described two disturbing instances of firearm confiscation followed by cold-blooded murder. The first altercation dealt with a black woman seeking justice through Union Army channels, and Yates relayed the incident in detail. “An armed band had visited her house. . . .She said they came for arms, and [her husband] did not have anything but an old gun. . . . They made him bring it out, and while in the act of bringing it out he was shot.”<sup>17</sup>

The second incident he described, which took place just a few miles away, was even more brutal: “She said the party came there, several people that they called for arms, and finally killed her husband and told her to go

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<sup>16</sup>Ibid.,673.

<sup>17</sup>Ibid.,793.

to bed.”<sup>18</sup> The Klansmen then proceeded burn the house to the ground, which incinerated her husband’s body and killed their two children. Violence was escalating along with the disarmament of Freedmen, and the reasons for this are unclear. It could have been due to increasing hostilities, or merely meant to affect the black turnout in an upcoming election, but the record does not provide any explanation.

Senseless acts of violence committed against Freedmen must have been the accepted reality for the congressmen conducting the inquiry, because they did not press for reasons or motivations. The hunt to capture and prosecute white terrorists takes center stage, and the otherwise highly detailed record suffers from an overemphasis on this objective at the expense of other aspects of Reconstruction such as the sociopolitical climate of the South. The Ku Klux Klan takes on superhuman characteristics because of the often tabloid quality of the hearings.

Secret Klan handshakes, disguises, and oaths are treated with fascination and all the depth of inquiry found in a developing conspiracy theory. The hearings dwell on the disputed level of nudity a white woman was in when law enforcement officers entered her bedchamber, and this line of inquiry comes across like an example of Victorian era pornography. A century and a half removed from these hearings, the attitudes and values of this time period come across as extremely strange in contrast with contemporary sensibilities.

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<sup>18</sup>Ibid.

Black communities were living in terror, and in many instances actively resisting oppression, but the Congressional Record more than often treats them like inanimate objects. Armed freedmen were fighting back, and efforts were underway to disarm them, yet all of this remains at the extreme periphery of these congressional documents. This struggle, however, emerges from the testimony line by line when searching for Freedmen, firearms, and conflict.

Testimony demonstrates that citizens were generally well-armed in the Mississippi city of Meridian and that a general state of hostilities existed between black and white citizens. Klansmen had been coming over the border from Alabama terrorizing and attacking freedmen, while local white authorities did little to stop them. Riots had occurred with a portion of the town set to fire, and subsequent trials and arrests further intensified the violence. A white citizen of Meridian, M.H. Whitaker, provided extensive testimony concerning the condition of unrest and the anger of black citizens. “Large squads of colored people were seen about in portions of the town in an organized form, with arms,” he described, and when the freedmen were questioned about the reason for state of armed readiness, they explained that “they were going to fight the white people: if they wanted a fight.”<sup>19</sup> The testimony does not focus on the motivations of the armed freedmen, but it clearly demonstrates the general numbers of weapons in their possession

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<sup>19</sup>The Condition of Affairs in the Late Insurrectionary States: Mississippi, Vol. I, S. Rep. No. 42nd - No. 41, pt. 11, 2d Sess. (1871), 172.

Whitaker surmised the count by comparison: “White people always had arms, always kept one or two guns about their premises, for squirrel hunting and bird hunting. The colored people all have guns, I suppose, for the same purpose.”<sup>20</sup> The common ownership of firearms by freedmen is not isolated to Meridian, and later evidence will demonstrate the expanse of an armed black population across the former Confederate States. A quantitative analysis after a century and a half is impossible in all likelihood, but since this testimony is a consistent sampling of a Reconstruction trend, it must represent something much larger in scope.

Miles away from Meridian in Brooksville, Mississippi, the story of armed Freedmen is quite similar, but with an added element of coordinated firearm confiscation. Former rebel soldier John R. Taliaferro testified in depth concerning his relations with freedmen and the Ku Klux Klan. He was not a member of the Klan, but rather was a plantation owner who employed former slaves. Taliaferro was questioned by congressman John Coburn as to whether freedmen were the majority population in the county and if they were all armed, and Taliaferro replied to both in the affirmative and added, “All the negroes who work for me, pretty much—have shot-guns or something of that kind.”<sup>21</sup>

The follow up question concerned the disarmament of these freedmen by the Ku Klux Klan,

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<sup>20</sup>Ibid.,200.

<sup>21</sup>Ibid., 244.

and Taliaferro replied, “Yes sir; they have taken away pistols and things of that kind from them. . . . Thirty or forty pistols.”<sup>22</sup> He denied there was any form of organized system of firearm confiscation, and that mass disarmaments only took place after riots.

In later testimony, however, he makes mention of a General Forrest coming down from West Point Mississippi to calm down the population of Brooksville. Another General followed this visit from West Point who conducted a large-scale disarmament of freedmen. Taliaferro recalled the event and qualifies the soldiers as former Confederates. “That was the occasion the when the Negroes were disarmed,” he explained, “by captain Franks, with his company from West Point. They came down, of course, as citizen soldiers.”<sup>23</sup> The Confederate army had been disbanded and outlawed as part of the terms of surrender, but they were reorganized and had participated in local affairs such as the confiscation of firearms.

It is unclear whether this was in fact Nathan Bedford Forrest, the first national leader and Grand Wizard of the Ku Klux Klan,<sup>24</sup> but this testimony referred to events taking place around 1869 and this would be just a year after the time when General Forest and other former Confederate officers transformed the Ku Klux Klan from a “harmless fraternal order” into a “hooded terrorist organization” that James McPherson describes as

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid., 245.

<sup>24</sup> McPherson, *Ordeal by Fire*, 586-587.

“The military arm of the Democratic party.”<sup>25</sup> The presiding congressmen did not follow up this disarmament testimony with any questions at all, and the line of inquiry instantly shifted to the Mississippi public school system, or lack thereof. If this was in fact General Forest and his followers in action, and this may never be known, then the newly organized and nationalized Klan had disarmed Freedmen during broad daylight in Brooksville, Mississippi. If this is the case, then white terrorists dressed down as common citizen soldiers did their most important work toward subjugating Freedmen, and the U. S. Congress did not even take notice. The testimony from Mississippi demonstrated some evidence of systematic firearm confiscation, but across the border in Alabama blatant and violent acts of disarming Freedmen reached near epidemic proportions.

The act of disarmament appears at first to be political in nature, and intended primarily to affect the outcome of elections in favor of Democrats. Freedmen voted in overwhelming numbers for Republican candidates and the party of Lincoln was deeply despised by white citizens throughout the former Confederate States. This sentiment is clear and understandable for those recently defeated in the Civil War and struggling to restore a cohesive working order to their society. The fundamental Southern hatred of Yankees, Republicans, and Freedmen communities are not at issue here, but rather the lasting effects of disarmament in the way of long-term black political agency lost, and white racial

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<sup>25</sup> Ibid.

oppression completely unfettered.

Testimony from Alabama presents a closer look at the Ku Klux Klan in action and a well-armed community of oppressed African Americans. Freedmen had the will to fight and the armaments to do just that, but what they lacked in hindsight was an educated leadership that could form a qualitative plan of militant action. Previous testimony describes a white schoolteacher Galloway approached by freedmen in search of a strategy for resistance to the Ku Klux Klan. White authorities and their clandestine terrorist groups already had a plan in motion to subjugate African Americans, the testimony from Alabama offers a glimpse into these disarmament operations.

The pages of testimony in *Volume II Alabama* are so full of firearm confiscation incidents that they are much too numerous to be listed here. The pattern begins in the nighttime when masked and armed white men arrive at homes or plantations where freedmen reside. They demand under threats that any guns on the premises be brought out and surrendered to them. When this is accomplished through force, or merely the threat of violence, then the African American residents are generally abused, beaten, or murdered.

There are exceptions that hint of a more organized and focused operation aimed merely at disarming freedmen with minimal incidents of violence being committed. George Cornelous worked at a plantation in Madison County and gave a sworn affidavit that described a streamlined raid one night. Twelve

Klansmen confiscated firearms from freedmen on his plantation and another one nearby, and he described their intended objective: “They also examined all the houses for money, and asked if we knew who had guns, pistols, and money.”<sup>26</sup> The incident comes across as a robbery because the objective seemed to be the search for valuables and cash. Firearms can hold a significant value depending on the condition and model, and these Klansmen were probably of the mercenary variety. The outcome of disarmament, however, was the same because as Cornelous described in the aftermath of this raid, “There is not a colored man in the Big Cove that had a gun or pistol, they all having been taken by the Ku Klux.”<sup>27</sup>

Not all nightly raids by the Klan went so orderly, and these instances demonstrate why the disarmament of freedmen was so important for white Southern interests to prevail. After learning of a Klan attack at a neighboring plantation a group of armed freedmen, in anticipation of being next, set up an ambush for the sixteen approaching Klansmen. Second Lieutenant John C. Bateman of the Union Army described the negative outcome for the white terrorists: “The Negroes returned the fire, wounding, it is supposed, three of the party. . . . The disguised men broke and ran, and were pursued by the

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<sup>26</sup>The Condition of Affairs in the Late Insurrectionary States: Alabama, Vol. II, S. Rep. No. 42nd-No. 41, pt. 9, 2d Sess. (1971), 1195.

<sup>27</sup> Ibid.

negroes about a quarter of a mile.”<sup>28</sup> In the confusion of retreat one Klansman was killed by friendly fire, and the others were most likely galvanized to enact the future disarmament of freedmen by any means necessary.

Nightly raids and terror campaigns were very common throughout Alabama, but not all forms of firearm confiscation were this piecemeal in method. A Freedmen’s Bureau worker, John H. Wagner, who had been living in Alabama since the end of the war, presented evidence of a large-scale disarmament operation. He described from secondhand accounts what happened to all the confiscated arms from in and around Huntsville: “It seems that along in 1868, they would go to a house and ask a Negro where his gun was; they knew he had one. . . . They would say, ‘you have got one, we will give you until such a day to take it to Markham’s mill and deposit it there.’”<sup>29</sup> This systematic method of firearm confiscation was far different than the nightly raids, and according to Wagner was also more effective: “One old man went to the mill, and he said he saw a thousand stored there. Very often they would take the guns from the Negroes and break them.”<sup>30</sup> This testimony identifies a form of disarmament that does not reflect the robbery and terror motivations of previous accounts. There was a basic line of reasoning behind this organized operation and Wagner addressed this question directly: “I suppose that the object was to keep the Negroes down. They

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<sup>28</sup>Ibid., 1224.

<sup>29</sup>Ibid., 935.

<sup>30</sup> Ibid.

thought they had no right to have guns. That is what they say to them.”<sup>31</sup> This testimony is from just one county and does not prove a nationalized conspiracy, but within the halls of Congress this issue was becoming central to the politics of Reconstruction.

### III. Armed Freedmen Under the U.S. Constitution

Klansmen and Southern authorities did their best to maintain secrecy in the confiscation of firearms and subjugation of African American citizens. Radical Republicans in Washington, however, already had a clear grasp on this disarmament practice and worked hard to introduce new protective legislation. These progressive politicians were generally from the pre-emancipation ranks of abolitionists. They perceived African Americans as fully human and fully equal citizens, and their Reconstruction plans included the redistribution of land and wealth to these former slaves.<sup>32</sup> The leading Radical Republican Thaddeus Stevens, a Congressman from Pennsylvania, was so extreme in his egalitarian politics that “when he died in 1868, he was buried in a black cemetery because the main cemetery in Lancaster PA refused to accept blacks.”<sup>33</sup> Stevens did not live to see the dismal end of Reconstruction, but his beliefs and tenacity set the tone for Radical Republicans who battled hard for the rights of African Americans.

Among these Radical advocates for former slaves was Congressman Benjamin F. Butler from

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<sup>31</sup> Ibid.

<sup>32</sup> McPherson, *Ordeal by Fire*, 548-549.

<sup>33</sup> Ibid.

Massachusetts, a former Union general and a strong supporter of freedmen's rights. He introduced a bill that would guarantee the Second Amendment<sup>34</sup> right for African Americans to keep and bear arms. Butler's work would form the basis for what became the famous anti-Ku Klux Klan Act, which has since been referred to in contemporary legal circles as the Civil Rights Act of 1871. Legal scholar Stephen P. Halbrook concludes from his examination of the Butler bill it is clear that "the Second Amendment guarantee was the only provision in the Bill of Rights mentioned by name"<sup>35</sup> in the 1871 act. This landmark legislation was passed to protect the civil rights of freedmen with a strong focus on the right for them to keep and bear arms. Halbrook is an avid gun rights advocate, and this may taint the scholarship, but given the limited work on this subject material it has been included with a disclaimer. His conclusion appears reasonable enough, however, because in 1871, the remnants of Union forces and understaffed Freedmen's Bureaus were not sufficient to protect African Americans from white terrorist organizations. The Fourteenth Amendment guaranteed the full rights of citizenship, at least to all male freedmen, and the anti-Ku Klux Klan Act should have provided a greater degree of jurisdiction for the enforcement of Federal laws including Second Amendment protections.

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<sup>34</sup>A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

<sup>35</sup>Stephen P. Halbrook, *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866-1875*, (Westport, CT: Praeger, 1998), 122.

The events in Mississippi and Alabama were being repeated all across the southern United States. Justification for the Butler bill in the Congressional Record recorded that 2<sup>nd</sup> Amendment violations were being enacted by legal authorities, “In Union County [South Carolina], where all the negro population were disarmed by the sheriff only a few months ago . . . five hundred masked men rode at night and murdered and otherwise maltreated the ten persons who were in jail in that county.”<sup>36</sup> Armed freedmen otherwise could defend their family and neighbors awaiting trial for any number of alleged crimes, but the confiscation of firearms in South Carolina meant that many freedmen would not survive to receive a constitutionally guaranteed trial by jury.

It is not surprising that these violent acts took place, because in both the North and the South, the post-Civil War white public was generally indifferent to the struggles of freed slaves. What is unusual is the strong push by white radical Republicans to secure the rights and liberties of freedmen, because their voting constituencies would not have directly demanded these actions in any great numbers. These actions may also have hurt the chances of certain Republicans for reelection, but indifference to the struggles of southern blacks was generally the prevailing attitude of the day. The right to defend oneself is fundamental among philosophical and legal circles, and so the denial of Second Amendment rights to freedmen would be reasonably troubling for Republicans or anyone who perceived blacks as fellow

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<sup>36</sup>Ibid.

human beings. These congressional battles for the benefit of a greatly marginalized black population are an example of bold progressive thinking put into the praxis of legislation. Federal law was all that Washington politicians could reasonably wield against restored Southern powers, and radical Republicans did their best against the prevailing political winds.

Not surprisingly, representatives from former Confederate slaveholding states disagreed with the protections found in the Butler bill. The argument put forward was that the federal government had disarmed the white southern populations and unleashed black militias against them.<sup>37</sup> This was generally not true, of course, but it did serve to support an argument that could not be readily disproved on the floor of the Congress. There were black militias formed throughout the South, armed by Federal and local governments, and there were some incidents,<sup>38</sup> but they were rarely if ever used by states with Republican-controlled Governors. In fact, the opposite was generally the case.<sup>39</sup>

When the war was over, tens of thousands of black Union veterans returned to the South, but first they purchased and kept their army muskets. But according to Republican Representative George McKee from Mississippi, they did not keep them very long. “I have seen those muskets taken from them and confiscated under this Democratic law. The United States did not

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<sup>37</sup>Ibid., 126.

<sup>38</sup> Ibid.

<sup>39</sup>McPherson, *Ordeal by Fire*, 606-607.

even protect the soldier in retaining the musket which it had given him [during the war], and which he had borne in its defense.”<sup>40</sup> His point was that southern governments should not be allowed to infringe on the rights of new black citizens, and that legislation was desperately needed to insure that this erosion of Civil Rights did not continue.

Butler debated fiercely for the passage of his bill, because the confiscation of firearms was only the beginning of an organized oppression. The violence he feared would otherwise continue and become grossly one-sided with white terrorists and authorities subjugating legally free citizens. In fact, in 1871, the line between law enforcement and terrorism was often crossed. To make this point, Butler read a troubling letter from Tennessee. “The Ku Klux fired on them through the window one of the bullets striking a colored woman. . . . The colored men then fired on the Ku Klux, and killed their leader. . . . He was identified, and proved to be ‘Pat Inman,’ a constable and deputy sheriff.”<sup>41</sup> Allowing local state ordinances and law enforcement the autonomy to dictate firearm restrictions was certainly not acceptable according to Butler.

Southern politicians and Northern Democrats argued at length, and through concessions the Butler bill continued to be stripped down to the point it became ineffective at protecting the Second Amendment rights of freedmen. There were provisions initially included making it a federal crime to unlawfully confiscate firearms

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<sup>40</sup>Halbrook, *Freedmen*, 127.

<sup>41</sup>Ibid.,127.

from legal citizens. Representative Washington Whitthorne from Tennessee argued against the provision using an absurd example. “If a police officer . . . should find a drunken negro or white man upon the streets with a loaded pistol flourishing it . . . [and if] he takes it away, the officer may be sued because the right to bear arms is secured by the Constitution.”<sup>42</sup>The powers to interpret Second Amendment protections were eventually surrendered to state and local ordinances. The watered-down Butler bill, which became the Civil Rights Act of 1971, was not specific enough in its language, and this allowed for a wide range of future Supreme Court rulings.

The armed conflict between freedmen and white terrorists was part of a struggle by white citizens to restore the old Southern order. This top-down, white-dominated society would resemble the antebellum South in every way possible if they had their way. Plantations filled with subservient black workers would fill the landscape once again, and the proper social orders would be restored to their former glory. The greatest obstacles remaining as the Reconstruction era wound to a close were Yankee carpetbaggers, Scalawags, Republicans and, of course, armed freedmen.<sup>43</sup>Federal prosecutions against Klansmen succeeded in some states, but the vast stretch of southern territory and webs of local authorities made it nearly impossible to impose federal law in the former Confederacy.

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<sup>42</sup>Ibid., 125.

<sup>43</sup>McPherson, *Ordeal by Fire*, 597-603.

Legal scholars had engaged the Fourteenth Amendment<sup>44</sup> with caution before by its passage, because the central flaw of this constitutional correction was that Federal authorities could not readily enforce it. The dean of the New York University Law School, John Norton Pomeroy engaged the issue in 1868, and his writing presents an ominous preview of the Jim Crow South.

The Fourteenth Amendment guaranteed equal constitutional protections for all citizens, and Pomeroy believed that it was the only viable solution for discriminatory practices in the Reconstruction South. The example he put forward focused on the Second Amendment and equal treatment, because according to how he interpreted this law, individual states could simply create discriminatory regulations “by which certain classes of inhabitants—say Negroes—are required to surrender their arms, and are forbidden to keep and bear them under certain penalties.”<sup>45</sup> The 14<sup>th</sup> Amendment did pass, but it too retained the great impediment of being extremely difficult to enforce. It did, however, open up the means for more meaningful action when mass transit

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<sup>44</sup> Article I: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>45</sup> Saul Cornell, *A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*. (New York: Oxford UP, 2006), 187.

and media exposed the southern United States to greater scrutiny in the mid-twentieth century.

The Fourteenth Amendment did have an early day in court, one that tested the meaning of Federal enforcement of the right of citizens to keep and bear arms. The case originated with the infamous Colfax Massacre in Louisiana in 1873, which was a protracted battle between black militiamen and white terrorists. Armed freedmen defended themselves at the Colfax courthouse, against a much larger white force, after disputed election results had erupted into violence. Negotiations failed and the white mob set fire to the courthouse, shooting anyone who tried to escape from the fire.<sup>46</sup> The violent incident created a string of legal battles that went right up to the U.S. Supreme Court. Federal jurisdiction in the matter was strongly disputed, and this legal hurdle overshadowed the substance of both the incident and constitutionality of the massacre.

The establishment of federal police powers was too much of a stretch for the Supreme Court, and the *U.S. v. Cruikshank* decision came down on the side of state's rights.<sup>47</sup> According to legal scholar Saul Cornell the verdict set the legal tone for the Second Amendment for the whole of the twentieth century. The states' rights argument flows directly into the collective rights school, where firearm laws are left to individual state governments.<sup>48</sup> During Reconstruction and the following

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<sup>46</sup>McDonald ET AL v. City of Chicago, Illinois, No. 08-1 52 1 S. Ct. (2010), 191.

<sup>47</sup>Ibid., 192.

<sup>48</sup>Ibid., 212.

decades, the decision of *U.S. v. Cruikshank* was devastating for African Americans, because while their rights as citizens were fully protected under Federal law, there was no tangible legal apparatus available to enforce these protections.

The Supreme Court by its decision had oddly enough declared that the Federal enforcement of Constitutional law was in fact unconstitutional. This legal rift demonstrated the strange balance of power that existed between the states and Federal government during the nineteenth century. The same imbalances of legal authority that fermented the outbreak of the Civil War also created a legal minefield of absurdities that hampered Federal efforts towards Reconstruction.

### Conclusion

The consequences of the American Civil War often resonate into present day society, and there are a few who readily recognize these indelible signs of this national tragedy. Scholars of the sectional conflict can often find themselves unable to read a daily domestic newspaper without finding something either distantly or intrinsically connected to the Civil War Era. The origins of this article, for example, are not the product of some tattered and worn archive document, but rather a contemporary *Chicago Tribune* article from 2010.<sup>49</sup> This article highlighted the numerous Reconstruction Era

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<sup>49</sup> Colleen Mastony, "The Public Face of Gun Rights." *Chicago Tribune* (Chicago, IL), January 30, 2010, online edition.

examples used by Justice Clarence Thomas in a contemporary Second Amendment case. Justice Thomas is an African American justice who is often maligned for his politically conservative tendencies on the court. Regardless of his political leanings on gun rights, the legal battles he described did turn out to be accurate.

Justice Thomas argued that the right of 19th century freedmen to bear arms in self-defense still remains central to the modern gun control debate. The United States Supreme Court had ruled in 2010 that the city of Chicago could not legally forbid its law-abiding citizens from owning handguns, and in an attempt to support this majority opinion Supreme Court Justice Clarence Thomas referenced events in the Reconstruction period.<sup>50</sup>The Court had originally ruled in 1875, in the case of *U.S. v. Cruikshank* that Second Amendment rights were to be determined by individual state laws and that “the 14th Amendment only required the states to apply their laws about arms bearing in a non-discriminatory fashion.”<sup>51</sup>

Thomas recognized the gross deficiencies of this ruling because discrimination itself was the rule of law in the Reconstruction South. He warned against the court leaving 2nd Amendment constitutional interpretations to the jurisdiction of state governments because, as Thomas recalled, “Without federal enforcement of the inalienable right to keep and bear arms, these militias and mobs were

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<sup>50</sup> Ibid.

<sup>51</sup> Saul Cornell, *A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*. (New York: Oxford UP, 2006), 194.

tragically successful in waging a campaign of terror against the very people the Fourteenth Amendment had just made citizens.”<sup>52</sup>

Thomas also speculated about the devastating effects of a Chicago-type civilian firearm ban and concluded that “African-Americans in the South would likely have remained vulnerable to attack by many of their worst abusers: the state militia and state peace officers.”<sup>53</sup> Reconstruction presented a dangerous ambiguity, because Southern law enforcement could simply turn its back on racial injustices, or as Justice Thomas suggested, become the lead perpetrators of violence against African Americans.

The confiscation of firearms from Freedmen during Reconstruction remains a sparsely explored avenue of scholarship, and this article creates more questions than answers. Ascertaining the size, scope and organizational structures, of what appears to be a regional disarmament movement, would require a substantial amount of further research. The political implications alone could be staggering, because millions of African Americans were eliminated from local and national elections for nearly a century as a result of the disarmament period. Current historic narratives maintain that African Americans were simply frightened away from politics, but the evidence presented in this article explains the sudden, and largely tranquil race relations that

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<sup>52</sup>McDonald ET AL v. City of Chicago, Illinois, No. 08-1 52 1 S. Ct. (2010), 53.

<sup>53</sup>Ibid.,44.

emerged during the late and post-Reconstruction eras.

Ralph Ellison shared a family secret about his grandfather giving up his firearm during Reconstruction, and living as a traitor and spy behind the enemy lines of an ongoing war. Perhaps this account was fictionalized, or merely the distorted thoughts of a dying old man. What if, however, this really was a universally well-kept secret in the African American community, and was otherwise taken silently to millions of graves? This possibility would not be outside of the realm of reasonable scholarship, because the genuine history of oppressed and marginalized peoples is most commonly buried with them.

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