



NOTHING
BUT
FREEDOM

EMANCIPATION AND
ITS LEGACY

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bor shortage as their principal weapon—a weapon inconceivable apart from emancipation. Long after abolition, and despite the importation of hundreds of thousands of indentured laborers, Caribbean planters continued to complain of a labor shortage—a shorthand way of describing the ways freedmen sought to determine the conditions, rhythms, and compensation of the work of themselves and their families.

For those who wish to employ the insights derived from an analysis of emancipation in other settings to illuminate the American experience, then, certain patterns stand out in bold relief.³⁸ The effort to create a dependent labor force, the ideological conflict over changing definitions of labor and property, the impact of metropolitan policies, the place of the society in the larger world economy, and the uses of the state in bolstering the plantation regime, all shaped the postemancipation outcome. And so too did the ongoing struggle between freedman and planter, which continued on the plantations and in peasant villages in forms both subtle and dramatic, long after slavery itself had become just a memory.

II THE POLITICS OF FREEDOM



At first glance, the scale, manner, and consequences of emancipation in the United States appear historically unique. The nearly four million slaves liberated in this country far outnumbered those in the Caribbean and Latin America. Although no abolition was entirely without violence, only in Haiti and the United States did the end of slavery result from terrible wars in which armed blacks played a crucial part. The economies of the Caribbean islands, tiny outposts of empire, had little in common with the nineteenth-century United States, where slavery existed within a rapidly expanding capitalist economic order.

Politically, the cast of characters in the United States was far more complex than in the West Indies. American blacks were outnumbered, even in the South, by whites, but this white population was divided against itself. There are few parallels in other postemancipation societies to the southern whites who cooperated politically with the freedmen, or the northerners, variously numbered at between twenty and fifty thousand, who moved into the South after the Civil War, carrying with them a

triumphant free-labor ideology and, for a time, playing a pivotal role in political affairs. Nor were there counterparts to the Radical Republicans of the North, a group with real if ultimately limited political power, which sought to forge from emancipation a thoroughgoing political and social revolution, supplanting plantation society, as one put it, by "small farms, thrifty villages, free schools, . . . respect for honest labor, and equality of political rights."

Finally and most strikingly, the United States was the only society where the freed slaves, within a few years of emancipation, enjoyed full political rights and a real measure of political power. Limited as its accomplishments may appear in retrospect, Black Reconstruction was a stunning experiment in the nineteenth-century world, the only attempt by an outside power in league with the emancipated slaves to fashion an interracial democracy from the ashes of slavery.¹

Despite these and other exceptional features of their national experience, nineteenth-century Americans sensed that prior emancipations held lessons for the aftermath of slavery in this country. Their precise significance, however, was a matter of some dispute. As John Dickinson had said at the Constitutional Convention of 1787, "experience must be our only guide", but the experience of Caribbean emancipation was interpreted through the lens of rival American ideologies concerning race and slavery. For southern whites, the lesson of the West Indies was unmistakable: emancipation was a failure.²

The consequences of abolition in Haiti and the British Caribbean played a small but noteworthy part in antebellum discussions of slavery. The overthrow of slavery in Haiti and the massacre of the whites there sent shock waves through the South and unleashed a flood of refugees who, as William Freehling notes, "served as constant reminders that servile insurrections could succeed." Equally pervasive was the influence of the "Great Experiment"—British emancipation—upon the southern mind. Through articles in the southern press, the dispatches of Robert M. Harrison, the Virginia-born American consul at Kingston, Jamaica, and the writings of proslavery ideologists, the lesson of the Caribbean was hammered home: "The manu-

mitted negro will not work." Caribbean emancipation was a symbol and a warning to the white South, a demonstration of the futility of all schemes to elevate the black and of the dire fate awaiting American planters and their world in the event of abolition. As George Fitzhugh summarized this view in 1850: "The emancipation of the slaves in the West Indies is admitted to have been a failure in all respects. The late masters have been ruined, the liberated slaves refuse to work, and are fast returning to a savage state, and England herself has sustained a severe blow in the present diminution and prospective annihilation of the once enormous imports from her West Indian colonies."³

To American abolitionists, on the other hand, West Indian emancipation was an inspiration rather than an embarrassment, an example of what a minority could achieve through years of agitation, and a vindication of the blacks' capacity for freedom. Particularly in the first years of the Civil War, abolitionists marshaled statistics to demonstrate that emancipation in the islands had in fact succeeded. The rise of the Jamaican peasantry, they insisted, reflected not incorrigible laziness, but the intolerable working conditions demanded by the planters and a laudable ambition to become landed proprietors. "The negroes," according to one defense of the "Great Experiment," simply acted "as Englishmen or Americans similarly situated would . . . preferring an independent to a servile position, . . . exhibiting themselves to be an industrious rather than an indolent people." Others argued that, despite the decline in sugar exports, the overall standard of living in Jamaica, as measured by the spread of education, the stability of family life, and the level of subsistence, had markedly improved in the aftermath of slavery.⁴

If the attention of white abolitionists was focused on Jamaica, many black Americans found in Haiti an unrivaled inspiration. Blacks celebrated August 1, the anniversary of British West Indian emancipation, as a kind of national holiday in the years before the Civil War, but it was Haiti that proved that the world could be turned upside down. A study of black American attitudes toward Haiti remains to be written, but it seems clear that throughout the nineteenth century, Haiti stood as an example of black heroism, resiliency, and self-reliance. Whatever

its failings, the black nation of Haiti had at least managed to survive in a hostile white world. The black press featured articles on Toussaint L'Ouverture, and slave rebels like Gabriel Prosser and Denmark Vesey found in Haiti a source of inspiration. (Of Vesey, his lieutenant Gullah Jack said, "He was in the habit of reading to me all the passages in the newspapers that related to St. Domingo.") In the 1850s black emigrationists saw in Haiti a possible homeland for black Americans.⁵

With the end of slavery in the United States, the practice of drawing lessons from the Caribbean experience became even more widespread. To abolitionists, the West Indies revealed the dangers of leaving the fate of the emancipated blacks in the hands of their former owners. If British emancipation was open to criticism, it was for not going far enough. "England," the Boston cotton manufacturer and Republican reformer Edward Atkinson wrote, "after she had caused the negroes to cease to be chattels, stopped far short of making them men, leaving them subject to oppressive laws made entirely under the influence of their former owners." His Boston colleague, railroad entrepreneur John Murray Forbes, likewise warned that Americans should take heed of "Jamaica's former experience in legislating the blacks back into slavery, by poor laws, vagrant laws, etc." Another abolitionist cited the Morant Bay "rebellion" of 1865 to demonstrate Britain's "grave mistakes" in attempting to create a halfway house between slavery and complete civil and political equality for blacks. Even Toussaint now came in for censure, for what Lydia Maria Child called "his favorite project of conciliating the old planters." Toussaint's mistake, Child believed, lay in "a hurry" to reconstruct, to restore outward prosperity, rather than attempting radically to transform his society on the basis of free labor principles. The implications of all these writings for American Reconstruction were self-evident.⁶

Not surprisingly, white southerners drew rather different conclusions from the West Indian example. Opponents of Reconstruction seized upon Morant Bay and the demise of local self-government in the islands to illustrate the dangers of black suffrage and rule by "representatives of hordes of ignorant negroes." Democratic newspapers, north and south, were filled

during the early days of Reconstruction with lurid reports of West Indian blacks sinking into a "savage state" when liberated from the controlling influence of whites. In Haiti, supposedly, they had reverted to barbarism, paganism, and even human sacrifice, and, said the *New York World*, "iminations of analogous phenomena have already reached us from the region of the lower Mississippi."⁷

Most important, the West Indies demonstrated that plantations could not be maintained with free labor: "the experiments made in Hayti and Jamaica settled that question long ago." J. D. B. De Bow, the South's foremost economic writer, amassed statistics to demonstrate the collapse of the West Indian economies and the indolence of the blacks. Julius J. Fleming, the South Carolina journalist, noted, "It seems to be a conceded fact that in all countries where slavery has existed and been abolished the great difficulty in the way of improvement has been the very subject of labor." Certainly, the Caribbean example reinforced the conviction that American blacks must be prevented from obtaining access to land: otherwise, they would "add nothing to those products which the world especially needs." If the South were to escape the fate of Caribbean societies, it could only be through "some well regulated system of labor, . . . devised by the white man." The emancipated slave, the Louisville *Democrat* concluded after a survey of the West Indies, needed to be taught that "he is *free*, but free only to labor."⁸

Whatever their ultimate conclusions, contemporaries were not wrong to draw parallels between American and Caribbean emancipations. For when viewed in terms of the response of blacks and whites to the end of slavery, the quest of the former slaves for autonomy and the desire of planters for a disciplined labor force, what is remarkable is the similarity between the American experience and that of other societies. As in the Caribbean and, indeed, everywhere else that plantation slavery was abolished, American emancipation raised the interrelated questions of labor control and access to economic resources. The plantation system never dominated the entire South as it did in the islands, yet both before and after emancipation, it helped de-

fine the quality of race relations and the nature of economic enterprise in the region as a whole. It was in the plantation black belt that the majority of the emancipated slaves lived, and it was the necessity, as perceived by whites, of maintaining the plantation system, that made labor such an obsession in the aftermath of emancipation. As Christopher G. Memminger, former Confederate secretary of the treasury, observed in 1865, politics, race relations, and the social consequences of abolition all turned "upon the decision which shall be made upon the mode of organizing the labor of the African race."⁹

As in the Caribbean, American freedmen adopted an interpretation of the implications of emancipation rather different from that of their former masters. Sir Frederick Bruce, the British ambassador to the United States, discerned little difference between the behavior of American and West Indian freedmen: "The negro here seems like his brother in Jamaica, to object to labour for hire, and to desire to become proprietor of his patch of land." The desire for land, sometimes judged "irrational" when viewed simply as a matter of dollars and cents, reflected the recognition that, whatever its limitations, land ownership ensured the freedmen a degree of control over the time and labor of themselves and their families. Candid observers who complained blacks were lazy and shiftless had to admit that there was "one motive sufficiently powerful to break this spell, and that is the *desire to own land*. That will arouse all that is dormant in their natures." Equally a sign of the desire for autonomy was the widespread withdrawal of women from plantation field labor, a phenomenon to which contemporaries attributed a good part of the postwar labor shortage.¹⁰

For the large majority of blacks who did not fulfill the dream of independence as owners or renters of land, the plantation remained an arena of ongoing conflict. In postemancipation east Africa, according to Frederick Cooper, "the smallest question—whether to plant a clove or cashew nut tree—became questions not just of marginal utility, but of class power." And so it was in the postemancipation South, where disputes over supervision by overseers, direction of the labor of black women and children, and work like repairing fences, ditches, and buildings not

directly related to the crop at hand, followed the end of slavery. Emancipation ushered in a period of what that perceptive South Carolina planter William H. Trescott called "the perpetual trouble that belongs to a time of social change."¹¹

The eventual solution to the labor problem in the post-Civil War cotton South was the system of sharecropping, which evolved out of an economic struggle in which planters were able to prevent most blacks from gaining access to land, while the freedmen utilized the labor shortage (and in many cases, the assistance of the Freedmen's Bureau) to oppose efforts to put them back to work in conditions, especially gang labor, reminiscent of slavery. A way station between independent farming and wage labor, sharecropping would later become associated with a credit system that reduced many tenants to semiponage. Yet this later development should not obscure the fact that, in a comparative perspective, sharecropping afforded agricultural laborers more control over their own time, labor, and family arrangements, and more hope of economic advancement, than many other modes of labor organization. Sharecroppers were not "coolie" laborers, not directly supervised wage workers.¹² And whatever its inherent economic logic, large numbers of planters believed sharecropping did not ensure the requisite degree of control over the labor force. Sharecropping, complained one planter, "is wrong policy; it makes the laborer too independent; he becomes a partner, and has a right to be consulted." Such planters preferred a complete transition to capitalist agriculture, with a closely supervised labor force working for wages. A wage system did in fact emerge on Louisiana sugar plantations and many Upper South tobacco farms. But in general, sharecropping became the South's replacement system of labor after the end of slavery. "To no laboring class," said a southern senator, "has capital—land—ever made such concessions as have been made to the colored people at the South."¹³

As in the Caribbean, the form of agrarian class relations that succeeded American slavery resulted from a struggle fought out on the plantations themselves. What made the American experience distinct was that the polity as well as the field became an arena of confrontation between former master and former slave.

Here, emancipation occurred in a republic. In the British Empire, as one historian notes, "the question, 'does a black man equal a white man?' had little meaning in an age when few thought all white men deserved equality." In America, however, where equality before the law was the foundation of the political culture, emancipation led inexorably to demands for civil and political rights for the former slaves. In contrast to Caribbean peasants, moreover, whose major ambition seems to have been to be left alone, Afro-Americans demanded full participation in the political life of the nation. Nowhere else did blacks achieve a comparable degree of political influence after the end of slavery. "Their civil and political elevation," as a Tennessee congressman put it, "is unparalleled in the history of nations. . . . France and England emancipated their slaves, but the emancipated never dreamed that they should have letters of nobility, or should be elevated to the woolsack."¹⁴

Black suffrage fundamentally altered the terms of the post-emancipation conflict in the United States. Far more than in the Caribbean and Africa, where white planters, farmers, and mine owners monopolized local political power, state and local government in America became a battleground between contending social classes, including the black laborer. Southern planters, initially restored to local power during Presidential Reconstruction, sought to use the state to stabilize the plantation system and secure their control of the labor force. With the advent of Radical Reconstruction, the role of the state was transformed and the freedmen won, in the vote, a form of leverage their counterparts in other societies did not possess. Then, after Reconstruction, political and economic authority once again coalesced in the South. If in the long run, planters, like their counterparts elsewhere, largely succeeded in shaping the political economy of emancipation in their own interests, by the same token Radical Reconstruction stands as a unique moment when local political authority actually sought to advance the interests of the black laborer. Many of the specific issues upon which postemancipation southern politics turned were the same as in the Caribbean and Africa: immigration, labor laws, the definition of property rights, taxation, and fiscal policy. The conflict

over these questions, and its eventual outcome, reveal how much of postemancipation politics was defined by the "labor problem."

As in the Caribbean, some American planters advocated in the aftermath of emancipation that the government directly promote "the accumulation of population," to break the bargaining power of black labor. Immigration, said one observer, would solve two problems at once: "If you would control [the freedman's] political power, you must outvote him, and if you would control him as a laborer, you must fill the country with a more congenial and more reliable laborer."¹⁵

Many southern states established agencies after the Civil War to encourage immigration from Europe, but the results were disappointing. Of the millions of immigrants landing in New York, Boston, and other northern cities, only a handful made their way south, a reflection, in part, of the ambivalent attitude white southerners communicated about their desire for immigration in the first place. Some reformers looked upon immigrants as prospective landholders; they urged planters to break up the large estates and make land available on easy terms to newcomers. Generally, however, immigration was intended not to undermine the plantation system, but to preserve it. A Republican newspaper was not incorrect when it concluded that the appeal for immigration, "when stripped of its verbosity, is about as follows: 'We have lands but can no longer control the niggers; . . . hence we want Northern laborers, Irish laborers, German laborers, to come down and take their places, to work our lands for ten dollars a month and rations of cornmeal and bacon.'"¹⁶

"Immigration," a prominent North Carolina lawyer wrote in 1865, "would, doubtless, be a blessing to us, provided we could always control it, and make it entirely subservient to our wants." As in the Caribbean, many planters concluded that indentured laborers would admirably meet this need. West Indian experiments with "coolie" labor were widely publicized in the post-Civil War southern press, and Chinese contract laborers were known to be at work in mines, railroad construction, and large-scale agriculture in contemporary California. A commer-

cial agency offered to deliver "coolies" under five-to-seven-year contracts to Mississippi planters in 1865, and two years later a few Chinese, dispatched from Cuba by southerners living there, arrived to labor in Louisiana sugar fields. Robert Somers, the traveling British correspondent, encountered a gang of some six hundred Chinese laborers, drawn from California, at work on the Alabama and Chattanooga Railroad in 1871, and a number of Chinese laborers were introduced into the Yazoo-Mississippi delta around the same time. But despite enthusiastic predictions of how the Chinese would transform the labor situation (a Kentucky newspaper declared that with the coming of the Chinese, "the tune . . . will not be 'forty acres and a mule,' but . . . 'work nigger or starve'"), the total number of Chinese in the South never exceeded a handful. And many who were introduced proved less docile than anticipated, abandoning plantation labor to set up as small-scale merchants and truck farmers.¹⁷

Compared with the situation in Trinidad and British Guiana, the need for imported laborers was less in the United States, and the obstacles to their introduction greater. Relatively few blacks had been able to abandon the plantations to take up independent farming. There was also the danger that meddling northerners would bestow the vote on the Chinese, further exacerbating political problems in the Reconstruction South. Blacks, moreover, exercising a measure of political power during Reconstruction, opposed the introduction of "coolies." And federal authorities warned that any effort to bring in laborers under long-term indentures would be deemed a violation of the 1862 statute outlawing the "Coolie Trade." During Reconstruction, Commissioner of Immigration A. N. Congar and Secretary of the Treasury George S. Boutwell promised that "all vigilance" would be exercised to suppress "this new modification of the slave trade."¹⁸

As in the Caribbean, the effort to introduce Chinese labor in the postbellum South formed only one part of a broader effort to use the power of the state to shape the postemancipation economic order and create a dependent plantation labor force. "There must be stringent laws to control the negroes, and require them to fulfill their contracts of labor on the farms," wrote a South Carolina planter in 1865. "No one will venture to en-

gage in agricultural occupations without some guarantee that his labor is to be controlled and continued under penalties and forfeitures." While a few Bourbons dreamt of compensation for their slave property or even a Supreme Court challenge to the Emancipation Proclamation, most southern whites accepted the fact that slavery was dead. But its dissolution, many believed, need not mean the demise of the plantation. "I am sure we will not be allowed even to contend for gradual emancipation," wrote Texas political leader and railroad promoter J. W. Throckmorton in August, 1865. "But I do believe we will be enabled to adopt a coercive system of labor."¹⁹

The outcome of such pressures was the Black Codes of 1865 and 1866. Ostensibly, their purpose was to outline the legal rights to be enjoyed by the former slaves. Generally, blacks were accorded the right to acquire and own property, marry, make contracts, sue and be sued, and testify in court in cases involving persons of their own color. But the main focus of the laws was labor. As a New Orleans newspaper put it, with slavery dead, a new labor system must "be prescribed and enforced by the state."²⁰

First to rise to the challenge were the legislatures of Mississippi and South Carolina. The Mississippi Code required all blacks to possess, each January, written evidence of employment for the coming year. Laborers leaving their jobs before the contract expired would forfeit all wages up to that time, and the law empowered every white person to arrest any black who deserted the service of his employer. Any person offering work to a laborer already under contract was liable to a fine of five hundred dollars or a prison sentence. Finally, to ensure that no economic opportunities apart from plantation labor remained for the freedmen, they were forbidden to rent land in rural areas.

A vagrancy statute, enacted at the same time, imposed fines or involuntary labor on a bizarre catalog of antisocial types:

rogues and vagabonds, idle and dissipated persons, beggars, jugglers, or persons practicing unlawful games or plays, runaways, common drunkards, common night-walkers, lewd, wanton, or lascivious persons, . . . common railers and

brawlers, persons who neglect their calling or employment, misspend what they earn, or do not provide for the support of themselves or their families, or dependents, and all other idle and disorderly persons, including all who neglect all lawful business, habitually misspend their time by frequenting houses of ill-fame, gaming-houses, or tipping shops.

And an apprenticeship law permitted the binding out to white employers of black orphans and children whose parents were unable to support them, with "the former owner of said minors" enjoying "the preference." In case anything had been overlooked, all previous penal codes defining offences of slaves were declared to remain in force, unless specifically altered by law.

South Carolina's Black Code was, in some respects, even more discriminatory. It did not prohibit blacks from renting land, but barred them from following any occupation other than farmer or servant except by paying an annual tax ranging from ten to one hundred dollars. Blacks were required to sign annual contracts, and there were elaborate provisions regulating such agreements, including labor from sunup to sundown, deductions from wages for time not worked, and a prohibition against leaving the plantation or entertaining guests upon it, without permission. Apprenticeship provisions were extended to black children whose parents "are not teaching them habits of industry and honesty, or are persons of notoriously bad character," and a vagrancy law, even more anachronistic in tone than Mississippi's, applied, among others, to "common gamblers, persons who lead disorderly lives or keep or frequent disorderly or disreputable houses; . . . those who are engaged in representing . . . without license, any tragedy, interlude, comedy, farce, play, . . . exhibition of the circus, sleight of hand, wax-works; . . . fortune tellers, sturdy beggars, common drunkards." The image of bands of black thespians undermining plantation discipline by presenting unlicensed theatrical productions in South Carolina truly boggles the imagination.²¹

The uproar created by this legislation led other southern states to modify the language and provisions, if not the underlying intention, of early legislation regarding freedmen. Vir-

tually all the former Confederate states enacted sweeping vagrancy, apprenticeship, labor contract, and antienticement legislation. Florida's code, drawn up by a three-member commission whose report praised slavery as a "benign" institution whose only shortcoming was its inadequate regulation of black sexual behavior, made disobedience, impudence, or even "disrespect" to the employer a crime. Louisiana and Texas, seeking to counteract the withdrawal of black women from field labor, declared that labor contracts "shall embrace the labor of all the members of the family able to work." Apprenticeship laws continued to seize upon the consequences of slavery—the separation of families and the poverty of the freedmen—as the excuse for securing to planters the labor of black minors free of expense. Many localities supplemented these measures with vagrancy ordinances of their own.²²

The laws of the southern states concerning labor, *De Bow's Review* claimed in 1866, were as "liberal, generous, and altogether as humane and equitable as the legislation of any country in the world under similar circumstances." De Bow was not being entirely disingenuous, for despite their excesses, the Black Codes were not as severe as the *Code Rural* of Haiti or some of the statutes enacted in the British Caribbean after emancipation. Southerners, indeed, insisted that precedents existed even in free labor societies for strict legal regulation of the labor force. "We have been informed by a distinguished jurist, who is a member elect of the Virginia Legislature," reported a South Carolina newspaper, "that the 'labor laws' of England . . . contain just such provisions for the protection of the employer as are now needed . . . at the South." And, it is true, laws subjecting employees, but not employers, to criminal penalties for breach of contract remained on the British statute books until 1875, and were widely enforced. Draconian English vagrancy laws, however, had long since fallen into abeyance. As the constitutional scholar Charles Fairman observes, vagrancy laws exist everywhere, but are generally "allowed to slumber out of sight." What is critical is the manner of their enforcement, and in the South of 1865 and 1866, with judicial and police authority in the hands of the planter class and its friends, impartial administra-

tion was an impossibility. Many southern vagrancy laws, in fact, contained no reference to race. But as John W. DuBoise, the Alabama planter and Democratic politico later remarked, "the vagrants contemplated was the plantation negro."²³

The Black Codes are worth dwelling upon not because of any long-range practical effect—most provisions were quickly voided by the army or Freedmen's Bureau, or invalidated by the Civil Rights Act of 1866—but because of their immediate political impact and what they reveal about the likely shape of southern economic relations if left to the undisputed control of the planters. As W. E. B. Du Bois observed, the Codes represented "what the South proposed to do to the emancipated Negro, unless restrained by the nation." The Codes persuaded many in the North that continuing federal intervention was essential if the fundamental rights of the freedmen were to be protected. They convinced southern blacks as well that their former owners could not be entrusted with political power. The "undisputed history" of Presidential Reconstruction, black Congressman Josiah Walls later recalled, explained why southern blacks refused to cast Democratic ballots, and stood as a warning "as to what they will do if they should again obtain control of this Government." But, as quickly as planters attempted to call forth the power of the state in their own interests, their political hegemony was swept away, and a new series of measures regarding labor was placed on the southern statute books.²⁴

Radical Reconstruction, in this respect, profoundly if temporarily affected the relationship of the state to the economic order. The remnants of the Black Codes were repealed and laws were passed seeking to protect blacks from arbitrary dismissal and to ensure payment for time worked. "There is a law now in this State," a black state senator from Florida told a congressional committee, "that allows a man to get what he works for." By the same token, planters' pleas for legislation "the more effectually to secure punctually the observance and performance of labor contracts" went unheeded. Ironically, even those few blacks who managed to acquire land began to complain that the law gave them no assistance in regulating hired labor. One wrote Mississippi's Governor Adelbert Ames that his hands had

left to work for a white farmer, "and no man can make a cotton crop that way. Had ought to be made to stay all the year till the crop is gathered. . . . The smart working folks can't live any longer without some laws to fix things up."²⁵

The tenor of Reconstruction legislation concerning labor was summed up in a complaint by a South Carolina agricultural journal: "Under the laws of most of the Southern States ample protection is afforded to tenants and very little to landlords." Equally important, the machinery of justice had, particularly in the black belt, been wrested from the planter class. As blacks and their white Republican allies took control of local courts, sheriff's offices, and justiceships of the peace, there were increasing complaints that vagrancy laws went unenforced, trespass was left unpunished, and efforts to discipline troublesome laborers enjoyed no support from the state. "By the law of the State," one planter declared in 1872, "you cannot dismiss from your plantation this intolerable nuisance [a laborer who would not work] after he has made a contract with you, until the year closes. If you take him to a Trial Justice, it costs you five to ten dollars, and the delinquent is ordered to do better, which he never does." A Mississippi observer agreed: "It is clearly demonstrative that negro labor is not reliable, especially as the negro is now a politician and office holder."²⁶

With Redemption, the state again stepped forward as an instrument of labor control. Georgia's Redeemer Governor James M. Smith was quite candid about the intention: "We may hold inviolate every law of the United States, and still so legislate upon our labor system as to retain our old plantation system." The writings of William Cohen, Pete Daniel, and others have illuminated the complex system of legal controls intended to secure a dependent labor force in the Redeemer South. Not all these measures, of course, were entirely effective. Black efforts to escape the clutches of tenancy and debt peonage persisted, and federal law placed limits on measures forthrightly designed to restrain the freedmen's mobility. The point is not that the law succeeded fully in its aims, but that the state's intervention altered the balance of economic power between black and white.²⁷ What one black political leader called "the class legislation

of the Democrats against the race" embraced vagrancy laws, restrictions on labor agents, laws against "enticing" a worker to leave his employment, and criminal penalties for breach of contract. Apart from a few remaining enclaves of black political power, moreover, these laws were now administered by white sheriffs and judges who owed no political debt to the black community. Such legislation, as a Tennessee black convention noted in 1875, was calculated "to make personal liberty an utter impossibility, and . . . place the race in a condition of servitude scarcely less degrading than that endured before the late civil war." As required by the Fourteenth Amendment, the statutes were, on the surface, color-blind—in this respect they differed from the Black Codes of Presidential Reconstruction. But as the Tennessee blacks commented, "a single instance of punishment of whites under these acts has never occurred, and is not expected."²⁸

Legislation attempting to limit the mobility of black laborers was, however, only one instance of the use of the law to affect the new class relations resulting from emancipation. In recent years significant studies by both legal and economic historians have detailed the law's relationship to economic change and the ways the courts act to define and redefine property rights. Morton Horwitz, for example, has detailed how, in the antebellum North, a society undergoing a rapid expansion of capitalist economic relations, the law moved from protecting one form of property—that of small, independent owners—to enhancing the property rights of corporations, while increasingly treating labor as a commodity like any other in the marketplace. An analogous legal transformation occurred in the postemancipation South. The abolition of slavery entailed not simply an adjustment to the demise of one species of property, but a redefinition of property rights in general. Here, the law had a decisive role to play.

As Mr. Justice Jackson once observed, "Only those economic advantages are 'rights' which have the law back of them." The market itself is defined and sanctified by law, depending for its existence upon a set of legally defined codes of permissible behavior. Rights to property are, in the end, delimited by the law, and in the United States, as elsewhere, abolition threw open to

question the legitimacy of planters' control of property other than slaves.²⁹

As far as most southern whites were concerned, the issue of property rights for the former slaves simply did not arise. As General Robert V. Richardson put it in 1865, "The emancipated slaves own nothing, because nothing but freedom has been given to them."³⁰ Blacks, on the other hand, contended that freedom should carry with it a stake in the soil, a demand reminiscent of the aspirations of Caribbean freedmen, but legitimized in ways distinctively American.

Blacks in the Caribbean, as we have seen, had enjoyed under slavery the "right" to extensive provision grounds, the embryo of the postemancipation peasantry. Many American slaveholders also permitted blacks to keep chickens and sometimes hogs, to raise vegetables to supplement their diets, and to sell the products of their "kitchen gardens" to raise spending money. Slaves, Eugene D. Genovese contends, came to view these gardens as a right rather than a privilege, but they were far less extensive than their counterparts in the West Indies, and American slaves tended to market their corn, eggs, vegetables, and pork directly to the planter rather than at town markets as in Jamaica. Only in coastal Georgia and South Carolina, where the task system allowed slaves considerable time to cultivate their own crops and the planters were absent for much of the year, did an extensive system of marketing and property accumulation emerge under American slavery.³¹

Blacks' claim to landed property in the aftermath of American emancipation, then, was not primarily legitimized as a "right" that had been recognized during bondage. Rather, it rested on a claim to compensation for their unrequited toil as slaves. It was a common misconception among southern whites that, for blacks, freedom meant an escape from all labor. Actually, as a group of black ministers explained to Secretary of War Edwin Stanton in their famous Savannah "Colloquy," blacks understood by slavery not toil, but unrequited toil, and freedom they defined as "placing us where we could reap the fruit of our own labor."

As Lincoln had emphasized so persuasively over the years,

slavery was a stranding reputation of the right of the working-man to the fruits of his labor. To blacks the justice of a claim to land based on unrequited labor seemed self-evident. It was not that blacks challenged the notion of private property per se; rather, they viewed the accumulated property of the planters as having been illegitimately acquired. Eliphalet Whittlesey, former commander of black troops and North Carolina Freedmen's Bureau assistant commissioner, explained the distinction to a congressional committee, when asked whether blacks generally understood what is meant by property: "Yes, sir, so far as their relations to strangers, to northern men, and to neighbors is concerned, but they have an idea that they have a certain right to the property of their former masters, that they have earned it, and that if they can lay their hands on any of it, it is so much that belongs to them." Or, as an Alabama black convention resolved, "The property which they hold was nearly all earned by the sweat of *our* brows."³²

In its most sophisticated form, this claim to land rested on an appreciation of the role blacks had historically played in the evolution of the American economy. This was the import of the remarkable speech delivered by freedman Bayley Wyat protesting the eviction of blacks from a contraband camp in Virginia in 1866:

We has a right to the land where we are located. For why? I tell you. Our wives, our children, our husbands, has been sold over and over again to purchase the lands we now locates upon; for that reason we have a divine right to the land. . . . And den didn't we clear the land, and raise de crops ob corn, ob cotton, ob tobacco, ob rice, ob sugar, ob everything. And den didn't dem large cities in de North grow up on de cotton and de sugars and de rice dat we made? . . . I say dey has grown rich, and my people is poor.

Such an appeal, Georgia lawyer Elias Yulee responded, was "mere nonsense." As he informed Georgia blacks in 1868, "as well may the Irish laborer claim New York city, because by his labor all the stores and residences there were constructed. Or claim our railroads because they labored on them with their shovels and wheelbarrows."³³

Yulee's comment illuminates the paradoxical double quality of free labor. As Marx emphasized, free labor is not bound as serf or slave, but is also "free" in that it enjoys no claim to the means of production. As labor became free, E. P. Thompson has explained in a different context, so "labour's product came to be seen as something totally distinct, the property of landowner or employee." Emancipation thus demanded a sharper demarcation between property and labor than had existed under slavery (since the laborer himself was no longer property). And, while the distribution of land never did materialize, the conflict over the definition of property rights continued on many fronts in the postbellum South. For the system of property rights formed an essential part of the social framework within which the postemancipation "labor problem" was worked out.

Like their Caribbean counterparts, southern freedmen did not believe the end of slavery should mean a diminution of either the privileges or level of income they had enjoyed as slaves. The slave, after all, possessed one customary "right" no free laborer could claim—the right to subsistence. Henry Lee Higginson, Harvard graduate and Civil War veteran who with his wife and two friends purchased a Georgia plantation in 1865, found the freedmen did not "understand the value of work and wages" in the same manner as northern workers. "They think," Mrs. Higginson observed, "they ought to get all their living and have wages besides, all extra."³⁴

The "right" to subsistence, however, had no place in a free labor society. Indeed, the end of slavery required a complete overhaul of the law, in a wide variety of instances, what had once been "rights" were now redefined as crimes. Under slavery theft of food belonging to the owner had been all but universal. Virtually every planter complained of the killing of poultry and hogs, and the plundering of corn cribs, smoke houses, and kitchens by the slaves. Most planters seem to have taken a lenient attitude, particularly where the theft was for purposes of consumption (selling stolen food was another matter entirely). "I do not think a man ever prosecuted his own slave for a larceny" a South Carolina lawyer remarked after the Civil War. Most masters seem to have assumed that thievery was simply another of

those inborn black traits that made slavery necessary in the first place. To slaves, on the other hand, as one freedman later recalled, theft simply followed the Biblical injunction: "Where ye labor there shall ye reap."³⁵

Under slavery the boundary between public and private authority had been indefinite, crimes like theft, looked upon as labor troubles, were generally settled by planters themselves. Abolition obviously required a restructuring and strengthening of the enforcement machinery. As George A. Trenholm, a prominent South Carolina merchant, explained soon after the end of the Civil War, "Hitherto these depredations were either overlooked, or the culprit punished lightly and restored to favor. Now it must necessarily be different. Theft is no longer an offense against his master, but a crime against the State." Thus, in the transition from slavery to freedom, the criminal law emerged as a means of enforcing the property rights and demands for labor discipline of the landowner against the claims of the former slave.

Everywhere, the end of slavery witnessed a determined effort to put down larceny by the former slaves. In the United States as well, planters complained of the widespread depredations committed by the freedmen. No one was able to raise stock in South Carolina, according to one planter, because "the negroes have shot and stolen them all." In Louisiana the "thefts of animals by the 'colored gentlemen' who do not want to work" were described in 1868 as "appalling." Some blacks forthrightly contended that, as under slavery, they had a "right" to steal from whites. One North Carolina preacher imprisoned for larceny, had been "known to say from his pulpit that it was no harm to steal from white people, that his hearers would only be getting back what belonged to them." Others, including some white observers, interpreted theft as a form of retaliation against inequitable labor practices. A Freedmen's Bureau agent explained that during Presidential Reconstruction, with planters in control of local courts, the only recourse of blacks driven from plantations without the compensation due them was "to steal and to kill the stock of the planter who defrauds him."³⁶

Where blacks or their white allies achieved local political

power during Reconstruction, planters contended that laws against theft went unenforced. "Let him know that if he steals for a living, as he now does, he will not be tried by a scallawag judge, nor a negro jury," one planter insisted. Another echoed, "We have negro magistrates, and negro jurymen, and we cannot convict the thieves." Black justices of the peace were said not to punish the theft of livestock and seed cotton by blacks, and as for black jurors, they "had a strong predilection for their own race, and they were not very clear in their ideas of the difference between right and wrong." Or, to put it more accurately, their sense of right and wrong differed from that of their former owners.³⁷

With Redemption came a concerted legal offensive "for the protection of the cotton planters." Measures such as sunset laws, meant to discourage theft by prohibiting the sale of seed cotton and sometimes all farm products between sundown and sunup, had been regularly proposed and just as regularly rejected during Reconstruction. Now they were placed on the statute books. To circumvent the Fourteenth Amendment and federal civil rights laws, such measures did not mention blacks specifically, but often applied only to counties with black majorities. Alabama made the sale of seed cotton to a merchant at any time of the day or night a felony in nine black belt counties. Such laws not only reinforced the property rights of the planters, but undermined those of the former slaves, limiting the economic alternatives available to them. As Alabama black leader James T. Rapier explained, "If a man commits a crime he ought to be punished, but every man ought to have a right to dispose of his own property. . . . I may raise as much cotton as I please in the seed, but I am prohibited by law from selling it to anybody but the landlord."³⁸

At the same time, the southern criminal law was transformed to increase sharply the penalty for petty theft (and provide a source of involuntary labor for those leasing convicts from the state). There was precedent for such measures in the early Black Codes. South Carolina's criminal law as amended in 1865 had been, a southern writer noted, "emphatically a bloody code." It made every theft a felony punishable by death, the re-

sult of which, critics charged, was that convictions would be impossible to obtain. Severe criminal penalties for theft fell into abeyance during Reconstruction, but were revived by the Redeemers. South Carolina did not go to quite the extreme of 1865, but did increase the penalty for the theft of any livestock to a fine of up to one thousand dollars and a maximum of ten years in prison. In North Carolina and Virginia after Reconstruction, a black spokesman charged, "They send him to the penitentiary if he steals a chicken." Mississippi, in its famous "pig law," defined the theft of any cattle or swine as grand larceny, punishable by five years in prison. The criminal laws of Mississippi, a federal official remarked, "appear to me to be a shame to the manhood of the state."³⁹

Such legislation made the convict lease system, which had originated on a small scale during Reconstruction, a lucrative business in the Redeemer South. Republicans were not far wrong when they charged of the system in Texas, "The courts of law are employed to re-enslave the colored race." Another result was that blacks, who had looked to the state for protection during Reconstruction, now correctly viewed it as simply an instrument of class rule. There was no rational correspondence between crime and punishment, blacks were excluded from judgeships and jury service in most of the South, and black sheriffs and policemen, stunning innovations of Reconstruction, were removed from their positions. In these circumstances the law could hardly fulfill a "hegemonic" function—providing a seemingly disinterested standard of justice independent of the authority of any particular social class. Conviction of crime in such a legal order carried little onus in the black community, indeed it sometimes was associated with a kind of heroism or notoriety. In the courts of Presidential Reconstruction, a petition of Charleston blacks had complained in early 1867, "Justice is mocked and injustice is clothed in the garb of righteousness." The same was true of the legal order fashioned by the Redeemers.⁴⁰

A further example of the use of law to redefine class and property relations and enhance labor discipline is the evolution of legislation concerning liens and the control of standing crops.

Crop liens as a form of agricultural credit had originated soon after the Civil War, but the early statutes made no distinction among suppliers—anyone who made advances could hold a lien on the crop. The Freedmen's Bureau and some military officials superimposed upon the credit system the requirement that laborers enjoy a lien superior to all others for their wages or share of the crop, and several states during Reconstruction enacted the laborer's lien into law. Some went further and prohibited the removal of crops from a plantation until the division and settlement took place before some disinterested party. As a result, control of the crop was somewhat indeterminate during Reconstruction.⁴¹

As in so many other areas, what was an open question, an arena of conflict during Reconstruction, became a closed issue with Redemption. The right to property and the terms of credit—the essence of economic power in the rural South—were redefined in the interest of the planter. Generally, landlords were awarded a lien superior to that of the laborer for wages or merchants for supplies. North Carolina placed the entire crop in the hands of the landlord until rent was fully paid, and allowed no challenge to his decision as to when the tenant's obligation had been fulfilled. In Texas the law prohibited the tenant from selling anything until the landlord received his rent. The law attempted to accomplish what planters by themselves had failed to achieve: the complete separation of the freedmen from the means of production, the creation of a true agricultural proletariat. Beginning with *Appling v. Odum* in Georgia in 1872, a series of court decisions defined the sharecropper simply as a wage worker, with no control of the land during the term of his lease, and no right to a portion of the crop until division. Croppers, said the court, enjoyed "no possession of the premises, . . . only a right to go on the land to plant, work, and gather the crop."⁴²

Conflicts over the legal definition of contract rights, liens and tenancy are familiar legacies of emancipation. Less well known, although equally important as an example of the reshaping of property relations, was the matter of fencing, an explosive political issue in parts of the postemancipation South because it

directly involved the laborer's access to economic resources and alternative means of subsistence.

There is no more compelling symbol of private property than a fence. In his *Discourse on the Origin of Inequality*, Rousseau identified as "the real founder of civil society" the first man who enclosed a piece of land. (He also blamed this mythical personage for all the "crimes, wars and murders, . . . horrors and misfortunes" which resulted from private ownership of "the fruits of the earth.") The antebellum South, a society in which social relations were in some ways still precapitalist, also seems to have been less than completely committed to the private appropriation of land. The common law doctrine requiring that livestock be confined to the property of its owner, as in New England, did not apply in the slave states. Rather, the farmer, not the stockowner, was required to fence in his holdings. All unenclosed land, even if privately owned, in effect became public commons, on which anyone could graze his livestock.

"Progressive planters" frequently voiced dissatisfaction over the expense of fencing and the damage caused by livestock roaming on their lands. The law allowed the landless and small property-holders to graze livestock, sometimes even large herds, on the lands of their wealthy neighbors. In the late antebellum period, a few states took the first steps toward requiring stock-owners to fence in their animals. But, as one planter commented, "the right of common" was so deeply ingrained that it was "out of the power of any farmer in this county to enclose a standing pasture." Property rights, Edmund Ruffin lamented, were simply not appreciated as thoroughly in the slave states as in the North.⁴³

Disputes over fencing were by no means confined to the South in nineteenth-century America. A Midwestern agricultural magazine in the 1840s spoke of "brutal conflicts" over damages done by animals running at large, and there were persistent battles on the Iowa and Illinois prairies between livestock men and farmers. By the 1870s, advocates of stock confinement had achieved their legislative aims in the Midwest. Simultaneously, California required cattlemen to fence in their animals in the rich agricultural region of the San Joaquin Valley,

and a similar battle raged on the Texas prairies between cattle barons using barbed wire to enclose public lands, and small farmers rallying under the banner of "free grass."⁴⁴

In the South, emancipation added a new entry to the list of combatants: the freedmen. Blacks, it appears, had a vested interest in existing southern fence laws, which allowed landless freedmen to own animals, grazing them on the property of others. The free ranging of livestock also facilitated the stealing and slaughtering of hogs by blacks, of which so many white farmers complained. The northern journalist and liberal reformer Charles Nordhoff was appalled by the southern practice of "letting animals run half wild in the woods." It was unrealistic, he believed, to expect blacks to "respect property rights so loosely asserted."

A chorus of complaints was raised during Reconstruction against what one planter termed "the infamous, and barbarous fence laws." Those who believed the climate and lands of the South ideally suited for stock raising, and that a shift to livestock would reduce dependence on black labor, found the fence laws an insuperable obstacle. Railroad companies joined planters in pressing for an end to the open range, since juries often awarded damages to persons whose stock was killed by passing trains. A Mississippi planter summed up the situation: "It is . . . the first duty of every intelligent landowner to arouse himself and keep this subject agitated until we have a law passed."⁴⁵

Even among whites, however, there was strong opposition to such demands. A change in the fence law, the *Selma Southern Argus* explained, "is opposed to the immemorial custom of the country, and encounters the prejudices and arouses the opposition of perhaps a majority of the farmers and planters . . . it is revolutionary in its character, and its enactment into law at this time, and enforcement, would fill the land with dissensions." The *Southern Argus* was concerned about dissensions among whites, not blacks, for yeoman farmers had long cherished the right to let their stock run free on the land of others. But the advent of black suffrage brought to the political arena a group equally adamant in opposing new fence laws. "Even before the recent changes in our government," one agricultural reformer

noted in 1873, "the proposition to fence stock met with little favor from the unintelligent masses and now that the suffrage has been so thoroughly debased, it is not likely that Legislative action will abate the evil." Blacks, after all, were generally propertyless, but many owned an animal or two. The open range was essential to enable them to graze their livestock. "All they need," said one writer, "is a little to plant, their diminutive gangs of stock can herd it about over the woods, and are no expense to them." Some freedmen, like the father of Nate Shaw, the protagonist of that classic of oral history, *All God's Dangers*, were able to subsist for a time entirely by hunting and the free ranging of their hogs, thereby avoiding wage labor altogether.⁴⁶

The first tentative steps to close the southern range had been taken during Presidential Reconstruction, directed at the black belt countries where most freedmen lived. Nothing more was done during Reconstruction, but with Redemption the legal offensive resumed. First to act was Georgia, whose Democratic legislature in 1872 passed a law allowing fifty freeholders in any county to petition for a local election on changing the fence laws. Alabama and Mississippi authorized similar elections in the 1880s. Generally, the battle was fought out first in the black counties, although early efforts to enact local statutes were often defeated by the votes of black tenants and laborers. But fraud, state laws restricting the vote on fence issues to landowners, and statutes simply ending common rights in black counties without a popular vote, succeeded by the mid-eighties in enclosing most of the black belt, a severe blow to the ability of freedmen to earn a living independent of plantation labor. The conflict then shifted to the white upcountry, where bitter struggles were waged between agricultural reformers and poorer yeomen determined to preserve their customary rights. The closing of the open range was a long-drawn-out process; in some states it was not completed until well into the twentieth century. But, as with the analogous English enclosure movement of the eighteenth century, the result was a fundamental redefinition of property rights. Southern small farmers and tenants, black and white alike, might well echo the lament of the English rural laborer who had seen his access to the land legislated out of exist-

tence: "Parliament may be tender of property; all I know is I had a cow, and an Act of Parliament has taken it from me."⁴⁷

Much the same demise of customary rights allowing an alternative to plantation labor was reflected in another postwar development, the growth of laws to prohibit hunting and fishing on private property. Here, too, the pattern had been established in eighteenth-century England, where a series of game laws, including the infamous Black Act of 1723 making the hunting or stealing of deer and hares in royal forests capital crimes, redefined traditional practices as criminal offenses. Such laws were resented by those accustomed to hunt on privately owned land, and supported by large landowners who saw them as a means of counteracting the inclination to idleness among the poor, as well as preserving a much-esteemed sport.⁴⁸

In the pre-Civil War South, a sparsely settled region whose extensive woods harbored plentiful supplies of game, there were few restrictions on hunting and fishing by free men. Evidence suggests that a significant number of slaves also had experience hunting, trapping game, and fishing. Toward the end of the antebellum period, planters in some counties, fearing the depletion of game for purposes of sport, began to press for the passage of laws to limit the times of year during which hunting could take place, and for stronger penalties against trespass. A handful of such measures was enacted, particularly in the Upper South, but generally their impact was quite limited.⁴⁹

Emancipation did not affect the abundance of the southern streams and forests, but it did transform the social implications of hunting and fishing. Henry Crydenwise, a northern army veteran who worked as overseer on a Mississippi plantation in 1866, was astonished at the profusion and variety of creatures near the plantation. There were bears, panthers, and wildcats, as well as "a large variety of other less dangerous animals," and blacks found in hunting a convenient way of supplementing their meager incomes. For the same reason, planters now agitated for restrictive legislation. "In England and France [they] have to get permits to carry guns as well as to shoot game on their neighbors' premises," wrote a North Carolinian, "but here in this ultra civilized country gangs of negroes prowling the

roads and woods nearly every day the most of them with double barrel guns . . . have . . . effectually destroyed the game." In Mississippi, a white woman, apologizing for intruding into the male domain of politics, urged the legislature to "pass the English game laws . . . the laws that old England found necessary, to protect her landed interest from the depredations of white laborers, and then a negro could not have the excuse when seen hunting on other persons estates, that he was only hunting bear, deer, squirrels, birds, etc."⁵⁰

Presidential Reconstruction witnessed legislative efforts to restrict blacks' right to hunt and fish. The Black Codes of several states made it illegal to carry firearms on the premises of any plantation without the permission of the owner, defined hunting or fishing on private property as vagrancy, and imposed taxes on dogs and guns owned by blacks. Georgia in 1866 outlawed hunting on Sundays in counties with large black populations, and forbade the taking of timber, berries, fruit, or anything "of any value whatever" from private property, whether or not fenced. During Reconstruction these laws were repealed or went unenforced, while planter petitions for new trespass and game laws were ignored. "We must have less freedom and more protection to property," said a speaker at the Mississippi State Grange in 1874. "We want something like the anti-dog and anti-gun laws of 1865 and 1866." But, as a visitor to South Carolina explained, so long as the "white man is so poorly represented in the Legislature, the poacher wanders unreproved." Nearly all black families, it seemed, owned shotguns which, as Cyrus Abram, an Alabama freedman, put it, were "a heap of service in shooting squirrels, birds, ducks, and turkeys, etc. That is the way we get a good portion of our meat." In the 1874 election campaign, however, armed whites confiscated the guns belonging to Abram and other freedmen. "My gun was a mighty loss to me," he told a congressional committee, "because it is so hard for a black man to get something to eat."⁵¹

In the Redeemer period, scores of local ordinances and many state-wide measures were enacted, designed to secure white private property from trespass, thereby discouraging men like Abram from getting "something to eat" without plantation la-

bor. Georgia once again took the lead, restricting hunting and fishing in black belt counties, establishing hunting seasons for deer and fowl, and limiting the ownership of dogs. As in the case of fence laws, the redefinition of private property at the expense of customary rights provoked dissension, especially in white up-country counties where the right to vote could not be as easily restricted or manipulated as in the black belt. Tennessee's Redeemers, for example, were unable to enact a dog law, because, according to one contemporary, "the dog is radiated in the affections of the mountain counties, and dog laws there beget popular uprisings." But those laws which applied in only the black countries faced weaker opposition, and represented a serious restriction on the opportunities for freedmen to earn an independent living.⁵²

In one final area, taxation, the relationship between the state and private property was also transformed after the Civil War. Before the war, landed property in the South had gone virtually untaxed, while levies on slaves, commercial activities, luxuries such as carriages, race horses, and gold watches, and licenses on professions provided the bulk of revenue. The result was that white yeomen paid few taxes—their tools, livestock, and personal property were generally exempted—while planters bore a larger burden, but hardly one commensurate with their wealth and income. The tax on slaves and luxury items drew money from the planter class, but the extremely low rate on real estate and the widespread practice of allowing the owner to determine the assessed value of his own land, meant planters could engross large holdings of unimproved land without incurring an added tax burden. During the 1850s, several states moved toward a uniform levy on the value of all property, a simplified and more modern system that had the effect of lessening the burden of urban and commercial interests and increasing the share of rural property holders.⁵³

With emancipation, the southern tax system became a battleground where the competing claims of planter and freedman, as well as yeoman farmers and commercial interests, were fought out. In Presidential Reconstruction, planters, like their counterparts in other parts of the world, looked to taxation as

one means of compelling blacks to offer their services in the labor market. Less well known than the Black Codes, the revenue laws of 1865 and 1866 formed part of the same overall attempt to create a dependent labor force. While taxes on landed property remained absurdly low (one-tenth of one percent in Mississippi, for example), heavy poll taxes were levied on freedmen, as well as imposts on the earnings of urban craftsmen. Because so much state revenue derived from taxes on individuals, an inequitable situation existed in which "the man with his two thousand acres paid less tax than any one of the scores of hands he may have had in his employ who owned not a dollar's worth of property." Not surprisingly, blacks resented a revenue system whose incidence was unfair, and from whose proceeds, as a North Carolina Freedmen's Bureau agent reported, "they state, and with truth, that they derive no benefit whatever."⁵⁴

Reconstruction witnessed a fundamental restructuring of the southern tax system and the emergence of the level and incidence of taxation as Democratic rallying cries second only to white supremacy. The need to rebuild and expand the social and economic infrastructure of the South, coupled with the sudden growth of the citizenry resulting from emancipation, vastly increased the financial necessities of southern state governments. Moreover, with the fall of property values, tax rates had to rise, simply to produce revenue equivalent to that of the prewar years. But more significant than the overall rate of taxation was the change in its incidence. Every southern state adopted an ad valorem tax on landed and personal property, shifting the burden of taxation to property holders. The result was that planters and poorer white farmers, many for the first time, paid a significant portion of their income as taxes, while propertyless blacks escaped almost scot-free. Democrats complained that apart from poll taxes, blacks contributed nothing to the support of the state, since generally a certain amount of personal property, tools, and livestock was exempted from the new levies. In retrospect, the antebellum years seemed to whites a golden age. As one farmer declared, when asked if his tax of four dollars on one hundred acres of land seemed excessive, "It appears so, sir, to what it was formerly. . . next to nothing."⁵⁵

In essentially self-sufficient areas like western North Carolina, where "the family do not see as much as \$20 in money all the year," even a few dollars tax was a grievous economic burden. "You can not have an idea how destitute of money the country is," a letter from upcountry South Carolina to Governor Robert M. Scott reported in 1871. "The taxes now are the cause of the greatest anxiety and to meet them, people are selling every egg and chicken they can get." Those blacks who managed to acquire property also felt the impact. On the South Carolina Sea Islands, black landowners in 1869 were said to be selling corn, chickens, and pigs to pay a tax amounting to a few dollars. "They stripped their little farms," wrote a northern teacher. Not a few blacks who acquired land in the Reconstruction South subsequently lost it at tax sales, and returned to the plantation labor force. The outcome was indeed ironic. In the Caribbean and southern Africa, taxation was consciously devised to help create a labor force for white plantations, farms, and mines. In American Reconstruction the high taxes needed to finance the school systems, economic improvements, and other measures designed to improve the lot of the freed population sometimes had the unintended result of jeopardizing what economic independence they had achieved.⁵⁶

In some parts of the Reconstruction South, Republican lawmakers designed the tax laws to force land onto the market and stimulate the breakup of the plantation system. "The reformers complain of taxes being too high," said a South Carolina black leader. "I tell you they are not high enough. I want them taxed until they put these lands back where they belong, into the hands of those who worked for them." In this century a progressive land tax, often employed in the Third World, has proved an inefficient means of promoting a redistribution of landed property. The same seems to have been the case during Reconstruction, although the new tax system did seriously inconvenience those holding large tracts of land for purposes of speculation. One result of Reconstruction fiscal policy, it is true, was that vast acreages—one-fifth of the entire area of Mississippi, to cite one example—fell into the hands of the state for nonpayment of taxes. The ultimate disposition of such lands is one of the more

fascinating uninvestigated questions of Reconstruction history. State law often required that they be sold at auction in 40-acre plots, and there is some evidence of blacks acquiring land in this manner. The title to such holdings, however, was far from secure, since state laws generally allowed the former owner to redeem his property by paying the back taxes plus a penalty. There was a certain regularity in the way many plantations forfeited for taxes were recovered, forfeited, and recovered again. Such lands continued to be worked by the former owner and tenants, in effect capitalized by a low-interest loan from the state in the form of a delay in tax collection. Where tax auctions did take place, the buyers tended to be neighboring white farmers, land speculators, or urban businessmen, who gathered up considerable expanses at a few cents per acre.⁵⁷

After Redemption, the southern tax system was transformed anew. First of all, the level of taxes was sharply reduced. The parsimony of the Redeemer regimes is notorious; in Louisiana, "they were so economical that public education and other state services to the people almost disappeared." But the reduction in taxes and expenditures did not affect all classes equally. Partly due to upcountry pressure, landed property enjoyed the sharpest decline in tax rates, while privilege and license taxes rose. The reduction in land taxes was not passed along to black tenants. As a black Louisiana politician complained, "The landowners get all the benefit and the laborers none from the reduction in taxes." Reconstruction laws exempting a certain value of property from taxation were replaced by exclusions only for specific items, such as machinery and implements utilized on a plantation. The result was that blacks now paid taxes on virtually every piece of property they owned—tools, mules, even furniture—while larger farmers had several thousand dollars exempted from levy. "The farmer's hoe and plow, and the mechanic's saw and plane," a Georgia Republican newspaper lamented, "must be taxed to support the Government; . . . Show me the rich man who handles a hoe or pushes a plane." Then, too, poll taxes—the most regressive form of revenue—remained in force. The result was that throughout the post-Reconstruction South, as in the postemancipation Caribbean, the poor bore

the heaviest burden of taxation and received the fewest public services.⁵⁸

To reiterate the obvious, no one can claim that the complex structure of labor, property, and tax laws initiated immediately after the war, then dismantled during Reconstruction, and finally, with modifications, reinstated after Redemption, were completely successful in controlling the black laborer or shaping the southern economy. The law is an inefficient mechanism for forcing men to work in a disciplined manner, as planters continued to lament long after the end of Reconstruction. Nor could any statute eliminate the colonial status of the South within the national economy, or counteract the slowdown in the rate of growth of world demand for cotton. But the post-Reconstruction legal system did have profound consequences for black and white alike, foreclosing economic possibilities for some, and opening opportunities for others. The issue, as Du Bois noted, was not so much whether the South could produce wealth with free labor—"It was the far more fundamental question of whom this wealth was to belong to and for whose interests laborers were to work."⁵⁹

In poverty, malnutrition, illiteracy, and a host of other burdens, the freedmen paid the highest price for the failure of Reconstruction and the economic stagnation of the plantation South. Even though these hardships were not confined to blacks, the freedmen were caught in a unique web of legal and extralegal coercions which distinguished their plight from that of the growing number of white sharecroppers. To the architects of the post-Reconstruction South, black poverty was a small price to pay for political peace and labor discipline. "I do not think that poverty disturbs their happiness at all," a Georgia editor told a congressional committee. Another Georgian took a slightly different route to the same conclusion: "The Nigger, when poverty stricken . . . will work well for you—but as soon as you get him up and he begins to be prosperous, he becomes impudent and unmanageable." For their part, blacks fully understood that their aspirations were incompatible with those of their former owners. "What motive has he to see you oppressed and downtrodden?" a visiting congressman asked David Graham, an Edge-

field County, South Carolina black leader in 1876. "In case I was rich, and all colored men was rich . . ." Graham replied, "how would he get his labor? He couldn't get it as cheap as he gets it now. . . His interest is in keeping me poor, so that I will have to hire to some one else."⁶⁹

Here, in the candid recognition of irreconcilable interests, lay a recipe for continuing conflict. And, indeed, it is the ongoing struggle over the definition of freedom and the control of labor that unites the experience of the American South with that of other postemancipation societies. Long after the end of slavery, the conflict would culminate in the enmeshing of blacks in a comprehensive system of segregation, disfranchisement, and, in many cases, virtual peonage, and the proletarianization of the agricultural labor force of the South. Here, as elsewhere, the adjustment to emancipation appears as a saga of persistence rather than change, stagnation rather than progress, the resiliency of an old ruling class rather than the triumph of a new order.

Yet if the ultimate outcome seems in retrospect depressingly similar to the Caribbean and South Africa experiences, by the same token it underscores the uniqueness of Reconstruction in the history of postemancipation societies, and the enduring changes American emancipation did accomplish. However brief its sway, Reconstruction allowed scope for a remarkable political and social mobilization of the black community, opening doors of opportunity that could never again be completely closed. If Reconstruction did not overturn the economic dominance of the planter class, it did prevent the immediate putting into place of a comprehensive legal and judicial system meant to define the political economy of emancipation solely in the planters' interests. Despite Redemption, the complete dispossession and immobilization of the labor force envisioned in 1865 and 1866 never was achieved, and blacks stubbornly clung to the measure of autonomy in day-to-day labor relations assured by sharecropping. Nor were plantation labor controls extended, as in twentieth-century South Africa, into industry, an outcome of great importance when employment opportunities opened for blacks in the North. And Reconstruction established a frame-

work of legal rights enshrined in the Constitution that, while flagrantly violated in practice after Redemption, planted the seeds of future struggle and left intact a vehicle for future federal intervention in southern affairs.

Thus, a subtle dialectic of persistence and change, continuity and conflict, shaped America's adjustment to abolition. As in most other societies that experienced the end of slavery, black aspirations were, in large measure, thwarted and plantation agriculture, in modified form, survived. Yet for a moment, American freedmen had enjoyed an unparalleled opportunity to help shape their own destiny. The legacy of Reconstruction would endure as blacks continued to assert their claims, against unequal odds, to economic autonomy, political citizenship, and a voice in determining the consequences of emancipation.