

Slavery in All but Its Name

By Josh Pan

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Josh Pan is a rising senior at Choate Rosemary Hall in Wallingford, Connecticut, where he studies history, political science, and international relations. His academic interests sit at the crossroads of historical inquiry and modern policymaking, particularly in how the unresolved conflicts of past eras continue to shape contemporary law and civil rights.

ABSTRACT

This paper argues that the political and racial conflicts of the Reconstruction era produced enduring structural patterns that continue to shape American politics, law, and geography. Drawing on primary statutes, legal history, and contemporary policy analysis, it traces three interlocking legacies of the post-Civil War failure to secure Black civil and political rights: local resistance to federal civil-rights enforcement, spatial control over where Black Americans could live and move, and constitutional ambiguity about the reach of federal power. Through close reading of the Virginia Vagrancy Act of 1866 and Southern Black Codes, alongside the Reconstruction Amendments and key Supreme Court decisions such as the Slaughter-House Cases and *United States v. Cruikshank*, the paper shows how local officials translated the language of slavery into vagrancy, convict leasing, and zoning regimes that survived emancipation in everything but name. It then follows these patterns into the twentieth century through Progressive-era carceral labor, mid-century highway routing, and suburban opposition to mass transit, before turning to twenty-first-century debates over policing and Black Lives Matter. The paper concludes that contemporary conflicts over race, federalism, and civil-rights enforcement are not departures from a stable constitutional order but the latest chapter in Reconstruction's unfinished work.

Keywords: *Reconstruction, Black Codes, convict leasing, Thirteenth Amendment, Fourteenth Amendment, federalism, civil rights, racial segregation, Black Lives Matter, mass incarceration*

THE UNFINISHED FOUNDING

In the aftermath of the Civil War, the United States found itself grappling not only with the bloodiest conflict in its history but also with fundamental questions about citizenship, equality, and the meaning of freedom. The Reconstruction era became a crucial turning point: a moment when the nation tried to rebuild itself on the foundation of emancipation and to forge new paths for democracy and justice. Across the war-torn South, and under the wary gaze of the North, Americans confronted the tension between ambitious federal reforms and entrenched local resistance. That collision shaped everyday life through court battles, legislative debates, and violent struggles over civil and political rights, leaving patterns that extended far beyond the 1870s.

Generational wounds from slavery persisted in new forms: discriminatory laws, economic exploitation, and systems of forced labor that undermined Abraham Lincoln's promise of emancipation. The contest between federal and state authority over civil-rights enforcement embedded deep divisions within lawmaking and political culture, creating cycles of progress and backlash that echoed through the twentieth century. State and local courts, backed by hostile police and community leaders, often subverted constitutional protections, leaving Black citizens vulnerable and allowing racial hierarchies to endure under new names. Housing policies, transportation systems, and patterns of urban development later reinforced these barriers, fueling migration, deepening segregation, and generating new conflicts over belonging and power.

This paper asks how the political and racial conflicts of Reconstruction created long-term divisions and why those divisions still structure our politics. It argues that the failure to secure lasting protections for Black civil and political rights established patterns of (1) local resistance to federal civil-rights enforcement, (2) spatial control over where Black Americans could live and move, and (3) constitutional ambiguity about federal power. Each of these patterns reappears in later moments—in progressive-era vagrancy and convict-leasing regimes, in twentieth-century housing and transportation policy, and in twenty-first-century struggles over policing and Black Lives Matter. By tracing these continuities, the paper shows that today's conflicts over race, rights, and federal authority are not departures from an otherwise stable order, but the latest chapter in a struggle that began in Reconstruction.

LITERATURE REVIEW: RECONSTRUCTION'S LONG SHADOW

The literature surveyed in this essay establishes the long-term effects of Reconstruction-era conflicts on political and racial divisions in the United States. Nikole Hannah-Jones's (2021) *The 1619 Project: A New Origin Story* presents a collection of essays, poetry, and historical analyses that situate the institution of slavery and its aftermath as foundational to the development of American democracy, law, and culture. Hannah-Jones and her collaborators challenge the traditional narrative that locates the nation's origins in 1776 and treats slavery as a regrettable contradiction to otherwise democratic ideals, arguing instead that racial slavery was constitutive of those ideals from the start. By reframing American history through the experiences of Black Americans rather than through the lens of the British colonial founders, *The 1619 Project* illuminates how the consequences of slavery persist in modern society and how Black Americans have shaped, rather than merely been excluded from, the nation's democratic traditions. Of particular relevance, the "Traffic" essay explores the deliberate design of infrastructure

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projects to maintain segregation and advantage white communities while restricting the mobility, access, and opportunities available to Black Americans. This work reframes American history by tracing how economic and social inequalities are physically built into cities and neighborhoods, underscoring how discrimination extends beyond laws into the nation's very landscape.

Eric Foner's (2019) *The Second Founding* argues that the ratification of the Reconstruction Amendments constituted a revolution in American law and citizenship. Foner examines how these amendments abolished slavery, introduced birthright citizenship, and sought to guarantee voting rights, yet also describes how enduring loopholes, such as the Thirteenth Amendment's "except as punishment" clause, allowed for new systems of racialized exploitation, including convict leasing and economic disenfranchisement. By connecting the historical transformation of postwar America to the ongoing legal vulnerabilities of Black Americans, Foner's work highlights the limitations and unintended consequences of federal reform efforts. This focus resonates with journal articles from JSTOR and other academic databases, which build on these foundational texts by analyzing primary-source documents and historiography to show that the incomplete implementation of Reconstruction policies laid the groundwork for persistent polarization, legal contestation, and activism that still shape contemporary political struggles.

Douglas A. Blackmon's (2008) *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* extends Foner's account into the decades that followed Reconstruction's formal end. Drawing on county court records, federal investigations, and corporate archives, Blackmon documents how Southern states transformed the Thirteenth Amendment's punishment clause into the legal scaffolding for a sprawling system of convict leasing, debt peonage, and forced labor that bound hundreds of thousands of Black Americans to mines, plantations, and railroad crews well into the twentieth century. By treating this regime not as an aberration but as a sustained, second slavery, Blackmon reframes the period commonly described as the "nadir" of African American life as a coherent legal and economic order that depended on local sheriffs, judges, and industrialists working in concert. His work is especially useful for this paper because it makes visible the mechanisms, false vagrancy charges, sham contracts, and pay-or-serve fines, through which Reconstruction-era statutes were repurposed long after federal troops had withdrawn.

Kevin M. Kruse's (2019) reporting in *The 1619 Project's* "Traffic" essay, along with his broader work on Atlanta and the politics of suburbanization, brings this analysis forward into the built environment of the twentieth century. Kruse argues that the racial geography of American metropolitan areas, with predominantly Black urban cores ringed by predominantly white suburbs, was not the natural outcome of consumer preferences but the product of deliberate political choices: federally subsidized highway routes that demolished Black neighborhoods, zoning ordinances that walled off white suburbs, and transit fights that turned commuter rail into a referendum on integration. By centering Atlanta and the MARTA system, Kruse shows how the language of "local control" and "community protection" that had once justified resistance to Reconstruction was repurposed by mid-century suburban voters into a politics of infrastructural veto. His account supplies the spatial vocabulary this paper uses to connect Reconstruction-era controls on Black movement to twentieth-century highway routing and transit politics.

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Finally, Christopher J. Lebron's (2017) *The Making of Black Lives Matter: A Brief History of an Idea* situates the contemporary movement within a much longer tradition of Black political thought stretching from Frederick Douglass and Ida B. Wells through Anna Julia Cooper, Langston Hughes, James Baldwin, and Audre Lorde. Lebron argues that Black Lives Matter is best understood not as a sudden eruption but as the latest articulation of a recurring critique: that American claims to equal citizenship have repeatedly been undone by the gap between formal rights and on-the-ground treatment by police, courts, and local officials. His genealogy is valuable for this paper because it links the constitutional and spatial failures of Reconstruction to the moral and political vocabulary of present-day protest, making clear that twenty-first-century debates over policing are continuous with, rather than separate from, the unresolved arguments of the 1860s and 1870s.

Collectively, these sources provide tools for examining the ways Reconstruction-era conflicts continue to influence American society today.

SLAVERY IN ALL BUT ITS NAME

Reconstruction-era battles over federal and local authority to enforce civil rights established lasting divisions in American society. This section argues that the federal government's inability, and at times unwillingness, to assert sustained power over local courts and law enforcement allowed states to hollow out constitutional protections for African Americans and to rebuild systems of racial exploitation through vagrancy laws and penal labor. By reading federal constitutional language alongside postwar Black Codes and vagrancy statutes, we can see how authority over "order" and "crime" was delegated downward in ways that made local officials, rather than federal judges or legislators, the primary authors of freedom and unfreedom in everyday life.

Reconstruction-era struggles over federal and local authority are clearest when we put federal constitutional language in direct contrast with the words of the postwar vagrancy and Black Code statutes that local officials enforced. Beginning with Mississippi in November 1865 and South Carolina shortly after, nearly every former Confederate state enacted some form of Black Code by early 1866, each designed to restrict the labor, mobility, and legal standing of newly freed Black Americans. Mississippi's code, the first of its kind, required Black workers to present written proof of employment each January and allowed courts to fine and forcibly hire out those deemed vagrants. South Carolina prohibited Black residents from working outside agriculture or domestic service unless they paid a high annual tax, and it borrowed the language of "masters" and "servants" directly from the old slave codes, recasting freedpeople under labor contracts as servants and their employers as masters (National Constitution Center, n.d.). Alabama, Louisiana, Florida, Georgia, North Carolina, Texas, Tennessee, and Arkansas followed in succession, each adapting the same logic to local conditions: criminal law would serve as the vehicle for preserving the racial labor order that emancipation had nominally abolished. Virginia's Vagrancy Act of January 1866, then, was not an isolated experiment but part of this coordinated regional strategy. It opened by warning that "there hath lately been a great increase of idle and disorderly persons," and that without new controls the state "will be overrun with dissolute and abandoned characters," language that lawmakers used as a thinly veiled reference to newly freed Black Virginians (Tarter, 2020). The statute empowered local justices and overseers of the poor to arrest those deemed vagrants and then

"hire them out 'for any term not exceeding three months' and 'for the best wages that can be procured,'" with wages controlled by officials rather than the workers themselves, and demanded that anyone who ran away could be returned in "balls and chains" and compelled to work without pay (Tarter, 2020). As one contemporary critic, Judge R. L. Terry, observed, "the ultimate effect of the statute...will be to reduce the freedmen to a condition of servitude worse than that from which they have been emancipated, a condition which will be slavery in all but its name." Terry's words applied not only to Virginia but to the entire edifice of postwar Black Codes: across the South, local lawmakers were using criminal law to recreate the power relations of slavery under another name (Tarter, 2020).

Similar provisions in the Southern Black Codes indicate that this was not an isolated instance of abuse but a regional strategy. A summary of these codes notes that "all Southern Black Codes relied on vagrancy laws to pressure freedmen to sign labor contracts," and that under South Carolina's code, county sheriffs could "hire out black vagrants to a white employer to work off their punishment," while courts routinely waived such penalties for white vagrants who could simply "take an oath of poverty" (Constitutional Rights Foundation, n.d.). Mississippi's Black Codes defined as vagrants Black people who were unemployed or lacked "lawful employment," subjected them to fines, and specified that those who could not pay "would be forced into jail and hired out to any person who would pay the fine and all costs," again turning sheriffs and judges into labor brokers rather than neutral enforcers of peace (Punsalan-Teigen, 2021). This asymmetry, Black people bound out for hard labor while whites in similar circumstances were spared, shows that the point of the law was not public safety, but preserving a racial labor order. Local officials interpreted their authority through the lens of race, rather than the Reconstruction promise of equal citizenship.

The emergence of convict leasing in the 1870s across former Confederate states, especially in Alabama, Georgia, and Texas, makes the economic logic behind this legal architecture even more explicit. A contemporary description of the system recalled that arrests were often made by "professional crime hunters who were paid for each 'criminal' arrested," and that "companies and individuals paid leasing fees to state, county, and local governments in exchange for the labor of prisoners," turning conviction into a revenue stream for both sheriffs and state budgets (Library of Congress, 2021). The Equal Justice Initiative (2013) likewise documents that, until the 1930s, thousands of Black people were forced into convict leasing on Southern railways, mines, and plantations, producing the first period in U.S. history in which many state penal systems held more Black prisoners than white. Sociological work on the postbellum South emphasizes that sheriffs and white civilians had strong incentives to funnel Black defendants into the lease system, particularly in counties where African Americans had begun to acquire land or move into cities, and that the overwhelming majority of those leased were Black men convicted of property and other low-level offenses (Muller, 2018). Under such conditions, local courts and police did not merely fail to enforce federal rights; they actively inverted them, treating the Thirteenth Amendment's punishment clause as an authorization to extract labor. This demonstrated that the real power to define freedom or unfreedom rested in the everyday decisions of county officials rather than in the text.

Legal historians argue that this structure had deep implications for the emerging American state. Analyses of vagrancy and early policing, for example, show that the broad, preemptive powers to stop and arrest those deemed idle or out of place were closely tied to older slave-patrol practices and continued to be deployed against Black movement and labor long after Reconstruction formally ended (Goluboff,

2016). Economic histories of convict leasing in the postbellum South likewise stress that by the 1870s and 1880s, leasing had become a routine instrument of state punishment and a major source of public revenue, ensuring that sheriffs, local judges, and industrialists shared a material interest in maintaining a steady flow of Black prisoners (Muller, 2018). When these findings are read alongside the primary statutes, they support the argument that the problem was not simply the absence of federal willpower, but of a structural delegation of power. Federal law proclaimed universal freedom and equal protection, yet it entrusted implementation to local institutions whose financial incentives and racial assumptions pulled in the opposite direction, entrenching a pattern of local resistance to civil-rights enforcement that continues to shape American political conflict.

Analysis of these practices, highlighted in both *Slavery by Another Name* (Blackmon, 2008) and related scholarship, shows that local and state actors systematically subverted the intent of federal civil rights reforms. Legal and extralegal mechanisms, arbitrary arrests, convict leasing, and police harassment produced a new form of racial slavery and economic exploitation that outlived formal emancipation. By granting local courts such broad discretion, federal institutions failed to resolve the contest over which authority prevailed, worsening distrust in civil rights enforcement and feeding wider political polarization within American law and politics.

THE SPATIAL AFTERLIFE OF RECONSTRUCTION

Reconstruction of freedom for African Americans was not only at odds with local courts and lawmen; it also collided with local control over space. White policymakers recognized that the conditions of freedom could be determined by restricting where Black people were allowed to live, labor, and move. Black Codes prevented Black residents from renting or occupying residences in certain localities and banned their presence in public places after dark, making clear that freedom could be hollowed out through geography as well as through labor. In the decades after formal Reconstruction ended, these spatial controls did not disappear; they were adapted into Jim Crow ordinances, racial zoning, and residential segregation schemes that dictated where Black southerners could reside and how they could travel, even as millions left the South during the Great Migration. At the same time, a related but distinct mechanism emerged: Progressive-era officials and businessmen learned to tie spatial control to carceral labor, extending convict leasing and chain gangs onto road construction and other public works. Where zoning and segregation determined who belonged in a given place, convict leasing determined who would build the infrastructure that enforced those boundaries. The two systems operated in tandem: one confined Black Americans to certain spaces, and the other extracted their labor to construct the spaces they were excluded from. Together, they show that the same local authorities who had once used vagrancy laws to control freedpeople now used planning boards, police, and public works to decide who could occupy land and whose movement could be constrained.

The 1619 Project's focus on infrastructure, particularly in the chapter titled "Traffic," shows that this spatial logic was scaled up through highways and metropolitan planning in the mid-twentieth century. Historian Kevin Kruse notes that in cities across the country, major roads and interstates became "stark dividing lines between black and white sections" as local officials routed federally funded highways through Black neighborhoods and along racial boundaries, transforming earlier practices of exclusion into concrete barriers (Kruse, 2019). In Atlanta, Interstate 20 was "deliberately plotted along a winding route

in the late 1950s” to serve, in Mayor William Hartsfield’s words, as “the boundary between the white and Negro communities” on the west side of town, literally cementing a color line into concrete and echoing the older impulse to keep Black residents physically separate from white communities (Kruse, 2019). These choices were not accidental byproducts of traffic engineering; they extended the Reconstruction-era practice of using local authority to cabin Black life into a new medium. Instead of vagrancy prosecutions keeping freedpeople tied to plantations, highway projects removed Black homeowners, destroyed tax bases, and walled off Black neighborhoods from white suburbs, locking racial hierarchy into the everyday geography of commuting, schooling, and housing wealth.

Suburban battles over mass transit reveal how this built landscape fed directly into the kind of regional polarization this paper tracks. When Atlanta sought to build the MARTA system, white suburban counties repeatedly voted it down by wide margins, determined to keep rail lines from linking the Black, urban core to their rapidly growing communities. Kruse recounts that Cobb, Gwinnett, and Clayton Counties rejected joining MARTA in the 1960s and 1970s, and even MARTA’s own white chairman later acknowledged that opposition to the system had been overwhelmingly driven by race, while opponents joked that the system’s acronym stood for “Moving Africans Rapidly Through Atlanta” (Saunders, 2012). Those decisions hardened a metropolitan pattern in which Black residents relied heavily on underfunded transit while white residents commuted by car from suburbs politically hostile to shared systems and regional redistribution, turning everyday commutes into a fault line of political identity. In effect, suburban voters and officials repurposed the old language of “local control” and “community protection” that had animated resistance to Reconstruction into a new context, using infrastructural veto power to preserve racial and economic separation and to cast any push for integrated transit or fair-housing enforcement as intrusive federal overreach.

Read alongside these later transportation developments, Black Codes’ early restrictions on movement and residence, Progressive-era convict leasing and public-works regimes, mid-century highway routing, and suburban anti-transit campaigns trace a continuous pattern: local and regional actors repeatedly use control over space to manage Black freedom and to resist broader egalitarian reforms. Rather than treating modern segregation and traffic patterns as purely technocratic or coincidental, this section contends that they are the spatial afterlife of Reconstruction’s unresolved conflicts, in which local authorities learned to translate racial hierarchy into roads, rails, and zoning maps. The physical separation of Black urban cores and predominantly white suburbs reinforces distinct experiences of policing, public services, and economic opportunity, which in turn map onto partisan identities and attitudes toward federal power. By linking Reconstruction-era experiments in spatial control to Progressive-era carceral labor, New Deal-era and postwar infrastructure building, and the highways and transit fights of the twentieth century, this section shows that the geography of contemporary polarization is not a new problem but a later chapter in the same struggle over who gets to define the boundaries of citizenship and belonging in the United States.

Yet the persistence of these spatial regimes raises a deeper question: how could vagrancy prosecutions, convict leasing, racial zoning, and discriminatory highway routing all survive in a constitutional order that, on paper, had abolished slavery and promised equal protection of the laws? The answer lies not only in the determination of local officials but in the legal architecture they inherited. The Reconstruction Amendments were supposed to make the federal government the guarantor of Black

freedom against precisely the kind of state and local abuses traced above. Whether that promise was honored, or instead reinterpreted into something far narrower, is the subject of the next section.

CONSTITUTIONAL REVOLUTION AND ITS CONTRADICTIONS

The preceding sections have shown how local officials used criminal law to rebuild racial exploitation after emancipation and how control over space became a tool for confining Black freedom. Both patterns depended on a third condition: constitutional ambiguity about whether the federal government could, or would, override the state and local authorities carrying out these abuses. The Reconstruction Amendments were designed to resolve that ambiguity. The Thirteenth Amendment abolished slavery and involuntary servitude, removing the legal foundation on which the entire system of racial labor had rested. The Fourteenth went further: by establishing birthright citizenship and guaranteeing "equal protection of the laws," it redefined who counted as an American and, for the first time, placed the federal government in the position of enforcing individual rights against state governments that violated them. The Fifteenth completed the triad by prohibiting race-based disfranchisement, making it unconstitutional for states to exclude Black men from the ballot. Taken together, the three amendments did something unprecedented in American law: they shifted the burden of protecting civil rights from states to the nation. During Reconstruction, the new constitutional amendments fundamentally altered the relationship between individual citizens and the federal government, creating a postwar order that departed sharply from the antebellum balance of power (Foner, 2019). In Foner's view, these measures amounted to the nation's first serious, though imperfect, effort to construct a more egalitarian society out of the ruins of slavery (Foner, 2019). By ending each amendment with a clause authorizing Congress to enforce its terms through appropriate legislation, the framers signaled a major shift in authority from the states to the national government and recast the federal state as a central guardian of freedom rather than merely a threat to liberty (Foner, 2019). In principle, then, the federal government now possessed the authority to override the local regimes that had used vagrancy laws to extract Black labor and zoning power to restrict Black movement. The question was whether that authority would be exercised, and on this point, the constitutional text left far more room for retreat than its framers intended.

Yet the Thirteenth Amendment contained a crucial weakness: its allowance of involuntary servitude "as a punishment for crime whereof the party shall have been duly convicted" provided an opening for former slaveholders and state officials to translate slavery into a penal system. As legal historians have shown, southern elites quickly advanced the interpretation that once a person had been convicted of a crime, state legislatures and officials could effectively re-enslave them through long-term penal labor or sale into leasing contracts, a reading contemporary Republicans originally rejected but which soon prevailed in practice (Foner, 2019). This punishment clause did not simply sit dormant; it actively encouraged states to recast racial domination as criminal justice, channeling the labor of Black people through arrests, fines, and leasing contracts instead of bills of sale. The vagrancy statutes and leasing schemes discussed earlier thus become legible as constitutional improvisations: local officials learned to package coercion and extraction as lawful punishment, allowing them to claim fidelity to the new constitutional order while preserving much of slavery's economic and social function.

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The Fourteenth and Fifteenth Amendments were similarly blunted in the transition from text to implementation. In decisions like the *Slaughter-House Cases* (1873) and *United States v. Cruikshank* (1876), the Supreme Court adopted narrow interpretations that sharply limited the reach of federal power. *Slaughter-House* effectively hollowed out the Privileges or Immunities Clause by treating it as protecting only a small set of national rights, leaving most civil rights under state control and denying Congress the broad enforcement authority envisioned by figures such as Representative John Bingham. In *Cruikshank*, the Court held that the Fourteenth Amendment restricted only state action, not private violence, and that victims of the Colfax Massacre and similar attacks must seek protection from state courts, even when those courts systematically refused to punish white perpetrators. These rulings signaled that federal protection would be exceptional and tightly confined. At the same time, the political compromise that ended Reconstruction in 1877, including the withdrawal of federal troops from the South, made clear that national leaders would not sustain costly, long-term enforcement of Black rights against entrenched local resistance. The combination of narrow doctrine and political retreat effectively returned most questions of racial order to the very state and local authorities the amendments were supposed to restrain.

This constitutional settlement had two far-reaching consequences that still shape American politics. First, by routing racial control through criminal law and then limiting federal oversight, it normalized a legal order in which grossly unequal treatment could be defended as race-neutral enforcement of “law and order.” Practices such as convict leasing, chain gangs, and later disfranchisement for criminal convictions could be portrayed as simple responses to crime, even when they overwhelmingly targeted Black communities and reproduced the economic and civic exclusions of slavery and Black Codes. Second, by insisting that most civil-rights questions belonged to the states unless explicit racial classification or state action could be shown, the Court reinforced a vision of federalism in which robust national civil-rights enforcement appeared radical and illegitimate. That vision, forged in the 1870s, still underlies contemporary disputes over voting rights, federal oversight of local policing, and the scope of equal protection: when activists demand federal intervention, opponents invoke the same language of “states’ rights” and “local control” that triumphed in the post-Reconstruction Court.

Seen in this way, the Reconstruction Amendments do not simply form a heroic backdrop to later civil-rights struggles; they are also part of the problem those movements confront. Foner emphasizes their emancipatory potential and the ways subsequent generations have creatively used them, arguing that the civil-rights era “did not need a new Constitution; it needed the existing one enforced.” This essay builds on that insight but stresses the other side of the story: the same amendments, as interpreted and enforced, helped entrench a system in which racial inequality could endure behind ostensibly neutral doctrines of crime, federalism, and private choice. That system links the neo-slavery of convict leasing to twentieth-century “law and order” politics and to present-day controversies over mass incarceration and police violence. In turning now to modern movements such as Black Lives Matter, this analysis shows that contemporary activists are not simply invoking Reconstruction as a moral reference point; they are grappling with the unresolved constitutional design choices and enforcement failures that have structured the terrain of American racial politics since the 1860s.

RECONSTRUCTION'S UNFINISHED WORK: BLACK LIVES MATTER AND THE PERSISTENCE OF STRUCTURAL RACISM

Black Lives Matter emerged in the early 2010s as a response to highly publicized police killings and the broader criminalization of Black life, but the movement's intellectual roots lie in a much longer tradition of Black critique of state violence and racial hierarchy. As Christopher Lebron (2017) argues in *The Making of Black Lives Matter: A Brief History of an Idea*, the modern movement builds on earlier thinkers and activists who exposed how claims of Black "criminality" have repeatedly been used to justify racial violence and legal exclusion, from lynching to mass incarceration. That framing directly echoes Reconstruction-era practices: then, as now, allegations of disorder and crime functioned as tools for managing Black mobility and disciplining demands for full citizenship. When protesters chant that "Black lives matter," they are therefore not simply condemning isolated incidents of police brutality; they are challenging a much older legal and political order that has long treated Black lives as conditional, disposable, or expendable in the name of "order" and "public safety."

The movement's focus on policing reveals how deeply Reconstruction's unresolved conflicts over local control and federal enforcement still structure American life. Studies of policing in Ferguson and Baltimore show departments using pre-emptive powers, stopping, citing, and arresting residents for low-level "quality of life" offenses, to clear corners, generate revenue, and assert control over heavily Black neighborhoods, often without any underlying criminal activity. A Department of Justice investigation into the Baltimore Police Department, for instance, documented how supervisors pressured officers to increase arrests and "clear corners" for offenses such as loitering, trespassing, and failure to obey, even when officers "did not observe criminal activity," relying on broad discretion, much like the vagrancy and disorderly-conduct laws of the post-Emancipation era (U.S. Department of Justice, 2016). Black Lives Matter activists interpret these practices not as isolated abuses but as contemporary versions of a familiar pattern: local authorities using criminal law and street-level discretion to police Black presence and protest, while invoking legal neutrality and states' rights to shield themselves from sustained federal oversight. In this sense, the movement's demands for structural change, ending broken-windows policing, demilitarizing departments, and redirecting resources toward social services, amount to a direct challenge to the carceral version of "public order" that grew out of Reconstruction's punishment clause and weak equal-protection enforcement.

At the same time, the federal government's uneven response to BLM protests repeats the ambivalent stance it adopted during Reconstruction. During the Obama administration, the Department of Justice used its authority under 42 U.S.C. § 14141, a provision of the 1994 Crime Bill that empowers the attorney general to investigate law enforcement agencies engaged in a "pattern or practice" of conduct that violates constitutional rights. Unlike prosecutions of individual officers, these investigations target the department itself, examining whether its policies, training, and culture produce systemic misconduct. The Obama-era DOJ opened 24 such investigations and negotiated consent decrees with police departments in cities such as Ferguson, Baltimore, and Cleveland, using the Reconstruction Amendments and civil rights statutes as the legal basis for federal oversight. These agreements imposed independent monitors, required changes to use-of-force policies and training, and framed constitutional policing as a national obligation. Yet subsequent administrations sharply curtailed the use of consent decrees and criticized them as illegitimate constraints on local law enforcement, echoing nineteenth-century

complaints that federal civil-rights enforcement represented a partisan intrusion into state affairs. Under the first Trump administration, the DOJ opened just one pattern-or-practice investigation and entered no new consent decrees (Wamsley, 2017). This back-and-forth underscores that the same constitutional tools created in Reconstruction remain contested today: whether and how Washington should intervene when local authorities violate Black citizens' rights is still a central fault line of partisan conflict.

Black Lives Matter has transformed the politics of historical memory in ways that bring Reconstruction's unresolved questions into sharper focus. Activists have targeted Confederate monuments, campaigned for changes to school curricula, and engaged with the 1619 Project to argue that slavery, Jim Crow, and racialized policing are not peripheral to American history but central to understanding contemporary institutions. These efforts confront dominant narratives that portray racism as a series of past "aberrations" corrected by the Civil Rights Movement, insisting instead on a thorough line that runs from slave patrols and Black Codes to stop-and-frisk and militarized SWAT teams. By connecting police violence to segregation, housing policy, and economic inequality, BLM pushes public debate toward the same insight this essay advances: that today's conflicts over policing, voting rights, and belonging are not departures from an otherwise settled constitutional order but the latest manifestations of compromises and power struggles that date back to Reconstruction. In doing so, the movement both depends on and extends the Reconstruction Amendments' promise, invoking their language of equal protection and due process, while exposing how far practice still falls short of that promise and how much of Reconstruction's work remains unfinished.

THE WORK WE HAVE YET TO DO

This paper has traced a persistent structure through more than a century and a half of American political life. During Reconstruction, the federal government failed to resolve the contest between national civil-rights authority and local resistance. That failure created patterns of carceral control, spatial exclusion, and constitutional ambiguity that did not fade with the end of the nineteenth century but adapted into new institutions and new definitions of power. Vagrancy statutes gave way to convict leasing; Black Codes gave way to racial zoning and highway routing; the narrow judicial readings of the Reconstruction Amendments gave way to a broader federalism in which "states' rights" and "local control" could be invoked to shield racial hierarchy from national accountability. When Black Lives Matter activists challenge broken-windows policing and demand federal oversight of local departments, they are not confronting a new problem; they are confronting the latest chapter of the same unresolved struggle over who gets to define freedom and for whom.

This argument has limitations, however. The evidence is concentrated in the South, Virginia, Mississippi, Alabama, Atlanta, and does not fully account for the parallel mechanisms of racial exclusion that developed in Northern and Western cities, from redlining in Chicago to restrictive covenants in postwar suburbs. The interwar period, including the Great Migration and the NAACP's early legal strategy, receives less attention than it deserves. By focusing on structures of oppression, this paper necessarily gives less space to the equally vital history of Black resistance, institution-building, and political creativity that responded to those structures at every stage. The story of Reconstruction's legacy is not only one of domination but also one of persistent, imaginative refusal, and a fuller account would reflect that.

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Yet the central insight stands, and it matters because it reframes the terms of contemporary debate. If police violence, residential segregation, and the uneven reach of federal civil-rights enforcement are treated as irrelevant modern problems, then piecemeal reforms appear sufficient. But if they are understood as the surface expressions of an idea that has been reproducing itself since the 1860s, then the scale of the response must match the depth of the problem. As Foner argues, the nation "did not need a new Constitution; it needed the existing one enforced." The question that remains open, as it was in 1868, is whether the political will exists to enforce it against entrenched local resistance, or whether each generation will arrive at that recognition and fail, again, to act on it.

I come to these questions as a student trying to make sense of the country I am inheriting. Reading the Virginia Vagrancy Act of 1866 alongside a Department of Justice report on the Baltimore Police Department, separated by a century and a half, I am struck less by how much has changed than by how precisely the language of "order" and "discretion" has traveled across institutions that look nothing alike on the surface but operate by the same logic underneath. This paper has been an exercise in learning to see that continuity, not as grounds for despair but as a precondition for the kind of truth that reform requires. The work of Reconstruction, it turns out, is not behind us. It is the work we have yet to do.

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