

# 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.<sup>1</sup>

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.<sup>2</sup> 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

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

<sup>2</sup> *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.<sup>3</sup>

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.<sup>4</sup>

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

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<sup>3</sup> Ibid., 147-149.

<sup>4</sup> 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](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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> The experiences of Black

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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

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

<sup>9</sup> "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.<sup>10</sup>

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<sup>10</sup> 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? \_\_\_\_\_

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

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

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

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

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7. What happened to David Rivers in 1885? \_\_\_\_\_

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8. What happened to Samuel McElwee in 1888? \_\_\_\_\_

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

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10. What are Jim Crow laws? \_\_\_\_\_