

AFD Ep 424 Links and Notes - Amnesty Act of 1872 (feat. Patrick from CYCBI) - Recording May 1, 2022

- [Bill will re-introduce Patrick to the audience and talk about some of the episodes of CYCBI that are interesting or relevant for today]
- [Bill] Intro: 150 years ago this month on May 22, 1872: The “Amnesty Act” restoring certain federal civil or civic rights to ex-Confederates (at least those not already restored as early as May 1865 under Andrew Johnson’s Presidential Reconstruction period) was signed into law by President Grant after two-thirds passage by both houses of Congress per the 14th Amendment. About 500 specific people, including prior federal officeholders who had defected to the Confederacy in 1860 and 1861, were not restored under the 1872 legislation on office-holding amnesty. (Although those elder statesmen of the South had to wait for a still further round of amnesties before they could re-enter office, about 150,000 former Confederate troops were cleared by the May 1872 amnesty to re-enter public life and many of them would form a new generation of a restored Southern ruling elite.) In July 1872, blanket pardons were issued to those not within those exceptions categories, and federal prosecutors dropped charges against those not excepted.
https://en.wikipedia.org/wiki/Amnesty_Act
<https://www.presidency.ucsb.edu/documents/proclamation-208-suspension-prosecution-or-violations-the-office-holding-prohibition>
- **One of the questions we’ll discuss today is whether this was a turning point or a long-foregone outcome, or perhaps some combination of the two.**
- [The Amnesty Act itself](#) is extremely short and reads as follows: *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), That all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever, except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States.*
- For reference and a refresher for the listeners, the 14th Amendment (1868) 3rd Section reads as follows: *No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. **But Congress may by a vote of two-thirds of each House, remove such disability.***
- [Patrick] Office-holding vs voting:
 - Historian James A Rawley [pointed out in a 1960 article](#) that the Amnesty Act really only restored the right to *serve in office*, not the right to vote—section 3 of the 14th Amendment only restricts holding office, not voting. Thaddeus Stevens initially wrote a section of the Amendment to ban all former confederates (of any rank) from voting until 1870. This was changed to Section 3 as we know it in the Senate, which passed.
 - However, some Southern states under biracial reconstruction governments, such as Alabama, did extend the federal ban on office-holding to voting. Alabama did this in its [1868 constitution](#) by simply stating that the 14th Amendment ban on holding office *also* applied to voting in the state of Alabama, disenfranchising many former confederate officers, although in 1868 a white Unionist named William H Smith became governor and took a more conservative tack, and would

support re-enfranchising them. The section that revokes civil and military Confederate officers from voting in Alabama: *the following classes of persons shall not be permitted to register, vote or hold office: 1st, Those, who, during the late rebellion, inflicted, or caused to be inflicted, any cruel or unusual punishment upon any soldier, sailor, marine, employee or citizen of the United States, or who, in any other way, violated the rules of civilized warfare. 2d, Those who may be disqualified from holding office by the proposed amendment to the Constitution of the United States, known as "Article XIV*

- [Bill] So why was the legislation passed in 1872?
 - For some narrow background, the 1872 Amnesty Act was sponsored by Massachusetts Congressman Benjamin Butler, at the time a radical Republican, but before the war a Democrat and much later on a Greenbacker and once again a Democrat. Butler had controversially served as the Union general in charge of the occupation of New Orleans, with a reputation that was partly deserved and partly hostile propaganda. In the immediate aftermath of the war, in early- to mid-1865, he had provided legal advice and legal representation to the Andrew Johnson Administration on several cases involving prosecution or potential prosecution of ex-Confederates. In those cases, he represented the hard-line position.
 - For some wider background, we can turn to some of the books on Reconstruction by Eric Foner. (Citations as always will be included in the PDF with this episode at ArsenalForDemocracy.com.) Foner makes the case essentially that although the amnesty idea had been floating around in Congress since the session of 1870, it finally got passed, when it did, as a deliberate national political response by Republican Party leaders to a Liberal-Republican and Democratic Party surprise joint nomination of newspaper publisher Horace Greeley for President in May 1872 against the incumbent President Grant. Greeley had been a noted anti-slavery figure before the war, but he had also taken an extremely soft line on the Confederacy at the beginning and end of the war and was now running on a platform of winding down Reconstruction including political amnesty for former Confederate politicians, officers, and soldiers. However, his support within the Democratic Party was soft, for a range of reasons – including that he wasn't really a Democrat per se and had kind of been forced on them externally by circumstance as a unity opposition pick – as well as some of his idiosyncratic views on issues totally unrelated to the Southern questions. So, Republicans sensed an opportunity to signal a softer, less radical line on Reconstruction as well and thus peel off some Democratic or swing constituencies to stick with Grant as the devil they knew. Greeley had been publicly arguing for “Universal Amnesty and Impartial Suffrage” for ex-Confederates since the moment the war ended, saying that failure to do so left out the “best men” from service as Southern leaders. He had been continuing for years to editorialize against the Reconstruction state governments and the lack of “local self-rule.” By passing the Amnesty Act in May 1872, Republicans took away one issue he could campaign on. Its passage happened in the same flurry of legislation meant to steal his platform out from under him, such as a 10% tariff cut the same month. They also stripped down and then killed Charles Sumner’s radical Civil Rights Act bill to such an extent that he ended up voting against it when it came up for a vote. That unpassed bill in its final form also ended up providing, against his intent with the original version, the basis of subsequent “separate but equal” public spaces and facilities and thus racial segregation enshrined in law. Sumner had hoped his bill could be passed as part of a package deal with Amnesty, but only the

Amnesty ended up passing. Unfortunately, Black supporters of the Republican Party felt they had no other option but to continue supporting Grant and the Republicans, despite these rollbacks of Reconstruction efforts and failures to pursue civil rights.

- Interesting: Foner argues that the 1872 Amnesty only affected a small number of individuals, but maybe he meant exempted only a small number ...?
- Citations: "Reconstruction: America's Unfinished Revolution, 1863-1867" by Eric Foner (1988) pp.502-508 (also the abridged version from 2005, pages 85, 89, 214-215)
- **[Patrick] Even more additional Context: Enforcement Acts of 1870 and 1871**—Laws intended to enforce the 14th & 15th amendments and protect voting rights for African-Americans in southern states, also meant to stop Ku Klux violence at the polls.
- **First Enforcement Act: 1870**, criminalized preventing eligible voters from casting ballots, outlawed voter intimidation based on race, outlawed "disguised groups" from going on roads or other people's property with intent to intimidate from the polls
- **Second Act 1871**: added provisions for federal supervisors in areas where elections interference was happening
- **Third Act 1871** (also the Ku Klux Act): made voter intimidation and conspiracy to overthrow the government or prevent people from serving on juries a federal offense, empowered federal marshals to use posse comitatus and the President to use the military to enforce it
- There were many successful prosecutions in 1870—the US won 74% of cases that year. but by 1872-3 it became clear that Atty General George Henry Williams wanted to pursue a moderate policy. The US won only 41% of cases in 1872, and 10% in 1874. The public opinion among northern whites was no longer supportive of a strong military-style protection of black voting rights in the south. Also, former confederates were actively resisting the Enforcement Acts and refusing to recognize the 14th and 15th amendments. From [Enforcing the 15th Amendment by Everette Swinney](#):

By going behind the statistics one discovers that there were other factors which made successful prosecutions difficult. White Southern Democrats insisted from the outset that the enforcement laws were unconstitutional, oppressive, and not worthy of respect. Linton Stephens of Georgia well expressed this view when brought before a United States commissioner for a preliminary hearing on an alleged violation.

I am accused under the Enforcement Act of Congress [Stephens said]. My first position is that this whole act is not a law, but a mere legal nullity. It was passed with the professed object of carrying into effect what are called the 14th and 15th Amendments to the Constitution . . . and depends on their validity for its own. These so-called amendments are . . . not true amendments of that sacred instrument. They are nothing but usurpations and nullities, having no validity themselves and therefore incapable of imparting any to the Enforcement Act or to any other act whatsoever.²⁴

(Linton Stephens was a CSA officer and the half-brother of CSA vice president Alexander Stephens). Opposition from anti-civil rights whites to Enforcement became widespread and violent. In one 1872 case the DA of northern mississippi had a case fall apart because five key witnesses were murdered.

-This article by [Wayne Flynt about the 1901 Alabama Constitution](#) gives some background to Alabama's 1875 constitution that overturned the more racially progressive 1868 reconstruction constitution. The assembly that passed it was white by a solid majority. The state had recently seen elections in 1874 that returned the former secessionist Democrats to power. That election was marred by violence against black voters, notably in the [Eufala massacre](#), where future governor BB Comer helped kill around ten black men and the white son of a republican judge when the local White League opened fire on a gathering of republican voters

-Some interesting exceptions to the former confederate officer support for conservatives: [The Readjuster Party in Virginia](#) was led by William Mahone, who had been a confederate general. Their candidate for governor was William Cameron, a former rebel lieutenant. The Readjusters were a coalition of working-class white Democrats and republicans as well as African-Americans. Their main stated goal was to "readjust" Virginia's pre-war debt, but also reinvest any savings back into public schools, including black schools. Mahone had previously been an opponent of reconstruction, but now found himself building a political coalition with black Virginians. Wm Cameron became governor in 1881 after entering into a deal with the black-led section of the state's republican party and the readjusters made many investments into black schools and eliminated the poll tax.

-Another example is [Reuben Kolb of Alabama](#), who was a two-time gubernatorial candidate for the Populists and a leader in the Farmer's Alliance. He also had been a confederate artillery captain. He campaigned on eliminating the racist convict lease system and protecting the voting rights of african-americans and poor whites, but his commitment to this was actually shaky at best. He would rejoin the regular democrats about a decade later under and openly racist state government.

- https://en.wikipedia.org/wiki/James_Longstreet [Confederate Gen. & future Ambassador to the Ottomans, James] *Longstreet enjoyed a successful post-war career working for the U.S. government as a diplomat, civil servant, and administrator. His support for the Republican Party and his cooperation with his old friend, President Ulysses S. Grant, as well as critical comments he wrote about Lee's wartime performance, made him anathema to many of his former Confederate colleagues. His reputation in the South further suffered when he led African-American militia against the anti-Reconstruction White League at the Battle of Liberty Place in 1874. Authors of the Lost Cause movement focused on Longstreet's actions at Gettysburg as a principal reason for why the South lost the Civil War.*

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