The Political Theory and Political Practice of Reconstruction

James R. Stoner, Jr.
Louisiana State University
poston@lsu.edu

Prepared for delivery on a panel on “Roots of American Progressivism,” at the annual meeting of the Midwest Political Science Association
Chicago, Illinois
April 13, 2012
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This essay is intended to pose a series of questions about the decade of American politics after the Civil War known as the period of Reconstruction. Except on the question of the original meaning of the Fourteenth Amendment, and on the constitutional question of post-war legal recognition of secession, scant attention has been given this critical moment by students of political theory or American political thought. This is unfortunate, I think, because Reconstruction is the fulcrum upon which the dominant foundational principle of American political thought shifts from natural rights to history, that is, to the idea of progress.¹ The politics, especially the constitutional politics, of Reconstruction are at once the consequence and the cause of that momentous change.

“Reconstruction” was the term used by President Lincoln and then by members of Congress to denote a series of proclamations, acts, and policies designed to restore the Union after the Civil War, and in particular, to reconstitute the governments of the states that had been in rebellion and thus to define the civil and political rights of their citizens, especially the rights of former rebels and former slaves, now freed. Lincoln’s plan, and his successor Johnson’s, too, was relatively lenient to the rebellious states, pardoning former Confederates who took an oath to support the Constitution and the Union (except high-ranking officers, former federal officeholders, and those who had abused black prisoners) and promising to recognize and guarantee a government

formed by a least 10% of the number of 1860 presidential voters. Congress, relying on its constitutional power to judge the qualifications of its members, devised a more demanding plan for restoration of congressional representation of the states whose representatives had withdrawn: Each state must ratify the Fourteenth (and later the Fifteenth) Amendment, must write a new constitution drafted by a convention elected by all adult males (including freedmen and previously free blacks) who had not participated in the rebellion, and must establish the same electorate for the future. Tennessee had had its representation restored before the passage of the Reconstruction Acts; seven other states qualified by 1868, and the final three by 1870. For the most part, the voting provisions of the acts were to be enforced by the Union army, then occupying the Southern states. The end of Reconstruction is generally agreed to have been 1877, when the last troops were withdrawn from the last state capitals where they were stationed. By that time, through presidential pardon and congressional act, all former Confederates had had their right to vote and hold office restored, and Democrats had won the governorship and controlled the legislature in all the formerly Confederate states.²

The critical issue in Reconstruction, at least in retrospect, turned out to be black suffrage. Initially withheld by the first governments formed, with Lincoln’s acquiescence if not exactly his endorsement, it soon became the central plank of Radical Reconstruction and the crown of the Reconstruction Amendments to the Constitution, only to be suppressed by the so-called “redeemer” governments that came to power in

the 1870s and finally obliterated at century's end, requiring a “Second Reconstruction” nearly a century after the first. The story can be told as a tale of partisan maneuver, first on the part of the resuscitated governments in 1865-66 who passed the Black Codes, then on the part of the northern Republicans who saw in black suffrage a means both of permitting self-help to the freedmen and ensuring their own national predominance, then on the part of the Democrats who formed a “solid South” based on white supremacy, and finally acquiescence by the Republican Party at the turn of the twentieth century—before new issues and a new configuration of partisan competition reopened the question in the middle of that century. While partisan politics is critical to the story—after all, it is about voting in democracy—scholars recognize that a complex jurisprudence accompanied partisan developments, with some lag to be sure, but also revelatory of what Republicans and Democrats were thinking.³ To speak of foundational ideas, of natural rights and the idea of progress, is to address what lies behind both partisan speech and jurisprudence, the points of reference that give partisans and judges on the one side confidence and those on the other pause. These are ideas that forge or at any rate indicate deep consensus; they tend to cross lines and redefine modes of ordinary political and legal thinking. As Lincoln himself said of public sentiment, they are what make it possible for laws to be enforced or accepted.⁴

Here is the issue at the level of thought as I see it. The Civil War begins within the frame of natural rights, with Lincoln’s insistence that the self-evident truths of the

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Declaration of Independence be honored and with the South’s claim that the compact of the Constitution has been broken. Reconstruction ends—or at any rate, the century ends—with Progressives in both parties comfortable with a doctrine of racial supremacy embedded in a narrative of human progress, and rights are seen as historical achievements, not natural claims. Typically this transformation is noticed but explained without reference to politics. Either the explanation is purely intellectual—Darwinism, launched on the eve of the Civil War by a man born the same day as Lincoln, changed the meaning of nature from permanent normative pattern to changeable empirical fact—or transformative economic change takes center stage, as individual property rights in a free market spawn huge concentrations of corporate wealth that in turn overwhelm the individual opportunity that created them. When politics enters the picture, it is usually to show that the effort to win the war—that is, the Union government’s ability to mobilize war production—catalyzed the industrial revolution that created the new conditions of capital and labor that defined the post-war period and indeed the rest of that century and the first half of the next. Without challenging the truth in the claims of the importance of Darwinism or the rise of capitalism, my point is to show how political and constitutional ideas were formulated, sometimes independent of these developments, sometimes in their wake, sometimes in their teeth.

THE NATURAL RIGHTS REPUBLIC

Natural rights were not the sole source of political ideas at the time of the Founding, but they played a critical role in defining political liberty as Americans

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understood it. Formulated with classic simplicity by Thomas Jefferson in the Declaration of Independence, the theory held that human beings had certain equal, pre-political rights—to live, to be free, to seek happiness—that were inherent in their natures and that formed the basis of political legitimacy and the test of good government. Said by the Declaration to be both self-evident and God-given, these rights were inalienable in principle and vulnerable in practice, so men found they had to form governments to protect their exercise, to transform natural rights into civil rights. Since men by right ruled themselves, governments could rightly be formed only with their consent. Since the end of government was clear—to secure rights—men could hold government accountable, changing its form if it failed at its task. Though it was evident to anyone who thought about the matter or simply observed the world that the exercise of equal rights would lead to unequal acquisition and achievement, and though government itself raised some above others, social and political inequalities did not justify superior rights or constitute an independent claim to rule. Equal rights permitted inequality provided consent was equally given to the arrangements. Representative government, founded on popularly-instituted constitutions, was at once a device to ensure consent and an expression of political liberty.

The theory of natural rights distinguished the original choice to constitute government from the routine choices that governance required and thus allowed; in principle everyone had a right to a say at the first stage, where one might rationally cede some part of his right to be involved in subsequent decisions. In the original version of Thomas Hobbes, the only rational government to choose is a single sovereign body, and the most reasonable form of sovereignty is a monarch. To Locke and to the
American founders, such a cure for the insecurity of rights is worse than the disease, since a powerful man with the authority of the whole society is more dangerous to rights than thousands of petty invaders. Instead, both Locke and the Americans insisted that there be elected representatives, at least for the purpose of legitimate taxation—for how can you be said to have a right to property if it can be taken in the form of taxes without your consent?—but allowed considerable latitude in the choice of political forms and thus political rights to meet the settled end of effectively securing civil rights. Both gave a nod toward democracy, that is, towards universal suffrage, or more precisely if only implicitly, universal male suffrage, but both allowed voting to be restricted to those with actual interests at stake. If the end of government, as Locke says, is simply the preservation of property, a property qualification for exercising the franchise makes sense, ancient and modern experience with democracy having confirmed that the property-less poor endowed with the vote would invade property rights. For Locke explicitly and for the Declaration by implication, constitutional monarchy was a legitimate political form, provided, for both, that taxation follows representation, and for the Americans, that certain forms of common law, such as trial by jury, be preserved. Indeed, so enamored were Americans of due process that, when writing their federal constitution, they agreed to lifetime appointments in the judiciary, to make them independent bulwarks of individual rights.

Locke wrote, of course, for England, where monarchy and a national church were established and where political rights following upon freehold property were still new. In America, monarchy had been known only through Crown agents, often from the metropolis, making republicanism effectively indigenous, and churches varied
sufficiently from colony to colony to prevent a national Establishment when independence was gained. Widespread property ownership at the time of the Founding made inherited property qualifications small impediment to majority participation; when it became clear that all could acquire property by their own efforts, and that all were eager to do so, the case in favor of a restricted franchise collapsed and universal suffrage was adopted by the 1820s. Ironically, the underlying supposition of the linkage of rights and representation was expressed most clearly by Hobbes: “A plain husbandman is more prudent in affairs of his own house, than a privy counselor in the affairs of another man.”6 The anchor of free government, in other words, is self-interest, what Tocqueville called the only stable point in the human heart.7 It is not exactly self-love or mere selfishness, but an enlightened and rational regard for achieving and securing one’s own good. Self-interest is enlightened by practice in the management of one’s affairs, and it is moralized by respect for the rights and the interests of others. Likewise, political enlightenment is gained by participation in the management of the affairs of one’s community and moralized by respect for its constitutional order. Both individual and political good sense can be formed, not to mention refined, by education, as both Locke and the founders explained, though of course an improper education can lead men astray and even confuse them as to their genuine interest and the true character of justice. While self-interest is a universal principle of human nature and education a universal need, the former was not the only political sentiment the natural-rights liberals recognized. Zeal was noted warily, and so

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was ambition, the latter being at once a threat to self-government—for ambition was above all the ambition to rule others—and an aid to representative government, if men could be persuaded to satisfy their ambition without risking their self-interest by speaking for, standing up for, and securing the interests of others together with their own.

There was, however, one large chink in this story of the logic of the political development of Jacksonian Democracy in America: A substantial number of people of African descent were held as chattel slaves, denied all rights held inalienable by the Declaration. Moreover, African Americans who were free by law, not enslaved, nevertheless shared in the stigma of slavery in the eyes of the majority. It was one of the cruel ironies of the coming of democracy in America that, as the franchise was extended to those without property, it was often withdrawn from the free African with property. In New York the propertied free black population retained the right to vote when suffrage was extended to whites without property; in Maryland, all blacks were disenfranchised precisely when all whites got the right to vote. Emancipation of slaves in the northern states during the Revolution and in its aftermath, encouraged by the theory of natural rights, did not lead to political rights for the freedmen except in New England, where their numbers were small. Again, the theory allowed a gap between civil and political rights if prudential reasons could be given why the security of civil rights required the compromise of political rights, since the latter were seen as instrumental to the former.
THE CRISIS OF THE 1850s

If the gap between civil and political rights in liberal theory left room for racial prejudice to usurp the place of prudence, an even greater problem arose from the tendency of universal suffrage to overwhelm the very rights it was meant to secure. Under the name “majority faction” this danger was known already to the Founders—Madison’s famous Federalist No. 10 explained how it could be countered, though not eradicated, by an extended republic—while under the name “popular sovereignty” and in the thought of Stephen Douglas, it was confidently asserted as the superior and adequate principle of American democracy itself. Douglas thought that conflict over slavery could be averted if the principle of majority rule were universally applied, in the territories as well as the states, and if the reach of majorities were locally confined: Whether blacks should be enslaved, excluded, ignored, or enfranchised was a matter for every political community to determine for itself, with the country as a whole indifferent to the choice each community would make. Douglas persuaded Congress to incorporate his idea in the 1854 act that organized the territories of Kansas and Nebraska, effectively repealing the Missouri Compromise of 1820 that had forbidden slavery in territory north of 36°30’ on the Great Plains.8

Abraham Lincoln immediately spoke against the Kansas-Nebraska Act,9 and in a series of speeches and debates over the next five years he advocated its repeal. Lincoln argued that slavery violated the first principles of the Declaration of Independence—inalienable natural rights meant at the very least that no one could be justly made the

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9 See Speech at Peoria, October 16, 1854, in Selected Speeches and Writings, pp. 93-99.
property of another, ceding all his rights—and insisted that the Declaration’s principle, enunciated eighty years before in the context of the Revolution, was relevant to the controversy over slavery in the territories in his own day. A constitutionalist rather than an abolitionist, Lincoln was willing to accept the existence of slavery where it was already established as acknowledged and protected in the Constitution—in the three-fifths clause, in the expired prohibition against abolishing the foreign slave trade, and in the fugitive slave clause—and was even willing to allow new legislation that carried the latter into effect, but he insisted that in new territory, where the matter could be decided afresh, the federal government had the right and indeed the duty to forbid slavery as it had under the Northwest Ordinance at the time of the Founding. Prohibiting slavery in the territories was of practical importance—Lincoln cited the career of the states carved out of the old Northwest to show that communities formed without slavery were not apt to later admit it—but also of symbolic importance, for it declared that slavery was morally wrong and a violation of American political principles, an evil that could be tolerated where greater evil might result from the attempt to abolish it, but an evil nonetheless. He insisted that this view of American slavery as an evil, even if for a while a necessary evil, was the position of the Founders, who set the public mind to rest with the assurance that the peculiar institution was on the course of ultimate extinction. Lincoln was not oblivious to the claims of the majority on the slavery question; on the contrary, he was contending for majority opinion, the public sentiment of the country at large. What he argued was that, in the orthodox theory of the Declaration, to which he adhered, natural rights preceded majority rule and thus set boundaries on its proper exercise.
Lincoln followed the orthodox political theory of the Declaration not only in support for natural rights, but in divorcing civil and political rights. While denouncing slavery as wrong, he did not advocate political equality for blacks, though Douglas taunted him with the accusation that he did. In a carefully worded statement in their 1858 debates, Lincoln went so far as to claim he shared the feeling of his countrymen that blacks and whites could never live together on an equal basis, adding that he naturally preferred that the group to which he belonged have the advantage—a position that would of course recommend to the black an opposite preference.\(^\text{10}\)

Already in the debates he proclaimed himself, following his “beau ideal of a statesman,” Henry Clay, an advocate of colonization, an idea he followed through on as late as the second year of his presidency, when he welcomed a delegation of black leaders to the White House to urge them to endorse a plan to establish a colony for free blacks and freedmen in Central America.\(^\text{11}\) However impractical the idea seemed—he insisted it was much more practical than Liberia in Africa, which he thought had already proven some success—the logic of his advocacy is clear enough. If blacks have equal natural rights and yet cannot be granted political rights in the United States, their rights could be genuinely secured only if they were to establish political communities of their own.

Political equality seemed impossible for blacks even to so consistent an opponent of slavery as Lincoln because social equality was impossible—partly because of ingrained racial prejudice in the white community, partly because of differences of culture, achievement, and wealth. The theory of natural rights, precisely as it was based on attributes of human nature, rejected the notion that social standing carried with it a

\(^{10}\) Selected Speeches and Writings, pp. 173-74 [Fourth Lincoln-Douglas Debate, Charleston].

\(^{11}\) Ibid., pp. 338-342 [August 14, 1862].
claim to rule; that social status translated into political power was the theory of the Old Regime and perhaps the natural way of thinking of every traditional society. To be sure, it entered liberal thinking through the back door of republican ideology: If fellow citizens had to be friends, and if representatives were the natural, not elected, spokesmen for their constituents, then social barriers made common citizenship difficult if not unthinkable. But if fellow citizens could act in coalitions arranged on the basis of strategic calculations, forming parties of interest and electing representative agents rather than acknowledging social notables, then civic equality would not be upset, or not greatly upset, by the natural inequalities that permeate social relations. The intention of the theory of natural rights and government by consent was partly to free government from social domination, and partly to free society from coercive formation. African American citizenship thus was not implausible in theory in the context of American liberalism, but, as Lincoln said, a universal feeling, a universal prejudice, could not be safely ignored.12

There was a contrary approach to the question of slavery, race, and politics in antebellum America, of course, exemplified by the “positive good” school that emerged in the middle of the nineteenth century, spearheaded by John C. Calhoun and incorporating independent autodidacts like George Fitzhugh, who discovered Aristotle’s Politics in a flea market in Paris, along with the writings of European socialists, and brought them home to devise a defense of slave society as a classical alternative to modern commercial society and the emerging ravages of capitalist

12 Ibid., p. 95 [Speech on Kansas-Nebraska Act].
development. These thinkers disparaged the Declaration of Independence and its assertion of the truth of human equality; they began with the naturalness of society, which meant the naturalness of inequality, and they designed institutions of government—or reinterpreted established institutions—to reinforce and thus administer social patterns. Calhoun’s concurrent majority aimed precisely to insure that every social interest, or every interest deserving of political representation, had a veto on the measures of the government. Fitzhugh was no socialist, but he agreed with the socialists that government had as its purpose the organization of society, not merely the preservation of individual rights, and he agreed as well that the practical effect of a regime of civil rights was “slaves without masters.” Stephen Douglas held no brief for slavery—there were those who claimed his program had the practical effect of achieving freedom without antagonizing slaveholders—and he never denounced the Declaration of Independence, instead restricting its proclamation of equality to whites only, but the effect of his doctrine of popular sovereignty would be, like Calhoun’s and Fitzhugh’s theories, to allow a social order to translate itself into a legal and political order. That his plan was majoritarian rather than hierarchical limited its appeal in the South, but the slaveholders were not mistaken to see a kinship which was lacking in Lincoln’s insistence upon maintaining respect for natural as well as constitutional rights.

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RECONSTRUCTION: LINCOLN’S PLAN

Lincoln’s last speech was about Reconstruction, and he begins by discussing the term, which he defines as “the re-inauguration of the national authority” in the defeated states. He explains that “It is fraught with great difficulty,” since, in the absence of a conquered government with which to treat, “we simply must begin with, and mould from, disorganized and discordant elements.”

In 1865 Lincoln was defending the application of his plan to the Louisiana, the first state to have fulfilled its terms. The plan itself had been announced by Proclamation in December 1863, as noted above. The new Louisiana constitution emancipated the slaves—because New Orleans and the surrounding area had been under Union control for most of the war, the Emancipation Proclamation, designed as a measure of military necessity and applied only to slaves in territories in rebellion, had had no force in the most populated part of the state—and while it did not enfranchise the freedmen or the many previously free blacks, it promised public schools “equally to black and white,” according to Lincoln, and “empower[ed] the Legislature to confer the elective franchise upon the colored man.”

On the question of this last point, Lincoln says, “I would myself prefer that [the elective franchise] were now conferred on the very intelligent [blacks], and on those who serve our cause as soldiers,” but he is willing to defer to the judgment of the loyal whites that the question be postponed. On balance, considering that a loyal government had been formed, had written a free constitution, and had ratified the Thirteenth Amendment, he thinks the course of prudence is to grant that government executive recognition.

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14 Selected Speeches and Writings, p. 454 [Speech on Reconstruction, April 11, 1865].
acknowledging that only Congress can determine the conditions upon which representatives in their bodies might be admitted to take their seats.

Lincoln’s attitude toward reconstruction of the Union seems consistent with his constitutionalism both before and throughout the war, as well as with his attitude towards black Americans. Regarding the Constitution, he was invariably precise in his insistence on strict adherence to its terms and careful to ensure that his actions did not exceed his authority—indeed often to ensure that his actions could not even be interpreted as absolute or dictatorial. He had made clear in his First Inaugural Address that he thought there was no constitutional right in the states to secede from the Union, and while he now concedes that there is a difference of opinion on whether the Union was broken, he denounces the controversy as “a merely pernicious abstraction,” preferring to speak in terms of the need to return the rebellious states to a “proper practical relation” to the Union. This he meant to do, not by inventing a new constitutional order but by restoring the old, with slavery abolished. As for black enfranchisement, as he moved gradually towards emancipation during the war, no faster and no more slowly than public opinion would bear, so in his final speech he makes a case on its behalf, preferring to recommend gradual enfranchisement—emphasizing as he always did once he made the decision to employ them, the claim of black soldiers—rather than to insist upon it. How he might have responded to the Black Codes passed by the reconstituted Southern legislatures in 1865 and 1866 is a matter of speculation, since of course he did not live to see them. On the one hand, from the time of Emancipation on, he was adamant that no one who had been freed from slavery was ever to be returned to it; though careful to respect constitutional forms, he
showed little patience with mere recourse to formalities without anything of substance, as evident, for example, in his evisceration of Douglas’s answer to his Freeport question, how popular sovereignty could still ban slavery in the territories after the Supreme Court had ruled in *Dred Scott* that holding slave property in the territories was a constitutional right. To the extent that the Codes aimed to restore the substance of slave law without the name, he seems likely to have supported the advocates of federal civil rights guarantees, first the Civil Rights Act of 1866, then the Fourteenth Amendment. On the other hand, he recognized that blacks could enjoy their natural rights as civil rights only if they were respected by the communities in which they lived, and he meant to bring these communities around gradually if need be. In his annual message to Congress in 1863, delivered the same day as his Reconstruction Proclamation, he wrote:

The proposed acquiescence of the national Executive in any reasonable temporary State arrangement for the freed people is made with the view of possibly modifying the confusion and destitution which must, at best, attend all classes by a total revolution of labor throughout whole States. It is hoped that the already deeply afflicted people in those States may be somewhat more ready to give up the cause of their affliction [i.e., slavery], if, to this extent, this vital matter be left to themselves; while no power of the national Executive to prevent an abuse is abridged by the proposition.\(^{15}\)

I am inclined to think that what Frederick Douglass said of Lincoln concerning abolition might have been true of his attitude toward Reconstruction had he lived to see it

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through: “Viewed from the genuine abolition ground, Mr. Lincoln seemed tardy, cold, dull, and indifferent; but measuring him by the sentiment of his country, a sentiment he was bound as a statesman to consult, he was swift, zealous, radical, and determined.”16

BLACK RECONSTRUCTION

Whether because, as a plural body that can act only through the awkward means of a formal bill, Congress lacked institutionally the capacity for prudence and nuance that allowed Lincoln in the executive to masterfully shape public sentiment, or because the congressional leadership fatefully lacked prudence and skill, or whether because the legacy of white prejudice in the South was so great and their shame and frustration in defeat was so bitter, or whether the distraction of the North first with avaricious gain and then after 1873 with financial panic was so thorough, and their own racial prejudice hardly less than that of those they defeated in battle, the course of Reconstruction in the dozen years after Lincoln’s death has been considered, both by its friends and its opponents at the time, and by its admirers and its detractors ever since, a course of failure and disaster. In retrospect, the great achievement of the age was the entrenchment in the Constitution of the Thirteenth, Fourteenth, and Fifteenth Amendments, the latter two of which, after a long eclipse, served the cause of civil rights and black enfranchisement when racial equality was finally addressed in the aftermath of the Second World War. At the time, the case for that enfranchisement came about, as discussed above, in large part as the result of partisan calculation, and for the very same

reason, by the opposing party, it was ruthlessly suppressed. To say this is not to deny the freedmen’s embrace of the ballot nor the political talent, however much ridiculed at the time, of the new black politicians. The testimony of Frederick Douglass, their contemporary, was always in their favor, and in the more systematic study of their work by W. E. Burghardt Du Bois and by John Hope Franklin they come off well, particularly the black members of Congress; corruption in the states has to be acknowledged, but whether it was any greater than that of white politicians of the era has never been established.\(^\text{17}\) Embracing the ballot as the dominant means to secure equal rights was, after all, the movement of Jacksonian Democracy for whites in America, and insofar as that reached its denouement in Stephen Douglas’s popular sovereignty, one might say that the experience of blacks was similarly disappointing. Of course it was much more than this, for the consequence was not only lost elections but subjection to a regime of violence and betrayal that damaged and haunted Southern blacks until only yesterday. The withdrawal of their vote was gradual. Klan and Klan-like violence did its work in rural Mississippi and Louisiana in the 1870s, intimidating blacks from voting and receiving little federal response. Pamela Brandwein has recently shown that legal recourse remained intact until the 1890s, and in some parts of the South black voting continued until the Second Reconstruction in the 1960s, albeit in small numbers.\(^\text{18}\) What arose in its place, of course, was state-enforced segregation, the enshrinement of racial prejudice in law and thus society. There was no warrant for anything of the sort in natural rights theory, and indeed the whole policy seems to


\(^{18}\) Brandwein, *op. cit.*
involve a rejection of the very idea of natural rights and a return to the attempt to reinforce a social order by coercive means rather than to use coercion to protect rights and allow society to develop with substantial freedom. That this new form of social engineering proceeded with the blessing of purported science, rather than upon an appeal to ancient tradition, is worth attention. And it arose, not against, but alongside Progressivism, coming to Washington, D.C., during the administration of Woodrow Wilson, the first Southern-born president elected since Lincoln himself.

CONCLUSION: PRAGMATISM AND PROGRESS

Of course these last few points are only circumstantial evidence of the connection between segregation and Progressivism, at least in one of its early forms. That the failure of Reconstruction was interpreted as a failure of natural rights has only been hinted at, as has the problem with that interpretation: that it links civil rights too closely to voting rights and thus makes immediate universal suffrage a mandate without regard to its consequences for securing justice and the general good. Doubts about the value of natural rights preceded the Civil War, indeed among those who provoked it, and it would be sad irony if the eclipse of natural rights came about as the postwar legacy of the “lost cause,” not by victory on the field of battle, but in the minds of men disappointed by the failure of their own, or their fathers’, brightest hopes. That Du Bois, who defends Reconstruction, was a Progressive, does not undermine the larger point but does complicate it. And it raises the question of whether modern social

\[19\] More direct evidence is the work of the leading historians of Reconstruction, both at Columbia University, during the Progressive era: William A. Dunning, *Essays on the Civil War and Reconstruction* (New York: Macmillan, 1897), and John Burgess, *Reconstruction and the Constitution, 1866-1876* (New York: Charles Scribner’s Sons, 1907).
science, for all its pride in helping to dismantle the segregation regime, played a role, too, in its original construction—starting as it does from the empirical observation of society with no normative compass internal to its own activity, as was claimed, if not always vindicated, by the political science of natural rights.