

1870 Constitution and Black Legislators

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1870 Constitution and Black Legislators

Essential Question: What events led to Tennessee's Constitutional Convention of 1870 and the election of African-Americans to the General Assembly?

To understand the roots of the Constitutional Convention of 1870, one must look back to Tennessee's Civil War experience beginning with the fight over secession. Once South Carolina seceded in December 1860, Tennesseans were roughly divided into three camps. The first camp wanted to secede wholeheartedly. The second camp wanted to remain in the Union at any cost. The third group wanted to remain in the Union, but they did not want to force other states like South Carolina to remain in the Union if they wanted out. When the question of secession was first put to voters in February 1861, 69,000 voted to remain in the Union while 58,000 voted for secession. After the Battle of Fort Sumter and President Lincoln's call for 75,000 troops, many Tennesseans in the third group changed their minds. A second vote on secession in June 1861 resulted in 105,000 votes for secession and only 47,000 against. Thus, Tennessee became the last state to join the Confederacy.¹

The majority of Unionists lived in East Tennessee. William "Parson" Brownlow and Andrew Johnson were two key leaders of the movement. The Unionists wanted to form a separate state as West Virginia had done, but this was never accomplished. Instead, they settled down to endure four years of ruthless guerilla warfare in which they were sometimes the victims and sometimes the perpetrators of brutally violent acts.² Ironically, Middle and West Tennessee, where most of the secessionists lived, quickly came under Federal control. President Lincoln appointed Andrew Johnson, the loyal Unionist, military governor. In an effort to bring order to Tennessee, Johnson ruled with an iron hand. His harsh mandates left

¹ Paul Bergeron, Stephen Ash and Jeanette Keith, *Tennesseans and Their History*. (Knoxville: University of Tennessee Press, 1999), 134-136.

² *Ibid.*, 139-140.

many of the moderate Unionists feeling betrayed. Emancipation was an especially tricky issue in Tennessee. Many Unionists including the very vocal Brownlow opposed emancipation. In fact, Johnson asked Lincoln to exclude Tennessee from the Emancipation Proclamation because he feared that to do otherwise would drive many Tennesseans into the arms of the Confederacy.³

When Johnson left Tennessee to assume his duties as vice-president, he was replaced by William Brownlow. Brownlow was able to push ratification of the 14th amendment through the legislature and ensure that Tennessee would be the first Confederate state to rejoin the Union. Brownlow was not a man given to compromise. Instead of trying to reunite former Confederates (Democrats) and Unionists (Republicans) he drove them further apart with two laws. The first stripped voting rights from former Confederates in order to keep the Republicans in power. The second granted Blacks the right to vote. Voting rights or enfranchisement of Blacks angered many Conservative Republicans as well. A split developed in the Republican Party between the Radicals and Conservatives.⁴

It is not coincidental that the Ku Klux Klan was founded in Pulaski, Tennessee in 1865, the same year that Brownlow took office. Former Confederates who found themselves locked out of political power could not bear to see Black men voting when they could not. The Klan quickly evolved into a terrorist organization that used violence and threats of violence to intimidate voters and control the outcome of elections. Brownlow responded by sending out state troops to capture Klansmen, but they were largely unsuccessful in breaking up the group. When the state guard appeared, the Klansmen stopped their activities until the guard

³ Ibid., 147-149.

⁴ Hardy, William Edward, "'Fare well to all Radicals': Redeeming Tennessee, 1869-1870." PhD diss., University of Tennessee, 2013.

http://trace.tennessee.edu/utk_graddiss/2432 Accessed 11 July 2018.

left. The state already had massive debts from the war and could not afford to maintain the state guard. Once the guard was gone, the Klansmen returned to terrorizing the countryside.⁵

In 1869, Brownlow left his post as governor to assume his duties as United States Senator. DeWitt Clinton Senter, Brownlow's successor, assumed the governorship. Senter eased the voting restrictions that Brownlow had put in place on Conservative Republican voters. The Conservative Republicans favored granting suffrage to former Confederates. In order to gain the support of Conservative Republicans, Senter agreed. He appointed election commissioners who allowed more Conservatives and former Confederates to vote. The former Confederates (Democrats) saw this as their path back to political power. The former Confederates began running candidates in legislative races across the state. By 1870, the former Confederates had enough seats in the legislative branch to call for a constitutional convention.⁶

The new constitution did not disenfranchise Black voters as many of the legislators wanted, but it did completely restore voting rights to former Confederates. At a practical level there was no need to anger the federal government by denying Black voting rights on paper when the Ku Klux Klan was doing it more effectively with violence. The poll tax was further assurance that while Blacks could vote in theory, few would be able to take advantage of that right. The new constitution also contained a number of other provisions designed to weaken the power of the Radical Republicans. The constitution was overwhelmingly approved by voters in March. In November 1870, John C. Brown was elected governor of Tennessee. Brown was a Democrat, former Confederate and member of the Ku Klux Klan. His election signaled the end of the Reconstruction era in Tennessee.⁷ The experiences of Black

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

legislators in the General Assembly show Tennessee's movement towards segregation and disenfranchisement.

In 1872, Tennessee's first Black legislator, Sampson Keeble, was elected to represent Davidson County in the 38th General Assembly. Keeble, a Republican, owned a successful barbershop and served on the advisory board of the Freedmen's Savings and Trust Company Bank and as the treasurer of the board of directors of the Colored Agricultural and Mechanical Association.⁸ Despite Keeble's credentials he only served one term. Between 1872 and 1887, 13 other Black men were elected to the Tennessee General Assembly. After 1887, no other Blacks were elected until A.W. Willis, who was elected in 1965. The Black legislators who served in the Tennessee General Assembly in the 19th century had a number of things in common. Nine of the men represented counties in southwest Tennessee (Shelby, Fayette, Haywood and Tipton counties). The other legislators represented Davidson, Hamilton and Montgomery counties. These counties had large populations of enslaved people prior to the Civil War and many of the formerly enslaved people had remained in the area after the war. The men shared certain demographic characteristics: eleven had been enslaved, four were attorneys, four were teachers, and seven attended college. Three of the representatives attended Fisk University, including Greene E. Evans who was part of the earliest group of Fisk Jubilee Singers.⁹

Another commonality was the lack of success these men had in preventing the passage of Jim Crow laws in Tennessee. In 1875, just after Sampson Keeble's term ended, Tennessee passed its first Jim Crow law. Jim Crow laws legalized the segregation of Black and white citizens. The laws were named after a character from a popular traveling show in the late

⁸ Linda T. Wynn, "Sampson W. Keeble" Tennessee Encyclopedia, <https://tennesseeencyclopedia.net/entries/sampson-w-keeble/> accessed 07 July 2021.

⁹ "This Honorable Body: African American Legislators in 19th Century Tennessee." TSLA Exhibits. Tennessee State Library and Archives, 2013. <https://sharetn.gov.tnsosfiles.com/tsla/exhibits/blackhistory/index.htm> Accessed 11 July 2018.

1800s. The Jim Crow character, played by a white actor in black face makeup, portrayed Blacks as stupid, brutish and completely inferior to whites. The 1875 law, Chapter 130 Acts of Tennessee, allowed discrimination in hotels, trains, theaters and most other public places. Under the law, business owners could simply refuse service to anyone they choose. If a patron complained, he or she could be fined up to 100 dollars . A number of the Black legislators who served in the General Assembly introduced bills to overturn or amend Chapter 130 and similar laws, but were unsuccessful. Only Styles Hutchins (Rep. Hamilton County) had any success in passing legislation. His bills to abolish the poll tax in Chattanooga and to prevent criminals from other states from testifying in Tennessee courts were successful. In general, any legislation proposed by Tennessee's Black legislators that aimed to protect the rights granted by the 13th, 14th and 15th amendments failed.

After the end of Reconstruction, Tennessee's Black legislators faced increasing pressure from violent groups of racist whites. David Rivers represented Fayette County from 1883-1884. He was reelected in 1885, but was prevented from taking his seat when a mob of prejudiced whites drove him from Fayette County. While running for a fourth term in 1888, Samuel McElwee was targeted by white separatists in Haywood County. Armed mobs terrorized Black voters. Local officials deliberately miscounted and misreported votes to prevent McElwee from serving another term. McElwee and his family were forced to flee Haywood County and barely escaped with their lives. Like many of the other former legislators, McElwee eventually left Tennessee. The 46th General Assembly (1889-1890) was the first since 1872 to not have any Black legislators. The 46th General Assembly passed a statewide poll tax designed to greatly reduce the number of Black voters. The poll tax also meant that it would be 75 years before another Black legislator would serve in Tennessee's General Assembly.¹⁰

¹⁰ Ibid.

1870 Constitution and Black Legislators

Use the text to answer the questions below.

1. Where did most of Tennessee's unionists live? _____

2. What caused the split between the Conservative and Radical Republicans? _____

3. How did Governor Brownlow deal with the Ku Klux Klan? _____

4. Why didn't the 1870 Constitution deny voting rights to Black Tennesseans? _____

5. Who was the first Black legislator to serve in the General Assembly? _____

6. What did the law known as Chapter 130 do? _____

7. What happened to David Rivers in 1885? _____

8. What happened to Samuel McElwee in 1888? _____

9. Why did Tennessee pass a poll tax in 1889? _____

10. What are Jim Crow laws? _____

1870 Constitution and Black Legislators Key

Use the text to answer the questions below. *Answers will vary.*

1. Where did most of Tennessee's unionists live? **East Tennessee**
2. What caused the split between the Conservative and Radical Republicans? **Conservative Republicans did not want to give voting rights to Blacks and wanted to restore the voting rights of former Confederates.**
3. How did Governor Brownlow deal with the Ku Klux Klan? **He sent the State Guard to stop the Klan, but they were not effective. The Klan just stopped activity in an area until the Guard moved on.**
4. Why didn't the 1870 Constitution deny voting rights to Black citizens? **Leaders did not want to anger the federal government by openly denying the 15th amendment. Also, the Klan was already effective at preventing African-Americans from voting.**
5. Who was the first Black legislator to serve in the General Assembly? **Sampson Keebles**
6. What did the law known as Chapter 130 do? **The law allowed the owner of any business to deny services to African-Americans. If an African-American complained, he or she could be punished.**
7. What happened to David Rivers in 1885? **Rivers was driven out of Fayette County by a white mob.**
8. What happened to Samuel McElwee in 1888? **McElwee and his family were forced out of Haywood County**
9. Why did Tennessee pass a poll tax in 1889? **To prevent Black citizens from voting**
10. What are Jim Crow laws? **Segregation laws that take their name from a character in a popular traveling show**

1870 Constitutional Convention Primary Source

The following is an excerpt of an article that appeared in the Nashville Union and American on January 19, 1870. It describes the Committee on Elections recommendations concerning voting in Tennessee

Mr. Nicholson, from the Committee on Elections and the Right of Suffrage, submitted the following report:

ELECTIONS AND RIGHT OF SUFFRAGE.

The Committee on Elections and the Right of Suffrage, have considered the several propositions referred to them on the subject of the elective franchise, and have instructed me to submit the following report: 1. A majority of the committee recommend that the elective franchise shall not be withdrawn from the colored men, but that they shall be secured in the continued exercise thereof.

2. A majority of the committee have rejected the proposition to submit the question of suffrage by colored persons as an independent proposition, separate and apart from all others.

3. A majority of the committee recommend that the payment of such poll taxes as may be assessed by law, shall be made a condition precedent to the exercise of the elective franchise.

4. A majority of the committee recommend that the General Assembly be empowered to pass laws for requiring voters to vote in the election precincts in which they may reside, and to secure the freedom of elections and the purity of the ballot box. For the purpose of carrying out the conclusions of the committee, a majority of them recommend that the following be adopted by the Convention, in lieu of section 1, article IV, of the present Constitution, viz :Article IV.

Section 1. Every man of the age of twenty-one years, being a citizen of the United States and a citizen of the county wherein he may offer his vote six months next preceding the day of election, shall be entitled to vote for members of the General Assembly and other civil officers for the county or district in which he resides, and there shall be no qualification attached to the right of suffrage except that each voter shall give to the judges of election when he offers to vote satisfactory evidence that he has paid his full taxes then due by him, without which his vote cannot be received. And all male citizens of the State shall be subject to the payment of poll taxes, and to the performance of military duty within such areas as may be prescribed by law. Provided, That the General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot-box.

Source: *Nashville union and American*. (Nashville, Tenn.), 19 Jan. 1870. *Chronicling America: Historic American Newspapers*. Lib. of Congress. Web. 7 July 2014

<<http://chroniclingamerica.loc.gov/lccn/sn85033699/1870-01-19/ed-1/seq-1/>>

Excerpts from Samuel McElwee's Speech Against Lynching

“Mobs under any and all circumstances are wrong, and the strong arm of the law should take hold of the participants and punish them severely. In speaking of my opposition to mob violence I wish to do so under the head of four indictments which I regard as germane to the discussion of this question. First indictment, mob violence is wrong; second, mob violence drives capital from the state; third, it demoralizes society; fourth and last, but by no means least, nine-tenths of the victims of mob violence in the south are negroes. Mob violence is wrong because it is in direct conflict with the constitution of the state and of the United States. It is then what every democrat would be pleased to call an unconstitutional act. It is a relic of barbarism and should be condemned by every community.”

“Again, mob violence is wrong because it violates that injunction of holy writ which says, “Thou shall not kill.” Any killing which is not legalized by the law of the land violates this injunction. “Vengeance is mine; I will repay, saith the Lord,” and no set or crowd of men have any right to attempt to avenge any wrong by resorting to mob violence. “

“Mr. Speaker, let us now notice the effects of mob violence upon the development of a country, as you know mob violence drives capital from a community, crippled the industries of the people and causes property to depreciate in value. Capital seeking investment is influenced by the intellectual and moral character of the community in which the investment is made. Men who have lived in communities where the intellectual and moral atmosphere is good will not consent to invest their means in neighborhoods where their children will be exposed to the contamination of vice. Capital seeks investment where the moral character of the people, the prevailing sentiment of the community, is a protection from dishonesty, robbery and mob violence.”

“Nine-tenths of the victims of mob violence in the south are negroes. Why is this? Is it because negroes commit nine-tenths of the crimes in the south? Or is it because negroes are afraid to assert their rights? Can it be that public sentiment in this land favors the wholesale mobbing of negroes? Give us an answer to this question and remove the stigma that calls in question the moral status of this people.”

McElwee included this item in his speech as an example of the mob violence he spoke of.

“Memphis Appeal: Two Negroes Taken From Jail and Lynched in Georgia.

Chattanooga, Dec. 11.: Last night about 11 o'clock, a mob of masked men visited the jail at Ringold, in Catoosa county, Ga., and after overpowering the jailer took out two prisoners, names George Sparks and Monroe Smith, both negroes, and taking them to a point near the railroad south of town, hanged them to a tree, where they were found this morning and cut down by the authorities. Both of the negroes have been engaged in robbing and burning houses in North Georgia for some months, and had come to be the terror of the community. Smith confessed the crime of which the two had been guilty.

The latest crime was robbing and attempted burning of a family residence near Ringold, on which occasion Smith said they had plotted to murder everybody in the house, rob the building and then fire it. There is no clue to the identity of the lynchers.”

“Hundreds of negroes, yes thousands, from all parts of this south’s land, are to-day numbered with the silent majority, gone to eternity without a tomb to mark their last resting-place, as the result of mob violence for crimes which they never committed. As we to-day legislate on this question the spirits of these negroes made perfect in the paradisiacal region of God, in convention assembled, with united voices, are asking the question, “Great God, when will this nation treat the negro as an American citizen, whether he be in Maine, among her tall pines, or in the south, where the magnolia blossoms grow?” Mr. Speaker, Tennessee should place the seal of eternal condemnation upon mob violence. “Your sins will find you out.” [Numbers 32:23] The spirit of God will not always strive with man. For years American slavery was the great sin of the nation. In the course of time God made clear his disapproval of this national sin by a national calamity. Four years of destructive and bloody war rent our country in twain and left our southland devastated. the war came as the result of sin; let us sin no more lest a greater calamity befall us.”

Source: McElwee, Samuel. “Samuel A. McElwee: Speech to the General Assembly (1887)” This Honorable Body: African American Legislators in 19th Century Tennessee. Tennessee State Library and Archives, 2013. Web.

<<http://sharetn.gov.tnsosfiles.com/tsla/exhibits/blackhistory/pdfs2/1887McElweeSpeech.pdf>>

Tennessee Segregation Law

Chapter 130 Acts of Tennessee, 1875

Chapter 130, Acts of Tennessee, 1875

Introduced as House Bill No. 527 by Representative R. P. Cole, Paris, Tennessee (Democrat representing Henry, Carroll, Gibson, and Weakley counties).

DOCUMENT ONE [Actual bill as amended and passed.]

A Bill – To define the rights, duties, and liabilities of Inn Keepers, Common Carriers, and Proprietors of places of public amusement.

1st Be it enacted by the General Assembly of the state of Tennessee – That the rule of the Common Law giving a right of action to any person excluded from any Hotel or public means of transportation or place of amusement, is hereby abrogated, and hereafter no keeper of any Hotel or public House, or carrier of passengers for hire or conductor, driver or employee of such carrier or keeper of any place of amusement or employee of such keeper shall be bound, or under any obligation to entertain carry or admit any person whom he shall for any reason whatever choose not to entertain carry or admit to his house Hotel carriage or means of Transportation or place of amusement nor shall any right exist in favor of any such person so refused admission but the right of such keepers of Hotels & public Houses carriers of passengers& keepers of places of amusement and their employees to control the access & admittance or exclusion of persons to or from their public Houses – means of Transportation & places of amusement shall be as perfect and complete as that of any private person over his private house carriage or private theatre or places of amusement for his family.

Sec 2nd Be it further enacted That a right of action is hereby given to any keeper of any Hotel Inn Theatre or public House common carrier and restaurant against any person guilty of turbulent or riotous conduct within or about the same, and any person found guilty of so doing may be indicted & fined not less than one hundred dollars, and the offender shall be liable to a forfeiture of five hundred dollars and the owner or person so offended against may sue in his own name for the same.

Sec 3 Be it further enacted that this act shall take effect from and after its passage the public welfare requiring it.

[On reverse]

Passage Recommended by Judiciary Committee. W. A. Quarles, Chm. HB 527 Passed 1st Rdg. Mch 9th

Rfd. J. C.

Passed 2nd Rdg. Mch 10th

Amended & passed 3rd Rdg. Mch 11th

R.P. Cole

Passed 1st reading Mch 12

Passed 2nd Reading March 22 1875

Passed 3d Reading March 23 1875

Source: "Chapter 130, Acts of Tennessee, 1875." *This Honorable Body: African American Legislators in 19th Century Tennessee. Tennessee State Library and Archives, 2013. Web. <
[http://www.tn.gov/tsla/exhibits/blackhistory/pdfs2/1875%20Chapter%20130,%20Acts%20of%20TN.p
df](http://www.tn.gov/tsla/exhibits/blackhistory/pdfs2/1875%20Chapter%20130,%20Acts%20of%20TN.pdf)>*