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**AN UNRIGHTEOUS PIECE OF BUSINESS:
A New Institutional Analysis of the Memphis Riot of 1866**

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An Unrighteous Piece of Business: A New Institutional Analysis of the Memphis Riot of 1866

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Abstract

To what extent can outsiders impose sustainable change on insiders acting within existing institutional arrangements? This paper explores this question in the context of the American Reconstruction experience in Memphis, Tennessee. Employing the framework of social orders developed by North, Wallis, and Weingast (2009), we contend that Memphis was a limited-access order on several important margins. Reconstruction policies failed to appreciate the realities in Memphis, resulting in the 1866 riots. We provide insight into the reasons for the Memphis Riot and offer implications for current and future efforts by outsiders to engage in institutional change.

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I stepped up to one of the men on horseback and said, “This is an unrighteous piece of business. The God of battles is just, and he is still in Memphis.” —Charles W. Anderson¹

The testimony exhibits many individual acts that would disgrace the most ferocious savage, and cause civilization and religion to blush and mourn over the depravity of mankind—such acts as have ever characterized all mobs wherever they have occurred, and will wherever they may occur.”—G.S. Shanklin²

1. Introduction

On the afternoon of Tuesday, May 1, 1866, a riot began in Memphis. The soldiers of the Third Colored Heavy Artillery had been mustered out of service the day before. They had been allowed to keep their side arms, and they were drinking and carousing in South Memphis while waiting to be paid (U.S. House 1866: 6). There had been a minor collision between two hack drivers—one black, one white—and the black hack driver had attempted to disappear into the crowd of recently discharged soldiers (Carriere 2001; Foner 1990: 117). The violence started shortly after the driver was arrested by members of the police force, and the riot itself didn’t end until General George Stoneman suspended the right of assembly and essentially took charge of the city on May 3.

Institutional changes can occur through a slow process of indigenous trial, error, and evolution. They can also be imposed from outside. Which is likely to stick and produce sustainable change? This question is especially relevant where people are oppressed and in cases of “weak” and “failed” states where government dysfunction hurts citizens. Are these problems best solved by the forced imposition of new formal institutions, or by alternative means? Developed countries’ attempts to address injustices and fix the problems plaguing weak and

¹ Charles W. Anderson was a manufacturer of soda water in Chelsea (north Memphis). The quote is from his testimony (U.S. House 1866: 170-171).

² G.S. Shanklin, Views of the Minority, (U.S. House 1866: 38). G.S. Shanklin was a member of the committee that investigated the Memphis Riot. Shanklin was the conservative member of the committee. More information on the foundations of radical Reconstruction is available in Trefousse (1970).

failed states in foreign nations have produced mixed results (Coyne 2008). Fortunately, the American experience after the Civil War provides us with a fertile source of information that can help us better understand the problems facing countries suffering from these problems. The Memphis Riot of 1866 provides a useful case study.

The riot's causes were several, and its institutional consequences were far-reaching. A confluence of factors produced an explosion of racist violence. Along with the July 1866 riot in New Orleans, the riot was a catalyst for radical Reconstruction (Trefousse 1970; Waller 1984:233; Doyle 2008). The horrors of the riot convinced many that a heavy-handed military reconstruction program was necessary if the South was going to be brought back into the Union successfully.

The South during Reconstruction can teach us important lessons for modern nation-building efforts. Particularly once the radical Republicans—who viewed Reconstruction “as an invitation to a social revolution” (Foner 2005: 113)—took control, Reconstruction went beyond rebuilding physical infrastructure and reintegrating Southern states into American government. It also attempted to generate fundamental changes in economic, legal, political, and social institutions as reflected in the “Reconstruction Amendments” to the Constitution, loyalty oaths and other restrictions on suffrage, the establishment of the Freedmen's Bureau, and eventual military rule. As in modern reconstruction efforts in Somalia, Afghanistan, and Iraq, these efforts sometimes were resisted violently.

Southern Reconstruction is an attractive research setting for several reasons. The South was economically successful before the war (Fogel 1989: 84-89). Growth rates in Southern incomes compared favorably to growth rates in Northern incomes from approximately the end of Reconstruction through World War II. After World War II, Southern incomes converged on

Northern and Western incomes (Mitchener and McLean 1999, 2003). The conquered South also shared a language and cultural/political/social heritage with the conquering North. This helps us isolate the margins on which transition was complicated and gives us a cleaner setting for the analysis of transition than many cross-country and cross-cultural comparative analyses.

Cultural, moral, and legal defenses of slavery were the key themes around which Southern institutions evolved and revolved during the early nineteenth century. Southern apologists for slavery viewed it as a positive good, not just something that was morally acceptable. Indeed, they viewed slavery as the divinely sanctioned solution to the fundamental tensions between capital and labor. Thus, the Southern defense of slavery was not merely a defense of the peculiar (and brutal) brand of slavery that was practiced in the South, but a defense of “slavery in the abstract” (Fox-Genovese and Genovese 2005, 2008). In this context, attempts to interfere with slavery were not merely a nuisance to Southern elites. They were considered attempts to meddle with the dictates of Providence.

We focus on the Memphis Riot for several reasons. First, the gruesome history of the riot itself highlights some of the key issues in social science and, more specifically, the problems associated with the transition from limited access to open access. Second, the riot emerged from the tensions created by outsiders’ attempts to impose new institutions on insiders. Third, the riot was, along with a riot that occurred in New Orleans at the end of July, one of the factors that helped usher in Radical Reconstruction. Finally, the congressional report titled *Memphis Riots and Massacres* provides a comprehensive range of primary-source, eyewitness accounts of the riot, as well as on-the-ground explanations for why events unfolded as they did. Some contemporaries charged that the report was explicitly political as two of the members of the Investigating Committee were Radical Republicans (Worley 2004). However, the report also

contains information on the views of the minority from the conservative member of the committee. Even if the report was motivated by a radical political purpose, it does not necessarily lend itself to radical political conclusions. We supplement the information from the congressional report with primary-source local and national newspaper accounts and interpretations, as well as archival material from the Memphis office of the Freedmen's Bureau.

We contribute to several different bodies of literature. First, we contribute to the economic history of the South (Fogel 1989; Wright 1978, 1986, 2006; Hummel 1996; Carden 2010). We explore how racism manifests itself when people are able to impose costs on others at little to no cost to themselves (Roback 1989). Second, we contribute to and synthesize the literature on Memphis, Southern politics, and the Memphis Riot (Holmes 1958; Burns 1972; Lovett 1979; Waller 1984; Hardwick 1993; Walker 1998; Carriere 2001; Page 2003; Worley 2004). Third, we contribute to the literature on the New Institutional Economics that seeks to understand how institutions and organizations evolve over time (Aoki 2001, 2007; David 1994; Denzau and North 1994; Greif 1994; Greif and Laitin 2004; North 1990, 2005; Young 1998). Fourth, we contribute to the literature on weak and failed states and on the ability of outsiders to create sustainable institutional change (Rotberg 2003; Coyne 2008; Ghani and Lockhart 2009).

The next section discusses the framework developed by North, Wallis, and Weingast (2009). Sections 3 and 4 provide background on the occupation and reconstruction of Memphis (Section 3), and on the Memphis Riot (Section 4). Section 5 analyzes the doorstep conditions in the context of the riot. Section 6 concludes with the implications of our analysis.

2. Limited Access and Open Access Orders

We seek to understand the causes and consequences of the Memphis Riot of 1866 in light of the framework developed by Douglass C. North, John Joseph Wallis, and Barry R. Weingast (2009). North, Wallis, and Weingast explore how societies make the transition from limited-access orders—where states create rents by limiting access to the economic order—to open-access orders—where innovators and entrepreneurs create rents by producing better products at lower costs. Limited-access orders also restrict access to the political system while open-access orders provide broader access to the political system, allowing for greater institutional innovation. North, Wallis, and Weingast acknowledge that their characterization is necessarily rough as political and economic orders can exhibit limited access characteristics on some margins and open access characteristics on others; generally, however, the more accessible the economic and political order, the greater the chances for modern economic growth.

Chattel slavery, and the racist justifications for it that developed over time, restricted access to the economic and political order for the slaves who constituted a large part of the Southern population. The fundamental problem the South had to solve in the aftermath of the war was the integration of four million former slaves into Southern society. The transition was necessarily difficult as the region had accumulated stocks of inconvertible social and cultural capital specific to the maintenance of the slave system (Carden 2009).

In the North, Wallis, and Weingast framework, the transition from limited access to open access is a two-step process. First, elites must be engaged in impersonal relationships that generate rights. Second, institutions must emerge that protect these rights. North, Wallis, and Weingast (2009: 25-27) provide the “doorstep conditions” for the transition from limited to open access order as follows:

1. **Rule of law for elites**—Elites, just like regular citizens, must be constrained by the law. This condition includes mechanisms for enforcing the law.
2. **Perpetual forms of organizations for elites**—Organizational sustainability is not a function of the personalities of the current members of the elite. Organizations can outlive the individuals who comprise them.
3. **Consolidated political control of the military**—The existence of this condition reduces the need for elites to maintain alliances with military factions and, therefore, the possibility of violence between factions.

These doorstep conditions “represent institutional and organizational support for increased impersonal exchange, as well as institutions . . . that can be used in the transition to support open access orders” (North, Wallis, and Weingast 2009: 26). These conditions are tenuous and complex, and there have been societies on the doorstep that have failed to make the transition to open access. One of the reasons for the failure to make the transition, even in the presence of the doorstep conditions, is that people do not often deal particularly well with new and novel situations (North, Wallis, and Weingast 2009: 252; North 2005: 13-64). In the context of Memphis, and the South more broadly, the overthrow of decades of social and cultural capital underpinning “slavery in the abstract” and the doctrine of the superiority of the white race was certainly a novel situation.

Using information on the specifics of the Memphis riot gleaned mostly from primary sources—mainly the congressional report on the riot (U.S. House 1866)—we analyze the ways in which each of these conditions were lacking in post-Civil War Memphis and, presumably, in the post-bellum South more generally. In this light, we explore how the Memphis riot occurred

as a result of attempts to impose open-access institutions for some groups on what was a limited access order on several important margins. Absent the doorstep conditions, the real and existing organizational forms could not support open access institutions. The tensions between the status quo and the open access order resulted in the riot and its aftermath.

3. Occupation and Reconstruction in Memphis

Tennessee occupies a unique place in the history of the era surrounding the Civil War and Reconstruction, and Memphis's experience with federal occupation during most of the war provides insight into the riot and its lessons (see Harkins 1998; McKenzie 1998). From the perspective of outsiders seeking to create lasting and successful institutional change as part of post-conflict reconstruction, conditions in Memphis would give one reason for optimism. While the city was the location of a thriving trade in contraband—and the corruption that comes with it—it had nonetheless been under federal occupation for almost three years by the time the war ended. Tennessee, moreover, had been the last state to leave the Union and the first to fall under federal control. The military governor of Tennessee during the war was the state's former elected governor and the country's future president, Andrew Johnson. Even under these salutary conditions, Memphis was home to a riot that galvanized the Radical Republicans and helped usher in Radical Reconstruction.

On the surface, the institutional conditions for a successful and peaceful transition appeared to have been in place, but there were other important changes that introduced additional complications for Reconstruction. The composition of the city's population changed dramatically during the 1850s and 1860s. People of Irish extraction comprised 9.9 percent of the population in 1850, but 23.2 percent in 1860 (Walker 1998: 36; Carriere 2001; Bordelon 2006).

After the city fell to federal forces in early June, 1862, the black population skyrocketed. Newly-established contraband camps and the presence of federal troops made Memphis an attractive destination for runaway slaves and others. There were 3,882 blacks in the city in 1860, about 20,000 in 1865, and 15,525 in 1870 (Page 2002: 79; Ryan 1977). The establishment of Freedmen's Bureau hospitals and schools around Memphis in the aftermath of the war added a more tangible element to the increased black presence that did not sit well with many white southerners (Foner 1988: 262). The city was allowed to maintain a civil government, which quickly fell into the hands of the Irish minority, but it remained under military rule until after the war ended (Parks 1941: 291).

Occupied Memphis was allowed to elect municipal officers, but loyalty oaths were required of prospective voters. There had been 3,143 votes cast in the June 1861 election and 1,631 of these votes went for John Park, an Irishman. In the June 1862 election, 698 votes were recorded. They all went for John Park (U.S. House 1866: 365; Young 1912: 128). In July, Ulysses S. Grant was placed in command of the city, and "[h]e issued an order that expelled from the city all persons in any way connected with the Confederate civil or military government" (Young 1912: 128). Grant "also expelled from office 'all persons holding state, county, or civic offices who claim allegiance to the so-called Confederate Government, and who have abandoned their families and gone South'" (Young 1912: 128).

On July 21, Grant was replaced by William T. Sherman, and while the city was nominally run by municipal officers, it was in reality run by General Sherman and the military (Young 1912: 129). Sherman's command lasted until he was relieved by Major-General Hurlbut in December; Hurlbut was in turn relieved by C.C. Washburne. In a special order issued by Major-General Washburne on July 2, 1864, the municipal government was dissolved because of

their “disloyal character” (Young 1912: 135). Formal military rule ended on July 3, 1865, when Major-General John E. Smith, then commanding the federal troops stationed in Memphis, revoked the orders that had dissolved the municipal government. The actions of the occupying military increased Memphians’ resentment toward occupation.

Memphis was an important source of ready access to Southern markets for Northern merchants; for the Confederacy, it was an important hub of trade in contraband and supplies (Parks 1941: 295). Restricting and regulating trade took on strategic importance for the Union; the Confederacy hurt its own cause by regulating trade in contraband in 1864 (Ekelund et al. 2004, 2010; Thornton and Ekelund 2004). The thriving trade in goods and gold led General Sherman to prohibit the use of gold and silver as media of exchange because the Confederates could readily trade specie for arms and other supplies. Trade in salt was also restricted as it was badly needed by the Confederates for the curing of meats. At the same time, however, Sherman was pressured by his superiors because these restrictions on trade in gold, silver, and salt restricted Northerners’ supply of cotton (Parks 1941: 295-296). Sherman also ordered that all blacks be treated as Freedmen because of their strategic importance to the South. This was yet another source of tension because as a territory that was under federal control, Tennessee had been exempted from the Emancipation Proclamation (Hardwick 1993: 111).

Tennessee itself was also deeply divided. The mountainous eastern part of the state had remained loyal to the Union and indeed had tried to separate from Tennessee on several occasions. East Tennessee leaders were of the opinion that they should take the lead in seeing the state restored to the Union, and indeed one of their number—William G. “Parson” Brownlow—became governor of the state after the war had ended. Wartime death and destruction, along with disenfranchisement, weakened western Tennessee relative to eastern

Tennessee. Figure 1 shows the ratio of votes cast in 1865 as a percentage of votes cast in 1861 by congressional district (shown on the x-axis) in Tennessee.

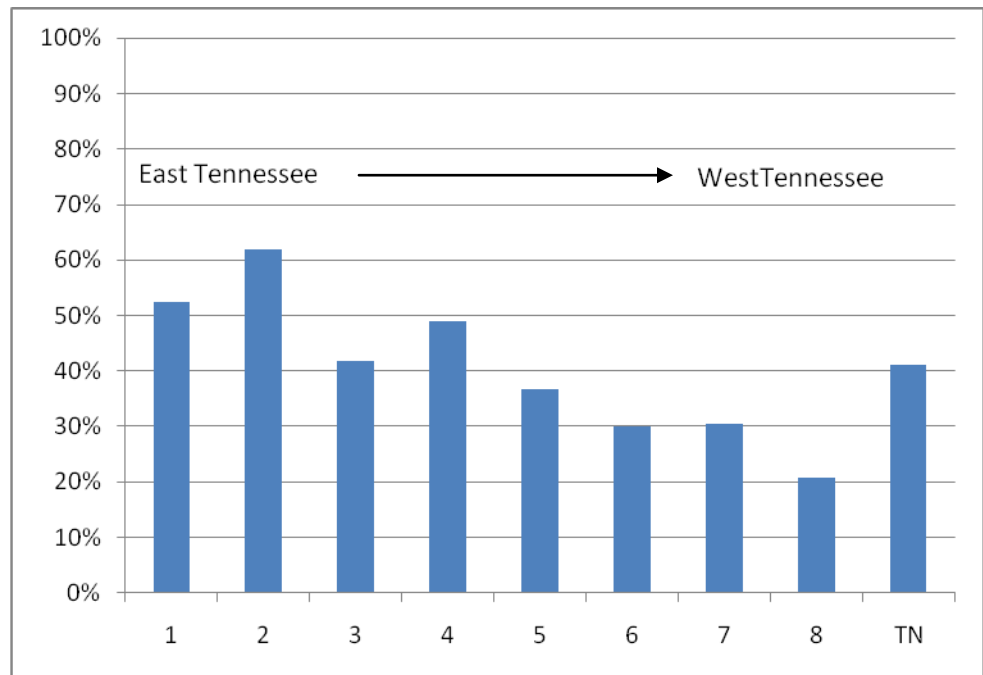


Figure 1: Votes Cast in 1865 as Percentage of Votes Cast in 1861
Source: Calculated from data in Fertig (1898:70).

As figure 1 shows, the ratio of votes cast in 1865 to votes cast in 1861 decreases steadily as one moves from eastern to western Tennessee, indicating an eastward shift in the state’s political power. This captures the changing environment in Tennessee in which the Memphis Riot took place.

4. Background on the Memphis Riot of 1866

Social tensions reached a boiling point at the end of April, 1866 and boiled over shortly after. The “(l)ast major detachment of white troops was withdrawn” from Memphis in September 1865 (Burns 1972: 32), and black troops from the Third Colored Heavy Artillery stationed at Fort Pickering were mustered out of service on April 30, 1866. The federal government offered free

transportation by rail that allowed some servicemen to return to their homes elsewhere, while other soldiers settled down in and around the contraband camps surrounding Fort Pickering. Back pay and bonuses was delayed for about 150 troops, so they stayed at the Fort. Paraphrasing Burns (1972: 32), the group was “unruly” and undisciplined, facing thirteen courts martial in the weeks leading up to when the regiment was formally discharged. Former Confederate surgeon Dr. J.M. Keller reported having seen black soldiers in large groups and drunk, at which times they were “impertinent, excessively so—disposed to curse every white man they saw as a ‘son of a bitch,’ if you will pardon the expression.” These were the soldiers. Others, apparently, were only “indolent” at times (U.S. House 1866: 132). General George Stoneman replaced Major-General John E. Smith as commander of the federal forces at Memphis on April 30, 1866. This “caused the loss of continuity of control of the racial situation in Memphis” as Smith had previously imposed a heavy-handed curfew on blacks in the city and felt that federal control of whites and blacks was necessary (Lovett 1979: 14, 18).

The riot in Memphis was one of a series of riots and domestic disturbances in which the federal government intervened between the adoption of the Constitution and the early twentieth century. During Reconstruction, marauders in Missouri rebelled against the idea of black equality; a report by the U.S. Senate argued that “a more prolific source of disturbance was the intense feeling toward the colored people, many of whom perhaps allowed their freedom to take unnecessary prominence in the presence of their former owners” (U.S. Senate 1903: 108). Riots in Norfolk, Virginia in 1866 highlighted the tensions associated with having black troops stationed in Southern cities (U.S. Senate 1903: 108). Federal assistance was requested because the local police were ineffective (U.S. Senate 1903: 109).

The people of Mobile, Alabama nearly rioted in 1867 over blacks' attempts to ride in street cars, and they rioted in May 1867 after a Republican meeting, and again in 1869 after the August election (U.S. Senate 1903: 113, 129). There was conflict in Franklin, Tennessee over municipal elections in July 1867 between members of the Loyal League (comprised mostly of discharged black soldiers) and returned Confederates (U.S. Senate 1903: 114). During the 1860s and 1870s, prominent riots occurred in Laurens, South Carolina; Unionville, South Carolina; Camilla, Georgia; and Millican, Texas (U.S. Senate 1903: 120, 126, 128). The federal government was also called upon to deal with disorder in Texas, Arkansas, and along the Gulf Coast, as well as Ku Klux Klan activity across the South (U.S. Senate 1903: 107-129).

The riot in Memphis was also the first of two riots that helped set the stage for Radical Reconstruction. At the end of July, 1866, there would be a riot in New Orleans resulting from a convention aimed at reorganizing the state government. The riot ended with a declaration of martial law in New Orleans and a greater conviction that Presidential Reconstruction would fail and that more force would be necessary.³ In a September 1, 1866 cartoon that appeared in *The Nation*, Thomas Nast used the Memphis riot in particular to criticize Presidential Reconstruction; the Memphis and New Orleans riots were keys to the electoral success of the Radicals in 1866 (Waller 1984: 233; Lovett 1998; Doyle 2008: 64-66, 70). Another Nast cartoon depicted Johnson's apparent indifference to the riot in New Orleans (Foner 2005: 119).

The violence was precipitated by a history of conflict between the troops and the police force. Part of the conflict was ethnic: the members of the Third Colored Heavy Artillery were black, and most of the police officers were Irish or of Irish extraction. There was also conflict over jurisdiction. Black troops had been used to patrol the city while it was under federal

³ See the summary and report of the investigating committee in U.S. House (1867: 1-61) and the testimony of Oscar J. Dunn in U.S. House (1867: 68-70).

occupation, and this raised the ire of police officers and other local whites. Finally, the police force developed a reputation for treating blacks very badly during arrests. The week before, a black man had been arrested near Fort Pickering, where the troops had been stationed, and had been beaten badly. The troops “made threats that if ever the police came up again and arrested a man in that way they would resent it” (U.S. House 1866: 6-7). The Investigating Committee’s Recapitulation and summary of property damage from the Memphis Riot is reproduced in table 1.

Blacks Killed	46
Whites Killed	2
Persons Wounded	75
Persons Raped	5
"Maltreated"	10
Robberies	100
Houses/Cabins Burned	91
Churches Burned	4
Schoolhouses Burned	12
Individual Property Destroyed	\$110,000
Government Property Destroyed	\$17,000
Expenses Incurred by Gen. Stoneman, Commissary & Quartermaster's Departments	\$3,981.41

Table 1: Death and Destruction in the Riot
Source: U.S. House (1866:36).

The day before the riot, a group of black soldiers and a group of police officers had gotten into a fight when they ran into one another on the sidewalk. The soldiers had yielded the sidewalk, but one of them fell and a police officer tripped over him. They exchanged words, and one of the officers struck the soldier over the head with a pistol from behind, drawing blood. One of the other soldiers retaliated and hit the officer with a stick. The officers responded by

striking him with a brick, opening a wound on the back of his head. Following the incident, the two groups separated, but this precipitated the next day's violence (U.S. House 1866: 64).

On May 1, there were about a hundred people gathered on South Street, and in the opinion of the riot's investigators, their "riotous and disorderly" behavior "fully justified the interposition of the civil authorities" (U.S. House 1866: 7). The police arrested two men "in an orderly manner," but the gentleman who had been arrested the previous week near Fort Pickering "discovered among the policemen making the arrests the very man who had arrested him" (U.S. House 1866: 7). There were shouts of "Club them! Shoot them!" from at least one of the soldiers (U.S. House 1866: 7; Ryan 1977: 246-247). When the police had gone about 40 feet, some of the soldiers, who had been permitted to keep their side arms when they had been mustered out, fired their revolvers into the air (Ryan 1977: 246-47; Lovett 1979: 20). The police, thinking they were being fired upon, turned and started shooting at the soldiers. After a while, both sides returned with reinforcements. This led to "a promiscuous running fight between the police and colored soldiers" (U.S. House 1866: 7).

The fighting stopped by nightfall and the soldiers returned to Fort Pickering. Mayor John Park called a special meeting of the Board of Aldermen shortly after its regular meeting that evening had adjourned. According to one historian, this was a pretext for the inauguration of further hostilities (Walker 1998: 40). That night at 10 o'clock, the police returned with a 200 man *posse comitatus* comprised of police officers and others. The posse "commenced an indiscriminate robbing, burning, and murdering" (U.S. House 1866: 7). The actions of drunken soldiers might have been to blame for the onset of the riot, but Memphis whites prolonged the violence and committed the atrocities (Holmes 1958: 59). The investigating committee

concluded that “there was no shadow of excuse for any further acts of violence on part of the police or posse” (U.S. House 1866: 8).

The next day, after order had apparently been restored, groups of police officers, fire fighters, and others again gathered in the area where the violence had broken out the day before. The causes of the outbreak on May 2nd were unclear, but in his minority report on the riot G.S. Shanklin reports that a group of whites on horseback had approached Fort Pickering, carrying a black flag. The *Memphis Argus* (1866b) also reported that some blacks had waved a black flag at one point, but the *Argus* was one of the papers condemned by the investigators and others for its role in provoking the violence. Witness Tony Cherry testified that the troops interpreted the whites’ black flag as a threat that they would be granted no quarter (U.S. House 1866: 184). The soldiers shot the flag-bearer. The flag did not reappear. Shanklin also reported that some of the black soldiers had been firing at whites on South Street (U.S. House 1866: 40). Fighting and assorted outrages continued until General Stoneman intervened the following day.

The riot itself also illustrates some of the costs of disorder more generally. The estimated value of the physical capital destroyed during the riot was approximately \$130,000. To provide some perspective on the magnitude of this number, consider that if it had been invested and reinvested in assets with yields equivalent to portfolios of 30-year corporate and government bonds beginning in 1866, it would have grown to \$228 million in 2008. Had the funds been placed in a savings account, they still would have grown to over \$10 million. By comparison, Memphis’s FedEx Forum, an arena that opened in 2004, cost \$250 million.⁴ This still severely underestimates the true cost of the riot because it does not account for lost human capital, social capital, or the costs of institutional changes.

⁴ The calculations are made using the online calculator at www.measuringworth.com.

5. Doorstep Conditions for Transition

In a limited access order, the state limits citizens' access to the economic and political system. In an open access order, in contrast, the state offers free and equal access to the economic and political system. Restrictions on voting are one way that states limit access to the political order, and licensing and regulation are ways that the government can limit access to the economic order. The antebellum South was a limited access order on many margins. Slaves were denied participation in the institutions of political and civil society, and while in some cases they could buy their freedom, they were also largely excluded from participation in the economic order, except as chattels to be directed by their masters. Laws against manumission helped to solidify slavery and restrict slaves' access to the economic order over the longer run.

The problems that led to the riot stemmed from a perceived social inversion in which the former Confederates were "being held as a serf" rather than being restored to full citizenship, in the words of Attorney Marland H. Perkins, who was a Chicagoan by birth and a member, along with Mayor John Park and Recorder John C. Creighton, of the Johnson Club (U.S. House 1866: 292). His testimony echoed a common theme of cordial relations between the older citizens of Memphis and the black population; he testified as a northerner that he could "speak positively as to the feelings of the old citizens toward the negro; and so far as I have been brought in contact with the negroes, it is reciprocal" (U.S. House 1866: 288). Resentment stemmed from the citizens' exclusion from the political order while Northerners sought access to the Memphis economic order. Memphis *Bulletin* editor L.J. Du Pre testified that there was a great deal of resentment stemming from the franchise law and the northerners' endorsement of it, and some felt that city government would be of much higher quality if former Confederates had been extended the franchise (U.S. House 1866: 304-305). Memphians wanted capital and labor to

move from the North, but they were unhappy about ceding control of their political institutions to immigrants and northerners (U.S. House 1866: 288-289).

In the following sub-sections we analyze the Memphis Riot through the lens of the doorstep conditions identified by North, Wallis, and Weingast (2009). It is important to remember that no society always and everywhere exhibits characteristics of open access on every margin. The South's peculiar institution—slavery—was fundamentally a limited-access institution. Disenfranchisement of former Confederates after the war limited their access to the political system. The clarity of the change that came with emancipation and the twin problem of restoring the Union and of rebuilding a workable society from the ashes of the antebellum South indicate that we can learn much by studying the transition experience in the South and the details of the Memphis Riot. The riot exhibits characteristics of a weak rule of law for the elites, expulsion of former elites from perpetually lived political organizations and limitations on access to organizations like schools and churches for outsiders, and conflicts over the legitimate use of violence.

5.1 Rule of Law for Elites

In open-access orders, the rule of law is unbiased and applies to elites and non-elites alike. Moreover, it covers a wide range of criminal and civil activities. In applying to everyone equally in both private and public relationships, the rule of law allows for predictable behavior and the development of impersonal relationships. In contrast, in limited-access orders, the law is used by the dominant coalition to secure rents. In such instances, laws are used to meet the short-term needs of the dominant coalition and there should be no expectation of unbiased application and enforcement (North, Wallis, Weingast 2009: 154-155).

The riot resulted from a meltdown in the rule of law for virtually everyone involved. While the rioters were, for the most part, members of the poor “rabble” of the city, whites nonetheless enjoyed elite status relative to blacks. The costs of the riot were socialized and the benefits were privatized. Of those involved in the riot, no whites were prosecuted for riotous depredations (even when named by several witnesses), and the taxpaying property holders of Memphis, rather than the rioters themselves, were ultimately on the hook for some of the damages.

The conduct of city officials was especially notable. Mayor John Park was “unequal to the occasion, either from sympathy with the mob, or on account of drunkenness during the whole time” (U.S. House 1866: 23). In the minority report, G.S. Shanklin reported that Park was “so much intoxicated that he was wholly incapacitated for business or duty of any kind” (U.S. House 1866: 40). On Mayor Park’s involvement, the Memphis *Public Ledger* wrote that “Mayor Park was on the field cheering the people and doing nobly,” but the Macon *Daily Telegraph*, on the other hand, wrote that “(t)he Mayor is drunk, and unfit for the emergency” (Memphis *Public Ledger* 1866, Macon *Daily Telegraph* 1866). This assessment coincides with the testimony assembled in the official investigation. Judge of the Recorder’s Court John C. Creighton was also singled out as “(t)he ringleader of this work of murder, incendiarism, and butchery” (U.S. House 1866: 23). The state’s attorney general, William Wallace, also led a mob (Worley 2004; U.S. House 1866: 246-247). The conduct of those who represented one of the organizations claiming an alleged legitimate monopoly on force and justice highlights some of the essential problems facing societies in transition. This was evident from some of the violence. According to Robert Church’s sworn affidavit in the wake of the massacre,

On the 2nd of May 1866 a number of persons jumped on a colored man near my place and abused him very badly. He ran into the Saloon—they followed him and said “close the door” but in the place of closing the door they commenced shooting—one shot took effect in my arm and one in my neck—they then drank all the whiskey they wanted and took a lot of cigars, I don’t know how many, also some money. Two of the Policemen were named Dave Roach and Shelby (Assistant Commissioner for the State of Tennessee 1866-1868).

Church further implicated Roach’s riotous behavior by claiming that he had failed to prevent “Policeman No. 144” from pistol-whipping a black man (Assistant Commissioner for the State of Tennessee 1866-1868).

Whites who were working on behalf of moral, spiritual, and intellectual improvement for the former slaves were singled out for special vengeance. General Stoneman offered them protection if they would seek out the soldiers; “if they wanted to leave the city I would furnish them transportation to wherever they wanted to go. Many, and in fact nearly all of them, availed themselves of the opportunity and left the city” (U.S. House 1866: 52). The Coopers, from England, and a teacher they had hired (a former Union soldier named Mr. Glasgow) were persecuted for building a school for blacks. Mr. Glasgow and Mr. Cooper were derided as abolitionists and targeted by a mob that burned their school, and Mrs. Cooper testified that she thought the mob intended to burn their children (U.S. House 1866: 19-20).

The rioters burned twelve schoolhouses in all; there had been 1,200 pupils and 22 teachers spread among twelve schools operated by various missionary associations. The investigators summarize their persecution: “. . . these people, guilty of no crime, engaged in a work of benevolence and Christianity, were themselves obliged to flee from the city for personal safety; and as they left, they were guided in their pathway by the light reflected from their burning school-houses” (U.S. House 1866: 20, 160, 260). An anonymous letter that appeared a

few days after the riot read: “You will please notice that we have determined to rid our community of negro fanatics and philanthropic teachers of our former slaves. You are one of the number, and it will be well for you if you are absent from the city by the 1st of June. Consult your safety” (U.S. House 1866: 20-21). In this case, in particular, elites (white rioters) were working to restrict access to organizational forms for non-elites and to restrict their access to the rule of law.

Five black women were raped during the riot, and their assailants were apparently unpunished. Frances Thompson testified that she was raped by seven Irishmen, who had appeared at her house demanding food. After she fed them, they raped both her and Lucy Smith, a sixteen year old who was boarding with her. These men then robbed them, saying that “they intended to ‘burn up the last God damned nigger’” (U.S. House 1866: 197). Lucy Smith testified that after they had finished their business they took “(w)hat was left of the sugar, and coffee, and ham [and] threw [it] in the bayou.” After Smith had been raped, one of her assailants claimed that she “was so damned near dead he would not have anything to do with me” (U.S. House 1866: 197).

Disenfranchisement restricted the pool of potential jurors and, in the eyes of some witnesses, limited the courts’ ability to administer justice. This was evident from the testimony of Judge William Hunter. Hunter was a northerner who had come to Memphis with General Sherman in 1862, and he had become a judge of the criminal court some six months or so before the riot. He saw none of the violence, but he described the chances of a white person being convicted for crimes against blacks as “remote” because “(t)here is another class, from whom most of our juries are made up, that would be utterly incapable of doing justice, and enforcing the law with anything like impartiality” (U.S. House 1866: 75). Hunter argued that many of the

votes in the last election had been cast by “foreigners” who had little stake in the city’s future and suggested that they could do no worse than the disenfranchised former Confederates: “(t)he qualified voters are a worse element than those disfranchised under a strict application of the franchise law” (U.S. House 1866: 75).

This manifested itself after the riot in the ways in which the local authorities failed to discharge their sworn duty. In a long missive responding to an inquiry from General Stoneman asking whether the local authorities had acted to compensate the victims of the riot, John Park framed the violence as a product of “negro rioters” and said that the city had taken no steps to compensate the victims because he “take[s] it for granted that no action will be had” because such a claim would lack merit in any court (U.S. House 1866: 54-55).

Part of the problem stemmed from ongoing conflicts between the Irish and black minorities that manifested themselves in violence rather than being mediated through the rule of law. Later, in 1872, the *Memphis Appeal* would entreat the Irish to remember that they were in competition with their “natural and inevitable enemy” (quoted in Page 2002: 86). Former Confederate surgeon J.M. Keller, in discussing the causes of the riot, said “I presume it is a conceded point that the sons of Erin do not like the sons of Ham, particularly when they come in conflict in their wages” (U.S. House 1866: 135).⁵ U.S. Marshall Martin T. Ryder testified that jobs in the police and fire services were filled from groups of unskilled Irish workers with whom blacks were generally competing (U.S. House 1866: 252). Orrin E. Waters, who was the superintendent of the colored public schools, testified that “(t)here is a large class here who do not wish to see them educated. They fear the negroes; that if they are educated they will become their competitors in business” (U.S. House 1866: 260, 280, 286).

⁵ “Sons of Ham” refers to a Biblical curse on the descendants of Ham (the father of Canaan), who was cursed by his father Noah (Genesis 9:20-27). In Genesis 9:25 (KJV), Noah says “Cursed be Canaan; a servant of servants shall he be unto his brethren.” Apologists for slavery thought that Africans were the cursed descendants of Ham.

5.2 Perpetual Forms of Organization

An open-access order divorces organization from personality. In the political sphere, for example, the offices of the state are independent of the individuals occupying those offices. For successful transition, elites must have the ability to form (or access) perpetual forms of organization. There are several benefits to perpetually lived organizations. First, such organizations can undertake a broader range of economic and political activities. Second, perpetual organization foster impersonal relationships because they are inherently impersonal given that they are not linked to any one individual, or group of individuals. In contrast, where perpetual forms of organization do not exist, the activities of these organizations (and the development of impersonal relationships) will be limited.

In Tennessee, strict loyalty oaths and disenfranchisement laws foreclosed access to perpetually lived political organizations (like city and county government) for former Confederates and therefore silenced potential stakeholders. The radicals viewed the riot as a cautionary tale suggesting that the South had to be subjugated by force if the Union was to be preserved. Others blamed the unrest on the disenfranchisement of the former Confederates and argued that they should be included in the institutions of civil society. The rioters, according to General Stoneman, had not been the propertied classes, but instead had been among those “permanently engaged in business” in the city, but General Stoneman “presume[d] them much less permanent than the well-established merchants and landholders necessarily” (U.S. House 1866: 58). It was those who, in Stoneman’s opinion, had a “pecuniary interest” in the future of Memphis who had refrained from and indeed denounced the riot while “(t)here is a class of agitators, writers for newspapers, and men of that class, who have no pecuniary interest in the

south at all, and who I look upon as among the worst enemies of the south” (U.S. House 1866: 58). He later testified that he “should prefer to go to the returned rebels here than to the class of people from whom juries are now drawn” if he “wanted justice meted out to the incendiaries and murderers in the recent riots (U.S. House 1866: 270). The property owners were generally shut out of the political process, and they complained that they had no influence over the civil authorities (U.S. House 1866: 58). General Runkle, however, testified that he thought the lower classes were instigated by the upper classes (U.S. House 1866: 279).

One of the major initiatives of the Freedmen’s Bureau was to establish educational institutions for the soldiers, former slaves, and their children. There were 22 black schools in Memphis, educating 1101 students. There were also “1549 black soldiers attending regimental schools at Fort Pickering” (Lovett 1979: 11). The Bureau itself did not actually provide the education, but they coordinated private efforts (Burns 1972: 21-22). This raised the ire of whites who didn’t want blacks to be educated because they might compete in business, according to the testimony of Freedmen’s Bureau school superintendent Orin E. Waters (Burns 1972: 21-22). In addition to education, the Freedmen’s Bureau established the Freedmen’s Savings and Trust Company to improve access to credit for the former slaves. The Bureau also established orphanages, hospitals, and courts in response to laws against black testimony in local courts (Burns 1972: 40). Agents of the Bureau also served as brokers between blacks and whites in the labor market (Burns 1972: 52).

Dr. Joseph E. Lynch testified that the rioters “were rather of the rabble of the city” and said that he “did not see a respectable man among them” (U.S. House 1866: 165). Dr. Allen Sterling described the mob as follows “[f]irst, of policemen, and they of course brought their particular friends; and there were federal soldiers, who were just as bad. Then there was a class

of people ready for anything, who, if they could catch a colored boy, would shoot him if they could do it safely. All the colored people I saw were down upon it” (U.S. House 1866: 174). J.S. Chapin “saw none of our merchants or business men. Those I saw were laboring men, judging by their appearance,” and lawyer Marcus J. Wright argued “that there were no citizens engaged” in the riots (U.S. House 1866: 191, 296).

The riot also drew people from outside the area, as Captain A.W. Allyn of the 16th US Infantry stationed at Memphis argued that “(m)en came up on the trains on the Mississippi and Tennessee railroad, and immediately after they came to the depot they jumped off the trains and commenced killing negroes” (U.S. House 1866: 247). He feared that there would have been “(a) universal massacre here, a universal burning” if troops had been withdrawn (U.S. House 1866: 248). Writing to President Andrew Johnson, James B. Bingham argued that “[t]he better class of citizens had nothing to do with the ‘muss.’ The ex-rebels were particularly *not engaged*” (Bergeron 1992: 513). Their participation in the political process, it was argued, would have encouraged the election of officials who might not have allowed the riot to occur in the first place.

Post-war policy opened access to local politics for some groups and restricted it for others. Strict allegiance oaths, required as conditions for exercising the franchise, undermined the perceived legitimacy of local politics (Fertig 1898: 47). Between 1/3 and 2/3 of the property holders of Memphis had been disfranchised (U.S. House 1866: 41). The Disenfranchisement Act of 1865, which was amended in 1866, shut many ex-Confederates out of the political process but created opportunities for members of the Irish minority. Shanklin argued that the effect of disfranchisement was “to exclude from one-half to two-thirds of the men of property, men of business, and that class regarded as the more intelligent and better portion of society in the State,

and thereby to place the political power in the hands of and under the control, to a great extent, of the more inferior classes of society, which often results in the selection of officers of little qualification and distasteful to a large majority of the people whose interest is directly affected thereby, and prejudicial to the prosperity, peace, order, and security of society” (U.S. House 1866: 41).

Stoneman concurred, arguing that property owners were generally excluded from the political process (U.S. House 1866: 58). Further, he argued that the propertied classes of Memphis were those who were “pecuniarily interested in the city of Memphis” and were therefore “desirous of seeing peace returned and order restored” (U.S. House 1866: 58). The agitators, he argued, “have no pecuniary interest in the south at all” (U.S. House 1866: 58). Lawyer John Martin testified “that if the elective franchise were thrown open to every man who under the laws of Tennessee was entitled to vote before the war, we could elect a mayor, city council, and police, who would preserve order” (U.S. House 1866: 139).

The enactment of legislation to disenfranchise former Confederates in Tennessee inverted the previous institutions’ rules of access. Instead of expanding access to the formation of political and economic organizations, one group—including those who had a powerful interest in the long-run health of Memphis—was disenfranchised while newcomers to the city were given the vote (blacks would be granted the franchise later). This reinforced a popular narrative viewing the war as a war of conquest and subjugation and reduced some of the checks that might have, for example, limited the city government’s ability to use jobs in the police and fire departments as sources of political patronage.

In sum, the limiting of access to local government undermined the perceived legitimacy of the reconstruction effort and reduced the disenfranchised Confederates’ incentives to

participate in the indigenous reconstruction of Memphis (and more broadly, Southern) society. The “perpetual form of organizations” doorstep condition implies that the sustainability of organization is not solely a function of the current members of the elite. Given the dramatic changes to political institutions in Memphis, this was not the case. To the extent that institutions were viewed as sustainable, they were a function of a group of elites viewed as outsiders.

5.3 Consolidated Political Control of the Military

Consolidated military control means that the military cannot be threatened by force from other areas of society (North, Wallis, Weingast 2009: 170). Control of the military is not consolidated in the limited-access order, meaning that elites must maintain an array of relationships and alliances with various elite groups that are tied to military factions. In open-access systems, in contrast, military power is consolidated, meaning there are no other military threats to that force. Moreover, there are other, non-military mechanisms for checking military force to ensure that it is not abused.

At the time of the riot, Memphis was home to three organizations competing over the right to monopolize the state’s police power. The first was, obviously, the occupying military. The second was the predominantly Irish police force. The third was the Freedmen’s Bureau. Uncertainty over who was “in charge” resulted in a lack of consolidation of military force, and Freedmen’s Bureau Superintendent Benjamin P. Runkle (1866) blamed the riot on an ongoing “feud between these soldiers and their ancient enemies, the police.” This had the effect of undermining the perceived legitimacy of the reconstruction effort and meant, tragically, that some of the rioters could indulge themselves without fear of punishment.

In an exchange of letters, General Stoneman and Mayor Park indicated different understandings of who was in charge as well as their respective duties (U.S. House 1866: 50, 52). Park requested military assistance putting down the riot, but Stoneman argued that, since the local authorities had been vocal about their ability to self-govern, he would stand aside and allow them to do so. The posses assembled by the civil authorities compounded the trouble; on May 3, Stoneman finally intervened by forbidding public assemblies. On May 5, four companies of white troops arrived from Nashville in order to prevent further violence (U.S. House 1866:73).

On the day the riot broke out the conservative Memphis *Argus* included a dispatch from the Cincinnati *Enquirer* about “Direct Conflict between the Civil and Military Authorities of Kentucky.” It reported on an “order for the arrest of one of the proprietors of the Louisville *Journal*” and said that “the military authorities are still carrying matters with a high hand in Kentucky, and that no respect whatever is paid to the law of the land” (Memphis *Daily Argus* 1866a). This apparent disregard for local rules and norms appears throughout Southern discussions of Reconstruction. G.S. Shanklin blamed the black soldiers for starting the riot by discharging their pistols while the police were doing their duty (U.S. House 1866: 39). General Stoneman pointed out that while blacks had been involved in a scuffle with the police on May 1st, they “had nothing to do with the riot, except to be killed and abused” (U.S. House 1866:58).

According to the testimony of James H. Swan, there was considerable conflict for legitimacy and rule between the colored soldiers and the Irish police officers:

There has seemed to be a competition which should excel in authority. The policemen did not want to give up to them, and the colored guards did not want to give up to the police.” In Swan’s estimation, “I think those who were in the rebel army, and those who were rebels had less to do with the riots here than any other class. I have heard it frequently spoken of that the rebels had nothing to do with it, and that the negroes and police might fight it out (U.S. House 1866: 178).

Swan thought that a riot was imminent in light of the periodic squabbles between the soldiers and the police, as well as the presence of a transient population who had no stake in Memphis and its future (U.S. House 1866: 178). Scuffles between the police and the black soldiers were “a rather common occurrence,” and this suggests that there would probably be violence after the soldiers were mustered out (U.S. House 1866: 205).

One of the roots of the conflict was the use of black troops to patrol the streets of Memphis; it created conflict of authority between the police and the soldiers (U.S. House 1866: 80). Dr. Robert White testified that under General Stoneman, the Memphians had had “perfect order” and that “(i)f you had lived here two or three months ago you would have come to the conclusion that you were in more danger from the police than anybody else” (U.S. House 1866: 164). James E. Donahue, while noting that the black soldiers no doubt did some things that were worthy of police punishment, nonetheless thought that “(w)henver a policeman arrested a colored man, the first thing he did was to strike him” (U.S. House 1866:199). He went on to say that his fear of abuse by the police “made [him] careful to keep out of scrapes” (U.S. House 1866: 199). This is confirmed by the Freedmen’s Bureau’s Benjamin P. Runkle, who argued that “a policeman could not arrest a negro without knocking him on the head before he carried him to the station-house, while if he arrested a white man he would carry him there in a decent way” (U.S. House 1866: 277).

Benjamin Runkle found it almost “impossible” to obtain justice for blacks who had been killed (U.S. House 1866: 277). Indeed, the Freedmen’s Bureau’s failure to protect blacks after the riot undermined its legitimacy in Memphis (U.S. House 1866: 276). One historian described the composition of the police force as being like “taking a troop of lions to guard a herd of unruly cattle” (U.S. House 1866:143). This had the effect of undermining the perceived

legitimacy of the reconstruction effort and meant, tragically, that some of the rioters could indulge themselves without fear of punishment. Runkle replied, when asked about the causes of racist violence in Memphis, that “(t)heir name is legion; such affairs as knocking down and beating were facts of every-day occurrence almost” (U.S. House 1866: 277). He further expressed contempt for local political machinations (U.S. House 1866: 277).

The riot occurred in part because of the contest for legitimacy between local authorities and the military. Neither side had been granted a clear monopoly on the use of force. Federal arms ultimately emerged victorious and the Metropolitan Police Bill, which was passed by the Tennessee Legislature not long after the riot ended, took control over the police force out of the hands of the local government and put it in the hands of the state government. Importantly, there was no competitive market for the use of force, and the issue was only settled at a great cost in lives and treasure.

6. Conclusion

Our analysis has several implications. First, the Memphis Riot was a result of attempts to replace by force limited access institutions with open access institutions on some margins and to limit access for some groups on others. Given the absence of the appropriate doorstep conditions, an open-access order was not sustainable. While previous analyses of the Memphis Riot have identified many of the contributing factors, our contribution synthesizes these factors and shows how their interaction resulted in the riot. In doing so, we emphasize the role that institutions played in the riot, which has been largely neglected in previous analysis of the Memphis Riot. One implication of this focus is that the same set of institutions will work

differently in different contexts and circumstances. Institutions that work in one place cannot simply be grafted onto another one absent the appropriate conditions.

A second, and related, implication of our analysis is that modern nation-building efforts should be met with skepticism. The problems that emerged during Southern Reconstruction occurred under conditions in which the society being reconstructed and the society doing the reconstructing shared a common cultural and legal heritage. Further, the Southern economy even under slavery had been one of history's economic success stories: at the beginning of the war, an independent South would have been one of the richest countries in the world. Tennessee had only been separated from the federal Union for a short period of time before it was conquered, and Memphis had been under military rule for over three years by the time the war ended. In spite of this, the problems emerging during the late nineteenth century were legion. The difficulties of Southern Reconstruction imply the need for skepticism regarding modern nation-building efforts because most of these efforts take place under conditions that deviate significantly from the conditions that characterized Southern Reconstruction.

Third, public economics often treats the existence of an externality or the possibility that a good is a public good as *prima facie* evidence justifying the existence of a government that must provide that good. The Memphis riot suggests that this is a necessary, but not sufficient, case for government involvement. Governments are responsive to political signals rather than profits and losses, and in a world (like Memphis in 1866) in which many had pathological racial preferences, we can expect to see a government responding to political pressure not by correcting an externality but by actively working to destroy wealth. In this regard our analysis highlights not just the role of formal institutions as checks on behavior, but also informal institutions the

form of beliefs and norms. Where either formal or informal (or both) institutions are perverse or dysfunctional, granting political elites increased power can disastrous consequences.

As North, Wallis, and Weingast (2009) point out, societies rarely exhibit open access (or limited access) on all margins; furthermore, the doorstep conditions they identify are not zero-one variables. Over the course of its history, the United States has adopted open-access institutions on some margins and limited-access institutions on others. Antebellum southern slavery was a limited-access institution, and the problems associated with replacing limited-access institutions in the South with open-access institutions help us identify some of the problems people face today as they consider the problems of postwar reconstruction around the world. For all of its problems, robust Southern growth ultimately emerged and even in spite of numerous institutional obstacles, blacks made rapid progress during the period between the end of the Civil War and the beginning of World War I (Higgs 1977). The North, Wallis, and Weingast framework helps us identify some of the social and institutional obstacles that prevented an even more remarkable Southern recovery.

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