



RACE AND NATIONAL POWER

A SOURCEBOOK OF BLACK CIVIL RIGHTS FROM 1862 TO 1954



CHRISTOPHER WALDREP

ROUTLEDGE



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In American history, students are taught about the three branches of government. Most of the time is spent learning about the Executive and the Legislative bodies, but the Judicial branch has had a monumental effect on the course of American history, and nowhere is this more apparent than in the area of civil rights.

Race and National Power: A Sourcebook of Black Civil Rights from 1862 to 1954 gathers together a collection of primary documents on the history of law and civil rights, specifically in regard to race. The sources covered include key Supreme Court decisions, some opinions from other courts as well, and texts written by ordinary people—the victims and perpetrators of racism and the lawmakers who wrote the statutes the courts must interpret.

With helpful headnotes and introductions, *Race and National Power: A Sourcebook of Black Civil Rights from 1862 to 1954* is the perfect resource for anyone studying legal history or race in America.

Christopher Waldrep is Jamie and Phyllis Pasker Chair of American History at San Francisco State University. He is author of *Lynching in America: A History in Documents*.

For Pamela, Janelle, and Andrea

PREFACE

The Civil War shocked Americans' Constitutional understandings, questioning its adequacy to meet the nation's greatest crisis, challenging the structure of power in America. In that emergency, the American North took unprecedented steps to preserve the Union against Southern secession. To save their country, Northerners allowed their national government new powers to draft young men into military service, to tax incomes, to print money and to centralize banking, to arrest persons without warrant, and to seize private property. As their powers expanded exponentially, the Republican politicians in charge of Congress and the White House wrestled with the problem of race and rights. Ideas about freedom and citizenship for black people that once seemed confined to only the most radical abolitionists now seemed plausible, something that could be supported by a majority of voters. As this debate unfolded, President Abraham Lincoln decided that the powers the Constitution gave him as Commander-in-Chief, his war powers, allowed him to declare an end to slavery. Thereafter, Congress promised to protect the rights of the freed people. Some white Americans saw the Emancipation Proclamation as merely temporary, a wartime measure. There could be no such doubts about the Civil Rights Act of 1866. Congress clearly and undeniably expected to permanently protect the rights of black Americans.

These dramatic actions—scarcely imaginable before the war began—left Americans confused and uncertain about the permanency and legitimacy of these new national powers. Increased federal authority contradicted the prevailing meaning of freedom once outlined by President Andrew Jackson. In 1832, Jackson had confronted South Carolina's attempted nullification of federal laws by pronouncing the Union sacred and inviolate. In that crisis, Jackson declared himself willing to use national power against a misbehaving

state. But in another difficulty over the national bank, Jackson championed freedom from government. Jackson thought every man equally entitled to protection by law, but for him this meant protection from the government's tendency to favor the rich and the powerful over the humble members of society. Government, Jackson wrote, is but a necessary evil. Better to keep it small. He meant small in terms of financing public improvements (roads and canals) or organizing a national bank; protecting citizens' civil rights could not even be imagined. Furthermore, it is not clear that Jackson did not understand every man to mean every *white* man. Jackson favored majority rule and saw himself as representing the majority of Americans against South Carolina nullifiers and against the small number of wealthy investors who would profit from a national bank. But Jackson defined his populism along gendered and racial lines; he could favor majority rule, because to him white men were the majority. He envisaged America as forever a white man's country, to be governed by white men. Jackson's powerfully "democratic" ideas dominated Americans' thinking for a generation. When Americans plunged into the Civil War crisis, they did so committed to the kind of Union and liberty identified with Jackson.

At least for a moment, those ideas melted on battlefields from Maryland to Texas. Lincoln's idealism, articulated since the 1830s but never before commanding a majority, now came to the fore. Lincoln distinguished the people's passions from their judgment. In the Revolutionary period, passion and judgment had joined, he wrote. In the Jacksonian era, the Democrats had mobilized new passions that threatened to run away from the judgments made by the founders. It was the judgment of the founders that people should let their elected officials run their government for them. Not to be ruled by popular passion became the prevailing passion in the Revolution, Lincoln said. Lincoln warned that Jackson's populism unleashed excitements that put mobs in the street opposing institutions the founders had created. With the Civil War, Lincoln's constitutionalism trumped Jackson's populism—ironically because once again a majority supported the constitutionalism.

For the politicians leading the country out of the Civil War, the main task became one of determining how much the public had permanently shifted its thinking away from antebellum racialized notions of liberty. They had to decide where the country could be led, what the people would tolerate. This sourcebook documents their efforts to expand national power on behalf of civil rights, but it also shows the important role that perceptions of public opinion played in those deliberations. In some cases it shows appeals made by segments of the public ignored or overlooked as white men sometimes wondered who really deserved membership in the "American people."

After the Civil War, the champions of civil rights justified an expanded national government by saying they really only carried out the true original intent of the founders, those permanent Enlightenment values Lincoln had

celebrated. They pitted abstract ideals of justice against an emerging majority opposed to increased national power. Their opponents could not see anything other than politics. For them, even the original Constitution was political, a deal between North and South. They dismissed permanent values of racial justice as utopian sentimentalism.

The documents in *Race and National Power: A Sourcebook of Black Civil Rights from 1862 to 1954* show Americans' arguments for and against an expanded national government. They include the court cases and legislation that proposed and opposed increased national power. Such documents demonstrate the power of Congress and the Supreme Court to reflect and shape the public's thinking. But they also include the private communications, reports, testimony, and speeches circulating beneath the surface of public pronouncements that commented on the great events shaping Americans' thinking about power and rights. They show ordinary Americans' doubts and hopes about the power of law to overcome social evils, including racial prejudice. They also document the rise of new perceptions of mass democracy articulated by George Gallup's "scientific" polling techniques and the strategy of resistance to authority pioneered by Mohandas Gandhi. The forces for continued racial segregation and civil rights fought battles both political (seeking majority approval) and constitutional, appealing to the nation's founding principles. This book shows the shift from majority politics as a justification for racial discrimination to politics as a tool to build a majority consensus behind rights against racial discrimination.

Some of these documents have been transcribed from handwritten originals. When the original authors inserted text as an afterthought, those interlineations have been placed between <angled brackets>. For court cases, I have used legal citations. So, the citation for *Brown v. Board of Education* looks like this: 347 US 483 (1954). Decisions of the Supreme Court are published in a series of books called *United States Reports*. US is the abbreviation for this longer title. The first number, 347, is the volume, and the second number, 483, indicates the first page of the decision. The year the Court decided the case appears in parentheses.

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