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The Civil Rights Act of 1875: A failure reconsidered

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THE CIVIL RIGHTS ACT OF 1875: A FAILURE RECONSIDERED

A Thesis
Presented to the
Department of History
and the
Faculty of the Graduate College
University of Nebraska at Omaha

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Barbara N. Luckett
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Date

November 15, 1972
PREFACE

The years since the Civil War have witnessed vigorous efforts, not always successful, on the part of black and white Americans to elevate substantially the position of the black American in society. The Civil Rights Act of 1964 was the most dramatic and significant legislation, on a national level, which attacked segregation and discrimination, but it was not the first of its kind. The Civil Rights Act passed in 1964 contained many of the same provisions that had been enacted, or proposed but deleted, in a similar Civil Rights Act in 1875. On the whole, in its impact and enforcement, the Act of 1875 was a failure.

The purpose of this study has been to take a closer and more detailed look at those events which surrounded the introduction, the debates and the final results of the Civil Rights Act of 1875. Little has been written on the subject of this act. Many of the standard general histories in their treatment of the Reconstruction era, simply refer to this act. The task of the historian in re-examining and evaluating developments that have taken place abounds in difficulties, but it seems, nonetheless, worthwhile to take cognizance of many of the neglected, but significant and positive effects of this legislation.

I have sought to interpret critically the forces and personalities that shaped the form of the Civil Rights Act in 1875. To be sure, there were times when dominant personalities forged to the front and assumed roles of responsibility and leadership; these individuals have been recognized. The role and influence of Charles Sumner in bringing about
this act is tremendous, and deserves more attention and credit as being one of the early civil rights leaders. The part played by black Congressmen in their support of this legislation placed their names permanently on the list of American statesmen. They spoke in 1875, but those same sounds were heard again in 1964.

This study was an attempt to focus attention upon the Civil Rights Act of 1875 as a very meaningful and important part of Reconstruction and the entire black effort to obtain equal rights. This act should be considered among the earliest efforts of legislators to wipe out and destroy social injustices. It is a well-known fact that it was not until 1964, nearly a century later, that those rights proposed in the Act of 1875, were secured for black Americans. It is my contention that if the Civil Rights Act of 1875 had been effective and enforced, there would have been no need for an act in 1964 to enforce those very same provisions.
AKNOWLEDGEMENT

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CHAPTER I

A CHAMPION OF EQUAL RIGHTS

On May 13, 1870, the Honorable Charles Sumner of Massachusetts arose from his seat in the United States Senate, asked and obtained permission to introduce a bill supplementary to an act entitled "An act to protect all persons in the United States in their civil rights and to furnish the means of their vindication," passed April 9, 1866. This bill proposed to secure equal rights on railroads, steamboats, in public conveyances, hotels, licensed theatres, houses of public entertainment, common schools, and institutions of learning authorized by law, church institutions, and national cemetery associations incorporated by national or State authority, and on juries in courts national or State.

Sumner moved reference of the bill to the Committee on the Judiciary, and he added "that when this bill shall become law, as I hope it will soon, I know nothing further to be done in the way of legislation for the security of equal rights." The bill was then moved to be printed and sent to the Committee on the Judiciary. The motion passed.

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1 U.S. Congressional Globe, 41st Cong., 2d Sess., 1870, XLII, part IV, 3434.

2 Ibid. For the text of the act in the final form, see U.S. Statutes at Large, 43d Cong., 2d Sess., XVIII, 336-37.


4 Ibid.
Preceded by a Civil Rights Act of 1866, Sumner's Civil Rights Bill, as it was called, was apparently comprehensive in the realm of securing equal rights for all citizens.

It was during the period of Reconstruction, as it is most commonly called, that Congress first acted to secure to blacks equal rights before the law. Three problems of unusual importance confronted Congress: the status of the eleven Confederate States; the status of the leaders of the Confederacy; and the status of the several millions of freedmen and other black Americans.

In their attempts to deal effectively with these problems, the Thirty-ninth and Fortieth Congresses adopted a certain reconstruction policy. It provided means for the formerly rebellious States to be readmitted to the Union, it imposed political disabilities upon many former Confederates and it bestowed citizenship and suffrage upon the freedmen. In its program, the Radical Congress, as it is called, sought to force a

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social revolution in the status of the Southern black; to impose punitive measures upon ex-Confederates; to secure control of Reconstruction for Congress; and to build a Southern Radical party organization which would help assure Republicans a nation-wide political ascendency.

Congress took a definite course of action to secure political rights for blacks. Because slavery was imbedded in the Constitution of the United States, a constitutional amendment was necessary to emancipate them from slavery. The Senate adopted the proposed Thirteenth Amendment on April 8, 1864, but it was not until January 31, 1865 that the House could assemble the required two-thirds vote needed to pass the bill. The Thirteenth Amendment was deficient however, in that it did not grant citizenship to freedmen. The Fourteenth Amendment was necessary to accomplish this. The Fourteenth Amendment defined citizenship in such a manner that all former slaves were qualified as citizens of the United States.

The newly elected Southern Legislatures assumed in legal error that Reconstruction had been complete when constitutions had been altered and oaths of loyalty taken. After State and local machinery was again established, the legislatures moved to restore social and economic

6"The motives of Congressmen doubtless were mixed, but in a period of national crisis when the issue of equality was basic to political contention, it is just possible that party advantage was subordinated to principle," McPherson, The Struggle for Equality, 238-39. For details on the Radical Congressional Plan see Alfred H. Kelly and Winfred A. Harbison, The American Constitution: Its Origin and Development (New York: W. W. Norton and Company, Inc., 1970), 454-65 and 468-99.

7Kelly and Harbison, 436, 457, and 459-62.
conditions as they were before the Civil War. The States accepted the Thirteenth Amendment with minimum complaints, but they expected no further action on the part of the federal government. They assumed that the regulation of the freedmen would be left to the individual States; and clearly, most of them "intended to replace slavery with their own caste system," and thereby keep blacks under white rule. To implement this, the several legislatures instituted the Black Codes. The "Black Code of Mississippi, 1865" is a striking example. The Black Codes and numerous other evidences of Southern white efforts to deny to blacks their civil rights, prompted even the moderate Republicans to believe that certain congressional legislation was needed to guarantee black Americans their civil rights.

In early January, 1866, Radical Congressmen began formulating their own reconstruction program. Many Congressmen were determined to establish a "legal revolution" in the status of blacks which would guarantee both full citizenship and the right to vote to the freedmen.

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9 Stamp and Litwack, Reconstruction, 13.


11 Craven, 122; Kelly and Harbison, 458, and McPherson, 332, 341.

12 Kelly and Harbison, 458.
In February, Congress passed the Freedmen's Bureau Bill, which placed black civil rights in the Southern States under federal military protection. A serious constitutional debate, over the provisions of this bill, took place in both houses of Congress. Opposition to the bill centered primarily on the argument that control of civil rights was not one of the specified or implied powers of Congress and therefore, this right was exclusively limited to the administration of the States. Others insisted that the Thirteenth Amendment, which gave Congress the power to enforce its provisions by appropriate legislation, provided Congress with the power to legislate to protect civil rights.\textsuperscript{13} This was the first step in the evolution of the Fourteenth Amendment.

Lyman Trumbull of Illinois introduced in the Senate on January 5, 1866 a bill "to protect all persons in the United States in their civil rights and furnish the means of their vindication," and it was referred to the Committee on the Judiciary. The necessity for this legislation was abundantly clear in the debates in Congress.\textsuperscript{14} The bill, however, encountered serious opposition in Congress, not merely from Democrats, but also from Republicans who opposed it on the ground that the Constitution did not authorize it.\textsuperscript{15} Amendments reported to the Committee on the Judiciary were agreed to on January 12th. On February 1st, an amendment submitted by Senator Trumbull, regarding the citizenship of persons born in the United States, being the first part of

\textsuperscript{13} Ibid., 495.

\textsuperscript{14} Cong. Globe, 39th Cong., 1st Sess., XXXVI, 1151-1833.

\textsuperscript{15} Ibid., 1266-91.
Section I of the act, was agreed to by a vote of 31 to 10. But the following day, an amendment striking out the provision for the employment of military enforcement was rejected. The bill passed the Senate on February 2nd, and the House, with further amendments, passed it on March 13th. The Senate agreed to the House amendments. On March 27th, President Johnson vetoed the bill; but after a long discussion, the bill was passed, over his veto, in the Senate on April 6th, and in the House on April 9th. 16

The passage of this act conferred citizenship on all persons born in the United States and secured them in the right to make and enforce contracts, to appear in courts and to inherit, purchase, and sell property. Blacks were to have the full and equal benefits of all laws for the security of person and property.

The Joint Committee of Congress on Reconstruction, meeting in closed hearings beginning in December of 1865, had heard much of Southern disloyalty, of the mistreatment of blacks and of the necessity of retaining troops in the Southern States. 17

16 For the text of the act see U.S. Statutes at Large, XIV, 27-29, and William MacDonald, Selected Statutes of U.S. History: 1881-1898 (New York: The Macmillan Company, 1903), 219. For the proceedings and the veto message see the House and Senate Journals, 39th Cong., 1st Sess., and the Cong. Globe, 39th Cong., 1st Sess. For the text of the Senate bill, as reported by the Committee, see Cong. Globe, 39th Cong. 1st Sess., XXXVI.

17 Craven, 156-59. The hearings, he states, were "aimed at carrying out the radical purpose of killing time until the nation was ready to accept a congressional plan of reconstruction. . . . The procedure used with most of the witnesses was to ask specific questions . . . so as to draw out the answer desired," 156 and 157. However reports made to Congress indicate the necessity for federal action, see Cong. Globe, 39th Cong., 1st Sess., XXXVI, 867-85; also see Franklin, Reconstruction, 57-59.
settled were becoming quite clear. They had been revealed in the debates on the Freedmen's Bureau Bill, more clearly in the Civil Rights Bill debates, in the President's veto messages, and by States which in effect, refused to accept black enfranchisement and the Fourteenth Amendment. Some decision had to be made regarding the rights of blacks, Southern representation and the disenfranchisement of Confederate leaders. Congressional members were more aware of the need for additional legislation to solve these questions.

The Fourteenth Amendment sought to settle the matter of equal rights for blacks. It conferred upon them citizenship and through those vague and elastic terms, "privileges and immunities," it gave federal protection. With this and the equal protection of the law clause, which no State could deny to any person, equal rights became part of the law of the land. The amendment represented a demand on the part of the North for an end to reconstruction, and at the same time, it represented an unrelenting "determination to make the Negro's rights secure."

This amendment, however, was not the final answer. It was vague in meaning and intent and its ultimate value depended on decisions that future courts handed down. As far as blacks were concerned, in the

\[18\] Kelly and Harbison, 66-67.

\[19\] Craven, 167.

\[20\] Ibid., 177 and 179; also McPherson, 364-65.

\[21\] As it turned out, in the years immediately following the Fourteenth Amendment, which was framed to serve and protect blacks, was primarily used to protect business organizations from state regulations, Ibid., 179-80 and Kelly and Harbison, 495-99.
days ahead, the courts upheld the existence of two kinds of citizenship, in which "State-citizenship" was matter for the States themselves to handle, and this meant that the blacks had to look to the State for their protection. The Supreme Court, in a long series of decisions, greatly reduced the significance of the Fourteenth and Fifteenth Amendments as safeguards of the rights of black Americans.

Under a Civil Rights Act passed in 1870, a long series of enumerated offenses of misdoings, violence, intimidation and fraud, with even the intention of denying equal rights to any citizen of the United States, were made crimes and misdemeanors, and were brought under the jurisdiction of the federal courts.

In an effort to further secure by statutes equality before the law for all citizens, Congress, on February 28, 1871, approved a Civil Rights Act designed to enforce the rights of citizens to vote. On April 20, 1871, a Civil Rights Act to enforce the provisions of the Fourteenth Amendment was passed to implement that part of the amendment which provided for the protection of the civil rights of all persons.

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22 Ibid., 495

23 Ibid., 495-96. The Fifteenth Amendment, passed March 30, 1870, intended to secure for blacks the right to vote, Ibid., 473.

24 The act was further supplemented by a provision of the civil appropriation bill of June 10, 1872, MacDonald, Selected Statutes, 249; for the text of the act see U.S. Statutes at Large, XVI, 433-40; for the proceedings see the House and Senate Journals, and the Cong. Globe, 11st Cong., 3d Session.


On the assumption that the white State governments in the South were unwilling, and black governments were unable to secure equal rights for blacks, Congress inaugurated the policy of what is commonly known as the "Force Acts." The primary aim was the protection of the right to vote, but ultimately the purely "civil rights," and even the "so-called social rights," were included in these Acts.

The Force Bills appeared as a Supplementary Act to Enforce the Fifteenth Amendment to the Constitution. It was introduced by John C. Churchill of New York on January 9, 1871, and it was referred to the Committee on the Judiciary. On February 15th, the House voted on the bill, in its final form, and passed it. The Senate passed it without Amendment.

The Supreme Court, however, in major decisions failed to uphold the chief objectives of the Radical Reconstruction Government, namely the security of equal rights for all before the law. The matter was then left to the individual States to enforce, and in most cases, the States would not and did not, enforce equal rights for all.


28 Ibid., and Editorial, The Nation, X (May 5, 1870), 279-80. See also "The Desperadoes and the Habeaus Corpus," The Nation, XX (February, 18, 1875), 108-109, it called the Enforcement Acts "comic."

29 Current, Reconstruction, 137.

30 The first big step came in 1876 in United States v. Cruikshank, when the Court decided that the Fourteenth Amendment did not place ordinary private rights under federal protection except as against state interference. In the Civil Rights Cases of 1883 the Court declared void the Civil Rights Act of 1875. The court's ruling in Plessy v. Ferguson (1896) is further evidence. For additional cases and the rulings, see Kelly and Harbison, 495-97.
CHAPTER II

THE CONGRESSIONAL PLIGHT

The Reconstruction Era witnessed a comprehensive campaign to secure equal rights for all men. The question of the status and role of blacks in society became a national problem. Emancipation had added millions of free blacks to the approximate 488,000 of black persons already free in 1865. The legal status and caste position of these blacks became the subject of extended Congressional attention.

It was becoming quite clear that action was needed on the part of the national government to combat existing conditions. Blacks and others throughout the nation, began to demand action that would secure equality for all before the law.

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1 Franklin, From Slavery to Freedom, 217. This number more accurately describes the total of free blacks in 1860. Franklin, however, maintains that it is difficult to access the exact total of free blacks in 1865, see 214-21.

2 For more details on black roles and demands during Reconstruction, see Alrutheus A. Taylor, "Historians of Reconstruction," Journal of Negro History, XXIII (January, 1938), 16-34. He states that "from the point of view of the American Negro, the Reconstruction was, perhaps, the most critical period in the history of the United States. The freedmen, turned loose to play a new role in this country, passed through a readjustment brought about by forces of far-reaching influence . . ." See also, James McPherson, "Abolitionists and the Civil Rights Act of 1875," The Journal of American History, LII (December, 1965), 493-510; and W. E. B. DuBois, Black Reconstruction (New York: Russel & Russel, 1962).
It was upon the Thirty-ninth and Fortieth Congresses that attention was focused. The victorious Radical Republicans in Congress included numerous idealistic Congressmen who were intent upon fashioning a new and casteless society.

In any examination of the Radical Reconstruction drive in Congress, for equal rights for all men before the law, one man in particular stands out as a leader. The initial force and the continuation of this drive was due largely to the efforts of Senator Charles Sumner of Massachusetts. He was the one senator to whom advocates of equal rights looked for the expression and promotion of their views. Very early in his career, long before federal emancipation of the slaves, Sumner took upon himself the huge task of securing rights for blacks. His efforts were to culminate in the enactment of the Civil Rights Act of 1875.

What motives inspired Sumner to continuously fight for equal rights for blacks, when other members of Congress, at first, were so very reluctant to listen to him? Was he the only Senator in Congress so valiantly dedicated to the idea of securing equality for blacks? Why did the Senate hesitate to actively support such legislation? Why did the bill eventually pass in 1875?

Sumner's leadership of the Radical Congressional crusade against

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3 E. L. Pierce, Memoires and Letters of Charlie Sumner, Vol. III (Boston: Roberts Brothers, 1893), 94.
inequality has been the subject of discussion for many historians. He is referred to as an "idealistic champion of Negro rights." One prominent writer, Avery O. Craven, says of him:

... Sumner was a man who dealt primarily in abstractions. ... He seldom saw things as they were, but only as he thought they ought to be. The practical results of what he advocated never bothered him. He showed no regard for the consequences of what he said... But Sumner... could supply the most essential elements: emotion and high-sounding morality.

Craven goes further to say that Sumner was

... always in a position to plead the Negro's cause and to raise the cry when his interests seemed to be in danger. ... he dealt in suspicion and hatred, two essentials for drastic reconstruction steps...

Sumner was, for the most part, unable to control an effective majority of his Republican colleagues on any decisive vote. He had a number of faithful supporters in the Senate, among them, Henry Wilson of Massachusetts, Richard Yates of Illinois, Samuel Pomery of Kansas, George Edmunds of Vermont, John Sherman of Ohio, and Levi P. Morton of Indiana. In the House, George F. Hoar and Ebenezer Hoar were consistently loyal to the cause. Though Sumner had their support on most

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5 Kelly and Harbison, L55.

6 Craven, Reconstruction, 139.

7 Ibid., 141.
occasions, they generally permitted him to lead the way. It is significant to note here that the only occasions in which the Senator found his quest for equal rights popular enough to command effective support in either the House or the Senate, was when it happened to "coincide with the momentary tactical or strategic interests of the Republican Party."

Summer's friends might have assumed too much credit for him in his involvement in Reconstruction legislation which dealt with equal rights for blacks. But, at any rate, his determined fight in behalf of black equality would seem to place him among the greatest leaders of the civil rights movement. One indication of this is the fact that the black American, almost a century later, could not enjoy many of those basic rights which Summer advocated in his civil rights legislation of 1875. And even as late as 1964, blacks were still striving to secure by statute, a law that would guarantee them their long-denied equal rights.

Summer believed that social and political equality for blacks was paramount. To him, blacks must have equal rights with all men to

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9 According to Kelly, "this was the case both in the protracted Congressional fight over southern amnesty in 1872 and during the partisan maneuvering incident to the passage of the Civil Rights Act of 1875," Ibid.

participate in self government. This," he asserted, "is the great guarantee without which all other guarantees will fail. This is the one solution to our present troubles and anxieties ... Sumner felt that Congress should have the power to ensure social and political rights.

He seemed to have made the fight for equal rights the dominant purpose of his political career. As early as 1849, he appeared as counsel for blacks in Boston who protested against their children being sent to separate schools in the city. Sumner argued at length before the State Supreme Court that the school committee of the city of Boston, had no legal power to exclude black children from any of the schools. He argued that such an arrangement was "contrary to the basic principle of equality before the law," and that such was the basis of "our republican polity." Summer observed that "every form of inequality and discrimination in civil and political institutions was thereby condemned." He argued further that the segregated schools as condoned by the city of Boston, could not be an "equivalent" because of inconveniences to those obliged to attend the separate schools, and also because of the "stigma

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14Pierce, 40.
15Ibid.
of caste" which it imposed. 17 He stated that the schools were not equal because a public school, by its definition, "was for the benefit of all classes, meeting together on terms of equality." 18 It is from this case that Sumner introduced the terms "equality before the law." 19 It marked the beginning of his warfare on caste, and of his persistent plea for equal civil and political rights for blacks. 20

From 1848-50, Sumner contributed numerous articles to newspapers. They were primarily controversial and submitted in connection with the political contest against slavery. 21 He supported and had the support of the Free Soil Party. To him, the far greater significance was a "solid mass of antislavery voters in the free States, moving steadily and courageously against the slave power." 22 His constituency, the antislavery people of Massachusetts and elsewhere, placed their faith in Sumner and believed that he was,

... best fitted by his personal force, his burning rhetoric, and his forensic power, to agitate in the Senate, directly in front of the organized slaveholding interest. . . . Sumner stood before all others in the power to denounce slavery, its wrongs, and its progress . . . . 23

17 Levy and Phillips, 51h.
18 Ibid., and Pierce, 41.
19 Pierce, 40.
20 Ibid.
21 Ibid., 41.
22 Ibid., 16h. For more details of his activities with the Free Soil Party and its support for his election, 165-88 and 228-57.
23 Ibid., 2h8.
From the first day he took his seat in the Senate, and thereafter, he did not cease to fight the evils of slavery. He believed that measures and policies needed the support of public opinion to be effective. He was conscientious and sincere in his efforts to obtain for all men equal rights.

Among his early efforts to wipe out discrimination at the national level, Sumner sought to repeal the Fugitive Slave Act. He began the contest for civil equality in the 1861-62 session of Congress. He opened an attack on the segregation and exclusion of blacks from the streetcars and railroads in the District of Columbia. A bill was finally passed prohibiting segregation on every streetcar line in the District. In 1862, he secured the competency of blacks as witnesses in the District of Columbia, but his action failed to prevent their exclusion in the national tribunals, which, according to practice, followed the statutes of local laws. In 1864, he introduced a bill to allow the testimony of blacks in all the courts of the United States. Sumner regarded his law, which secured for blacks equal rights in the courts, as "the most important of all in establishing the manhood and citizenship of the colored people." In the Senate he fought against

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24 Ibid., Vol. IV, 88-89.
25 Ibid.
26 Ibid., 175.
27 Ibid., 179-80.
28 Ibid., 181.
29 Ibid.
the practice of discriminating against black soldiers on the payroll.\textsuperscript{30}

In March of 1867, Sumner offered an amendment to the Second Reconstruction Act, which was being considered by the Congress. He proposed to have all the States under reconstruction open the public schools to all without distinction of race or color.\textsuperscript{31} This was the opening move of what proved to be an extended campaign for federal legislation to abolish racial segregation nationally. The segregated public schools served as the initial target for the movement. This campaign continued in Summer's proposed Supplementary Civil Rights Act introduced in early 1870. It met stiff opposition and was ultimately defeated. The question of racial segregation in public schools remained unsettled.

The passage of anti-slavery and anti-discriminatory measures which Sumner introduced and pushed so vigorously, was attributed to his outstanding leadership in the Senate. It would appear that many of those measures would have failed utterly under the direction of any other Senator who was less committed to his beliefs and convictions, or less capable of supporting them with strong and convincing arguments. Sumner coerced some of his colleagues who were at heart opposed to

\textsuperscript{30}Ibid., 182 and Senate Journal, No. 1409, 41st Cong., 2d Sess., 29. Summer submitted a resolution that the Committee on the Military Affairs be directed to consider if any further legislation was needed to secure for black citizens who had served in the army of the United States, complete equality with white citizens in the field of military services.

\textsuperscript{31}Cong. Globe, 40th Cong., 1st Sess., 165.
certain of his measures and sought to convince them to come to their 
support.32

Sumner went on record as opposed to the Fourteenth Amendment. He 
regarded it as just "another compromise with human rights" so far as it 
concerned representation.33 He argued, instead, that "Congress could by 
merely statute impose conditions, as to suffrage, in the rebel States 
from which they could not rid themselves after their complete restora-
tion."34 He had come to the conviction that for the protection of human 
rights, the power of Congress was supreme, that the decision of equal 
rights could be made at once, and that it was not certain that it would 
be maintained by the States. He distrusted the fate of a constitutional 
amendment, which was up to the discretion of the States, and it further 
implicated that Congress was incompetent to establish equality. Sumner, 
therefore, moved to have a substitute which called for the prohibition 
of the denial of civil or political rights on account of race or color.35

Sumner's warning was not heeded. Political and civil rights were 
still being denied and Congress took up the Fifteenth Amendment. Again, 
Sumner insisted that an amendment was unnecessary, as Congress already 
had the power to forbid such discriminations. He sought, rather, to 
define more specifically, and extend in details, the powers that Congress

32 Ibid., 185. Such was the case when Sumner sought passage of 
his civil rights bill.

33 Ibid., 277.

34 Ibid., 279.

35 Ibid., 277.
already possessed. His fear was that the Southern States would bypass the amendment and not enforce it.

During the 1869-70 session, a bill to amend the naturalization laws was pending in Congress. Sumner moved, as an amendment, to strike the word "white" from a section of those laws, so as to remove all distinctions of race and color from the procedure of being admitted to naturalization.

In the second session of the Forty-first Congress, Sumner made an earnest and determined effort to secure the protection of equal rights by national statute. In the five years that followed, numerous bills similar to Sumner's Civil Rights Bill were introduced into the Congress.

36 Ibid., 365.
38 Several notable examples appeared before Sumner's bill. George E. Spencer, of Alabama, on December 7, 1869, introduced in the Senate a bill to "amend" the Civil Rights Act of April 9, 1866, which was printed and ordered to lie on the table. On December 8, it was referred to the appropriate Committee. Senator Trumbull reported it from the Committee on February 2, 1870, but the bill was discharged from further consideration and was indefinitely postponed. Cong. Globe, 1st Cong., 2d Sess., XLII, part I, 16, 27; part II, 964.

In the House, Representative William F. Prosser of Tennessee introduced a bill on December 13, 1869, entitled "An act to amend an act to amend and construe" the Civil Rights Act of April 9, 1866. It was referred to committee and was not acted upon. Cong. Globe, 1st Cong., 2d Sess., XLII, part I, 98.

In March 11, 1870, Representative Roderick R. Butler of Tennessee introduced a similar bill to amend the Civil Rights Act of 1866. It was referred to the Select Committee on Reconstruction with no further successful action. Cong. Globe, 1st Cong., 2d Sess., part III, 1931.

Representative Philetus Sawyer of Wisconsin, on March 28, 1870, introduced a bill supplementary to the Civil Rights Act passed April, 1866. It was read and referred to committee. Cong. Globe, 1st Cong., 2d Sess., part III, 2234.
A consideration of the social rights of blacks began with the introduction into the Senate of Sumner's Supplementary Civil Rights Bill of May 13, 1870. The bill was referred to the Committee on the Judiciary. To a considerable abuse of Sumner's patience, the measure was held up in the Judiciary Committee, which had Lyman Trumbull of Illinois as its chairman. Members of the Senate were not particularly interested in the measure, and they received it with coldness. The next appearance of the bill was on July 7th, when according to the Journal, "Mr. Trumbull, from the Committee on the Judiciary," with a large number of other bills, "reported the bill to the Senate with a recommendation that they ought not to pass," and the bill was reported adversely and indefinitely postponed.

Sumner again introduced his bill on January 2, 1871. On February 15, 1871, it was reported from committee without amendment with a note that it ought not to pass, and there was no action in the Senate, due to the lateness of the session. The Bill went on Calendar with the adverse report of the committee.

During the first session of the Forty-second Congress, beginning

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39 Cong. Globe., 1st Cong., 2d Sess., XLII, part II, 311; see also The Nation, X (May 19, 1870), 311.

40 Cong. Globe, part I, 531.

41 Ibid., part II, 619.

42 Ibid., 1263.

43 Reported from the Committee also, was a bill designed to inquire what further legislation was needed to protect citizens in their civil and political rights. It was discharged from further consideration and referred to the select committee to investigate alleged outrages in the South. Cong. Globe, part II, 1100 and 1382.
on March 4, 1871, Sumner, for the third time, introduced the same measure. A motion was made to refer the bill to committee. Sumner made a plea to the Senate to consider his bill saying:

"It will not be advisable to refer it again to that committee. It is a very important bill; nothing more important could be submitted to the Senate, and . . . Congress should act upon it . . . . I believe that our colored fellow-citizens are exposed to outrages which the Congress of the United States can arrest; and so long as Congress fails to arrest the outrages the Republican Party . . . with whose welfare and success I am identified, must suffer . . . ."

Sumner asked the members of the Republican Party how they could turn to their "colored fellow-citizens" and ask for their votes, when they insulted them by forbidding them to travel upon a railway or enter a hotel without encountering discriminations.

A resolution had been introduced at this session, against Sumner's protests, which limited legislation to particular subjects. This prevented the consideration of his measure. Sumner had, at first, made a concerted effort to get the attention of the Senate by presenting numerous petitions from groups of black citizens. With his mail came large numbers of letters from blacks and others devoted to his cause.


It is not possible to present here, within the confines of this paper, the many petitions that were presented in the Congress in support of Sumner's bill. They will, however, be treated in more detail in a following chapter.

They stated, often at great length, their testimony of discrimination which they were forced to endure; and their hopes and fears and their interest in the various measures concerning equal rights for blacks. The petitions called for the passage of Sumner's Civil Rights Bill. Sumner presented these to the Senate, usually with a brief remark, in behalf of his measure.  

Sumner stated that "colored fellow-citizens" ought to receive a hearing on the Senate floor in justice. He accused those who had been elected by blacks, of showing "no zeal for their rights." He went on to say that blacks have a right to be heard; they were capable of speaking for themselves. But they were not there and they could "only be heard through their communications."  

Blacks, in both the North and South, circulated petitions urging the passage of the bill, and scores of these petitions bearing, at times, thousands of signatures, soon found their way to the desks of Congressmen. The Senate Journals of the Forty-first and Forty-second Congresses show that a very large percent of these petitions are signed

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46 In addition to the petitions, see, Pierce, 499; L. E. Murphy, "The Civil Rights Law of 1875," Journal of Negro History, XII (April, 1927), 114.  
48 Ibid.  
"Colored Citizens" or "Citizens of the United States."  

Early in the first session of the Forty-second Congress, Sumner fell upon another method of getting his Civil Rights Bill considered. On December 20, 1871, the Senate had under consideration a general amnesty measure. Sumner presented his bill as an amendment. He favored amnesty as well as civil rights, and his strategy was designed primarily to unite supporters of both measures with a single bill. A long discussion ensued immediately between Sumner and Senator Hill of Georgia, which brought out the Southern point of view very clearly. Hill thought that distinctions in public conveyances, inns, and schools, if equally good, were all that blacks could ask. Sumner insisted,  

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51 The Amnesty Bill, 380, passed the House without serious debate in the previous session. It was entitled, "An act for the removal of legal and political disabilities imposed by Section 3 of Article 14 of the amendments to the Constitution of the United States." It lifted the disabilities from all former members of Congress as well as army and navy officers who had resigned in support of the Confederacy, and from members of state conventions who had adopted ordinances of session and voted for and supported such ordinances. Cong. Globe, 42d Cong., 1st Sess., XLIV, part I, 561-62.


53 Ibid., 241-44.

54 Ibid., 241-42.
however, that such distinctions was an indignity to which no man should be subjected. He declared that he could not and would not, deny any human being the right of equality. Blacks must be equal before the law, "or the promises of the Declaration of Independence" were not yet fulfilled. Sumner exclaimed, "I do always insist upon justice; and now that it is proposed that we be generous . . . and I insist upon justice to the colored race . . ." Sumner argued that clemency to the white man in the South ought not be granted until justice was granted the black man. He pledged that "so long as strength remains," he would press the question of equal rights to a successful end. He promised to see that blacks were treated with dignity.

Several of Summer's colleagues, who mildly favored civil rights, but were hostile to amnesty, supported his amendment, in the hope that by uniting the opponents of each measure, they could both be defeated. However, the proposal to unite the two bills had the popular support of many of the Senate Radicals.

Blacks, and others opposed to inequality, "may or may not have been aware of the motives of Summer's allies," however, they generally supported Summer and his efforts to couple the Civil Rights Bill with the Amnesty Bill. One prominent black representative, Jefferson Long

55 Ibid., 243-44.
56 Ibid.
of Georgia, openly opposed the general amnesty bill while it occupied
the debates in the House. His first speech in Congress, on February 2,
1871, was a plea to keep the test oath requiring voters to uphold the
Constitution. He warned against removing political disabilities from
the very men who were the leaders of the Ku Klux Klan committing mid­
night outrages in the State. He felt that it was his duty to vote
against such a proposition.

In the discussions of December 20, 1871, a point of order was
overruled, and then the amendment was defeated by a vote of one.

In the Senate, Sumner again pleaded for his bill. On January
15, 1872, the Senate began an extended debate on Summer's proposal, in
which both sides dealt at length with the constitutionality and the
social merits of the bill. Summer renewed his efforts to get his bill
passed. He supported the bill with an elaborate speech. His argument
was based largely upon moral grounds. He ignored those legal objections
which led the Supreme Court, in later years, to declare the act unconsti­
tutional. Summer showed very easily that evils existed and that the

60 Ibid.
61 Moorfield Storey, Charles Sumner (New York: Houghton Mifflin
Company, 1900), 403.
63 The argument of its constitutionality and its social impli­
cations will be dealt with in a later chapter.
64 Cong. Globe, 42d Cong., 2d Sess., 881-86.
65 Ibid., See also The Civil Rights Cases of 1883, 109 U.S. Statutes,
3 and Henry J. Abraham, Freedom and the Court: Civil Rights and Liberties
civil rights of blacks were not being recognized. He explained at length each provision of the bill. He told of the experiences of Frederick Douglass and Lieutenant Governor Dunn of Louisiana who had both encountered "unquestionable grievances." Douglass upon his return home, after several weeks as secretary of the commission to report on the people of Santa Domingo and the expediency of joining them with the United States, was rudely excluded from the dinner-table aboard the returning steamer. Sumner pointed to "peculiar circumstances" surrounding this incident, as Douglass was a "gentleman of unquestionable ability and agreeable in his personality." Lieutenant Governor Oscar J. Dunn, upon the request of Sumner, told the Senate of the hardships that he had encountered. These were both infamous incidents, Sumner agreed; however, they were "denied the ordinary accommodations of comfort and repose," and this was an indication of what others must endure. Sumner pointed to the fact that a large mass of testimony had come from all parts of the country, Massachusetts as well as Georgia, which showed the absolute necessity of Congressional legislation for the protection of equal rights.

He directed attention to several reasons why the Civil Rights Bill should be united with the amnesty bill. Each bill called for the removal of disabilities; each was to operate largely in the same region

68 Ibid.
69 Ibid.
of the nation; and each was a measure of reconciliation, designed to
close the issues of the war. The issues could not be closed unless both
measures were adopted. Therefore, he believed that it was better for the
country that these measures be agreed upon simultaneously.70

Sumner argued that separate arrangements for blacks in hotels,
railway cars and schools could not be an equivalent to equal rights.
He found legal basis for this in the English Common Law.71 He argued
further that it was impossible for separate accommodations to be equal,
for under such conditions, denials were being made to both blacks and
whites and to society as a whole. He further insisted that this measure
was constitutional, the right was derived from the Declaration of
Independence, the Civil Rights Act of 1866, and the Thirteenth and
Fourteenth Amendments to the Constitution.72

The bill was strongly opposed by many Congressmen on constitu­
tional grounds. Both sides had much to say of the social implications
of the desegregation and mixed school clauses in particular. Senator
George Vickers of Maryland opposed the unification of the two bills. In
a counter-argument with Sumner, he expressed an opinion which best
indicates the views of those in opposition. "The idea of giving to
former slaves political privileges denied to their masters," he contended,
"was a moral torture and injustice that finds no parallel in history and
which shocks sensibility and the sense of justice."73

70 Ibid., 384.
71 Ibid., 383-84.
72 Ibid., 384.
73 Ibid., 378-90.
After some weeks of heavy and almost continuous debate, Sumner pressed for a vote on the subject on February 9, 1872. The bill had been opposed because it could not be moved as an amendment to the amnesty bill which required a two-thirds, as opposed to a majority vote, for passage.\(^7^4\) The Senate being equally divided, the Vice-President, Colfax of Indiana, cast the deciding vote.\(^7^5\) The amendment was carried. The galleries were crowded with blacks and other Sumner supporters; and upon the announcement of the adoption of the amendment, the crowds burst into "great applause." The Senate voted in favor of the measure, but it was two votes less than the required constitutional majority, and thus the bill was dead.\(^7^6\)

Voting for the measure together with amnesty, were virtually all of the Republican group; among them, Pomeroy, Sherman, Wilson, James Harlan of Iowa, Justin S. Morrill of Vermont, Simon Cameron, Roscoe Conkling, and Zachariah Chandler. Some Republicans voted against it, notably Schurz, Trumbull, and Lot Morrill of Maine.\(^7^7\)

In May, the Senate took up a new general amnesty bill which had come up from the House, at an earlier date, but had met defeat. Immediately, Summer introduced his civil rights rider as an amendment. The


\(^7^5\)Cong. Globe, part II, 919. The vote on the rider was 28 to 28.

\(^7^6\)Ibid., 929.

\(^7^7\)Ibid., 928-29. Some of the Senators explained that they had voted on the principle of the bill without committing themselves to its details. Cong. Globe, part I, 531. President Grant did not oppose the combination of the two measures in the same bill, Pierce, vol. IV, 499.
Senate again adopted the measure only after prolonged parliamentary maneuverings, and Vice President Colfax, once more, cast the deciding vote. The Senate, thereafter, voted to pass the bill, but as before, the votes failed to constitute the required two-thirds majority.  

On May 14, Sumner moved his bill as an amendment to an Act to enforce the rights of citizens to vote, but withdrew it on the appeal of Senator Sherman of Ohio, in behalf of the pending bill. Sherman argued that the two bills should be voted upon separately by the Senate.  

The friends of amnesty had encountered difficulty. It would seem that Radical attitudes underwent a sudden change toward amnesty and civil rights combined. This meant that the civil rights rider had to be abandoned and the amnesty bill would pass without it, even though some "nominal gesture toward civil rights might still be necessary to appease Negro Leaders."  

On May 21, 1872, a bill to extend the provisions of the so-called "Ku Klux Klan Act" was pending; the Senate scheduled an all-night session to discuss the bill. In the session the Senate Republicans, led by Edmunds of Vermont, Carpenter of Wisconsin, Conkling of New York, and Logan of Illinois, sought to bargain with Thurman of Ohio and other

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\[78\] For the proceedings see Cong. Globe, 42d Cong., 2d Sess., part IV, 3268, 3270. The vote on the bill was 32 to 22.  

\[79\] Pierce, 502; Cong. Globe, part IV, 4325.  

\[80\] Kelly, 550-51.  

\[81\] Cong. Globe, 42d Cong., 2d Sess., part V, 3705-42.
Democrats. Then Carpenter moved to take up discussion of Summer's bill in his absence. A bare majority of Senators was present, but the motion carried to discuss the bill, and the Senate agreed not to adjourn. The discussion, at first, centered on the question of whether the Civil Rights Bill should be coupled with the Amnesty Bill. After moving an amendment which eliminated the clauses pertaining to schools, churches, cemeteries, and juries, Carpenter insisted on an immediate vote, and despite protests from one member against the unfairness of such proceedings, the bill was finally put to a vote. When Summer, who had been sent for, appeared, the Senate then took up the amnesty bill. Summer immediately protested against the passage of what he called, the "emasculated" Civil Rights Bill. He moved his bill as an amendment to the pending Amnesty Bill, but the motion was defeated by a large majority. Summer then declined to vote for the Amnesty Bill which was not associated with equal rights. The measure passed, however, when the Senate was sparsely occupied and held barely a quorum. Only Summer and Nye of Nevada voted against it.

82 Ibid., 3730-36.
83 Ibid., 3727-42.
84 Ibid., 3734-36.
85 Ibid., 3736-39.
86 Ibid., 3738; also for the text of the act see U.S. Statutes at Large, XVIII, 1142.
Sumner renewed his appeal. He ordered a reconsideration of the vote by which the Civil Rights Bill had passed. He pleaded for the rights of blacks, who had no representative present at that time, saying that "so long as I remain in this chamber, you will hear me perpetually demanding their rights. I cannot, I will not cease ..." 87 The Senate adjourned at 10:20 that morning, less than two hours before the beginning of the next day's session. And again, civil rights met defeat.

Three days before the session closed, Sumner moved his bill as an amendment to the civil appropriation bill, but it was ruled as out of order. So the Amnesty Bill became law, but the Civil Rights Bill as curtailed by Carpenter was not acted upon in the House. 88

The Civil Rights Bill remained virtually at rest for the next two years. Sumner was ill during the most of the 1872-73 session of Congress, and the Civil Rights Bill lost strength without his leadership. Sumner returned to Congress December, 1873. It was to be his last great effort in behalf of equal rights for black Americans. The growing demand from black voters, abolitionists, and northern liberals for civil rights legislation, had created a "more favorable climate" for Sumner's bill than at any previous time. 89

On the second day of the session, Sumner moved to take up his

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87 Ibid., 3739-42.

88 A two-thirds vote was needed in the House in order to take up consideration of the bill.

89 McPherson, "The Civil Rights Act of 1875," 50. President Grant in his annual message, had recommended greater action to secure equal rights for blacks; but in his address of 1874, he dropped all mention of a Civil Rights Act. See also the editorial in The Nation, XIX (December 3, 1874), 357.
Civil Rights Bill, saying that it had been considered and would require no debate. He appealed for its consideration on the grounds that it had been long before the Senate. He told his friends that he was ready to die when he had completed his part of his reconstruction plan, but he was never able to obtain a discussion of the bill. Objection was made and reference was urged. A motion was made to refer the bill to the Committee on the Judiciary, and Sumner objected immediately. He objected to the action repeatedly taken on the bill while it was held in committee. He argued that the committee could not enlighten the Senate on the subject and the bill had been fully debated. He appealed personally to Senator Edmunds to join him in support of the measure. Finally, in agreement with Senator Frelinghuysen of New Jersey, Edmunds joined.

Sumner died on March 11, 1874, before his bill was reported. His last plea for passage of the Civil Rights Bill was entrusted to Representative E. A. Hoar saying: "You must take care of the Civil Rights Bill, my bill, the Civil Rights Bill, don't let it fail!"

On April 27th, the Senate and the House held memorial services. Those who spoke at the services made references to Sumner's work in behalf of equal rights. Prominent black men participated in the funeral. It would be difficult to determine the degree of influence the memorial

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90 Senate Journal, 42d Cong., 2d Sess., 1.
92 Pierce, 589.
service had in bringing the bill up for discussion in the Senate two days later, and its eventual passage on May 22nd.93 Senators Dawes and Potter both expressed Sumner's disappointment that the bill had not passed. Joseph Rainey, a black Representative of South Carolina, referred to his services in behalf of blacks and also of Sumner's "martyrdom for freedom."94

In the House, Representative Butler of Massachusetts, chairman of the Judiciary Committee and the administration's party floor leader, introduced a somewhat similar Civil Rights Bill.95 It was comprehensive, and like Summer's bill, it carried strongly worded mixed school clauses.96 Butler pleaded for the bill saying that the Amnesty Bill was allowed to go forward, thereby giving precedent to the white race in that regard; and now he was insisting that blacks too, have their rights enforced.97

The bill came up for debate in early January, 1874, before galleries crowded with black spectators.98 The debate in favor of the

93Murphy, 116-17.

94Speaker of the Senate Hoar, Congressmen Rainey and Dawes on a joint memorial service for Sumner in the Senate and House. Cong. Record, 33d Cong., 1st Sess., 3409-10, 3411. Also "Charles Sumner," The Nation, XVIII (March 19, 1874), 184-85.

95Cong. Record, part I, 64, 97, and 318.

96Ibid., 318. Sumner's bill would have forbidden racial segregation in "common schools and public schools, of learning or benevolence supported, in whole or in part, by general taxation." Ibid., part IV, 3451. Butler's bill prohibited segregation in all schools supported, "in whole or in part at public expense or by endowment for public use," which would have included many public as well as private schools. Ibid., part I, 378.

97Ibid., 338.

98Kelly, 552.
bill was led by John R. Lynch of Mississippi, Benjamin Butler of Massachusetts, and James Garfield of Ohio. In opposition, the leaders were the aged Alexander H. Stephens of Georgia, Lucius Q. C. Lamar of Mississippi, Charles A. Eldredge of Wisconsin and John Y. Brown of Kentucky.

Early in the Forty-third Congressional session, a new and threatening obstacle arose to the Civil Rights Bill. The constitutional approval for civil rights legislation was believed to rest in part on the section of the Fourteenth Amendment which prohibited States from abridging the "privileges and immunities" of United States citizens. In 1873, the Supreme Court, in the Slaughterhouse cases, by a vote of five to four, declared that the Fourteenth Amendment applied only to the privileges and immunities of national citizenship, and that the protection of the rights of State citizenship must be left to the States. The definite distinction between State and national citizenship was not clearly defined, but the opponents of the civil rights legislation used the Slaughterhouse decision to condemn the Civil Rights Bill as unconstitutional, and held that the federal government was denying and abusing individual States rights.

Stephens, who delivered the main speech for the Democrats, used the decision to show that the Fourteenth Amendment had bestowed no rights whatsoever definable or enforceable by Congress. Applying this

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99 Cong. Record., 43d Cong., 1st Sess., 412. Sumner had argued in 1872, that the equal protection clause of the Fourteenth Amendment gave Congress the power to enact civil rights legislation.

100 Kelly and Harbison, 494-99.

101 Cong. Record, 376, 380-81, 405-06, 419-20, 453-45.
analysis to the mixed school clause, he spoke out strongly for individual States rights. Harris of Virginia, Durham of Kentucky, Bright of Tennessee, Mills and Herndon of Texas stressed a similar argument.

Supporters of the bill quickly undertook the challenge, and some turned to the "equal protection" clause to justify the bill. William Lawrence of Ohio presented perhaps the most effective constitutional reply. He saw the damage which the Court had done to the "privileges and immunities" clause, he resorted particularly to the "equal protection" clause saying that "it must not be understood in any restrictive sense, but must include every benefit to be derived from the law."

Lynch of Mississippi, a black representative, commented on the Slaughterhouse case ruling. He stated that the right to prevent discrimination and distinctions between citizens of the United States and of the States, whenever such acts were made on account of race, color, or previous status, were prohibited by the Fourteenth Amendment, and this did not necessarily confer "additional powers" on the federal government.

Another black representative, Robert B. Elliott of South Carolina, made one of the most impressive and dramatic speeches delivered at that session on the Supreme Court ruling. He replied to the speech

102 ibid., 380-81.
103 ibid., 376, 383, 405, 411, 420.
104 ibid., 412.
105 ibid., 943.
of Stephens that was made earlier in the session. Elliott stated that the distinction between the two kinds of citizenship was clear. "No-where" had the Supreme Court "written a word or line" which denied Congress the power to prevent denials of equal rights. He refuted contentions that the Fourteenth Amendment denied States their individual rights. What it did forbid, according to him, was inequality and discrimination against persons who were citizens of the United States. 106

After two days of continuous and strong debate, Butler suddenly withdrew the bill to the Judiciary Committee once again. It would appear that he was under extremely heavy pressure by members of both parties to kill the mandatory mixed school clause. 107 The bill went to committee and remained there until January, 1875.

On May 22, 1874, the Senate, after strenuous debate and an all-night session, passed the Sumner bill keeping intact the mixed school provision. 108 The debate had begun in late April and was very similar to the debate in the House. Thurman of Ohio spoke at length on the Slaughterhouse decision to underline his position that Congress had no constitutional power to deal with public schools. In reply, Senators Morton, Howe of Wisconsin, and Frelinghuysen of New Jersey followed.

106 Cong. Record, 33d Cong., 1st Sess., 407-10. Elliott received great bursts of applause throughout and at the end of his speech from both the floor and the galleries. On numerous occasions following, he was quoted and complimented on the quality and force of his speech.


108 Ibid., part V, 4176. The vote was 29 to 16. Virtually all the Republican members lined up behind the bill.
Senator Lawrence's lead and placed strong emphasis on the equal protection clause of the Fourteenth Amendment. 109

A greater part of the Senate debate, for the first time, centered around the "separate but equal" argument. Merriman of Ohio, argued that segregation was constitutional if States would "make the same provisions for the black race that it makes for the white race." 110 But Edmunds of Vermont called the "separate but equal" arrangement fraudulent, and he then read a list of statistics to prove that the practical effect of such an arrangement would "destroy equality of opportunity for the Negro child." 111 Sargent of California argued that social implications of mixed schools, saying that in certain States, it would "break up and utterly destroy" the common school system, 112 while Johnson of Virginia, warned black voters, who petitioned for passage of the clause, that they would "wake up one of these mornings to find the doors of every public school house in the state barred. 113 Boutwell of Massachusetts answered, in reply, that mixed schools were "imperative to the growth of American democracy." 114

The second session of the Forty-third Congress met in December, 1874. Butler and other Radical Republican leaders in the House decided

109 Ibid., 4084-88.
110 Ibid., appendix, 358-61.
111 Ibid., 4173.
112 Ibid., 4172.
113 Ibid., 4114.
114 Ibid., 4116.
to push a comprehensive legislative program through both houses. It consisted of two principal parts: a series of bills intended to strengthen the Republican position in the South; and a variety of subsidy bills for various railroad interests. Included in this plan were a two year army appropriation bill, a new enforcement bill extending presidential powers, and Butler's Civil Rights Bill. Many moderate Republicans, among them, Garfield, Dawes, Phelps, Speaker Blaine, all of whom were influential men in the party, were opposed to the program.

The Butler bill took priority. The program however, could not pass it in such a short session without a change of rules which would destroy the possibility of a filibuster. A modification of rules required a two-thirds majority. Butler used the Civil Rights Bill as a direct test to change the rules.

In December, after internal struggle, the House Judiciary Committee struck out the controversial mixed school clause; and replaced it with separate but equal facilities in public schools. The decision was primarily Butler's for quite obvious reasons. Opposition from the President was well known by this time, a number of State superin-


Ibid.

Ibid., 259, 248-90.

Ibid., 1875-86.

Ibid., 116.

Kelly, 558.
tendents in the South had repeatedly warned that a Civil Rights Bill would ruin both white and black education in the South.\textsuperscript{121} Numerous Republicans warned that the mixed school clause would badly damage the party in the South.\textsuperscript{122}

The rules fight began when Cessna of Pennsylvania introduced a motion to forbid all dilatory motions during the remainder of the session, but it failed to achieve a two-thirds majority required for its adoption.\textsuperscript{123} With the motion defeated, Butler moved to call up the Civil Rights Bill and place it on the calendar.\textsuperscript{124} The bill had been recommitted the previous session in January. Procedure in the House rules required a two-thirds vote to recall the bill. The Democrats launched a major filibuster, forcing some seventy-five votes with delaying motions within the forty-eight hours that Congress was in session.\textsuperscript{125} At the end of two days of filibuster, Butler surrendered and the House adjourned. When they returned, the Democrats fought hard to block all rule changes, but after a series of failures, the Republicans secured the required two-thirds vote to suspend the rules and close the debate. With this came the death of the enforcement, the army


\textsuperscript{122}The Alabama Convention of 1874; however, it appears that Butler did not consider, to any decisive extent, the plea of thousands of "Colored People" who petitioned in support of the provision.

\textsuperscript{123}\textit{Cong. Record}, 43d Cong., 2d Sess., 700.

\textsuperscript{124}\textit{Ibid.}, 701.

\textsuperscript{125}\textit{Ibid.}, 785-829. While the Senate was occupied with the continuance of the debate on the Louisiana affairs, the House Republicans continued their struggle to get control of legislation and cut off debate for the remainder of the session.
and the subsidy bills.  

Great bitterness characterized the debate in the House. The prominent part played by Butler in pushing through the Civil Rights Bill led to a great deal of violent debate. In one very disorderly scene, Butler charged the Southerners with lawlessness, which prompted John Y. Brown of Kentucky to make an unrestrained verbal attack on Butler, and the House rebuked him with a formal resolution of censure.  

The omission of the mixed school clause cut much out of the dissenting debate on the floor. Black Republican Richard Cain of South Carolina expressed a belief that Southern blacks did not want the mixing of schools. It is somewhat ironic that the clause on civil rights from the Democratic platform of 1872 was adopted in debate as the preamble to the Civil Rights Bill. After two days of debate in the House, the Kellogg Amendment, which in effect struck all reference to public schools, was passed by a large majority. The Senate bill was

126 Ibid. For detailed parliamentary procedures see, 880-92, 896-99, 901-902, 1600-1601.
127 Ibid., 991-92. Also see The Nation, XX (February 11, 1875), 87.
128 Ibid., 981-82.
130 Ibid., 1011. The vote was 218-29. Kelly states that the purposed amendment by Representative Shank of Indiana, was to embarrass the Democratic minority by forcing them to accept the preamble or vote against their own platform, Kelly, 561-62.
then offered as a substitute for the Butler bill, in an effort to main-
tain the mixed clause. It failed, however, and the Butler bill passed
the House on February 4, 1875.

The Senate received the bill from the House on February 6, 1875
and it was referred to the Committee on the Judiciary. It was
reported by Senator Edmunds on February 26th and discussed. There was
very little effort to restore the mixed school clause, and no attempt
was made to discuss the Senate Civil Rights Bill, passed the previous
May. After two days of sparse debate, the Senate passed the House
Civil Rights Bill with no further amendment.

Sumner's outstanding efforts to secure for blacks racial equality
deserves special emphasis in the passage of the Civil Rights Act of 1875.
His bill was a proposal of enormous scope and broad statesmanship.
Sumner realized that the future of American democracy depended upon the
ability of the white and black peoples to live together in peace and
equality. He alone continuously insisted that blacks should have equal
title to all civil rights and privileges as those enjoyed by whites. He
refused to avoid the very sensitive question of racial equality. He
brought it out into the open and discussed it at a time when American
institutions were in a position that demanded social changes. Sumner
sought to secure equal rights before the law for black people. He

131 Ibid. The vote was 162 to 99.
132 Ibid., 1020, 1031.
133 Ibid., 1786, 1791-99.
134 Ibid., 1870. The vote was 38 to 26.
believed federal legislation was necessary to do this, because he doubted, and correctly so, that many of the Southern States would seek to rule with the best interests of blacks in mind.  

Summer believed that the promises of the Declaration of Independence would be fulfilled only by securing equal rights to all citizens. It appears that Charles Summer fought for racial equality out of a personal belief in equality for all, and not merely as a political maneuver. He introduced many measures for the benefit of black citizens, and some carried while others failed. It was his policy to use all constitutional means necessary to eliminate racial inequality at the earliest possible moment. Summer's life was devoted to an unending effort to secure for a wronged and degraded people, those rights which were enjoyed by other segments of society. He never lived to see the enactment of the one measure he pushed so vigorously. Had Summer lived, he would have seen it stripped of some of its chief provisions, and later declared null and void by the highest judicial authority in the nation. And no doubt, Summer would have immediately introduced another measure to secure full and equal rights for all citizens.


CHAPTER III

CIVIL RIGHTS UNDER ATTACK

In the course of the debate on the Supplementary Civil Rights Bill, introduced by Sumner, and the Civil Rights Bill that eventually passed in February of 1875, various arguments were advanced before both houses of Congress. Constitutionality and social implications of the proposed legislation were the major issues.

The outstanding opponents of the bill were Trumbull of Illinois, Thurman of Ohio, Saulsbury of Delaware, Davis, Durham and Beck of Kentucky, Stephens and Hill of Georgia, Mills and Herndon of Texas, Vance and Robbins of North Carolina, Harris of Virginia, Atkins of Tennessee, Eldredge of Wisconsin, and Storm of Pennsylvania. They repeatedly attacked Sumner's bill, in particular, and all civil rights legislation as "grossly and palpably unconstitutional." ¹

The old problem of States-rights came up again. The arguments rested upon an extremely restrictive interpretation of the boundaries and effects of the Fourteenth Amendment. Opponents of the bill felt that they were "entitled to and would use every parliamentary and legal means," and would "go under any and all circumstances" to defeat the passage of such legislation because they felt this was their duty. ²


The question of the constitutionality of the Civil Rights Bill was of particular concern to all members of Congress. It concerned blacks in their political and social rights, and it touched upon the very position of the United States government in relation to its citizens. It led to a thorough and bitter discussion of the real nature and extent of the changes which the recent Federal constitutional amendments had worked in relation to the State governments.

Stephens and other States-rights opponents of the bill, while granting that the recent Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution guaranteed blacks the privileges accorded to whites, declared, nonetheless, that it was within the province of the several States and not of the Federal Government to enact laws enforcing these guarantees. This was the crux of the question.

The most active champions of limited federal penetration of state action contended that the Fourteenth Amendment actually had conferred no new substantive legislative powers upon Congress. Thurman of Ohio insisted that the power of Congress was limited to providing for the appellate jurisdiction of the federal courts whenever a State had "violated any of the limitations imposed" by the Fourteenth Amendment.

The opponents and "States-righters" quickly pointed to the Supreme Court decision on the Slaughter-House cases in 1873 to defend their positions. Senator Boggs of Missouri spoke at length along this

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3 Cong. Record, 43d Cong., 1st Sess., II, part I, 381.
line and declared that if such a bill was passed he could see no limit to Federal power. Stephens of Georgia assigned his reasons for opposing the bill. He declared that Congress lacked the necessary powers under the Constitution to enact such provisions as the measure proposed. Stephens denied knowledge of racial discriminations by the laws of Georgia, and declared himself in favor of a "proper remedy by the proper authority" where the laws were found to be "defective" or failed to provide "protection and security for all the civil rights of all the inhabitants of the State." He voiced opposition because of the "inexpediency" of the bill, and advised that such matters should be left to the States. Stephens asked, "Where, then, in the Constitution is to be found the power which authorizes the passage of this measure?" He refuted the argument that the authority for the Civil Rights Act was found in the provisions of the Fourteenth Amendment which secured national protection for blacks against alleged abuses of State power. He considered it "as settled by the highest judicial tribunal" of the country, so far as that tribunal was "competent to settle the question of constitutional law." Interference by the Federal Government, he warned, would

6 Ibid., 379.
7 Ibid., 379-81.
9 Cong. Record, 43d Cong., 1st Sess., 831.
be against the "very genius and entire spirit" of the nation. Stephens concluded by asking Congress not to act contrary to the Supreme Court ruling and not to pass the bill when they had no "rightful power" to do so.\(^{10}\)

Durham of Kentucky declared the bill unconstitutional, as Congress had no right under either of the three "slavery amendments" to pass such a law.\(^{11}\) The matter of the things included in the bill, he accorded, was the subject of State legislation and was not included in any of the powers delegated to the Federal Government. Such matters, he held, "were the concern of purely local legislation or of private contract." He denounced the bill as interfering with "States Rights and State sovereignty."\(^{12}\)

The strong States-rights position was clearly brought forth in a somewhat lengthy speech delivered before the Forty-third Congress by Atkins of Tennessee. Herndon and Mills of Texas expressed similar statements relating to the State and Federal "compact" theory.\(^{13}\)

Atkins first pointed directly to Amendments Nine and Ten of the Constitution to support his position. He attempted to prove that the government of the United States had no original sovereignty and could only exercise delegated authority, "all others being reserved to the

\(^{10}\)Ibid.

\(^{11}\)Ibid., 405.

\(^{12}\)Ibid.

\(^{13}\)Ibid., 417-18.
States. Every citizen had certain rights, he conceded, which no legislation was necessary to enforce, but should any of those rights to any citizen be denied, then Congress "could come to the rescue of such injured citizen by coercive legislation." Atkins, however, could see that no such rights were being refused. He saw only that there were certain rights which Congress possessed and those which the State alone possessed and that Congress had no power to deal with these rights.

To support his own construction of constitutional powers, Atkins put before Congress the example of the state of Pennsylvania, which had incorporated into its constitution a provision forbidding the inter-marrying of the "different races" because "sound public opinion and the well-being of both races forbid the commingling of the blood of totally distinct races." Accordingly, the States "chose to exercise their own free will," as it was "their business and no one else's." If States could regulate marriage, he asserted, they could also regulate other institutions.

In reference to the Slaughter-house decision, Atkins concluded that the Fourteenth Amendment only "protects the citizen in his rights as a citizen of the United States and does not propose to interfere with the States in the management of their own internal and domestic affairs."

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14 Amendment Nine states that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people; and Article Ten states that the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people. Ibid., 452-53.

15 Ibid., 453.

16 Ibid.
For him, the language of the Court was clear and conclusive. Atkins proposed that the States "be let alone to enforce and protect the rights of its citizens by requiring separation of the races."\(^{17}\)

In his final conclusion, Atkins criticized the bill saying that it was a "direct and fatal blow to the harmony and order of our federative system," and the gravest results of the bill would be the destruction of the peace and the well being of society.\(^{18}\)

In the opinion of Harris of Virginia, the bill was, in its every provision, "a plain, open, and palpable violation of the Constitution," and if passed it would reduce State governments and powers to a mere myth. If the "elder patriots of our country" could return to earth, he conjectured, they would be horrified to find the government attempting to legislate such a law.\(^{19}\) He continued, saying, that if such a system of legislation were carried out, it would sooner or later prove the downfall of the Government and whites would not long endure such unprovoked oppression. They would find "revenge as rapid as the whirlwind and as merciless as the angel of death."\(^{20}\)

Trumbull of Illinois made it clear that he was opposed to "this social equality bill" and Senator Cooper denounced it as "a measure of gross flagrant injustice."\(^{21}\) Bright of Tennessee declared the bill

\(^{17}\)Ibid.

\(^{18}\)Ibid., 455.

\(^{19}\)Ibid., 376.

\(^{20}\)Ibid., 378.

\(^{21}\)Ibid., part V, 1161, and Cong. Globe, 2d Cong., 2d Sess., XLV, part V, 3421.
"impolitic" and "unnecessary," as no rights were being denied blacks: "All the gates are open to them . . . they have all the rights of the boasted Roman citizen," and "the colored man has everything to lose by it and nothing to gain." Eldredge of Wisconsin referred to the bill, in its original form "as injury to the American citizen, both white and black," and it would bring "destruction to the black race." Brown of Kentucky said that the bill was "born of malignity," in violation of the Constitution, and if passed, would be executed in "violence and bloodshed." Tipton of Nebraska rejected the assumption that the public would demand such legislation and called it "sheerest bosh." Storm of Pennsylvania saw the solution to the question of equal rights in providing separate accommodations for blacks. He believed that the bill was thrust upon Congress for "no other purpose than mischief," as it excited ill-feelings and would lead to disturbances.

In spite of arguments denying its validity, the first section of the Fourteenth Amendment was clear and declaratory of the meaning of the Constitution, and therefore introduced no new or outstanding rule.

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22 Cong. Record, 43d Cong., 1st Sess., 415.
24 Ibid., part II, 985.
25 Ibid., part III, 1868.
26 Ibid., part II, 951.
or principle.27 The amendment makes it quite clear that the Federal Government has a duty to protect and enforce the equal rights and protection clauses of the law for all citizens. In it is found the authority for the enactment of the Civil Rights Bill, which was so grand a move in the development of a national idea.

If the legislature of a State should have any law upon its statute-book which violated the Fourteenth Amendment, thereby infringing the rights of its citizens, as so clearly demonstrated to the Reconstruction Congresses, then Congress had the right to act to correct such injustices. In 1875, and particularly in the Twentieth Century, there was a proven need for federal legislation to protect equal rights of all citizens.

Early in 1872, Sumner answered arguments on the Constitutionality of his bill. He showed how consistent the pending measure was with acknowledged principles:

The bill for Equal Rights is simply supplementary to the existing Civil Rights Law, which is one of our great statutes of peace, and it stands on the same requirements of the Constitution. If the Civil Rights Law is above question, as cannot be doubted, then also is the supplementary amendment, for it is only the completion of the other, and necessary to its completion. Without the amendment, the original law is imperfect.28

27Amendment Fourteen, Section I, "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the law."

Section V, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Sumner stated the need of such a bill to make the rights of citizens uniform everywhere. "An enlightened public opinion," he declared, "must be invoked . . . this will not be wanted, but the law is needed now as a help to public opinion." He intended his law to serve as an "instrument of improvement," necessary in proportion to the existing prejudices.29

Butler of Massachusetts, who took up the fight for a Civil Rights Bill, explained that it was designed simply to "give to whoever has their rights taken from them," the means of over-riding that State of "hostile legislation," and of punishing the man who took the right away. That was the whole of the legislation.30 No State had the right to pass laws which inhibited the full enjoyment of all the rights to a certain class, he stated, and he would not "uphold State wrongs."31 He expressed no doubts upon the constitutionality of the bill.

Representative Lynch of Mississippi answered Stephens of Georgia and Lamar of Mississippi who condemned the bill as unconstitutional. It was a well-known fact, he asserted, that the great question of States-rights had been a continuous source of political agitation for many years. Lynch believed, however, that the "Constitution as a whole should be so construed as to carry out the intention of the framers of the recent amendment."32

29Ibid.
31Ibid., also Ibid., 43d Cong., 2d Sess., III, part I, 455.
32Ibid., part II, 943.
Elliott of South Carolina made a remarkable reply to arguments on the Slaughter-house decision. He showed that the argument upon the pending bill had proceeded upon a question of constitutional law. He undertook to prove that the bill was proposed in the true spirit of the Constitution, that it was founded on reason, and that in view of the state of affairs then existing in the South, it was, as a measure of protection, not only warranted, but the Supreme Court sanctioned it, and justice imperatively demanded it.

If the States . . . continue to deny to any person within their jurisdiction the equal protection of the law . . . then Congress is here said to have the power to enforce the Constitutional guarantee by appropriate legislation. That is the power which this bill now seeks to put in exercise. It proposed to enforce the Constitutional guarantee against inequality and discrimination . . . Never was a bill more completely within the constitutional power of Congress. Never was there a bill which appealed for support more strongly to that sense of justice and fair-play . . .

Senator Henry Pease of Mississippi supported the bill. The policy of the Government had been changed, he granted, by the recent amendments and that policy defined, recognized and protected the rights, privileges and immunities of citizens, and Congress had the power and the right to legislate accordingly. Pease called upon the Congress to act expediently to settle the question of equal rights, as the

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33Ibid., II, part I, 407-10.
34Ibid.
35Ibid., 409-10. Butler commented upon the truth and effectiveness of Elliott's speech: "He with the true instinct of freedom, with a grasp of mind that shows him to be the peer of any man on this floor. . . ." Ibid., 455.
36Cong. Record, 33d Cong., 1st Sess., II, part V, 1153.
American people were "prepared for it and desirous that the status of blacks be fixed."

Senator Howe of Wisconsin declared, "No truth is so hard to demonstrate by reasoning as that which is self evident," and the simple justice of the provisions of the bill were self evident. Pratt of Indiana expressed a similar view.

As long as the arguments of these Republican leaders insisted that the Democratic party stood for race prejudice, the interest of blacks could best be served by those measures proposed by the Republican Party. The Civil Rights Bill was, at times, treated as a party question. Members of Congress, especially black Congressmen, called upon its passage as a fulfillment of the promises made to black voters. Senator Pease accused the Democrats of having shouted "unconstitutional" when previous amendments and Civil Rights legislation had come before

37 Ibid.
38 Ibid., 41147.
39 Ibid., 4081.
41 Rainey said the Republican party could not expect to continue to receive black voters if it continued to disregard their rights and treat them indifferently; Cong. Record, 13d Cong., 2d Sess., III, part II, 959. Rapier demanded its passage because blacks had been true to the party and as a matter of sound public policy in the interest of the Republican party, Cong. Record, 13d Cong., 1st Sess., II, part V, 4786. Lynch asked for the Civil Rights Bill so that black voters could occupy an "independent" political position, 4955, also III, part II, 945, 947.
There is ample indication in the debates which show that a substantial number of Republican legislators feared that their party was losing power and position in local Southern States. It is difficult to estimate the amount of influence that this had upon the passage of this bill, but it did, however, play a significant role.

The second source of opposition to this legislation centered around the notion that it was designed to legislate social equality for blacks. Buckner of Missouri best characterizes the views of the opposition. "It is a palpable misnomer," he claimed, "to designate the bill under consideration as a bill to protect all persons in their civil and legal rights." He called it a "sham" and a "transparent deception." A more appropriate title, he asserted, would be "a bill to create social equality in the late slave-holding States, to consolidate the two races in hostility to each other, and to destroy the public schools."

Stockton of New Jersey referred to it as another step to place blacks upon "social and civil equality with the white race." He feared that black voters, in areas where they composed the majority of the population, would force the country to surrender the government to blacks. Stockton posed the question: "Is this good for the colored man, ignorant as he is?"

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\(^{h2}\)Ibid., II, part V, 413.

\(^{h3}\)The cause of the defeat of the Republican party is debated. Murphy states that the Civil Rights Bill could not have been the major cause, rather the Louisiana outrages and the depression in 1873 were more responsible, "The Civil Rights Law of 1875," 121-23. See also Schwartz, Statutory History of the United States, Vol. I, 658-59.

\(^{hl}\)Ibid., II, part I, 427.

\(^{h5}\)Ibid., part V, 4143.
Chittenden of New York called the bill "an offense and menace to the dominant race," and its aim was to "vex white men." He predicted that it would "breed mischief, prejudice, and cruelty to the weaker race in their struggle for higher civilization." "Time and patience" were needed most for the black American. \(^{66}\) Durham of Kentucky warned Congress that if it sought to legislate the civil and social relations of the "races," it would embitter the feelings of the Anglo-Saxons to such a degree that it would be uncontrollable. "The poorest and humblest white person . . . knows that he or she belongs to a superior race morally and intellectually." The Kentuckian stated, that he found nothing was so revolting to whites as "social equality with this inferior race." Durham asserted that the bill would end in a "war between the races" and the blacks would be exterminated! \(^{67}\)

Herndon of Texas contended that blacks would never be admitted to white society because they were unfit. \(^{68}\) Harris of Virginia asked Congress to consider the practical effects of such a measure. It sought to enforce absolute equality, he claimed, and such would not be accepted in the minds and hearts of the white people. He called upon someone in the House to be honest enough to say that he believed that the black man was his equal, and Ransier, the black representative from South Carolina, rose to say "I do!" \(^{69}\) "The white men of the South cannot be brought to submit to the domination of the black man," said Eldredge. The attempt

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\(^{66}\)Ibid., II, part II, 982.
\(^{67}\)Ibid., 405-406.
\(^{68}\)Ibid., 421-22.
\(^{69}\)Ibid., 376.
would bring ruin and destruction to blacks, as Congress could not legislate to make whites submit to blacks. "No Anglo-Saxon," he said "can bear dishonorable burdens . . . imposed upon him by other hands than his own."\(^{50}\)

The two spokesmen from North Carolina expressed similar views. Robbins accused supporters of the bill of seeking to make the "negro equal to the white man by pulling the white man down to the level of the negro; by providing that the white man shall be nothing, have nothing, and enjoy nothing, unless he sees to it that the negro shall be, have, and enjoy the same thing."\(^{51}\) Vance declared that the bill placed a "dangerous power" in the hand of the "vicious man," it gave rise to antagonism between the "races," and it gave to blacks a false hope and ambition.\(^{52}\)

It was Vance who, perhaps, best summed up the feelings of many of the opponents of the bill:

Look at the history of the world. Where is the Indian? . . . Less than two centuries ago on this spot the Indian reared his wigwam and stood upon these hills and looked upon the broad, beautiful Potomac, or swept his eyes over the hunting grounds of the West: and he had the title to this magnificent country. Where is he now? He has gone back, step by step, before the advancing march of the white man. No race in the world has been able to stand before the pure Caucasian.\(^{53}\)

Supporters of the Civil Rights legislation rejected, beyond a doubt, the argument that its intent was to legislate social equality.

\(^{50}\)Ibid., 985.  
\(^{51}\)Ibid., 898.  
\(^{52}\)Ibid., 555-556.  
\(^{53}\)Ibid., 556.
Summer said it was a "question of society, and not of rights, which was clearly a misrepresentation. The object was simply equality before the law." He denounced the idea of separate but equal as an "artificial substitute for equality which was not an equivalent." How vain it was, he argued, to argue that there was no denial of equal rights when separation was enforced. 54

Black Congressmen were quick to point out the real meaning of the measure. They emphatically denied the contention that it forced social equality for blacks. Rapier declared that it did not and could not contemplate "any such idea as social equality." He rebuked the charges of black inferiority and said nothing short of a complete acknowledgement of his manhood would be accepted. 55 Rainey denied the allegations that the bill sought to put blacks on a footing of social equality. 56 Josiah T. Walls of Florida and Lynch concurred in their opinion that it was not for social rights that blacks asked, but rather for the protection in the enjoyment of "public" rights, those rights accorded all other citizens. 57 In reply to the speech by Vance, Cain of South Carolina commented that no laws enacted by legislatures could compel social equality; and blacks, he clearly insisted, were asking only for those rights so readily denied them. 58

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54 Ibid., 2d Cong., 2d Sess., XIV, part I, 382-83. Note also, that it was not until 1964 that the separate but equal idea in public facilities, etc. was outlawed.


56 Ibid., 344.

57 Ibid., 416-17 and 944.

58 Ibid., 565-67.
Butler sought to clarify the intent of the bill by clearly stating that there was no proposal to legislate social equality. Every man, he alleged, had the "inalienable God-given right to be created equal of every man if he can," and the bill only removed the impediments "to every man making himself equal to every other man if God has given him the power." Butler pointed to the speech so magnificently delivered by Elliott and boastfully said that few on the House floor could equal the talent which the black South Carolinian had displayed.  

Apart from the threats and fears of the social implications of the bill, a strong objection was made to its bearing on the public school systems. The opposition believed that it would seriously affect, if not destroy the public school systems in the South by forcing integrated schools.

A. A. Sargent of California warned that in certain states mixed schools "will break up and utterly destroy, certainly for a long time to come, the efficacy of the common school system," while Johnston of Virginia warned that if black voters persisted in encouraging "such unconstitutional interferences as are now sought, they will wake up one of these mornings to find the doors of every public school house in the State barred to all educational advantages for their own and white children alike."

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59 Ibid., 455.
60 Ibid., 421, 453, 555, 3h22, 4115, 4114. Only in Louisiana, Mississippi and South Carolina, states with black majorities, did constitutions contain school desegregation clauses. Ibid., 4114.
61 Ibid., 4172.
62 Ibid., 4114.
Boutwell of Massachusetts asserted in reply that mixed schools were imperative to the growth of American democracy. In them he said, "Negro and white alike" would eventually "be assimilated and made one of the fundamental ideal of human equality." The doctrine of human equality, he stated, could best be taught in public schools where children of all classes and conditions were brought together. Pratt concurred with this view saying that if mixed schools were not allowed, black children would remain uneducated, a thing to avoid, since they would one day be voters and policy makers. Black fathers, he continued, were taxed as equally as white fathers and that was all the more reason his children should receive a rudimentary education in common schools.

Butler thought the mixed school provision would be the "greatest boom on earth" to black parents and their children, as neither of them had an opportunity for formal education, and Lynch concluded that the school clause was the most "harmless provision" of the bill.

In accordance with the Fourteenth Amendment and other doctrines, the Civil Rights Bill was a proper exercise of constitutional authority conferred upon Congress. The major idea of the bill was to provide more specific and concrete meaning to the Fourteenth Amendment and provide for the guarantee of equal rights, and not social equality, to be accorded all citizens of the United States.

\[63\] Ibid., 4116.
\[64\] Ibid., 4082.
\[65\] Ibid., 456-67.
\[66\] Ibid., 945.
CHAPTER IV

IN DEFENSE OF CIVIL RIGHTS

The active role of black Congressmen in their efforts to obtain passage of the Civil Rights Act of 1875 deserves special attention. Their testimony in its behalf and their ability to counteract the stiff opposition to the bill during floor debate marked their greatest contributions. On the whole, they made an impressive and commendable record in their fight for progressive legislation.

The first decade following the Civil War contained the elements for the struggle in which blacks were engaged for the next century. It was in this period that blacks were able to begin the political struggle as members of the United States Congress. From the Forty-first Congress through the Forty-fourth Congress (1869-1877), a total of fourteen different blacks were at various times members of the House of Representatives and two became members of the Senate. Historians have tended to show that those blacks elected to office during the Reconstruction period were generally ignorant, unreliable, shiftless, and boorish. Many of these black men, however, despite their lack of experience and limited training in most instances, made important contributions as legislators.¹

¹The role of blacks in the Radical Reconstruction government was one of the most neglected aspects of Reconstruction history. Little attention was paid to the development of black leadership and independent actions. In recent years, numerous studies have appeared. Among the first attempts which further evaluated the extent and quality of black
The burdens of Reconstruction cannot overshadow the achievements of those Southern black men who went from their States and districts to serve in the nation's Congress. For the short time that they held official positions, they were a force to be heard.

The primary interest of black Congressmen was seeking a proper solution to the perplexing question of civil rights for blacks. Their major objectives were to secure for themselves, and other blacks, those civil rights freely enjoyed by other groups of the nation. In addition to civil rights, black Congressmen directed their efforts towards the obtaining of national funds for the aiding of education and the relieving of former slaveholders of their political disabilities. They therefore addressed themselves to the solution of these problems.

Black Congressmen felt that it was their responsibility to urge protection for black citizens in the exercise of their rights and...
privileges that were granted them under the Constitution. They sought to secure the enactment of laws with the purpose of securing a greater measure of opportunity for social advancement and they opposed the enactment of laws which intended to hinder such progress. Their work was characterized by efforts to stimulate public opinion in support of their cause. In the halls of Congress, they campaigned and protested against every injustice directed toward blacks.

The question of civil rights was not the first to draw the attention of black Congressmen. The protection of loyal people in the South drew their attention. When, therefore, the bill to enforce the Fourteenth Amendment was under consideration in the House, Robert C. De Large of South Carolina made an eloquent speech in reply to the remarks of Cox of New York. Cox had denounced the "ignorant" rulers of South Carolina for their "rapacity," which, according to him, justified the activities of the Ku Klux Klan.²

Two speeches of noteworthy importance were made on the political conditions of the South by Robert B. Elliott, a vigorous supporter of the Civil Rights Bill, during the Forty-second Congress. On May 30, 1872, he addressed the House on the topic of the Ku Klux Klan. He

²Cong. Globe, 2d Cong., 1st Sess., Appendix, 230-31. De Large placed the responsibility with both parties. He said: "Mr. Speaker, when the governor . . . called in council the leading men of the State, to consider the condition of affairs there and to advise what measures would be best for the protection of the people, . . . . The major portion of the men whom he convened were men resting under political disabilities imposed by the Fourteenth Amendment. In good faith, I ask . . . whether it is reasonable to expect that those men who would be interested . . . in using their influence and best endeavor for the preservation of the public peace when they have nothing to look for politically in the future?"
revealed, in his speech, the whole plan of domination by violence as
effectuated by a certain segment of the Southern whites who would either
"rule" or "ruin the government of the several States."^6

One of the initial struggles developed over the proposed
measure to grant amnesty to former Confederates who, by a provision of
the Fourteenth Amendment, had been declared ineligible to vote or hold
office.7

In the first session of the Forty-first Congress, on February 1,
1871, Representative Jefferson F. Long of Georgia, delivered in the House
his speech in opposition to the granting of suffrage to those who had
played key roles in the secessionist effort.8 He spoke in a manner
which reflected the attitude of many of the black Congressmen who were
to follow him.9 In his protest, Long maintained that any change or
modification of the test oath, for the purpose of bringing about a
general removal of political disabilities, would, in effect, subject the
loyal men of the Southern states to the disloyal. He further protested
that such activity would appear to the Ku Klux Klan to be an endorsement
of their vicious campaign of crime and lawlessness.10

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^6 Cong. Globe, 42d Cong., 2d Sess., XIV, part V, 4039. In his
second speech, Elliott answered directly the accusations made by Repre­
sentative Voorhees of Indiana concerning financial affairs of the
administration of South Carolina. Cong. Record, 43d Cong., 3d Sess.,
Appendix, 175.

^7 Ibid., 192.

^8 Supra, Chap. II, pp. 30-31.

^9 Taylor, 142.

Hiram R. Revels, from Mississippi, spoke at length on the Enforcement Act. He stated, first, his own position and, second that of the Republican party in his State, and declared himself in favor of "general" amnesty. Revels remarked:

I am in favor of removing the disabilities of those upon whom they are imposed in the South just as fast as they give evidence of having become loyal and being loyal. If you can find one man in the South who gives evidence of the fact that he has ceased to renounce the laws as unconstitutional, has ceased to oppose them, and respects them and favors carrying them out, I am in favor of removing his disabilities. . . . If you can find one hundred men that the same is true of . . . If you can find a whole State that this is true of, I am in favor of removing the disabilities.\(^{11}\)

At that time, Revels, as a black Southern Senator, had reasonable grounds for making such a speech in behalf of general amnesty, but the political situation in Mississippi soon changed.\(^{12}\)

Joseph H. Rainey, a South Carolina representative, speaking in the Forty-second Congress on the enforcement of the Fourteenth Amendment, felt that too much amnesty had already led to the murderous actions by the disloyal who had consented quietly and passively.\(^{13}\)

The subject of civil rights took on added importance and momentum when Charles Sumner's proposed Supplementary Civil Rights Bill came before the Congress in 1870. Black Congressmen pushed strongly for the passage of the Civil Rights Bill and actively sought to encourage other

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\(^{11}\)Cong. Globe, 41st Cong., 2d Sess., XLII, 3520. Revel's support of the bill for the removal of political disabilities was especially effective, Stampp, Reconstruction, 341.

\(^{12}\)Taylor, 143. In Mississippi, blacks had predominant political control of local governments in 1872, but conditions were reversed shortly thereafter.

\(^{13}\)Cong. Globe, 42d Cong., 1st Sess., XLIV, part I, 393.
Republican Congressmen to support the measure. The question of respecting blacks as social equals seems to have been brought to the attention of Congress when blacks were admitted as Senators and Representatives and took their seat in the Congressional chambers along with the white man. This had been Sumner's first argument for civil rights when he appeared before the Senate in debate in 1872. He asked his opponent, Hill of Georgia, if he thought the black Senator from Massachusetts should be placed in a separate hall of the Senate.

Black Congressmen were very vocal in stating their objection to the inconsistency that they encountered as selected legislators. In the Senate and the House chambers they were seated with the white Congressmen, but when they rode on steamboats or railroad cars on their journey enroute to Washington, they were forced to take separate compartments from them.

With perfect ease, an effective delivery and ready wit, which was a characteristic of his speeches, John R. Lynch of Mississippi rose before the House to speak in behalf of the pending Civil Rights Bill. He called for passage of a national Civil Rights Bill, full and complete, because "it was act of simple justice." In a later speech, he gave

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11 Cong. Record, 43d Cong., 1st Sess., II, part V, 4147.
16 Ibid.
17 Ibid. See also the speech of John R. Lynch before the House of Representatives, February 3, 1875, Cong. Record, 43d Cong., 1st Sess., II, part V, 1782-86.
his testimony of the discrimination that he had to endure as a Republican
Congressman. Lynch said:

... here I am, a member of your honorable body, representing
one of the largest and wealthiest districts in the State of
Mississippi, and possibly the South ... yet, when I leave my
home to come to the capitol of the nation to take part in the
deliberations of the House and to participate with you in
making laws for the government of this great Republic ... I
am treated, not as an American citizen, but as a brute.\textsuperscript{19}

Lynch manifested an unceasing interest in conditions as they existed in
the South.\textsuperscript{20} He appealed to the "fair-minded and justice-loving"
people of America to unite in a common effort to help destroy the evils
of injustice and secure for blacks the rights that they so justly
deserved.\textsuperscript{21}

The general theme of remarks made by Alonzo J. Ransier, a South
Carolina representative, also concerned the civil rights of blacks. He
spoke before the Forty-third Congress in opposition to a speech made by
Stephens of Georgia. Ransier stated the necessity of having a Civil
Rights Act. Such a measure, he declared, should be enacted by Congress
and not by the Legislatures of the several States. It was apparent to
everyone, he claimed, "who had any regard for the rights of their fellow-
men" and any "appreciation of the principles underlying the fabric of
the Government," that such an act was so desperately needed.\textsuperscript{22}

\textsuperscript{19}Cong. Record, 43d Cong., 2d Sess., 945.
\textsuperscript{20}Taylor, 155.
\textsuperscript{21}Cong. Record, 43d Cong., 1st Sess., 1121.
\textsuperscript{22}Cong. Record, 43d Cong., 1st Sess., III, part I, 382.
Ransier insisted that the black people of the country were asking no "peculiar privileges;" all they asked was "an equal chance in the race of life and the same privileges and protection meted out to other classes of people." They had established their loyalty beyond dispute, he asserted, and had given evidence of their fitness for political rights. Ransier proclaimed that blacks would be satisfied with "nothing short of their equal civil rights." Ransier further declared that States would not give blacks protection in the exercise of their civil rights, as "States-rights" men knew too well. He concluded by saying that it was clear to all that Congress had the power to regulate the matter of civil rights, and justice and humanity demanded that they do their duty to fulfill the "promises toward a people who had suffered" so long in the nation from the opposition in the country.

In a speech some time later, Ransier refuted the allegations made by certain members of the opposition to the effect that the mass of black people were not interested in having their civil rights. He sought to show, by the presentation of data in the form of resolutions from leading black groups and conventions, the intense desire to have their civil rights recognized. The presentations each carried a message calling for the passage of the Civil Rights Bill. In the course of

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23 Ibid., 382-83.
24 Ibid., 383.
25 Ibid.
27 Ibid.
his remarks, Ransier announced his intentions to offer an amendment to the Civil Rights Bill which would prevent disqualification of competent citizens for service on juries in any court in the nation because of "race, color, or previous servitude." The amendment would also provide for the repeal of all statutes, laws or ordinances, State or national, which were designed to discriminate against any citizen on account of color by the use of the word "white."  

Another ardent champion of civil rights was James T. Rapier of Alabama. He delivered a speech to the Forty-third Congress supporting the measure supplementary to the Civil Rights Bill. In his speech, "Is the Negro A Man?" he described segregation on the railroads and in hotels and restaurants and he answered some of the major arguments against the bill. Rapier made a clear analysis of the subordinate position which blacks were forced to occupy. Pointing out that they were accorded political rights without civil rights, he deplored the entire situation and challenged the truth of the statement that America was an "asylum for the oppressed." In direct reply to arguments presented by Stephens of Georgia and Beck of Kentucky, he asserted the constitutional authority of Congress to solve the problem of civil rights. Stephens contended that such a prerogative, to bestow civil rights upon blacks, belonged to the States, but Rapier did not agree to this position. Kentucky and

28 Ibid.
29 Cong. Record, 43d Cong., 1st Sess., II, part V, 4782-86.
30 Ibid., 4785.
31 Ibid., 4782.
other Southern states, he maintained, which denied blacks the privilege of testifying in courts against the whites; refused blacks their rights to education by the destruction of their schools and violent attacks upon their teachers; and where the Ku Klux Klan prevented blacks from voting, fully demonstrated that blacks possessed no rights under the Constitution. Such actions, he insisted, were in direct conflict with the belief that the States would eventually confer civil rights upon the blacks.  

Rapier stated that the law recognized his rights as a lawmaker on the House floor, but declared that there was no law which secured him equal rights to accommodations while traveling to discharge his "duties as a representative of a large and wealthy constituency." He declared that blacks had earned all the rights so freely enjoyed by other citizens. "Let this bill become law," he asked, "and it will do much toward giving rest to this weary country on the subject." The passage of the bill, he pledged, would "complete the manhood of and perfect the citizenship of the black people," and entitle them to rights, which he most vividly demonstrated, that they did not enjoy.

Here a foreigner can learn what he cannot learn in any other country, that it is possible to be half free and half slave . . . that it is possible for a man to enjoy political rights while he is denied social ones; he will see a man legislating for a free people, while his own chains of civil slavery are about him. . . . I am subjected to far more outrages and indignities in coming to and going from the capitol in discharge of my public duties than any criminal in the country, providing he be white.

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32 Ibid., l783.
33 Ibid., l782.
34 Ibid., l785-86.
35 Ibid., l782.
The great significance which many of the Congressmen attached to civil rights is also evident in a speech made by Representative Rainey. He spoke of discriminations imposed upon him as a black man. "Why is it," he asked, "that colored members of Congress cannot enjoy the immunities that are accorded the white members?" He met objections when he attempted to register in hotels and was insulted when he attempted to dine in restaurants. Such discriminations, he added, were unjust and a mistake. Blacks, according to Rainey, were not asking Congress to legislate for them specifically and only for their class. If blacks could exercise their full rights, he asserted, there would be no need for such a bill. But, such was not the case. He therefore declared that blacks would never rest until those rights granted by the Constitution were accorded them. Discrimination, he concluded, must cease.37

At a later date, speaking on the same subject, Rainey pointed to the fact that the "determined and earnest opposition" to which the Civil Rights Bill was subjected in the houses of Congress, served as an additional argument in favor of the necessity for the passage of the bill. He stated in conclusion:

The time has come under this Government when we must no longer be looked upon and judged by the color of our skins. Yes, the time is at hand when you must cease to take us for cringing slaves.38

Walls of Florida spoke of the problems which accompanied the denial of equal rights to blacks. He pointed to the need for appropriate

37Ibid.
38Cong. Record, 43d Cong., 2d Sess., III, part I, 959-60.
federal legislation to provide for the enforcement of the provisions of the Fourteenth Amendment which declared equal protection of the law of all its citizens.\textsuperscript{39}

Like his colleagues, Representative Cain, from South Carolina to the Forty-third Congress, gave much of his time and energy to the matter of civil rights. Replying in part, to Robert Vance and William Robbins of North Carolina, Cain denied that passage of the Civil Rights Bill would be beyond the limits of the Constitution.\textsuperscript{40} He asserted that the blacks of South Carolina did not enjoy, in public places, all the "rights, privileges and immunities" accorded to other citizens.\textsuperscript{41} In answer to arguments directed against the bill, he showed that the admission of black students to the University of South Carolina had not effected its destruction. He did not believe that the passage of the bill would alienate the "friendly" whites of the South from blacks.\textsuperscript{42} Cain reviewed the history of the role of blacks in the economic and industrial development of the country; he pointed to the importance of providing, in every State, the best possible school facilities; and he asserted the right of blacks to demand his full civil liberties by statutory enactment. He further insisted that he would demand, in the name of "God and humanity," all the rights, privileges and immunities

\textsuperscript{39}Cong. Record, 43d Cong., 2d Sess., 416-17.
\textsuperscript{40}Cong. Record, 44d Cong., 1st Sess., II, part I, 565-67 and 901.
\textsuperscript{41}Ibid., 565-67.
\textsuperscript{42}Ibid.
accorded to other citizens, and he asked nothing more than this.  

Conforming in principle to the doctrine that he had pronounced, Cain called for the passage of the Civil Rights Bill to settle the question of rights for all people, once and forever. Until this was done, he exclaimed, there would be no peace and harmony in the country. He objected to the "false statements" from those opposing the bill. In rejecting the idea of returning blacks to Africa, Cain proposed to stay in America and "solve this problem of whether the black race and the white race can live together in this country." The Civil Rights Bill, said Cain, was among the "best measures that ever came before Congress." He regarded it as a just and righteous measure which the government had to adopt in order to guarantee the enjoyment of equal rights to all citizens. In his final words he stated:  

... I will tell you further that there will be strife all over this land as long as five million black men, women and children are deprived of their rights ...  

Cain made a strong plea to the American people to become alert to the needs of the black people. He called upon every man, of every race to strike hands and go forward in national progress.

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43 Ibid., 566-67.  
44 Ibid., 902.  
45 Ibid.  
47 Ibid., 956.  
48 Ibid.  
49 Ibid., 901.
Numerous petitions and resolutions were offered by Congressmen in both Houses, to show the need and support of the Civil Rights Act. In an examination of the many petitions which were presented to Congress, no single conclusion can be drawn. The sole justification for their consideration, in this study, is the fact that they serve as a direct influence on the resolutions, motions and bills presented in behalf of the Civil Rights Bills which came before Congress. While the petitions varied in their nature, the ones of major concern dealt with those which gave testimonial evidences to the need for a Civil Rights Bill in 1875 and strongly advocated its passage. Black Congressmen, and others, presented these to Congress and used evidence from them to enhance their debate in favor of the bill.  

Black citizens held meetings to popularize the measure, but at that time, there was no unified nation-wide organized interest in it. Ransier claimed that there were organizations in nearly every State in the Union for the purpose of securing for the blacks their equal rights. Through individuals with delegated authority to act, through State and county conventions and organizations, and through national conventions, 

50 Supra, Chap. II, 27.

51 Charles Sumner, in his daily activity in Congress, presented numerous petitions from black groups who spoke very clearly and demonstrated the need for the Civil Rights Bill. Sumner addressed these to Congress in support of his measure. He read documents, letters, newspaper extracts and memos to show the necessity for his bill. Journal of the Senate, 33d Cong., 1st Sess., 33, 40, 55, 59, 65, 72, 90, 97. A glance at any of the Congressional proceedings will show the vast number of petitions received in support of the bill. However, one excellent indication of black response to the Civil Rights Bill was presented on January 17, 1872 by Sumner, Cong. Globe, 42d Cong., 1st Sess., II, part II, 1310-12.

52 DuBois, Reconstruction, 592.
blacks assembled for the purpose of asking for and supporting those
measures pending in Congress which called for equal rights for all
citizens.53

A convention held at Columbia, Georgia on October 18, 1871, was
composed of regularly elected delegates from "nearly every Southern
state." A convention subsequently held at New Orleans, Louisiana, and
in Atlanta, Georgia on January 26, 1874, all called for the passage of
the Civil Rights Bill which was under consideration.54

The Convention of black Republican Citizens of Tennessee sent
petitions to the Senate in behalf of the bill. It reminded the
Republican party that it had not lived up to the ideal of equal rights
for blacks and called for the passage of the Civil Rights Bill.55

A committee of black citizens came from Philadelphia to
Washington to call upon the President in behalf of the Civil Rights Bill.
They were stimulated in their convictions by the fact that they were
refused dining service in the depot hotel near the Capitol.56

On April 29, 1874, a convention of blacks met in Nashville,
Tennessee and drew up a resolution declaring that the interests of the
black people had been betrayed. They therefore, accused the Republican

54Ibid.
55Murphy, 117.
56Ibid., 114.
party, in their failure to enact the Civil Rights Bill, of surrendering the basic rights of humanity. 57

Through their speeches, of which their personal testimony was the most vivid indication, black Congressmen sought to focus attention upon the need of the Civil Rights Act. They gave their undaunted support to legislative measures which were designed primarily to benefit blacks for obvious reasons. In the first place, they regarded themselves as the official spokesmen for the black people and had a responsibility toward their constituencies. They saw this prerogative conferred upon them as evidence of the expectations and confidence which blacks had placed in them. Their efforts were often restricted to those measures which were related to their interests, as they were often forced and called upon to represent and defend the interests of blacks when they came up for discussion in Congress. They, therefore, fought vigorously to secure for blacks their equal rights and the equal protection of the law. While they were heard, all Americans, not just black Americans, were represented by their fight for justice and advancement. They supported laws in education, government, and economic matters which sought to improve the welfare of all citizens. 58

57 The resolution of the Nashville Convention was read in Congress by Stockton of New Jersey. It was bitterly objected to and denounced by the elected white representatives of Tennessee, Representative Butler and Senator William G. Brownlow, who both opposed the Civil Rights Bill. The debate which followed, centered on the admission of the resolution as representative of the blacks of Tennessee. For additional information see Cong. Record, 43d Cong., 1st Sess., II, part V, 4143-44, 4593.

58 Franklin, From Slavery to Freedom, 313-15.
CHAPTER V

THE AFTERMATH

The Civil Rights Act of 1875, with President Grant's signature, became law on March 1st.\(^1\) The new law, as it was in its final form, attracted no great attention. In actual practice it proved to have little meaning. The two most controversial sections, the mixed school clause and the cemetery provision, were deleted from the bill. It was generally regarded as little more than part of the "tactical device" employed in the Radical Reconstruction strategy.\(^2\)

The bill was described in the Washington National Republican as a "mere piece of legislative sentimentality."\(^3\) The Chicago Tribune called it a "harmless" and "unnecessary" bill. The New York Nation considered it "amusing, tea-table nonsense," the principle objection

\(^1\)Congressional Record, 33d Cong., 2d Sess., Vol. III, part III, 1861-70; also U.S. Statutes at Large, X1VII, 333-37. The law stipulated that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment" in inns, public conveyances on land and water, theatres, and "other places of amusement," subject only to provisions "applicable alike to citizens of every race and color, regardless of any previous servitude." It made violation of the statute a misdemeanor subject to a fine of five hundred to one thousand dollars and imprisonment of thirty days to one year, and permitted civil suits for damages of five hundred dollars for each offense.


\(^3\)As cited in Kelly, 562.

\(^4\)Editorial. Chicago Tribune, February 6, 1875, as quoted in Murphy, 124.
to it being its "entire unconstitutionality." Three days after the bill was made a law, The Nation explained the harmlessness of the bill. "The negroes of the South," it stated, "being mainly occupied in tilling the soil, or in labor of some kind, are not as a rule in the habit of traveling from place to place." When blacks did travel, it asserted, they were "more apt to move in crowds on foot, or in wagons," and consequently had little use for trains and hotels. It thought there were not many theatres in the South that would warrant the expectations of a great advance of the race through the influence of drama and music.

After the law had been in effect for eight years, technically, the New York Tribune in 1883, declared that blacks could not afford to bring suit for damages when they had been subjected to indignities. It added that blacks were not disposed to force themselves into inns, hotels, and the best seats in the theatres. The law was a failure, said the Tribune, and it had done nothing except to "irritate public feelings and keep alive antagonism between the races." It was of the

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5 Editorial. The Nation, XX (March 4, 1875), 111. The Nation, which had previously supported the Civil Rights Bill, declared in 1874 that the bill was "so unconstitutional that probably not ten respectable lawyers in the country could be found who would be willing to father it." Editorial. The Nation, XIX (December 3, 1874), 357. For an indication of its earlier position on blacks and Reconstruction, see "The Essence of the Reconstruction Question." The Nation, I (July 6, 1865), 4-5.

6 Editorial. The Nation, XX (March 4, 1875), 111.

7 Ibid.

opinion that blacks "would be as well off without the law as they were with it."⁹

Black public opinion apparently showed little interest in the act once the school clause had been striken out.¹⁰ The law, however, was deemed necessary by many who knew the "indignities and discriminations to which the colored people were subjected."¹¹

The severest blow to the law came when the constitutionality of the federal Civil Rights Act was challenged in the Supreme Court. On October 15, 1883, in the Civil Rights Cases, the United States Supreme Court, in interpreting the Fourteenth Amendment declared void the Civil Rights Act of 1875.¹² Blacks were denied the right to a mixed jury unless race reasons were proved. Segregated coaches for travel were permitted if they were equal in quality.¹³ The Jim Crow era came to dominance.¹⁴

In the Civil Rights Cases, the proceedings were related to a number of indictments charging refusals in defiance of the Civil Rights

⁹Ibid.
¹⁰Kelly, 562.
¹¹The Boston Daily Advertiser, March 1, 1875, as quoted in Murphy, "The Civil Rights Law of 1875," 125.
¹²Civil Rights Cases, 109 U.S. Statutes at Large, 2.
¹³Kelly, 562. He cited, ironically, that a mandatory school clause would have survived the test of constitutionality by the Court. "Justice Bradley based his opinion on the fact that the Fourteenth Amendment prohibited only certain forms of State action, whereas the Statute prohibited various acts by private persons, a distinction which would have left a prohibition of segregation in public schools intact."
¹⁴Craven, 180; McPherson, 510.
Act of 1875, to grant accommodations to blacks in a hotel and in theatres in San Francisco and New York, as well as a civil suit brought by a black woman who had been refused admission to the ladies' car on a train in Tennessee. 15

The Court took the position that the Fourteenth Amendment prohibited States from discriminating against blacks on account of color, but it did not restrict private individuals or organizations. The 1875 statute was based upon Section 5 of the Fourteenth Amendment, giving Congress power to enforce, by appropriate legislation, the Amendment's provisions. The Court held that the enforcement section of the amendment like the substantive provisions of the amendment itself, was limited to State action alone. Justice Bradley, who delivered the decision of the Court, declared that the Fourteenth Amendment, which supposedly authorized Congress to pass such legislation, "did not refer to the protection of the Negro against his fellow-citizen." 17 It applied only to discrimination against blacks by the State or local governments. The Court pointed out that the statute rested only on the first section of the Fourteenth Amendment, which prohibited States from abridging the privileges and immunities of or denying equal protection of the laws to United States citizens, and from depriving any person of

15Bardolph, The Civil Rights Record, 68-69.

16Ibid.

life, liberty, or property without due process of law. In the majority opinion of the Court, the amendment prohibited States from restricting the rights of citizens, but it held that Congress did not have power to legislate in this area. The amendment thus clearly prohibited invasion by State action of certain private rights. In effect, the Court served notice that the Federal Government could not lawfully protect blacks against discriminations by private individuals.

The Court, in its ruling, refused to recognize the argument that the Thirteenth and Fourteenth Amendments had specifically empowered Congress with the authority to pass such laws and enforce them. In particular, the Court denied the relevancy of the Fourteenth Amendment. Many of the private institutions which discriminated against blacks were recognized or licensed by the State, and were therefore instruments of the State. In effect, the actions of these institutions were actions of the State.

The Slaughter-house rulings had been the first important decision which raised the questions of Congressional authority and the constitutionality of the Civil Rights Act. In the decision of the

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19 Ibid., 315.
20 Kelly and Harbison, 494.
21 Fishel and Quarles, The Black American, 315; and Bardolph, 68-72.
22 Kelly and Harbison, 494.
23 Murphy, 126.
the Civil Rights Cases, the Court upheld the position previously established in regards to dual citizenship. It failed, however, to recognize that citizens of a State were also citizens of the United States, and that the Federal Government had an obligation to enforce the rights of all of its citizens.

In declaring the act unconstitutional, the Court asserted that the adjustment of social relations of individuals was beyond Congressional power. "It was the equivalent to saying that the jurisdiction of the Reconstruction amendments was restricted to political rights rather than social rights." Schools, railroads, hotels, theatres, and the like were given legal sanction in the practice of racial discrimination and segregation. In the years that followed the decision of the Civil Rights Cases, the Court eventually validated State legislation which discriminated against blacks.

The Nation, commenting in 1883 on the Supreme Court decision, noted that the "calm with which the country received the action of the Court," that the "celebrated Civil Rights Act of 1875" had been pronounced unconstitutional, "showed how completely extravagant expectations as well as the fierce passions of the war had died out."

It said that the Act was forced through Congress as the "crown-

24McPherson, 510.
25Murphy, 126.
26Current, 428.
27"The End of the Civil Rights Bill," The Nation, XXXVII (October 18, 1883), 326.
ing measure" of the plan of reconstructing the South by the Radical Republican party. The Nation asserted that members of both houses of Congress had seen clearly enough, that the Act was unconstitutional, but had voted for it "as a useful piece of party work," which might have been effective but certainly could not have been harmful. It stated, however, that the Republican Party still deserved the credit for having done its best to put blacks on a "footing of complete social as well as political equality." It went further to say that the act was really "an abomination, or statement of moral obligation, than a legal command." It declared that an estimated nine-tenths of those who voted for it knew that, whenever the Act came before the Supreme Court, it would be "torn to pieces." It stated very simply, that the Fourteenth Amendment did not authorize Congress to protect the civil rights of blacks, within the States, except where State legislation was proved hostile. In conclusion, it stated that the powers of Congress were defined by the Constitution, and "not by consideration of humanity, or even general utility, or by the opinions of wishes of prominent politicians."

Blacks, and those abolitionists still alive, did not approve of the Supreme Court's decision. Phillips declared angrily that the Court

\[28\] Ibid.  
\[29\] Ibid.  
\[30\] Ibid. The Slaughter-house and Civil Rights decisions were both rendered by a Court, the majority of which was Republican.  
\[31\] Ibid.  
\[32\] Ibid.  
\[33\] Ibid.
was "governed by a pro-slavery bias."\textsuperscript{34} Douglass condemned the decision as "a blow ... struck at human progress,"\textsuperscript{35} and "a glaring inconsistency" with former decisions.\textsuperscript{36} He referred to it as a new departure, entirely out of line with the precedents and decisions of the Supreme Court at other times. He proclaimed that the ruling had construed the Constitution in "defiant disregard of what was the object and intention of the adoption of the Fourteenth Amendment."\textsuperscript{37}

Douglass declared that the Supreme Court, in the exercise of its high and vast constitutional power, had suddenly and unexpectedly declared that the law intended to secure for blacks those rights guaranteed to them by the provisions of the Fourteenth Amendment was unconstitutional.\textsuperscript{38} The nullification by the Court, said Douglass, was "one more shocking development of that moral weakness in high places which has attended the conflict between the spirit of slavery from the beginning."\textsuperscript{39}

Although the Civil Rights Act was not enforced and was nullified by the Supreme Court decision in 1883, it was, nonetheless, a very significant piece of legislation. It was the first major piece of federal legislation that attempted to deal directly with social segregation and

\textsuperscript{34}McPherson, 510. \textsuperscript{35}Ibid.


\textsuperscript{38}Ibid., 229.

\textsuperscript{39}Foner, The Life and Writings of Frederick Douglass, 303.
discrimination by the States and private enterprises which were established to serve the public. In spite of its ineffectiveness, the very existence of such a law was a symbol of egalitarian aspirations on the part of the Federal Government. It proved to be a direct link between the Fourteenth Amendment and the Civil Rights Act of 1964.

With the circumstances surrounding the Congressional debates and the final form in which the bill passed, the Act seemed doomed in its effectiveness from the onset. When the bill appeared before the Supreme Court, it suffered its final devastating blow. The high hopes which Sumner, and other abolitionists, had expressed, in the hopes of wiping out racial injustices, were "betrayed by moral indifference and sordid politics which characterized the Reconstruction era."

The quest for social equality for all citizens was to continue in the following years. The Supreme Court played an important and decisive role. In major decisions, the Court succeeded in defeating, for the most part, the original intent of the Thirteenth, Fourteenth, and Fifteenth Amendments and the Civil Rights Act of 1875, all of which were designed to protect and secure equal rights for blacks.

*Pherson, 510.*

*Kelly and Harbison, 95-97, which gives more details of the Supreme Court ruling which followed the Civil Rights Cases in 1883. In expressing a widely accepted opinion, they state that "the Supreme Court also lent support to the restoration of 'white supremacy' in the Southern states."*  


*Kelly and Harbison, 497.*
Indeed, it is to the "discredit" of the Supreme Court that those cases which came before the Court, and where those rights granted by the Constitution were at issue, it interpreted the law so as to argue the intent of the Constitution.

Efforts to eliminate existing social injustices continued well into the Twentieth Century. A series of challenging cases were brought before the Supreme Court. The National Association for the Advancement of Colored People (NAACP) pioneered many of the early major challenges against such laws. Their main target was the "separate but equal" provision of the Plessey v. Ferguson ruling of 1896. The case involved the law that required separate seating arrangements for blacks and whites on railroads. The Court held that separate accommodations did not deprive blacks of their equal rights if the accommodations were equal. It maintained that separate facilities for blacks did not imply that they were inferior, and furthermore, such provisions in the laws did not violate the Fourteenth Amendment.

The Court reflected the dominant public opinion and social beliefs of the day. It merely gave its approval to the long-established situation that had been generally accepted for years. "Separate but equal" was to remain the law of the land for years to come. Americans with new and different ideas came to the forefront, in much the same spirit as Charles Sumner, and their ideas triumphed.

\[\text{\textsuperscript{44}}\text{Taylor, "Negro Congressmen A Generation Later," 141.}\]
\[\text{\textsuperscript{45}}\text{Current, 428-29.}\]
\[\text{\textsuperscript{46}}\text{Ibid.}\]
In 1899, a case challenging segregation in public schools came before the Supreme Court. It was the first major effort to obtain equal rights for blacks in public schools since Sumner's proposed mixed school provision. In Cumming v. County Board of Education, the Court reaffirmed the validity of segregated public schools. It accepted the constitutionality of State laws which supported the establishment of separate schools for blacks and whites.47 This doctrine remained a statute until as late as 1954, when the Court reversed this principle in Brown v. Board of Education.48

From 1875 to 1954, there was no further statutory gain for racial equality. The next significant national legislation involving civil rights was the Civil Rights Act of 1957. It was the first law of its kind to be enacted by Congress since the Act of 1875.49 Between 1953 and 1957, the House of Representatives passed several civil rights bills, but none of them ever came to a vote in the Senate.50

Early in 1947, President Truman, responding to growing public interest, set up a Committee on Civil Rights.51 On the basis of this Committee report, President Truman sent to Congress a strongly worded

47 Ibid.
48 Current, 755.
49 Franklin, From Slavery to Freedom, 621.
50 Kelly and Harbison, 954.
message which set the pattern for bringing about social and civil rights for all citizens. His program included a number of proposals which called for federal action to secure and promote the enjoyment of equal rights. Such a stand went far beyond the traditional position which thought that government interference was prohibited.

A somewhat limited civil rights "package" appeared before Congress in January of 1956. Its chief provisions resembled the earlier proposals of the Truman civil rights program. This bill passed the House, but failed to obtain the approval of the Senate Judiciary Committee.

In 1957, President Eisenhower presented Congress a four-point proposal for civil rights. A predominant feature of his proposal permitted the Attorney General to seek injunctive relief in the federal courts for persons whose constitutional rights had been violated. This particular aspect, however, was striken from the bill.

After sixty-three days of bitter debate and considerable pressure from civil rights advocates, Congress passed a new Civil Rights Bill in August of 1957. The new law, an extremely modest measure in itself,

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52 For the text of the President's message, see The New York Times, February 2, 1948, 1.
53 Young, 71.
54 Kelly and Harbison, 954.
55 Ibid.
56 Franklin, 621-22.
57 Ibid.
58 Current, 756.
was devoted to strengthening the judicial enforcement of voting privileges in the South. It gave federal protection to blacks wanting to vote. It authorized the Federal Government to bring civil suits in its own name to acquire an injunctive relief in federal Courts, in behalf of any person denied or threatened in their right to vote. The Act empowered the Attorney General to seek injunctions to prevent interference with voting rights.

Interference with the exercise of the franchise by intimidation or coersion, was made a federal offense, to be tried by a federal court, and the jury requirement was made optional. Under the Act, the Civil Rights Section of the Department of Justice became the Civil Rights Division, headed by an assistant Attorney General. It also set up a new Civil Rights Commission whose responsibility it was to investigate alleged voting discriminations; to study and collect information concerning legal developments composed of denials of equal protection of the laws; and to review the laws and policies of the government in regards to equal protection for all citizens.

In September of 1959, the newly established Civil Rights Commission delivered its report to the President. In view of the fact that the recent Civil Rights Act was proved ineffective in the protection

59Kelly and Harbison, 954.
60Franklin, 622.
61Kelly and Harbison, 955.
62Ibid.
63Ibid.
64Ibid., and Franklin, 622.
of voting rights, the Commission recommended a new system of federal registration for disfranchised black voters.\textsuperscript{65} The numerous recommendations and evidence presented by the Commission pointed to the need for stronger federal action to secure equal rights. Based largely on its recommendations, President Eisenhower introduced a new Civil Rights Bill to Congress in January of 1960.\textsuperscript{66} The bill called for stronger federal protection of the voting right. It passed the House by an overwhelming majority after five weeks of debate; and the Senate passed it, virtually unchanged, by a vote of 71 to 18.\textsuperscript{67}

In June of 1963, President Kennedy submitted to Congress proposals for a new Civil Rights Bill, the most comprehensive of the acts since Reconstruction. So strong was the measure that it caused considerable alarm.\textsuperscript{68} The Act prohibited racial discriminations in public places and facilities; it authorized the Attorney General to set up school desegregation suits; a ban was placed on racial discriminations for jobs; and an Equal Employment Commission was created; racial discriminations in all federally funded programs were prohibited; a Community Relations Service was established; and finally, it called for stronger voter registration systems to be enacted.\textsuperscript{69}

In both houses of Congress, the bill encountered serious

\textsuperscript{65}Ibid., 955.
\textsuperscript{66}Ibid.
\textsuperscript{67}Ibid., 956.
\textsuperscript{68}Ibid., 958.
\textsuperscript{69}Kelly and Harbison, 957, and Current, 766-67. For details of the provisions of the act, see Kelly and Harbison, 957-60.
filibustering. Strong, heated and at times, violent discussions characterized most of the debates. There was bitter opposition to the public accommodations provisions of the bill, on grounds that it interfered with States' and property rights. The proposal to withhold federal funds from programs where discriminations were practiced, was declared vindictive and unconstitutional by opponents of the bill.

Advocates of the civil rights legislation directed attention to the delay of federal action in granting blacks their equal rights. They called upon Congress to enact such legislation as a step in the direction of achieving racial equality.

The bill passed the House on February 10th by a vote of 290 to 130, and the Senate, June 19, 1964, by a vote of 73 to 27. The Act strengthened earlier legislation which was directed toward the protection of black voting rights. It was designed to speed up the progress of the desegregation of schools. Discriminations in public accommodations and facilities and private institutions were outlawed.

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70 Ibid. See Franklin, 629-45 for details of civil rights events and activities that occurred while the act was debated by Congress.
71 Ibid., 958-59.
72 Ibid.
73 Franklin, 632.
74 Ibid.
75 Ibid.
76 Kelly and Harbison, 958.
77 Current, 766-67.
In sum, the Civil Rights Act of 1964 gave legal guidance and protection for black Americans in their quest for equal rights. It embraced the more modern concept that the power and prestige of the national government had to be employed to disallow discriminations by private enterprises. The Act of 1964 passed with essentially the same provisions as the Act of 1875 had proposed, but perhaps, the climate of public opinion which accepted legalized segregation in 1875 had taken a turn in favor of securing equal rights for blacks.\textsuperscript{78}

Several Civil Rights Acts, not as controversial as the previous acts of 1875 and 1964, but equally important, were passed to further secure equal rights for black Americans. A Voting Rights Act was passed in 1965 which specifically eliminated voting discriminations in the South. It proved to have a remarkable impact upon efforts to wipe out social and political injustices.\textsuperscript{79} In an effort to eliminate discrimination and segregation in housing, a Civil Rights Act was approved. The major provision of the act established a federal fair housing law.\textsuperscript{80}

Within weeks of the enactment of the new federal housing law, a case was brought before the Supreme Court and acted upon. In prominent rulings, some of which found support for it from measures as far back as the Civil Rights Act of 1866, the Court upheld the validity of the housing law. It established a very favorable pattern toward civil

\textsuperscript{78} Austin, The Black Man and the Promise of America, 83.

\textsuperscript{79} Kelly and Harbison, 970.

\textsuperscript{80} Ibid.
rights and directed many of its efforts to wipe out both government-supported and purely private discriminations against blacks. It was the Supreme Court's long and lonely stand for justice for black Americans, more than any other single instrument of the government, during the first half of the nineteenth century, that brought blacks further along the path in their search for first-class citizenship in the American constitutional system.

Congress acted in these matters slowly and only after a great deal of public agitation. Responding to the dramatic change in the national climate that occurred in the racial field, Congress was impelled to enact civil rights legislation, not merely in response to Presidents Kennedy's and Johnson's suggestions, but also from mounting pressure by advocates of civil rights. Congress, therefore, joined in the battle against racial discriminations.

The Civil Rights Act of 1875 was considered, in most respects, to have been a failure. It was not enforced, it had little favorable impact upon the country, and the Court declared it void. Congress had exerted a tremendous amount of effort to secure the passage of the act.

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81 Kelly and Harbison, in Chapter 33, "The Supreme Court and the Black Revolution," 911-73; and Archibald Cox, The Warren Court. (Cambridge: Harvard University Press, 1968); Bardolph, The Civil Rights Record and Schwartz, Statutory History of the United States are all detailed and excellent accounts of the role and works of the Supreme Court on desegregation.

82 Kelly and Harbison, 918.

83 Ibid., and Schwartz, 1017-20.

84 Ibid.
They, along with the President, failed, however, to respond to and act upon the Court's invalidation of the legislation. Federal legislators literally practiced "hands off" the civil rights field for over three quarters of a century.

The important effects of the Act of 1875 have too often been neglected and overlooked. It was the first major and comprehensive attempt on the part of the national government to conquer and destroy racial discriminations and social injustice throughout the nation. It was the earliest effort, thorough in its scope and contents, designed to secure, for all times, equality and protection of the law for black Americans.

The vision of Charles Sumner, a man whose beliefs and efforts are to be highly commended, was perhaps a hundred years before its time. It was not until 1964, almost a century later, that the very same provisions became law finally. Efforts to secure those certain rights for blacks had essentially failed in the previous years.

What the Act of 1875 directed the hotel and railroad managers to do in the treatment of blacks, were basically the same as those demanded in the "sit-ins" in the 1960's. The idea was good in itself and if the managers had done it in 1875, perhaps, all would have been well in 1960.

Public opinion, it would seem, was never strong enough to produce either the adoption of a Constitutional amendment or the passage of a civil rights act which was expected to be enforced by the State governments. Even though public opinion influences legislation, legislation can also influence public opinion and serve to educate the public.
Had the Act of 1875 been enforced, a daring but correct assumption is that it would have done much toward eradicating the existing prejudices directed against black Americans. As it stood, it remained for the Congress of the Twentieth Century to give direction and substance to Sumner's ideals and the Civil Rights Act of 1875.

In February of 1875, Representative Rainey stood before Congress and echoed these words:

... The time has come ... when we must no longer be looked upon and judged by the color of our skins ... you must cease to take us for cringing slaves.85

On August 29, 1963, before a crowd at the Lincoln Memorial in Washington, D. C., Dr. Martin Luther King moved his listeners to tears with these words: "I have a dream ..."86

85 Cong. Record, 43d Cong., 2d Sess., 959.

86 Speech of Dr. Martin Luther King as printed in Fishel and Quarles, The Black American, 533-34.
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