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Marcus Gadson
Campbell University School of Law

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Time to Reconcile

MARCUS A. GADSON*

Soon after George Floyd's murder, Americans began taking down statues of Confederate leaders. Amid the protests about police misconduct and longstanding racial inequalities, the statues inspired surprisingly fierce controversy. Some defended taking down the monuments as necessary to grapple with their racist history. Others warned us against erasing history. The disagreement, when coupled with the concurrent one about Black Lives Matter and whether it has gone too far or has accurately assessed the state of racial affairs in America, provides us an important opportunity. We can complete the racial reconciliation that never took place after the Civil War, and to this day has not fully completed.

That claim might surprise you. Didn't Joshua Lawrence Chamberlain order his men to salute surrendering Southern soldiers at Appomattox?¹ Didn't General Grant tell his soldiers to stop celebrating after the surrender because "[t]he Rebels are our countrymen again"?² Didn't a reunified nation win the world wars and become a superpower? To be precise, although we have had reunification between whites in the North and the South, we haven't had racial reconciliation.

The term reconciliation is thrown around a lot, but it is the result of a deliberate process. In fact, the Centre for Justice & Reconciliation describes reconciliation as a five-step process.³ First, the wrongdoer must accept responsibility for the harm done. Second, they must confess their behavior and repent of it. Third, they must seek forgiveness. Fourth, they must make amends. Then, and only then, can reconciliation take place.

Measured against this standard, the United States has never had true racial reconciliation. During the Civil War, President Lincoln's plan for

*Assistant Professor of Law, Campbell University's Norman Adrian Wiggins School of Law.

1. J.L. Chamberlain, *The Last Salute of the Army of Northern Virginia*, AM. BATTLEFIELD TR., <https://www.battlefields.org/learn/primary-sources/last-salute-army-northern-virginia> [https://perma.cc/J7WE-3NVF].

2. *This Day in History: April 9*, HIST., <https://www.history.com/this-day-in-history/robert-lee-surrenders> [https://perma.cc/LZ4C-VZMG].

3. *Steps to Reconciliation*, CTR. FOR JUST. & RECONCILIATION, <http://restorativejustice.org/tj-library/steps-to-reconciliation/9034/#sthash.noBlzBJM.uQlWpyY0.dpbs> [https://perma.cc/8MP8-4K57].

southerners to rejoin the Union didn't require it.⁴ Slaveholders did not need to apologize for slavery or attempt to make things right for their slaves. In fact, new state governments could be re-established with just 10% of the votes of qualified oath-taking residents.⁵ This choice was, of course, understandable. The country was in the midst of a terrible conflict that would cost the equivalent of 7.5 million lives today.⁶ Stitching a dismembered country back together was urgent.

As the war ended, the opposite of racial reconciliation took place. Instead of apologizing for slavery, former slaveholders instituted Black codes that reinstated slavery in all but name; the codes even referred to those who made contracts with freedmen as "masters."⁷ Instead of taking responsibility for the way slavery demeaned and oppressed Blacks, defeated rebels started a crime wave. Things got so bad in Texas, for example, that the state formed a committee on lawlessness and violence at its 1868 constitutional convention.⁸ The committee found that bands of whites were roving the countryside and murdering Blacks at random.⁹ There were so many murders that the committee deemed it a "minor outrage" when a white man cut off a Black woman's ear.¹⁰ Ominously, the committee suggested that a race war was afoot, and that it was "all on the part of the whites against the blacks."¹¹

Once radical Republicans took over Reconstruction, the situation improved. Black men helped rewrite state constitutions, went to state legislatures and Congress, and served as judges. They helped establish public school systems. But this did not, for the most part, happen with the support of former rebels. Instead, the Ku Klux Klan used terrorism to suppress Black votes.¹² The former rebels won through crime and

4. *Presidential Proclamation (December 8, 1863)*, LINCOLN'S WRITINGS, <http://housedivided.dickinson.edu/sites/lincoln/presidential-proclamation-december-8-1863/> [<https://perma.cc/5ZKX-QEQT>].

5. *Id.*

6. Daniel Nasaw, *Who, What, Why: How Many Soldiers Died in the U.S. Civil War?*, BBC NEWS (Apr. 3, 2012), <https://www.bbc.com/news/magazine-17604991> [<https://perma.cc/5BWD-N4CE>].

7. *After Slavery: Educator Resources, South Carolina's 'Black Code,'* LOWCOUNTRY DIGIT. HIST. INITIATIVE, https://ldhi.library.cofc.edu/exhibits/show/after_slavery_educator/unit_three_documents/document_eight/ [<https://perma.cc/59C8-W7PA>].

8. REPORT OF SPECIAL COMMITTEE ON LAWLESSNESS AND VIOLENCE IN TEXAS, S. REP. NO. 40-109, at 1 (1868).

9. *See id.* at 4.

10. *Id.* at 4.

11. *Id.* at 2.

12. *Grant, Reconstruction and the KKK*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/grant-kkk/> [<https://perma.cc/8GLL-ZMB5>].

intimidation what they had lost on the battlefield and had been losing in the political process—a free hand for white supremacy. Northern soldiers withdrew from the South, and Jim Crow rose to take slavery’s place.

Eventually, there would be a largely successful attempt at sectional reunification. This began with noble portrayals of defeated rebels. A speaker at a Confederate Memorial Day celebration in 1874 described Robert E. Lee and Stonewall Jackson as “two God-like heroes who were invincible in the battle field, scorned not to visit the dying soldier and kneel before his humble couch, and lift their hearts and hand to the throne of God and ask him to take the soldier’s spirit home.”¹³ They were, he said, “the purest men who ever adorned or illuminated this land.”¹⁴

In fact, shortly after the Civil War ended, the North started to accept this “lost cause” view of the South.¹⁵ The North even started building monuments to defeated Confederates.¹⁶ That Blacks opposed this trend towards celebrating the Confederacy escaped notice or didn’t matter. But it’s worth remembering that every Black member of Richmond’s city council opposed building a monument to Lee.¹⁷

The nation saw sectional reunification in moving terms in 1913, when Confederate and Union war veterans met at Gettysburg. Pictures of soldiers from opposing sides embracing each other were heartwarming. President Woodrow Wilson could declare in his address to veterans that “[w]e have found one another again as brothers and comrades in arms, enemies no longer, generous friends rather, our battles long past, the quarrel forgotten,”¹⁸ and millions of Americans could believe him. Left out, however, was the fate of slaves and their descendants. Had the defeated rebels treated Blacks as “generous friends” after the Civil War? The sectional reunification Wilson celebrated never recognized this tension. Nor could it, because it was ultimately based on lies.

13. Rod Andrew, Jr., *Soldiers, Christians, and Patriots: The Lost Cause and Southern Military Schools, 1865-1915*, 64 J.S. HIST. 677, 677 (1998).

14. *Id.*

15. James C. Cobb, *How Did Robert E. Lee Become an American Icon?*, HUMANS., July/Aug. 2011, at 28, 29.

16. Philip Bump, *About 1 in 12 Confederate Memorials in the U.S. Is in a Union State*, WASH. POST (Aug. 15, 2017, 12:49 PM), <https://www.washingtonpost.com/news/politics/wp/2017/08/15/about-one-out-of-every-12-confederate-memorials-in-the-u-s-is-in-a-union-state/> [<https://perma.cc/P3HE-PMCH>].

17. Tina Griego, *Past and Present: The Many-Sided History of the Monument Avenue Debate*, RICHMONDMAG (June 25, 2015, 4:38 PM), <https://richmondmagazine.com/news/news-monument-ave-history/> [<https://perma.cc/E9QW-4AWV>].

18. Woodrow Wilson, Address at Gettysburg (July 4, 1913) (transcript available online through the University of Virginia’s Miller Center), <https://millercenter.org/the-presidency/presidential-speeches/july-4-1913-address-gettysburg> [<https://perma.cc/9F94-L2DY>].

So that whites North and South could look at each other as honorable contestants in a difficult struggle, they told stories about slavery and the Civil War that weren't true. First, they minimized how bad slavery was. Historian Ulrich Bonnell Phillips spoke for many in the early 20th century when he described the typical master as one who "promoted Christianity and the customs of marriage and parental care, . . . permitted as large a degree of liberty as they thought slaves could be trusted not to abuse . . . [and] avoided cruel, vindictive and captious punishments."¹⁹ To the extent masters' conduct could be characterized as despotic, he argued, it was "benevolent in intent and on the whole beneficial in effect."²⁰

More reflective slaveholders knew better. Thomas Jefferson warned that slavery corrupted masters because "[t]he whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other."²¹ He understood that a benevolent master "must be a prodigy who can retain his manners and morals undepraved."²² And yet, after the Civil War, many Americans accepted that the ranks of southern slaveholders were filled with moral prodigies.

Former slaves knew better too. During the New Deal, the Works Progress Administration interviewed thousands of them. Their experiences refute Phillips's portrayal of slavery. W.L. Bost said he and slaves on his plantation never had the "chance to go to Sunday School and church" because whites "feared for niggers to get any religion and education."²³ In fact, when slaves tried to have prayer meetings by themselves, "the paddyrollers catch us and beat us good."²⁴ Bost would be forgiven for not agreeing that masters avoided cruel punishments. As an old man, he remembered in vivid detail how, when he was a child, one master whipped a man until "[h]is back was cut all to pieces," rubbed salt into the wounds, laid him out in the sun while he experienced excruciating pain, and then

19. ULRICH BONNELL PHILLIPS, *AMERICAN NEGRO SLAVERY: A SURVEY OF THE SUPPLY, EMPLOYMENT, AND CONTROL OF NEGRO LABOR AS DETERMINED BY THE PLANTATION REGIME* 328 (Peter Smith ed., 1959) (1918).

20. *Id.*

21. THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA, QUERY XVIII* 162 (William Peden ed., Univ. of N.C. Press 2d ed. 1996) (1781).

22. *Id.*

23. Interview by Marjorie Jones with W.L. Bost, in Asheville, N.C. (Sept. 27, 1937) in 11 FEDERAL WRITERS' PROJECT: *SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART I* at 138, 143 (1941), <https://www.loc.gov/resource/mesn.111/?sp=142> [<https://perma.cc/79XR-F3JH>].

24. *Id.*

whipped him again.²⁵ Heartbreaking stories like these are, sadly, typical of what slaves experienced when you read through the interviews.

The second story Americans of the era told themselves was that slavery had not really caused the Civil War. Instead, it was all an honest misunderstanding among honorable men. To help Robert E. Lee become a figure all Americans could rally behind, he was portrayed as anti-slavery,²⁶ though few questioned what it said about a man that he would fight to defend what he called a “moral & political evil.”²⁷ Surprisingly, this view has sometimes echoed into our time.²⁸ Yet, those who took the momentous step of seceding told us slavery drove their decisions. Southern states wrote ordinances explaining their decisions, not unlike our Declaration of Independence from England. Whereas the Declaration of Independence’s second sentence gave us the familiar refrain that “all men are created equal,” the second sentence of Mississippi’s ordinance states, “Our position is thoroughly identified with the institution of slavery—the greatest material interest of the world.”²⁹ In the second sentence of its ordinance, Georgia lamented that “we have had numerous and serious causes of complaint against our non-slave-holding confederate States with reference to the subject of African slavery.”³⁰ Recognizing that slavery caused the Civil War does not require anyone to be woke or to have a doctorate in history; it simply requires the ability to read.

Finally, many Americans, North and South, agreed that Blacks had been unworthy of citizenship and that entrusting them with power after the Civil War had been a mistake. Historian E. Merton Coulter wrote of the Black man that “[h]e loved idleness, he had no keen conception of right and wrong, and he was ‘improvident to the last degree of childishness.’”³¹ In

25. *Id.* at 142.

26. Roy Blount, Jr., *Making Sense of Robert E. Lee*, SMITHSONIAN MAG. (July 2003), <https://www.smithsonianmag.com/history/making-sense-of-robert-e-lee-85017563/> [<https://perma.cc/8UWY-M3ZQ>].

27. *Id.*

28. Charley Reese, *Purge South of Its Symbols? You’re Barking up the Wrong Flagpole*, ORLANDO SENTINEL (Feb. 20, 1997), <https://www.orlandosentinel.com/news/os-xpm-1997-02-20-9702191588-story.html> [<https://perma.cc/L5G4-95VZ>].

29. *A Declaration of the Immediate Causes Which Induce and Justify the Secession of the State of Mississippi from the Federal Union*, YALE L. SCH. LILLIAN GOLDMAN L. LIBR. (2008), https://avalon.law.yale.edu/19th_century/csa_missec.asp [<https://perma.cc/Y3XF-95ZP>].

30. *The Declaration of Causes of Seceding States, Georgia*, AM. BATTLEFIELD TR. (Jan. 29, 1861), <https://www.battlefields.org/learn/primary-sources/declaration-causes-seceding-states#Mississippi> [<https://perma.cc/PWA8-4WTR>].

31. E. MERTON COULTER, *THE SOUTH DURING RECONSTRUCTION, 1867–1877* 49 (Wendell Holmes Stephenson ed., 1918).

fact, he claimed that the vote had “made him vain and idle and put into his head dangerous desires, impossible of fulfillment.”³² This view found expression in the infamous 1915 film *Birth of a Nation*, which showed Black officials drinking alcohol and eating peanuts and fried chicken while the South Carolina legislature was in session. Whites eagerly lined up to pay twenty times what a normal movie ticket cost to see the film.³³

In light of the way sectional reunification depended on whitewashing history, we might say that it came at the expense of racial reconciliation. That tragic choice leaves us to ask what racial reconciliation would look like now.

For starters, we have to accept that for slaves and many of those who endured Jim Crow, reconciliation is impossible. Unlike South Africa after apartheid, there was no truth and reconciliation commission for slaves to confront their oppressors.³⁴ Unlike the aftermath of World War II, where General Eisenhower forced Germans to visit a concentration camp,³⁵ Union generals did not make Southerners visit plantations and hear about the atrocities slaves suffered. Slaves received no compensation for their unpaid labor. Their masters didn’t apologize to them for their horrific experiences; indeed, they, and other Americans, defended slavery as a benign institution. It was not until 2007 that Alabama’s legislature officially apologized for slavery.³⁶ Even if the generation that enslaved Blacks had the humility to seek forgiveness, the depredations they inflicted might have been unforgiveable. One slave poignantly noted:

32. *Id.* at 59.

33. Richard Corliss, *D.W. Griffith’s The Birth of a Nation 100 Years Later: Still Great, Still Shameful*, TIME (Mar. 3, 2015, 1:45 PM), <https://time.com/3729807/d-w-griffiths-the-birth-of-a-nation-10/> [<https://perma.cc/R6XH-T68K>].

34. Mary Kay Magistad, *South Africa’s Imperfect Progress, 20 Years After the Truth and Reconciliation Commission*, WORLD (Apr. 6, 2017, 1:45 AM), <https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission> [<https://perma.cc/2AGL-T9TG>].

35. *Holocaust and Human Behavior: As the War Ended*, FACING HIST. & OURSELVES, <https://www.facinghistory.org/holocaust-and-human-behavior/chapter-9/war-ended> [<https://perma.cc/F99J-E3CN>].

36. *Alabama: Legislature Approves Slavery Apology*, N.Y. TIMES (Apr. 25, 2007), <https://www.nytimes.com/2007/04/25/us/25brfs-sorry.html> [<https://perma.cc/C9FR-P77B>].

The man who tied me to a tree and gave me 39 lashes and who stripped and flogged my mother and my sister and who will not let me stay in his empty hut except I will do his planting and be satisfied with his price and who combines with others to keep away land from me well knowing I would not have anything to do with him if I had land on my own—that man, I cannot well forgive.³⁷

There probably wasn't a way to fully make amends to W.L. Bost for having his innocence stolen by brutality and white supremacy. There probably wasn't a way to make amends to the spouses who had their marriages ripped apart when their master sold them separately or to the parents whose children were sold away.

So, what would reconciliation look like now? First, we have to really acknowledge our racist history. Though that is obvious, how many of us realize just how awful that history is? It is one thing to say that slavery is bad in the abstract and another thing to actually read Cornelia Andrews' account of being whipped so hard as a child for dropping a dish that she had scars sixty years later.³⁸ Part of grappling with that history is realizing that it is not just the South that needs to atone for how it has treated Blacks. Indiana needs to confront its history of banning free Blacks from even entering the state,³⁹ and Massachusetts must realize that its supreme court affirmed segregation in public schools almost fifty years before the United States Supreme Court infamously upheld segregation in *Plessy v. Ferguson*.⁴⁰ Truly understanding our history means realizing that there were heroes among the underground railroad conductors in the South and villains among banks in the North that refused to underwrite mortgages for Blacks. The line separating racial justice from racial injustice was not the Mason-Dixon line. Coming to terms with our history means overhauling our curricula at all levels of education so students know the truth.

This past year, I taught a class on how race has shaped the legal system. Students thanked me for presenting them with materials they had never encountered before, such as interviews with slaves and documentation of

37. ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 160 (Henry Steele Commager & Richard B. Morris eds., 1988).

38. Interview by Mary A. Hicks with Cornelia Andrews, in N.C. (May 21, 1937) in 11 FEDERAL WRITERS' PROJECT: SLAVE NARRATIVES PROJECT, NORTH CAROLINA, PART I at 27, 29–30 (1941), <https://www.loc.gov/resource/mesn.111/?sp=31> [<https://perma.cc/XUP8-VDVL>].

39. *Being Black in Indiana*, IND. HIST. BUREAU, <https://www.in.gov/history/2548.htm> [<https://perma.cc/WFN3-5RA2>].

40. *Roberts v. City of Boston*, 59 Mass. (1 Cush.) 198, 209–10 (1849); *Plessy v. Ferguson*, 163 U.S. 537 (1896), *overruled by* *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

biased coverage of Black politicians during Reconstruction. While I'm grateful that my institution gave students an option to engage with this information, I wish they had seen it in middle or high school.

Second, after exploring a history in ways that my students—all of whom were intellectually curious and abhorred racism—had not, there is a place for an apology to the Blacks who have experienced Jim Crow or discrimination after Jim Crow ended. I think of Blacks turned away from movie theaters and restaurants and denied admissions to schools and universities. I think of Blacks being told to move to the back of the bus and those whose experience of integrated schools was bullying, harassment, howling mobs, and death threats. I think of the Blacks refused jobs and promotions because, even though they had the right talent and work ethic, they had the wrong skin color. We still have a chance to try and reconcile with these Americans. While the country has moved on, the pain they feel has not always. Reconciliation in these cases requires self-examination and humility. Were you part of a crowd that chanted, “Two, four, six, eight—we don't want to integrate,” at the Black child integrating their local elementary school?⁴¹ Were you someone who knew better but chose not to say anything because you didn't want to rock the boat? Were you one of the students that refused to eat with the Black kid who made their difficult journey even lonelier? Did you know that your bank was refusing to give Blacks mortgages but chose to say nothing and accept promotions because you were scared what would happen to your career if you objected? Did you attend a church where the pastor and elders called Dr. King a demagogue or criticized him for moving too fast or using the wrong methods⁴² and registered your approval or sat there in silence? Were you that pastor? Did you inherit a family fortune that slaves helped build and enjoyed the easier life that fortune gave you without a second thought? You can own the part that you played in white supremacy, apologize for it, and try to make it up to the person you harmed.

As we do this, we will have to face our own capacity for evil. We tend to look at slaveholders today and ask, “How could they?” We are ready to condemn our founding fathers for their hypocrisy in owning slaves while demanding freedom for themselves. But we need to ask a different question. If men who were highly educated and courageous and genius in how they designed our government could be capable of so grievous an injustice as slavery, what does that say for the rest of us? What would we

41. Monte Williams, *Heroic Act for Equality in Schools Still Inspires*, N.Y. TIMES, Mar. 5, 2001, at B3 (recounting Elizabeth Eckford's experience as part of the “Little Rock Nine”).

42. Martin Luther King, Jr., “*Letter from Birmingham Jail [King, Jr.]*,” UNIV. OF PENN.: AFR. STUD. CTR., https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html [https://perma.cc/ZRX7-W98X].

have done if we had lived in a time and place where slavery was common? We might like to think we would all have been abolitionists, and yet, how many of us would have thrown away our livelihoods and made ourselves social pariahs on behalf of people we couldn't relate to? We might like to think we would have demanded that schools integrate or that businesses pay Black workers fairly, but how many of us would have spoken up if it might cost us our jobs or lose us friends?

These questions color the way I view the debate over Confederate statues. To say that they should come down does not mean the men celebrated were all monsters or abnormally evil. In fact, what scares me is that they were normal. They had redeeming qualities and virtues and yearnings like the rest of us. As a Black man whose ancestors stood to remain enslaved if the Confederacy had won, I can still muster compassion for the southern mothers whose darling boys never returned and for the rebel soldiers who suffered grievously during the war. I can acknowledge their bravery and their fortitude, but I wish that their virtues had been married to a more virtuous cause.

Finally, we must answer the question that has lingered since before the country was founded: What place are Blacks to occupy? You might think we answered that question after the Civil War or after the Civil Rights Movement. But if the answer is that Blacks and whites are created equal, it is not one we have fully acted on. A Black baby today is born into a world where their mother is much likelier than white women to die during childbirth,⁴³ where they are likelier than whites to be searched at a traffic stop and much more likely to experience police violence,⁴⁴ where their family on average will have only one-tenth of a white family's net worth,⁴⁵ and where they will die sooner than white babies.⁴⁶ For all the progress we have made in ending legalized second class citizenship for Blacks, the sad

43. Press Release, Ctr. for Disease Control & Prevention, Racial & Ethnic Disparities Continue in Pregnancy-Related Deaths (Sept. 5, 2019), <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html> [<https://perma.cc/YAG3-JVS K>].

44. Sophia Kerby, *Top 10 Most Startling Facts about People of Color and Criminal Justice in the U.S.*, CTR. FOR AM. PROGRESS (Mar. 13, 2012, 9:00 AM), <https://www.americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/> [<https://perma.cc/6HR3-CEDZ>].

45. Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> [<https://perma.cc/6FUQ-CJ6Q>].

46. Sam Harper et al., *Trends in the Black-White Life Expectancy Gap Among U.S. States, 1990–2009*, HEALTH AFF. (Aug. 2014), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2013.1273> [<https://perma.cc/GBJ6-U9EJ>].

reality remains that in 2021, Blacks and whites experience very different Americas.

At stake in whether we can overcome these inequalities is the fate of our experiment in multi-racial democracy. Just as the United States could not endure half slave and half free, we cannot reach our true potential as a nation until we can honestly say that the color of a person's skin is not a predictor of their quality of life. And in rectifying these longstanding inequities, we will finally redress the harms that slavery, Jim Crow, and white supremacy have caused and lay the groundwork for the true racial reconciliation that should have happened long ago, but didn't. That is our challenge. May we rise to it.