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THE RIGHT WAY: CONGRESSIONAL REPUBLICANS
AND RECONSTRUCTION, 1863-1869

by

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A THESIS SUBMITTED
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PREFACE

This dissertation deals with the American reconstruction after the Civil War. It is a period to which American historians have devoted a great deal of attention, and it would be almost presumptuous to attempt to redo the work of great historians like Rhodes, Dunning, Beale, Franklin, McKitrick, Stampp, Brock, and the Coxes. Instead I hope to augment their studies by concentrating on the tensions and divisions among the "Radical Republicans" alone, placing in the background the well-studied struggle between President Andrew Johnson and the Republicans. By focusing only on the Republicans, I believe we may obtain important insights into the nature of reconstruction, especially as to who the radicals were, how radical reconstruction really was, who dominated the congressional party which defeated the President, and what inherent weaknesses in the congressional reconstruction program led to its collapse. But in concentrating primarily upon the Republicans, one must remember that he is seeing a somewhat distorted picture: the immense differences between Republicans, the President, and Democrats are intentionally left without major attention. Leading Republicans emerge as conservatives although neither
President Johnson nor the Democrats (who were truly arch-conservatives) recognized them as such. Indeed, compared to the President and his Democratic allies, conservative and moderate Republicans like Henry L. Dawes, John Sherman, John A. Bingham, and William Pitt Fessenden, emerge at least as men of liberal views, even if they did not espouse the radicalism of which they were accused. Nonetheless, radical Republicans knew their conservative allies were not as committed as they to the racially egalitarian principles of the Republican party, and they were continually frustrated in their attempts to win what they conceived to be true security for the Union and its loyal southern adherents. They recognized the difference between what they called "radical Radicalism" and "conservative Radicalism." And it is to that difference to which I hope to draw the attention of the profession and the public.

As part of that effort I have made modest use of techniques utilized by political scientists to analyze legislative bodies. But I have not used them in the same way as scholars in our sister discipline. They use these tools with maximum precision, obtaining results which may be accepted with confidence because they are valid according to the laws of statistics and probability. I have used these tools merely to explicate points which I intend to prove through more traditional historical analysis. My lists of radicals and conservatives are not intended precisely to
define those groups; they are not the starting points for the analyses which follow them, although they have aided immensurably in understanding the nature of radicalism and the development of reconstruction legislation; they are intended primarily to give the reader a general statement of who radicals, moderates, and conservatives were individually, to answer a complaint that most studies of reconstruction do not give us that information. This is not to downgrade the importance of this statistical analysis. With corroborating historical evidence this statistical work indicates radicals never controlled the process of reconstruction, that moderates and conservatives dominated the institutional mechanisms of Congress. But it does this only because the historical evidence supports it. Standing alone, it would not have the scientific precision which political scientists require.

I doubt that my use of analytic techniques so dear to political scientists can be considered a marriage of the approaches of two disciplines. I have used them in a manner too imprecise to win scientists' approbation; too much space is devoted to "mere" chronology. But I hope that these techniques, so simple and easy to learn, will prove useful to more historians in the future.
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CHAPTER I
INTRODUCTION

Building on a literature which had been growing since Howard K. Beale's 1940 call for re-evaluation, historians in the 1960s rewrote reconstruction history in probably the most thorough revision in American historical literature. William R. Brock, LaWanda and John H. Cox, John Hope Franklin, Harold M. Hyman, Eric L. McKitrick, James M. McPherson, Kenneth M. Stampp, Hans L. Trefousse, and others have rescued the reputation of the maligned "Radical Republicans;" they have reduced Andrew Johnson to the low esteem in which he had been held prior to a resurrection almost as miraculous as the original; and they have returned race relations to the focal point of controversy, from which it had been ejected by considerations of class and economics.

In the process historians have discovered that the "Radical Republicans," once believed to have been a monolithic, overpowering unit welded by the will of Thaddeus Stevens, the fanaticism of Charles Sumner, and the power of the party whip, were neither so monolithic, nor so radical as portrayed. McKitrick rediscovered William Pitt Fessenden, the great, moderate Republican leader of the Senate, and suggested the Fourteenth Amendment had not been framed by
radicals after all. He, Brock, and David Donald recorded the bitter wrangling over the final congressional plan of reconstruction, and they concluded that it had not been whipped through Congress by Stevens' lash as historians had so long believed, but was the result of last-minute compromise and confusion between bitterly contesting factions.

Finally, these great historians have posed questions it will take a generation of their students to answer. Among the most fascinating are, to what extent was reconstruction radical? to what extent did it incorporate the ideas of those Republicans contemporaries identified as radical? What were the real contributions of radicals and non-radicals to the reconstruction program? who really dominated Congress and the Republican party during the era historians have called "Radical Reconstruction"?

For many years historians were only dimly aware that differences existed among "Radical Republicans" after 1865. Many factors contributed to their uncertainty. The first lay in the very appellation "Radical Republican." For the fact is that contemporaries used that word not to elucidate but to obfuscate the real alignments in the Republican party. Originally "radical" seems to have come into wide use to describe those members of the Union party who believed abolition should become one of the northern war-aims, whether as a humanitarian gesture or an effort to weaken the southern aristocracy. Since President Lincoln, Secretary of State William Henry Seward, the Blair family, and most Democrats resisted this
conclusion during the first years of the war, they became known as conservatives. As the Democratic party machinery revived, the term "conservative" came more and more to refer primarily to Union party members who resisted emancipation, rather than Democrats. When the President endorsed emancipation, he removed the clear distinction which until then had prevailed. After 1862 radicalism was a rather foggy notion embodying an inclination to insist on more secure guarantees for freedom than the President's Emancipation Proclamation, a more vigorous prosecution of the war, and especially resistance to any hint of peace without northern victory.

But by 1865 radicalism ceased to be defined in terms of war issues and instead related to questions of peace: the terms of reconstruction. In particular, radicalism came to be identified with the insistence that black southerners be given a meaningful role in the political life of the restored states. In practical terms, this again brought radicals into sharp conflict with Lincoln's position. He had committed himself to recognizing states reorganized by the action of white unionists alone.

During the summer and fall of 1865 differences between radicals and non-radicals were sharply delineated. The radicals insisted on the incorporation of black suffrage in any plan of reconstruction, no matter what position Lincoln's successor, Andrew Johnson, might take, while non-radicals
abandoned that requirement, which most of them had come to accept, rather than alienate the President and because they believed that Johnson's opposition rendered insistence upon Negro suffrage politically impractical. But despite this clear conflict, Johnson either failed or refused to recognize the differences. And when he would not acquiesce in the mild peace program non-radicals required, he and his Democratic and renegade Republican allies deliberately lumped all Republicans together as radicals, insisting that the entire congressional party had come under the domination of the "fanatics," Thaddeus Stevens and Charles Sumner. From this time forward all anti-Johnson Republicans were called—and called themselves—Radical Republicans, and it was this journalistic and political convention which for so long submerged the incontestable fact that many "Radicals" were radical with a capital "R" only. For four years, the entire term of Andrew Johnson, the anomaly of what radical Senator Charles D. Drake called "conservative radicalism" persisted, and the failure to recognize this has subsequently plagued historical literature. Thus, more radical Radicals referred to "conservative Radicals," while the more conservative Radicals complained of "extreme Radicals" or "Radical-Radicals." Drake called himself "a representative, not of a conservative radicalism, but of a radical radicalism . . . which has a strange and new-fashioned way of shelving those who vacillate or stagger, as well as those who desert," while
Stevens reminded the House of Representatives that the Senate as a whole was "several furlongs behind the House in the march of . . . radicalism." To avoid problems of semantics, in this work Radical Republicans will be called simply Republicans and the term radical (in lower case) will refer only to those Republicans whom it accurately describes.

A second obstacle, which helped to lead historians to the conclusion that Republicans were in fact as united under radical leadership as their enemies insisted, was their essential unanimity on the votes by which they passed their legislation and rejected Democratic and Johnsonite amendments to it. During the first session of the Thirty-ninth Congress, for example, the average index of cohesion of Republican Senators was a high 68.01. And of the sixty-four votes on reconstruction-connected legislation, forty-six had indices of cohesion above the already high average. Only one of the eighteen votes below the average involved the actual passage of legislation.

But tensions between more extreme "Radical Republicans" and their less radical allies flared into the open often enough to let investigators know they existed. In February, 1865, a small coterie of radicals joined Democrats to prevent the restoration of Lincoln's reconstructed Louisiana government. Conflict rekindled with the meeting of the Thirty-ninth Congress in December, 1865, when in the Republican caucus Senate conservatives and centrists forced modification
of the resolution creating the Joint Committee on Reconstruction. Republican non-radicals defeated an attempt by Sumner and Henry Wilson to void the Southern black codes in the first weeks of that Congress. In March radicals joined Democrats to defeat one of the original versions of the Fourteenth Amendment, while conservative and center Republicans joined Democrats to defeat an 1866 version of the Tenure of Office bill. The following session witnessed a sharp struggle over a new plan of reconstruction. Continuing conflicts over the wisdom of adjourning Congress for the summer and fall, leaving President Johnson unwatched, culminated in the ill-fated impeachment, which led to the best-known and most spectacular division of all.

Occasionally individual Republicans would grow exasperated at such factionalism. After the defeat of his 1866 Tenure of Office amendment, Lyman Trumbull bitterly complained of the willingness of "a few Republicans" to "unite with conservatives and Democrats to beat their own friends." Two years later California's John Conness was still regretting "that Senators here representing the great national, patriotic party of the Union . . . so often differ upon questions of doctrine and policy." 5

It was despite such disagreements that the "Radical Republicans" maintained their astonishing unity on their most important legislation. With the Presidency occupied by a man whose position on reconstruction was unacceptable to even
the most conservative among them, there was no choice but to maintain such agreement as would enable them to control two thirds of the votes in each house of Congress. "Standing right here in the ranks where our elbows as it were constantly touch, I can feel the slightest symptoms of faltering," Timothy Otis Howe wrote his niece, "We count so much upon each other—and each man in a time like this counts so much."6 Republicans feared not only that they might be unable to overturn Johnson's vetoes, but that Democrats and the few members of the Union party who followed Johnson out of it (called Conservatives) might seize upon Republican differences to become the balance of power. Even with the high level of Republican agreement on major legislation, Conness complained that "Senators on this side of the Chamber allow them [Democrats] often to dictate a policy to divide and distribute out forces, while they never vote apart. . . ."7

To minimize this danger, Republicans resorted to various parliamentary tactics. In the House, the rules encouraged unity. A bill's manager could move to commit his legislation to a committee immediately after it came to the floor. While this motion was before the House, no representative could move amendments. After general discussion the manager could withdraw his motion to commit and move that the House proceed to consider "the previous question." If the representatives agreed (that is, seconded the motion), amendments again would be foreclosed. Representatives would have to vote on the bill as it first
came before them. Republicans would have to accept or reject the bill in toto, and as they usually accepted its fundamental principles, the legislation generally passed with overwhelming party support. Only on the rarest occasions did enough representatives oppose a bill so strongly that they defeated the previous question, opening it to amendment.

Second, both branches of Congress employed committees to frame or modify legislation. In the 1860s as now, these committees were the real working bodies in Congress. In the House they were appointed by the speaker in a manner to reflect as accurately as possible the party, sectional, and philosophical makeup of all the representatives. In the Senate committees were chosen by a special group of influential Senators appointed by the caucus of the majority party. Here
committee chairmen had more to say about the makeup of their committees, but still party, philosophical, and sectional balance was generally maintained. These committees were expected to report legislation which would win the approval of a broad spectrum of their parent bodies. And as they generally paralleled their houses in outlook, they usually did so. Conflict and debate usually arose on an issue when the committee was divided or when another committee which had studied a similar question challenged the first committee's decision. In these situations committee members would be the leading advocates—often the only speakers—on either side.

In the House the prestige of these committees, combined with rules hostile to free debate and amendment, made their will almost irresistible and did much to force an almost artificial unity upon Republicans. Nonetheless, reconstruction was an issue so controversial, on which so many representatives considered themselves expert although they sat on no committee with direct jurisdiction over it, of such fundamental importance for the nation's future, that even with these restraints on free and full debate Republican unity often disintegrated.

In the Senate committees carried less weight. Sometimes they did not reflect the opinions of Senators as accurately as they should have because of the greater influence of their chairman in appointing members. Moreover Senators were (and are) more independent than representatives and more inclined
to consider themselves expert in fields outside their committee jurisdictions. Nonetheless, here too committees served as harmonizing agent on reconstruction legislation, although without the benefit of the House's strict rules they were less formidable to challenge.

Finally, when the normal procedures of Congress failed to secure harmony, Republicans took their differences to the caucus, not to enforce regularity on a harassed minority, but to settle upon some policy which would allow them to keep the initiative in the face of their resolute opponents. This was the case in May, 1866, when Senate Republicans called a party conference to reconcile conflicting opinions on the constitutional amendment proposed by the Joint Committee on Reconstruction and again in February, 1867, when Senators would not agree to the Military Government bill reported by the same committee.

The result of these harmonizing institutions and techniques was what must be considered an artificial degree of unanimity on reconstruction legislation, which has hampered efforts to determine radical-conservative alignments through analysis of voting patterns. To overcome this problem as much as possible, I have studied the votes congressmen cast on reconstruction and other issues through scale analysis. The advantage of this method is that it is not intended to determine representatives' voting behavior per se, but rather their attitudes towards an issue. Since House and Senate
rules and customs limited the legislative alternatives with which congressmen were presented, the most extreme radicals might be able to demonstrate their differences with less radical colleagues on only one or two roll calls during each congressional session. Although these might involve apparently minor questions, in fact they often indicated fundamental differences in attitude and opinion—differences which could not receive legislative exposition due to the institutional structure of Congress. Scale analysis highlights these votes and thus proves far more illuminating for the purposes of this study than alternative statistical techniques.

Analysis discloses that radical-conservative lines were fluid during the Thirty-eighth, Thirty-ninth, and Fortieth Congresses. Not only did congressmen frequently display different attitudes in different sessions, but groups were not completely distinct in any given session, with numerous representatives and Senators falling between one faction and another. Major shifts in alignment occurred between the first and second sessions of the Thirty-eighth Congress, when war issues gave way to those of peace and reconstruction, between the second session of the Thirty-ninth Congress and the first session of the Fortieth, as questions of restoration gave way to those of impeachment and legislative-executive relations (in the Senate this shift occurred between the first and second sessions of the Thirty-ninth Congress), and between the second and third sessions of the Fortieth Congress,
when—with most states restored to normal relations with the Union—congressmen began to consider the problem of permanent national government protection for citizens of fully equal states.

Despite this chaotic inconsistency (and despite the fact that fewer congressmen were reelected in the 1860s than in later years), it is possible to compile a list of men who might be called the "essential" radicals, centrists, and conservatives from 1863 to 1869. They voted rather consistently during at least two Congresses—the core of each group throughout these years. Significantly, the list includes most of the recognized leaders of each group, men like Stevens, Ashley, Daws, Butler, Bingham, Blaine, and Schenck in the House, and Sumner, Wade, Chandler, Fessenden, Trumbull, and Sherman in the Senate. They were the magnets to whom the floating material in each house were attracted, stronger in one session than another, but always there, beacons in a sea of shifting allegiances.

With consistent factionists in Congress isolated, it is possible to offer some suggestions regarding the fundamental nature of Republican radicalism and conservatism.
CHAPTER II
THE BASIS OF POLITICAL RADICALISM

In examining radicalism, historians must recognize that it had two aspects during the war and reconstruction: political and legislative. Republicans became radicals or conservatives in pursuance of political power as well as intellectual commitment. There were actually two radical factions working on different planes. The first consisted of men committed to a legislative program (it may be called an ideology with the understanding that it was so only in the sense of being united on certain fundamentals, with wide divergences on specifics) for change in southern society, a program with implications of increasing magnitude for northern society as well. The factions acting on this level are those which may be identified by voting analysis. The second stratum of Republican radicalism related to the hard-nosed business of politics. Men who desired to gain or maintain power in the party proclaimed their adherence to the amorphous radical or conservative ideologies, using such commitments as weapons to battle their adversaries.

One of the greatest obstacles to understanding Republican radicalism and conservatism during the Civil War period has been the confusion of political radicalism and legislative
radicalism. This confusion is not surprising. Contemporaries did not differentiate between the two aspects of radicalism in the 1860s either. But because they did not, they were equally perplexed by the ideological somersaults of Salmon P. Chase, Horace Greeley, George Julian, and a host of lesser lights. To understand how a Chase could be the radical candidate for the Republican presidential nomination in 1864 and then aspire to the Democratic nomination four years later, one must recognize the factional nature of American politics.

Traditionally, the United States has been a two-party democracy; in many states there has been only one viable political party. Yet, for nearly every position in American national and state government, there have been more than one or two aspirants. These rivals have had to fight their battles within one or another of the parties. Often ideological similarities, personal friendships, or pure self-interest have encouraged groups of aspirants to office to ally themselves against their rivals. Sometimes these factions are short-lived; often they persist for many years, and this is the genesis of factional politics.

Intra-party factional battles often have been fought on the basis of personality alone, but it has been more common for contesting factions to seize upon issues which they believe will obtain the support of their constituencies. From the outbreak of the Civil War until 1868, legislative
radicalism held wide appeal for Republicans. Advocating bold action to carry into effect principles which most Republicans held in common, radicalism could not help but win the adherence of broad segments of the party. In certain areas, conservatism too could exert wide appeal. In states with nearly even balances between the parties, conservatism might offer greater promise of success in general elections, and consequently a greater likelihood of office and patronage. Not as important as ideological purity to the rank and file perhaps, these considerations might carry great weight with local workers, the muscle and sinew of the party, who determined congressional nominations and local appointments. The tendency of Republican factions to adopt radicalism or conservatism as an organizing issue was what gave both concepts their real political power. After 1868, when other issues--civil service and revenue reform, anti-monopolism, and money questions--displaced the radical-conservative dichotomy as the basis of factional organization, radicalism went into a swift and fatal decline.

Perhaps the best-known factional rivalry in the Republican party during the 1860s was that in New York between the friends of William Henry Seward, Governor, Senator, and then United States Secretary of State, and Thurlow Weed, Whig and Republican political manager and editor of the Albany Evening Journal, and those of Horace Greeley, editor of the New York Tribune, the most powerful Republican
newspaper of the East. Originally allies in the liberal faction of the New York Whig party, Greeley had drifted from Seward and Weed over mild disagreements regarding Whig political strategy and Greeley's own ambitions for office. Greeley preceded his former allies into the newly-forming Republican party and cooperated with them uneasily until 1860. The feud broke into bitter warfare that year when Seward and Weed blamed Greeley for Seward's failure to win the Republican presidential nomination. Seward had been the radical candidate at the Chicago Convention. Greeley had favored the arch-conservative Missouri Whig, Edward Bates.

Weed repaid Greeley for his anti-Seward activities in 1861, defeating Greeley's drive for the Republican nomination to the United States Senate. During the secession winter, as Weed advocated concessions to slavery to preserve the Union, Greeley opposed compromises, preferring to allow the South to secede peacefully. Strife continued as both factions tried to win Lincoln's favor and control of the national patronage. Lincoln gave control of the customs house in New York city to former Democrats, who generally disliked Seward and allied loosely with Greeley, but the Seward-Weed forces generally received the choicer appointments in the rest of the state.

In 1862 anti-Weed forces, made up of Greeley's friends and the allies of independent-minded former Democrats such as William Cullen Bryant of the New York Evening Post,
David Dudley Field, Daniel S. Dickinson, Daniel E. Sickles, and Lyman Tremain, controlled the Republican nominations. Weed, advocating a strong appeal to Union Democrats, left the state convention disgruntled and did little to elect the ticket. When the Republicans lost the canvass, Greeley and his allies charged him with sabotage. With the only patronage available to Republicans in the state emanating from the national government, Weed slowly regained control of the state organization.

By 1864 Weed, who first worked for Lincoln's renomination and then threatened to sit out the campaign unless Lincoln acceded to his ever-growing patronage demands, had won control of every important national appointment in the state. Lincoln had replaced the former Democrat Chase in the Treasury Department had soon thereafter turned out Chase's formerly Democratic friends in the New York customs house. He replaced them with allies of Weed. At the same time he named a Seward-Weed partisan city postmaster. Given this political situation, it is little wonder that Greeley opposed Lincoln's renomination and that many leading former Democrats—David Dudley Field, Lyman Tremain, Parke Godwin, and John Cochrane, among others—actively promoted the Frémont third-party movement. When Lincoln died, the Seward-Weed wing of the New York party had almost total control of the national patronage in New York City while the radicals, who had managed to elect Reuben E. Fenton governor in 1864,
dominated the state's.

LaWanda and John H. Cox have shown how Weed and Seward hoped to use Andrew Johnson to gain complete control of the Union party in 1865 and early 1866 by driving the radicals out of the organization on the issue of Negro suffrage. Seward and Weed failed because Johnson went too far, making the issue civil instead of political rights and denying the North virtually any guarantees for the South's future conduct. By adhering to the President's policy too long, Seward and Weed discredited themselves with the party. Fenton and Greeley used the state patronage to perfect their control of the Republican organization. But former members of the Seward-Weed machine—representatives Henry J. Raymond, James M. Marvin, Addison H. Laflin, Robert S. Hale, William A. Darling, William E. Dodge, and Senators Edwin D. Morgan and Ira Harris—remained among the most conservative Republicans in Congress. Weed made a last effort to restore his political fortunes in 1867, trying to start and dominate a presidential boom for Ulysses S. Grant.

The political activity (and social friendship) of one of Weed's allies, ex-Governor Hamilton Fish, influenced Grant to appoint him Secretary of State, but this did not revive Weed's fortunes, and the old politician's influence continued to fade.

As the Seward-Weed versus Greeley struggle developed, contemporaries began to refer to the Weed forces as
"conservatives" and Greeley's allies as "radicals," primarily because Greeley favored emancipation early in the war while Seward and Weed opposed it. As opposition to Lincoln's renomination came to be identified with radicalism, Greeley's position in 1864 reinforced the identification. Yet, there can be no doubt Greeley's reputation as a radical stemmed more from his political position than ideological commitment. In 1860 and 1861, as noted, Greeley favored the presidential aspirations of an extreme conservative (Bates) and opposed coercion of the South. In the winter of 1862-1863 he began to hint at acceptance of peace without reunion, and his party rivals accused him of defeatism. In early 1865 his newspaper endorsed Lincoln's mode of reconstruction in Louisiana, and at the same time the erratic politician arranged the Niagara peace conference.

In the summer of 1865, with Seward and Weed apparently enjoying the confidence of the new President, Greeley endorsed black suffrage and with moderation questioned Johnson's reconstruction program. But after Johnson's desertion threatened the defeat of the Republican party, Greeley acquiesced in the abandonment of Negro suffrage and endorsed the proposed XIV Amendment. By 1867 Greeley generally opposed disfranchisement of southern whites, repudiated confiscation, aided conservative Republicans in the South against radicals, and raised money to bail Jefferson Davis, for which he was attacked by Wendell Phillips, Stevens, and the Union Club of New York.
But despite his conservatism on these essentially ideological and legislative questions, Greeley vigorously opposed the movement to nominate Grant, favoring Chase instead. Since Grant was considered a conservative Republican candidate in 1867 and Chase a radical, Greeley's inconsistency is patent. Yet it is also easily explained when one remembers that the Seward-Weed organization was Grant's most active backer in New York.

The essentially factional nature of Greeley's politics became even more apparent after 1868. Between 1866 and 1869, the "radical" faction of the New York Republican party, led by Greeley and Governor Fenton, held complete sway over the party organization. But in 1868 Fenton determined to win the Senate seat Morgan occupied. Traditionally, New Yorkers agreed that one Senate seat should go to an upstater and one to a man from New York City. In 1868 the seats were so arranged—Roscoe Conkling being the upstate Senator and Morgan residing in the metropolis. If Fenton—an upstater—succeeded in displacing Morgan, he would create an imbalance which, four years later, would imperil Conkling's seat. Therefore Conkling bent every effort to reelect Morgan, beginning a new factional dispute. Fenton's efforts succeeded—he took his seat in March, 1869—and Conkling decided he must challenge Fenton's control of the party to make his own reelection certain. He did this by attacking the legitimacy of Greeley's radical New York city organization,
accusing it of maintaining ties with the Tammany Democrats (which was true), and advocating the creation of a new city organization in which the old Seward-Weed faction would share control. The "radicals" steadfastly refused to disband, and after two extremely hard-fought convention battles in 1870 and 1871 Conkling succeeded in wresting control of the state party from the Greeley-Fenton coalition.

When Grant recognized Conkling's primary voice in patronage matters, Greeley and Fenton began to oppose efforts to renominate him. By 1871 the old "radical" organization (minus those who deserted to their triumphant opponents) was in full revolt against the regular party. But when Greeley and Fenton adopted issues on which to attack their enemies, they turned to civil service reform, retrenchment, and an end to "centralization" (particularly with reference to national enforcement of the Fifteenth Amendment). Travelling through the South in May, 1871, Greeley denounced "Carpet-baggers" and Republican corruption. He developed contacts in the region which would influence southern leaders to prefer him to all other dissident Republicans when the anti-Grant forces determined to nominate a coalition presidential candidate.

In spring, 1871, Greeley and his intimates began conferring with other disgruntled Republicans, who would form the nucleus of the "liberal Republican" movement. Yet as late as October, 1871, Greeley was attempting to devise
means to maintain the unity of the New York party (and, of course, to restore his own access to power and patronage). Not until winter, 1871-72, did Greeley finally decide to bolt the party completely. When he did so, he confessed it was not due to his philosophical disagreements with it alone, but because "General Grant has seen fit to make especial war on my friends in this State . . . repeatedly, and without excuse. . . . [Grant] proscribed all who were formerly known as radicals, lately as 'Fenton' men. . . .

". . . . It is now too late for reconciliation. We must go to the wall, or he must."

Greeley's contemporaries generally considered him a radical, but to understand the twists and turns of his political career and his abandonment of radicalism, one must recognize that his was essentially a "political radicalism." He no doubt fully believed in his radical convictions while he held them, but his mind was elastic enough to adjust to new political necessities. When it became necessary, he could believe just as passionately in a new program, elements of which were diametrically opposed to that which he had adhered to for so long.

The course of the former Democrats in New York's Union party offers an even better example of factional politics. Although they had allied themselves loosely with Greeley during the war and spearheaded the anti-Lincoln radical third party movement in 1864, when Johnson, a fellow War
Democrat, became President they recognized immediately an opportunity to take the leadership of a new, revitalized, loyal Democratic party based on opposition to radicalism. During the summer and fall of 1865, such former radicals as Dickinson and Cochrane (who had been vice-presidential candidate on the radical Frémont ticket) busily tried to win Johnson's support for their project. The New York Evening Post, edited by Bryant and Godwin, who had been extremely radical during the war, endorsed Johnson's conservative reconstruction program and supported him vigorously until he vetoed the Civil Rights bill in March, 1866. Lucius Robinson, a close ally of Greeley during the war, accepted the Democratic-Soldiers' Convention nomination for state comptroller, the position to which he had been elected in 1864 as a Republican. David Dudley Field was prominent among Johnson's supporters throughout his administration.

Similar factional alignments existed in the Republican and Union parties of nearly every state. In Maine the friends of former Democrat Hannibal Hamlin vied for control of the Republican machinery with those of James G. Blaine, Lot M. Morrill, and William Pitt Fessenden. In Massachusetts the radical "Bird club" battled the conservative "Banks club" before 1860. During the war Richard Henry Dana, Jr., fired by the ambition to replace Sumner in the Senate, outspokenly supported the conservative measures of the Lincoln administration against radical criticisms. From
1865 to his death in 1867, former Governor John A. Andrew staked out a more conservative position than Sumner's, preparing for a run for the presidency or Sumner's Senate seat. The feud between Simon Cameron and Andrew G. Curtin rent Pennsylvania's Republican party for fifteen years. Curtin allied himself closely with Lincoln during the war, becoming one of the leaders of the "moderate" group of northern war governors. In 1865 Cameron, returning from a diplomatic post in Russia, attempted to cultivate friendly relations with President Johnson, and Curtin followed suit. Cameron then swung towards radicalism, while Curtin continued to urge conciliation with the President until summer, 1866. Cameron defeated Curtin for the Republican Senate nomination in 1866-67 after Thaddeus Stevens' friends swung their support to him to prevent the election of the more conservative man. By 1871 Curtin, like Greeley, was a Liberal Republican.

In Indiana George W. Julian and Oliver P. Morton fought a long and bitter battle for control of the party. During the war and until 1871 Julian attacked Morton's conservatism. Morton in turn challenged Julian to leave the party on the issue of black suffrage in 1865 and distinguished himself as one of President Johnson's most zealous defenders. Abandoning Johnson after he vetoed the Civil Rights bill in 1866, Morton adopted a policy more closely attuned to the centrist element of his party but with a partisanship and anti-Johnson fervor which satisfied many radicals. In 1867, he managed
to defeat Julian in a contest for the Republican Senate nomination. Continuing to dominate the state party, Morton's allies finally redistricted Indiana's congressional districts in such a way as to deprive Julian of his overwhelming local majorities. Reelected to Congress by a narrow margin in 1868, Julian failed to win renomination in 1870. By 1872 he too assailed his enemies as a Liberal Republican.

Similar factional strife—though sometimes with less emphasis on national issues—obtained in Wisconsin between former Whig Timothy Otis Howe and former Democrat James R. Doolittle, (both Senators) in Minnesota between Representative Ignatius Donnelly and former Governor and Senator Alexander Ramsey, and in Iowa between the forces of Representatives Grenville Dodge and William Boyd Allison and those of Senator James Harlan.

Some struggles were particularly noteworthy for the inconsistencies they produced. In Connecticut, for instance, the major factional division was between former Whig and American party members, led by Senator James Dixon, Nehemiah D. Sperry, the Hartford Courant, and former Democrats and Free-Soilers, led by James R. Hawley, the editor of the Hartford Press, and William S. Buckingham. As they organized about war issues, the Dixon faction became known as "conservative" and the Hawley faction as "radical." Yet Gideon Welles, Lincoln and Johnson's arch-conservative Secretary of the Navy, belonged to the "radical" faction, and used Navy
Department patronage to support it whenever possible. Moreover, in 1865 the "conservative" faction joined the "radicals" in endorsing an amendment to Connecticut's constitution enfranchising black men, and both groups worked diligently for it despite President Johnson's known position. As in New York, the conservative faction controlled the national patronage while the radical faction controlled that of the state, through Buckingham and then Hawley, who served as governors from 1864 to 1867. In 1865-1866 Dixon allied with Johnson, like the New York conservatives hoping to drive the radicals from the party. Instead he lost his influence. His colleague, Senator Lafayette S. Foster, president pro tempore of the Senate, remained loyal to the regular party on the national level but cooperated with the Dixon forces in Connecticut. Despite efforts by Johnson-men, Dixon's friends, and the conservative Senator William Pitt Fessenden of Maine, Foster lost his Senate seat in 1867.

Perhaps the most explicit interaction between political and legislative radicalism occurred in Kansas. There James H. Lane, first governor and then Senator, for years had been battling Charles Robinson for control of Kansas' Republican party. In the course of this long rivalry the Robinson adherents became identified with conservatism and Lane's supporters with radicalism. Lane's voting record as Senator justified the appellation. Committed to vigorous prosecution of the war, emancipation, the use of black troops, and by
1864 Negro suffrage, Lane far outdistanced his colleague, Samuel C. Pomeroy, in claims to radical credentials. But in 1863 Lane found himself in serious trouble back home. Governor Thomas Carney, Robinson, and Pomeroy had joined forces in an attempt to strip Lane of power. With the state legislature also arrayed against him, Lane's position was critical. To save himself, Lane became Lincoln's most outspoken supporter in the state. Gaining control of the national patronage in Kansas through this maneuver, he soon regained his pre-eminent place in the party. Pomeroy, his power waning, became one of the leaders of the drive to replace Lincoln with Chase as the Republican presidential candidate in 1864, authoring the famous Pomeroy Circular. Despite his relatively conservative voting record in the Senate up to this time, Pomeroy became in the eyes of contemporaries and historians one of the leading wartime radicals.

As the gulf between President Johnson and the party widened, Lane was loathe to risk his control of the national patronage in Kansas. Supporting the congressional leadership at first, he altered his course and endorsed the President, supporting his veto of the Civil Rights bill despite cautionings from his allies in Kansas that they feared the consequences. The day of the vote Lane received a telegram warning him that he would make the mistake of his life if he sustained the veto. "The mistake has been made," he lamented despondently. "I would give all I possess if
it were undone."

As Lane hesitated, his enemy, Pomeroy, veered sharply toward radicalism. Lane's friends were forced to abandon him, and when both radicals and Democrats charged him with corruption, the former radical, in a state of massive depression, committed suicide.

Perhaps the state in which legislative and political radicalism was most confused was Ohio. Historians have generally identified radicalism with support of the presidential ambitions of Salmon P. Chase in 1864 and in 1867 (before he precipitately converted to conservatism). This is accurate. Chase's supporters were looked upon as radicals by conservatives. The mistake is in assuming such political radicalism necessarily implied legislative radicalism. Ohio's politics were nearly as faction-ridden as New York's, and less organized. But the Republicans with the most numerous followings in Ohio during the Civil War were Chase, Benjamin F. Wade, and Columbus Delano. Delano had challenged Chase for the Republican Senate nomination in 1859-60, worked to defeat his presidential nomination in 1860, and opposed him again in 1864. Between Delano's adherents and Chase's there was a true radical-conservative dichotomy.

But no such philosophical division separated the Chase and Wade factions. Wade's opposition to Chase's ambitions was no less thorough than Delano's. He too opposed Chase for the 1860 presidential nomination, and Chase blamed him
rather than Delano for his defeat. In 1862 Chase tried to repay Wade first by trying to replace him as Senator himself and then by supporting Rufus P. Spalding, at this time known as "The Great Radical from Ohio," for the place. Spalding also enjoyed the support of the conservative wing of the Cleveland Republican party (his home district). When Wade allied himself with Spalding's more radical local enemies, Chase aided Spalding, who steadily became more conservative in legislative as well as political terms.

To add to the confusion, the conservative Delano also challenged Wade. He quickly developed into a more dangerous opponent than Spalding, but opponents in his legislative district prevented his renomination to the state legislature, effectively destroying his prestige. With Wade's prospects improving, Chase tried to gain the support of the conservative War Democrat element of the Union party through an alliance with William S. Groesbeck, while at the same time trying to patch his quarrel with Wade. When the Republican caucus of the state legislature met in January, 1863, the Democratic element refused to be bound by its decision and bolted the meeting. But Delano, evidently deciding that he hated Chase more than Wade, threw his support to the latter. The Unionists then coalesced, all but sixteen of them voting for Wade in the state legislature. Fifteen--die-hard conservatives--voted for Thomas Ewing and one for Robert C. Schenck.
Naturally these enmities had an impact on Chase's drive for the 1864 nomination. Wade, an enemy to both Lincoln and Chase, aided neither. Delano's forces became Lincoln's primary supporters in Ohio, but their conservatism did not prevent Chase from trying to reach a modus vivendi with them. After negotiations, the Delano men agreed to relax their pressure for Lincoln's renomination and to close the 1864 session of the state legislature without bringing a resolution endorsing Lincoln before the Republican caucus. But the furor over the premature "Pomeroy Circular" convinced Delano and his friends they stood to gain more by continuing their alliance with Lincoln than by deserting to Chase, and they forced passage of the endorsement shortly thereafter.

Once again political radicalism did not always run parallel to legislative radicalism. Among Chase's most important allies in Ohio was John Sherman, whose voting record in the Senate was very conservative. He served on the committee which framed the Pomeroy Circular and circulated denunciations of Lincoln under his frank. Robert C. Schenck, on the other hand, displayed a very radical voting record in the Thirty-eighth Congress. Despite his legislative radicalism, however, Schenck had been a conservative Whig, allying with the Republicans' conservative wing only in 1859. Although Lincoln had urged his election to the Senate seat Chase had vacated to become Secretary of the Treasury in 1861, Chase's supporters had opposed him and elected
Sherman instead. In 1864, while the conservative (in legislative terms) Sherman worked for Chase in Ohio, the radical Schenck became Lincoln's most vociferous defender in the southern part of the state.

In 1866, Schenck once more challenged Sherman, then running for reelection. He attacked Sherman's conservatism, pointing especially to his vote in the Senate against repealing the 1793 Fugitive Slave law. Once again Chase supported Sherman, and Schenck was defeated.

By 1867 Chase, though considered a radical candidate for President by most observers, was the more conservative aspirant in Ohio, where Wade tried to forward similar ambitions. To secure the state's support for his presidential ambitions in 1867, Chase and his allies tried to force the nomination of Benjamin Cowen for governor. When this failed, they determined to renominate the extremely conservative Governor Jacob D. Cox. However, the Wade forces, under the leadership of William Henry Smith, forced the nomination of Rutherford B. Hayes, winning a crucial victory over Chase. After the Republican losses in the ensuing election, however, the prospects of both candidates were irreparably damaged. Given the background of Chase's political maneuverings, it is not surprising to find Chase trying to win the Democratic nomination instead.

Factional rivalries run to the local level also. Schenck's leading opponent within the Republican party in
his congressional district was Lewis D. Campbell, also a
former Whig, who had supported Bell and Everett in 1860.
Campbell was intensely jealous of Schenck, who, he said,
"seems to act on the idea that he is the only man entitled
to consideration in this section." In 1864, as Schenck
supported Lincoln for renomination, Campbell supported Chase.
In 1866, though disenchanted with Chase, Campbell supported
Sherman's campaign for reelection against Schenck's challenge.
As soon as he saw President Johnson was not in sympathy with
Schenck's ideas of reconstruction, he offered him advice
and support, exaggerating his part in opposing radical schemes
in the state. For his services, Johnson rewarded him with
the ministry to Mexico. Using his patronage lever, Campbell
tried unsuccessfully to pry his district's Republicans from
their allegiance to Schenck. But in 1870 he succeeded finally
in replacing his old antagonist, running as an independent
Republican with Democratic support.

Similar hostilities obtained in many local areas. They
are not easily detailed because historians have not studied
local politics as thoroughly as the subject warrants, but
they probably existed in many more localities than those for
which evidence exists. Felice A. Bonadio alludes to several
in Ohio—between Schenck and Campbell, James M. Ashley and
his conservative opponents in Toledo, between the editors of
the Cleveland Herald and Cleveland Leader, between Samuel F.
Cary and Richard Smith in Cincinnati and John Hutchins and
James Garfield in the nineteenth congressional district. The Trumbull papers in the Library of Congress offer detailed insights into factional struggles on the local level in Illinois. And published materials by and about George W. Julian give some indication of the depth of the antagonism between him and General Solomon Meredith, his local Republican rival.

Historians have accepted contemporary assessments that Johnson did not use his patronage power wisely. Yet there is evidence that he wielded it in such a way as to use these factional rivalries. He named Meredith district tax assessor in Julian's congressional district, for instance. He nominated one of Ashley's long-standing rivals in Toledo, A. G. Clark, city postmaster. In 1865 Rush R. Sloan, a close friend of Sherman and a conservative, succeeded in winning a presidential appointment as special agent of the Post Office in Ohio. His chief competitor had been S. M. Penn, a radical. When Sloan refused to endorse the President in summer, 1866, Johnson removed him and named Penn to his old position. Penn changed his politics. The Trumbull papers also indicate that wherever he could Johnson used his patronage to aid pre-existing factions of the Republican party in Illinois.

Legislative and political radicalism, then, were not necessarily identical. The two facets of radicalism were often closely related, but political necessities often explain
the legislative inconsistencies men like Lane, Pomeroy, Morton, Chase and Julian displayed. Moreover, radicalism must be understood as a potent political weapon in the hands of bitter personal and political enemies within the Republican party. Finally, the events leading to Andrew Johnson's desertion of the party must be understood in light of the bitter factional rivalries tearing at its organization at the state level. With such rivalries threatening the party, Johnson should have—and at first did have—ready-made allies hoping to gain control of national patronage by supporting him. That he failed to carry the party organization with him indicates how unacceptable his position became to Republicans as it evolved. Recognizing that in the background of the struggles between radical and non-radical Republicans in Congress there lay often complementary, sometimes contradictory, struggles for political power, we may ask the question, "What was legislative radicalism?"
CHAPTER III

THE BASIS OF LEGISLATIVE RADICALISM

Historians of reconstruction who wrote from the 1890s to the 1930s were convinced that the radicals had forced a tragic policy on the nation after the war. But they never doubted that radical Republicans agreed on one basic principle -- that political power must be transferred from the men who went into rebellion to those who had remained loyal. The greatest of these historians--James Ford Rhodes, John W. Burgess, and William A. Dunning--never suggested that this determination was inherently wrong or immoral. In their opinion the tragedy was that the Republicans, in Rhodes' words, "showed no appreciation of the great fact of race ... ."

Firmly grounded in the racist science of their times, these historians concluded that black suffrage was not a viable alternative to continued white, rebel rule. By the 1920s and 1930s historians had added to this conception of the radicals an imputation of vindictiveness which culminated when James G. Randall in his widely used text on civil war and reconstruction ceased referring to "Radical Republicans" at all, instead denominating them "Vindictives."

A second interpretation of the radicals originated in the assumption so fundamental to progressive historians that
men's actions are dictated by economic considerations. This interpretation suggested they were the political spokesmen of northeastern business, hoping for a reconstruction which would open the South to economic development and exploitation and which would minimize the power of agrarian and anti-industrial interests. Although expressed primarily in one major work on reconstruction, Howard K. Beale's The Critical Year, this interpretation swept the field and in an incredibly short time became the new orthodoxy. Robert P. Sharkey, studying the economic issues during the civil war and reconstruction, arrived at a third conclusion, diametrically opposed to Beale's. He determined that radical Republicans were generally united by an egalitarian economic as well as racial ideology which led them to support high tariffs and soft money.

In recent years historians have returned to a position more similar to that forwarded by the first group of reconstruction historians led by Dunning, Rhodes, and Burgess. Once again matters of race and security for the Union and its southern partisans have come to the fore, although historians have rejected the early historians' racial notions. If reconstruction was a tragic era, many insist, its tragedy lay in the reluctance of Republicans to press harder for racial justice rather than their decision to press at all. But with the new revisionism has come real confusion over who the radicals were. Dunning, Rhodes, Bowers, Beale,
Randall, and Sharkey all knew what radicalism was. McKitrick, Donald, Hyman, Brock, and the Coxes have more difficulty. They point to numerous convictions and attitudes radical and non-radical Republicans held in common, but have more trouble trying to determine differences. Trefousse has called the radicals a "vanguard for racial justice," and historians tend to agree, but the amount of study being devoted to the subject reveals the depth of their perplexity.

As historians have restudied reconstruction, Beale's thesis that economic considerations underlay radicalism has come under sharp attack. Beginning with Stanley Coben's brilliant discussion of the divisive economic questions of the reconstruction era, continuing with Peter Kolchin's analysis of the attitude of the business press and Glenn M. Linden's voting analyses of radicalism and economic issues, rejection of Beale's assumption has become a yet newer orthodoxy. Sharkey's conclusions have been less widely challenged, but at the same time they have not been accepted. Although more conscious now that many radicals held soft-money views, historians seem to feel that the studies which apparently demolished Beale's thesis answer Sharkey's also.

But there are some problems with the studies upon which these conclusions are based. Coben demonstrated that the American business community was hopelessly divided on economic issues during reconstruction. He suggested that the Radical Republicans divided in the same way. But one must question
the conclusiveness of his study because he identified the entire regular Republican party as radical, studying the "Radical Republicans" instead of radical Republicans. Kolchin's study proves much of the business press opposed Republican reconstruction policy, but does not discuss the radicals' economic ideas at all. Linden's work is at first more convincing. His technique of analysis led him to categorize too many Republicans as radical, but this is easily remedied by separating congressmen in his list who qualify as radicals after more sophisticated analysis from those who do not. This does not alter Linden's conclusion. 

But Linden incorporated into his study myriad issues, among them the Homestead bill, tariff regulation, various loan bills, currency measures, tax legislation, and funding bills. The fact that radicals did not agree on these measures indicates that Beale's conception of a monolithic pro-capitalist and pro-industrialist Radical party is erroneous, but it does not answer suggestions that radicals may have shared common attitudes towards specific issues—money questions or tariffs, for example. For this further analysis is required.

A glance at Charts 1 and 2 makes Beale's first mistake clear. Radicalism was not accepted primarily by northeasterners. On the contrary, northeastern representatives and Senators (those from New England and the Atlantic states on the charts) tended towards conservatism and centrism, with
CHART ONE

Consistent Factions in the House of Representatives
38th Congress - 40th Congress

The "Essential" Radicals

William B. Allison, Iowa (until 41st Congress)
Samuel M. Arnett, Tenn.
James M. Ashley, Ohio
George S. Boutwell, Mass.
Henry P. H. Bromwell, Ill.
John M. Broomall, Pa.
Benjamin F. Butler, Mass.
Sidney Clarke, Kans.
Amasa Cobb, Wis.
John Coburn, Ind.
Ignatius Donnelly, Minn.
Jacob H. Ela, N.H.
George W. Julian, Ind.
William D. Kelley, Pa.
William H. Kelsey, N.Y.
William Lawrence, Ohio
Benjamin F. Loan, Mo.
Horace Maynard, Tenn.
Dennis McCarthy, N.Y. (tending towards center)
Joseph W. McClurg, Mo.
Ulysses Marcy, Pa. (tending towards center)
Charles O'Neill, Pa. (tending towards center)
Godlove S. Orth, Ind. (until 41st Congress)
Halburt E. Paine, Wis.
Robert C. Schenck, Ohio (until 41st Congress)
John P. C. Shanks, Ind.
Samuel Shellabarger, Ohio (tending towards center)
Ithamar C. Sloan, Wis.
Thaddeus Stevens, Pa.
William B. Stokes, Tenn.
John Taff, Nebr.
Charles Upson, Mich.
Robert T. Van Horn, Mo.
Hamilton Ward, N.Y.
Martin Welker, Ohio
Thomas Williams, Pa.
William Windom, Minn.
The "Essential" Centrists

Oakes Ames, Mass.
Nathaniel P. Banks, Mass.
James G. Blaine, Me.
Ralph P. Buckland, Ohio
Reader W. Clarke, Ohio
Henry C. Deming, Conn.
Benjamin F. Eggleston, Ohio
Samuel Hooper, Mass.
John H. Hubbard, Conn.
Calvin T. Hubburg, N.Y.
William H. Koontz, Pa.
Daniel Morris, N.Y.
James W. Patterson, N.H.
Alexander H. Rice, Mass.
John H. Rice, Me.
Glenn W. Scofield, Pa.
Burt Van Horn, N.Y. (tending towards radicalism)
Cadwallader C. Washburn, Wis. (tending towards conservatism)
William E. Washburn, Mass.

The "Essential" Conservatives

John A. Bingham, Ohio (tending towards center)
Austin Blair, Mich.
Thomas T. Davis, N.Y. (tending towards center)
Henry L. Dawes, Mass.
Thomas W. Ferry, Mich.
John A. Griswold, N.Y.
Isaac R. Hawkins, Tenn.
Chester D. Hubbard, W. Va.
John A. Kasson, Iowa
John H. Ketcham, N.Y.
Addison H. Laflin, N.Y.
George V. Lawrence, Pa.
James M. Marvin, N.Y.
Luke P. Poland, Vt. (tending towards center)
William H. Randall, Ky.
Green Clay Smith, Ky.
Worthington C. Smith, Vt.
Frederick K. Woodbridge, Vt.

To qualify for each designation, a representative must have served four years in Congress, scaling in at least three sessions. He may have deviated from his radical, centrist, or conservative voting pattern by more than one group (that is from radical to radical-center,
conservative to conservative-center, etc.) only once. Such deviations may have occurred only once in three sessions during which the representative scaled. A session during which a representative could not be scaled due to inconsistent voting is considered a deviation.
CHART TWO

Consistent Factions in the Senate
38th Congress - 40th Congress

The "Essential" Radicals

Simon Cameron, Pa.
Zachariah Chandler, Mich.
Jacob M. Howard, Mich.
James W. Nye, Nev. (until 41st Congress)
Charles Sumner, Mass.
John M. Thayer, Nebr.
Benjamin F. Wade, Ohio
Henry Wilson, Mass.
Richard Yates, Ill.

The "Essential" Centrists

Aaron Cragin, N.H. (radical centrist)
George F. Edmunds, Vt.
William P. Fessenden, Me. (conservative centrist)
Lot M. Morrill, Me.
Alexander Ramsey, Minn. (radical centrist)
George H. Williams, Ore.

The "Essential" Conservatives

Henry B. Anthony, R.I.
Henry S. Corbett, Ore.
Edgar Cowan, Pa.
James Dixon, Conn.
James R. Doolittle, Wis.
Frederick T. Frelinghuysen, N.J.
Ira Harris, N.Y.
John B. Henderson, Mo.
Daniel S. Norton, Minn.
John Sherman, Ohio
Lyman Trumbull, Ill.
Peter G. Van Winkle, W. Va.
Waitman T. Willey, W. Va.

To qualify for each designation, a Senator must have served four years in Congress, scaling in at least three sessions. He must never have deviated from his
radical, centrist, or conservative voting pattern by more than one group (that is from radical to radical-center, conservative to conservative-center, etc.). Such deviations may have occurred only once in three sessions during which the Senator scaled. A session during which a Senator could not be scaled due to inconsistent voting is considered a deviation.
New England congressman concentrated heavily at the center of the Republican spectrum and those from the Atlantic states inclined to be more conservative (see Charts Nos. 3 and 4). The western states provided the core of radicalism (the West as Americans defined it in the 1860s—anything west of Pennsylvania). This geographic pattern appears consistently in radical-conservative alignments within individual sessions of Congress also, as a look at the charts scattered throughout this work will demonstrate.

Cohen has demonstrated the complexity of economic issues during reconstruction. Pennsylvania iron masters, New England textile manufacturers, New York importers, Maryland, Pennsylvania, and western mine-owners, and agriculturalists, all had different interests to protect and their congressmen shared their concerns. For that reason one cannot expect a simple correlation between radicalism and economic attitudes.

The tariff bills were good examples of such complexities at work. Because the rules of the House of Representatives made amendment of tariff bills difficult, rival interests fought their battles before the Ways and Means committee, which framed the legislation. The battles were renewed before the Senate Finance committee and then again on the Senate floor, where the rules could not be used to prevent debate and amendment. Therefore a complete picture of the tariff battle is given only in the Senate.

Although individual rates were the products of adjustments between particular interests, when taken as a whole
### Chart Three

**Factions and Sections in the House of Representatives**  
38th Congress - 40th Congress

<table>
<thead>
<tr>
<th>Region</th>
<th>&quot;Essential&quot; Conservatives</th>
<th>&quot;Essential&quot; Centrists</th>
<th>&quot;Essential&quot; Radicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>New England</td>
<td>4</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Atlantic (N.J., N.Y., Pa.)</td>
<td>6</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Border (Del., Ky., Md., No., Tenn.)</td>
<td>5</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>West (Ill., Ind., Iowa, Kans., Mich., Minn., Ohio, Wis.)</td>
<td>4</td>
<td>4</td>
<td>19</td>
</tr>
<tr>
<td>Far West (Cal., Nev., Ore.)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
CHART FOUR

Radicalism and Sections in the Senate
38th Congress - 40th Congress

<table>
<thead>
<tr>
<th></th>
<th>&quot;Essential&quot; Conservatives</th>
<th>&quot;Essential&quot; Centrists</th>
<th>&quot;Essential&quot; Radicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>New England</td>
<td>2</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Atlantic</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Border</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>West</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Far West</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>
the tariff system was designed to create a vast, protected free trade area within which industry could grow and prosper, subsidized by the American consumer. Most Senators did not take part in individual conflicts over rates on particular items. Each had his own favored interests, important to his constituents. When these were not involved he was content merely to witness the battles important to others and to vote in favor of whichever group seemed to have the better argument. Over a long series of votes like that of the second session of the Thirty-ninth Congress, an individual Senator's general bias for or against high tariffs often became apparent.

Senators considered the only general tariff adjustment of the Thirty-eighth through Fortieth Congresses during the second session of the Thirty-ninth. Over the entire span of forty votes (including three during the first session), the six "essential radicals" in the Senate at the time apparently voted little differently than the conservatives, although both groups differed from the centrists. The median radical Senator voted for higher tariffs 61.3% of the time; the median conservative 61.7% of the time, and the median centrist 48.3%. But separating the groups geographically accentuates the differences, particularly among westerners:
CHART FIVE

Percentage of Votes on Which Median Senators Voted for Higher Tariffs
39th Congress

<table>
<thead>
<tr>
<th>Location</th>
<th>&quot;Essential&quot; Radicals</th>
<th>&quot;Essential&quot; Centrists</th>
<th>&quot;Essential&quot; Conservatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>East (Md., N.J., N.Y.,</td>
<td>26.6</td>
<td>59.9</td>
<td>67.6</td>
</tr>
<tr>
<td>Pa., and the New England states)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West (Calif., Ill., Ind.,</td>
<td>76.9</td>
<td>45.2</td>
<td>33.9</td>
</tr>
<tr>
<td>Iowa, Kans., Mich.,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minn., Mo. Nebr.,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nev., Ohio, Ore.,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wis.)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For citations to individual roll calls, see Appendix II.
The relationship is more pronounced still when votes on the tariff bill are compared to the radicalism of individual Senators in the second session of the Thirty-ninth Congress alone, irrespective of each Senator's radicalism in other sessions (see Chart No. 6).

However, these figures express only tendencies to vote for or against higher tariffs, rather than absolute commitment or opposition to the protective system. Radicalism, free tradism, and protectionism, as expressed by votes on final passage of tariff legislation, seem unrelated. Of the seven Republican Senators voting to recommit the tariff bill for sweeping rate reductions and/or voting against the bill itself, four tended towards radicalism and three towards conservatism during the Thirty-ninth Congress, second session. However, each of the four free traders who served in the Fortieth Congress voted against removing President Johnson on his trial of impeachment and elevating Benjamin F. Wade, a vigorous protectionist, to his place. The votes on taking up and passing tariff legislation in the House show a similar absence of pattern (see Chart No. 7).

The overwhelming unanimity with which Republicans favored the protective tariff in 1867 indicates that Sharkey exaggerated the relationship between protectionism and radicalism. But an analysis of radicalism and financial doctrine at first appears to sustain his conclusions (see Chart No. 8). But upon looking further, the issue becomes
<table>
<thead>
<tr>
<th></th>
<th>Radicals 39C.,2S.</th>
<th>Radical-Center 39C.,2S.</th>
<th>Conservative-Center 39C.,2S.</th>
<th>Conservative 39C.,2S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>East (Md., N.J., N.Y., Pa., and the New England states)</td>
<td>26.6</td>
<td>77.8</td>
<td>61.7</td>
<td>70.0</td>
</tr>
<tr>
<td>West (Calif., Ill., Ind., Iowa, Kans., Mich., Minn., Mo., Nebr., Nev., Ohio, Ore., Wis.)</td>
<td>87.1</td>
<td>42.9</td>
<td>27.8</td>
<td>28.7</td>
</tr>
</tbody>
</table>
CHART SEVEN

Radicalism and the Tariff in the House of Representatives
39th Congress

<table>
<thead>
<tr>
<th></th>
<th>Anti-Tariff</th>
<th>Pro-Tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Essential&quot; Radicals</td>
<td>5</td>
<td>19</td>
</tr>
<tr>
<td>&quot;Essential&quot; Centrists</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>&quot;Essential&quot; Conservatives</td>
<td>2</td>
<td>10</td>
</tr>
</tbody>
</table>

For citations to individual roll calls, see Appendix III.
### Chart Eight

**Radicalism and the Money Question in the House of Representatives**

*39th Congress - 41st Congress*

<table>
<thead>
<tr>
<th><strong>Contractionists</strong></th>
<th><strong>Suspensionists</strong></th>
<th><strong>Inflationists</strong> and Mild Inflationists</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>&quot;Essential&quot; Radicals</strong></td>
<td><strong>&quot;Essential&quot; Centrists</strong></td>
<td><strong>&quot;Essential&quot; Conservatives</strong></td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
</tr>
</tbody>
</table>

For citations to roll calls on the money question, see Appendix IV.
Only "essential" factionists who voted consistently on the money question are included. They may have been unscalable during one Congress. Where subscales existed, the representatives must have scaled on them consistently with the major scale.
more complex. Divisions on the money question, like the radical-conservative division, ran along sectional lines, with New England and New York representatives favoring hard money, the western representatives demanding at least an end to contraction, if not inflation, and the Pennsylvania delegation divided. Studying the relationship between radicalism and fiscal policy by region, one at first finds no meaningful correlation (see Chart No. 9). Westerners appear to be both overwhelmingly radical and opponents of contraction. The degree of westerners' opposition to contraction—whether primarily in favor of suspending contraction or in favor of significant inflation and payment of all debts in paper money—apparently had no relation to radicalism. Easterners demonstrate their commitment to hard money, payment of debts in gold, and rejection of radicalism. Nonetheless the fact remains that nearly all contractionists were also non-radicals, while nearly all suspensionists and inflationists were radical.

The Senate did not vote upon currency issues as a distinct question until the Fortieth Congress. No significant relationship appears between radicalism and the money question when one studies the votes of the "essential" factionists on that issue (Chart 10). But a comparison of the votes of Senators who did and did not vote with the radicals during the Fortieth Congress alone, irrespective of their voting patterns in other Congresses, discloses a different and
CHART NINE

Radicalism and the Money Question by Region
in the House of Representatives
39th Congress - 41st Congress

<table>
<thead>
<tr>
<th></th>
<th>Contractionists</th>
<th>Suspensionists</th>
<th>Inflationists</th>
<th>Mild Inflationists</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>East</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Radicals</td>
<td>4</td>
<td>0</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td>11</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Centrists</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Conservatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>West</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(including Mo.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td>0</td>
<td>6</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Radicals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Centrists</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Conservatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CHART TEN

Radicalism and the Money Question in the Senate
40th Congress  41st Congress

<table>
<thead>
<tr>
<th></th>
<th>Extreme and Immediate Contraction</th>
<th>Steady Contraction</th>
<th>Suspensionist</th>
<th>Inflationists</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Essential&quot; Radicals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Howard, Mich.</td>
<td></td>
<td>Cameron, Pa.</td>
<td>Wade, O.</td>
</tr>
<tr>
<td></td>
<td>Thayer, Nebr.</td>
<td></td>
<td>Yates, Ill.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wilson, Mass.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot; Centrists</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Edmunds, Vt.</td>
<td>Cragin, N.H.</td>
<td></td>
<td>Ramsey, Minn.</td>
<td></td>
</tr>
<tr>
<td>Fessenden, Me.</td>
<td>(inclined to suspension)</td>
<td></td>
<td>Williams, Ore.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Morrill, Me.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(inclined to suspension)</td>
<td></td>
<td>Sherman, O.</td>
<td>Doolittle, Wis.</td>
</tr>
<tr>
<td></td>
<td>Trumbull, Ill.</td>
<td></td>
<td>(inclined to inflation)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Willey, W. Va.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For roll calls on the money question in the Senate, see Appendix V.
significant pattern (Chart 11). None of the extreme contractionists voted with the radicals. Of the fourteen Republican contractionists, during the Fortieth Congress, eleven displayed non-radical voting patterns.

There are two conclusions which may be drawn from this evidence. The first is that which Sharkey drew in his *Money, Class, and Party*: radicalism and anti-contractionism were intimately connected in "a fairly consistent social philosophy." Several considerations militate against this interpretation. First, the soft-money radicals--Stevens, Butler, and Wade and others--rarely and possibly never connected the two issues themselves. Unless one suggests--as some historians have--that the radicals wanted to keep their real objectives secret, such omissions are inexplicable. An alternative possibility would be that radicalism and soft-money views were unrelated, but that for some reason contractionists rejected radicalism. Studying the question from this angle, radicalism itself and its relation to other issues can be logically--even easily--explained.

One might suggest for further investigation that nearly all Republicans shared convictions which contemporaries would have called radical. The question then becomes not "Why were some Republicans radical?" but "Why were any Republicans not radical?" Within this construct one might postulate that positions on other issues--finances, for example, might modify radicalism.
### CHART ELEVEN

#### Radicalism and the Money Question in the Senate

40th Congress

<table>
<thead>
<tr>
<th>Radicals</th>
<th>Immediate Contractionists</th>
<th>Steady Contractionists</th>
<th>Suspensionists</th>
<th>Inflationists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Edmunds, Vt.</td>
<td>Ferry, Conn.</td>
<td>Morrill, Me.</td>
<td>Trumbull, Ill.</td>
<td>Morrill</td>
</tr>
<tr>
<td>Fessenden, Me.</td>
<td>Morrill, Vt.</td>
<td>Patterson, N.H.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>

*Senators falling between groups.

Senators must have voted consistently radical or non-radical in all three sessions, with one nonscaling session permissible. Those italicized voted consistently conservative.
Although this interpretation would require a full investigation, there is evidence that radicalism was indeed the natural state of Republicanism. Jacobus tenBroek, in his great study, *The Antislavery Origins of the Fourteenth Amendment*, has outlined the common intellectual heritage which bound nearly all Republicans together, and Harry V. Jaffa has suggested that in his debates with Steven A. Douglas in 1858 Abraham Lincoln expressed a consistent, liberal philosophy of race and slavery which embodied and in large part determined the essential elements of Republicanism. Hans Trefousse concluded moderate Republicans—as an example he cited Lincoln—"were basically in agreement with many of the radicals' aims, but remained willing to make temporary concessions . . . ." Indeed, one of Trefousse's primary goals in writing *The Radical Republicans* was to show that the radicals and Lincoln, the leading Republican non-radical, shared growing commitments to racial justice. More evidence in support of this hypothesis may be derived from the works of McKitrick, the Coxes, and Brock on reconstruction. Each of these scholars emphasizes the principles Republicans held in common.

As early as 1864 twenty-two Republican Senators voted to extend the franchise to any black men who might live in Montana. Among them were such consistent conservatives and centrists as Fessenden, Dixon, Harris, and Lot Morrill.
Fifty-four Republican representatives voted for black suffrage in Montana, including conservatives and centrists 16 Ames, Blaine, Dawes, Marvin, and Woodbridge. In summer, 1865, nearly the entire Republican party was prepared to endorse black suffrage as an element of reconstruction in the South, until President Johnson's opposition persuaded the more conservative to abandon the measure, not because it was wrong but because it was impractical. (see pp.140 - 50, infra). Even after the President made his position on the suffrage question clear, two thirds to three quarters of the Republicans in Connecticut, Minnesota, and Wisconsin voted in favor of enfranchising black men in their states. It is likely that the proportion favoring suffrage extension in the South was greater.

Their common anti-slavery heritage, their shared desire to guarantee the security of southern loyalists, their determination to realize a reconstruction which would firmly and permanently cement the Union, and their united wish to see justice done the freedmen enabled Republicans to act in fundamental harmony under great pressure despite disagreements which rose out of the interaction of other factors with the reconstruction problem. Such fundamental agreement on abstract principles and goals would explain why more conservative Republicans rarely attacked radical proposals as wrong, but merely as "impractical." Radicals did not look upon conservatives as irreconcilable enemies, but rather as
men who believed "that it is wrong to follow right, unless with extreme moderation, and at almost geological intervals." "The spirit of conservatism," they averred, "is but a pre-
eminently admission of a want of courage and hope."

The radicals, then, were the men who acted upon the essentially radical principles of the Republican party unalloyed by other considerations, either because those principles were of overwhelming importance to them or because their other interests did not run counter to them. They were, the conservative Boston Evening Journal conceded, the "exponents of a feeling, an underlying sentiment of their party," its "great and characteristic principles"--the men, as a Minnesota party warhorse put it, "that 'believe in it.'"

As recent historians have suggested, radicalism appears to have been associated primarily with commitment to racial justice. Charts 12 and 13 demonstrate this association. But extraneous factors could modify the correlation. Of these perhaps the most important was congressmen's position on the money question. Among soft-money men the association between radicalism and commitment to legal equality of the races is perfect (see Chart 14). Moreover, half the representatives who were virtually uncommitted to black rights but not actually hostile to them voted with the radicals. Among hard-money men, the correlation is nearly as good, but even those moderately committed to black legal equality did not generally act with the radicals. Only the most committed
CHART TWELVE (CONT.)

For individual roll calls on race legislation in the House of Representatives not directly involving reconstruction, see Appendix VI. These roll calls are arranged by the radicalism of those voting for them. Those in the Anti-black group voted as follows--38th Congress: groups 0-2; 39th Congress: group 0; 41st Congress: group 0. Those in the Uncommitted group--38th Congress: group 2; 39th Congress: group 1; 41st Congress: group 1. Those in the Moderately Committed group--38th Congress: group 3; 39th Congress: group 2; 41st Congress: group 1. Those in the Most Committed group--38th Congress: group 4 or 5; 39th Congress: group 3; 41st Congress: group 2. Representatives considered no race legislation independent of reconstruction during the 40th Congress.
**CHART THIRTEEN**

Radicalism and Commitment to Racial Justice in the Senate
38th Congress - 42nd Congress

<table>
<thead>
<tr>
<th>Anti-black</th>
<th>Uncommitted</th>
<th>Moderately Committed</th>
<th>Most Committed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>&quot;Essential&quot; Radicals</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td>Howard, Mich. Wade, O. Wilson, Mass. 3</td>
<td>Sumner, Mass. 1</td>
</tr>
<tr>
<td><strong>&quot;Essential&quot; Centrists</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>Williams, Ore.</td>
<td>Cragin, N.H. Morrill, Me. Ramsey, Minn. 3</td>
<td>Edmunds, Vt. Fessenden, Me. 2</td>
</tr>
<tr>
<td><strong>&quot;Essential&quot; Conservatives</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For individual roll calls on race legislation in the Senate not directly involving reconstruction, see Appendix VII. These roll calls are grouped according to radicalism of those voting for them. Those in the Anti-black group voted with group 0 in each Congress. Those in the Uncommitted group voted with group 1 in each Congress. Those in the Moderately Committed group voted as follows—38th Congress: group 2 or 3; 39th-40th Congresses: group 2; 41st Congress: group 1; 42nd Congress: group 2 or 3. Senators may not have deviated from the pattern by more than one group in any session of Congress and only once in three sessions.
### Chart Fourteen

**Radicalism and Commitment to Racial Justice, by Financial Views**

38th Congress - 41st Congress

<table>
<thead>
<tr>
<th></th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hard-Money</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Radicals</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Centrists</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Soft-Money</strong></td>
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<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Radicals</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Centrists</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Essential&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservatives</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
racial liberals among the contractionists tended towards radicalism (Chart 14).

The reason contractionists tended to rank among non-radicals may be explained easily in terms of practical politics: by the first session of the Fortieth Congress (and to a lesser extent the second session of the Thirty-ninth), the issue which divided radical from non-radical was impeachment. President Johnson's Secretary of the Treasury, Hugh McCulloch, was a militant contractionist, who had put his beliefs into practice as soon as the war ended. Benjamin F. Wade, who as president pro tempore of the Senate would succeed Johnson if he were removed, was a militant inflationist. As the radical issue shifted to impeachment, contractionists shifted towards conservatism.

During the Thirty-ninth Congress contractionists divided almost evenly on reconstruction issues, with inflationists tending more towards radicalism (Chart 15). But during the Fortieth Congress—the impeachment Congress—contractionists were literally a unit against radicalism, while soft-money men displayed no greater partiality towards radicalism than they had during the previous Congress (Chart 16). In the Forty-first Congress, with the entire Republican party swinging towards contraction and a commitment to pay United States bonds in gold and impeachment no longer an issue, the association between contractionism and conservatism disappeared (Chart 17).
CHART FIFTEEN

Radicalism and the Money Question
in the House of Representatives
39th Congress

<table>
<thead>
<tr>
<th>Contractionist (Conservatives and Centrists)</th>
<th>Non-radicals</th>
<th>Radicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>18</td>
<td>13</td>
</tr>
<tr>
<td>1 to 2</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>3-4</td>
<td>7</td>
<td>16</td>
</tr>
</tbody>
</table>

Radicals must have voted consistently in both sessions of Congress. Non-radicals must have voted with conservatives or centrists in each session. Contractionists and inflationists during the 39th Congress are listed in Appendix A.
CHART SIXTEEN

Radicalism and the Money Question
in the House of Representatives
40th Congress

<table>
<thead>
<tr>
<th></th>
<th>Non-radicals</th>
<th>Radicals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contractionist</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>25</td>
<td>1</td>
</tr>
<tr>
<td>to 1</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>9</td>
</tr>
</tbody>
</table>

Expansionist

Radicals must not have deviated from a radical voting pattern in any session, although they may have an unscalable pattern in one. Non-radicals must have voted with conservatives or centrists in each session, with one unscalable session permitted. Contractionists and inflationists during the 40th Congress are listed in Appendix A.
### CHART SEVENTEEN

**Radicalism and the Money Question in the House of Representatives 41st Congress**

<table>
<thead>
<tr>
<th></th>
<th>Conservatives</th>
<th>Centrists</th>
<th>Radicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>7</td>
<td>6</td>
<td>20</td>
</tr>
<tr>
<td>1</td>
<td>4</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

Contractionists and inflationists during the 41st Congress are listed in Appendix A. For individual roll calls on the money question in the House, see Appendix IV.
Although the impeachment issue probably was the primary reason contractionists moved towards conservatism, less practical considerations also impelled them in that direction. Americans identified Republican radicalism with Thaddeus Stevens, "Ben" Butler, William D. Kelley, George S. Boutwell, "Ben" Wade, and Charles Sumner. Of these only Sumner was a firm contractionist. Boutwell wavered, and the others were the leading spokesmen for currency expansion in Congress. Contractionists could not help but connect the two issues. By summer, 1867, they feared that southern radicals--owing so much to Stevens and Butler--might follow their lead in financial matters.

Other legislative issues also inclined men away from radicalism, though not so dramatically. The tariff question appears to have been one of these. It is difficult to pinpoint this issue's effect to the same extent as that of the money question. The Fortieth Congress considered no general tariff bill; when the Thirty-ninth Congress did consider one, anti-tariff sentiment was just budding and few Republicans in Congress opposed its passage. But many hard-money men were also free-traders and the well-known high-tariff views of Stevens, Kelley, Zachariah Chandler, Wade and other radicals could only have added to their determination to oppose radicalism. As previously noted, all four Republican Senators present who had opposed the Tariff bill during the Thirty-ninth Congress voted against convicting Johnson on his
Another question which may have affected radicalism—especially after 1868—was the issue of aiding railroad construction through grants of land. Before the Fortieth Congress Republicans supported or opposed individual grants on the merits of each case, taking into special account the effect of each upon their constituents. But the Fortieth Congress witnessed continuing efforts to end the landgrant system as it related to railroads. In some respects this movement related to financial and tariff questions. Contractionists were urging retrenchment of government expenditures to aid redemption of the currency. The iron interest, perhaps the most important soft-money, high-tariff lobby, naturally supported government aid to the railroads, which were among their best customers. Reformers blamed logrolling by railroad lobbyists for much of the corruption they believed pervaded Washington. And these reformers, "the best men," as they thought of themselves, generally adhered to the hard-money, free-trade doctrines of classical liberalism.

When opponents of railroad landgrants first brought a resolution opposing any further grants before the House in the first session of the Fortieth Congress, more "essential" radicals than conservatives favored it. But as the movement to end the practice gained momentum, radicals proved the landgrants' most tenacious supporters. By the third
session (1869) all but two of the "essential" non-radicals voting opposed further grants. Nearly all those who had not converted to opposition were radicals (see Chart No. 18). Moreover, of the fifty-four Republicans most inclined to favor landgrant aid in the third session, twenty-eight represented southern constituencies (including the border states Missouri, Kentucky, Tennessee, and West Virginia). Of the ninety-one Republicans who opposed it, only fourteen came from the South. Southerners were also over-represented among Republicans who pressed for an increased circulation of currency after 1869. Republicans from other regions divided almost evenly on currency expansion, fifty-four opposing and fifty favoring it. Of thirty-four southern Republicans taking a clear position during the Forty-first Congress, thirty favored expansion. Although they joined their northern allies in opposing efforts to pay United States bonds with greenbacks rather than gold (the second key financial issue of the times), southern Republicans' "pro-corruption," "pro-logrolling," support of national aid to railroads and their soft-money sympathies help explain why orthodox, hard-money Republicans so quickly agreed to the "Carpet-bagger" label Democrats fastened to them.

David Donald has discovered yet another factor which influenced some Republicans to modify their radicalism. Investigating the majorities by which constituents elected radicals, moderates, and conservatives, he found that within
<table>
<thead>
<tr>
<th></th>
<th>Anti-aid Generally Against Aid Given 40th Congress</th>
<th>Pro-aid throughout 40th Congress</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Banks, Mass.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Blaine, Me.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Moorhead, Pa.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Buckland, O.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Clarke, O.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Lawrence, O.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Clark, Kans.</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>O'Meill, Pa.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Washburn, Wis.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Smiley, Mo.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Kelley, Pa.</td>
<td></td>
</tr>
</tbody>
</table>

**For individual roll calls on the railroad land grant system in the House of Representatives, see Appendix VIII.**

**Radicalism and Aid to Railroads in the House of Representatives.**

**Chart Eighteen**
states radicals generally enjoyed greater majorities than non-radicals. Donald limited his investigation to the Republicans of the second session of the Thirty-ninth Congress, however, and further investigation is needed to determine if his findings apply to those consistent radicals and non-radicals whose careers spanned at least four years, during which radical and conservative lines broke and re-formed twice.

Chart 19 is an attempt to do this. The index of comparative security given there is the average percentage of the vote each representative received in congressional elections from 1862 to 1868 expressed in terms of the median percentage of the vote all successful Republican candidates in his state received over those years. Thus, with one figure one can compare the percentage of the vote an individual representative received from 1862 to 1868 with the percentage garnered by his successful Republican colleagues. Checking the close states, where a tendency to run slightly behind the average Republican candidate could prove disastrous in close elections, one finds that in general radicals' seats were more secure than those of non-radicals. In states where Republicans polled overwhelming majorities and where even those who ran behind the average Republican candidate had safe seats, there appears to have been no correlation between radicalism and comparative security. Donald
### CHART NINETEEN

**Radicalism and the Degree of Security of Individual Representatives**  
*38th - 41st Congresses*

<table>
<thead>
<tr>
<th></th>
<th>Index of Comparative Security</th>
<th>Average Percentage of vote, 1862-1868</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CLOSE STATES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hulburd, centrist</td>
<td>.22</td>
<td>69.80</td>
</tr>
<tr>
<td>Kelsey, radical</td>
<td>.15</td>
<td>66.15</td>
</tr>
<tr>
<td>Ward, radical</td>
<td>.05</td>
<td>59.53</td>
</tr>
<tr>
<td>McCarthy, radical</td>
<td>.04</td>
<td>59.75</td>
</tr>
<tr>
<td>Davis, conservative</td>
<td>.03</td>
<td>58.15</td>
</tr>
<tr>
<td>Van Horn, centrist</td>
<td>.00</td>
<td>57.10</td>
</tr>
<tr>
<td>Griswold, conservative</td>
<td>-.00</td>
<td>56.67</td>
</tr>
<tr>
<td>Laflin, conservative</td>
<td>-.01</td>
<td>52.70</td>
</tr>
<tr>
<td>Marvin, conservative</td>
<td>-.08</td>
<td>51.93</td>
</tr>
<tr>
<td>Ketcham, conservative</td>
<td>-.09</td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eggleston, centrist</td>
<td>.03</td>
<td>52.23</td>
</tr>
<tr>
<td>Welker, radical</td>
<td>.01</td>
<td>53.57</td>
</tr>
<tr>
<td>Shellafranker, radical</td>
<td>.01</td>
<td>55.65</td>
</tr>
<tr>
<td>Lawrence, radical</td>
<td>.00</td>
<td>53.97</td>
</tr>
<tr>
<td>Schenck, radical</td>
<td>-.02</td>
<td>52.58</td>
</tr>
<tr>
<td>Clarke, centrist</td>
<td>-.03</td>
<td>54.15</td>
</tr>
<tr>
<td>Buckland, centrist</td>
<td>-.04</td>
<td>53.70</td>
</tr>
<tr>
<td>Bingham, conservative</td>
<td>-.04</td>
<td>51.93</td>
</tr>
<tr>
<td>Ashley, radical</td>
<td>-.10</td>
<td>48.05</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stevens, radical</td>
<td>.16</td>
<td>62.10</td>
</tr>
<tr>
<td>Broomall, radical</td>
<td>.12</td>
<td>59.86</td>
</tr>
<tr>
<td>Moorhead, centrist</td>
<td>.10</td>
<td>58.97</td>
</tr>
<tr>
<td>O'Neill, radical</td>
<td>.08</td>
<td>58.08</td>
</tr>
<tr>
<td>Williams, radical</td>
<td>.06</td>
<td>57.13</td>
</tr>
<tr>
<td>Kelley, radical</td>
<td>.02</td>
<td>54.78</td>
</tr>
<tr>
<td>Lawrence, conservative</td>
<td>.00</td>
<td>53.30</td>
</tr>
<tr>
<td>Scofield, centrist</td>
<td>.01</td>
<td>53.40</td>
</tr>
<tr>
<td>Mercru, radical</td>
<td>-.03</td>
<td>52.07</td>
</tr>
<tr>
<td>Koontz, centrist</td>
<td>-.07</td>
<td>50.60</td>
</tr>
<tr>
<td>SAFE STATES</td>
<td>Index of Comparative Security</td>
<td>Average Percentage of vote, 1862-1868</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td><strong>Massachusetts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washburn, centrist</td>
<td>.32</td>
<td>90.55</td>
</tr>
<tr>
<td>Ames, centrist</td>
<td>.08</td>
<td>69.03</td>
</tr>
<tr>
<td>Banks, centrist</td>
<td>.02</td>
<td>73.60</td>
</tr>
<tr>
<td>Butler, radical</td>
<td>-.01</td>
<td>71.00</td>
</tr>
<tr>
<td>Boutwell, radical</td>
<td>-.03</td>
<td>66.68</td>
</tr>
<tr>
<td>Hooper, centrist</td>
<td>-.10</td>
<td>61.63</td>
</tr>
<tr>
<td>Dawes, conservative</td>
<td>-.11</td>
<td>60.78</td>
</tr>
<tr>
<td>Rice, centrist</td>
<td>-.19</td>
<td>60.65</td>
</tr>
<tr>
<td><strong>Michigan</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perry, conservative</td>
<td>.15</td>
<td>63.37</td>
</tr>
<tr>
<td>Upson, radical</td>
<td>.10</td>
<td>59.90</td>
</tr>
<tr>
<td>Blair, conservative</td>
<td>-.01</td>
<td>55.20</td>
</tr>
<tr>
<td><strong>Vermont</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woodbridge, conservative</td>
<td>.02</td>
<td>73.53</td>
</tr>
<tr>
<td>Poland, conservative</td>
<td>.00</td>
<td>73.65</td>
</tr>
<tr>
<td>Smith, conservative</td>
<td>-.18</td>
<td>61.15</td>
</tr>
<tr>
<td><strong>Wisconsin</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washburn, centrist</td>
<td>.08</td>
<td>65.50</td>
</tr>
<tr>
<td>Cobb, radical</td>
<td>.03</td>
<td>61.10</td>
</tr>
<tr>
<td>Sloan, radical</td>
<td>-.01</td>
<td>57.65</td>
</tr>
<tr>
<td>Paine, radical</td>
<td>-.12</td>
<td>53.43</td>
</tr>
</tbody>
</table>
explains this relationship in close states by suggesting Republicans from close districts had to appeal to Democratic votes to secure election and therefore were forced to moderate their radicalism. Actually, the political customs of the times made such crossing of party lines rare. The traditional way to signify disapproval of the candidate or course of one's party was to stay away from the polls. A Republican congressman in a close district might well conclude that radicals in his district would prefer him to a Democrat in any case. Conservative Republican voters, however, might not share that preference. If they refused to vote, their absence might mean defeat. But the decision to conciliate conservatives was not so easily made as Donald assumed. The dilemma of the Republican congressman from a close district was manifest when one of them complained to radical representative John Wentworth that a vote to enfranchise blacks in the capital would cost him his reelection. "Reelection?" Wentworth growled. "You'd better get your nomination first. Haven't you learnt that it is the Radicals who do that job now-a-days?" Before a congressman could adopt a conservative course to satisfy his conservative constituents, he had to make quite certain that local workers—who made the nominations—agreed with his assessment. But despite the dangers it is evident that Republicans from close districts tended to oppose legislation framed with eyes open only to the principles of the party and not to its political necessities.
But many Republicans who enjoyed safe seats also worried over the political effect of adhering too rigidly to its principles. Fessenden, Blaine, Grimes, and Morrill, and others feared the people were not ready to accept the principles of the Republican party if carried to their fullest extent. Their concern was not primarily for their own safe seats but for the success of the organization as a whole. Radicals like George Julian sometimes referred to these stalwart party loyalists as "the mercenary element," but this was quite unfair. The moderate and conservative Republicans for the most part considered the continued success of the party the only way to secure the supremacy of its principles. Blaine illustrated this years later, in 1879, when Wendell Phillips accused the party of failing its mission by not insisting on more secure guarantees for black men's rights. Blaine answered that Phillips' policy would have led to political disaster. And this would have led to an immediate restoration of the Union "without the imposition of a single condition, without the exaction of a single guarantee. All the inestimable provisions of the Fourteenth Amendment would have been lost: its broad and comprehensive basis of citizenship; its clause regulating representation in Congress and coercing the States into granting suffrage to the negro . . . . These great achievements for liberty, in addition to the Fifteenth Amendment, would have been put to hazard and probably lost, could Mr. Phillips have had his way . . . ."30
When Republicans entered this area of "practicality," they demonstrated that something more than the mere size of majorities or positions on non-reconstruction issues influenced individuals towards or away from radicalism. Radicalism related to temperament as well—to how different men perceived practicality. Their contemporaries understood there was something different in the patterns of thought of conservatives like Fessenden, Sherman, Bingham, and Dawes and radicals like Stevens, Butler, Sumner, and Wade. Concerned with the political repercussions of their actions, their undefinable differences of attitude led to opposing conclusions. For instance, the conservative Rufus P. Spalding (once known as the "Great Radical from Ohio," but no longer meriting that designation after the war) worried, "I have been a partisan long enough to know that extreme measures will not always promote the interests of a party. . . . What will our people at home think of . . . rank and radical measures? . . . Will not these matters react . . . ?" But the radical Josiah B. Grinnell warned, "Yielding a principle . . . through fear [of the party] . . . disgusts the moralist, and dampens the ardor of the young and heroic whose service has been determined by the nature of our boldness, constancy, and trust in the Almighty Ruler."31

Those who, like Spalding, believed the electorate basically unsympathetic to Republican principles argued it was a political necessity
to move slowly in enacting those principles into law. Radicals argued this timidity lost votes. This was the key to radical-conservative differences, commented a radical observer. "Policy is the rule of the one, Principle is the only guide for the other." The conservative Fessenden did not dispute the moral mission of the Republican party. But in pursuing its principles, he insisted, "we ought to be practical." Later he explained, "I have been taught since I have been in public life to consider it a matter of proper statesmanship, when we aim at an object which we think is valuable and important, if that object ... is unattainable, to get as much of it and come as near it as we may be able to do." To this the radical Sumner answered, "Ample experience shows that [compromise] ... is the least practical mode of settling questions involving moral principles. A moral principle cannot be compromised."

Republicans might be influenced away from legislative radicalism by many considerations, some practical, others having more to do with how they perceived practicality. To understand fully what made men conservatives and radicals, historians require intensive studies of the lives of individual Republicans, with special emphasis on their political frames of reference, on how they approached problems, on how their positions of various issues related and reacted upon one another.
CHAPTER IV
LINCOLN & THE PARTY UNITED

Reconstruction began shortly after the firing on Fort Sumter. As Union forces occupied territory once held by rebels, northern generals and then civilian policy-makers were forced to cope with the problem of how to govern conquered areas and what their relations to the national government should be. By 1862 the Sea Islands of South Carolina and Georgia, the New Orleans area, and parts of Tennessee, Arkansas, and Virginia were under the control of national forces. But Congress was deep in the process of financing a gigantic war, increasing the size of the military establishment, and regulating the treatment of property of the disloyal. At the same time the national legislature was reordering the nation's financial institutions and developing new policy towards public land, education, and taxation. To the legislators reconstruction seemed a remote problem, and although sporadic debate helped lay a foundation for future action, in the hectic life of the Thirty-seventh Congress issues of restoration had a low priority.

Receiving no positive guidance from Congress, the people of reconquered areas were left to develop reconstruction movements of their own. With Lincoln's prodding, provisional governors encouraged local citizens to resume the
obligations and privileges of loyalty. But the results of such unaided "self-reconstruction" were disappointing, and by winter 1863-1864 changed conditions required the government to articulate some policy. The growing conviction among Unionists in the wake of Gettysburg and victories in the West that the nation would emerge victorious from its struggle and the increasing amount of territory held by federal troops made some program for restoring loyal government a necessity. And the possible anti-Republican political repercussions of continuing the war with no established plan for the restoration of peace rendered that necessity urgent. In response Lincoln decided to promulgate more concrete guidelines for reconstruction. Still relying in theory on voluntary action by the people, Lincoln suggested to southerners in his Amnesty Proclamation of December 8, 1863, "a mode in and by which the national authority and loyal State governments may be reestablished." The President announced he would pardon all rebels who took a specified oath to support the Constitution and obey all laws of Congress and presidential proclamations promulgated during the war, unless modified or voided by the Supreme Court. He added that if ten percent or more of the number of electors of any state who cast votes in 1860 should organize a state government "not inconsistent" with the oath, "such shall be recognized as the true government of the State . . . ."

Lincoln enclosed a copy of the proclamation with his annual message to Congress, delivered shortly after the
opening of the first session of the Thirty-eighth Congress. With Lincoln committed by his proclamation to accepting only state governments "not inconsistent" with oaths recognizing the abolition of slavery, both radical and conservative Republicans in Congress acquiesced in its promulgation. But this acquiescence did not mean that congressional Republicans were prepared to leave reconstruction solely under the control of the President. After seven months of discussion and confusion, Congress finally passed a Reconstruction bill, which historians have described as the measure through which radicals "openly challenged Lincoln to battle on the issue of reconstruction." In particular they have argued that it was the radical response to Lincoln's conservative policy of reconstruction as manifested in Louisiana.

Several facts militate against such an interpretation, however. First, the situation in Louisiana was not all that clear in spring, 1864, as Congress considered the bill. All most congressmen knew at this time was that Nathaniel Banks, Lincoln's commanding general in Louisiana, had organized elections for civil officers in the state and also for delegates to a constitutional convention. Some of the more radical Republicans were concerned that Banks had not shown enough sympathy in his dealings with black Louisianans, but a large proportion of those who supported the Reconstruction bill were not overly sympathetic to black aspirations either. Republican reaction to various measures in the Thirty-eighth
CHART TWENTY

Radicalism in the House of Representatives
38th Congress, First Session*

GROUP #0 (PEACE DEMOCRATS)

James C. Allen, Ill.
Sydenham E. Ancona, Pa.
George Bliss, Ohio
James Brooks, N.Y.
John W. Chanler, N.Y.
Charles Denison, Pa.
John R. Eden, Ill.
Joseph K. Edgerton, Ind.
Charles A. Eldredge, Wis.
William E. Finck, Ohio
Henry Grider, Ky.
William A. Hall, Mo.
Benjamin G. Harris, Md.
Charles M. Harris, Ill.
Anson Herrick, N.Y.
William S. Holman, Ind.
William Johnston, Ohio
Anthony L. Knapp, Ill.
John Law, Ind.
Jesse Lazear, Pa.
Francis C. LeBlond, Ohio
Alexander Long, Ohio
Daniel Marcy, N.H.
Robert Mallory, Ky.

Archibald McAllister, Pa.
James F. McDowell, Ind.
John F. McKinney, Ohio
William H. Miller, Pa.
James R. Morris, Ohio
William R. Morrison, Ill.
George C. Pendleton, Ohio
Nehemiah Perry, N.J.
John V. L. Pruyn, N.Y.
Samuel J. Randall, Pa.
James C. Robinson, Ill.
Andrew J. Rogers, N.J.
Lewis W. Ross, Ill.
John G. Scott, Mo.
John D. Stiles, Pa.
Myer Strouse, Pa.
Daniel W. Voorhees, Ind.
Elijah Ward, N.Y.
Chilton A. White, Ohio
Joseph W. White, Ohio
Fernando Wood, N.Y.

---- Amendment to Conscription bill that no troops be raised under it until the President offers armistice, resolution it is moral duty to crush rebellion, censure of Benjamin G. Harris, resolution to appoint a peace commission, resolution that to negotiate with rebels means de facto recognition and should be rejected

GROUP #1 (WAR DEMOCRATS)

Augustus C. Baldwin, Mich.
James S. Brown, Wis.
Samuel S. Cox, Ohio

James A. Cravens, Ind.
James E. English, Conn.
John Ganson, N.Y.
CHART TWENTY (CONT.)

Aaron Harding, Ky. Henry G. Stebbins, N.Y.
Henry W. Harrington, Ind. John B. Steele, N.Y.
Wells A. Hutchins, Ohio William G. Steele, N.J.
Francis Kernan, N.Y. Lorenzo D. Sweat, Me.
Austin A. King, Mo. William Henry Wadsworth, Ky.
George Middleton, N.J. (Unionist)
Homer A. Nelson, N.Y. Ezra Wheeler, Wis.
William Hadford, N.Y. Charles H. Winfield, N.Y.
James S. Rollins, Mo. George H. Yeaman, Ky.

--- Bill to punish guerillas, resolutions re exchanging prisoners, bill to aid enlistment in southern states (black soldiers), censure of administration for suspending publication of anti-war newspapers, resolution for peace commissioners, resolution to appoint presidential commission to report on conditions in Ark. preparatory to seating representatives, resolutions on slavery, seating of La. representatives, XIII Amendment

GROUP #2 (WAR AND ABOLITION DEMOCRATS AND EXTREME CONSERVATIVE REPUBLICANS)

Joseph Bailey, Pa. (Dem.)
Francis P. Blair, Jr., Mo. (Rep.)
Jacob B. Blair, W. Va. (Union-Rep.)
William G. Brown, W. Va. (Union-Rep.)
John A. Griswold, N.Y. (Dem.)
James T. Hale, Pa. (Rep.)
Benjamin B. Odell, N.Y. (Dem.)
Edwin H. Webster, Md. (Rep.)
Kellian V. Whaley, W. Va. (Rep.)
Francis Thomas, Md. (Rep.)

--- Conscription bill, bill to provide homesteads on forfeited estates, passage of the Wade-Davis bill, expulsion of Alexander Long, creation of reconstruction committee, resolution to print Gen. McClellan's report
CHART TWENTY (CONT.)

GROUP #3 (CONSERVATIVES)

Green Clay Smith, Ky.

(CENTER REPUBLICANS)
Lucian Anderson, Ky. (Unionist)
John D. Baldwin, Mass.
James G. Blaine, Me.
Ambrose W. Clark, N.Y.
Thomas T. Davis, N.Y.
Henry L. Dawes, Mass.
Henry C. Deming, Conn.
Nathan F. Dixon, R.I.
John F. Farnsworth, Ill.
Reuben E. Fenton, N.Y.
Augustus Frank, N.Y.
Daniel W. Gooch, Mass.
Giles W. Hotchkiss, N.Y.
Eben C. Ingersoll, Ill.
Thomas A. Jenckes, R.I.
John A. Kasson, Iowa
Orlando Kellogg, N.Y.
James M. Marvin, N.Y.
John R. McBride, Ore.
Samuel F. Miller, N.Y.
Daniel Morris, N.Y.
Leonard Myers, Pa.
Charles O'Neill, Pa.
James W. Patterson, N.H.
Frederick A. Pike, Me.
John H. Rice, Me.
Alexander H. Rice, Mass.
Edward H. Rollins, N.H.
Glenn W. Scofield, Pa.
John F. Starr, N.J.
Martin R. Thayer, Pa.
Henry W. Tracy, Pa. (Ind. Rep.)

(CENTER RADICALS)
John B. Alley, Mass.
Sempronius Boyd, Mo.
John M. Broomall, Pa.
Freeman Clarke, N.Y.
Amasa Cobb, Wis.
Cornelius Cole, Calif.
Ebenezer Dumont, Ind.
Ephraim R. Eckley, Ohio
Asahel W. Hubbard, Iowa
Benjamin F. Loan, Mo.
Jesse C. Norton, Ill.
Thomas B. Shannon, Calif.
Robert B. Van Valkenburg, N.Y.
Elihu B. Washburne, Ill.
Frederick E. Woodbridge, Vt.

--- Motion to excuse Democrats' absences from the House, amendment to motion to refer Ark. claimants' credentials, to require Elections committee to report on Ark. conditions, motion to table resolution promising to preserve Constitution during war, motion to table Electoral Count bill, motion to table resolution to admit Va. representatives
GROUP #4 (RADICAL REPUBLICANS)

Oakes Ames, Mass.
Isaac Arnold, Ill.
Portus Baxter, Vt.
Henry T. Blow, Mo.
George S. Boutwell, Mass.
Augustus Brandegee, Conn.
John F. Driggs, Mich.
William Higby, Calif.
Samuel Hooper, Mass.
Calvin T. Hulburd, N.Y.
Justin S. Morrill, Vt.
Theodore Pomeroy, N.Y.
Hiram Price, Iowa
Nathaniel B. Smithers, Del.
Charles Upson, Mich.
Abel C. Wilder, Kans.
Thomas Williams, Pa.
James F. Wilson, Iowa
William Windom, Minn.

William Boyd Allison, Iowa
James M. Ashley, Ohio
Fernando C. Beaman, Mich.
John A. J. Creswell, Md.
Henry W. Davis, Md.
Ignatius Donnelly, Minn.
James A. Garfield, Ohio
Josiah Grinnell, Iowa
Jonathan H. Hubbard, Vt.
George W. Julian, Ind.
William D. Kelley, Pa.
Francis W. Kellogg, Mich.
Samuel Knox, Mo.
John W. Longyear, Mich.
Joseph W. McClurg, Mo.
Walter D. McIndoe, Wis.
Godlove S. Orth, Ind.
Sidney Perham, Me.
Robert C. Schenck, Ohio
Ithamar C. Sloan, Wis.
Hufus F. Spalding, Ohio
Thaddeus Stevens, Pa.

Dewitt C. Littlejohn, N.Y. (Rep.)

NOT VOTING:  Schuyler Colfax, Ind. (Rep.), Owen Lovejoy, Ill. (Rep.), Henry G. Worthington, Nev. (Rep.)

*Includes several votes of the second session which show patterns similar to those of the first.

For a list of the roll calls upon which this chart is based, see Appendix X.

Congressmen in italics tend towards group nearest which they are placed.
CHART TWENTY-ONE

Radicalism in the Senate 38th Congress, First Session.*

GROUP #0 (DEMOCRATS)**

Charles R. Buckalew, Pa.
John S. Carlile, Va.
Garrett Davis, Ky.
Thomas A. Hendricks, Ind.
Lazarus W. Powell, Ky.
William A. Richardson, Ill.
George R. Riddle, Del.
Willard Saulsbury, Del.
William Wright, N.J.
James A. McDougall, Calif.***

---- Passage of the Wade-Davis bill, XII Amendment, compensation for slaves enlisted in armed forces, oath for businessmen in D.C. Lawyer's test oath

GROUP #1 (ABOLITION DEMOCRATS AND EXTREME CONSERVATIVE REPUBLICANS)

Edgar A. Cowan, Pa.
John B. Henderson, Mo.
Thomas H. Hicks, Md.
Reverdy Johnson, Md. (Dem.)
James W. Nesmith, Ore. (Dem.)
Peter G. Van Winkle, W.Va.
Waitman T. Willey, W.Va.
Henry S. Lane, Ind.
John Sherman, Ohio
Lyman Trumbull, Ill.

---- Test oath for congressmen, Reference of bill to prohibit military interference with elections to Judiciary committee, amendment to military interference bill to allow troops to keep peace at polls if necessary, Brown amendment to modify Wade-Davis bill
CHART TWENTY-ONE (CONT.)

GROUP #2 (CENTER REPUBLICANS)

B. Gratz Brown, Mo.
James R. Doolittle, Wis.
James W. Grimes, Iowa
Ira Harris, N.Y.
Samuel C. Pomeroy, Kans.
John C. Ten Eyck, N.J.
James Harlan, Iowa

--- Bill to prohibit military interference with elections, Brown amendment to modify Wade-Davis bill, amendment to Wade-Davis bill to enact Emancipation proclamation into law, retaliation upon rebel prisoners for brutality against Union prisoners

GROUP #3 (RADICAL REPUBLICANS)

Lafayette S. Foster, Conn.
William Sprague, R.I.
Henry Wilson, Mass.
Henry B. Anthony, R.I.
Zachariah Chandler, Mich.
Daniel Clark, N.H.
Jacob Collamer, Vt.
John Conness, Calif.
James Dixon, Conn.
William P. Fessenden, Me.
Solomon Foot, Vt.
Jacob M. Howard, Mich.

Timothy O. Howe, Wis.
James H. Lane, Kans.
Edmund D. Morgan, N.Y.
Lot M. Morrill, Me.
Alexander Ranney, Minn.
Charles Sumner, Mass.
Benjamin F. Wade, Ohio
Morton S. Wilkinson, Minn.

NONSCALAR: John P. Hale, N.H.

NOT VOTING: Benjamin F. Harding, Ore. (Rep.); James W. Nye, Nev. (Rep.); William M. Stewart, Nev. (Rep.)

*Includes several votes of the second session which show patterns similar to those of the first. For a list of the roll calls upon which this chart is based, see Appendix IX.

**These are only loose designations and dependent on the historian's subjective criteria.

***Italicized congressmen voted less consistently than others in their groups, leaning towards the groups nearest their names.
Congress involving racial attitudes would demonstrate this. Some Republicans were wary of Banks' intentions also because of warnings and complaints voiced by dissident Unionist elements in Louisiana. A faction, led by Benjamin F. Flanders and Thomas J. Durant, claimed to represent radical opinion in Louisiana, and they were vociferous in their denunciations of Banks and Unionists who cooperated with him. But other radicals and friends of the black men dismissed the dissidents' charges. James McKay's damning report on the Louisiana labor system, sponsored by the Freedmen's Inquiry Commission, would not be published until July. With the Louisiana constitutional convention meeting as the Reconstruction bill was being passed, the situation there was murky. So while many Republicans distrusted the sincerity of the men emerging as leaders of the movement in the southern state, this was not universal among the Reconstruction bill's supporters.

Henry Winter Davis, William Darrah Kelley, and Nathaniel B. Smithers all explicitly or implicitly attacked Lincoln's efforts at reconstruction in Arkansas and Louisiana, but other representatives, whose voting records proved them no less radical than Lincoln's critics, seconded radical representative Fernando C. Beaman's avowal of "the utmost confidence in the ability and purity of intention of the present Commander-in-Chief . . . ." Even Kansas Senator James H. Lane, the most persistent advocate of Arkansas' restoration,
voted consistently for the Reconstruction bill. In fact, the unanimity with which Republicans sustained this legislation, dealing as it did with so controversial a subject, is remarkable. Only six Republican representatives and five Senators opposed the Wade-Davis bill when it finally passed July 2, 1864, and none of the Senators opposed a general affirmation of Congress' authority over reconstruction. 9

The unanimity with which the bill passed brings forward a second consideration which renders the traditional interpretation of suspect: Radicals and non-radicals were not in hostility during this session; the Republicans in the first session of the Thirty-eighth Congress were more united in support of all war and reconstruction measures than they were in any other session before or after. Only seven Republicans clearly emerged as conservatives. Another fifty were centrists of varying degrees of conservatism and radicalism. Forty-one Republicans can be identified as radicals. But radicals and centrists rarely divided. Republican unanimity broke down significantly on only nine of the seventy-seven votes clearly involving the war or reconstruction. Senate Republicans differed more often, with their rules which permitted more freedom, but here too differences were not so great as in other sessions. Actually, radicalism was in a transitional state, operating at this time more on the political level—in support for Salmon P. Chase for the
Republican presidential nomination—than on the ideological level.

Recognizing the importance of this factional dispute, historians have also argued that presidential politics played a role in the reconstruction question, especially as it pertained to Louisiana, with those who opposed Lincoln's nomination also opposing the Banks' program. There is some support for this interpretation. Francis Preston Blair, Jr., made this charge on the floor of the House of Representatives, and one of Chase's adherents in Louisiana, John Hutchins, wrote the Secretary that "if Gen. Banks' plan . . . shall be approved by Congress, I am fearful it will materially prejudice your prospects." But in fact Chase had come to the conclusion that he was more likely to further his presidential aspirations by conciliating Banks than by irritating him. Informed by more reliable sources that Banks was not inimical to his interests, Chase endeavored to win his friendship and informed his Louisiana allies that he regretted the opposition to Banks' efforts. And in Congress Blair's charges were vigorously denied.

Finally, and most compelling, is the positive evidence that all Republicans, whether they supported or opposed Banks' policy in Louisiana, whether they favored or deprecated Lincoln's renomination for the presidency, desired the passage of a reconstruction measure for practical reasons relating primarily to law and what they believed to be the
proper principles of government.

The idea that the President alone must judge when the southern states should be restored to normal relations with the national government was so foreign to American political thought that few Republicans in Congress—radical, centrist, or conservative—believed Lincoln had meant to preclude congressional action on reconstruction when he promulgated his Amnesty Proclamation. In it Lincoln himself acknowledged that admission of any state's representatives to Congress would rest "exclusively with the respective Houses, and not to any extent with the Executive." Republicans in Congress were reassured that the Executive intended no infringement on congressional powers by the opinions of William Whiting, the Solicitor of the War Department and Lincoln's chief "constitutionalist in residence." From Whiting's prolific pen came what were considered the official constitutional justifications for Lincoln's broad use of the war power. When James M. Ashley prepared a reconstruction bill in December 1863—after the appearance of the President's Amnesty proclamation—he asked Stanton for his suggestions, or those of Whiting. In answer Whiting published a treatise on military government. Taking an extremely broad view of Lincoln's right to authorize local governments under the war power, Whiting averred nonetheless that "although the President may, while engaged in hostilities, and in the absence of laws restricting his authority, enforce belligerent rights
against a public enemy, Congress also may establish rules and regulations which, without interfering with his powers as commander of the army, it will be his duty to administer." Though the governments the President might erect in conquered areas were essentially military, and therefore under his control, "[y]et the President is bound to execute all laws which Congress has a right to make; and so far as the Legislature has the authority to interfere with or control the President by laws or by regulations, or by imposing upon him the machinery of provisional governments, so far he is bound to administer them according to statute." Whiting carefully refrained from drawing the exact limits to which Congress could interfere, saying only that question "will require careful consideration," but he had explicitly recognized some degree of congressional control. Moreover, once peace were restored, he emphasized, "there can exist no reason why the President should not obey and enforce the rules and statutes of Congress, regulating his own conduct and the military governments and military tribunals established by him. . . . His refusal to do so would subject him to impeachment." Ashley may have been referring to Whiting's opinions or to private conversations with Lincoln when he informed the House of Representatives, "I can speak authoritatively when I say the President does not intend to [recognize governments formed under his proclamation] . . . without the concurrence of Congress."
Republicans contemplated legislative action during the Thirty-eighth Congress with these considerations in mind. "[T]he proclamation is simply an invitation to the people to organize governments, and a promise to protect them in so doing by the war power," Representative John Broomall declared. "If the plan be accepted and carried out, the next step will be an act of Congress ratifying the action of the people and admitting the State. . . .

"It is not pretended that the proclamation of the President can admit a State . . . . That document expressly guards against such construction, by denying all attempt [sic] to give the State organized under it any right to participate in the law-making power."

Indeed, where congressmen divided was not over Congress' power to legislate on reconstruction, but the President's. Despite the growing power of the President as a political force, legal theory held that except for the veto power his office was divorced from legislation. American statesmen had grown up with the conviction that all government had three functions—judicial, legislative, and administrative—and, as Francis Lieber, the most influential political theoretician in America, insisted, "A principle and guarantee of liberty . . . of really organic and fundamental importance, is . . . the keeping of these functions clearly apart."

"The union of these functions," they agreed, "is absolutism . . . ."
Many presidential activities during the war contravened this axiom of political philosophy. Lincoln and Whiting had discerned in presidential war powers as Commander-in-Chief a source of authority for acts which in peacetime would have been clearly legislative. Lincoln or his subordinates in the Executive department had suspended the privilege of the writ of *habeas corpus*, established martial law, emancipated slaves, issued rules to govern the armed forces, and promulgated regulations governing trade with the enemy. But not all congressmen—even Republicans—conceded the legitimacy of these activities. So while Sumner, Broomall, and others conceded some power of reconstruction to the President in the absence of congressional legislation, Henry Winter Davis saw in his proclamation "a grave usurpation of the legislative authority of the people . . . ." And John W. Longyear, conceding that the "proclamation of amnesty, as a general plan or outline for organizing new State governments . . . will ever stand as a bright and glorious page in the history of the present Administration," insisted that it was "incomplete for lack of constitutional power." That power "can be conferred by Congress alone . . . ."

But if Republicans in Congress disagreed as to the propriety of Lincoln's Amnesty Proclamation, nearly all of them—conservative as well as radical—agreed that of itself the proclamation was insufficient. Again the source of their concern could be traced to the concept of separation of
powers. The simple fact was that the proclamation was not law. It was not the binding, sovereign will of the nation as expressed through its legislative channels; instead, the proclamation rested on the temporary military power of the Executive Department, the branch of government which according to political theory was charged only with enforcing, not making, laws.

Only by law could national action on reconstruction be rendered stable and uniform. By the decision of Luther v. Borden, congressmen believed, the judicial department had already conceded that it was bound to follow the decision of the other departments in recognizing state governments. But only the passage of a law was an act which bound both the executive and legislative departments. For through the veto power, the President too had a part in the legislative process. By requiring that restored governments be "recognized by Congress," Ashley explained, "I mean by the concurrent action of the Senate, House, and President . . . ." Davis made the same point: "If we recognize a government in Arkansas and the President refuse to recognize it, in what condition are we? If the Senate recognize a government and we fail to recognize it here, in what condition are we? Or . . . if the President . . . shall see fit to recognize [Arkansas' provisional government] as the government of a State . . . , and if this House or both Houses of Congress refuse to recognize it, where are we? Can there be a recognition of a State government which does not unite the suffrages
of all three political departments?" Recognition "must be done by the concurrence of the legislative and executive powers, and without that, it is nothing," he concluded.

"The plan of the President, unsupported by any action on our part, hangs upon too many contingencies," Representative Ignatius Donnelly warned. "It may be repealed by his successor; it may be resisted by Congress; it may be annulled by the Supreme Court. It rests the welfare of the nation upon the mind of one man; it rests the whole structure of social order upon the unstable foundation of individual oaths."

This consideration prompted Davis' suggestion near the beginning of the session (December 15, 1863) that the speaker of the House name a committee "which shall report the bills necessary and proper for carrying into execution" the guarantee of a republican form of government. To this committee would be referred the President's suggestions on reconstruction. Davis made his motion as an alternative to a resolution from the Committee on Ways and Means which would have created a special committee to study the "condition and treatment of the rebellious States" generally, but which unlike the Davis resolution did not require it to propose a law. When Democrats demanded a roll call vote on Davis' proposition, only six of the most conservative Republicans opposed it. But other Republicans generally just as conservative supported Davis.
The same concern underlay House proceedings in regard to the representation of Arkansas. There loyalists had organized a new government in consonance with Lincoln's proclamation and with his active but covert encouragement. In February Arkansas representatives-elect presented their credentials to the House. Henry L. Dawes, the chairman of the House Elections committee, moved their reference to his committee, but Davis moved that they instead be laid upon the table. Historians have pointed to this effort as an illustration of radical hostility towards the results of Lincoln's reconstruction program. But in fact, although many radicals did distrust those who controlled the restoration government in Arkansas, Davis' real apprehension was that the Elections committee might report in favor of seating the representatives—and thus implicitly recognize the Arkansas government—without first reporting a law. "[I]t is not a mere question of election law which would be involved," he argued, "but a question of the recognition or refusal to recognize the organization of a State government in Arkansas." Davis averred he would be happy to refer the credentials to Dawes' committee if it would agree "to consider whether there exists a State government of the State of Arkansas, making it a direct and substantive topic of examination . . . ." 23

Davis had every reason to worry that Dawes would not do this, instead limiting his investigation simply to whether the claimants' credentials were in proper form. During the
previous Congress his committee had reported in favor of seating representatives from Tennessee, Virginia, and Louisiana after just such a cursory examination. To obviate the danger, Robert C. Schenck moved that the House instruct the Elections committee to investigate and report on Arkansas' status "by bill or otherwise" before deciding whether its representatives should be seated. But Dawes and his committee adamantly insisted "there is no particular occasion . . . to treat the Committee of Elections differently from what you would any other committee." With the question of the committee's rights clouding the issue, Schenck's motion lost 53-104, with thirty-six Republicans--eight of them identifiable as radicals--joining the Democrats to defeat it. Davis' tabling motion was defeated, and although Stevens suggested sending the credentials to Davis' special committee, Dawes' motion to refer to his committee had precedence, was voted on first, and passed without even a roll-call.

The same situation arose in the Senate. Here James H. Lane and Solomon Foot presented the credentials of the Arkansas Senators-elect. But Senate Republicans quickly showed themselves unwilling to admit Senators without first recognizing Arkansas' new government by law, and Lane was forced to propose a resolution to that effect and to move that both it and the credentials be referred to the Judiciary committee.
Republicans wanted reconstruction to proceed by law for a second reason. Lincoln by his Emancipation proclamation had freed the slaves in areas in rebellion against the United States on January 1, 1863, but there were grave doubts as to the proclamation's legality. Issued by virtue of the President's war powers, the proclamation, Republicans feared, might not withstand peacetime litigation, especially given the pro-slavery record of the Supreme Court. Though Lincoln's Amnesty proclamation required southerners returning to their allegiance to organize governments "not inconsistent" with their personal oaths to submit to the Emancipation proclamation—that is, governments that did not recognize slavery—Davis reminded his colleagues that none of the old state constitutions or the United States Constitution had ever specifically recognized slavery. Beaman agreed. "I fail to perceive that any one of [Lincoln's proclama- tions] . . . has vacated the constitution or laws under which the institution of slavery is protected and sustained," he worried. Those who did not take the amnesty oath or who violated it might still restrain blacks from their freedom, and it would be the courts to which the blacks would have to turn for relief.  

There was but one way to bind the judiciary to enforce emancipation: "I do not desire to argue the legality of the proclamation of freedom," Winter Davis insisted. "I think it safer to make it law." Davis proposed that Congress
in a reconstruction law require reorganized state governments to incorporate provisions specifically prohibiting slavery in their constitutions. Since the Supreme Court had already acknowledged it was bound to recognize state governments recognized by the legislative and executive departments, the courts would be obligated to recognize also the abolition provisions of their constitutions. And not only the federal courts would be obligated to uphold the legality of abolition, but state courts—bound by the constitutions of their states—would have to do the same. In this way Congress could "preclude the judicial question of the validity and effect of the President's proclamation by the decision of the political authority in reorganizing the State governments," Davis explained. "It makes the rule of decision the State constitutions, which, when recognized by Congress, can be questioned in no court." 29

The Wade-Davis bill was the result of these convictions and apprehensions, and practical legal considerations had far more to do with the nearly unanimous support Republicans gave it than partisan and anti-Lincoln politics. In fact the nearly universal conviction that some congressional enactment on reconstruction, almost any enactment, was a legal and practical necessity far overshadowed any controversy over its actual provisions.

Although historians have called the Wade-Davis bill radical, the fact was that the radicals really did not know
how to secure a safe reconstruction. Insofar as the mechanics of restoration were concerned—the appointment of governors, the framing of oaths, the rules for holding elections, etc.—the Reconstruction bill was not very different from the program followed in Arkansas and Louisiana pursuant to the Amnesty Proclamation and under Lincoln's watchful prodding. And although it received the support of most conservative Republicans it did not differ much from an earlier bill proposed by the radical James M. Ashley either. Where it did differ was in its stipulations as to who could vote. For if representatives of southern states were to return to the Union, their attitude towards it would depend on who elected them, no matter what the mechanics of restoration were. The Ashley bill had enfranchised all men; the Wade-Davis bill limited the ballot to whites. It was not a concession ungrudgingly granted.

The Thirty-eighth Congress had not even been considering reconstruction when the battle was fought over black suffrage. It was organizing a government for Montana.

The House of Representatives had passed a bill to organize a territorial government in Montana on March 17, 1864, two weeks after Davis had reported his Reconstruction bill but before debate on it began. But the Senate had amended the bill to eliminate the word "white" from the qualifications for voting on the motion of the radical Morton S. Wilkinson. Twenty-two of the thirty-one Republicans voting had supported
the change. The Senate then passed the bill itself 29 to 8, with only two Republicans voting against it.

When House Democrats discovered what the Senate had done, they were thrown into a furor, arguing against even appointing a conference committee to meet with the Senate to solve the differences. But with the bill's manager implying the House conferees would not accede to the Senate's black suffrage amendment, House Republicans overcame Democratic objections and appointed the committee. Colfax, following tradition, appointed the measure's manager and the chairman of the committee reporting the bill to the conference committee. In this case, the men were Fernanco C. Beaman and James M. Ashley, both intense radicals and strong proponents of black suffrage. The two representatives decided to accept the Senate amendment and see if the House would concur.

When the clerk of the House read the conference committee report on April 15, the representatives were thrown into a turmoil. A Democratic motion to table the entire bill failed only by the casting vote of the speaker, but the motion to concur in the report was decisively defeated, 54-85. Twenty Republicans joined the united Democrats in opposition; another thirty did not vote. The Democrats then moved to order the House conferees to agree to no report which enfranchised anyone other than white citizens. Nine Republicans who had voted against concurring in the conference
report and seven who had abstained joined the radicals in opposing this motion, but it passed 75-67. Ten Republi-
cans—including Winter Davis—had voted even for this.

Faced with the unprecedented prospect of House con-
ferees (now Democrats, replacing Ashley and Beaman) under
instructions not to compromise the sole point at issue, the
Senate refused to appoint a conference committee to meet
them. The House then retreated, rescinding its instructions
but maintaining the Democratic majority in its conference
delegation. Now Senate opponents of Negro suffrage mounted
a powerful counter-attack. Conservative Republicans,
including John Sherman, Lyman Trumbull, and James Rood Doo-
little, warned of the political consequences of endorsing
black suffrage. "[T]he tendency is to alienate and divide
loyal men and to help the rebellion," Trumbull complained.
"You give men who are really opposed to the Government some-
thing to go to the people upon, and get up divisions and dis-
tractions, when we want no divisions . . . . "... [T]he
effect of such a proposition is evil, and only evil." Sherman and Doolittle echoed him.

Nonetheless, the Senators did not recede from their
amendment and appointed conferees who favored black suffrage.
Deadlocked for three weeks, the conference committee finally
abandoned Negro suffrage after one of the Senate members,
Lot M. Morrill, deferred to the House's opinions.

Morrill defended his decision in the Senate and
immediately received the support not only of conservatives but several radicals, including Benjamin F. Wade, who, noting no black men resided in Montana, averred, "I never legislate or act in reference to shadows." Other radicals refused to accede, but the Senate concurred in the report, 26 to 13. 36

But there is no question the Senate acted reluctantly, conceding principle to expediency. When Senator Morrill "is really in earnest, when his heart and his voice and his judgment and his impulses are all in unison, all sympathetic on the same chord, he thunders his convictions . . . ." Wilkinson observed. "But, sir, it was not so to-day. The Senator spoke well, but not loud enough . . . ." 37

The battle over black suffrage in Montana killed the possibility for black suffrage in the South under the Wade-Davis bill. If Congress would not impose Negro suffrage in Montana, where its constitutional right to do so was unquestioned, there was no hope of imposing it on the South, where its constitutional power was in doubt.

Davis had held back debate on his reconstruction bill until April 19, four days after the House so emphatically rejected the Senate's Negro suffrage proposition. The decision probably stiffened his resolve to exclude blacks from any part in his process of restoration, and in this radicals had to acquiesce, but, as Boutwell said, "only in deference to what I suppose is the present judgment of this
House and of the country." The radicals had hoped the House would recognize the right of black men to the franchise.

"The vote upon the amendment of the Senate to the bill establishing the Territory of Montana dissipated at once for the present this hope. The country will speedily revise our proceedings in this particular," Boutwell prophesized. "Mark the progress of events!" Parliamentary procedures allowed Davis to prevent representatives from offering amendments to his bill, and when John H. Rice of Maine tried to amend the bill to eliminate white-only voting restrictions, Davis rudely cut him off.

In the Senate the reconstruction bill had been referred to Wade's radical Committee on Territories. With the Senate evincing some inclination to support Negro suffrage, the committee voted to amend the measure to enfranchise the freedmen.

But on June 15 an attempt to pass a constitutional amendment abolishing slavery in the United States failed in the House. This meant that the only way to provide a legislative basis for emancipation was to pass the reconstruction bill. The passage of the measure was now more important than ever, so when the Senate voted July 1 on whether to agree to the committee's amendment Wade explained, "[A]lthough I agreed to this amendment in committee I would rather it should not be adopted, because, in my judgment it will sacrifice the bill." Two other Republican members of the committee joined
Wade in abandoning the suffrage provision, Wilkinson abstaining and John P. Hale sadly announcing he was compelled to "Waive my conscientious scruples and go for expediency." Only Lane remained firm, and the amendment lost 5-24. On this most fundamental and controversial of all reconstruction issues, the terms of Lincoln's Amnesty proclamation and the Wade-Davis bill agreed.

But there were some variations. Once Republican congressmen had determined that a reconstruction bill was necessary, it was inevitable that it should differ in some respects from Lincoln's proclamation and the policies military commanders in occupied areas were developing under his surveillance. One important difference arose from the desire of congressmen to postpone the whole question as much as possible. Republicans were really torn in opposite directions by the reconstruction issue. On one hand nearly all of them agreed that there was an urgent necessity for a general statement of policy which, in Lane's words, "will advertise the loyal people as to what course they are to pursue . . . ."

But at the same time the Republicans, whether radical or conservative, did not really feel that they were yet prepared to define specific regulations for reconstruction. This reluctance became most pronounced in the Senate, where on July 1, a group of Republicans joined Democrats to amend the bill in such a way as to put off the whole question. The substitute resolution, proposed by Missouri Republican Senator B. Gratz Brown, stated simply that the representatives of a
state in rebellion would be admitted neither into Congress nor the electoral college until its people were declared to be in obedience to the United States government. This declaration was to be made in the form of a presidential proclamation issued by virtue of a law of Congress to be passed at a later date. The Brown resolution did not question the necessity for a law, but left its specific terms to be worked out later. Brown's proposal was defeated the next day as Wade, with the aid of absentees of the day before, persuaded the Senate to recede from its amendment in the absence of five Senators who supported it—including Brown himself.

But the desire of Republicans to postpone reconstruction was still manifest in the bill as it passed. When Davis' special committee first reported the bill, it had authorized restoration processes to begin in a state when ten percent of the number of voters in the 1860 presidential election had taken Lincoln's amnesty oath. In this it had corresponded exactly to the terms of Lincoln's proclamation. But before the bill passed the House, the committee suggested increasing the required number to fifty percent of the state's population, effectively delaying reconstruction until war's end (and sweeping away the possibility of restoring government in the areas where efforts to this end had already begun). Since the amnesty oath would be relatively meaningless with the war over (instead of a voluntary resumption of loyalty
while war continued, the sponsors feared it would become a grudging submission of defeated rebels trying to avoid punishment), only those who could swear they had never voluntarily aided the rebellion would be permitted to participate in the political process leading to restoration.

The second variance resulted directly from the Republicans' concern that abolition have a firm basis in law. To accomplish this the bill required that a provision guaranteeing freedom be incorporated in the restored states' new constitutions. Except for these provisions the reconstruction procedure enunciated in the Wade-Davis bill was very similar to that developed by the military governors in Louisiana and Arkansas. Indeed, even the requirement that abolition be incorporated into state constitutions was not inconsistent with developments where provisional governments had been established by Lincoln's authority. Both Louisiana and Arkansas had already adopted new constitutions abolishing slavery. Moreover, the bill left local government in the hands of a provisional governor appointed by the President with the advice and consent of the Senate. There was no reason to believe, therefore, that the actual political control of the states in which civil governments had been partially restored would pass from the hands of the men many radicals so distrusted.

The manifest importance of passing some bill had led the special House committee to frame legislation which could command the assent of men of all shades of radicalism and
and conservatism. The committee itself had consisted of four Republicans who generally voted with radicals, two who usually voted conservative, and three Democrats. In order to report any bill the radicals on the committee had to satisfy at least one of the conservatives, and in fact the Republicans endorsed the bill which did emerge unanimously. "[T]he committee have sought to avoid the adoption of any especial theory in the bill which they have presented," Ashley explained. "As a member of the committee, ... I have sought to secure the best bill I possibly could."

But congressional Republicans had altered the bill in precisely the ways Lincoln would not accept. First, the Wade-Davis bill was a peace bill; its effect was to delay reconstruction until hostilities ceased. Lincoln's suggested mode of restoration was a war plan. It was designed to weaken support for the rebellion by providing a "rallying point" for those willing to abandon it and resume loyalty. As a war measure, the Amnesty proclamation was not nearly so lenient as some historians have believed. Lincoln offered amnesty only to those who made a conscious decision to abandon the insurrection while it still had a chance of success. As Carl Schurz later pointed out, "so long as the rebellion continued in any form and to any extent, the State governments he contemplated would have been substantially in the control of really loyal men who had been on the side of the Union during the war." Lincoln evidently did not
intend to be bound indefinitely by this proclamation. In his annual message to Congress he had affirmed his commitment to reconstructing the Union only on the basis of loyalty. It was obvious that once Union armies were victorious the amnesty oath would no longer be, in Lincoln's words, "a test by which to separate the opposing elements, so as to build only from the sound . . . ." As a war-time measure, Lincoln's program was a safe and logical tactic. By delaying the possibility of reconstruction to war's end, congressional Republicans were depriving Lincoln of what he hoped would be a potent weapon for shortening the conflict.

The second point of collision originated from that very concern for legality which prompted the Wade-Davis bill's passage. For despite Lincoln's active encouragement of restoration movements in Tennessee, Arkansas, and Louisiana, it became apparent that he still considered these movements to emanate "voluntarily" from the people. Lincoln's constitutional justification for reconstruction had not progressed to the same degree as his activities. In retrospect, this could be seen from his proclamation and message of December. "On examination of this proclamation," Lincoln had pointed out, "it will appear, as is believed, that nothing will be attempted beyond what is amply justified by the Constitution. True, the form of an oath is given, but no man is coerced to take it." And in the proclamation itself Lincoln carefully
avoided any hint of compulsion. Provisions for the care, education, and freedom of former slaves "will not be objected to by the National Executive." Maintenance of old boundaries, old constitutions, legal codes, and subdivisions were "suggested as not improper." And although the mode of restoration suggested in the proclamation was acceptable, "it must not be understood that no other possible mode would be acceptable." Behind the scenes, Lincoln was much more active in getting his "suggestions" enacted than his modest words indicated, but evidently he did not believe these activities really to be coercive.

But the Wade-Davis bill compelled the people of the southern states to include an emancipation provision in their new constitutions, as well as prohibitions on office-holding by high-ranking Confederates, and a repudiation of the rebel war debt. The Republicans had not recognized Lincoln's objections to such coercion. Indeed, they believed their bill to be based on the same constitutional groundwork as the President's proclamation. "The bill goes somewhat further," explained Beaman, "but the principle upon which the authority is assumed is the same in each." The President required test oaths and dictated who should control the restored state governments. "If you can impose one condition you may insist upon others."

"Now, it is manifest that if the President has the power to direct the organization of a 'new State government'
with 'modifications' he may direct and require just such and just so many modifications . . . as shall seem to him expedient," he continued. "Conceding, then, the competency of the proclamation, it is clear that the difference between that instrument and the bill does not arise out of the question constitutional authority . . . ." Lincoln made no objection to the bill while it was debated. Since the bill, reported with unanimous Republican support from House and Senate committees, was clearly going to pass unless the President intervened, such silence could only be taken for acquiescence.

The Republicans, then, were unprepared for what ensued. Sumner and Boutwell waited in the President's room as he signed bills Congress passed at the last minute. But when he came to the reconstruction bill, he set it aside and went on signing other measures. Sumner and Boutwell stood in nervous silence. Zachariah Chandler, the blunt, radical Senator from Michigan, then entered and asked—apparently in all innocence—whether Lincoln had signed the bill yet. "No," came the answer. Agitated, Chandler pointed to the bill's raison d'être, the provision assuring the permanence of emancipation. "The important point is that one prohibiting slavery in the reconstructed states," he said.

"That is the point on which I doubt the authority of Congress to act," Lincoln answered.

"It is no more that you have done yourself," Chandler
urged. But Lincoln responded, "I conceive that I may in an emergency do things on military grounds which cannot be done constitutionally by Congress." Lincoln did not sign the bill before Congress adjourned, killing it by a "pocket veto."

But Lincoln's veto was also motivated by other considerations. By encouraging the restoration movement in Louisiana, Lincoln wanted to allay possible Democratic criticism that Republicans were pursuing a war of conquest without a plan for reconstruction and to create what "rallying point" for rebels willing to return to their allegiances, but in encouraging Banks' activities, Lincoln was also building a political alliance. Although Secretary of the Treasury Chase had made overtures to Banks regarding political cooperation, by June, 1864, when the reconstruction bill was passed, Banks and his supporters were Lincoln's steadfast political "friends." The President could hardly aid in dismantling the fruits of Banks' efforts.

Lincoln's actions again divided Republicans in Congress along radical-conservative lines. Some—like Wade, Davis, Chandler, and Sumner—were prepared to stand firm and would so demonstrate during the next session, but others already began to regret their support for the congressional bill. William Pitt Fessenden, who as chairman of the Finance Committee was recognized as Senate Republican leader, had abstained from voting on the measure and now informed Lincoln that he had doubted its constitutionality all along.
Despite their unhappiness, most radicals kept silent under the pressure of the 1864 presidential election. Nonetheless, Wade and Davis, the bill's Senate and House managers, penned an address "To the supporters of the Government."

Once again emphasizing the necessity of a legal basis for reconstruction, the two radicals attacked the President's policies in Louisiana and Arkansas, accused him of intending to use the electoral votes of the two "states" to maintain himself in power should he lose the election, and bitterly but conclusively demonstrated the inconsistency of the President's constitutional scruples over emancipation where Congress was concerned as compared to his own assumption of war powers on the subject. But Wade and Davis stood alone. Republicans of all shades of opinion joined to denounce their manifesto, so rashly conceived during a hot campaign.
CHAPTER V

THE RADICALS ON THE DEFENSIVE

With Grant's army slogging towards Richmond and Sherman's slicing through Rebel territory further South, reconstruction became the primary war-connected concern of the second session of the Thirty-eighth Congress. No longer were enrollment bills, *habeas corpus* acts, and and confiscation measures the chief centers of congressional controversy. Now the question was restoration and the place of black men in American society, and in the winter of 1864-1865 the position of congressmen on the question of recognizing the governments of Louisiana and Arkansas reconstructed under Lincoln's authority became the new test of radicalism, precipitating a major shift in the radical-conservative alignment in Congress. Since radicals and conservatives fought the most clearcut battle in the Senate, the shift was especially noticeable there. Radical and conservative lines broke and re-formed with considerable change in personnel and a significant decline in radical power.¹
Not only had individual congressmen shifted to more conservative groups, but the groups themselves took more conservative positions on reconstruction than they had in the first session. Although nearly all Republicans had cooperated in passing the Wade-Davis bill a few months earlier, during the second session sponsors of a similar reconstruction measure could make little headway. Conservative and center Republicans united to press instead for recognition of the government erected in Louisiana under Lincoln's authority. Suddenly conservative Republicans found, as Davis bitterly observed, that the Reconstruction bill "violates the principles of republican government." Nothing better demonstrates that most Republicans had not passed the Wade-Davis bill as a challenge to Lincoln than Davis' sardonic comment: "... gentlemen who at the last session voted for this bill, ... in the quiet and repose of the intervening period have criticised in detail the language, and not stopping there, have found in its substance that it essentially violates the principles of republican government ... That these discoveries should have been made since the vote of last session is quite as remarkable as that they should have been overlooked before that vote. But they were neither overlooked before nor discovered since. ... It is the will of the President which has been discovered since."

Republicans were encouraged to accede to the President's now manifest desires regarding reconstruction by his new
position of strength. Lincoln had demonstrated surprising power within the party in the election of 1864. Easily defeating Chase's opposition candidacy, Lincoln was nominated by the overwhelming decision of the local politicians who attended the Republican national convention in Baltimore. Though many congressmen--both radical and conservative--might oppose him for his apparent incapacities and vacillation on questions of principle, the local politicians, interested in winning elections, believed him to be the only Republican candidate who could succeed.

The attempt to create a radical third party, frustrated by appeals for party unity and Democratic ineptitude (Democrats framed a peace platform which literally forced leading radicals to support Lincoln rather than risk disunion), served only to weaken radicalism's appeal and reduce radicals' prestige. The first President since Jackson to be reelected, Republicans expected Lincoln to appoint new, deserving supporters to government office. The four year terms of numerous government officials expired with the President's second inauguration. They would be reappointed or replaced. In the faction-ridden Republican party, Lincoln's favor would be indispensable to ambitious local politicians who needed access to patronage to build solid support.

This power was more than most Republicans could resist. Kansas' Senator Pomeroy, bloodied in his struggle against Lincoln and Lane, became one of the Senate's leading advocates.
of Lincoln's reconstruction policy. Horace Greeley had been identified with the anti-Lincoln radicals during the nomination fight. Although his allies had won control of the New York state government, Greeley's enemies, Weed and Seward, had consolidated their hold on the national patronage in the state. Greeley, perhaps trying to restore his diminished influence with the President, began vociferously to support the administration and its reconstruction policy. When Wendell Phillips and George Luther Stearns went to Washington to lobby against recognizing Lincoln's restored state governments, they found themselves "critically situated." Radical congressmen informed them that "A.L. has just now all the great offices to give afresh & cant [sic] be successfully resisted. He is dictator."

Other factors influenced Republicans to favor Louisiana's restoration and oppose legislation which put in doubt the status of the governments in Louisiana, Arkansas, and Tennessee. When Republican congressmen considered the Wade-Davis reconstruction bill, the situation in Louisiana had been murky. Now it was clearer, and most Republicans were satisfied with Lincoln's policy there. Louisiana's government was controlled by moderately conservative unionists, opposed to slavery but indisposed to champion black men's political or civil rights.

Louisiana was the state in which war-time reconstruction progressed farthest, and Republicans formulated their
positions on reconstruction with reference to it. Therefore developments there require detailed examination: In December, 1863, Lincoln, impatient for signs of progress in Louisiana's restoration movement, had instructed the commanding general, Nathaniel P. Banks, to "give us a free State reorganization of Louisiana in the shortest possible time" and gave him complete authority to fulfill that assignment.

With this Lincoln put a political general in absolute control of Louisiana's restoration process. Banks was a politician rather than a professional soldier, a volunteer general who intended to return to politics after the war and whose ultimate goal was to become President. During his nimble political career in Massachusetts, he had been successively an anti-slavery Democrat, an American (or Know-Nothing), and finally a Republican. By 1857 Banks had been the acknowledged leader of the conservative wing of the Massachusetts Republican party, called after him the "Banks club." Elected governor that year, he had served three terms from 1858 to 1860, during which he had battled the radical wing of his party.

Replacing the fiery, radical Benjamin F. Butler in Louisiana, Banks had determined to pursue a conservative, conciliatory policy. In the process he had modified Butler's orders and framed a labor policy which had been denounced by leading abolitionists, because although it recognized the freedom of former slaves, it forced them to work on plantations for only a small share of the profit from crops they
raised. Moreover, the Banks labor code applied strict
punishments for those freedmen who would not work under its
restrictive provisions.

Searching for materials with which to build his free
state government, Banks turned to Michael Hahn and his ad-
erents, one of the unionist factions fighting for control of
the state. Withdrawing patronage from another faction which
Butler had favored, Banks had distributed it to the Hahn group
and created, in the words of his biographer, "a personal
political machine, run in the interests of Banks, Hahn, and
their lieutenants . . . ." The displaced group, cut off by
Banks from Lincoln's support and patronage, attacked Banks
and Hahn, veered towards radicalism, and allied itself with
the interests of then Secretary of the Treasury Chase. Led
by Benjamin F. Flanders and Thomas J. Durant, these radicals
urged their allied in Congress not to recognize the Banks-
Hahn regime and warned them reconstruction could not be secure
under the control of such conservative elements. By December,
1864, as Congress reassembled, Hahn had been elected governor
of Louisiana, his allies occupied the other state offices,
Louisianans had adopted a new state constitution which abo-
lished slavery, and representatives and Senators-elect were
ready to claim seats in Congress. Despite the opposition
of Louisiana radicals most Republicans were willing to recog-
nize the new Louisiana government. After all, Hahn's regime
was controlled by loyal union men, committed to emancipation.
The Hahn-Banks policy was to appeal to white Louisianans to resume their loyalty and to govern with the support only of those who did so. Most Republicans preferred this to the policy pursued by Hahn's and Banks' radical rivals, who advocated rigid proscription of former Confederates and therefore were forced to turn more and more to black men in their search for a constituency upon which to base a government.

Congressional developments also enabled Republicans to support Louisiana restoration with reduced fear for the safety of black men. On January 31, 1865, Congress finally passed a constitutional amendment abolishing slavery in the United States. With prospects good that the amendment would be swiftly ratified, the possibility that slavery might persist in restored southern states seemed to recede. Of similar importance was the apparent intention of Congress to pass legislation establishing a national bureau to protect black men's interests during the transition from slave to free labor in the South. The Senate and House had passed differing versions of the bill during the first session of Congress, with only two Republicans opposing the Senate bill and only nine defections in the House--although a significant number of conservative Republican representatives had abstained. The House vote was close, but most of the conservatives favored the bill, although they feared constituents' reactions. It was clear the measure would have enough support to pass
and that those who had abstained would vote for it if necessary. The passage of this measure was the first in a series of Republican attempts in effect to separate the race problem from that of restoration. By creating a national agency to protect the interests of black men, Republicans made it less critical that local restored governments should be responsive to their needs. The Freedmen's Bureau, as envisioned by its sponsors, would secure to each black family forty acres of land and provide food, shelter, and clothing for freedmen and refugees during the war and for a year thereafter. The result would be a black yeomanry, many of whom had served in the Union's armed forces, numerous, independent, and possibly strong enough to persuade restored loyal governments to extend political privileges to them and at least so powerful as to render it impossible to tamper with their civil rights. It was these expectations which would enable the radical Thomas D. Eliot, chairman of the House committee which reported the Freedman's Bureau bill, also to be one of the leading proponents of quick recognition of the loyal Louisiana regime.

Although a majority of Republicans were willing to recognize the Louisiana Government, most still insisted that this recognition required a law of Congress. So on December 13 Eliot submitted to the House a joint resolution declaring the state of Louisiana entitled to resume normal relations with the national government. This resolution Eliot proposed
to refer to the Judiciary committee, leading to a conflict of jurisdiction between the more conservative Judiciary committee and Davis' more radical Reconstruction committee. At first Eliot succeeded in referring his proposition to the more moderate committee, but many Democrats then reversed themselves, joining with radicals to reconsider the original vote and send the recognition measure to the Reconstruction committee, where they hoped it would die. But although the radicals had won this skirmish, they had done so only with Democratic aid. It was clear that the majority of Republicans had lost confidence in their Reconstruction committee, led by Davis. Three quarters of them had voted to send the Eliot resolution to the Judiciary committee instead.

The radicals' position was desperate. The credentials of the Louisiana representatives already had been referred to Dawes' conservative Elections Committee. Banks was in Washington lobbying strenuously for the recognition of the government he had helped to create. On December 13 he testified before the Elections committee. Shortly thereafter he delivered a written opinion to the Senate Judiciary committee to which the credentials of the Louisiana Senators-elect had been referred. In both cases he avowed that the new state constitution embodied the freely ascertained will of Louisianans and that two thirds to three quarters of all Louisianans resided behind Union lines. Louisiana's loyalty was assured, Banks insisted. It was secured by a radical
reform "of all the elements of power which effect public opinion." And before Dawes' committee he emphasized that had the Wade-Davis bill passed, the result in Louisiana would have been the same. "[I]n fact, in the measures taken to reorganize a government they have anticipated it," he argued. The Wade-Davis bill's "provisions were adopted by the people of Louisiana without knowing anything that was in the bill." 15

The general's urgency was dictated by events in Louisiana. While Banks was away things had not gone as well there as he had hoped. His allies urgently informed him that the military authorities under Banks' new superior, General E. R. S. Canby, were Democrats aiding the Hahn group's enemies. Worse, Banks' temporary replacement as commander of the Gulf Department, General Stephen A. Hurlbut, was demanding the right to appoint civil officials, despite Hahn's protests, thus depriving Hahn of the state patronage. Relations between Hahn and Hurlbut quickly degenerated. 16

Banks received another jolt when the new Louisiana state legislature elected R. King Cutler and Charles Smith to the United States Senate over the Hahn-Banks candidates, E. H. Durrell and Cuthbert Bullitt. It had been understood that Bullitt would serve only the short term and that Banks would replace him the following year. The state legislature's decision to send Cutler and Smith instead destroyed that plan. 17 Banks won permission to write Lincoln directly--outside military channels--on Louisiana's civil affairs, but
when he used this privilege to urge Canby's replacement it was revoked.

Only by winning recognition for Louisiana could Banks' political allies there regain complete control over the state patronage, and Banks put all his skill into the effort. He defended his program in New England, emphasizing the essential humanity of his labor system and the benefits which accrued to the freedmen under it. Banks convinced William Lloyd Garrison, and the radical abolitionist's newspaper, the *Liberator*, became the most vociferous supporter of Louisiana recognition of the nation's press.

Banks went beyond the testimony he gave the committees and privately assured concerned Republicans that black people's interests in Louisiana would be protected. He informed Chase, now Chief Justice of the United States and still influential with his fellow radicals, that he personally favored black suffrage. Banks probably told Thomas D. Eliot, whom he knew from his Massachusetts days, that the state legislature would enfranchise at least some of the black population.

Banks exerted his personal influence with the Massachusetts delegation, especially Samuel Hooper, with whom Banks had worked closely in Massachusetts politics, and the all-important Dawes, who had been a member of the Banks Club and had been Banks' candidate for governor in 1860 only to lose the Republican nomination to the radical John A. Andrew. In his endeavors Banks had the aid of the entire Louisiana
delegation. To them Banks left the task of discrediting the opposition of Louisiana radicals, and A. P. Field, the Louisiana delegation's most articulate spokesman, accepted the assignment with relish. To make their admission yet more appealing to Republicans, the Louisiana claimants gave Banks a written promise that they would act with the Republicans in Congress and—most important—vote for the emancipation amendment to the Constitution which at this time still appeared to be short a handful of votes. Banks no doubt paraded this letter before wavering Republicans.

Lincoln too joined the campaign. In mid-December he informed a delegation of congressmen that he would sign no reconstruction bill unless Louisiana were recognized. "The President is exerting every force to bring Congress to receive Louisiana under the Banks government," Sumner wrote the English reformer, John Bright. On January 8, when Senate Judiciary committee chairman Trumbull brought a copy of Banks' testimony to the President for his comment, Lincoln showed him correspondence from Louisiana which urged recognition and pledged loyalty. The next day Lincoln sent Trumbull a note endorsing Banks' views and asked, "If I neither take sides or argue, will it be out of place for me to make what I think is the true statement of your question as the proposed Louisiana Senators?

"Can Louisiana be brought into proper relations with the Union sooner by admitting or by rejecting the proposed Senators?" Lincoln did not issue his proposed statement
until April 11, when it was the nucleus of his last public address, but all knew where the President stood.

Against all this the most the Louisiana radicals could muster was a memorial to Congress opposing the admission of the Louisiana delegation because the military power had dominated the elections, the elections themselves had been held without the authorization of law, and neither one half Louisiana's voting population nor territory participated. Evidently the radicals felt it wise not even to mention Negro suffrage.

Radicals outside Congress joined their Louisiana allies in protesting against recognizing the Louisiana government. Wendell Phillips, Frederick Douglass, William M. Grosvenor, James Miller McKim, and the Boston Commonwealth, denounced Banks' government and urged congressional radicals to remain firm, but to no avail. When Phillips and George Luther Stearns travelled to Washington to confer with radicals there, they found their friends convinced opposition was hopeless.

The radicals had no alternative but to bend in the face of this pressure. Ashley, though antagonistic to the Banks-Hahn regime in Louisiana, framed a Reconstruction bill which recognized the Louisiana government but which in return enfranchised all black men in other southern states. He submitted it to the House December 15, 1864. Under Banks' eager prodding, Lincoln agreed to the Ashley measure as a compromise, although it included nearly all the features to
which he had objected in the Wade-Davis bill. But he insisted that the black suffrage provision be stricken, and Banks concurred, despite his assurances to radicals that he favored black enfranchisement, agreeing it "would be a fatal objection to the Bill. It would simply throw the Government into the hands of the blacks, as the white people under that arrangement would refuse to vote." Moreover, Lincoln appears to have agreed with Banks' advice that passage of the measure would not prevent him from continuing to recognize governments organized by methods other than those the bill prescribed. If he did intend to act on that interpretation, Lincoln was very close to an act of betrayal which would have alienated the radicals from him forever.

In response to Lincoln's objections, Ashley and Winter Davis modified Ashley's legislation to enfranchise only black veterans of the Union armed forces and grudgingly reported the measure from the Reconstruction committee December 20. "Banks has been pressing his Louisiana govt.," Davis lamented. "All Mass. took his part & the Prest. joined. It was plainly a combination not be resisted so I had to let La. in under Banks' govt. in condition of it going in the Bill defeated by the Prest. last year." The *New York Times* Washington correspondent sanguinely reported that Ashley's bill now met the views of conservative Republicans. "It will pass Congress at once and receive the signature of the President. Louisiana will be admitted . . . and the delegation now here will be
at once admitted to seats in Congress." 32

But Ashley found it impossible to satisfy both radicals and conservatives. Wendell Phillips and other radicals, including Stevens and Julian in the House, objected to any measure which recognized Louisiana, fearing the precedent no matter what provisions the bill might make with regard to other states in rebellion. William D. Kelley, and others no doubt, objected to any restriction on the enfranchisement of black men. "We are to shape the future," Kelley insisted. "We cannot escape the duty. And 'conciliation, compromise, and concession' are not the methods we are to use." 33

In efforts to pass some bill acceptable to both his radical friends and Republican conservatives, Ashley modified his legislation seven times. Each time conservatives in particular found something objectionable and forced him to begin again. On January 16 Eliot moved an amendment to the bill simply substituting a resolution that Louisiana was entitled to resume political relations with the United States government. Judiciary committee chairman Wilson proposed a substitute for that, designed to delay the entire, divisive question: "Senators and Representatives shall not be received from any State heretofore declared in rebellion . . . until by an act or joint resolution of Congress approved by the President, or passed notwithstanding his objections, such State shall have been first declared to have organized a just local government, republican in form, and to be entitled to
representation in the respective Houses of Congress." 34

On January 17, 1865, the House voted to postpone the Reconstruction bill for two weeks over Davis' objection that a vote to postpone was equivalent to a vote to kill the bill. After the two weeks elapsed, Ashley himself moved a temporary postponement to enable the Reconstruction committee to modify the bill once more in light of the passage of the proposed Thirteenth Amendment and continuing conservative objections. Finally, on February 18, Ashley brought an amended bill to the floor of the House once more. The new version enfranchised all black men in the states without loyal governments, but recognized the restoration of Louisiana, Tennessee, and Arkansas to normal relations in the Union. It was a true compromise, acquiescing in the President's policy of reconstruction where it had begun and adding new provisions to the reconstruction program where it had not. Nonetheless it met a tremendous barrage of criticism.

Dawes made the most devastating attack. Affirming he personally favored black suffrage, Dawes denied Congress had the power to require it. He insisted southerners did not require national authority to begin the process of restoration. They could—and should—begin reorganizing their governments themselves, untrammelled by congressional requirements. Dawes objected to provisions which gave the President the right to fill all state offices until regular state authority was restored, charging that "these rebel states may
thus be converted into asylums for broken-down politicians." By continuing in force all state laws of 1860 not inconsistent with emancipation, Dawes' warned, the reconstruction measure would countenance the southern black codes which regulated free blacks. There was no time limit to the bill, he complained. It was in the discretion of the provisional governor appointed by the President under the bill to determine when a subdued state was loyal enough to begin organizing a state government. Henry T. Blow, a Missourian who formerly had been one of the staunchest radicals (he still appears to be so on Chart No. 22 because the Negro suffrage issue never came to a vote), followed with an attack on black suffrage.

Stung by the criticism, Ashley withdrew the bill the next day and offered yet another version. He abandoned efforts to win the support of conservatives like Dawes. To conciliate radicals he eliminated the provisions recognizing the Lincoln governments. Answering Dawes criticism of provisions confirming southern state laws as they stood in 1860, Ashley added a section requiring the governments organized under his bill to guarantee equal civil rights to all citizens, regardless of race. Finally, to avoid alienating too many moderate Republicans, he restricted voting rights to white loyalists and black veterans. "... [I]t has been my earnest desire to conciliate all gentlemen on this side of the House ...," Ashley told his fellow Republicans. "For that purpose I consented to what might properly be called a compromise, in
CHART TWENTY-TWO

Radicalism in the House of Representatives
38th Congress, Second Session.*

GROUP #0 (DEMOCRATS)

Ancona, Pa.
J. W. Allen, Ill.
Baldwin, Mich.
Bliss, Ohio
Brooks, N.Y.
Brown, Wis.
Chanler, N.Y.
Coffroth, Pa.
Cox, Ohio
Dawson, Pa.
Eden, Ill.
Edgerton, Ind.
Eldredge, Wis.
Finck, Ohio
Hall, Mo.
Harding, Ky.
Harrington, Ind.
Harris, Md.
Harris, Ill.
Herrick, N.Y.
Hutchins, Ohio
Johnson, Pa.
Johnston, Ohio
Kalbfleisch, N.Y.
Kerman, N.Y.
Knapp, Ill.
Law, Ind.
LeBlond, Ohio
Long, Ohio
Mallory, Ky.
McAllister, Pa.
McDowell, Ind.
Mckinney, Ohio
Middleton, N.J.
Miller, Pa.
Morris, Ohio
Morrison, Ill.
Nelson, N.Y.
Noble, Mo.
O'Neill, Mo.
Pendleton, Ohio
Perry, N.J.
Fruyn, N.Y.
Radford, N.Y.
Randall, Pa.
Robinson, Ill.
Rogers, N.J.
Ross, Ill.
Steele, N.Y.
Stiles, Pa.
Strouse, Pa.
Stuart, Ill.
Sweat, Me.
Dwight Townsend, N.Y.
Wadsworth, Ky.
Ward, N.Y.
C. A. White, Ohio
J. W. White, Ohio
Winfield, N.Y.
B. Wood, N.Y.
F. Wood, N.Y.
Yeaman, Ky.

--- Resolution of thanks
to Gen. Philip Sheridan

GROUP #1 (DEMOCRATS)

J. C. Allen, Ill.
Cravens, Ind.
Ganson, N.Y.
Grider, Ky.

Lazear, Pa.
Marcy, N.H.
Scott, Mo.
Holman, Ind.
--- Amendment to Conscription bill to repeal the draft, Thirteenth Amendment, Passage of the Conscription bill, resolution urging the President to name peace commissioners, resolution to extend the life of the Joint Committee on the Conduct of the War.

GROUP #2 (ABOLITION DEMOCRATS AND EXTREME CONSERVATIVE REPUBLICANS)

English, Conn. (Dem.)
Bailey, Pa. (Dem.)
Blair, W.Va. (Union-Rep.)
Griswold, N.Y. (Dem.)
+Hale, Pa. (Rep.)
King, Mo. (Dem.)
Odell, N.Y. (Dem.)

W.H. Randall, Pa. (Rep.)
Rollins, Mo. (Dem.)
Smith, Ky. (Rep.)
Tracy, Pa. (Ind. Rep.)
+Webster, Md. (Rep.)
Whaley, W.Va. (Rep.)
Wheeler, Wis. (Dem.)
Anderson, Ky. (Unionist)
Brown, W.Va. (Union-Rep.)

--- Confiscation bill, resolution instructing Judiciary committee to inquire into the expediency of amending the Constitution to base congressional representation on voters.

GROUP #3
(CONSERVATIVE REPUBLICANS)

Brandegee, Conn.
+Dawes, Mass.
+Gooch, Mass.
Pike, Me.
Thomas, Md.
+Wasburn, Mass.
(CENTER-CONSERVATIVES)

Alley, Mass.
Boyd, Mo.
Cobb, Wis.
Davis, N.Y.
Ingersoll, Ill.

Littlejohn, N.Y.
Marvin, N.Y.
Pomeroy, N.Y.
Rice, Me.
Van Valkenburg, N.Y.

--- Reconstruction bill (votes Feb. 21 and 22), resolution asking President to send a list of all persons held for political reasons without trial, amendment to the Military appropriations bill to require civil trials where courts are open, resolution to rescind A.P. Field's floor privileges.
GROUP #4
(CENTER CONSERVATIVES)
Eckley, Ohio
Hulburd, N.Y.
(CENTER REPUBLICANS)
Ames, Mass.
Arnold, Ill.
Baxter, Vt.
Blaine, Me.
A.W. Clark, N.Y.
F. Clarke, N.Y.
Cole, Cal.
+Deming, Conn.
Dixon, R.I.
Donnelly, Minn.
Driggs, Mich.
Eliot, Mass.
Parnsworth, Ill.
Frank, N.Y.
Higby, Calif.
Hooper, Mass.
Hubbard, Iowa
Hubbard, Vt.
Jenckes, R.I.
(RADICALS)
Allison, Iowa
Baldwin, Mass.
+Boutwell, Mass.
Dumont, Ind.
+Garfield, Ohio
Grinnell, Iowa
Kelley, Pa.
Kellogg, Mich.
Kellogg, N.Y.
Loan, Mo.
Moorhead, Pa.
Morrill, Vt.
Amos Myers, Pa.
L. Myers, Pa.
Norton, Ill.
O'Neill, Pa.
Orth, Ind.
Patterson, N.H.
+Perham, Me.
+Price, Iowa
Rollins, N.H.
Shannon, Calif.
Spalding, Ohio
+Thayer, Pa.
Washburne, Ill.
Wilson, Iowa
Knox, Mo.
McBride, Ore.
McCormick, Mo.
McClurg, Mo.
Miller, N.Y.
Morris, N.J.
+ Scofield, Pa.
Upson, Mich.
Williams, Pa.
Woodbridge, Vt.
Worthington, Nev.

---
Reconstruction bill
postponement (Jan. 17),
representation of Louisiana

GROUP #5 (RADICALS)
Ashley, Ohio
+Beaman, Mich.
Blow, Mo.
+Brookmall, Pa.
+Davis, Md.
Julian, Ind.
Longyear, Mich.
+Schenck, Ohio
Sloan, Wis.
+Smithers, Del.
Starr, N.J.
Stevens, Pa.
Wilder, Kans.
NONSCALAR: Creswell, Md., +Hotchkiss, N.Y., Kasson, Iowa, +McIndoe, Wis., Windom, Minn. (all Republican)

NOT VOTING: Blair, Mo., Colfax, Ind., Lovejoy, Ill. (all Republican)

*Includes several votes of the first session which show patterns similar to those of the second.

For a list of the roll calls upon which this chart is based, see Appendix X.

Surnames alone are given for returning Congressmen.

**Stevens and Julian voted with Democrats and conservative Republicans to table the Reconstruction bill (Feb. 21) after they saw a radical version could not pass.

+Republicans voting to restrict military intervention in areas of traditionally civilian jurisdiction. All Democrats support this legislation.
providing for the readmission or recognition of the new
governments of Louisiana, Arkansas, and Tennessee . . . in
order to secure what I thought of paramount importance--
universal suffrage to the liberated black men of the . . .
South . . . ." But, he continued acidly, "[d]isappointed in
my efforts to secure the cooperation of gentlemen who pro-
fess to entertain . . . practically the same opinions which
I do in favor of securing universal suffrage to the colored
men . . . , I now decline to offer my substitute . . . ." 38

Kelley immediately moved his radical amendment to
enfranchise all blacks, Eliot moved his substitute recognizing
Louisiana, and Wilson again proposed his delaying resolution.
But when the Democrats moved to lay the bill on the table,
conservative Republicans joined them, and the motion passed
over the objections both of radicals who supported the Ashley
bill and Kelley amendment and centrists who supported the
proposals either of Eliot or Wilson. 39

The defeat meant Lincoln would remain free to pursue any
reconstruction program he saw fit during the recess of Con-
gress between March and December, 1865. "Sir, when I came
into Congress ten years ago, this was a Government of law,"
Davis mourned. "I have lived to see it a Government of per-
sonal will. Congress has dwindled from a power to dictate
law and the policy of the Government to a commission to audit
accounts and appropriate moneys to enable the Executive to
execute his will and not ours." 40
The debate and maneuvering over the Reconstruction bill had disclosed three fundamental Republican positions. The radicals desired a reconstruction measure enfranchising blacks and setting a definite program which the President and the military authorities must follow. Centrists and many conservatives agreed with radicals that the restoration of normal relations with southern states required joint action by the President and Congress in the form of a joint resolution. They either supported Eliot's resolution recognizing the restoration of Louisiana in this manner or Wilson's resolution declaring such joint action a precondition for restoration. Other conservatives—a small minority of all Republicans—agreed with Dawes that no such resolution was necessary. Southerners should voluntarily organize loyal state governments and send representatives to Congress. Each house or both houses jointly would then decide whether to admit those congressmen to seats.

As radicals had met one defeat after another in their efforts to pass the Reconstruction bill, conservatives had gone on the offensive. On January 17, the same day the House had postponed the Reconstruction bill for the first time, Dawes' Committee on Elections voted to seat two of the five Louisianans claiming to have been elected to the House of Representatives: Field and M. F. Bonzano. Dawes expressed the conservative Republican position on reconstruction in his report on the Bonzano case. "Congress cannot pass an
enabling act for a State," he argued. "It is neither one of the powers granted by the several States to the general government, nor necessary to the carrying out of any of those powers . . . . [Therefore] it follows that the power to restore a lost State government in Louisiana existed in 'the people,' the original source of all political power in this country. The people, in the exercise of that power, cannot be required to conform to any particular mode . . . ."

Dawes spoke for four of the six Republicans on his committee. But of tremendous importance for the future was the fact that the two Democratic members accepted Dawes' formulation of the constitutional question. They would support the immediate admission of representatives from restored southern state governments and deny any power to Congress to dictate requirements. In February the committee voted to seat two of the three claimants from Arkansas and another from Louisiana. Dawes reported resolutions to this effect February 11 and 17. They remained on the speaker's table, privileged questions waiting to be taken up at any time, but Dawes decided against pressing them.

Instead, conservative Republicans made their strongest effort in the Senate, in an effort to count the electoral votes Lincoln had cast for Lincoln. If a joint resolution were required to recognize the restoration of normal relations with a rebel state as most Republicans insisted, then in the absence of such a resolution its electoral vote
CHART TWENTY-THREE

Radicalism in the Senate
38th Congress, Second Session.*

GROUP #0 (CONSERVATIVE REPUBLICANS)**

Cowan, Pa.
Doolittle, Wis.
Harris, N.Y.
H.S. Lane, Ind.
J.H. Lane, Kans.
Pomeroy, Kans.
Ten Eyck, N.J.
Van Winkle, W. Va.
Willey, W. Va.

--- Amendment to strike preamble
of resolution on counting
the electoral vote, seating
of Arkansas claimants, amendment
to the Electoral Count
resolution to omit inferences
prejudicial to Ark. and La.
recognition, passing over
La. recognition bill

GROUP #1 (CONSERVATIVE-CENTER REPUBLICANS)

Nathan A. Farwell, Me.
Dixon, Conn.
Harlan, Iowa
Ramsey, Minn.
Foot, Vt. (not voting on bills separating groups 1 and 2)

--- Amendment to remove Ark.
and La. from operation
of Electoral Count resolu-
tion, motion to postpone
resolution indefinitely

GROUP #2 (CENTER)

Clark, N.H.
Foster, Conn.
Henderson, Mo.
Morgan, N.Y.
Trumbull, Ill.
Collamer, Vt. (not voting during La. recognition filibuster)
Morrill, Me.
Sherman, Ohio.
Wilkinson, Minn.
CHART TWENTY-THREE (CONT.)

--- La. recognition filibuster

GROUP #3 (RADICAL REPUBLICANS)

Wilson, Mass.
Brown, Mo.
Conness, Calif.
Sprague, R.I.

--- Motion to table resolution to recognize Arkansas, amendment to La. recognition to delay reconstruction

GROUP #4

Chandler, Mich.
Grimes, Iowa
Howard, Mich.
Sumner, Mass.
Wade, Ohio

NONSCALAR: Anthony, R.I.; Hale, N.H. (all Republicans)

NOT VOTING: Hicks, Md. (Unionist); James W. Nye, Nev. (Rep.);
William M. Stewart, Nev. (Rep.)

*Includes several votes of the first session which show patterns similar to those of the second.

For a list of the roll calls upon which this chart is based, see Appendix IX.
logically could not be counted. Acting on this conception of the legal requirements, Wilson's House Judiciary committee had succeeded in passing a resolution that no electoral votes from states in rebellion would be counted. The Senate had referred the resolution to its Judiciary committee, which, unwilling to imply that the southern states were out of the Union, refused to accept the House's language. It reported an amendment to the resolution declaring only that the rebel states "were in such state of rebellion on the 8th day of November, 1864, that no valid election . . . was held on that day." Trumbull told the Senate the committee had purposely avoided deciding whether Louisiana should be considered a state, entitled to a voice in the electoral college and representation in Congress without benefit of a congressional resolution recognizing its government.

The Senate accepted the amendment, but nonetheless Robert C. Ten Eyck, a member of the committee, determined to force the issue by moving to strike Louisiana from the list of excluded states. Conservatives argued Louisiana was in the Union; it had never been out. When the people erected a loyal government the state automatically resumed its normal functions and reacquired all its privileges. Moreover, they argued, Congress could not exclude electoral votes. To hold otherwise would enable a political majority of Congress to exclude the electoral votes cast for the candidate of an opposing party. But unlike their House counterparts, Senate
Democrats refused to support the conservative Republican position. In fact they took essentially the same position on Louisiana as the radicals. Both argued that Louisianans could not express their free determinations while occupied by the military. The centrists insisted on postponing the entire question by accepting the Judiciary committee's version of the resolution. With Democrats, radicals, and center Republicans united against them, the conservative offensive failed. Ten Eyck's motion to exempt Louisiana from the joint resolution's operation lost 16 to 22. Six Democrats joined the Republican centrists and radicals in opposition. Had the Democrats followed the lead of their brethren in the House, the conservatives would have won by the same margin they had lost.

Lincoln had not been happy at the conservative defeat. He made his displeasure obvious when he received the joint resolution for his signature, taking the unusual step of returning a message with the signed measure. He conceded that "the two Houses of Congress . . . have complete power to exclude from counting all electoral votes deemed by them to be illegal . . . . [I]t is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes." But he added pointedly, " . . . [H]e disclaims that, by
signing said resolution, he has expressed any opinion on the recitals of the preamble, or any judgment of his own upon the subject of the resolution."

Lincoln's position was becoming clearer. He would not deny powers the Constitution expressly delegated to Congress. The power to determine the legality of electoral votes was one of these. The power to seat congressmen-elect patently would be another. But he would resist efforts to limit his alternatives on specific measures of reconstruction, which he considered so intimately connected with the prosecution of the war that they came within the scope of his wartime powers as commander-in-chief of the armed forces. And he would use all his legitimate influence to persuade Congress to reach decisions where its power was undoubted which would recognize the results of his reconstruction initiatives.

With Lincoln exerting all his influence to that end, center Republicans determined to enact their reconstruction policy and satisfy their President at the same. They would pass the joint resolution they believed necessary recognizing the reorganized government of Louisiana. On February 18 Trumbull had reported such a resolution from his Senate Judiciary committee. On February 23, the day after the House defeated the last attempt to pass the Reconstruction bill, Trumbull began his drive to pass his joint resolution. Sumner's attempt to substitute a bill similar to Wilson's delaying measure in the House was brushed aside by a vote of
8-29, and it became apparent a large majority of Republicans were prepared to follow the Judiciary committee's lead. Again Democrats joined radicals in opposing recognition, but the conservatives, having failed in their attempt to win recognition for Louisiana without first passing a law, now supported the Republican center group. Hopelessly outnumbered, the radicals determined to filibuster. On February 25, after two days of debate, Trumbull, still unaware of the radicals' purpose, suggested an evening session to conclude consideration of the bill. Late that evening the radicals launched their operation. Wade moved to postpone consideration of the resolution until the following December and demanded a roll-call vote. The clerk called out the name of each Senator. After each responded or was recorded as absent, the vote stood 12-17 against postponement. Jacob M. Howard then moved that the Senate adjourn. Again the Senate had to endure the tedious business of a roll-call vote. The motion lost 12-19. Howard then moved to postpone the bill to the following Monday, February 27, when there would be only four days left in the life of the Thirty-eighth Congress. Another roll call. And another on a dilatory motion by Sumner. One roll call later Trumbull was on his feet. "It is manifest now by the course being pursued by the Senator from Massachusetts, that he is in a combination here of a fraction of the Senate to delay the important business of the country. . . .

"Does he hold in his hand the Senate of the United States,
that, in his omnipotence, he is to say when votes shall be taken and public measures shall be passed? Has it come to this? Is he charged with the administration of the Government . . . ? Sir, there can be no excuse for such action." Sumner remained adamant. "... I would counsel the Senator . . . to look at the clock. He will see that it is twenty-five minutes of eleven; that it is approaching Sunday morning. Then let him think we have been here all day; and then I would counsel him to ask himself whether, all things considered, it is advisable to press this revolutionary measure after this protected session, and at this late hour . . . At any rate . . . all his efforts will be fruitless." He moved to adjourn.

Desperately, Trumbull tried to arrange a compromise. He would agree to adjourn to Monday if the vote were taken that day, with no more dilatory motions. Sumner refused. "There was a Senator from Illinois once in this Chamber. His name was Douglas. He, too, brought forward a proposition calculated to bring discord upon the country," he said. "He brought that proposition in precisely as my friend from Illinois now brings this in, proudly, confidently, almost menacingly, saying the was to pass it—was it not in twenty-four hours? . . .

"... The Senator from Illinois tears a leaf out of that hateful book. . . . He is going to cram his resolution down the throats of the Senate, and he appeals to us to enter
into some compact or understanding that we will allow the operation to proceed without the least resistance . . . ." Trumbull had no alternative but to let the Senate adjourn without conditions. The radicals knew they had won. When the Louisiana resolution came up on Monday, Sherman, chairman of the Finance committee, moved to take up the Tax bill instead. With only four days left before the final adjournment of the Thirty-eighth Congress, there was too much business yet undone to permit long debate on the question of recognizing Louisiana, and the Senate agreed to Sherman's motion 34 to 12, with only the most conservative Republicans standing firm.

The radicals had managed to prevent the recognition of Louisiana during the Thirty-eighth Congress, but they could not be sanguine. They had been put on the defensive. Their ranks had broken. They had been forced to rely on Democrats for support. The reconstruction question remained under the jurisdiction of the two most conservative committees of the respective houses of Congress, while the radicals' base of power—the House select Reconstruction committee—expired (as do all select committees) with the Thirty-eighth Congress. To revive it would require the assent of the whole House, and even then the speaker might feel obligated to name a conservative-center Republican majority to it.
Conservative and center Republicans on the other hand, could be confident. With Congress adjourned until December and no reconstruction bill passed, Lincoln would be free to reconstruct the southern states according to his desires. Judging from his past policy, this meant the restoration processes there would be placed in the hands of loyal, anti-slavery unionists, conciliatory towards the conquered and anxious to persuade them to return to their former allegiance and accept the finality of abolition. When the Thirty-ninth Congress assembled, recognition would be under the jurisdiction of the conservative House Elections committee and the Senate and House Judiciary committees. With nine months or more in which to act during the next session, no filibuster by radicals or Democrats could prevent recognition.

To Sumner the radicals' successful holding action meant opportunity. "In rejecting the application of [Louisiana] . . . during this session we obtain the vacation for the discussion of the question & the appeal to the sober 2d thought of the people," he wrote. "We shall insist upon the Decltn of Indep. as the foundation of the new state govt., & the argt. will be presented, not merely on the grounds of human right, but of self-interest. It will be shown that we shall need the vote of the negroes to sustain the Union . . . ." Basking in the gratitude of his radical friends outside of Congress, Sumner was optimistic about the future. "[B]elieve me, all this will be done. To this consummation every thing tends."
But other radicals were less certain. Wendell Phillips believed "Negro suffrage ripens rapidly" and exhorted Sumner, "That needs only reputable leadership to open almost every press & every class with favor. Your indorsement of it will lift it forward as much as years could do." But at the same time he feared this public enthusiasm might not be translated into power. "The trouble is neither the Senate or House has a Head—-as Clay or Webster was," he wrote. "Sumner leads ten; Trumbull twenty. Fessenden some. But the three quarrel. . . . [In] the House Boutwell makes good speeches, but no one follows him. Stevens is the only approach to a leader. In fact Congress is a mob--the Admt. a unit. Hence its success."

* * *

With the war drawing to a close, no reconstruction policy had yet been established. Unwilling to commit the government to a rigid program, Lincoln found he had no program at all. The amnesty oath would hardly separate the loyal from the disloyal once the war ended. At the same time he was extremely worried lest southerners resort to guerilla tactics. It would be a difficult task to restore complete peace in the South and still limit control of reconstruction to loyalists.

Lincoln remained committed to his reorganized governments in Louisiana, Arkansas, and Tennessee, but he seemed to flounder in his efforts to create a policy for the other rebel states. On February 6 he suggested to the Cabinet that
the government pay $400,000,000 to the southern states in exchange for peace. The money could be used to recompense former slaveholders or for any other purpose. The Cabinet's frosty reception of that proposal persuaded the President to abandon it. Early in April Lincoln offered to allow the rebel Virginia legislature to meet with the protection of Union forces if it would call for peace. In exchange the President would exercise his pardoning power to exempt Virginians from confiscation, with the exception of slave property. Lincoln believed this to be the most certain way to convince southerners to cease resistance. The southern state legislatures were, after all, organizations which southern soldiers recognized as legitimate voices of authority. An appeal to end the fighting might well have carried more weight if it emanated from them rather than the northern enemy.

Lincoln did not intend to recognize the rebel legislature or negotiate with it. He wanted them "to do a specific thing, to wit, 'withdraw the Virginia troops and other support from resistance to the general government,' for which I promised . . . a remission to the people of the State . . . of the confiscation of their property. I meant this, and no more." But most Republicans were appalled. They believed Lincoln meant to treat with the rebels, recognizing the Virginia legislature, and they urged him to reconsider.
In the midst of this confusion, Lincoln delivered a formal address on reconstruction. He had been pressed to speak on April 10 by boisterous crowds celebrating Lee's surrender the day before. Preoccupied by other duties he had declined, but promised to say a few words the next evening at a more formal demonstration. Lincoln decided to make the plea for Louisiana recognition which he had suggested to Trumbull three months earlier. In January Lincoln had wanted to make a statement of the question as he saw it. Now he did so. "The question is . . . 'Can Louisiana be brought into proper practical relation with the Union sooner by sustaining, or by discarding her new State Government?" he maintained. Having asked the question in the form he preferred, the President found little difficulty answering it likewise. He hinted similar policies might be applied to other rebel states. But again inveighing against setting rigid policies, Lincoln announced no "exclusive and inflexible plan" would be prescribed. He informed his audience he should be pleased if Louisiana enfranchised at least its literate black citizens and those who bore arms for the Union, but he refused to make this a condition for restoration. And he closed with the tantalizing suggestion that "In the present 'situation' as the phrase goes, it may be my duty to make some new announcement to the people of the South. I am considering, and shall not fail to act, when satisfied that action will be proper."
Some historians of reconstruction have suggested that Lincoln's final statement indicated that he was about to move in a more radical direction. But at the time he spoke, Lincoln was still holding open his offer to the Virginia legislature, and radicals might just as easily assume his reference to "a new announcement" referred to a proclamation extending his offer to other state legislatures. Sumner certainly did not believe the President had signalled growing radicalism. "The President's speech and other things [Sumner had just learned of the Virginia negotiations] augur confusion and uncertainty in the future, with hot controversy," he wrote Francis Lieber. The Marquis de Chambrun, visiting the United States and an acute observer whose company Sumner enjoyed, recorded in his diary that the address "called forth violent reactions" against the President. By April 13, the Marquis noted, "a veritable campaign against him was launched."

But faced with the opposition of his Cabinet, led by Stanton and his newly appointed Attorney-General, James Speed, Lincoln discarded his Virginia initiative.

To combat what he believed to be Lincoln's desire to employ southern rebel legislatures to stabilize the southern situation, Secretary of War Edwin M. Stanton drafted a plan to provide temporary military government in Virginia and North Carolina. Under Stanton's proposal the President would appoint a military governor who would issue regulations to restore order. The temporary government's authority would
be founded upon martial law, and a provost marshal corps would enforce its decrees. Under the protective shield of military authority, the national government could reestablish its presence, reopening federal courts, revenue offices, post offices, and land offices. Lincoln concurred when Welles objected to combining Virginia and North Carolina under one military governor, and he ordered Stanton to redraft his plan and present it again at a future Cabinet meeting. At the same time other Republicans were trying to convince Lincoln to adopt their views of reconstruction. Chief Justice Chase ardently championed the cause of black suffrage. House Speaker Colfax discussed reconstruction matters with Lincoln the day of his death. Several Senators visited him the same day. But before he arrived at any conclusions—or at least before he told anyone of them—Lincoln lay assassinated.

Like other Americans, radicals were shocked and stunned by the news of Lincoln's death. But while they mourned Lincoln the man, they did not mourn his policies. "God had graciously withheld him from any fatal mistep in the great advance," Phillips said. With the war ended, "[t]he nation needed a sterner hand for the work God gives it to do." Most radicals shared the mixed feelings of radical Representative John B. Alley. "The decease of Mr. Lincoln is a great national bereavement," he wrote Sumner, "but I am not so clear that it is so much of a national loss." Still, he continued, "I feel his death personally very much. He was very kind to me."
CHAPTER VI
THE RADICALS ON THE OFFENSIVE

"Johnson, we have faith in you. By the Gods, there will be no trouble now in running the Government," tough Benjamin Wade enthused when he first visited the new President after Lincoln's death. Citing this and other evidence, historians have recognized that during the first month of Johnson's administration radicals considered him an ally. Rarely devoting more than a paragraph or two to this "aberration," they have not delved into just what this meant to the radicals and to the Republican party. Furthermore, historians never have offered a clear picture of the developments during the crucial six months which preceded the meeting of the Thirty-ninth Congress in December, 1865. The period appears to have been one of confusion, with growing distrust of the President and increasing conviction that the South was not yet ready for restoration. Within this confusion historians have been unable to separate radical from conservative satisfactorily. Nor have they recognized how profoundly President Johnson's course altered the program of a Republican party on the verge of endorsing black suffrage, or how close non-radical Republicans believed they were to a complete understanding with him, an understanding which would have left the radicals
isolated and nearly powerless within the party or bolters outside it.

Radicals appeared to have good reason to believe Johnson sympathetic to them. He evinced an inclination to hold rebels strictly accountable for their activities. Whereas Lincoln, during the war at least, had been willing to treat former rebels as allies if they would only take the simple amnesty oath swearing future loyalty, Johnson seemed more disposed to demand strict justice. "Robbery is a crime; rape is a crime; murder is a crime; treason is a crime; and crime must be punished," he said. Radicals had feared Lincoln intended to work through recognized southern leaders to establish peace (especially when his Virginia initiative became known); there seemed to be no reason to apprehend Johnson's following a similar policy. "The conservatives are not here [in Washington] . . . ," Julian noted happily. The radical Joint Committee on the Conduct of the War, on which Wade, Chandler, Julian, and other radicals sat, had been authorized to meet during the congressional recess, however. Julian expected the "influence of the War Committee with Johnson, who is an ex-member, will powerfully aid the new administration in getting onto the right track."

Although Johnson denied he sought vengeance against southern leaders, he reiterated his "treason is a crime" theme several times in the early days of his administration. He seemed to advocate large-scale criminal prosecutions and
the death penalty for rebel leaders. As the new President repeated these opinions, many northerners, including radicals, began to grow apprehensive. Sumner acknowledged Johnson's position on the treatment of rebels was far more radical than his and continued to hope that rebel leaders would be driven into exile rather than executed. Wade, who on general principle was not nearly so reluctant as Sumner to shed rebel blood, also believed Johnson's oft-expressed determination unwise. He told Johnson that "I should either force into exile or hang about ten or twelve of the worst of those fellows."

"But how are you going to pick out so small a number and show them to be guiltier than the rest?" Johnson asked, expressing surprise Wade was willing to allow leading secessionists to escape so easily. Wade left Johnson fearing his bitter policy would lead to a reaction in the North against radicalism. Radicals needn't have worried. The growing sentiment against violent reprisals and Johnson's eventual decision on reconstruction policy persuaded him to abandon his intention to hold leading rebels strictly accountable for their crimes.

Violent denunciations of rebel leaders and assurances that their treason would be punished showed the state of the new President's temper, but they were not a reconstruction policy. As the Marquis de Chambrun wrote, "To punish traitors may be the order of the day, but afterwards what? [Johnson] ... is a radical to be sure, no one denies that, but what
sort of radical is he?"  

Johnson indicated at least one program he would not follow. This was the policy enunciated in a peace convention agreed to be General William Tecumseh Sherman and rebel General Joseph E. Johnston. Sherman's terms were incredibly liberal—recognizing the Confederate state organizations as legal governments (although not conceding their secession), providing for adjudication before the Supreme Court of claims of rival state governments, guaranteeing rebels peaceful possession of their property, possibly including slaves and certainly precluding confiscation of anything else, and granting a universal amnesty.

Sherman believed these provisions consistent with Lincoln's desire, expressed to him shortly before his death, quickly to restore order in the South. To Sherman they seemed not much different from the abortive policy Lincoln had attempted in Virginia. Nonetheless the Cabinet unanimously rejected the terms, and Johnson concurred. Stanton, fearing Sherman's terms might win wide public approval, launched a bitter attack on the general's action and motives, which though alienating the Sherman brothers and the powerful Ewing family (the general's wife was Ellen Ewing) demolished any possibility of the plan's acceptance or the approval of one like it.

Johnson was slow in coming to final conclusions regarding reconstruction. The subject arose in Cabinet April 21 but
only in regard to the Sherman-Johnson convention, which was roundly condemned. Not until the first week of May did Johnson tell Stanton to send Cabinet members copies of his plan to reestablish national authority in North Carolina as modified by Lincoln's instructions to preserve the state's territorial integrity. Not until May 9 would it be considered.

Meanwhile, the radicals lobbied for their program. The recent session of Congress had demonstrated the weakness of their influence on legislation. The radicals were well aware of what lay ahead. George Luther Stearns, the influential abolitionist, wrote Sumner, "You I understand are to have a 'fight' with Trumbull & Co. next winter. Today when the events of the past month have softened mens [sic] hearts and disposed them to listen to the voice of God, is the time to prepare the public mind for it." If Andrew Johnson could be persuaded to endorse black suffrage, Sumner knew, the battle virtually would be won. The radicals needed time. "There are some who have supposed that Congress would be convened at once. I hope not," Sumner wrote. "We are not ready for the discussion of domestic policy."

The radical campaign for Negro suffrage had been gaining momentum since January. Phillips and Douglass had called abolitionists to the standard at the Massachusetts Anti-Slavery Society meeting January 26. Stearns had collected their speeches, the speech Kelley had delivered in Congress
in support of his Negro suffrage amendment to the Reconstruction bill, and several letters, in a pamphlet which radicals distributed throughout the country. The radical New York Independent, the Anti-Slavery Standard, the Liberator, and the Boston Commonwealth took up the cause. Stearns opened a correspondence with anti-slavery men throughout the country, and by mid-February had a list of 5,000 names and expected to get up to 15,000. On February 16 he called together a few Boston radicals to decide what to do with it. "Our general idea was that between the sessions of Congress, public opinion should be moulded to demand no readmission of rebel states without securing equal rights," wrote Edward Atkinson, the radical Boston textile manufacturer. As a result Stearns, Atkinson, Charles Eliot Norton, and others founded the New York Nation, with Edwin L. Godkin as editor. When that journal emerged less radical than Stearns had hoped (it did espouse black suffrage, however), he withdrew his money and began yet another paper, The Right Way, which he circulated throughout the country without charge. Chase, of course, also had been working hard to develop public opinion on the suffrage question, urging his friends actively to aid the cause.

Lincoln's death had given a strong impetus to the demand for Negro suffrage. In the eulogies and analyses which followed the assassination, opinion began to swing in the radicals' direction. In May, Wendell Phillips joyfully wrote Sumner, "Public opinion surprises me by the rapidity
with which it crystallizes on this point. Every one hastens. From Blake the banker & Ames the Probate Judge all around to clergymen small & great & to the rank & file here, literally no dissent."

"But if you wish an expression," Phillips continued, "... come home ... assembly forty of your personal & political friends & give them their cue. Start the thing thus--the harvest is ripe." The people "only wish a leader whom they feel it safe to follow ...," he urged. "Come & unseal their lips. Have one or two large conventions & the work is done. The Ball will roll itself onward." But Sumner knew Andrew Johnson would be a better and "safer" leader yet.

The radicals worked hard to convince Johnson Negro suffrage was necessary. For though he had been a radical during the war and was radical in his desire to punish rebel leaders, this did not mean he would be radical on reconstruction questions. Many of the Republicans who had voted against the Reconstruction bill in the House and in favor of recognizing Louisiana in the Senate also had been radical on war issues. More than this kind of radicalism was needed. Many Republicans now believed "To hang Davis won't do any good; we have no guarantee against the South, who gave him up as a holocaust, hoping thereby to get themselves out of trouble with no other sacrifice demanded of them," de Chambrun observed. "What we want now is Negro suffrage."17

On April 18, Chase urged the President to delay any
invitation to the people of North Carolina to reorganize their government. "Would it not be far better to make Florida and Louisiana really free States with universal suffrage, and then let other States follow?" he asked. Johnson must consider carefully. "Everything now, under God, must depend on you." On the 22d, Chase and Sumner visited Johnson together to argue for requiring Negro suffrage in the South. "... He is well disposed, and sees the rights and necessities of the case, all of which I urged earnestly," Sumner wrote. "Both of us left him light-hearted. ... I am confident that our ideas will prevail." A week later Sumner saw Johnson again. He seemed even more in agreement than before. The President "deprecates haste," Sumner found, "is unwilling that States should be precipitated back; thinks there must be a period of probation, but that meanwhile all loyal people, without distinction of color, must be treated as citizens, and must take part in any proceedings for reorganization." 19

But other Republicans exerted pressure in the opposite direction. On April 22, the conservative Indiana Governor, Oliver P. Morton, led a state delegation to an interview with the President. In his address, Morton expounded an extremely conservative view of the power of the national government in reconstruction. He concluded, "The powers of the state government ... [should] be in abeyance only until new men [can] be called to the exercise of those powers. There is in every rebel state a loyal element of greater or less strength,
and to its hands should be confided the power and duty of reorganizing the state government, giving to it military protection until such time as it can, by convention or otherwise, so regulate the right of suffrage that this right will be intrusted only to safe and loyal hands. . . . " Morton publicly opposed Negro suffrage and by his last sentence advocated not extension of suffrage to blacks but restrictions against disloyal whites. Johnson, in a brilliantly vague answer, agreed with all Morton's main points: Rebellion was an individual matter, but it could reach such proportions as to overthrow the state authorities and paralyze its activities. When this happened, the national government had the duty to resuscitate it, and it must be done through the medium of its friends, that is loyalists. But Johnson did not define the color of its "friends". He did close, however, by assuring the delegation he opposed centralization of power in the national government. Morton left satisfied. Julian, who had accompanied the delegation was "mortified" and left believing the radicals' confidence entirely unwarranted.

There was also a latent conservatism on the reconstruction question in the Executive department as Johnson found it. Throughout the war Lincoln had endeavored to leave restoration to the voluntary action of the southern people. This desire for voluntarism, or at least the illusion of it, had colored the whole policy of reconstruction insofar as Lincoln had developed any. In particular it had been important in
Tennessee, where Johnson, as military governor, had been left largely to his own devices in encouraging the people of the state to resume loyal relations with the Union. To a large extent past experience limited future policy.

Johnson was committed to preserving this illusion of voluntarism. He told Sumner he wanted the black suffrage movement to "appear to proceed from the people" for political reasons. To encourage this voluntary extension of suffrage to the newly freed black men, Johnson decided to send Chief Justice Chase on a tour of the southern states and authorized him privately to urge Negro suffrage in the President's name. Sumner doubted southerners would agree to such a step voluntarily, but affirmed he "regarded the modus operandi as an inferior question . . . ." 22

Chase's travels fulfilled Sumner's pessimistic expectations. The Chief Justice wrote Johnson that southern whites would not themselves enfranchise the freed blacks, but added they would not resist if the President required it. 23 Now Johnson would have to make the distasteful decision of whether to abandon all pretense of voluntarism and require southerners to enfranchise black men, or to acquiesce in the southerners' refusal.

Although his conviction that Negro suffrage could come only through pressure seemed to have been verified, Sumner remained sanguine. Radical fortunes had soared. In February he and a handful of others had barely prevented recognition
of Louisiana with its discriminatory suffrage regulations. President Lincoln had seemed adamant. A hard fight had lain ahead. Now Sumner wrote, "I said during this winter that the rebel States could not come back, except on the footing of the Declaration of Independence and the complete recognition of human rights. I feel more than ever confident that all this will be fulfilled. And then what a regenerated land! I had looked for a bitter contest on this question; but with the President on our side, it will be carried by simple avoir-dupois." 

But on May 8, Johnson recognized the government of Governor Francis H. Pierpont in Virginia, a government which had not enfranchised its black citizens. This loyalist regime had maintained a tenuous existence throughout the war and Lincoln had felt obligated to sustain it. He evidently had intended to recognize Pierpont's government, and Johnson's Cabinet agreed to this early in May. The executive order pointedly referred to Pierpont as "Governor of Virginia" rather than provisional governor, and left his government in unrestricted control of the state's domestic affairs.

Many radicals were alarmed. Stevens wrote Sumner, "I see the President is precipitating things. Virginia is recognized! I fear before Congress meets he will have so bedeviled matters as to render them incurable [?]. It would be well if he would call an extra session of Congress." But Sumner, and other radicals still in Washington remained calm. They
had known of the prospective order re Virginia. On April 16, he, Colfax, Dawes, and several other congressmen had met with Stanton to discuss reconstruction. Stanton had already altered his tentative plan of military occupation to exclude Virginia and recognize its loyal government. The plan now applied only to North Carolina but was a prototype for all the rebel states. The men had acquiesced in the Virginia recognition and turned their attention to Stanton's occupation plan.

Stanton's original draft, placed before the Cabinet the day before Lincoln died, had provided primarily for military government. Now he modified it, either himself or at the suggestion of his visitors, to include a plan for reorganizing the state governments. Following the pattern set by Lincoln and the proposed congressional reconstruction bills, Stanton's program added to the provisional governor's duties that of organizing elections for a constitutional convention, which would alter the state constitutions to conform to the new situation. Finding Stanton had left the vote in the hands of whites alone, Sumner argued the necessity of its extension. Stanton had resisted, fearing its divisive effect on the party, but after a long discussion Sumner and Colfax convinced the Secretary that all loyal men, irrespective of color, should participate in the election of delegates to the state constitutional conventions.29

Sumner, Colfax, and others knew that on May 9, the day
after Johnson promulgated his executive order recognizing Virginia, the Cabinet had discussed the amended North Carolina occupation plan. The Cabinet had agreed unanimously to all but its suffrage provision. On this they had divided evenly, Stanton, Postmaster-General William Dennison, and Attorney-General James Speed favoring it, and Navy Secretary Gideon Welles, Treasury Secretary McCulloch, and outgoing Secretary of the Interior John P. Usher opposed. The President withheld his opinion and took the matter under advisement.

Sumner and Wade, knowing Johnson favored Negro suffrage, remained certain of the result. On May 12 the radicals met in the National Hotel in Washington. Those who called the meeting feared Johnson was falling under conservative influence, but the two radical leaders convinced them their alarm was groundless. Even the sceptical Julian wrote, "Radicalism will not be expelled from the Cabinet, but will rule the Administration." But Stevens remained unsatisfied. He wrote Johnson, attempting but failing in his agitation to be tactful. The last Congress, Stevens insisted, had considered reconstruction "a question for the Legislative power exclusively. While I think we should agree with you almost unanimously as to the main objects you have in view I fear we may differ as to the manner of affecting them." Complaining specifically of the Virginia order, Stevens asked Johnson to suspend further reconstruction activity. "Better call an extra session," he argued, "than to allow many to think that
the executive was approaching usurpation." Such language could hardly increase radical influence.

Nearly three weeks passed before Johnson made his decision known. On May 29 he issued two proclamations. One offered amnesty to most southerners; the other announced a reconstruction plan for North Carolina. The plan was substantially Stanton's. But in its key provision it limited the vote for delegates to the constitutional convention to those "qualified and prescribed by the constitution and laws of the State of North Carolina in force immediately before the 20th day of May, A.D. 1861, the date of the so-called ordinance of secession . . . ." The constitutional convention would then prescribe any new qualifications for suffrage.

The radicals were shocked. Sumner wrote Bright of his "immense disappointment." "This is madness," he lamented. "But it is also inconsistent with his sayings to the chief-justice and myself."

What had happened? There are virtually no clues to the processes of Andrew Johnson's mind in the last ten days of May. Contemporaries suspected the influence of the Blairs or of Secretary of State Seward had intervened. Others have pointed to the blandishments of returning former rebels. But the former Confederates did not rally to Andrew Johnson's support until after he had enunciated his policy. Seward had been disabled by the attempt on his life and had just returned to his duties in mid-May. Indeed, radicals had as easy access
to the President as conservatives. They had clearly had the inside track. If Andrew Johnson was swayed by conservatives, it could only have been because he was more susceptible to their arguments.

Some historians have emphasized Johnson's intense Negro-phobia. Certainly Andrew Johnson was a racist, but so were many radicals. The argument for black suffrage was not based only on Negrophilism. Many Republicans believed Negro suffrage necessary to protect white southern Unionists. Benjamin F. Wade's personal anti-Negro prejudice, for example, probably matched the President's.

The most plausible explanation is that Andrew Johnson had not changed his mind at all. He had told the radicals he favored black suffrage but wanted it to emanate voluntarily from southerners themselves. He manifested his sincerity when he sent Chase south, authorized to inform southerners of the President's desire. In August Johnson telegraphed Mississippi's provisional governor, W. L. Sharkey, urging that the state's constitutional convention "extend the elective franchise to all persons of color who can read the Constitution of the United States in English and write their names, and to all persons of color who own real estate valued at not less than two hundred and fifty dollars, and pay taxes thereon . . . ." This would make Mississippi's voting provisions similar to those of several free states, and more liberal than most, disarming radical criticism. Johnson showed this
telegram to Missouri Senator John B. Henderson in October and authorized him to inform others this was his position, although not to quote the telegram directly.

On October 3 Johnson told Stearns, who had obtained an interview with him, that were he in Tennessee "I should try to introduce negro suffrage gradually; first those who had served in the army; those who could read and write; and perhaps a property qualification for others, say $200 or $250." Johnson again authorized the publication of his views. He never again endorsed Negro suffrage after October. This hardening position probably resulted from some radicals' bitter attacks upon him, the cordial support anti-black elements began to give, and--probably most important--the unwillingness of northern states to accept Negro suffrage in their own constitutions, as expressed in elections during the fall.

Moreover, Johnson's reluctance to require black suffrage had been based on more than political expediency. Johnson apparently had decided he had no constitutional power to force certain voting qualifications on the people of the southern states. This was "a power the people of the several States composing the Federal Union have rightfully exercised from the origin of the Government to the present time," he explained in his proclamation.

Johnson was wrong in his constitutional interpretation. He was in no way obligated to adhere to old constitutional
provisions in providing election rules for a new constitutional convention. "There is not a single state constitution which defines the qualifications of voters at an election of a state convention," an unidentified New York lawyer pointed out in the Independent. "The qualifications of voters for governors and legislators are carefully stated, but nothing is said about conventions. Delegates to a convention are not 'officers' under the constitution of a state. They do not swear to support it. On the contrary, they usually meet for the very purpose of abrogating it." This was so plain that radicals evidently never had conceived the President might have constitutional objections to ordering Negro suffrage. Sumner concluded simply, "...[T]he Federal Power, whether Prest or Congress, that undertakes to set the State machine a-going can say who shall take part in the meetings to organize & thus at the outset fix the suffrage."

Radicals were astounded at Johnson's misguided scruples. "How easy it was to be right!" Sumner lamented. "The President seems to have made an effort to be wrong."

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Radicals were despondent. They had placed great hopes on Johnson's conversion. Now, Sumner mourned, "We have before us controversy & an agony of strife." And they had to rely on Congress, where they had barely staved off defeat a few months earlier. "I almost despair of resisting Executive influence," Stevens had written after Johnson recognized
Virginia. Now he wrote, the President's "North Carolina proclamation sickens me. . . . By the time congress meets all will be passed [sic] remedy I fear. Yet what can we do? The excitement and self complacency of power will give but little heed to reason. I write merely to vent my mortification. I do not know that I can suggest anything . . . ."

The experience of the previous session weighed heavily upon him. "Is there any hope that Congress will overrule the Prest?" he asked Sumner. "I fear we are lost [?], for I have little faith in Congress."

Other radicals shared Stevens' anguish. If Johnson was firmly committed to his reconstruction policy, Wendell Phillips believed, "he will sway Congress as he pleases." Henry Winter Davis and Wade shared his conviction. Almost in despair, Wade raged to Gideon Welles that "the Executive has the control of the government, that Congress and the Judiciary are subordinate and mere instruments in his hands; . . . our form of government was on the whole a failure; that there are not three distinct and independent departments but one great controlling one with two others as assistants."

But the radicals, some angry and all apprehensive, zealously continued to agitate for black suffrage. Many believed Johnson not yet firmly committed to the policy enunciated in the North Carolina proclamation. "Let me warn impulsive Republicans against hasty judgment of the President in this matter," wrote the Independent's radical Washington
correspondent, David W. Bartlett. "Personally, he favors negro suffrage. He has said so repeatedly of late. He is in doubt of the means to be used. Probably he has a little of the old prejudice against the negro. . . . Give Mr. Johnson a little time to watch events," he urged. Speed wrote Boutwell that the proclamation related only to North Carolina and did not preclude a different rule for other states. Johnson himself sent Carl Schurz, who had criticized his proclamation, on a tour of the southern states to report how well his plan actually was operating. From the rebel states Schurz sent a barrage of reports, most discouraging. Encouraged, Sumner urgently wrote Chase he was needed in Washington. "I hope it is not too late to arrest this fatal policy. I have reason to believe that the President has lately shown a disposition to treat what he has done as an experiment," he added hopefully. Sumner tried to influence Johnson through his Cabinet. But McCulloch vigorously defended Johnson's program, and Harlan, the new Secretary of the Interior, though he assured Sumner he personally favored black suffrage, said flatly, "I do not doubt that the 'North Carolina Proclamation' will be followed substantially in the proposed re-organization of the other Rebel States." He conceded that Congress could refuse to readmit southern congressmen until their states adopted Negro suffrage, but such a course, he warned, "would lay the foundation of a certain and inevitable division of the Union organization, which I am
inclined to think would result in the triumph of the President's policy." Sumner soon realized that his efforts were futile.

After reading the North Carolina proclamation, Boutwell hastened to Washington, where he and representative Justin Morrill saw the President. Johnson assured them his program was experimental, and if it failed a new proclamation would be forthcoming. Boutwell then visited McCulloch and urged him to work for a change in policy. John Murray Forbes, who shared a warm friendship with McCulloch, Joseph Medill, coeditor of the Chicago Tribune, Whitelaw Reid, Horace Greeley's conservative lieutenant on the New York Tribune, and Edward Atkinson all wrote McCulloch that support for Negro suffrage was growing and urged him to intercede with the President. "I don't believe that five republican members of Congress in the ten Western States approve of the President's clause excluding the loyal blacks from voting in the reorganization, nor that five percent of the republican party endorse his course," Medill wrote. "People try to be quiet on the question but they are growing very restive and alarmed. The President ought to be informed . . . ." McCulloch forwarded at least one of the letters (Forbes') to the President, yet in August the Secretary insisted that he did not believe "one man in an hundred of the intelligent men of this country" favored immediate Negro suffrage. Instead of warning the President of impending danger, he urged moderation upon his
correspondents.

Still, many radicals believed Johnson personally committed to black suffrage. Even as they expressed their distaste for his program, they assured audiences the President would accept a popular verdict in favor suffrage extension and insist on blacks' voting himself if southerners displayed disloyalty. This impression remained current through July and even August. But the radicals' faith began to wane as other aspects of the President's policy became apparent. McCulloch began to appoint Treasury agents in the South who could not take the test oath required by law. When Sumner complained to McCulloch, the Secretary answered he did not believe the law was intended to apply to the new situation. Attorney-General Speed began to dilute the application of the Confiscation act. And the President ordered the Freedmen's Bureau to begin returning the property of all rebels receiving executive pardon. By August Republicans began to concede that Johnson's policy seemed final.

Throughout these critical months popular support for Negro suffrage had continued to grow. In May Henry Winter Davis, no longer limited by the prejudices of his constituents since his defeat for Congress, had announced in favor of extending the franchise. In June New York City's Union League club joined the campaign. The Independent, Anti-Slavery Standard, and Liberator continued their radical campaign for Negro suffrage, joined by the New York Tribune.
the Nation, the Boston Journal and Boston Daily Advertiser, and the Chicago Tribune.

Boston had become the center for the movement, due to the efforts of Sumner, Stearns, and others. The agitation there culminated in a massive meeting at Faneuil Hall, June 21, as conservative and radical Bostonians united in support for suffrage extension. Richard Henry Dana, Henry Ward Beecher, and Theophilus Parsons spoke, and Governor Andrew had endorsed their position in a long, carefully drawn letter. The meeting appointed a committee of nine, consisting of Boston's most illustrious citizens, radicals and conservatives, to prepare an address to the people of the United States in support of Negro suffrage. As an outgrowth of the meeting, John Murray Forbes and others decided to form "an association to mould public opinion, against [i.e., in anticipation of] the meeting of Congress." Members contributed $50 to $500 each. In August Forbes, Dana, Parsons and others persuaded over two hundred Boston businessmen and professionals to sign a letter to President Johnson, urging him to enfranchise southern blacks.

The movement had spread nation-wide. In Ohio, the conservative John Sherman argued simply, "If we can put negro regiments there [in the South] and give them bayonets, why can't we give them votes? Both are weapons of offense and defense. Votes are cheaper and better." July Fourth brought a flood of pro-Negro suffrage oratory. Garfield,
Winter Davis, Edwin Channing Larned, Senator Richard Yates, Boutwell, Phillips, Stearns, John B. Alley, Henry Wilson, and even Banks, endorsed the measure in speeches given around the nation.

Many conservative Republicans also decided Negro suffrage should be part of reconstruction. Besides Sherman and Banks, their number included Edwin D. Morgan, Fessenden, and James Dixon. During the summer, Republican party conventions in Iowa, Minnesota, Vermont, Maine, and Massachusetts all had endorsed suffrage extension. As early as June Joseph Medill discovered that nearly all those attending the Northwest Sanitary Fair in Chicago favored Negro suffrage; Boutwell discerned a similar feeling among western congressmen. With such pressure growing, even the New York Times, the conservative organ of the Seward-Weed faction of the New York Republican party, suggested a constitutional amendment to give the ballot to all male adults who could read.

Sumner took the lead in trying to convert this public opinion into political power. He barraged his fellow Senators with letters, sounding out their positions on the great issue. In general the prospects seemed uncertain Michigan's Senator Jacob M. Howard and his colleague, Zachariah Chandler, were sound. Sumner believed he could rely on both of Maine's Senators and Missouri's B. Gratz Brown. Howard counted on Sherman, Wade, Pomeroy, Lane of Kansas, Yates, and Alexander Ramsey of Minnesota. But other Senators might waver. John Conness doubted Congress' power to demand black suffrage.
Morgan, though favoring the measure in the abstract, was Seward's ally and clearly desired to avoid any difficulty with the President. The Connecticut and Vermont Senators were conservative. Doolittle opposed Negro suffrage, as did James W. Grimes. Trumbull had privately given Johnson his support.

It is apparent that as pressure for Negro suffrage grew, politicians close to the President and the President himself concluded that radicals had become political enemies. By June 25 McCulloch already foresaw a party division. Welles concluded after the Maine and Pennsylvania conventions "that extensive operations are on foot for an organization hostile to the Administration in the Republican or Union party." By mid-August the President too spoke of the radicals, "who are wild upon negro franchise," as "the adversary."

As the President's opposition to black suffrage firmed, more and more leading Republicans began to back away from the measure. John W. Forney, editor of the Philadelphia Press and owner of the Washington Daily Morning Chronicle, which was considered the administration's organ while Lincoln was in office, vigorously supported the President's policy, despite his earlier pro-Negro suffrage avowals to Sumner.

Morgan urged Sumner to "be cautious and conciliatory with the President," and wrote Lieber urging him to use his influence to moderate the Massachusetts radical. Charles A. Dana, founding a new newspaper in Chicago, told Sumner that while he favored black suffrage with a literacy test, "I am quite
willing to see what will come of Mr. Johnson's experiment. And I think it is desirable to keep with him as far & as much as possible. I don't want to see the Democrats coming back into power through any unnecessary quarrel among ourselves."

Thoroughly alarmed, Phillips wrote, "Most if not all of those high in office & near [Johnson] who in May professed to go for unconditional negro suff. as preliminary to admitting rebel States now write that they've changed their minds. The dodge is to be not to strike us radicals square in the face but evade & then say 'oh yes, we go for negro suff: but it is a State matter—the States are alive with all their rights & they ought to grant it but we cant [sic] interfere." Gloomily he continued, "My fear is we are to be sacrificed. The States will be admitted . . . next winter—that will reinstate the old Democ & Slave Power alliance . . . ."

The hesitation afflicted many of the newspapers which supported black suffrage as a general principle. Most urged Republicans to conciliate the President; many outspokenly supported him. The Democrats were hoping for a Republican division over Negro suffrage, wrote David L. Phillips, editor of the Springfield Illinois State Journal. If a division occurred they could win the day for their real issues, state sovereignty, Democratic control of southern states. They might even prevent abolition. "It is for the Union or Republican party to prevent so fatal a catastrophe," Phillips urged, "and that only can be done by the force of united action."
Whatever differences of opinion may exist among individual members of the party on the question of colored suffrage, they must be reserved and not allowed to interfere with the greater issue of universal freedom, which is at stake."

As the reaction gained strength, factions of local Republican parties began to use the suffrage issue as weapons. In Indiana, Governor Morton's supporters bitterly assailed his radical enemy, George Julian, as "bent on destroying the supremacy of the Union party" by insisting on Negro suffrage. The radicals, the Indianapolis *Daily Journal* charged, were "The Would-be Dictators to the Union Party." By November the Morton forces suggested, "Mr. Julian and his satellites may be ready to forsake the Union party ... ." The battle between Morton and Julian raged through the fall, culminating in a physical attack on Julian which he always blamed on his adversary.

A similar struggle developed in New York. Conservatives dropped unsubtle hints that the radicals were about to leave the party. The Seward-Weed organ, the *New York Times*, forecast a reorganization of parties around the question of reconstruction, with conservative Republicans and Democrats joining against radicals. Though the *Times* usually referred to the radicals as "Sumner, Stevens & Co." the attacks were primarily aimed at the so-called radical faction of the New York party, led by Horace Greeley and the *Tribune*. The New York struggle
culminated in the state convention held in Syracuse in September. The radicals claimed a majority of the delegates, but adroit maneuvering by Weed and some radicals' reluctance to force a confrontation gave the conservatives control of the meeting. Conservatives received most of the nominations and the Times' editor, Henry J. Raymond, was named chairman of the Committee on Resolutions, where he smothered attempts to endorse Negro suffrage and forced through a resolution in support of the President.

At the same time War Democrats attempted to wrest control of the New York Democratic organization from those who had controlled it during the war. Led by John Van Buren, John A. Dix, and John Cochrane (who had been the Vice-presidential candidate of the radical Democracy in 1864), these Democrats--aided by the Blairs--urged party leaders to endorse President Johnson warmly and support his policy. The Democrats followed their advice and named a unionist ticket. Challenged by the Democrats, the Republicans coalesced. The conservatives ceased their bitter attacks on radicals, and the radicals urged their followers to support the party despite their dissatisfaction. Circumstances had forced the New York radicals to moderate their position for the sake of harmony.

Similar patterns appeared in other states. In Wisconsin radical efforts to pass a pro-black suffrage resolution in the state convention were defeated by conservative and center Republicans led by Doolittle. Instead the convention endorsed
the President. Disgruntled radicals met in a counter-convention in Jaynesville, Wisconsin, where the formerly conservative Timothy Otis Howe announced his conversion to black suffrage. But the Madison Wisconsin State Journal, voice of the dominant "Madison regency," and the gubernatorial candidate, Lucius Fairchild, steered a middle-of-the-road course. The Journal, while endorsing Negro suffrage, argued it was not a party question, and Fairchild refused to commit himself to suffrage extension at all. Ohio Republicans met in late June to nominate a candidate for governor. Radical efforts to pass a black suffrage resolution failed here too, conservatives preventing a vote on the question. "The overthrow and eradication of slavery was felt to be a paramount consideration of the hour; and no expression of opinion that might embarrass or prevent this consummation was permitted," William Henry Smith recalled. Richard P. L. Baber, who was to support President Johnson faithfully throughout his term, happily wrote Seward that "our State Committee was so organized . . . as to exclude all the opponents (but four or five) of the President's policy." The radicals tried to force the issue into the open by publishing a letter asking Jacob Dolson Cox, the gubernatorial candidate, to declare his position. Cox responded to the "Oberlin letter," as it was called, by repudiating black suffrage and calling for complete, physical separation of the races. The radicals were furious, many of them attacking their candidate, while
conservatives attacked the radicals. One of Chase's local allies, Dwight Bannister, wrote him, "The politics of this State is [sic] getting daily more unsatisfactory. I do not see how it is possible for the present Union party to remain together much longer..." Other observers agreed.

Cox became one of Johnson's most outspoken supporters. "We must not only ask ourselves what we would desire to do with the Southern States," Cox urged Garfield, "but what we can do." The people will support the President's policy, he warned his friend, and to oppose it meant division and the ruin of the party. Opinion in Ohio was too much divided on the suffrage question for the Republicans to commit themselves to it. Even Robert C. Schenck, the radical congressman, who was contending with Sherman for the senatorial nomination, found he was forced to abandon radical ground. In August he announced the President's restrictions against black voting in the South "did not trouble him in the least."

Instead of Negro suffrage he suggested a change in the basis of congressional representation to apportion seats according to the number of voters in each state rather than inhabitants. The radical correspondent of the New York Independent lamented, "[The suffrage question] has been dodged in the platform... [and] dodged by nearly all the public speakers..."

Many disgruntled Republicans, especially in the radical Western Reserve area, refused to vote, but Cox was elected nonetheless.
At the same time in Pennsylvania, the old enemies Curtin and Cameron (returned from his Russian diplomatic post) renewed their factional strife, each striving for the President's support. In Kansas the erratic James H. Lane's faction controlled the party, and he adhered to President Johnson rather than risk throwing the patronage to his opponents. In California, Iowa, and Illinois Republicans divided over the Negro suffrage question, with both sides about evenly balanced.

The reaction reached even into Massachusetts. In June Governor John A. Andrew had written the Faneuil Hall meeting endorsing black suffrage, but he had also urged "temperate, philosophical and statesmanlike treatment" of the question and expressed his confidence in the President. Andrew urged President Johnson to visit New England to attend Harvard's Day of Commemoration in honor of the college's war dead. He hoped the President and Bostonians might be brought closer by the experience, but Johnson politely declined. As Andrew continued to urge moderation, the distance between him and Sumner, opened during Andrew's campaign for a Cabinet position months earlier, grew wider. In November, Andrew wrote the Senator urging him to cooperate with Johnson so far as possible and clearly signified his abandonment of Negro suffrage as a necessary measure of reconstruction. Sumner answered coldly, "Mr. S. hopes that the Governor will not
cease that watchfulness which has done him so much honor. He ventures to suggest that first & foremost 'among the arts & methods of peace,' which the Govr now wishes to cultivate, is justice to the oppressed, & he entreats the Govr. not to allow any negro-hater, with his sympathizers, to believe him, at this crisis, indifferent to the guarantees of Human Rights or disposed to postpone his efforts in their behalf."

Clearly the tide was running against the radicals. "... [E]very Republican convention has indorsed President Johnson, and ... the party, as a party, does not include negro suffrage among its issues," the conservative New York Times announced with pleasure. "The more the subject has been discussed, the more has it been seen to be encompassed with difficulties, and the more hearty has been the acquiescence in the wise conclusion of President Johnson to begin at least the work of reconstruction without any definite judgment upon it ..." The Radical drive was sputtering.

But the death-blow to the radical campaign for Negro suffrage came from Connecticut. There the people were to vote on a proposition to amend the state constitution to enfranchise blacks. All understood the necessity of its passage. Local Republican leaders worked hard to pass it. New York's radical newspapers directed their editorials to their northern neighbors. The Independent pleaded for victory. "On Monday next Connecticut is to decide whether her Christianity and Republicanism, being brought to the test,
mean anything. She will decide that day if she believes in the Bible of Christianity or the Slave Code of Carolina; whether in the Declaration of Independence of the Montgomery Constitution . . . ." Tilton exhorted.

But all readings failed; the voters of Connecticut rejected the Negro suffrage amendment, although Connecticut had only 2000 black citizens. "This unmanly vote is like the act of a strongman striking a lame child," wrote the disgusted Tilton. Connecticut, mourned Greeley, "has committed wrong from pure love of it."

The effect of Connecticut's vote was predictable. It meant there was no longer any possibility that Republicans would make Negro suffrage a party question. Conservatives pointed to the returns as justification for their reluctance. Similar amendments met defeat in elections held in November in Minnesota and Wisconsin. Yet in all three states well over half the voters who cast ballots for the Republican ticket (in Wisconsin, about three fourths) also supported Negro suffrage. And most of the Republicans who had not endorsed the proposition had abstained rather than vote against it. As Tilton complained, " . . . [I]f the Administration had chosen a policy of justice, instead of injustice, and asked from the people a verdict in favor of equal suffrage as a basis of permanent peace, the response would have been a sweeping approval throughout the North. On the contrary, the President virtually invited Connecticut to join with Alabama
in denying the negro his rights.

The radical Republicans had failed to force a shift in the party. The conservative Indiana Republican Jonathan D. Defrees wrote Doolittle, "A few months ago I feared there might be men enough among us so shortsighted as to commit us to the fatal dogma of negro suffrage as a condition precedent to a recognition of the rebel States. I have no such fear now. There is a healthy reaction taking place among our friends. . . .

"Before the adjournment of Congress Sumner, Thad Stevens, Phillips and Anna Dickenson [sic] will be about all that is left of the State-Suicide, negro suffrage party." To Welles too prospects seemed bright. "Things are working very well. . . . Some of the extreme Republicans of the Sumner school, are dissatisfied, but I think their numbers are growing less. . . . I think the policy of the Administration is growing in favor."

The radicals were forced to alter their tactics. Lieber warned Sumner that insisting on Negro suffrage in the present situation "would weaken you and our side altogether." Casting about for a new issue, James A. Garfield wrote Chase, "If we shall not be able to maintain the fight on the suffrage question alone, should we not make a preliminary resistance to immediate restoration and thereby gain time?"

But it was not certain that this tactic could succeed
either. Only by the most strenuous effort had Senate radicals prevented recognition of Louisiana without requiring Negro suffrage a few months before. The House Elections committee had reported in favor of seating representatives from Louisiana and Arkansas. If the President succeeded in reconstructing civil government in the South around loyal elements, it seemed he need not worry about congressional resistance.
CHAPTER VII
THE CENTER REPUBLICANS CHANGE THEIR MINDS

By October, 1865, the radical offensive had failed. Unwilling to divide the party, conservative and center Republicans refused to make commitment to Negro suffrage a test of party loyalty. They might favor suffrage extension personally, but they were not going to force their preference on the President or that minority of Republicans who opposed it. Given the course these Republicans had taken during the previous session of Congress, the future should have been bright for early readmission of reconstructed southern states. In the Senate recognition of southern states would come under the jurisdiction of the Committee on the Judiciary, which had led the fight for Louisiana restoration a few months earlier and whose chairman, Lyman Trumbull, had confided to Gideon Welles that he supported the President's policy. Moreover in the previous session Senate Democrats had joined radicals to filibuster Louisiana recognition to death. Now Democrats vociferously supported presidential reconstruction. In the House the conservative Elections committee had control of the question, and it had already reported in favor of seating Louisiana representatives. Both Dawes and Thomas D. Eliot, the most important proponents of quick restoration in the
Thirty-eighth Congress would be returning in the Thirty-ninth. Furthermore the conservatives could expect to receive important additional support. For General Nathaniel Prentiss Banks was returning to Congress. Banks' old Massachusetts congressional district had selected him to replace Daniel W. Gooch, who had died shortly after his reelection to Congress. Experienced and influential, Banks would receive an important committee assignment and carry great weight among his colleagues.

But even before the radical drive for Negro suffrage collapsed, events were altering the more conservative Republicans' position. The most important developments occurred in Louisiana.

Louisiana, in a large sense, provides the link between war-time and peace-time reconstruction. This had been the state in which reconstruction had advanced farthest during the war. Republicans had hammered out their conception of reconstruction in reference to it. Banks' and Lincoln's policy there had been to place the state in the hands of moderate Unionist elements, opposed to slavery but conciliatory towards the sensibilities of white southerners and allied with the moderate-conservative elements of the Republican party. Most Republicans had decided that this was the correct policy and in spring, 1865 attempted to recognize the Louisiana government over the opposition of radicals, who demanded the enfranchisement of black Louisianans. During the spring and summer of 1865 the Louisiana situation changed so radically that the
conservative and centrist Republicans changed their minds and decided it—and all the other southern states—must remain in the cold.

The Banks-Hahn political machine in Louisiana had begun to sputter as soon as Banks left Louisiana in 1864 to campaign for the state's restoration. Banks' replacement, Gen. Stephen A. Hurlbut, had been a Democratic lawyer and politician in Illinois. With ambitions of his own, he had little use for the New Orleans municipal authorities who had been the backbone of Banks' political organization. The new commander announced that he regarded the Hahn government merely provisional and subject to military power. Rejecting Hahn's political appointments, he substituted his own from among the old, pro-slavery Conservative Unionists, threatening Hahn's control of the patronage. That Hahn's control was slipping became apparent when the state legislature defeated his candidates to fill Louisiana's vacant seats in the United States Senate. By late 1864 Banks' Louisiana allies already were appealing for his aid. When Banks' efforts to persuade Congress to recognize the restored Louisiana government failed, Hahn realized his power was crumbling away. Louisiana was due to elect a new Senator to take his seat in the Thirty-ninth Congress. Originally the Banks-Hahn organization had intended that Banks take this seat, replacing the Senator elected to fill the short term in October, but now Hahn determined to take it for himself, hoping to secure a six-year term in the
Senate before his political machine failed completely. The outraged Banks condemned Hahn for "vacating the power which had been put into his hands at the cost of such outlays of treasure and blood."

With Hahn resigning in favor of the Senate, Lieutenant-Governor J. Madison Wells ascended to the governorship. Unquestionably one of the most unattractive men of the Civil War era, Wells was to fight on nearly every side in its political battles and betray them all. He began by abandoning Louisiana's Unionists. Recognizing the imminent collapse of the Banks machine, Wells allied himself with Hurlbut and the Conservative Unionists. He removed the loyal municipal authorities, replacing them with former Confederates. Putting his allies in control of the police department, Wells removed Banks' close friend, A. P. Dostie, as state auditor and replaced him with the man Dostie had defeated at the polls.

When Banks returned to his Louisiana command late in April he reversed most of Wells' decisions, restoring his moderate supporters to power, but Wells travelled to Washington to appeal Banks' orders directly to Johnson. Banks too informed the President of the situation, both himself and through intermediaries. Louisiana loyalists sent letters and delegations attacking Wells' course, but the governor responded by accusing his assailants of seeking power so they could defraud the state. Johnson hesitated, but Wells finally emerged victorious, and on May 17 Johnson ordered a reorganization of the military department of the Southwest. Banks
lost his command, but was to remain in New Orleans without any position or power. Banks had no alternative; he resigned.

With the war over returning Confederates hurried to take the loyalty oath required by the President for amnesty. Wells decided to win these elements to his support and make himself the master of Louisiana politics. Discarding the voting register prepared under his predecessor, Wells announced new elections for the fall with all white male citizens eligible to vote who had resided in the state for the previous twelve months and had taken the President's amnesty oath. Only the exceptions listed in Johnson's Amnesty proclamation were ineligible, unless they had already received their pardons from the President. In the elections Wells was nominated both by the Democrats, made up of returned Confederates, and the Conservative Unionists, although the rest of their tickets differed.

Banks and his supporters, completely without power in the state, coalesced with their old radical enemies in July to form the National Republican Association. One of the resolutions passed at the organizational meeting called upon the President to remove Wells, name a provisional governor, and reorganize the state "upon the basis of universal freedom and suffrage."

Louisiana Republicans did not despair of convincing President Johnson of his error. In July Banks still believed the President would change his course when he realized the
situation. Their hopes were buoyed by evidence the administration was striving to acquire the true facts. Late in May Stanton commissioned congressman John Covode to investigate the Louisiana situation for the War department. Covode reported that the situation was deteriorating. He concluded that those in control of Louisiana's government were out of harmony with the policy of the national government and if the situation continued the entire South would be influenced to array itself against the government. Although "unwilling to urge upon the Government the adoption of radical measures," Covode reluctantly concluded only the extension of suffrage to black men could restore Louisiana to the control of loyalists.

In September the Louisiana Republicans received another opportunity to appeal to the President, when Carl Schurz--touring the South at the President's request--arrived in New Orleans. Purposely ignoring the radical element led by Flanders, Durant, and Henry C. Warmoth, Schurz asked the conservative Republicans to give their views in writing. These he forwarded to the President with a covering letter agreeing with their conclusions. The protests came from Hahn, Banks, Thomas W. Conway and others of the Banks-Hahn faction. Even General Canby and the arch-conservative Senator-elect R. King Cutler joined in the effort. All agreed that Unionists could control the state if Johnson removed Wells. But "if things continue and as they are now, they feel powerless and despondent," Schurz wrote. Johnson again hesitated, telegraphing
Wells of the accusations September 18. But the governor again responded by impugning the honesty of his detractors, dismissing them as "unscrupulous and tainted opponents of your policy." Wells sent two of his lieutenants to confer with the President, and evidently they removed Johnson's doubts.

Even the most conservative Unionist elements in Louisiana were thoroughly alarmed. James G. Taliaferro, one of the claimants for a seat in the House of Representatives in the previous Congress and the Conservative Unionist candidate for Lieutenant-Governor, complained the rebels were regaining control of the state. "Their affrontery [sic] is astonishing," he exclaimed. The Conservative Unionist, A. P. Field, confided to Schurz that only the frantic efforts of the Conservative Unionists had deterred Wells from abrogating the 1864 Free-State constitution and reinstating the aristocratic constitution of 1852 as Democrats had wanted. He appealed to Schurz to persuade the President to order the military to prevent the registration of former rebels.

When the Democrats elected their state ticket in November, receiving four-fifths of the vote, even these Conservative Unionists joined the Republican protest. The men who had been most active in lobbying for recognition nine months earlier now opposed it. Field wrote Banks that "hatred of the Government and to the Union men is now more intense than it was in 1860 & 1861, and were we without the Protection of the Federal
troops in this State the union men would be persecuted and driven out of the country." Field, who had spent four months in the winter of 1864-1865 trying to win recognition for Louisiana, came to what must have been an almost unpalatable conclusion: "[I]f Congress recognises . . . the late election as valid and admits the members under it the union men of this State will be forced to leave here." In an effort to build united Republican opposition to recognition, the aristocratic conservative even wrote his old antagonist, Thaddeus Stevens, expressing the same opinions.

By October Louisiana's conservative Republicans were on the stump. In Massachusetts Banks told his audiences, "The death of President Lincoln . . . had led, momentarily only, I think, to a suspension of [Banks' and Lincoln's] . . . generous policy of organizing a Government of the Union men, excluding our enemies. . . . A change has come over the spirit of the people, and now the entire political power is given to the men who were prominent in the . . . rebel government. The Union men are disappointed; they are discouraged. . . . The true course to be pursued in Louisiana, and in every other of the rebel States, in my judgment is the same that has been pursued there before. **Put the government of the States into the hands of loyal men . . . .**" Speaking before the National Equal Suffrage Association in Washington, Hahn called for congressional legislation prohibiting apprenticeship laws, requiring free schools, and guaranteeing legal equality.
Finally, he endorsed an extension of the franchise to black soldiers and a literacy requirement for voters of both races. The Louisiana Republicans also made their influence felt privately. Banks, of course, had many friends in Congress, among them his colleague and old political ally, Henry Laurens Dawes, the conservative chairman of the House Elections committee. Louisiana Senator-elect R. King Cutler had worked closely with Lyman Trumbull in trying to win recognition for Louisiana during the Thirty-eighth Congress. Now he wrote his friend, "Rebels reign supreme here." "If Congress would admit La. reserving the right to regulate the franchise of her people White and Black, there would be no danger in the future," he suggested.

Republican disquiet grew as evidence mounted that southerners were not prepared to protect the rights of black and white Unionists or reward their faithfulness to the nation with political office. Newspapers carried disquieting accounts of brutality towards blacks and threats against white loyalists. The reluctance of many of the southern state conventions to repudiate the rebel debt and the new state legislatures' hesitation at ratifying the Thirteenth Amendment added to northerners' fears. Even more convincing were the new "Black Codes" southern legislatures passed in the winter of 1865-1866 to regulate their black populations.

Men who had led the fight for Louisiana recognition during the Thirty-eighth Congress now concluded recognition
would be inexpedient. The most important of the centrist Republican converts probably was Trumbull, since his committee would exert large influence over reconstruction legislation. But other conservative and moderate Republicans received similar information from Louisiana and other states and arrived at corresponding conclusions. William Pitt Fessenden, the most influential Republican in the Senate, expressed his doubts to his best friend, Senator James W. Grimes of Iowa. Senator Lot M. Morrill echoed his colleague's fears. Massachusetts Governor Andrew, in the same letter in which he urged moderation on Sumner, acknowledged he too had received discouraging reports from the South, and affirmed something had to be done. 15

Republican disquiet grew as conventions organized in other states under the President's authority demonstrated their reluctance to conform to the new national order. Even Henry J. Raymond, editor of the New York Times and spokesman for the Seward-Weed faction, worried "Public matters are getting foggy . . . The general opinion is that [the President] . . . is going too fast in his policy of reconstruction and that the rebel States must rest awhile longer under military rule." 16 In his newspaper Raymond, who was expected to be the administration spokesman in Congress, wrote, "With much regret we confess our disappointment. Admitting many honorable exceptions, we conclude (from every source of information within our reach) that public sentiment [in the South] is still as bitter and unloyal as in 1861 . . . ." Raymond pointed out
that the people and press of the North, "with the exception of a few extreme theorists . . . have been guided by most generous sentiments; they have had no words of malice; they have forborne the discussion of irritating topics; they have sought every feasible occasion to assure the Southern people of a willingness to forgive and forget . . . .

"And how are we met? . . . [E]very indication of their policy . . . seems to be in the wrong direction." Raymond admonished southerners that they were provoking a powerful reaction. "Already we are conscious of a decided change of feeling in this section," he warned.

As more Republicans concluded reconstruction was going badly, sentiment grew to delay readmission of their representatives into Congress. There were two primary reasons for this. First, Republicans simply feared that as matters now stood southern congressmen would unite with northern Democrats on most issues, restoring the pre-war coalition which had dominated the national government. If congressional legislation were needed to protect freedmen or southern loyalists, this coalition might be powerful enough to block its passage.

But more important yet was the constitutional framework in which Republicans viewed the war and reconstruction. During the war, most Republicans had justified extraordinary measures by arguing the conflict had forced a suspension of peace-time constitutional provisions. Unionists reached this conclusion by two different routes. Francis Lieber, the leading student
of government in mid-nineteenth century America, espoused
the first interpretation: "The whole Rebellion is beyond the
Constitution," he insisted. "The Constitution was not made
for such a state of things . . . . [T]he life of a nation
is the first substantial thing and far above the formulas
[for government] which . . . have been adopted." The Constitu-
tion had been intended to serve a nation which had been
forged by a common heritage and experience before and during
the war for independence. That nation had to be preserved,
even if the Constitution were violated. Thaddeus Stevens
was the most important American statesman to accept this view.
A second school argued that the Constitution itself incorporated
virtually unlimited war powers through the clause vesting in
Congress the power to prosecute war. These powers were as
much a part of the Constitution as its peace-time provisions,
but in a state of war the war powers naturally became more
prominent while other provisions receded into the background.

By justifying the massive war-time expansion of the
national governments' power in this way, Republicans believed
they had preserved the Constitution from contamination. With
war's end, the occasion for using the war powers--whether
under the Constitution's authority or outside it--would cease.
The limitations of the peace-time fundamental law would regain
their sway.

A second important conviction Republicans developed during
the war was that only the people of the southern states could
reorganize civil governments there. Lincoln and the Republicans in Congress shared this commitment to voluntarism, although they sometimes interpreted it rather loosely. Both presidential reconstruction under Lincoln and the congressional reconstruction bills during the war were essentially enabling acts. Under either program the President appointed a provisional governor to administer the state temporarily while the people themselves framed new constitutions and elected new officers. The provisional governors might regulate the election of delegates to the constitutional convention, and either the President or Congress might make it clear that they would withdraw military control from no state which did not meet certain conditions, but the people were not ordered to comply with those conditions. They could refuse and remain under military government. At some point, of course, this kind of "voluntarism" becomes coercion. But in constitutional theory, nonetheless, the new civil governments of the South were to spring from the authority of the southern people themselves.

As Republicans reluctantly concluded during the summer and fall of 1865 that they had to take some action to preserve the fruits of victory in the South, they found themselves limited by their war-time constitutional doctrines. By strictly differentiating between national powers during war and peace, they had preserved federal relations as they had existed ante-bellum. If the war were truly over, if Republicans restored
the southern states to normal relations within the Union, then
the national government would have no more power over those
states' domestic affairs than it had before the war, except
insofar as the Thirteenth Amendment might authorize Congress
to legislate to prevent reintroduction of slavery. As Wendell
Phillips said, once restore a state and "we have put a fence
between the Federal Government and the State Government. . . .
Put up the fence and the [national] law runs to it, not over
it, except in two or three specified cases." The implica-
tions were clear. "[T]he time is to come when each southern
State is to take its own local affairs into its own hands,"
the Boston Journal pointed out, "and the only security we can
have that it will then move on in a loyal orbit is to be found
in the permanent forces we shall have previously implanted
in it." The fruits of victory had to be secured before the
southern states were restored to proper relations in the Union.

Before Andrew Johnson's position had hardened, many Repub-
licans had decided the best internal force which they could
implant in the rebel states would be black suffrage. This
would force southern politicians to appeal to black voters for
election. One could hardly expect to get those votes by
advocating any violation of black men's rights. Negro suffrage
in the South had appealed to conservatives as well as rad-
cals. First, it would give black men protection within their
states without requiring a broad expansion of national govern-
ment power. As James Russell Lowell pointed out, the ballot
would give the freedmen "that power of self-protection which no interference of government can so safely, cheaply, and surely exercise in their behalf." Second, Negro suffrage could be instituted at the outset of the restoration process without doing violence to the Republicans' constitutional interpretations of reconstruction. Since the new civil governments in the South had to be organized by the southern people themselves, it should have been an easy matter to allow all southerners, black and white, to vote in the first elections for delegates to constitutional conventions. Republicans assumed that delegates elected in part by black votes would not restrict the franchise to whites in the new constitution. But the President had refused to allow blacks to vote in those elections, and with civil governments in the process of organization under presidential authority, the constitutional problem had grown knottier.

Some of the radicals forwarded a bold solution. The President had usurped the power of Congress in beginning the restoration process in the South, they argued. Congress should treat the southern states as conquered territory. Their state governments were overthrown, but the people and territory of the South still owed allegiance to the United States. Congress should give them territorial governments. In this way the President could appoint the territorial governor and the judiciary (only federal courts operate in United States territories) with the Senate's advice and consent, while the
people could govern themselves through a territorial legislature and the election of local officials, all under a supervisory power in Congress. Since Congress determines voting requirements in territories, blacks could be enfranchised by congressional action. As in any territory, the people could frame a state constitution and petition Congress for statehood. Again this constitution-making would be voluntary, but Congress could refuse the petition until the state presented a constitution which protected the rights of southern loyalists.

Consequently, this program still protected the old balance between the state and national government in the federal system. Once southern territories were granted statehood, they would have all the rights of other states, and the national government could no longer interfere with their internal affairs. This radical alternative provided a way for the national government to retain its power over the South for a long period under peace-time constitutional provisions but was still conservative in protecting the old federal system. The territorialization scheme was radical politically, however. It implied that Congress not only would refuse admission to the reorganized southern states, but that it would overthrow their governments completely, forcing the entire process to begin anew. Territorialization, therefore, meant a complete repudiation of the President's activities.

Conservative and center Republicans would not accept a program which manifestly would alienate the President and
divide the party. They determined to conciliate President Johnson by accepting his work as the basis for reconstruction. But if reconstruction were not to begin anew, they had to find a way to persuade the reorganized southern governments to protect the rights of southern Unionists and preserve the victory won on the battlefield. What emerged was a new justification for reconstruction which seemed to fit the situation perfectly and which also seemed consistent with past Republican constitutional doctrine.

The natural assumption had been that peace would restore the sway of peace-time constitutional limitations to the power of the national government. But some legal writers had suggested that it was up to the national government to decide precisely when peace had arrived. In that case the government might demand certain concessions in return for recognition that peace was restored. This view had been forwarded in the Atlantic Monthly as early as August, 1863: "The Rebel States will not cease to be enemies by being defeated . . . . They have invoked the laws of war, and they must abide the decision of the tribunal to which they have appealed. We may hold them as enemies until they submit to such reasonable terms of peace as we may demand." This doctrine had been popularized by Richard Henry Dana in the speech he had delivered to the Faneuil Hall black suffrage meeting on June 21. "The conquering party may hold the other in the grasp of war until it has secured whatever it has a right to acquire," he maintained.
Under this theory the national government still held great leverage over the reorganized states, without having to remand them to the status of territories or overturning their new governments. Dana advocated that Congress insist upon Negro suffrage as the main condition for the restoration of peace and—-with peace—-the restoration of the southern states' privileges in the Union. But the theory justified alternative requirements. The ratification of new constitutional amendments, for instance. The "grasp of war" theory received immediate and wide support. Collis P. Huntington, the railroad financier, wrote McCulloch that the doctrine met with favor in Boston. Ohio's conservative, new governor, Jacob D. Cox, House speaker Schuyler Colfax, William Pitt Fessenden, George S. Boutwell, Chief Justice Chase, John Sherman, William Lawrence, and Carl Schurz all expressed views similar to Dana's.

The influence of the "grasp of war" theory would be manifest in the policy Congress finally adopted. The first congressional reconstruction program would promise restoration of political privileges to the southern states upon ratification of the guarantees embodied in the Fourteenth Amendment. The second combined the enabling act approach with the "grasp of war" doctrine. Congress would require southerners to begin anew to reorganize their state governments, allowing blacks to participate in the process, and also would formulate conditions the new governments would have to meet before Congress
accepted their constitutions and released them from "the
grasp of war."

The "grasp of war" doctrine, like the territorialization plan, gave no permanent power to Congress. Once released from military control, southern states regained all their old prerogatives. Dana meant his program to preserve pre-war federal balance between the state and national governments. "[I]t would do irreparable mischief for Congress to assume civil and political authority in state matters," he wrote his friend Charles Francis Adams, Jr. immediately after his speech, "but it is not an irreparable mischief for the general government to continue the exercise of such war powers as are necessary until the people of these States do what we in conscience think necessary for the reasonable security of the republic."

Moreover, the guarantees would be given through voluntary state action, rather than national imposition. This might only be done under the pressure of continued exclusion from the Union, but again the states were not forced to do anything. They might choose to remain under military control if they preferred.

There was one more reason conservative and center Republicans felt it safe to adopt the "grasp of war" approach, with its continued exclusion of southern states. It seemed that President Johnson had adopted it too.

* * *

President Johnson's proclamations appointing provisional
governors in the southern states and instructing them to call constitutional conventions had said nothing about any requirements the states would have to meet before restoration to normal relations with the United States. The provisional governors were to exercise any power necessary "to present such a republican form of State government as will entitle the State to the guarantee of the United States therefor . . . ," Johnson said. He had given no indication of what provisions if any he considered necessary to "a republican form of State government." This led the Boston Advertiser to conclude that the President believed that as soon as he started the wheels of state government moving again the states automatically resumed their places in the Union.

This was the precise doctrine which Andrew Johnson would later insist he had acted upon, but in fact he had privately informed his provisional governors that he wished the state conventions to declare the secession ordinances null and void, repudiate the rebel debt, and abolish slavery within their states. Furthermore, he wanted the state legislatures which would be elected under the new or amended state constitutions to ratify the Thirteenth Amendment. At first these may have been no more than suggestions, consistent in theory with Lincoln's "suggestions" to Unionists reconstructing Tennessee, Arkansas, and Louisiana during the war.

Democrats took advantage of the ambiguity of Johnson's policy. Adopting the position of the Democratic members of
the House Committee on Elections during the second session of
the Thirty-eighth Congress, leading Democrats argued for
immediate restoration of the reorganized southern state govern-
ments to normal relations in the Union. Pointing to the Pre-
sident's original reconstruction proclamations, they inter-
preted the President's position to be that once civil govern-
ments in the states were reinstituted, they automatically
resumed all the privileges and duties of statehood. The
national government—whether President or Congress or courts—
immediately lost any war power they may have once held over
southern territory. Democrats vociferously supported the
President and what they proclaimed to be "his policy," pri-
vately offering him the political support of the Democratic
organization and urging the appointment of a Democratic
Cabinet.

But as conservative and moderate northern Republicans
became alarmed at events in the South, reports multiplied that
the President too was dissatisfied. The political ascendancy
of the returned rebels in many of the southern states became
manifest in the actions of the constitutional conventions. In
North Carolina, South Carolina, and Georgia the conventions
refused to repudiate the rebel debt. Many of the new state
legislatures hesitated to ratify the Thirteenth Amendment.
Johnson reacted by ending his policy of non-involvement.
Bluntly, he wrote the governors that he would recognize no
restored state government which did not meet his "suggested"
requirements. His letters, immediately made public, fit exactly into the mold of the "grasp of war" doctrine. The southern state governments would have to meet his conditions before he would recognize them as having resumed loyal relations to the Union.

The *New York Times*, the opinions of which took on added importance because of editor Raymond's intimacy with Secretary of State Seward, pointed to Johnson's actions as demonstrating the difference between the President's reconstruction policy and that of the Democrats, who vigorously proclaimed their support for him. The Democratic theory, Raymond argued, "is that the close of the war of itself revives the relations of the rebel States to the Union, and that the practical restoration consists only in the civil reorganization of the States by the Southern people themselves, in accordance with their own will. On the other hand President Johnson's principle is, that the abeyance of constitutional rights does not pass away with the mere close of the war; that it must terminate only at the discretion of the government against which the rebellion was directed, and that the first duty of the government is to see that it continues until all obligations are fulfilled and safeguards established. The Democratic party considers that the Southern States have a right to a restoration immediate and unconditional. President Johnson, on the other hand, deems it to be both his right and his duty to impose conditions."
At the same time Johnson began to inform leading Republicans that he considered his policy an experiment. He authorized Missouri Senator John B. Henderson to tell audiences he personally favored Negro suffrage and repeated his conviction in his published interview with George Luther Stearns. He told Ohio congressman Robert C. Schenck that he would intervene in the southern states if his experimental policy failed to secure the ascendancy of Unionists, and in a two hour interview convinced the influential Fessenden that he was in complete agreement with the party on all issues but the imposition of black suffrage.

His Cabinet joined in the campaign. McCulloch assured the doubting Sumner that the President's policy was "but an experiment." "If it fails," he explained, "it will not be the fault of the President; and he will then be at liberty to pursue a sterner policy, and the country will sustain him in it. Rebels and enemies will not be permitted to take possession of the Southern States, or to occupy seats in Congress, or to form coalitions with the Northern Democracy for the repudiation of the National Debt or a restoration of Slavery. . . . No action of his is final . . . ." And he added, "If he makes mistakes and does not rectify them, Congress has the power to do it."

But Secretary of State Seward played the most important role. Recognizing that the Democrats were making a strenuous effort to win the President's support, he launched a campaign
to commit the President to a course which would insure harmony with the conservative and moderate Republicans and alienate the Democrats. One element in his strategy was to highlight the differences between the reconstruction policy of the President and the Democrats. Raymond's editorial in the New York Times was part of that effort. A second was to assure Republicans that the President intended to leave final disposition of reconstruction questions to Congress.

Seward began his effort to commit the administration to this course when Mississippi's provisional governor, William L. Sharkey, asked President Johnson to order the military authorities to release an accused murderer into civil custody. Seward answered, "The President sees no reason to interfere with General Slocum's proceedings. The government of the State will be provisional only until the civil authorities shall be restored, with the approval of Congress. Meanwhile, military authority cannot be withdrawn." Seward followed this with a communication to the provisional governor of Florida, William Marvin. Commenting on Marvin's proclamation calling for the election of delegates to the required state convention, Seward--indicating he spoke for the President--admonished, "It must . . . be distinctly understood that the restoration to which your proclamation refers will be subject to the decision of Congress." Seward determined to press
his campaign in the Cabinet. Late in September he read the
draft of a letter to one of the provisional governors informing
him that the President intended to continue the provisional
governments in power until Congress decided whether to recog-
nize the civil governments founded under the new state con-
stitutions. But Welles immediately objected and Johnson
ordered Seward to omit any reference to Congress from any of
his communications.

Despite this rebuff the Times continued to assure Repub-
licans that the President would defer to Congress' decision
in the recognition of the southern regimes he had organized.
Furthermore, the Times emphasized the point Seward had pressed
on the Cabinet: "All the late insurrectionary States are still
under a military government. The Provisional Governors who
are at their head were appointed by the National Executive by
virtue of his war powers. By virtue of these same powers they
are still retained at their posts, even in those States in
which the people have elected new Governors. . . . It still
rests absolutely with the government to determine in its own
high discretion, whether the late insurrectionary States have
done all that can reasonably be required of them . . . . Until
that decision is reached and acted upon, the insurrectionary
States must remain as they are, under military law . . . ."
That decision would be Congress', Raymond assured his readers.
". . . [T]he military government of the States will be removed
as soon as their representative functions are revived."
As the Times publicized what many believed to be the administration policy, many Republicans gained confidence in the President. "... [T]he events of each day make it clearer and clearer that he means to do right," Godkin concluded. Conservative and moderate Republican organs happily predicted harmony would prevail in Republican ranks. Even radical Jacob M. Howard took heart. "I still have... confidence that Mr. Johnson will stand with us," he wrote Sumner. "His policy, that of Lincoln, has been liberal, indulgent to a fault. I cannot believe he will fail to see that he has been warming a viper. I think his late dispatches & notes indicate his distrust of the experiment, & his resolution to be more rigid & exacting," he continued hopefully. And although he still favored black suffrage, Howard urged, "... [W]e ought to do all in our power to avoid a break with him & to keep him with us... We must not suffer our strength to be divided."

Johnson encouraged this optimism as he himself raised the conditions required for restoration. As the new southern state legislatures demonstrated their inclination to limit as much as possible the rights of the freed slaves, Johnson informed Mississippi Governor-elect Benjamin G. Humphreys that before he would withdraw military authority he required "loyal compliance with the laws and Constitution of the United States and the adoption of such measures giving protection to all freedmen or freemen in persons and property without regard
to color . . . "

As the meeting date of the Thirty-ninth Congress approached, speaker of the House Schuyler Colfax decided to take advantage of the growing optimism to voice the opinions of moderate Republicans and outline their program. Responding to a serenade in Washington on November 18, the speaker warmly endorsed the President's decision to begin the restoration process in the absence of congressional legislation. This was preferable to leaving the southern people under purely martial law. He endorsed the minimum conditions the President had set for restoration, and he went on to list several more conditions he believed all Union men would endorse. First, the freedmen's civil rights must be protected (the President's letter to Humphreys had not yet been published). They must be guaranteed equality before the law. Second, Colfax wanted the southern people to ratify the amendments to their state constitutions, adopted so reluctantly under presidential pressure. Finally, he urged caution in restoring privileges to the rebellious states. "Let us rather make haste slowly," Colfax suggested, until the southerners show a more tractable spirit. The address received the immediate endorsement of the conservative and moderate Republican journals which had been supporting the President. Morton's organ, the Indianapolis Daily Journal, agreed the speaker "spoke the determination of his party . . . ." Other journals followed suit.\[49\]

Colfax's speech clearly indicated that the moderate and
conservative Republicans had abandoned Negro suffrage as a guarantee of reconstruction. If the New York Times had accurately gauged the President's position, if his communications to the provisional governors meant what they implied—that the President believed the national government could hold the southern states under military control until they met certain conditions—then harmony between the President and the majority of Republicans in Congress was assured. Even if the President had been wavering between the policy advocated by the Democrats and that advocated by his Republican confidantes, Colfax's speech and the immense enthusiasm it aroused among even the most conservative Republicans had to bring the President over to the Republican position. "You have spoken 'the word in season,'" James G. Blaine congratulated Colfax. "The omens are bright now for the future—and the President sees them!!!"

As if in response to the Republicans' bubbling optimism, the President on November 27 advised South Carolina's provisional governor, Benjamin F. Perry, not to send the state's congressman-elect to Washington immediately. "On the contrary," he wrote, "it will be better policy to present their certificates of election after the two Houses are organized . . . ." The President was vague about just what Congress' rights were in the matter ("it will . . . be a simple question under the Constitution of the members taking their seats," he wrote), but he clearly rejected the Democratic contention that the southern states had already resumed all their rights
and privileges in the Union and that the names of their representatives must be called upon the organization of the House, subject to challenge if any of them could not take the required oaths. And once again he urged the adoption "of a code in reference to free persons of color that will be acceptable to the country, at the same time doing justice to the white and colored population."  

Johnson wrote his provisional governor of North Carolina, William W. Holden, who had just been defeated in his state's gubernatorial election by a rebel-supported candidate, that the election had "greatly damaged the prospects of the State in the restoration of its governmental relations." He warned, "Should the action and spirit of the legislature be in the same direction, it will greatly increase the mischief already done and might be fatal."  

Even Sumner was somewhat mollified. Since he had de-emphasized Negro suffrage in favor of delay in restoration, many Republicans believed even he might remain in harmony with the administration. Fessenden said his views had "modified down to just the right point" and George Bancroft wrote Johnson that he had succeeded in calming the Senator during a three hour visit. Sumner remained firm in his resolution to deliver speeches in the Senate critical of southern conditions, Bancroft wrote, but was "resolved to cultivate friendly relations with you." Sumner immediately went to visit the President on his arrival in the capital. But he was profoundly
disappointed with the result. "He does not understand the case," he wrote. "Much that he said was painful, from its prejudice, ignorance, and perversity."

But other Republicans remained enthusiastic. Indiana Senator Henry S. Lane, just arrived in Washington, found "there is good feeling here & less excitement on the subject of reconstruction . . . then [sic] in Indiana." Happily, the New York Times recorded the disappointment of those who had looked for the disruption of the party. "Indeed the Union party seems to be quite as thoroughly united upon all cardinal points of national policy, and quite as harmonious in support of the President, as any party, equally strong in numbers and popular support has ever been before," the Times noted. The radicals had little support for their policies, few Republicans insisted on Negro suffrage as a condition for restoration, and the remaining, minor differences would "be harmonized without difficulty."

The first session of the Thirty-ninth Congress opened December 4, 1865. As expected the secretaries of the House and Senate listed none of the southern claimants' names on the roll of the houses, and the congressmen settled back to await the annual message of the President. Here would be the great test; here the President would inform the country whether the Republicans' optimism had been well-founded.

Seward had been hard at work. He had written a draft of the President's message as he hoped Johnson would deliver
it. It marked the culmination of his efforts. The power to admit southern representatives, Seward wanted Johnson to say, "belongs, not to the executive department of the government, but to Congress. I leave it there with entire confidence . . . ." He hoped the President would remain flexible: "I have not at any time fixed, and it is not my purpose now to insist upon . . . a detailed scheme to be applied in all cases for the restoration of their [the southern states'] political connection with the Union. On the contrary, I have held, and with the sanction of Congress shall for the present continue to hold . . . such control therein as would be sure to prevent anarchy . . . ."

But the President rejected such explicit language. Instead he turned to George Bancroft, the great historian, to prepare a message brilliant in its ambiguity. Had Republican conservatives and moderates known that the President had rejected Seward's clear enunciation of policy, they might have been less pleased with the final product. But they were ignorant of the maneuvering behind the scenes. The conservative editor of the Wisconsin State Journal happily reported "the hearty satisfaction which glowed upon the faces of the members of the Union side as they listened . . . ." The message appeared to be all the conservative and centrist Republicans could desire. The President, as expected, explicitly rejected black suffrage for the South, but he explained his decision to begin the restoration process in the South in
precisely the same terms Colfax had employed, emphasizing the preferability of civil to military government. The President affirmed his commitment to securing to the freedmen "their liberty and their property, their right to labor, and their right to claim the just return of their labor." ... [I]t would remain for the States whose powers have been so long in abeyance to resume their places in the two branches of the National Legislature, and thereby complete the work of restoration," the President wrote. "Here it is for you, fellow-citizens of the Senate, and for you, fellow-citizens of the House of Representatives, to judge, each of you for yourselves, of the elections, returns, and qualifications of your own members." Later Republicans could look back upon this message and recognize that the President had conceded nothing, that the careful language left him uncommitted on all essential points. But in light of Johnson’s activities, his communications to his provisional governors, his assurances to party leaders, and the simple fact that he was the titular leader of the party, Republicans could only interpret the message as they did—a clear statement by the President that though he desired speedy restoration, he recognized Congress as the final judge of reconstruction, a clear indication he shared their concern for the safety of southern loyalists. Banks confidently informed a happy audience that "all fear of dissensions between the different branches of the Government representing the loyal people is removed. The
country will be relieved of its apprehensions, the friends of
the Government encouraged and its enemies depressed." Virtually
all Republicans concurred, but as the Nation's correspondent
observed, "The message . . . is praised most loudly by the
most moderate . . . ." Morton and Bancroft congratulated
Johnson that the conciliatory tone of the message put the
radicals in an untenable position. "In less than twenty days
the extreme radical opposition will be over," Bancroft pre-
dicted.

The Thirty-ninth Congress had opened auspiciously for
the conservative and centrist Republicans. But radicals'
feelings were mixed. Many were happy at the prospect of har-
mony; others feared that Congress might concede too much to
the President's desire for haste. Stevens fretted, "We shall
be betrayed by the Senate I fear--Fessenden! Trumbull
Doolittle et al. are all weak kneed, or trimming. . . . The
House I believe will be right, if not over-ruled by the
Senate." The opening days would indicate the direction of
Congress, as it turned its attention to the great questions
before it.
CHAPTER VIII

CONSERVATIVE RECONSTRUCTION--PART ONE

With the outlook good for harmony between the President and conservative and center Republicans, Congress began to formulate congressional reconstruction policy. Despite radical resistance, conservatives and centrists would take the lead in this endeavor. Pursuing a conservative policy early in the session in order to conciliate the President, they would continue it after his desertion, fearing that to do otherwise would insure the disruption and defeat of the party.

As indicated in Chapter III radicalism depended in large part on Republicans' perceptions of political practicality rather than differences in principle. At no time was this more evident than from August, 1865--when Andrew Johnson made clear his opposition to black suffrage in the South--to December, 1866, when the second session of the Thirty-ninth Congress opened. Most conservatives did not differ widely from radicals in their views of abstract justice; they differed in their commitment to carrying out their principles when balanced against other factors. Many conservative and center Republicans had endorsed black suffrage by summer, 1865, but they decided not to press their convictions once President Johnson indicated the depth of his opposition. They based
their decision not merely on deference to the President's wishes, but on the conviction that without his support black suffrage was unattainable. The results of the suffrage referenda in Connecticut, Wisconsin, and Minnesota convinced them they were right.

The reluctant abandonment of Negro suffrage by those who once espoused it brought them closer to the positions of those Republicans, like Doolittle, Grimes, Trumbull, Morton, and Governor Cox of Ohio, who had never endorsed suffrage extension at all.

Most Republicans shared the conviction that the southern states should be restored by the joint action of both houses of Congress and the Executive—by law. Until that was done no legal governments existed in the South; the Johnson governments were provisional. As the lawmaking power Congress had final authority over those governments, "I assert the power in its fullest extent," Fessenden said. "I assert that by the civil war . . . [the rebel states] lost all . . . rights . . . . I assert that they have many things to do in order to regain that position. I assert that in the mean time we have a right to govern them . . . ; and I assert, moreover, that they cannot come back here to occupy these seats or seats in the other House until we . . . be satisfied ourselves and decide that they are entitled to occupy these seats again; and that we have a right to take all the time necessary in order to give ourselves entire satisfaction on that subject . . . ."
On this point the majority of conservative and centrist Republicans differed from a conservative minority which argued not only for immediate admission of southern states on the ground of expediency, but denied that Congress had any right to exclude loyal representatives or Senators from states restored under presidential authority as long as their credentials were in order.

But this difference was not so great as it appeared. For while radical Republicans might propose the employment of Congress' power over the southern states to require black suffrage, institute territorial governments, and to exclude them from normal relations in the Union for an indefinite time, conservatives and centrists had no such intention. Agreeing Congress had plenary power over the southern states, non-radicals like Fessenden continued, "it is another question about what we should do; I have been talking about the right. Now I hold that the good of this country requires that these States should be admitted ... just as soon as it can be done consistently with the safety of the people of this country ... ." To do otherwise, Fessenden warned, would "demoralize" the nation. "We are teaching ourselves to exercise a power which the Constitution did not contemplate ... ." Left unsaid, but just as important, was the patent fact that to abolish Johnson's state governments, to govern them by law of Congress, meant to alienate the President completely and to risk the failure of the party of the Union. These considerations carried little
weight with the radicals. "I have ever had one polar star to guide my action," Wade affirmed with pride, "and to that I adhere whether I am in the majority or the minority, and I never intend to be tempted from it one single inch. I fix my eye upon the great principle of eternal justice . . . . Talk not to me about unpopular doctrines, and endeavor not to intimidate me by the intimation that I shall be found in a minority among the people: . . . I know that I tread in the great path of rectitude and right, and I care not who opposes me." With such differences in temperament and attitude rather than principle, radicals and conservatives hammered out differing programs for reconstruction.

The conservatives and centrists (see Chart Nos. 24 and 25 for the approximate make-up of these groups in this session of Congress) predicated their entire program upon the assumption that Negro suffrage would not be at the basis of reconstruction and that the governments created under presidential authority in the South would be the ones eventually restored to normal relations in the Union. For this reason their policy consisted not so much of reconstructing the political, social, or economic institutions within the states as trying to protect northern and freedmen's interests from a potentially hostile restored South. Therefore, the first element in the conservative-centrist program was a constitutional amendment to change the basis of representation in Congress.

Under the Constitution only three fifths of the slave
CHART TWENTY-FOUR

Radicalism in the House of Representatives
39th Congress, First Session

GROUP #0 (EXTREME CONSERVATIVE DEMOCRATS AND ONE CONSERVATIVE UNIONIST)

Aaron Harding, Ky.
Harris, Md.
Hiram McCullough, Md.
William E. Niblack, Ind.
Lawrence S. Trimble, Ky.
Grider, Ky.
John A. Nicholson, Del.
Thomas E. Noell, Mo. (Unionist)
George S. Shanklin, Ky.
Charles Sitgreaves, N.J.
Strouse, Pa.
Edwin R.V. Wright, N.J.

Resolution that treason ought to be punished, resolution that President is due thanks for his use of the war power to protect Union citizens and freedmen in the South, motion to introduce Indemnity Act Amendment

GROUP #1 (PRO-JOHNSON DEMOCRATS AND EXTREME CONSERVATIVE UNIONISTS)

Ancona, Pa.
Teunis G. Bergen, N.Y.
Benjamin M. Boyer, Pa.
Brooks, N.Y.
Chanler, N.Y.
Coffroth, Pa.
Dawson, Pa.
Charles Denison, Pa.
Eldredge, Wis.
Finck, Ohio
Adam J. Glostrenner, Pa.
John Hogan, Mo.
Edwin N. Hubbell, N.Y.
James M. Humphrey, N.Y.
Johnson, Pa.
CHART TWENTY-FOUR (CONT.)

Michael C. Kerr, Ind.
LeBlond, Ohio
Samuel S. Marshall, Ill.
Hodgdon, N.Y.
Samuel J. Rand, Pa.
Burwell C. Ritter, Ky.
Rogers, N.J.
Ross, Ill.
Stephen Taber, N.Y.
Nelson Taylor, N.Y.
Anthony Thornton, Ill.
Charles H. Winfield, N.Y.
Charles E. Phelps, Md. (Unionist)
Lovell H. Rousseau, Ky. (Unionist)
Smith, Ky. (Unionist)

--- Resolution that no southern representative may be seated until the Joint Committee on Reconstruction reports, resolution calling for trial of Jefferson Davis, passage of XIV Amendment, resolutions endorsing continued military presence in south, Freedmen's Bureau bill, 2d Freedmen's Bureau bill, Habeas Corpus bill, resolution appointing Joint Committee on Reconstruction, Civil Rights bill

GROUP #2 (CONSERVATIVE REPUBLICANS)

Robert S. Hale, N.Y.
Andrew J. Kuykendall, Ill.
Henry J. Raymond, N.Y.
Whaley, W.Va.
William A. Darling, N.Y.
Davis, N.Y.
Dawes, Mass.
Columbus Delano, Ohio
*John H. Farquhar, Ind.
Griswold, N.Y. (formerly Dem.)
Ralph Hill, Ind.
Chester D. Hubbard, W.Va.
Kasson, Iowa
John H. Ketcham, N.Y.
Addison H. Laflin, N.Y.
Marvin, N.Y.
Randall, Pa.
Thomas N. Stillwell, Ohio
Robert T. Van Horn, Mo.
Henry D. Washburn, Ind.
Blow, Mo.
CHART TWENTY-FOUR (CONT.)

Ralph P. Buckland, Ohio
George V. Lawrence, Pa.

--- Amendment to Freedmen's Bureau bill ordering the commissioner not to return lands given to freedmen in the Sea Islands to former owners, resolution granting floor privileges to claimants from Arkansas, resolution indicating recognition of the Johnson-authorized government in Tennessee, compromise adjournment resolution, tabling of Reconstruction bill

GROUP #3 (CONSERVATIVE CENTER REPUBLICANS)

Dumont, Ind.
Garfield, Ohio
J. H. Hubbard, Conn.
James R. Hubbell, Ohio
William A. Newell, N.J.
Pike, Me.
*John A. Bingham, Ohio
Hezekiah S. Bundy, Ohio
Reader W. Clarke, Ohio
Dewing, Conn.
Eckley, Ohio
Benjamin Eggleston, Ohio
*Thomas W. Ferry, Mich.
*Grinnell, Iowa
Hulbert, N.Y.
William H. Koontz, Pa.
Longyear, Mich.
McIndoe, Wis.
Samuel McKee, Ky.
George F. Miller, Pa.
Moorhead, Pa.
Morris, N.Y.
Patterson, N.H.
Tobias A. Plants, Ohio
*A. H. Rice, Mass.
*Rollins, N.H.
Thayer, Pa.
Samuel L. Warner, Conn.
W. B. Washburn, Mass.
*Woodbridge, Vt.
*George W. Anderson, Mo.
*Delos R. Ashley, Nev.
Baldwin, Mass.
Beaman, Mich.
*Nathaniel P. Banks, Mass.
Donnelly, Minn.
Hooper, Mass.
Demas Hubbard, N.Y.
Orth, Ind.
Sloan, Wis.
Upson, Mich.

--- Readmission of Tennessee, adjournment

GROUP #4 (RADICAL CENTER REPUBLICANS)

John F. Benjamin, Mo.
*Driggs, Mich.
Roswell Hart, N.Y.
*John Lynch, Me.
*Morrill, Vt.
J. H. Rice, Me.
*Scofield, Pa.
CHART TWENTY-FOUR (CONT.)

*Samanuel Shellabarger, Ohio
*F. Thomas, Md.
Henry Van Aernam, N.Y.
Andrew H. Ward, Ky.
Martin Welker, Ohio
*Windom, Minn.
*Ames, Mass.
*Jehu Baker, Ill.
John H.D. Henderson, Ore.
Sidney T. Holmes, N.Y.
*O'Neill, Pa.
*Halbert E. Faine, Wis.
Perham, Me.
*John L. Thomas, Md.
*Burt Van Horn, N.Y.

---- Resolution granting floor privileges to Tennessee claimants, readmission of Tennessee

GROUP #5 (RADICALS)

*Allison, Iowa
*John Bidwell, Calif.
  Brandegee, Conn.
  Henry P.H. Bromwell, Ill.
  Broomall, Pa.
*Sidney Clarke, Kans.
*Cobb, Wis.
*Farnsworth, Ill.
*Abner C. Harding, Ill.
*Higby, Calif.
*Hotchkiss, N.Y.
*Hubbard, Iowa
*Ingersoll, Ill.
  John R. Kelso, Mo.
  Ulysses Mercur, Pa.
*Samuel W. Moulton, Ill. (formerly Dem.)
  Price, Iowa
*Schenck, Ohio
*John Wentworth, Ill.
*Wilson, Iowa
  Stephen F. Wilson, Pa.
*Ashley, Ohio
*Loan, Mo.
  McClurg, Mo.
  Starr, N. J.

---- Readmission of Tennessee, resolution denying House the constitutional right to fix the qualifications of electors in the several states
GROUP #6 (EXTREME RADICALS)

*Boutwell, Mass.
Eliot, Mass.
*Jenckes, R.I.
*Kelley, Pa.
*Williams, Pa.


*Denotes radical vote against adjournment until December, 1866.

For a list of the roll calls upon which this chart is based see Appendix X.
CHART TWENTY-FIVE

Radicalism in the Senate
39th Congress, First Session.

GROUP #0 (DEMOCHATS AND ONE JOHNSON CONSERVATIVE ELECTED AS A UNIONIST)

Buckalew, Pa.
Cowan, Pa. (Johnson Conservative)
Davis, Ky.
James Guthrie, Ky.
Hendricks, Ind.
Johnson, Md.
McDougall, Calif.
Nesmith, Ore.
Riddle, Del.
Saulsbury, Del.

---- Freedmen's Bureau bill,
Civil Rights bill

GROUP #1 (JOHNSON CONSERVATIVES)

Dixon, Conn.
Doolittle, Wis.
Lane, Kans.
Daniel S. Norton, Minn.

---- Resolution creating Joint
Reconstruction Committee,
resolution to exclude southern
representatives until both
Houses act, resolution to seat
representatives from Arkansas,
Freedmen's Bureau bill veto,
Civil Rights bill veto

GROUP #2 (CONSERVATIVE REPUBLICANS)

Foster, Conn.
Van Winkle, W.Va.
Willey, W.Va.
Anthony, R.I.
Harris, N.Y.
*Henderson, Mo.
Morgan, N.Y.
Trumbull, Ill.
CHART TWENTY-FIVE (CONT.)

---- Seating Senator John P.
Stockton (D.-N.J.), first
vote on the tenure-of-office
amendment to the Post Office
Appropriation bill

GROUP #3 (CONSERVATIVE-CENTER REPUBLICANS)

Sherman, Ohio
(CENTER REPUBLICANS)
Clark, N.H.
Aaron H. Cragin, N.H.
George F. Edmunds, Vt.
Pessenden, Me.
Grimes, Iowa
Kirkwood, Iowa
Lane, Ind.
Morrill, Me.
Sprague, R.I.
George H. Williams, Ore.
(RADICAL-CENTER REPUBLICANS)
Conness, Calif.
John A.J. Creswell, Md.
*Howe, Wis.
Ramsey, Minn.
*Wilson, Mass.

---- Adjournment before vote on
Civil Rights bill veto to
allow ailing Democrat to vote,
prohibition against appointing
West Point cadets from rebel
states, admission of Tennessee,
black suffrage amendment to
XIV Amendment

GROUP #4 (RADICAL REPUBLICANS)

*Brown, Mo.
*Chandler, Mich.
Howard, Mich.
Nye, Nev.
*Pomercy, Kans.
*Sumner, Mass.
*Wade, Ohio
*Yates, Ill.

NOT VOTING: Foot, Vt. (Rep.); Joseph S. Fowler, Tenn. (Rep.);
David T. Patterson, Tenn. (Unionist allied with Democrats);
Edmund G. Ross, Kans. (Rep.); John P. Stockton, N.J. (Dem.);
Wright, N.J. (Dem.).
CHART TWENTY-FIVE (CONT.)

*Voting in favor of black suffrage amendments to Tennessee admission and XIV Amendment.

For a list of the roll calls upon which this chart is based, see Appendix IX.
population in southern states were counted in determining each state's proper representation in the House of Representatives. With abolition, the entire population would be counted, increasing the number of congressional seats to which southern states would be entitled. If blacks did not vote, the ballot of a white man in South Carolina, where blacks made up more than one half the population, would count twice as heavily in congressional and presidential elections as the ballot of a northerner. To remedy the inequity, conservative and centrist Republicans favored an amendment to the Constitution which somehow would make congressional representation more consistent with the number of voters in a state. This was a measure necessary only if Republicans did not intend to force black suffrage on the reluctant South.

Conservatives and centrists further insisted that the Constitution be amended to prohibit the assumption of the Confederate debt or the repudiation of that incurred by the Union in subjugating the South. Again the amendment was necessary because Republicans feared and expected that power in the South would be wielded by those who had led and aided the rebellion. Third, Republicans insisted that only men who could take the "ironclad" test oath be admitted to Congress. Fourth, Republicans demanded equal civil rights for freedmen with whites. This vague term included rights of property and physical security and equal access to the courts which protected them. Whatever else "civil rights" did include, it
emphatically did not include political privileges. Finally conservative and centrist Republicans endorsed the conditions required by the President—the ratification of the XIII Amendment, repudiation of the rebel debt, and the nullification of secession ordinances. Individual conservatives or moderates might phrase their demands differently or demand something more. Many desired a constitutional amendment clearly rejecting the right of secession and nullification, for instance. Some desired to enfranchise blacks in the District of Columbia, where Congress has absolute jurisdiction under the Constitution. Others were willing to restore Tennessee and perhaps Arkansas immediately. But nearly all agreed to the terms outlined above. Even those conservatives who denied Congress' power to exclude the southern states from representation generally agreed to the propriety of the conservative-center program and would vote for the legislation which carried it out.

Radicals did not oppose the policy advocated by more conservative Republicans. They demanded more. Yet radicals seemed less in agreement than non-radicals in determining what they believed to be the proper course. One common denominator was a continued insistence on black suffrage. "There are many ways of human government in the world," radical George Luther Stearns observed, "but there is only one right way, and that is the way of a democratic republic, or a representative democracy, in which every person unconvicted
of crime, of mature age and sound mind, without respect to
color or pecuniary condition, enjoys the right to voting for
and selecting the makers and executors of the laws of the
community in which the voter may reside." No adequate recon-
struction was possible unless it rested on the democratic
principle. ". . . Equal manhood suffrage for all men in the South is the right way, and the only right way."

By advocating black suffrage, radicals already risked
the displeasure of the President, but even more likely to
alienate him was the mode by which they proposed to secure
it. They were willing if necessary to proceed by constitu-
tional amendment—a course which even some conservatives
supported—but most radicals desired to reorganize the southern
states completely on the basis of equal suffrage, overthrowing
the Johnson governments beginning the reconstruction process anew. Many, probably a large majority, hoped to erect terri-
torial governments in the South. Southerners, black and
white, could elect territorial legislatures and officials;
they would enact their own laws. But Congress would retain
ultimate jurisdiction. In this way southerners, especially
black southerners, would be educated in the processes of
democratic government. These radicals wanted southern states
to undergo "a probationary training, looking to their restora-
tion when they should prove their fitness for civil govern-
ment as independent states," Julian explained later. They
knew, he wrote, "that no theories of democracy could avail
unless adequately supported by a healthy and intelligent public opinion. They saw that States must grow, and could not be suddenly constructed where materials were wanting . . . ."  

Many radicals further insisted on a national guarantee for the education of the newly freed black men. Like the probation they envisaged, education would render black men fit for the responsibilities of democratic government. Others, like Stevens and Julian, urged that the national government endow the freedmen with the confiscated and abandoned lands of their former owners. But with so many Republicans reluctant even to stand on the demand for black enfranchisement, radicals were forced to concentrate on this great, fundamental requirement, the minimum without which reconstruction, they believed, would be but a sham. During the first session of the Thirty-ninth Congress, questions of education, confiscation, land reform, and territorialization remained in the background.  

The radicals' attitude towards the President seemed to be mixed. They insisted they desired no split with the Chief Executive, but they did not intend to let his conservatism sway them from their course. No letters or speeches exist to prove they wanted the President to break with the party. But they must have realized that so long as Republicans determined to conciliate the President radical policies had slight chances of adoption. The final rupture could not have occasioned much grief.
The conservatives and centrists, on the other hand, had every reason to believe the President would cooperate with their program. They had rejected the two proposals which were calculated to antagonize him—black suffrage and a new reorganization of the southern states. It seemed inconceivable he should object to the constitutional amendments they had suggested, they seemed so eminently just and uncontroversial. Johnson himself had called for the protection of freedmen's rights in his annual message and his commissioner of the Freedmen's Bureau had called for such legislation in his report to Congress. If they could secure such protection for freedmen and northern interests, the non-radicals would make no issue with the President over Negro suffrage. The radicals must acquiesce or bolt the party. The President, then, was in a strong position as the Thirty-ninth Congress met.

It is extremely difficult to understand the processes through which Andrew Johnson arrived at his conclusions and formulated his policy, but it is patent that the President seriously misunderstood the nature of the differences within the Republican party. Johnson came to power two and a half months after the great struggle over the recognition of Louisiana, which pit Lincoln, conservative, and center Republicans against a handful of radicals. Those radicals had given two reasons for opposing the Republican majority: Louisiana had been reconstructed by military force rather than
voluntary action and black Louisianans were denied the vote. But observers agreed black suffrage had been the key issue. After Johnson promulgated his North Carolina proclamation, outlining the restoration process he instituted in the southern states, the radicals had attacked one element of that policy alone: he had restricted political power in the process to whites.

During the summer of 1865 conservative and moderate Republicans first endorsed and then backed away from Negro suffrage. As they abandoned it, Johnson's closest Republican advisers informed him this was a swing towards his policy. So at this time confidantes like Gideon Welles, Doolittle, and James Dixon identified opposition to the President's policy with Republicans of the Sumner-Stevens ilk and their advocacy of prolonged national control of the South and black enfranchisement. As far as these Republicans, and probably the President, were concerned, the only opposition to Johnson's policy came from those who demanded black suffrage. They seemed completely to misconstrue the conservative and moderates' changed position on immediate recognition during the fall of 1865. In the opinion of Johnson and his advisors, a Republican who opposed the speedy admission of loyal representatives from reconstructed states could only have one objection—the absence of black suffrage. This misunderstanding continued even after the Reconstruction committee proposed a constitutional amendment virtually conceding a state's right to
discriminate against blacks in suffrage regulations. Witness the confusion and frustration of a local pro-Johnson politician in Ohio: "I . . . found the whole game of the radicals was to misrepresent the issue, and deny that negro suffrage was the issue, which was at the bottom of their whole opposition of the President's plan. Why do not our friends in Congress compel [sic] them to tear off this mask and come plainly on the record?" The reason was that the Republicans who this observer called "radicals" (all who opposed the President) did not "bottom" their opposition to the President's plan on black suffrage. There was no mask to tear off.

It is an open question whether the President's advisors really misunderstood the position of conservative and moderate Republicans or purposely misled him. There can be no doubt that the Democrats intentionally mislabelled all Republicans "Radicals" for party purposes. But men like Doolittle, Morton, and Dixon should have known better. However, all three were involved in bitter factional struggles with rival Republicans who did indeed advocate black suffrage. Their oft-proclaimed support for the President was based at least in part on their desire to gain control of the patronage in their states. They may consciously have determined to pander to Johnson's prejudices and, by misrepresenting others, bind him more closely to themselves. If so, they were indirectly aided by other
Republicans. Surprising, and perhaps disastrous for non-radical Republicans in 1865-1866, is the nearly total absence of correspondence between moderate Republicans and the President during the critical months before the meeting of the Thirty-ninth Congress. One looks in vain for letters from Fessenden or Trumbull or Sherman or Grimes. Perhaps they believed the President would learn the true situation easily enough by reading the Republican newspapers which supported him at the same time they agreed Congress should ultimately decide reconstruction questions. If so, they were wrong. He remained convinced that only radical Negro suffragists would seek to delay recognition of his restored governments. Alexander K. McClure, in 1865 a local politician of conservative leanings, recalled Johnson "was amazed when I expressed grave doubts about Congress recognizing his reconstructed authority in the States and admitting their Representatives to Congress." Confident of support, he had not insisted that southern representatives be included by the clerk of the House of Representatives on the roll of the House before it organized, as claimants from recognized states customarily were. "...[I]t will be better policy to present their certificates after the two Houses are organized," he wrote an inquirer. Johnson was convinced Congress would quickly admit representatives from Tennessee anyway and set a precedent for the other states. Pro-Johnson newspapers insisted the President conceded
Congress' right to admit or not admit southern states to representation in Congress, and the President had not publicly contradicted these reports. But his refusal to incorporate Seward's distinct avowal of this policy in his annual message, unbeknown to Republicans in Congress, indicates his reservations. It seems reasonable to believe that he would have made no issue if Congress had acted speedily in admitting loyal representatives. When Republicans delayed, he would demonstrate that Republicans had misjudged his position as badly as he had misjudged theirs.

* * *

As the Thirty-ninth Congress opened conservative and center Republicans quickly demonstrated that they could check the radicals. The first test of strength came over a resolution, sponsored by Thaddeus Stevens, to create a joint committee on reconstruction. It would consist of nine representatives and six Senators and all pertinent documents and papers from either house of Congress would be referred to it without debate. By the resolution's terms no southern claimant could be admitted to a seat in the Senate or House until this committee reported its findings on conditions in the southern states. Originally authored by the conservative Henry Laurens Dawes, who feared he might lose the chairmanship of the House Elections committee if it retained jurisdiction over admission of southern representatives, Stevens won for it the approval of the House Republican caucus on December 2.
The entire House passed the joint resolution on December 4, 16 with only one Republican in opposition.

Several elements of the joint resolution as it passed the House inclined Senate conservatives and centrists to vote against it. First, the House passed the measure as a joint resolution, which required the signature of the President. Usually joint committees were created by concurrent resolution, which did not go to the President for appraisal. Conservative Republican Senators believed the President would acquiesce in a congressional decision to delay admission of loyal representatives from his restored state governments. But they feared he would refuse to take an active part in their exclusion by signing the joint resolution. They did not want to set the stage for an early veto and collision on reconstruction matters. Second, the resolution in effect gave the House a veto over the action of the Senate, as the House contributed nine of the sixteen members of the committee and neither house could seat a southern claimant until the committee reported. Leading Senators decided the measure must be modified. The conciliatory tone of the President's message reinforced their determination.

In a caucus of Senate Republicans December 11, conservatives and many centrists, led by Fessenden, Trumbull, Doolittle, Dixon, and Morgan, succeeded in amending the resolution over the opposition of Sumner, Chandler, Wilson, and Wade by a close 16 to 14 vote. Changing the measure to a concurrent resolution
and eliminating the prohibition against seating southern claimants until the committee reported, Senators agreed to pass a resolution simply creating a joint committee on reconstruction. This passed the Senate with only three Republicans dissenting. In the House Stevens advised agreement to the Senate amendments, and the representatives acquiesced.  

As Speaker Colfax pondered his appointments to the joint committee, the lines between House factions became more definite. Henry J. Raymond, considered the administration spokesman in the House, presented the credentials of the representatives-elect from Tennessee and moved that they be referred to the joint committee when named. The House agreed with only six Republicans voting in the negative, among them Dawes. Stevens then moved that the House allow the claimants to occupy seats on the floor. But the radicals objected, separating as they often would during this session of Congress from the man so many considered their leader. Center and radical Republicans joined to table a resolution which would have granted the claimants the privileges of the House as appearing "to have been elected by the people of Tennessee." They objected to the implication that Tennessee was entitled to representation and that this was an ordinary election case. But a resolution simply to seat the representatives-elect, without mentioning the state, passed over radical objections, with Stevens voting with the majority. The Tennessee claimants were
confident of quick admission. Observers reported a strong disposition among Republicans to recognize the restored government without requiring further conditions. Judging by the votes, radical opponents could muster the support of only one third of their party. Seward told visitors the House action made a breach with the President impossible. "Small favor this!" Sumner commented acidly.

The weakness of both the radical and the conservative Republican position in the House was further demonstrated by reaction to the first oratorical passage at arms between radical and conservative ideologists. Stevens expounded on his radical ideas for the first time during the session on December 18. Denying the authority of the President to reconstruct the dead states, he insisted Congress should create territorial governments for them, allowing both blacks and whites to vote for territorial legislators and local officeholders under the supervision of Congress. But as he spoke, the powerful radical acknowledged his isolation. "I trust the Republican party will not be alarmed at what I am saying," he said. "I do not profess to speak their sentiments, nor must they be held responsible for them. I speak for myself, and take the responsibility, and will settle with my intelligent constituents."

Raymond enunciated the conservative position December 21. He supported legislation to protect freedmen and constitutional amendments to alter the basis of representation in the House
and guarantee the national debt. In general, he agreed to the entire non-radical program. But he denied Congress could demand acquiescence in it from the reconstructed states as a condition for restoration. The United States government had a right to require guarantees from the defeated rebel states, but only on questions arising directly out of the war. It could ask no more. The President had already demanded and received acquiescence in those conditions. They were the ratification of the Thirteenth Amendment, the repudiation of the secession ordinances, and the repudiation of the rebel debt. Congress could ask no more; there was no point, therefore, in delaying final restoration. Republicans had assumed that if the President had acted on the grasp-of-war theory of reconstruction--holding southern states under military government until they gave securities for the future--he would concede Congress the same right. Now Raymond had denied that proposition. It boded ill for the future.

Stevens' program was too radical. "No party, however strong, could stand a year on this platform," commented Forney's Washington Chronicle. It meant certain collision with the President and division of the party. Raymond's position was patently absurd. His distinctions as to what conditions the government could ask in return for peace were completely artificial. If the government could legitimately demand agreement to an abolition amendment to the Constitution as a necessary result of the war, why should a civil rights amendment to
protect abolition be impermissible? If the President could require repudiation of the rebel debt in state constitutions as a legitimate result of the war, why could Congress not require the southern states to ratify the same provision in the national constitution? The entire argument was self-serving. Neither Raymond nor Stevens found much support. 23

In the Senate too radicals displayed surprising weakness. When Republican Senators had considered Stevens’ proposed joint resolution in the privacy of the caucus, Sumner, Wade, and Chandler had criticized the President. But in open session only Sumner went on the attack. He labelled President Johnson’s report on conditions in the South a "whitewash." He urged immediate passage of a bill by Henry Wilson to nullify the discriminatory laws regulating freedmen in the southern states—the "Black Codes." In a long speech the Massachusetts radical overwhelmed the Senate with evidence of southern brutality towards the freedmen and their determination to institute a system of quasi-slavery. Sumner insisted that the Thirteenth Amendment had already been ratified without the action of the rebel states. They were out of the Union and should have no part in the ratification process. But the Senator received virtually no support. Trumbull and Sherman implicitly rejected his argument as to the ratification of the Thirteenth Amendment. Wilson while urging immediate passage of his bill, went out of his way to praise the President. After Sumner’s speech, immediate passage of the bill would
have signified Senate approval of his sentiments. Under Sherman and Trumbull's prodding the Senate instead referred the bill to the Judiciary committee. In the midst of the controversy Sumner wrote the beautiful widow, Alice Hooper, of his gloom and told her Fessenden was "cross & perverse." Radicals might praise Sumner's "whitewashing" speech ("Glorious--just the truth & just the time & place to speak it," Wendell Phillips wrote), but most Republicans determined to work for harmony and remained convinced division was not inevitable. To these Republicans speeches such as Sumner's and Stevens' constituted threats. These radicals were trying to manufacture issues on which to attack the President, complained David L. Phillips, the important southern Illinois politician. "There is no reason for it," he insisted. The pro-black suffrage New York Nation termed Sumner's speech an "unseemly...outburst," making "slapdash charges." So while Sumner and most radicals grumbled, the moderate and conservative majority--and many radicals--continued to urge conciliation in private letters, newspapers, and official speeches. Of especial importance were the addresses delivered by Republican governors, nearly all of which were moderate in tone. Outgoing Massachusetts Governor Andrew took occasion to widen the growing gulf between him and Sumner, abandoning black suffrage as an element of reconstruction and outlining a program similar to that advocated by non-radicals. "It is well that Stevens and Sumner show their hands," Thurlow Weed wrote Morgan optimistically. "So far, the President gains strength with the People."

With Republicans so clearly manifesting their desire for
harmonious relations with the President, Speaker Colfax and President pro tempore of the Senate Lafayette S. Foster chose the members of the joint committee carefully. Colfax announced the names of the House members December 14, after the meaningful votes on the privileges of the Tennessee representatives. The speaker appointed two Democrats (Henry Grider and Andrew J. Rogers), one Republican who had voted with the conservatives to admit the Tennessee claimants as appearing "to have been elected by the people of Tennessee" (Henry T. Blow), one Republican who had abstained on that vote (Roscoe Conkling), four who had voted only to seat the claimants without mentioning Tennessee (Stevens, John A. Bingham, Elihu B. Washburne, and Justin Morrill), and only one who had joined the radicals in opposing any seating (George S. Boutwell).

In the Senate, the most important contest was between Fessenden and Sumner for the chairmanship of the committee. The differences between the men were clear. Fessenden had openly avowed his conviction that the time for radical measures was over. He had suggested that he would "act upon different principles now and hereafter in a state of peace, from those which I adopted and defended before . . . ." On December 21, Foster announced Fessenden would chair the committee. To serve with him Foster appointed Fessenden's friend Grimes, who had been one of the few centrists publicly to oppose black suffrage before President Johnson made his opposition clear, Ira Harris, who the same day informed Gideon Welles he agreed
with the administration's views on reconstruction, George H. Williams, Jacob M. Howard, the lone radical, and Reverdy Johnson, the most respected Democrat in the Senate.

All in all, the committee consisted, Fessenden wrote, "of a large majority of thorough men, who are resolved that ample security shall attend any restoration of the insurgent States, come what will--while they desire to avoid, if possible, a division between Congress and the Executive which would only result in unmixd evil." Voting analysis shows the committee consisted of three Democrats, two conservative Republicans, six centrists of varying degrees of radicalism, two radicals, and two Republicans who voted erratically. The centrists would have control.

But the President received advice from men bent on fomenting discord. Advisers like Dixon, Doolittle, and Welles lumped together the conservatives and moderates who insisted that formal recognition by Congress was necessary for readmission of southern states, with the radicals who were demanding black suffrage and a reorganization of the civil governments Johnson had instituted. Welles blindly viewed Sumner and Stevens as the Republican leaders. Instead of recognizing that centrists controlled the party, he believed they were "under the discipline of party, which is cunningly kept up with almost despotic power." Welles, Doolittle, and Dixon joined in urging the President to admit the irreconcilability of his differences with the "radicals," who--as Welles,
Doolittle, and Dixon defined them—made up virtually the entire party. Seward, Welles noted with disgust, deprecated such advice.  

As he received such advice, the President determined to increase the pressure for quick admission of the southern states. Seward had hoped that Johnson would maintain military control in the southern states until Congress recognized them. But Johnson determined to follow a different course. Already on December 4, he ordered Seward to notify William W. Holden, the provisional governor of North Carolina, that he should now remit the control of local affairs "to the constitutional authorities chosen by the people" under their new constitution. This should have served as a clear indication to Republicans of the President's intentions. It meant that political power in the rebel states would be turned over to Johnson's restored governments whether Congress admitted them to representation or not. In mid-nineteenth century America, state governments were far more active than the national government and affected citizens' lives far more intimately. The citizens of the United States were among the least governed in the world, but what government there was, was state government. The southern states might have to await congressional action for readmission into the national legislature, but in the meantime they would control the government which really counted—local government.

The New York Times quickly recognized the importance of
the President's decision. "After all," it concluded, "we think Congress will find its action decided, if not fore-
stalled, substantially by the course of events and the action of the President." Congress would never supplant the authori-
ties recognized by the President. "It is possible for Con-
gress to embarrass the President somewhat in acting upon this question, but it cannot defeat him." As radicals, centrists, and conservatives maneuvered for position in Congress, Johnson terminated the activities of his provisional governors in Alabama, Georgia, North Carolina, and South Carolina. The Times observed confidently that it would take a law of Con-
gress to alter the President's action, and that would require a two thirds majority to pass over a veto. "Even if any con-
flict of opinion or of purpose, therefore, should exist or arise between the President and Congress on this subject, the President is clearly 'master of the situation.'"

When Congress reconvened after the Christmas holiday, many recognized what the Chicago Tribune's Washington corres-
dent called "the changed situation." A Congress which faced the "cautious non-committalism of the message," he wrote, "has now to confront an Executive pledged beyond hope of recall to the speediest possible restoration of the rebel States."

* * * *

In light of the President's new belligerence it is remarkable that Republican conservatives and moderates remained
optimistic about prospects for harmony, but they did nonetheless. They pointed out that the President had not revoked the authority of the Freedmen's Bureau, which continued to supervise and protect state citizens, and that national troops still kept the peace. If the President intended to restore the states to all their old rights, he could not have continued the exercise of such military authority within their boundaries.

Shortly after Congress convened, Fessenden, Washburne, and Reverdy Johnson visited the President on behalf of the Joint Committee on Reconstruction. They assured him they desired to avoid all controversies and asked him to suspend any future reconstruction activities. Johnson responded "very well indeed," wrote Washburne. He left reassured that there would be no division. Most Republicans shared his belief. With the political situation muddled, the House of Representatives early in January turned its attention to the explosive issue of black suffrage in the District of Columbia. Since the Constitution gives Congress direct authority to govern the district, no constitutional objection based on state rights clouded the issue. In voting on the District suffrage bill, Republicans would declare their principles pure and simple.

On December 18, the House Judiciary committee had reported a bill to strike the word "white" from the district's voting qualifications. The bill was made the special order for January 10. During the intervening three weeks, resistance
to it among Republicans had grown. Friends of the President and western Republicans, fearful of their constituents' reactions, urged its modification. After a day of debate January 10, House Republicans caucused on the measure. Angry with the Judiciary committee for trying to prevent amendments, hesitant Republican representatives demanded that the bill be modified to allow a literacy test. The radicals resisted, arguing that such a test would effectively disfranchise most blacks. If extended to the South, enfranchisement on such a basis would provide virtually no security at all. The caucus appointed a special committee to revise the bill, but with differences so fundamental, Republicans could arrive at no compromise. As a confrontation neared in the House, both sides believed they had the votes to secure their versions of the bill. The final test came on January 18. The Republicans who favored qualified suffrage—some of them radicals with anti-black suffrage constituencies—moved to recommit the bill to the Judiciary committee with instructions to require a literacy test for all new voters except those who had served in the armed forces. Fifty-three Republicans favored the recommittal, but Democrats and anti-Negro suffrage Republicans joined radicals to defeat it. The Democrats and anti-black suffrage Republicans had hoped in this way to kill the measure, but they had misjudged. The angry moderates joined radicals to pass the bill. Only sixteen Republicans dissented. 41

Again more moderate radicals expressed their irritation.
The President had been prepared to sign the qualified black suffrage measure, Ben Perley Poore reported; the radicals and Democrats had spoiled that chance for harmony. But in the Senate, the radical Committee on the District of Columbia prudently held the bill back pending further developments. So died the only radical legislation of the Thirty-ninth Congress.

Meanwhile the center Republicans busily formulated a Reconstruction program upon which both they and the President could stand. It was no easy task, Fessenden wrote. "In addition to all other difficulties, the work of keeping the peace between the President & those who wish to quarrel with him, aided as they are by those who wish him to quarrel with us, is a most difficult undertaking. The fools are not all dead, you know." The centrists' work centered in two committees—Fessenden's Joint Committee on Reconstruction and Trumbull's Senate Judiciary committee. Between them they fashioned the conservative reconstruction program of the Thirty-ninth Congress.

From the Judiciary committee came two bills which put the freedmen under national protection—the Freedmen's Bureau bill and the Civil Rights bill. Trumbull reported both bills from his committee January 12. Trumbull, John W. Forney wrote later, was "distinguished for his frequently manifested desire to sustain the President, and known for his opposition to some of Mr. Sumner's particular theories." His opposition to black suffrage was well known. "[T]he most sovereign
remedy . . . since the days of Townsend's Sasparilla," he called it. Newspapers taking a pro-administration stance in January, 1866, identified the conservative Senator as an administration ally. Even the suspicious Welles had recognized as much.

Trumbull authored the bills, he explained later, in light of the President's call for protection for the freedmen in his annual message and in response to the report of the Freedmen's Bureau Commissioner. He hoped to separate the issue of protection for the blacks from restoration. Protect the blacks by national action, he believed, and black suffrage and well-disposed southern governments became less critical. "One great cause of apprehension on the part of the loyal men of the country would be removed, and I believe[d] the work of restoration would go on," Trumbull explained. Later, he told Welles that if the President had signed his bills, Tennessee, Louisiana, and Arkansas would have been recognized immediately. Trumbull visited Commissioner Oliver Otis Howard at the Freedmen's Bureau office to get his help in framing the bills. He visited the President several times and believed he had won his approval. There can be little doubt that he informed his colleagues of this, and that this information played a large part in the prevalent optimism among center and conservative Republicans.

Trumbull's Freedmen's Bureau bill promised to be less controversial than his Civil Rights bill. The primary purpose
of the Freedmen's Bureau bill was to extend the agency's life. The original legislation creating the bureau had specified it could continue operations during the war and for one year thereafter. The new legislation allowed the bureau to continue indefinitely. Trumbull modified the original legislation in several other ways. His bill authorized the bureau to protect freedmen "in all parts of the United States," instead of limiting its jurisdiction to the states in rebellion. It authorized the President to set aside large tracts of the public lands in Florida, Mississippi, and Arkansas for the use of freedmen and "loyal refugees" and directed the commissioner to parcel these out in forty acre tracts to be rented and then purchased by the bureau's wards. The bill authorized a national appropriation to fund the bureau instead of forcing it to rely entirely on private donations as it had before. It extended military jurisdiction over freedmen in any state which discriminated against them in its laws, and protected them against involuntary servitude except for violation of laws.

As peace-time legislation the bill would have been incredibly radical, but Republicans justified it under the war powers. The bureau would not be a permanent institution. Its necessity arose out of the direct results of the war; it would serve only to aid in the transition from slave to free labor in the South. Nonetheless, so important a Senator as Fessenden had trouble determining its constitutionality. Only after private talks with Trumbull did Fessenden concede that
legislation of this sort could be passed, as a necessity under the war powers of Congress.

Trumbull's second measure, the Civil Rights bill, was a peacetime measure, to be passed by virtue of Congress' power under the second section of the Thirteenth Amendment to enforce emancipation by appropriate legislation. The bill, as originally presented, declared the inhabitants of every state and territory entitled to equal privileges and immunities. Specifically it mentioned the rights "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, and . . . [to] be subject to like punishment, pains, and penalties, and to none other" irrespective of race, color, or previous condition of servitude. The proposed law made it a crime for anyone to deny these rights under the cover of law. All violations of the bill were to be tried in United States district courts. Most important, any person who could not secure the rights guaranteed them under the bill in state or local courts could transfer his case to the United States district or circuit courts in his locality. Other sections of the bill outlined enforcement procedures. When Trumbull brought the bill up again two weeks later, he moved an addition to the first section declaring all persons of African descent born in the United States citizens.
On its face the Civil Rights bill radically expanded national power. For the first time the national government accepted the responsibility for protecting the rights of its citizens. Under the bill national courts might try cases of every description, civil and criminal, wherever state and local courts did not grant all citizens equal protection in the rights guaranteed by the bill. This broad, apparently radical bill was patently inconsistent with Trumbull's political conservatism on reconstruction matters and his constitutional conservatism generally. But in fact Trumbull had found a way to preserve rather than alter the old federal system.

Although theoretically Trumbull's bill vastly expanded the duties of the national government, in fact these new duties would not be permanent. Court jurisdiction was the key to the bill's real purpose. Jurisdiction would be taken from the state courts only so long as state law required them to discriminate in the rights guaranteed to all inhabitants by the first section of the bill. Once the states enforced these rights equally, there could be no removal of jurisdiction from state to national courts. Thus there would be great pressure on states to change their laws to give equal rights to blacks in order to regain their old spheres of jurisdiction. There would be no point in resisting. Retain unequal law and blacks would simply take their cases into the federal courts.

It was a brilliant piece of legislation. Trumbull had found a way to force the states themselves to alter their
discriminatory laws. Once they did so, they would regain jurisdiction over all their citizens, and the balance of power between the state and national governments would remain unchanged. Trumbull emphasized this in his defense of the measure:

[The bill] may be assailed as drawing to the Federal Government powers that properly belong to "States"; but I apprehend, rightly considered, it is not obnoxious to that objection. It will have no operation in any State where the laws are equal, where all persons have the same civil rights without regard to color or race.  

The bill's essential conservatism would become of fundamental importance later, when the President vetoed it.

Trumbull's measures won immediate approval from the pro-administration press and congressmen. Doolittle, one of the President's leading defenders in the Senate and an ultra-conservative, had himself prepared a Freedmen's Bureau bill similar to Trumbull's. The Wisconsin conservative now supported Trumbull's measure. Observers predicted the bills, along with a constitutional amendment to change the basis of representation, would be the basis for harmonious action by the President and Congress. But radicals were only lukewarm. "The measure itself was not particularly acceptable to the radicals," Forney wrote, "but was accepted by them as an expedient, preparatory to the adoption of a more drastic and permanent system."

The Freedmen's Bureau bill sped through the Senate with virtually no Republican opposition, passing January 25. Not
one Republican voted against the bill on its passage. Two did not vote. One of them, Cowan, had signified his opposition on earlier roll calls.

In the House the bill came under attack not only from Democrats but radicals. Ignatius Donnelly urged the House to adopt an amendment requiring the bureau commissioner to provide free education to all black children. Only education would eradicate the effects of slavery. Congress' decision on this question would be "the great test, ... the crucial test, of our institutions and the popular judgment." Stevens emphasized the necessity of providing land for the freedmen. During the war ex-slaves had been allowed to work the land of their former owners in the Sea Islands of South Carolina and Florida. General Sherman had confirmed the blacks' titles to the land by a general field order, but President Johnson had begun returning it to former owners. Trumbull had confirmed the blacks' possession of the land for only three years in his Freedmen's Bureau bill. Sumner had objected, but the Senate overwhelmingly approved the provision. Stevens now moved to strike the three year limitation. The bill also authorized the President and the commissioner to lease or sell small homesteads to blacks from the public lands; Stevens moved to add to this the lands confiscated from rebels and limit the rent to two cents per acre per year. Finally he added Donnelly's education amendment to his own amendments.

Stevens bitterly attacked the landholding provisions of
the Trumbull bill. Under it freedmen could rent the public
land at the same fee all men had rented them before the war.
And the only public lands available were the everglades,
Stevens insisted (he was wrong.) "What boon is that to a
freedman?" he asked. The Trumbull bill recognized the power
of the President to restore seized land to rebels by his pardon.
The freedmen had built villages and school houses and churches
on those lands. And they "now receive notice to turn out, and
reeking rebels are to be brought back and take their places,
under the pretense that a pardon can restore to them lands
which belonged to us and which we have given to these freed-
men. God forbid that I should ever vote for such a bill as
that." Even the emperor of Russia gave land to the serfs when
he freed them. "But, by this bill, we propose to sell our
land at not less than the Government price, or to rent it at
prices which these poor people can never pay."

But Stevens pleaded in vain. His amendment received only
thirty-seven votes. Thirty-one Democrats and ninety-five
Republicans defeated it. Seven more abstained. On its
passage, only two Unionists voted against the Freedmen's
Bureau bill. The President's staunchest friends signified
their approval.

As soon as the Senate had passed the Freedmen's Bureau
bill, it had taken up Trumbull's Civil Rights bill. With as
much alacrity as possible in a body with no limitations on
debate, this bill too passed the Senate. The final vote came
on February 2, with only three Republicans dissenting. The President's "special friends," Dixon and Doolittle, favored the bill throughout. The House referred the bill to its Judiciary committee, where it remained as the representatives concentrated on appropriations bills.

With action on Trumbull's bills concluded, the Senate turned its attention to the third element of the centrist program—a constitutional amendment to alter the basis of state representation in Congress. This proposed amendment had been hammered out with difficulty by the Reconstruction committee. When Stevens, as senior House member of the committee, reported it to that branch of Congress, the measure read "Representatives and direct taxes shall be apportioned among the several States . . . according to their respective numbers, counting the whole number of citizens of the United States in each State, excluding Indians not taxed: Provided that, whenever the elective franchise shall be denied or abridged in any State on account of race, creed or color, all persons of such race, creed or color, shall be excluded from the basis of representation." The committee had proposed the amendment in this form rather than merely basing representation on voters, because under the alternative form New England with proportionately more women than the western states, would have lost representation.

Unlike the bills reported by the Senate Judiciary committee, the Reconstruction committee's proposed constitutional
amendment met a hail of Republican criticism. Kelley and other radicals had immediately announced their opposition in the House. Many western Republicans had demanded that representation be apportioned to the number of voters in each state. Despite Stevens' determination to force the amendment through the House the same day he reported it, the representatives had debated the proposition for six days. Democrats insisted the Constitution was being too much amended; western Republicans complained the committee had framed the measure to please New England; radicals worried the amendment in effect recognized the states' right to discriminate in voting on the basis of color. By January 30 all knew the amendment could not win the two-thirds vote needed to pass a constitutional amendment. The House had recommitted the measure to the Reconstruction committee.

But on the same day, Washington newspapers reported an interview between the President and Senator Dixon. The President had denounced black suffrage and complained of the number of constitutional amendments pending in Congress. He had opposed any more amendments but affirmed that if one had to be passed it should base representation on voters. Furious, Stevens had reported the constitutional amendment back to the House. The House had agreed to vote immediately. An amalgam of radicals and western Republicans failed in an attempt to modify the amendment to base representation on voters, and then the House passed the original amendment—less the taxation
provision—by a vote of 120 to 46. Only two radicals had
withstood the party's pressure. They had been joined by the
Democrats and only ten conservative Republicans. But to
radicals outside Congress the centrist program was betrayal.
"We are now . . . invited to cement the Union with the blood
of the negro," Moncure Conway wrote.

Fessenden took the responsibility of steering the apportionment amendment through the Senate. It would be no easy
job, he wrote. "Mr. Sumner says he shall put his foot on it
and crush." Many radicals would rise in the Senate to oppose
the amendment or espouse black suffrage. Sumner would have
the public support of Tilton's Independent and the black lobby
led by Frederick Douglass and George T. Downing; he would have
the private support of numerous important radicals like Schurz,
Gerritt Smith, William Lloyd Garrison, George Bailey Loring,
Parker Pillsbury, and Wendell Phillips. But in essence the
battle over the proposed constitutional amendment was fought
by two men, the great titans of the Senate, Sumner and Fessenden,
in a bitter, personal contest. In the Senate Sumner
stood virtually alone. "You are the keystone of our arch,"
Smith wrote him later. "If you fail all falls."

Fessenden and Sumner each spoke twice on the apportionment amendment. Sumner opened the debate February 5 and 6.
Fessenden followed on the 7th. Sumner spoke again March 7,
and Fessenden closed the debate March 9. Numerous other
Senators joined the discussions—Henderson, who offered an
enfranchising amendment, Wilson, Henry S. Lane, and others—but the nation concentrated on the two giants. They debated not only the amendment but two different approaches to politics, two different approaches to morality.

Speaking February 5 and 6, Sumner proposed an alternative to the committee measure. He suggested a simple act of Congress to guarantee republican forms of government in the states and to enforce the constitutional amendment prohibiting slavery: "That there shall be no Oligarchy, Aristocracy, Caste, or Monopoly invested with peculiar privileges and powers, and there shall be no denial of rights, civil or political, on account of color or race anywhere within the limits of the United States or the jurisdiction thereof . . . ." Sumner found four justifications for such legislation—necessity, the power of Congress over areas under United States jurisdiction where no legal governments exist, the right under the laws of war to demand conditions from defeated enemies, and Congress' power to guarantee republican forms of government in the states. Sumner devoted most of his attention to the last source of power. Under it, he argued, Congress had a duty to provide the southern states with republican governments. In defining republican government, Sumner turned to the principles espoused by the American revolutionaries before and during the revolution, the public acts of the states, and the precedents of Republican France.

Universal suffrage, Sumner insisted, was a right subject
only "to such regulations as the safety of society may require." These included qualifications of age, character, registration, and residence. Conspicuously absent from his list were property and educational requirements. The ballot would be a peacemaker, forcing former masters to respect erstwhile slaves, obviating the dangers to the freedmen which were impelling Republicans to seek guarantees for their security. The ballot would encourage reconciliation between black and white, forcing each to treat the other with respect. It would educate black men to responsibilities of manhood. Most important, the right of suffrage would protect the freedmen. "When the master knows that he may be voted down, he will know that he must be just..."  

But Sumner best illustrated his temperament, the temperament of the radical in politics, in his denunciation of the committee amendment. It was "nothing else that another Compromise of Human Rights, as if the country had not already paid enough in costly treasure and more costly blood for such compromises in the past." He expanded on this in his second speech, with some of the most brilliant and bitter invective ever delivered in Congress. "The present Compromise, like all other compromises, has two sides; in other words, it is a concession for a consideration. On one side it is conceded that the States may, under the Constitution, exclude citizens counted by the million from the body-politic and practice the tyranny of taxation without representation, provided, on the
other side, that there is a corresponding diminution of repre-
sentative power in the lower House of Congress, without,
however, touching the representative power in the Senate."
It was outrageous, "the most utterly reprehensible and unpar-
donable" proposition ever set before Congress. "The attempt
now is on a larger scale and is more essentially bad than the
Crime against Kansas or the Fugitive Slave Bill. Such a
measure, so obnoxious to every argument of reason, justice,
and feeling, so perilous to the national peace and to the good
name of the Republic, must be encountered as we encounter a
public enemy."

"Adopt it," Sumner warned, "and you will put millions of
fellow-citizens under the ban of excommunication; you will hand
them over to a new anathema maranatha; you will declare that
they have no political rights 'which white men are bound to
respect' . . . . Adopt it, and you will stimulate anew the
war of race upon race. . . . The proposition is as hardy as
it is gigantic; for it takes no account of the moral sense of
mankind, which is the same as if in rearing a monument we took
no account of the law of gravitation. It is the paragon and
master-piece of ingratitude, showing more than any other act
of history what is so often charged and we so fondly deny,
that republics are ungrateful. The freedmen ask for bread,
and you send them a stone. With piteous voice they ask for
protection. You thrust them back unprotected into the cruel
den of their former masters. . . . Adopt it, and you will
cover the country with dishonor. Adopt it, and you will fix a stigma upon the very name of Republic. . . . As to the imagination there are mountains of light, so are there mountains of darkness; and this is one of them. It is the very Koh-i-noor of blackness."

At least, Sumner urged, change the proposed amendment to base representation on the number of voters alone. This would not incorporate into the Constitution itself the right to discriminate in voting qualifications. Henderson proposed a constitutional amendment to prohibit discrimination in voting rights on account of race or color (eventually, this would become the Fifteenth Amendment to the Constitution). Other Senators endorsed it.

If Sumner displayed the uncompromising devotion to abso-
lute justice which characterized radicalism, Fessenden demon-
strated the devotion to practicality which characterized its Republican opponents. He too favored black suffrage, Fessenden confessed, though not as immediate and unqualifiedly as did Sumner. Suffrage was not a right but a trust. Nonetheless it "should be extended just as fast as as far as the public good will allow." "But," Fessenden continued, "the argument that addressed itself to the committee was, what can be accomplished? What can pass?" If the committee reported a constitutional amendment enfranchising blacks, "is there the slightest probability that it will be adopted by the States . . . ? It is perfectly evident that there would be no hope . . . ."
The votes in Wisconsin and Connecticut the previous fall had shown that. "We must take men as we find them." If Republicans could not win a constitutional amendment to give blacks the vote, it must do something else. Aiming his shaft directly at Sumner, Fessenden averred, "I do not think it my duty as a legislator in this Hall to trouble myself much about what are called abstractions. My constituents did not send me here to philosophize. They sent me here to act. . . . I speak to those who are willing to do something."

There were two alternatives left—the committee's amendment or the amendment Sumner desired, simply to base representation on the number of voters in each state. Fessenden favored the committee's alternative. The second would be unfair to the eastern states, it might encourage a race among the states to enfranchise more people—aliens, women, children—in order to gain representation, and it would encourage southern and border states to enfranchise rebels.

Finally Fessenden denied there was any difference in principle between the two alternatives. Each recognized the states' right to determine voting qualifications. He insisted Sumner was making artificial distinctions. The committee bill was no compromise. It punished discrimination; it did not sanction it. "What lawyer in the world ever heard that a denial is an admission? What lawyer ever heard that a penalty is permission? By this proposition we say simply this: 'If in the exercise of the power that you have under the Constitution
you make an inequality of rights, then you are to suffer such and such consequences.' What sane man could ever pretend that that was saying, 'Make an inequality of rights and we will sanction it?'' But in his very example, Fessenden had conceded what Sumner was so desperately trying to deny—that the states had the absolute right to discriminate in their voting regulations.

Sumner answered wearily, "There is a familiar story of a shield with inscriptions on it which was suspended in a highway. Two travelers approached it from opposite quarters, and standing face to face, each read the inscription as he saw it. Straightway there was a difference and a contest. Each insisted that the inscription was as he read it. At last on looking at both sides it was ascertained that each was right, as the inscriptions on the two sides were different. So it on the present occasion. The Senator from Maine, as he approaches it, sees only the side which limits the representation. As I approach it I see the recognition of a caste and the disfranchisement of a race. He defends it; I condemn it. But he defends only what he sees. I condemn only what I see. It is the misfortune of the measure that it has two sides with two opposite inscriptions."

As the Senate approached a vote on the constitutional amendment, the President precipitated a change in all political calculations. Congress had sent Trumbull's Freedmen's Bureau bill to the President February 13. Earlier Republicans had
been certain that Johnson intended to sign it. They had looked forward eagerly to Democratic reaction, predicting the President's approval would put an end to the Democratic courtship. But by early February many were more uncertain. The President had denounced black suffrage in such uncompromising, inflammatory terms to the delegation of black lobbyists which had visited him that Count Adam Gurowski told friends "he felt ashamed of belonging to the white race." Poore and David W. Bartlett, another leading Washington correspondent, predicted an open rupture. Garfield, still striving for harmony, acknowledged that if Johnson went much further, "we shall make the open issue and abide the results."

Many conservatives and moderates blamed the radicals for the disintegrating situation. Pessenden complained of Sumner, "with his impracticable notions, his vanity, his hatred of the President, coupled with his power over public opinion . . . ." "There are a few who are determined to have a quarrel with the President," Dawes wrote grimly, "and he is not disposed to disappoint them."

In fact the President had already intimated to Welles his intention of vetoing the Freedmen's Bureau bill on February 13, just before he officially received it. He confided his apprehension that the radicals meant to depose him by declaring Tennessee out of the Union and then administer the government through a central directory (he probably meant the reconstruction committee). Nothing could better demonstrate how out of
touch. Johnson was with the reality of Republican politics. Recognizing the President's drift, Seward tried desperately to persuade him to cooperate with the party; he "greatly embarrassed" Johnson, Welles wrote, with his advice of "compromise and concession."

Johnson turned to his advisers for aid in preparing a veto message. Again Seward wrote a conciliatory draft, avowing the responsibility of the national government to protect the freedmen but questioning the necessity of the specific legislation. Extolling the bureau's usefulness, Seward argued in his draft that technically the war was not yet over and reminded Congress the bureau would run for one year after its close. Seward's message assured Congress that the President would sign a bill to extend the bureau's life if it proved necessary.

By February 17 Republicans knew the President intended to veto the bill, but they hoped that he would approve its principles if not its specific terms—they hoped for a veto such as Seward had prepared. Instead, the President chose to send in broad objections. His message, sent to Congress February 19, denied Congress' power to pass any such bill in peacetime. More ominous yet, Johnson questioned whether peace had not yet arrived. He indicated that he would approve no such legislation unless Congress admitted loyal representatives from the southern states.

As the Boston Advertiser observed, "Mr. Johnson, had he chosen, could have so vetoed that measure as to cause hardly a ripple on the surface of affairs." Instead he had argued the rebellion was at an end and Congress was derelict by not
admitting the southern state representatives. "These points . . . are the special features which give sorrow to those who have heretofore been his supporters," wrote the Advertiser's Washington correspondent. The next evening, Johnson responded to a Washington's Birthday serenade offered by enthusiastic supporters. His pugnacity aroused, the President lashed the radicals as disunionists, naming not only Stevens and Sumner but John W. Forney, secretary of the Senate, whose two newspapers, the Philadelphia Press and Washington Chronicle had supported him until the veto. Disillusioned both by the veto and Johnson's speech, most of the newspapers which had supported him became critical.

To Republican conservatives and centrists, the President's veto smacked of betrayal. He had said in his annual message that the freedmen must be protected. In private conversations and published interviews he had announced his determination to cooperate with the Republican party. He had indicated to Trumbull, and possibly others, his approval of Trumbull's bills. But most important of all he had seemed to be acting on the same assumptions as the non-radical Republican majority. Both had recognized a constructive state of war. As Trumbull urged the Senate to pass the Freedmen's Bureau bill over the veto he cited instance after instance in which the President had interfered with southern state institutions through the military. Military courts in the South tried civilians. They prohibited the publication of rebellious sentiments in
southern newspapers. The privilege of the writ of habeas corpus was still suspended throughout the South. Where was the authority for this if the war was over? 87

Fessenden pointed to the disparity between the President's sentiments in his annual message and in the veto. In the annual message he had recognized Congress' absolute right to determine for itself whether to admit southern representatives; in his veto he denied that right. He had demanded conditions of the southerners before he would recognize them.

"He undertook to tell them that he would have nothing to do with their governments unless they made specific provisions in their new constitutions. . . . If he had the right to do it, have we not? If he could impose conditions with reference to what he would do, have we not the power to impose conditions with reference to what we are called upon to do?" 88

The Republicans had abandoned black suffrage to please the President. They had been willing eventually to recognize governments restored under his authority, dominated as they were by former Confederates. They had passed legislation they knew to be acceptable to him and had held back that which would have been disagreeable. They were rewarded by the veto of their first reconstruction legislation and a denial of their jurisdiction.

Congress had proceeded upon the conviction that the political departments of the government must recognize the restoration of the rebel states concurrently, that is through an act
of Congress requiring the President's signature. This had been the basis for the Wade-Davis bill. With this understanding the Senate Judiciary committee had pressed its joint resolution recognizing Louisiana in early 1865. Stevens' joint resolution creating the Reconstruction committee and forbidding the seating of claimants until it reported and carried forward the same idea. But the Senate had refused to concur in the prohibition, fearing it might alienate the President and encourage radicalism in the House. Now President Johnson was challenging the established congressional position, arguing each house of Congress was obligated to admit loyal representatives from the state governments he had created and recognized by presidential authority alone.

The Reconstruction committee decided it should clarify Congress' position. It agreed to report a concurrent resolution to both houses declaring that "no senator or representative shall be admitted into either branch of Congress from any of said states until Congress shall have declared such state entitled to representation." The House passed the resolution February 20, with only seven Unionists in opposition. Eleven more conservatives had absented themselves. The House defeated a motion to reconsider the vote the next day. Three of the conservatives not voting the day before joined the minority; three more voted with the majority.

Fessenden managed the resolution in the Senate. He assured his colleagues the resolution did not deny the right
of each house of Congress to proceed separately in admitting southern claimants; it merely declared the opinion of the Senate that the houses should act concurrently. He himself would join in admitting southern Senators if the House delayed action unreasonably. With such assurances from its leader, the Senate agreed to the resolution by a vote of 29 to 18. Eight Republicans voted with the minority.

Although the Republicans were angry, not all despair of bringing the President to his senses. "The only way to prevent his going over," Timothy Otis Howe wrote, "is to convince him he must go alone. He now thinks the crowd is going with him." They had to pass the Freedmen's Bureau bill over the veto. But on the vote, eight Republicans joined the Democrats to sustain the President. The vote was 30 to 18, two short of the two thirds the Republicans needed. One more Republican joined the conservative minority six days later. House Republicans determined to pass several test resolutions to clarify representatives' positions on the issues of reconstruction. No more than ten Unionists voted against any of them, with perhaps ten more abstaining.

In the House Republicans maintained a firm two thirds majority. In the Senate they were two to three votes short. The situation would be touch and go. Outside Congress the same uncertainty prevailed. In the Indiana state Republican convention, held February 23, conservatives and radicals fought to a standstill. The convention passed a resolution endorsing
both Congress and the President. In New York City, Johnson supporters organized a large rally, attended by Seward, Morgan, Weed, William M. Evarts, Hamilton Fish, and other members of the Seward-Weed faction of the Republican party and War Democrats such as Daniel S. Dickinson, David Dudley Field and William Cullen Bryant. The Times, Evening Post, and Herald lent Johnson their support. In Massachusetts Andrew exerted his influence to delay resolutions supporting Congress in the state legislature. Montgomery Blair was so impressed with Andrew's position that he urged the ex-governor to take the lead over pro-administration forces in New England, but Andrew declined, urging forbearance instead.

But the Republican split threatened the greatest damage in Ohio, always a swing state. There the governor, Jacob D. Cox, openly sustained the President, joined by--among others--Rush R. Sloane, John Sherman's campaign manager. It was natural, therefore, for Ohio Republicans to lead efforts to effect a reconciliation between the President and the party. Sherman led the movement with a long, prepared speech on February 26, in which he defended the President's motives and intentions, arguing that the President was justified in adopting his own reconstruction policy when Congress had through its own dereliction failed to pass one of its own. The President, Sherman pointed out, had incorporated into his program nearly all the features of the Wade-Davis bill. Moreover he had insisted that the southern states meet certain conditions
before he would remit them to local self-government. Sherman defended Johnson's decision not to enfranchise blacks, pointing out nearly all the northern states made the same discrimination and that Congress had not yet enfranchised black men in the District of Columbia.

Pointing to the resolutions passed by the Indiana Union convention and others by the Ohio state legislature, Sherman urged, "[T]he people of the United States now demand of us wisdom and moderation. This is not the time for extreme counsels. It is not the time to attempt great reforms and works." Poore reported that Sherman's effort made a strong impression on the Senate.

The same day newspapers reported Sherman's speech, they published a letter from Ohio Governor Cox to the chairman of the Ohio Union party central committee. Cox wrote that he had seen the President and was convinced no split need occur. Johnson wished to cooperate with the Union party. He wanted military government in the South to cease as soon as possible, fearing its effect on the nation, but he would admit into Congress only representatives who had been completely loyal throughout the war. Most important, the President assured Cox that he would endorse purely civil legislation to protect the freedmen, implying approval of the Civil Rights bill. That evening Cox visited Welles, Postmaster Dennison, and Doolittle. Welles clearly believed him an ally.
By late February and early March, Republicans spoke hopefully of "better signs." The conservative Massachusetts representative, John D. Baldwin, Leonard Myers, of Pennsylvania, and Grimes assured Welles that radicals were losing influence. Welles recorded that Grimes "guessed we were nearer now than some apprehended. This he said with a smile and manner that impressed me as coming from one who thinks his associates have the reins in their hands and intend to guide the government car safely."

Grimes was confident, no doubt, because he knew that the Reconstruction committee had decided to demonstrate Republicans' desire for harmony to the President by recognizing Tennessee's restoration to normal relations with the United States. The Reconstruction committee had been debating the form of such a resolution since February 15. Significantly, Grimes had chaired the conservative subcommittee which decided Tennessee was ready for admission. On February 20 the Joint Committee had rejected Boutwell's motion to require the state to grant impartial suffrage without regard to race by a 5 to 6 vote, Howard, Stevens, Washburne, Morrill, and Boutwell in favor and Harris, Williams, Bingham, Conkling, Grider and Rogers opposed. Fessenden had abstained. On March 5, the committee voted to report a resolution recognizing Tennessee with the fundamental conditions that it maintain the provisions of its constitution disfranchising former rebels for five years and never pay the debt incurred during the
rebellion or compensate former slave owners for the loss of their slave property. With these conditions, the committee voted to report the resolution over the objections of the Democrats and Washburne and Boutwell, who urged Tennessee must be required to enfranchise blacks.

Radicals were disgusted. They had hoped the President's course would ease opposition to black suffrage and pressure for recognition of southern states without it. The conservative and centrist majority on the committee, complained the radical Washington correspondent of the Chicago Tribune, "have furnished the insidious organizer at the White House an entering wedge, that will enable him, sooner or later, to enlarge the split already made in the body of the Union party to a disintegrating extent. Adopted or not it will... prove the point upon which the faithless political Archimedes will rest his lever to lift the congressional opposition to his usurpation from the ground it has heretofore held so firmly." 104

Instead of allowing the party to move to the left, Johnson's apparent desertion had forced it to the right. In the House a second proposition from the Reconstruction committee—a constitutional amendment giving Congress power to guarantee all citizens of the United States in equal protection in life, liberty and property—met strong opposition. Its supporters were forced to agree to postpone its consideration to mid-April.105 The Civil Rights bill met a similar reception when reported from the House Judiciary committee.
A coalition of Democrats and conservative and centrist Republicans led by Bingham forced the bill's recommittal on March 9.

On the same day the Senate finally determined to vote on the proposed apportionment amendment. Here too Johnson had forced a shift towards conservatism. Men who openly had espoused black suffrage now opposed Henderson's proposition to prohibit racial discrimination in voting regulations. The Senate defeated his amendment to substitute this for the committee measure by a vote of 37 to 10. Other black suffrage proposals garnered still less support. Party pressure upon radicals to support the committee proposal grew. Stevens and Chase urged Sumner to cease his opposition. I hope, Stevens wrote Sumner, "that if we are to be slain it will not be by accident." But as some who might have opposed the amendment out of radicalism swung to its support as a result of Johnson's course, conservatives who would have supported it earlier now joined the opposition. On the final roll call the proposed constitutional amendment received only 25 votes. A coalition of five hold-outs for black suffrage, eight Johnson-supporting conservatives, and nine Democrats prevented its passage.

Republicans were furious. The constitutional amendment had "been slaughtered by a puerile and pedantic criticism," Stevens fumed, "... by the united forces of self-righteous Republicans and unrighteous Republicans. Fessenden wrote bitterly of "Sumner's folly and wickedness." He could see no
justification for his course. "[T]he only ground of his opposition was mortified vanity," he believed. "He was not made chairman of the Reconstruction Committee."

The Republican situation was critical. Every radical and centrist reconstruction measure had been defeated. Congress had no policy at all. "Nothing has been gained but further evidence of the great, apparently increasing diversity of opinion among the members of the majority . . . ," wrote the Chicago Tribune correspondent. "Indeed the fatality of disagreement, that has been hanging over the majority ever since the opening of the session, preventing all substantial legislative achievements . . . threatens to become a chronic, insuperable obstacle to the success of Congress in conflict with the President."

"The President has gone over to the enemy," Washburne wrote home gloomily, "and our friends are all split up among themselves."
CHAPTER IX

CONSERVATIVE RECONSTRUCTION--PART TWO

Republicans agreed Congress and the President should act concurrently by law to restore the southern states, and they rejected the President's argument to the contrary, but they had fragmented over specific measures. This, they knew, could spell disaster. They knew something must be done.

The House Judiciary committee responded to the challenge, reporting the Civil Rights bill back to the House with only minor changes only four days after it had been recommitted. In its most important amendment, the committee proposed to eliminate from the bill the provision barring discrimination "in civil rights or immunities" generally. This left guaranteed only those rights of property and access to courts specifically listed in the bill. This amendment assured congressmen that the bill could not be construed to enfranchise blacks (its sponsors had insisted it did not anyway), but also limited the rights black men could claim under the law. To meet the constitutional objections of conservative Republicans, the committee incorporated a provision specifically authorizing a final appeal to the Supreme Court in any case arising out of the act. Again, the amendment added nothing of substance as that right of appeal existed in any case.
Judiciary committee chairman Wilson determined to ram the bill through over Bingham's objection that it could find no warrant in the Constitution. Nearly all Republicans now united and passed the measure with only six Republicans dissenting, including Bingham. Forty-three Republicans who had voted to recommit the bill four days earlier now voted to pass it, including three who agreed with the President's views on restoration.

The Senate agreed to the House amendments with the barest of opposition. On the one roll-call vote demanded by the Democrats, the Republicans were united, including even those who had sustained the veto of the Freedmen's Bureau bill and opposed the concurrent resolution on admission of southern claimants.

The Civil Rights bill passed, Republicans anxiously awaited the President's action upon it. They had high hopes. After all, the President had indicated to Trumbull that he approved it. He had told Ohio Governor Cox that he favored protection of freedmen's rights by a civil process rather than military (see pp. 210, 233 supra). The President's leading supporters in the Senate had voted for the legislation. Moreover, the Reconstruction committee had indicated its willingness to recognize Tennessee's restoration to the Union. According to Welles' Diary Republican conservatives and centrists bombarded him with hints and suggestions for accommodation (see p. 234, supra). It is likely other Cabinet
members were approached in the same way.

Cabinet members too desired a reconciliation. McCulloch urged Senator Henry Wilson to arrange a free conference between congressmen and loyal southern conservatives like Alabama's provisional governor, Lewis Parsons. Postmaster Dennison tried to persuade Welles to accompany him and McCulloch in a visit to the President to work out some means to preserve harmony. There is no specific evidence, but it is likely Seward too urged moderation. In Congress itself a desire for harmony seemed to prevail among Johnson's adherents. Not only did they endorse the Civil Rights bill, but Doolittle, Kansas Senator Lane, and William M. Stewart, all Johnson supporters, attended the Republican caucus held after the defeat of the proposed constitutional amendment in an effort to unite on a new one.

By March 17, Sherman told Republicans that he believed Johnson would sign the bill. Newspapersmen learned Senators "likely to be advised" agreed. But an editorial in the National Intelligencer of March 21, now believed to reflect the thinking of the administration, signalled Republican hopes had been misplaced. By March 25 nearly all Republicans realized Johnson would veto the bill. Once again the question became how far he would go. Would he merely object to some of the enforcement provisions, or would he again question Congress' jurisdiction and oppose any national protection of the freedmen's civil rights?
The President had retained a fair amount of Republican support after his Freedmen's Bureau bill veto. But the reaction would be different if he disapproved the Civil Rights bill. From Ohio Sherman learned "The general feeling here & all over the country is much more united in sustaining the action of Congress than it was soon after the [Freedmen's Bureau bill] veto message. . . . We all feel that the most important interests are at stake. We are ready to do anything for harmony in the Union party that will not lead to a sacrifice of right or endanger our safety as a people. If the President vetoes the Civil Rights bill, I believe we shall be obliged to draw our swords for a fight and throw away the scabbard." With public opinion strongly in favor of the Civil Rights bill, Johnson's supporters began to grow uneasy. Governor Cox and Indiana's Governor Morton urged the President to sign the bill. In the Cabinet Stanton and Dennison offered the same advice. McCulloch and Harlan, acknowledging they had not read the bill, told the President they hoped he could sign it. Seward opposed the enforcement provisions but urged approval of a measure declaring black men citizens. Only Welles remained in adamant opposition. But the President determined to veto the bill despite his friends apprehensions. Learning of this, Doolittle prepared a new civil rights bill, which he hoped would meet the President's objections. He probably hoped the President in his veto would agree
to approve a civil rights bill in principle, objecting to specific provisions of Trumbull's bill. Doolittle could then propose his measure in the Senate, drawing off enough votes from the majority to sustain the veto, and then uniting the party in favor of his measure. But Welles objected to Doolittle's proposition on the same grounds as Trumbull's, a bad omen.

Once more Johnson turned to his friends to help frame a veto message. For the last time Seward tried to moderate Johnson's opinions to preserve the possibility of Republican harmony. In his draft, Seward elaborately defended Congress' constitutional power to legislate in protection of the freedmen's civil rights, objecting only to specific provisions of the bill. He virtually asked Congress to modify the bill and resubmit it. As Johnson prepared his message, Seward scrawled a hasty note appealing to the President "to intimate that you are not opposed to the policy of the bill but only to its detailed provisions..." It was to no avail. The President sent in a broad, uncompromising veto the same day.

"In all our history, in all our experience as a people living under the Federal and State law, no such system as that contemplated by the details of this bill has ever before been proposed or adopted," the President observed. His constitutional objections to the bill were so fundamental that he seemed to leave no room for national legislation to protect civil rights. A few Senate conservatives and centrist
wished to make absolutely certain. On April 3 Morgan and Fessenden visited the President in an effort to agree upon a compromise bill. But Johnson admantly opposed any legisla-
tion by Congress to declare black men citizens, and the effort collapsed. Morgan, who had sustained the President up to this time, told his allies in the Seward-Weed faction that he would vote to override the veto. 12

As the breadth of the President's veto became known, local Republican support of Congress began to solidify. "The last veto hits harder than the first and has fewer friends by far," an Ohio correspondent wrote Sherman. The President had thrown away his great opportunity for reconciliation, and newspaper correspondents found "those who formerly defended him are now readiest in his condemnation." 13

The Civil Rights bill's essential conservatism--its tem-
porary nature--served it well in the struggle for Republican support. In urging the President to sign the measure, Governor Cox had drawn his attention to this. "If the Southern people will . . . do right themselves, by legislation of their own which shall break down distinctions between classes in the matters specified in the bill, as I hope they will do, the law itself would become of little practical moment . . . and a very short time would make it a practically dead letter," he pointed out. Another administration supporter, Senator William M. Stewart, came to the bill's support on the same considerations. " . . . [W]hen I reflect how very easy it is
for the States to avoid the operation of this bill, how very little they have to do to avoid the operation of the bill entirely, I think that it is robbed of its coercive features," he said. If the southern states will only modify their laws to do right, "this civil rights bill . . . will simply be a nullity . . . ."

Still, the result was in doubt as the Senate prepared to vote April 6. Dixon was ill and not in his seat. All expected him to support the veto; his absence might be critical. Morgan remained silent, not informing the bill's supporters of his intention to vote for it. Messenger after messenger went to summon Dixon, but he did not come. Finally, as Garrett Davis droned through an attack on the bill, Doolittle took Morgan's carriage to find the absent Senator. He returned alone, but he and Morgan both anxiously looked at the clock as more Democrats spoke. Finally the vote commenced. One by one the Senators answered the call. Dixon did not arrive. When the clerk called Morgan's name, he voted "aye," and the galleries broke into cheers. Even if Dixon arrived, the bill would pass over the veto. President pro tempore Foster gavelled the galleries into silence and the vote continued. Finally the clerk announced the final tally, 33 Senators in favor of overriding the veto and 15 against. "And then you ought to have heard the galleries," Howe wrote his niece. "They sprang to their feet clapping hands, stamping, shouting, yelling, waving handkerchiefs." The radical editor of the
Independent, Theodore Tilton, stood in those galleries as the Senate overrode the veto. "... [S]enators shook hands, old friends clapped each other's shoulders, women shed tears, and joy reigned!" he wrote. "O Gentle Reader, it was good to be there."

The House passed the bill over the veto April 9 by a vote of 122 to 41. Eight Unionists joined the minority, including Raymond. Bingham was absent but a colleague announced he would have voted against the bill. Three more who had supported the President rejoined the majority. It was "a glorious day ... A day of days!" wrote Colfax.

"The demand of the President," explained the Philadelphia North American, which had supported him until the Freedmen's Bureau bill veto, "... is that the Republican party shall suit him, stultify itself and its whole past career and principles. By this simple process he has managed to make the term radical synonymous with the entire mass of the dominant party ... ." The President had made an issue not on policy favored by the radicals alone, but on legislation framed and passed by the conservatives and centrists. He would have to fight a united Republican party.

* * *

For radicals like Sumner, the future seemed bright, difficult as a struggle with the President might be. A year before he and a handful of radicals had barely fought off the restoration of Louisiana, a measure supported by the President
and the nearly united Republican force in the Senate, led by the same man who now led the fight for the Civil Rights bill. Sumner had prepared a speech in defense of the bill, but he had determined not to deliver it. "If I were disposed to despair on other questions," Sumner had intended to say, "I should take heart, when I see how Senators once lukewarm, indifferent, or perhaps hostile, now generously unite in securing protection to the freedmen by Act of Congress." The Democratic press began referring to men like Trumbull and Fessenden as "Radicals," and they accepted the label proudly. If they accepted the label, might they not accept the program?

Radicals recognized the opportunity. "Remember these are no times of ordinary politics," Phillips admonished Sumner. "They are formative hours: the national purpose & thought grows and ripens in thirty days as much as ordinary years bring it forward. We radicals have all the elements of national education in our hands--pressure of a vast debt--uncertainty of it--capital unwilling to risk itself in the South but longing to do so--vigilant masses--every returned soldier a witness--every defeated emigrant to the truth a witness & weight . . ." Breathing the true radical fire, Phillips urged Sumner to stand firm. "Plant yourselves on the base claim no state readmitted without impartial suffrage--live & die by that, vote alone, if necessary against everything short of it . . . Three years will justify the position. You can afford to wait that verdict. Disclaim all
coming down to the level of dead Whiggery (Fessenden) cowardly Republicans (Wilson) disguised copperhead (Doolittle) unadulterated treason (Raymond) stolid ignorance . . . (Trumbull) & stand for what every clearsighted man sees and confesses as indispensible for safe settlement . . . Secure as many 'civil rights' as you can, bolster up as many Bureaux as you please but never open your doors to any State unless on [the] avowed principle of negro suffrage."

Others offered similar advice to Republicans as a whole. "Congress has demoralized itself in the effort to find some middle ground so moderate, so 'conservative' . . ., that they and the President can stand on it together," the Chicago Tribune noted. "We hope the veto of the Civil Rights bill . . . will end all such futile attempts."

But other Republicans, angry as they were with the President, were not disposed to embark on a new career of radicalism. Many of the most conservative blamed the radicals for the split as much as they did the President. Dawes was disgusted. "A few of our people are in their element now--perfectly happy," he wrote his wife. "They can cry and howl and . . . alarm the country at the terrible crisis the President has involved us in, and he is fool enough, or wicked enough . . . to furnish them with material fuel for the flame, depriving every friend he has of the least ground upon which to stand and defend him."23

After President Johnson had vetoed the Freedmen's Bureau
bill, several leading Ohio politicians had endorsed the opinion of Warner M. Bateman, warning Sherman of the situation. The veto had created a strong desire for unity among Ohio Republicans, as a necessity to survive the President's possible defection. "But to this end there is a most serious difficulty in the way," they had written. Ohio Republicans generally opposed the President's policy. "It is in vain however to secure their united support to Congress or even to maintain the ascendance of the Union party in Ohio unless Congress shall pursue a course more temperate. If it is to be carried along the furious tide with Stevens & Sumner . . . I assure you that the power of the Union party will die with the present Congress." After the second veto Bateman cautioned, "The controversies between the President and Congress has [sic] not so much divided [the people] . . . among themselves as it has separated them from both you and Johnson. The great body of the people are entirely harmonious as to their general aims and the one that leaves them is lost be it the President or Congress." Congressional Republicans understood the situation. Speaker Colfax determined that Congress should adopt "some plan which, obtaining the needed security for the future from the rebel States, shall not take on any loads of popular prejudice that can be avoided." The Illinois, New York, and Ohio Republican delegations caucused and concluded to oppose black suffrage in deference to the prejudices of
their constituents. Trumbull told Welles that no more than eight Senators and perhaps sixteen representatives favored black suffrage. Even Boutwell, who had held out for black enfranchisement in the Reconstruction committee, now recognized that it was unattainable and joined his colleagues in framing a practical plan.

Moreover, the President appeared to have stopped for a second look after the passage of the Civil Rights bill over his veto. The overwhelming Republican support for the measure, William Cullen Bryant wrote, seemed to have "stunned him." Rumors circulated that Johnson desired a rapprochement. This too inclined Republicans to moderation.

The first acid test of Republican sentiment came in the Senate April 25, as the Senate voted on admitting Colorado to statehood. Sumner proposed to require the territory to enfranchise blacks as a condition for admission, but his amendment was overwhelmed, receiving only seven votes, two or three of which came from Senators more interested in defeating the legislation than securing black suffrage. Following Phillips' advice, Sumner then joined the Democratic opposition to Colorado statehood. In the House a similar amendment garnered only 37 votes. Here Boutwell, Eliot, Kelley, Julian, Stevens, Elihu B. Washburne, and other Republicans joined the opposition in a futile effort to defeat passage.

In the reconstruction committee, Republicans took cognizance of their colleagues' opinions. The committee had
accepted as its basis of action a proposal Robert Dale Owen suggested to Stevens, incorporating into one constitutional amendment nearly all the elements of the centrist program. It had prohibited racial discrimination in voting regulations after July 4, 1876. On April 28, two days after the Ohio congressional delegation had voted to oppose Negro suffrage, Stevens moved to eliminate even this mild enfranchisement provision, and the committee instead decided to disqualify men who had voluntarily aided the rebellion from the right to vote in national elections until July 4, 1870.

On April 30 Stevens reported the joint committee's reconstruction plan to Congress. It consisted of two parts. The first was a proposed XIV Amendment to the constitution, with five sections. The first—a modification of the amendment Bingham had proposed to the House in February—forbade state laws abridging the privileges or immunities of United States citizens or depriving them of life, liberty, or property without due process of law, or denying them the equal protection of the law. The second section was based on the rejected apportionment amendment, excluding from the basis of congressional representation any class of men over 21 years of age denied the right of suffrage, excepting those excluded for participation in the rebellion or for other crimes. The third section contained the voting disqualification, and the fourth forbade the state and national governments to pay the rebel debt or compensation for freed slaves. The final section
gave Congress power to enforce the amendment by appropriate legislation.

The second element in the committee's plan was a bill to provide for the restoration of the rebel states to the Union. Under its provisions the representatives of any southern state which ratified the XIV Amendment and altered its laws to conform to it would be admitted to Congress, but only after the amendment became part of the United States Constitution. Furthermore, any state which did ratify the amendment could defer payment of direct taxes uncollected during the war for ten years.

The Reconstruction committee plan was the culmination during the first session of the Thirty-ninth Congress of the "grasp-of-war" doctrine on which so many conservatives and centrists based their constitutional justifications for reconstruction. This became plain when the committee submitted its report a month later. Holding that "the conquered rebels were at the mercy of the conquerors," the Reconstruction committee offered the constitutional amendment under "a most perfect right to exact indemnity for the injuries done and security against the recurrence of such outrages in the future." To be entitled to restoration, the committee insisted, the southern states "must prove that they have established with the consent of the people, republican forms of government in harmony with the Constitution and laws of the United States, that all hostile purposes have ceased, and should
give adequate guarantees against future treason and rebellion—guarantees which shall prove satisfactory to the government against which they rebelled, and by whose arms they were subdued."

At the same time, the proposed amendment again demonstrated Republicans' reluctance radically to expand the national government's jurisdiction over its citizens. The amendment in no way challenged the tradition that states had primary jurisdiction over citizens in matters of police regulation, the regulation of conduct for the protection of the community. Instead its first and fifth sections gave Congress power to assure that these police regulations would not discriminate against citizens on account of race, color, or previous condition of slavery where the regulation involved some "fundamental right" of United States citizens. It limited states' alternatives in framing laws involving these rights; it did not transfer to the national government the power to frame all laws touching on these rights. National jurisdiction could arise only through the states' prior wrongdoing. It was the expedient of the Civil Rights bill employed once again. As the arch-conservative Governor Cox of Ohio explained in endorsing the amendment, "If these rights are in good faith protected by State authorities, there will be no need of federal legislation on the subject, and the power will remain in abeyance; but if they are systematically violated, those who violate them will be themselves responsible
for all the necessary interference of the central govern-
ment."

In framing their plan, the committee members had not divided purely along ideological lines. They had agreed some plan was necessary for the political survival of the Republican party, and they had determined to hammer one out. The differences which had arisen among Republican committee men were over what provisions were most likely to guarantee the security of the Union and of black men. Each of the members had his favorite measure. All the Republicans and Reverdy Johnson had insisted on the section of the proposed amendment repudiating the rebel debt. Only the two House Democrats had resisted. Bingham had been most insistent on a broad national guarantee of United States citizens' "privileges and immunities." He had insisted on the phrase. "Its euphony and indefiniteness of meaning were a charm to him," Boutwell remembered. Stevens and Blow also favored Bingham's proposition, with Grimes and Howard the Republicans most disinclined to accept it.

On the other hand, Howard and Washburne had been the only Republicans to hold out for black suffrage to the end. All the others proved willing to abandon it. Stevens, Conkling, and Washburne desired the strongest possible disqualification of rebels from voting and office-holding privileges. Bingham, Blow, Williams, and Fessenden had wanted to minimize this. Howard and Harris tended to agree with Conkling, Stevens, and
Washburne, while Grimes and Boutwell voted erratically. In framing the reconstruction bill, Williams, Bingham, and Blow wanted to readmit southern states' representatives and Senators into the Fortieth Congress if their states ratified the proposed constitutional amendment and altered their laws to conform with it, without forcing them to wait until the amendment became part of the Constitution. The other Republicans had insisted on the more stringent requirement.

So the Republican committee members had eschewed ideology in favor of practicality. And in so doing the radicals among them had, in effect, acted as moderates. They were aware of this and defended their actions vigorously. Note Stevens' explanation: "This proposition is not all that the committee desired. It falls far short of my wishes . . . . I believe it is all that can be obtained in the present state of public opinion. . . . I shall not be driven by clamor or denunciation to throw away a great good because it is not perfect. I will take all I can get in the cause of humanity and leave it to be perfected by better men in better times." Fessenden could not have said it better.

Radicals outside Congress were shocked at the plan's conservatism. "Its surrender is total," Wendell Phillips lamented. He urged Sumner to raise his voice against it. "Seven years will show that this settlement allows the South to carry off the . . . best part of the victory . . . ." Phillips publicly hoped that the Republicans would be defeated
in the upcoming elections if they adhered to the committee platform. The Chicago Tribune complained that conservatism had "undue weight" with the committee but accepted the program. Privately, however, co-editor Joseph Medill informed Trumbull that Republicans received the plan coldly. "I regard it as the offspring of cowardice—want of faith in the people." Frederick Douglass, Benjamin F. Butler, and other radicals, including important southern Unionists, echoed the negative opinions and reluctant endorsements.

But from Washington Republicans urged toleration upon the radicals. The Independent's correspondent, David W. Bartlett, pleaded with that journal's radical readers to "remember that it was extremely difficult to secure a two-thirds vote for any proposition disapproved by President Johnson. . . . The emergency is great. In the opinion of the leaders of Congress, it is absolutely necessary that a fair plan of restoration be submitted to the South at once." Colfax wrote a friend on the staff of the New York Tribune in the same vein: "I wish the Tribune was more cordial in its indorsement of Congress. I know, with the difficulties around us, we can't quite reach its standard of choice as to legislation and terms; but . . . [w]e cannot go further than we can command a two-thirds vote in both Houses. . . . So we agreed on the best we could do . . .—just as John Bright takes what he can get in Parliament, not what he wants." 36

In fact, Republicans in Congress attacked the proposed
XIV Amendment as being too restrictive, rather than too conservative. Radicals found themselves defending against conservative attacks the one real restriction in it—the five year prohibition on voting by those who had joined the rebellion voluntarily. The insertion of this disfranchisement had made the abandonment of black suffrage at least palatable to the radicals. Now Republicans were insisting men who had committed treason should vote in national elections, while those who had remained loyal but were born black should not! The third section of the amendment as it stood was quite liberal. It disfranchised only those who had joined the rebellion voluntarily, excluding the hundreds of thousands who had been drafted. It allowed them to vote in state and local elections, electing lawmakers whose activities would have far more influence on their daily lives than those in Washington. Yet this seemed too strict to many Republicans, and not only conservatives.

James A. Garfield announced his disappointment that the amendment did not guarantee impartial suffrage; he also opposed the disqualification of rebels. Whereas the radicals on the Reconstruction committee believed the denial of the franchise to blacks made it imperative to disfranchise rebels, men like Garfield believed the opposite. If blacks should continue unenfranchised, rebels must continue to vote. To do otherwise left one-tenth or less of the population in each southern state with the right to vote. "Will nine tenths of
the population consent to stay at home and let one tenth do the voting? Will not every ballot-box be the scene of strife and bloodshed?" he asked. To enforce this would require a large standing army in the South, and this he could not support. Yet he conceded his willingness to accept the amendment less this section. He would not carry his views to their logical conclusion and insist on black enfranchisement. Dictated perhaps by political necessity, the willingness of Garfield and men like him to entrust political power to southern Confederates while excluding southern blacks from sharing it marked a definite shift away from the radicalism they once pronounced and still professed.

Bingham, Blaine, and Raymond added their voices to Garfield's. Stevens, Boutwell, Eliot, and other radicals defended the restriction. The test came May 10. Republicans who wanted to modify or eliminate the disqualification section opposed the seconding of the previous question. If they succeeded they could move amendments. If they failed they could not.

The final speeches before the vote brought the first of the great confrontations between the two great House members of the Reconstruction committee, Thaddeus Stevens and John A. Bingham, which would mark reconstruction during the Johnson administration. The third section could not be enforced, Bingham insisted. He was not unalterably opposed to its inclusion in the amendment, but he did not like adding an
unenforceable provision to the fundamental law. If representatives insisted on such a measure, let them embody it in ordinary legislation. Stevens answered with controlled fury. "Give us the third section or give us nothing," he retorted. Gentlemen tell us it is too strong—too strong for what? Too strong for their stomachs, but not for the people. Some say it is too lenient. It is too lenient for my hard heart. Not only to 1870, but to 18070, every rebel who shed the blood of loyal men should be prevented from exercising any power in this Government. That, even, would be too mild a punishment for them." Ordinary criminals did not vote, Stevens pointed out. "They have done nothing but err. There is no blood on their hands; they have only erred in committing such little acts as arson and larceny." Stevens remembered the scene six years earlier when "every southern member... came forth in one yelling body, because a speech for freedom was being made here; when weapons were drawn, and Barksdale's bowie-knife gleamed before our eyes. Would you have these men back again so soon as to reenact those scenes? Wait until I am gone, I pray you. I want not to go through it again. It will be but a short time for my colleague to wait. I hope he will not put us to that test."

Stevens won; the motion to second the previous question passed 84 to 79. Bingham, Blaine, Garfield, Dawes, Hayes, and James M. Ashley were among the 62 Republicans voting in
the opposition. Fourteen Democrats and the arch-conservative Unionist Lovell R. Rousseau had joined the radicals, hoping the more conservative Republicans would then vote against the entire amendment. They had miscalculated; Republicans united to pass the measure 128 to 37. Even Raymond voted for it, and the galleries applauded him. Only five Unionists voted with the opposition. But more conservative Republicans were fairly certain the Senate would remove the objectionable provision. "[W]e shall then adopt it solid," Hayes informed Bateman. "There is now almost perfect harmony in the Party here. Negro suffrage is not to be insisted upon, but difference of opinion over that allowed."

The expectations of those representatives who wanted to modify the proposed amendment's disfranchising section proved justified. Trumbull, Grimes, and others criticized it before the measure even reached the Senate. Once there, Jacob M. Howard, the respected, radical member of the Reconstruction committee, who accepted the job of managing the amendment through the Senate when Fessenden pleaded illness, immediately abandoned the controversial section, arguing instead for an office-holding disqualification. Such a position, taken by the amendment's Senate manager, signalled the death-knell of disfranchisement. Again a leading radical member of the committee, this time Howard, urged moderation on his radical colleagues. He too desired black suffrage, he conceded. "But . . . it is not the question here what we will do; it is
not the question what, you, or I, or half a dozen other mem-
ers of the Senate may prefer in respect to colored suffrage;
it is not entirely the question what measure we can pass
through the two Houses; but the question really is, what will
the legislatures of the various States to whom these amend-
ments are to be submitted do in the premises; what is it
likely will meet the general approbation of the people who
are to elect the Legislatures . . . ?" 43

As Senators discussed what to do, pressure grew for a
reconciliation between President Johnson and the party. On
May 22, Seward delivered a carefully prepared address in his
home town of Auburn, New York. Carefully treading a tor-
tuous path between the President and Congress, he argued that
Johnson and the party were not so widely separated. He
insisted the southern states had been reorganized on a loyal
basis and that reconciliation between sections was the nation's
prime necessity. But he the President favored a change in
the basis of congressional representation and protection for
freedmen. Despite Seward's efforts, however, his speech was
not nearly so conciliatory in tone as the drafts he had pre-
pared of the President's messages. 44 Stanton too informed
audiences that he saw "a steady and encouraging advance towards
practical adjustment" in Congress' rejection of radical solu-
tions to the problem of reconstruction. 45 Rumors of recon-
ciliation filled the press. 46

With hope rising that the Republican party might present
a united front in the next elections, Senate Republicans met in caucus on Trumbull's suggestion to modify the proposed amendment in such a way that all could approve it. On May 25 they agreed to eliminate the third section as it stood. They met again May 28 but after several hours discussion decided to let Fessenden, Grimes, and Howard alter the amendment in light of the opinions Senators had expressed. The committee reported the next day. Most of the changes suggested by the committee were minor. The most important was the alteration in the third section. Instead of disfranchising rebels in national elections, they proposed to disqualify from the right to hold office any former Confederate who had taken an oath to support the United States Constitution in order to hold office before the rebellion. Congress could remove the disability by a two-thirds vote of each house. The changed provision left rebels with the vote. Only men who had remained loyal might hold office, but they would be responsible to rebel constituents. Despite its effect the caucus agreed to this and the other alterations the committee recommended with little debate.

But other suggestions aroused greater controversy. After long debate the caucus decided to admit Tennessee immediately, as loyalists controlled its government and it already had modified its laws to disfranchise rebels, to secure civil rights to blacks, and to repudiate the rebel debt. Moreover, the Republicans agreed to modify the Reconstruction bill
reported by the Reconstruction committee to provide for restoration of each southern state upon its ratification of the constitutional amendment rather than upon the amendment's incorporation into the Constitution. The radicals' defeat was total.

Because its rules allowed unlimited debate, it took the Senate over a week to amend the proposed constitutional amendment in accordance with the caucus decision. Not until June 8 was the process completed and the amendment passed, only four Republicans voting in the negative. Stewart, Morgan, and Lane of Kansas, all of whom had once supported the President, voted with the majority. The House agreed to the Senate amendments without modification. The Senate modifications had so far eliminated any radicalism the committee had left in the measure that not one Republican voted against it. Raymond, Delano, Hale, George R. Latham, Kuykendall, Charles E. Phelps, Green Clay Smith, Kellian V. Whaley, and Thomas N. Stilwell, all supporters of the President, voted for the amendment. Rousseau and Thomas E. Noell did not vote.

It was no day of triumph, Tilton observed. He had again travelled to Washington to watch history being made. He sat in the galleries as he had the day the Senate passed the Civil Rights bill over the veto. He contrasted this occasion with that. "... [T]here was not a cheer, not a murmur of applause, not even a ripple of enthusiasm," he informed his readers.
Before the vote, Stevens had surveyed the scene. "In my youth, in my manhood, in my old age, I had fondly dreamed that when any fortunate chance should have broken up for a while the foundation of our institutions, and released us from obligations the most tyrannical that ever men imposed in the name of freedom, that the intelligent, pure and just men of this Republic, true to their professions and their consciences, would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich. In short, that no distinction would be tolerated in this purified Republic but what arose from merit and conduct. This bright dream has vanished," the old warrior told the hushed House, "'like the baseless fabric of a vision.' I find that we shall be obliged to be content with patching up the worst portions of the ancient edifice, and leaving it, in many of its parts, to be swept through by the tempests, the frosts, and the storms of despotism."

Tilton lamented, "If there had been a few more minds like his own in the party into whose hands the government of the country has fallen, his dream of political justice would have been a reality. It is tormenting to think of what might have been." 51

* * *

With Congress committed now to a conservative reconstruction program Republicans hoped the President would retrace his
steps. After all, Trumbull wrote his wife, "there is really nothing in it, which he hasn't approved one time or another. Conservative Republicans, who had been waiting to see what Congress would do after its split with the President, pronounced themselves satisfied. Jacob D. Cox, the arch-conservative Governor of Ohio, still disliked the office-holding disqualification, mild as it was, but he informed Garfield, "[S]ince the party has made undoubted progress in my direction within the past year, I can afford to be easily suited . . . ." The Ohio State Republican convention remained entirely harmonious, the President's two most influential supporters, Cox and M. P. Gaddis, both endorsing a platform which endorsed the congressional plan. 53 Stephen J. Field, one of the most conservative justices of the Supreme Court, wrote Chase, "The proposed amendments to the Constitution . . . appear to me to be just what we need. I think we members of the Union party can unite cordially in their support. If the President with-holds his approval he will sever all connections with the Union Party. . . ." Chase, who unknown to the radicals had great sympathy for the President, agreed. In general, Republicans agreed with David Ross Locke, the editor of the Toledo Blade: "There is nothing in these propositions which the most conservative Unionist can object to--nothing which he ought not to heartily endorse. 54

But Johnson remained stolid. On June 22 he showed his Cabinet a message he and Seward intended to send to Congress
informing the members that the Secretary of State had sent copies of the proposed XIV Amendment to the state governors but avowing this to have been purely a ministerial act in no way signifying approval. Only Welles, Seward, and McCulloch approved the transmission of this gratuitous insult. Dennison and Harlan advised against it. It would burn the bridges. At the same time, Doolittle, Welles, Seward, the Blairs, former Governor Alexander W. Randall of Wisconsin, and others prepared a call for a national union convention to assemble in Philadelphia in August. It would support the President and endorse candidates committed to his policy. The President's message to Congress, sent June 22, and the call for the Philadelphia convention, which appeared June 26, killed the last faint hope that the President would cooperate with the party which had elected him. Recognizing the break's finality, Speed, Harlan, and Dennison quit the Cabinet. Stanton, heeding the urgings of Republican friends and not himself an active politician with ambitions to nurture, remained.

With the President irrevocably committed to opposing the program of the Republican party, radicals and conservatives collided once more, over its finality. The Reconstruction committee had reported a measure providing for the readmission of representatives and Senators from southern states which ratified the proposed amendment and modified their laws in conformity with it. But that re-admission would occur only after the amendment was incorporated into the Constitution. Having acquiesced in the centrist-conservative
program embodied in the constitutional amendment, the Civil Rights bill, and a second Freedmen's Bureau bill (passed over a presidential veto July 16), radicals determined to make a last fight for black suffrage and at least to resist the foreclosure of congressional options in reconstruction policy which the Reconstruction bill represented. On the other hand, more conservative Republicans determined further to moderate the committee program by eliminating the requirement that the amendment be incorporated into the Constitution before the southern states could be readmitted. Bingham proposed an amendment to this effect May 1, and the Senate Republican caucus agreed to a similar course May 29. 57

On the radical side, Boutwell informed the House he would propose an amendment to the Reconstruction bill. It substituted for the committee measure one promising restoration only to Tennessee and Arkansas, and to those states only after they instituted impartial suffrage. 58 James F. Wilson, the chairman of the Judiciary committee, proposed a less extreme measure similar to the committee's except that it promised to restore any southern state which inaugurated impartial suffrage without waiting for the constitutional amendment's final adoption. 59 James M. Ashley suggested an amendment to the committee bill requiring a new election for state officers in all but Tennessee and Arkansas before the southern states could be restored. 60 But Thaddeus Stevens introduced the most radical proposal, perhaps in an effort to make the other
radical suggestions appear more attractive to moderates. Stevens' measure declared the Johnson state governments valid only for municipal purposes and authorized them to call new constitutional conventions to be elected by all male citizens over 21. It disfranchised all Confederates for five years after they signified their intention to resume allegiance to the United States. Finally the Stevens bill required that no constitution be presented to Congress which made any discrimination in rights, privileges, or immunities of citizens on account of race or previous condition. Only after complying with these terms would southern states be restored. He had ignored the constitutional amendment completely. In the Senate Sumner suggested a measure simply adding an impartial suffrage requirement to those required by the committee bill.

The battle had opened in the House May 15, before the Senate had completed debate on the constitutional amendment, when the committee's Reconstruction bill came up as the regular order of business. Pursuant to an agreement among the House members of the Reconstruction committee to delay the bill until the XIV Amendment passed, Stevens moved to postpone it two weeks. But Bingham objected. Now the hostility between the two leaders flared into the open. The radical members of the Reconstruction committee had agreed to abandon black suffrage. They had supported the constitutional amendment in good faith; none of them had embarrassed the amendment by trying to add more radical provisions to it. But Bingham
had not adhered to the committee amendment where he dis-
approved of it. He had joined the attempt to modify the third
section disfranchising rebels. He had helped create a climate
in which the Senate was certain to eliminate that section.
Then he proposed an amendment to the committee's Reconstruc-
tion bill to allow the readmission of southern states before
the final adoption of the constitutional amendment. Now he
opposed the bill's postponement. "I must say that I do not
understand what the gentleman from Ohio means," Stevens com-
plained. "I thought it was understood that the bill should
take the course I have indicated, but it so happens that my
friend from Ohio never agrees long to what he and the rest of
the committee may agree to at any time upon any particular
point." Bingham answered that he never had agreed to the
postponement; Stevens was hardly satisfied. Seeing he could
not prevent some postponement, Bingham moved that it be for
one week only, but an alliance of radicals and Democrats
defeated him. Nonetheless Bingham had carried a majority of
the Republicans with him, a clear indication that most Repub-
lican congressmen would vote for his amendment to the bill.

The representatives began debate on the Reconstruction
measure May 29. Devoting much of their effort to defending
the constitutional amendment and regretting that it went no
further, Republicans disagreed on the proper terms of a Reconstruc-
tion bill. But the real work was done behind the scenes.
By June 12, Raymond wrote that "[t]he Radicals [i.e., Repub-
licans] feel beaten. They cannot agree and will drop the
Reconstruction bill altogether! Stevens told me yesterday he thought they had better do so, & Boutwell, Banks Garfield, & the rest are today urging it. They can't help themselves." Boutwell informed Sumner that no one knew what action the House would take on the bill. But he added, "We must never permit the passage of an act pledging the country to the admission of rebel states when amendments are ratified. Better that Tennessee be admitted at once, which, however, I hope will not happen." With members of the Reconstruction committee, including the bill's House manager, Stevens, unenthusiastic about the Reconstruction bill, its consideration continually was delayed. On July 3, the House passed over the measure in favor of the tariff bill, and this signalled its abandonment.

But Republicans knew they could not adjourn without giving some indication that their constitutional amendment embodied a plan for restoration, that they did not intend to keep the southern states in limbo indefinitely. So when the Tennessee state legislature ratified the amendment, more conservative Republicans immediately moved to restore the state to normal relations in the Union. In effect, they were adopting the Bingham amendment to the Reconstruction bill, admitting a southern state which ratified the constitutional amendment before the amendment became part of the Constitution. Another of the more radical elements in the mild Reconstruction committee program was to be abandoned.
On July 19 Bingham moved to reconsider the vote by which the House recommitted to the Reconstruction committee the resolution to recognize Tennessee first offered in February as part of the effort to conciliate the President. Stevens led the radical effort to delay it, with motions to adjourn. But Bingham succeeded in forcing a vote, and Democrats, conservatives, and centrists agreed to reconsider the recommittal vote over radical objections, 71 to 34.

The next day Bingham offered an amendment to eliminate the conditions the Reconstruction committee had required of Tennessee in return for recognition, since similar—though somewhat milder provisions—had been included in the XIV Amendment itself. When the House agreed to the substitute and then seconded the previous question, cutting off the possibility of amendments, Boutwell recognized the radical cause was lost, but he deplored the decision. The preamble to Bingham’s resolution affirmed that Tennessee had framed a republican form of government, he pointed out. Pass that preamble and admit Tennessee on its affirmations, and Congress would abandon any ground that black disfranchisement and republican government were contradictory. Pass the resolution and the other southern states would be admitted under the same precedent. Congress would acquiesce in the creation of a dissatisfied, disfranchised class of over four million people. And to the loyal white men of the South it offered “only submission, degradation, or expatriation.” "I speak under
the impression, the firm conviction, that we to-day here surrender up the cause of justice, the cause of the country, in the vain hope that the admission of Tennessee may work somewhat for the advantage of the party which has controlled the country during these last six years." But Boutwell's objections failed to deter his colleagues, faced as they were with a bitter election campaign in which the opposition would have the power of the Presidency and the patronage. The radical opposition fragmented, over half of those voting against reconsidering the bill the day before now joining the majority, among them Stevens. Only thirteen radicals held out against the combined weight of the Democrats and nearly all the Republicans as the resolution passed.

Immediately after the vote the radicals made a last attempt to soften the blow. Stevens again brought up the original Reconstruction bill and moved the previous question to avoid amendments. If Congress passed this bill now, it would mean that only Tennessee would be admitted before the adoption of the XIV Amendment. But Bingham succeeded in preventing the House from seconding the previous question, opening the bill for his amendment to eliminate the delay. With this radical-conservative lines broke completely as a coalition of Democrats, and Republicans of all degrees of radicalism joined to table the bill finally and irrevocably.

In the yet more conservative Senate, even fewer Republicans opposed the recognition resolution. An attempt by
Sumner to require impartial suffrage as a further condition was defeated, garnering only four radical votes. After a stiff fight over the proper wording of the preamble and whether to restate the entire congressional constitutional position in it, the Senate passed the resolution 28 to 4. Only two Republicans voted against it—Sumner and B. Gratz Brown.

"The flag of the nation ought to hang at half-mast over the halls of the National Capitol," the Standard mourned, "in commemoration of the dead courage of Congress."

* * *

The conservative reconstruction program was complete. The centrists and conservatives had embodied their requirements into law and a proposed constitutional amendment. Despite the failure of the Reconstruction bill, a majority of Republicans had clearly indicated their intention to admit the representatives of any southern state which ratified the amendment and conformed its laws to it. On this platform the Republican party could and did unite virtually its full strength. Urging moderation on their radical allies, conservative and centrist Republicans, with the help of a bungling President, swept the elections of 1866, electing a House of Representatives to the Fortieth Congress as overwhelmingly Republican as that of the Thirty-ninth.

For the radicals it had been a time of trial and disappointment. If historians have viewed 1866 as "the critical year," in which Radicals seized control of the Republican
party from a "moderate" and "reasonable" President, contemporary radicals viewed it as something else again. It was the year, as Tilton wrote, in which "[t]he Republican majority . . . abandoned for the sake of party a principle which they ought to have maintained for the sake of mankind."
CHAPTER X

"RADICAL" RECONSTRUCTION--PART ONE

During the first session of the Thirty-ninth Congress, differences between radical Republicans and conservatives and centrists had been fundamental. The non-radicals had succeeded in enacting their program with the sullen acquiescence of some radicals and over the open opposition of many. After their victories in the north in the elections of fall, 1866, Republican congressmen grimly prepared for a renewal of the strife. It would come, they knew, when southern states ratified the proposed constitutional amendment. Conservatives and centrists would seek to recognize the states which did so, as they had Tennessee; radicals would resist.

Preparing for the battle he expected, Stevens suggested to his Pennsylvania colleague and friend, John M. Broomall, that fifteen or twenty leading radical Senators and representatives form their own caucus. Broomall's answer illustrated the seriousness with which radicals viewed the coming struggle: "A caucus of the entire party would result in nothing, as we both well know," he wrote. "Bingham and myself would agree upon nothing. You would help me to disagree. I take it that the inevitable question whether all the adult males of the South are to be consulted in the reconstruction
will find you the leader on one side and Bingham on the other. This question will make the coming political parties and I think it will divide our party in the coming session." Moreover Bromwell was a witness to how badly the radicals had fragmented during the previous session in the face of conservative-centrist pressure and political necessity. "Now if we could get together those who would be upon our side of that question alone I would like it very much," he continued, "but after the first dozen who can tell who they are[?] Would it not be better . . . for us to communicate by letter with Boutwell, Kelley, Williams, Wilson of Iowa and such others as we feel sure of . . . [?]"

As Congress opened Republicans began sparring on the great, divisive question. But once again the attitude of Andrew Johnson and the defiance his position bred in the South would rescue Republicans from impending division. For despite the constitutional amendment's remarkable conservatism, one by one the southern states would reject it. Texas, Florida, and Georgia did so before the second session began. In South Carolina, Alabama, and Virginia, sentiment for ratification grew, but Johnson's personal intervention stiffened resistance. By February 6 the process of rejection would be complete, and Republicans would ponder what to do next. The result was a new program, considerably more radical than the first.

For many years historians viewed the result of these
new deliberations—the Reconstruction acts of 1867—as the final victory of radicalism. But recently scholars have concluded that this is an oversimplified view and that the program of radical reconstruction emerged only after furious tugging and hauling among various Republican factions. Eric L. McKitrick, David Donald, and William R. Brock have all outlined this struggle, but only Brock has attempted to present it as a conflict between two fundamentally different policies, and none of them recognized the important role played by last-minute efforts to compromise with the President.

Moreover historians have not indicated just how short the Reconstruction acts fell of what the radicals originally had wanted. Studying the events of the Thirty-ninth Congress' second session separately from radical opinion of a year earlier, taking as a starting point radical opinion in December, 1866, rather than December, 1865, scholars have suggested the radicals held their own if they did not win a complete victory in the struggle over the Reconstruction acts. But men like George W. Julian, Wendell Phillips, Zachariah Chandler, and Josiah B. Grinnell did not see in the passage of those acts the enactment of the program they had advocated. Most of the radicals originally had favored territorial governments for the southern states. But the radicals were forced to give that program up as impractical even before the second session of the Thirty-ninth Congress convened. The struggle with the President had forced public opinion too far to the
right. Johnson had forced the public debate on to the ques-
tion of the proper mode of restoring the rebel states, not
governing them. Republicans could urge stringent policies
for restoration, but they could not hope to retain power if
they appeared to advocate no restoration at all or a program
of long delay. Radicals knew there was no prospect that a
territorialization program could win enough support to pass
Congress, much less survive a presidential veto. In a large
sense, the radicals had been beaten before the battle had
begun.

Having abandoned the program they believed best suited
to the emergency, radicals cast about for another. One con-
clusion they arrived at quickly. The attempt to protect black
southerners by national action while leaving southern state
governments under the control of former rebels could not work.
The influence of local government on the lives of Americans
was too powerful for the national government to counteract,
even when the national government was represented by the
Freedmen's Bureau. The prospect for national protection
through the courts and national civil officers alone was even
less promising.

Radicals cited the reports of the assistant commissioners
of the Freedmen's Bureau to support their arguments. They
pointed to the race riots in which organized mobs, aided by
white southern police, brutalized and murdered black citizens.
Civil Rights bills and constitutional enactments could not do
the job. "Everything there is organized against the black man, from the judge upon the bench to the constable with his process," New York's radical representative, Hamilton Ward, observed. "[E]very officer, State, legislative, judicial, county, town, and municipal, who is called upon in any manner to enforce those laws and carry out those sacred guarantees of the Constitution are the enemies of the loyal men and freedmen, and opposed to the execution of those laws and guarantees." The only answer, radicals insisted, was totally to reorganize the southern states, completely displacing the governments erected under President Johnson's authority.

Southern loyalists pleaded for such action. "Our present State Government is a curse to us," they lamented. Loyalists, white and black, suffering under rule of former rebels, understood the true political complexion of Congress better than its Democratic and pro-Johnson critics. "We talk some of the members [of Congress] as being radical," one of them observed. "They are not. They have but a faint glimmering of the facts, else they could not be so slow in looking up the measures for the relief of the country."

Any such reorganization, radicals insisted, must be based on universal suffrage for loyal men and further, the disfranchisement at least of rebels who held civil or military office under Confederate state or national authority. Most important, radicals generally wanted Congress to create loyal civil governments to administer the southern states until
they adopted new state constitutions and elected new state officers. They proposed different modes of doing this—appointment of new provisional governors by the President with the advice and consent of the Senate, similar selections by the Chief Justice, or appointment of committees of public safety by new state conventions—but they agreed that southerners should be governed by civil administrations under the control of unionists, who would in good faith protect the rights of all citizens and use their influence and power to secure constitutions consistent with the radicals' conception of a republican form of government. In the process, no doubt, these unionists would use the patronage of their offices to nurture new, Republican political organizations just as Johnson's appointees had nurtured conservative organizations.

Radicals justified plans to reorganize southern state governments under the national government's obligation to guarantee republican forms of government to the states or Congress' power to govern United States territories. The President had no authority to organize civil governments in the South in the absence of congressional law, they argued. Therefore southerners were without legal governments, and it was in Congress' power to provide temporary administrations until the people could organize their own by constitutional convention.

Finally, to render reconstruction completely secure, the radicals desired the impeachment and removal of the
President. This was essential to any plan, Boutwell argued. Congress "is powerless to execute. It has no hand by which it can wield or control the vast powers of this government." So long as Johnson remained in office, he could obstruct any Republican effort.

For all practical purposes the conservative and center Republicans no longer had a program. They had enacted their reconstruction policy during the first session. Proceeding essentially on a grasp-of-war theory by which Southern state governments remained unrecognized by Congress until they "voluntarily" agreed to certain conditions embodied in the proposed constitutional amendment, conservatives and centrists now watched those states reject their terms. Only few alternatives remained for these Republicans. They could surrender to the President and admit the southern states without requiring further conditions. They could adopt a policy of non-action, maintaining the status quo until the recalcitrant southerners decided to ratify the amendment. They could acquiesce in a radical plan to replace the Johnson governments completely. But most finally decided to add only one condition to ratification of the constitutional amendment--the acceptance of Negro suffrage.

Although most conservative and moderate Republicans accepted the abstract justice of equal suffrage, they were slow to accept it as one of the bases for reconstruction. They adhered, as long as they could, to the proposed constitutional
amendment alone. Even after every southern state rejected it, some conservatives, like Fessenden and Bingham, still regarded the constitutional amendment as the more important element in reconstruction. Many of these Republicans, certainly Bingham, adopted this position out of more than mere political conservatism. While radicals argued that national protection for southern citizens would prove ineffective unless black men voted, that the ballot was the citizen's ultimate and best protection, men like Fessenden, Trumbull, and Bingham disagreed. "My opinion," Fessenden recalled, "was that, once recognized, the wealth and intelligence of the State would rule them [the freedmen]. . . ."

Fessenden and other conservatives doubted the wisdom and practicality of efforts to prevent rebel control by disfranchisement, and they opposed such measures vigorously. They expected the old southern leadership to retain power, and they believed the constitutional amendment might prove the only source of protection for southern black and white loyalists. But most non-radical Republicans reluctantly decided some further protection was necessary. Not sharing Fessenden's distrust of black suffrage, these conservatives and moderates, like the radicals, decided it would do the job best. As Carl Schurz put it in his Reminiscences, conservative Republicans, "after a faithful and somewhat perplexed wrestle with the complicated problem of reconstruction, finally landed—or it might almost be said, were stranded—at the
conclusion that, to enable the negro to protect his own rights as a free man by the exercise of the ballot was after all the simplest way out of the tangle . . . ." But they would not endorse schemes of territorial government, disfranchisement, or impeachment.

The conservative and center Republicans' decisions to add black suffrage to their reconstruction program guaranteed that the measure would be part of any final reconstruction legislation. Since historians for many years identified Negro suffrage with radicalism, they interpreted its inclusion in the Reconstruction act as a radical victory. Indeed, historians have considered congressional reconstruction radical primarily because it enfranchised the freedmen. In comparison to the policy espoused by the President and the Democrats, of course, black suffrage was a radical measure. But in the context of conservative-radical tensions within the Republican party, it definitely was not. Within the framework of Republican politics, by 1867 the argument for black suffrage was distinctly conservative.

Conservative and moderate Republicans still were not reconciled to a permanent—or even long-term—alteration in the balance of power between the state and national governments. The same constitutional conservatism which impelled them to adopt the grasp-of-war theory of reconstruction (see pp. 161-62, supra) persuaded them that the primary protection for citizens' rights must come from the states themselves—from a reconstruction of power within the states
rather than reconstruction of the federal system, with a vast increase in the powers of the national government. (This had been true even as Congress passed the proposed constitutional amendment. See pp. 252-53, supra.) As E. L. Godkin, the ever more conservative editor of the Nation, explained this new conservative position, "Our government owes to those who can get it no other way the one thing for which all governments exist . . . --security for person and property. This . . . we can supply either by a good police or by the admission of the blacks to such a share in the management of state affairs that they can provide a police for themselves. The former of these courses is not strictly in accordance with the spirit of our institutions; the latter is." When the Reconstruction bill passed, black suffrage was an alternative to a radical reconstruction program which embodied much more. 13

* * *

The struggle over reconstruction legislation began January 3, 1867, when the joint committee's Reconstruction bill, left in limbo during the previous session (see pp. 265-69, supra), came before the House as the regular order of business. Stevens immediately proposed to substitute the more radical measure he had suggested during the first session. Stevens' proposition was essentially an enabling act, detailing the steps southerners must take to form valid state governments. It recognized the Johnson state governments as valid "for municipal purposes" until replaced by the process outlined
in the bill. The Supreme Court of the District of Columbia would appoint a commission for each state to organize an election for delegates to a constitutional convention. All adult male citizens meeting certain residence requirements would be entitled to vote. But the bill declared that men over 21 when Lincoln was inaugurated President who held civil or military office under the Confederacy or who swore allegiance to it had forfeited their American citizenship. They could only resume it five years after swearing allegiance to the United States anew. However, anyone who swore he favored peace by March 4, 1864, and who did not voluntarily aid the rebellion thereafter would be exempted from the forfeiture. Finally, the bill announced no constitution could be presented to Congress if it denied equal rights, privileges, and immunities to all citizens; all laws had to be impartial, "without regard to language, race, or former condition." These provisions must be irrevocable. If any state reorganized under the act violated them after its restoration, it would lose its right to congressional representation once again.

Stevens' proposition abandoned any notion of territorialization, but most radicals realized there was no choice. However, they did object to the section recognizing the Johnson governments, even if only for "municipal purposes." So long as rebels administered those states, radicals feared, they would obstruct any plan of reorganization which, by requiring black suffrage, threatened their control. And with the power
of the state governments in their hands, they very likely would succeed and thereby retain that control "for municipal purposes" indefinitely. Stevens acceded to radical demands and eliminated the objectionable provision.

Stevens knew Bingham and the Reconstruction committee's chairman, Fessenden, were hostile to further reconstruction legislation. Fessenden, as chairman of the Senate Finance committee, was busy framing the difficult, complex tariff bill. Even if he were sympathetic to Stevens' bill, he would have difficulty scheduling committee meetings. Therefore, Stevens believed he could win the bill's passage only if he brought it before the House without reference. He knew this would be risky. Without the prestige of a committee behind the bill, representatives would give it a thorough going over. But it was his only chance. Contrary to the custom, the wily radical did not call for the previous question, which would have prevented further amendments.

James M. Ashley immediately proposed a substitute for Stevens' amendment. Much longer and more complex than Stevens' proposition, Ashley's measure too was essentially an enabling act. It provided for the election of two conventions. The first would appoint a committee of public safety which would elect a provisional governor to administer the government while the committee arranged an election for the second convention, which would appoint a new governor, all state officers, and frame a new state constitution "not repugnant to the
Constitution of the United States and the principles of the Declaration of Independence." Moreover, it would pass ordinances irrevocable without the consent of Congress guaranteeing equality before the law and requiring all laws to apply impartially to citizens without regard for race or color, repudiating the rebel debt and compensation for slaves, guaranteeing the establishment of free public schools for all children between six and twenty without regard to race, disqualifying Confederate office-holders from holding state office unless the state legislature removed the disability by a two-thirds vote, and conceding the national governments' right to exclude state representatives from Congress in case of rebellion by state authorities.

Like Stevens' proposal, Ashley's extended the franchise to black men. He did not revoke the citizenship of rebels, but did restrict the ballot to men who swore an oath similar to Stevens'. However, only men who never voluntarily bore arms or aided the rebellion could serve in the conventions. Ashley's substitute went on to enact further regulations in some detail. Since Ashley had proposed an amendment to an amendment, under House rules it would have to be acted on before any further modifications were in order.

Neither proposition satisfied all the radicals, much less the conservatives and centrists. Stevens' went farther than Ashley's in revoking the citizenship (and therefore the right to vote or hold office) of all men who would not swear they
had opposed the rebellion after Lincoln's second inaugura-
tion. Ashley disfranchised the same men in the original elec-
tions for convention delegates, but nothing in his proposal
prohibited those conventions from enfranchising them in the
new state constitutions. Moreover Ashley disqualified only
Confederate civil and military officials from the right to
hold office and did not make even this disqualification abso-
lute. On the other hand, Ashley's measure swept away the
Johnson governments completely, even declaring laws passed and
acts done under their authority null and void unless ratified
by the new authorities. Both measures embodied primarily the
radical program and went much too far for their more moderate
bill while others wanted no bill at all. Speaking for these
Republicans, Bingham moved to refer the bill to the Recon-

17

struction committee.

The press of other business and Stevens' decision to
return to Pennsylvania, where he was a candidate for the Repub-
lican senatorial nomination, delayed consideration of the
proposed reconstruction measures until January 16. On that
day Bingham launched a slashing attack. The conservative
Ohioan urged Congress to adhere to the constitutional amend-
ment as the basis of reconstruction. It was conciliatory,
an "act of general forgiveness and amnesty, securing to each,
however guilty, the equal protection of the laws by the com-
bined power of the nation, in a sublime humanity which
challenges a parallel since man was upon the earth." 18
Stevens' proposed bill, in contrast, was "framed in the spirit of the utterances of a distinguished man of this country [Wendell Phillips] who has been waging war on this amendment and this Congress, denouncing both as a 'swindle' . . . . I submit with all confidence that what is contemplated by the gentleman's bill is to patch up a restoration by the usurpation of powers which do not belong to the Congress of the United States, induce the people to fling aside the constitutional amendment, and thereby subject the future of this Republic to all those dread calamities which have darkened its recent past."

Bingham denied Congress could revoke citizenship in the United States. He denied it could force irrevocable, non-amendable provisions into state constitutions. He complained the proposal, by dictating the conditions for restoration, denied southern citizens the right freely to petition for admission under other plans. In general, Bingham wanted to maintain that illusion of voluntarism (which could be more than illusion, as southern rejection of the constitutional amendment proved) which characterized reconstruction under the grasp-of-war theory; he objected to the direct imposition of northern will justified by radicals under the power to guarantee republican forms of government or to govern territories.

Ashley's proposition, Bingham insisted, was no better, "a bill of restoration." 20

Representatives debated the reconstruction measures for
nearly two weeks. Most Republicans offered qualified approval; only three (Bingham, Raymond, and William E. Dodge) argued for outright rejection. On January 21 Stevens, who must have felt confident, announced he would press for a vote the next day. But instead the House swept into a wild debate and filibuster (in those days this was possible in the House as well as Senate) on a bill to bar former rebels from practicing law before United States courts. When the Reconstruction bills came before the House once more January 24, the situation had changed. Stevens decided not to call the previous question, forcing a vote, and instead announced, "... I see such diversity of opinion on this side of the House that if I do not change my mind I shall to-morrow relieve the House from any question upon the merits of this bill by moving to lay it on the table." This was a powerful, dangerous ploy, designed to force the radicals to give up special objections and projects and unite behind the bill or face a complete conservative and Democratic victory.

Two days later Stevens announced his intentions. He would ask Ashley to withdraw his amendment and Bingham to withdraw his motion to recommit to the Reconstruction committee. The House would then, Stevens hoped, go under the five-minute rule (allowing each speaker only that amount of time) and he would open the bill for amendment, not calling the previous question until the House modified it into an acceptable form. This, radicals believed, was the only hope for passage.
Ashley withdrawing his substitute, urged Bingham and the
House to agree to Stevens' suggestion. The Reconstruction
committee had not yet met during the second session, despite
the large number of reconstruction bills referred to it, he
observed. If it did meet, its members were not likely to
agree. "... I fear that if this bill goes to that committee
it will go to its grave, and that it will not during the life
of the Thirty-Ninth Congress see the light. If I were opposed
to these bills I would vote to send them to that committee as
sending them to their tomb." Stevens agreed.

The test came January 28. In an effort to win support
Stevens accepted several amendments to his substitute and
struck out the section requiring irrevocable provisions in
the new state constitutions. He then appealed to Bingham to
withdraw his motion to recommit the bill so that the House
could amend it. He promised he would give his antagonist an
opportunity to renew his motion afterwards. But Bingham would
not bend. It could mean only one thing: he did not want the
House to modify Stevens' bill; he wanted no reconstruction
bill at all.

Grimly Stevens reiterated his conviction that recommittal
meant the death of the measure. Bingham denied it. Angrily,
Stevens turned on his rival. "The gentleman will recollect
that I did not ask his concurrence. In all this contest about
reconstruction I do not propose either to take his counsel,
recognize his authority, or believe a word he says."
As the fierce old radical watched, the House agreed to Bingham's motion, 88 to 65. Bingham had carried fifty-three Republicans and unionists with him, including three supporters of the administration. Thirty-five Democratic votes provided his victory. It was a defeat for Stevens. But he had not lost all. He had won the support of over half the Republicans, indicating a significant shift to the left over the previous session, when the fragmented radicals had been unable to carry any of their points. (In fact analysis of voting patterns indicates a significant break and reformation in Republican ranks in the House. Twenty-seven returning Republicans now acted with groups more conservative than they had during the first session, thirty-seven with groups more radical. Only forty-eight remained constant. Including newcomers and representatives who had not voted consistently during the first session, the more radical factions gained thirty-one members while the more conservative lost fifteen. (See chart 26.) Moreover Bingham had virtually promised the joint committee would act. His angry exchange with Stevens had made it a point of honor.

As Republicans fought and floundered over reconstruction legislation in Congress, the President and some of his southern supporters determined to offer a compromise, which, they hoped, might appeal to Republican conservatives. In fact, many Republican conservatives had been hoping for some such effort. Before Congress met, Chase had been urging the President to acquiesce in the constitutional amendment and recommend
CHART TWENTY-SIX

Radicalism in the House of Representatives
39th Congress, Second Session.

GROUP #0 (DEMOCRATS AND CONSERVATIVES)

Bergen, N.Y.                     Taber, N.Y.
Boyer, Pa.                       Taylor, N.Y.
Campbell, Tenn. (Conservative)   Chanler, N.Y.
Cooper, Tenn. (Conservative)     Dawson, Pa.
Denison, Pa.                     Eldredge, Wis.
Finck, Ohio                      Glossbrenner, Pa.
Goodyear, N.Y.                   Harding, Ky.
Harris, Md.                      Elijah Hise, Ky.
Hogan, Mo.                       Hubbell, N.Y.
J. M. Humphrey, N.Y.             Hunter, N.Y.
Johnson, Pa.                     Jones, N.Y.
Kerr, Ind.                       Latham, W.Va. (Johnson Conservative)
LeBlond, Ohio                    LeFevre, Ind.
Leftwich, Tenn. (Conservative)   Lott, Ind.
McCullough, Md.                  Marshall, Ill.
Noell, Mo. (Unionist)            Phelps, Md. (Johnson Conservative)
Ritter, Ky.                      Rogers, N.J.
Ross, Ill.                       Rousseau, Ky. (Unionist)
Shanklin, Ky.                    Sitgreaves, N.J.
Stillwell, Ind. (Johnson Conservative)
CHART TWENTY-SIX (CONT.)

Taylor, Tenn. (Conservative)
Thornton, Ill.
Trimble, Ky.
Andrew H. Ward, Ky.
Winfield, N.Y.
Wright, N.J.
Hale, N.Y. (Johnson Conservative)
Hawkins, Tenn. (Repub.)

Repeal of the President's amnesty power, bill to suspend payment for slaves taken into the army, resolution reaffirming the necessity for southern states to ratify the XIV Amendment before admission, bill prohibiting the President for one year from reappointing a man rejected by the Senate, bill to require the test oath of those seeking public lands, Indemnity bill, resolution instructing the Committee on Territories to prepare a territorial government bill for the South, passage of the Reconstruction bill, concurring in conference committee report on the Tenure of Office bill, passage of the La. Reconstruction bill

GROUP #1 (CONSERVATIVE REPUBLICANS)

Kuykendall, Ill. (Johnson Conservative)
Whaley, W.Va.
Benjamin, Mo.
Dawes, Mass.
Defrees, Ind.
Farnsworth, Ill.
Hubbard, W.Va.
Hubbell, Ohio
Jenckes, R.I.
Laflin, N.Y.
Marvin, N.Y.
Pomeroy, N.Y.
Randall, Ky.
CHART TWENTY-SIX (CONT.)

Raymond, N.Y. (Johnson Conservative)
Schenck, Ohio
Thayer, Pa.
F. Thomas, Md.
J. L. Thomas, Md.
Ashley, Nev.
Barker, Pa.
Bingham, Ohio
Darling, N.Y.
Davis, N.Y.
Dodge, N.Y.
Ketcham, N.Y.
Lawrence, Pa.
McRuer, Calif.
Plants, Ohio
Rice, Me.

--- Ordering main question on La. Reconstruction bill, amendment to the Reconstruction bill that military commanders may remove officers of the provisional southern governments, reconsideration of the amendment to the Tenure of Office bill to include the Department heads in its operation

GROUP #2 (CONSERVATIVE CENTER REPUBLICANS)

Ames, Mass.
Banks, Mass.
Blow, Mo.
Bundy, Ohio
Ferry, Mich.
Garfield, Ohio
Ingersoll, Ill.
Morris, N.Y.
Patterson, N.H.
Rice, Mass.
Washburne, Ill.
Washburn, Mass.
Woodbridge, Vt.
Alley, Mass.
Baker, Ill.
Baldwin, Mass.
Deming, Conn.
Farquhar, Ind.
Kasson, Iowa
CHART TWENTY-SIX (CONT.)

Maynard, Tenn.
Price, Iowa

--- Amendment to the Tenure of Office bill to include the Department heads, motion to recommit the Military Government bill to the Judiciary committee with instructions to add the "Blaine amendment," resolution that it is Congress' duty to establish new governments in the southern states, motion to refer Steven's Reconstruction bill to the Reconstruction committee

GROUP #3 (RADICAL CENTER REPUBLICANS)

<table>
<thead>
<tr>
<th>Longyear, Mich.</th>
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<td>Allison, Iowa</td>
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<td>Koontz, Pa.</td>
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CHART TWENTY-SIX (CONT.)

Loan, Mo.
Lynch, Me.
Moulton, Ill.
Perham, Me.
Scofield, Pa.
Shellabarger, Ohio
Stokes, Tenn.
Upson, Mich.
Wilson, Iowa

---- Ordering the main question on the motion to recommit the Military Government bill with instructions to add the "Blaine amendment," motion to concur in Senate amendments to the Military Government bill, amendment to the Tenure of Office bill that any person rejected by the Senate for confirmation shall be ineligible to hold office for three years thereafter, amendment that no person so rejected may be renominated for one year

GROUP #4 (RADICAL REPUBLICANS)

Boutwell, Mass.
Brandegge, Conn.
Driggs, Mich.
Holmes, N.Y.
Samuel M. Arnell, Tenn.
Beaman, Mich.
Conkling, N.Y.
Eckley, Ohio
Eliot, Mass.
Grinnell, Iowa
Harding, Ill.
Henderson, Ore.
Hotchkiss, N.Y.
Julian, Ind.
Kelley, Pa.
Myers, Pa.
Newell, N.J.
O'Neill, Pa.
Starr, N.J.
Stevens, Pa.
Trowbridge, Mich.
CHART TWENTY-SIX (CONT.)

Van Aernam, N.Y.
Van Horn, Mo.
Ward, N.Y.
Washburn, Ind.
Williams, Pa.
Wilson, Pa.
Ashley, Ohio
Bromwell, Ill.
Clarke, Kans.
Cobb, Wis.
Kelso, Mo.
McClurg, Mo.
Paine, Wis.
Pike, Me.
Sawyer, Wis.
Sloan, Wis.
Wentworth, Ill.
Windom, Minn.

---- Motion to recommit Military Government bill to Judiciary committee, ordering main question on non-concurring in Senate amendments to the Military Government bill (Ultra Radicals vote with conservatives and Democrats on these roll calls)

GROUP #5 (ULTRA RADICAL REPUBLICANS)

Baxter, Vt.
Donnelly, Minn.

NONSCALAR: Elaine, Me.; Buckland, Ohio; Culver, Pa.; Delano, Ohio; Hubbard, Iowa; Griswold, N.Y.; McKee, Ky.; Warner, Conn. (All Repubs.)

NOT VOTING: Colfax, Ind. (Repub.)

For a list of the roll calls upon which this chart is based, see Appendix X.
CHART TWENTY-SEVEN

Radicalism in the Senate
39th Congress, Second Session

GROUP #0 (DEMOCRATS AND JOHNSON CONSERVATIVES)

Buckalew, Pa.
Cowan, Pa. (Johnson Conservative)
Davis, Ky.
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Hendricks, Ind.
Johnson, Md.
McDougall, Calif.
Nesmith, Ore.
Norton, Minn. (Johnson Conservative)
Patterson, Tenn.
Riddle, Del.
Saulsbury, Del.

Repeal of presidential amnesty power under Confiscation act,
Tenure of Office bill passage,
Reconstruction bill, Indemnity bill

GROUP #1 (CONSERVATIVE REPUBLICANS)

Foster, Conn.
Van Winkle, W.Va.
Wolley, W.Va.

Dilatory motions to delay
Reconstruction bill, amendment
to Diplomatic Appropriation
bill to cut money from minister
to Portugal who publicly
endorses Johnson, amendments
to Army Appropriation bill
to disband southern state
militias and to require all
orders to go through Grant

GROUP #2 (CONSERVATIVE-CENTER REPUBLICANS)

Frederick T. Frelinghuysen, N.J.
Anthony, R.I.
Alexander G. Cattell, N.J.
Edmunds, Vt.
CHART TWENTY-SEVEN (CONT.)

Fessenden, Me.
George G. Fogg, N.H.
Grimes, Iowa
Harris, N.Y.
Henderson, Mo.
Morgan, N.Y.
Poland, Vt.
Sherman, Ohio
Trumbull, Ill.

--- Amendment to oust Department heads from the operation of the Tenure of Office bill, concurring in compromise on Department heads' coverage under act, amendment to Pension bill to remove all pension agents appointed since July 1, 1865, motion to take up La. Reconstruction bill

GROUP #3 (RADICAL-CENTER REPUBLICANS)

Williams, Ore.
Brown, Mo.
Conness, Calif.
Cragin, N.H.
Creswell, Md.
Kirkwood, Iowa
Lane, Ind.
Morrill, Me.
Ramsey, Minn.
Ross, Kans.
Stewart, Nev.

--- Amendment to Pension bill to remove all pension agents appointed after Oct. 1, 1865, amendment to Bankruptcy bill to require test oath of all using its provisions, amendment to Reconstruction bill declaring XIV Amendment may be ratified without the assent of the rebel states, amendment to Civil Appropriation bill to forbid payment of salary to tax collectors unable to take test oath

GROUP #4 (RADICAL REPUBLICANS)

Chandler, Mich.
Fowler, Tenn.
Howard, Mich.
CHART TWENTY-SEVEN (CONT.)

Howe, Wis.
Nye, Nev.
Pomeroy, Kans.
Sumner, Mass.
Wade, Ohio
Wilson, Mass.
Yates, Ill.

NOT VOTING: Guthrie, Ky. (Dem.); Sprague, R.I. (Rep.)

For a list of the roll calls upon which this chart is based, see Appendix IX.
its adoption to southerners. Willing now to abandon black suffrage for the sake of regaining control of the presidency for the party, Chase clearly was drifting away from his former radicalism. The President hesitated. He even prepared a conciliatory annual message to Congress, embodying Chase's views, but he decided not to send it, reiterating his old opinions instead.

Despite Johnson's evident stolidity, the ambitious Banks called on Orville H. Browning, one of the President's closest advisers, to express his "great gratification" at the message's "tone and temper." Furthermore, Banks assured Browning there was no danger of impeachment (which radicals were beginning to discuss) or "revolutionary measures." Banks' assurances and possibly his services (Banks played a leading role in some of the conservative efforts to obstruct the reconstruction bill) did not go unrewarded. He received access to government patronage once more and succeeded in getting an ally named port collector in Boston, the most important patronage position in Massachusetts.

Republican moderates and conservatives sent Johnson another clear signal of their willingness to compromise when they rejected radical efforts to force Raymond out of the Republican caucus. Raymond's New York Times had been the leading Republican paper to support Johnson's Philadelphia "Arm-in-Arm Convention." Raymond himself had attended it and delivered the key-note address. He was, therefore, a surrogate
for Johnson. When the caucus refused to expel him and then refused even to declare that no man who still adhered to the Philadelphia platform could participate in the caucus with honor, they were in effect telling Johnson he was welcome to rejoin the fold. He need do only what Raymond did: avow his adherence to the party and acquiesce in the adoption of the constitutional amendment.

Now some of President Johnson's less intransigent supporters determined to take advantage of the deadlock in Congress. James L. Orr, governor of South Carolina, proposed a new reconstruction plan. Southern states would amend their constitutions to extend the ballot to all men who could read the Declaration of Independence and the Constitution in English and write their names, or who owned $250 of taxable property. However no one entitled to vote under state laws before the adoption of the amendment would be disfranchised. The southern states would also pledge to ratify a new constitutional amendment if passed by Congress. This would declare the Union perpetual, guarantee the national debt and repudiate that incurred in support of the rebellion, declare all persons born in the United States and subject to its jurisdiction citizens and guarantee them equal protection of the laws, and deduct classes excluded from the ballot from the basis of representation in Congress.

Late in January, Orr presented this plan to leading Republicans and became satisfied it would win the support of
conservatives. On January 31 he, former provisional Governors Parsons of Alabama and Marvin of Florida, and two North Carolina representatives-elect proposed the plan to the President, who signified his cautious approval. Published in many newspapers, the plan caused a great stir, frightening radicals and those moderates who believed something had to be done to protect southern loyalists.

Despite Orr's apparent conviction to the contrary, most Republicans, even conservatives, could not accept his proposal. It eliminated the proposed constitutional amendment's mild disqualification clause and weakened its civil rights section. It displeased radicals because (and this was its manifest purpose) it confirmed the presently constituted state governments, dominated by former rebels, and left the administration of its slight guarantees to them. Finally, it permitted all whites to vote, including rebels, while enfranchising only literate blacks or those with $250 worth of property. And there was no guarantee southerners would institute free public schools to educate their black fellow-citizens.

This new political offensive, demonstrating to the public that while Congress presented no reconstruction plan southerners were willing to compromise, forced a Republican response. It guaranteed even more certainly that reconstruction legislation would not die in the second session of the Thirty-ninth Congress.
CHAPTER XI

"RADICAL" RECONSTRUCTION--PART TWO

The Joint Reconstruction committee met for the first time during the second session on February 2, and the conflict between Stevens and Bingham flared immediately. Stevens had his bill read to the committee; Bingham then asked for a reading of the original bill, which promised restoration of states ratifying the constitutional amendment and conforming their laws to it. He then moved to amend it to require the states to enact impartial suffrage also. Battle lines appeared set—a radical plan completely to reorganize the state governments, requiring universal male suffrage at least in the reorganization process, versus a conservative bill requiring only the ratification of the amendment and impartial (as distinguished from universal) male suffrage. Stevens and Bingham argued the merits of their plans for two hours, and the committee adjourned without reaching a conclusion.

The committee met again February 6, and in an effort to end the impasse, at Conkling's suggestion it postponed consideration of Bingham and Stevens' proposals and turned its attention to a new measure, submitted in the Senate by the centrist committee member, George H. Williams, two days earlier. Bypassing the controversies of reconstruction,
Williams' bill proposed simply to place the southern states under military authority. Military commanders were empowered to protect southerners in rights of person and property and punish criminals and those who disturbed the peace. They could employ military commissions to do this, but the bill also authorized the use of the civil tribunals of the Johnson state governments. While pronouncing those governments "of no constitutional validity," the measure did not eliminate them, providing only that any attempts by them to interfere with the military authorities would be null and void. Conkling led the committee in making minor amendments, while Bingham tried and failed to eliminate language he believed questioned the existence of the states. Bingham then tried to persuade the committee to report again the original Reconstruction bill offered the previous session. If both measures passed, the military occupation bill would remain in force only until the southern states met the conditions of the Reconstruction bill—ratification of the constitutional amendment and conformation of state laws and constitutions to it. But the committee, unwilling to renew the controversy over actual reconstruction terms, defeated Bingham's motion.

Williams' bill, reported to the House February 6, was not a radical measure, nor even a measure for reconstruction. It was, Williams explained in the Senate later, "proposed simply to enforce good order in these so-called States until loyal and republican State governments can be legally established."
In proposing the measure Senator Williams and Representative Conkling no doubt hoped to bypass controversy, leaving to future discussions the actual terms of restoration. It seems likely that they believed conservative and centrist Republicans would endorse their proposal. It did not stiffen the terms for readmission or erase the governments already organized by presidential authority, although it denied their legitimacy. It did not foreclose those southern governments from acting on their own initiative to alter their laws or state constitutions in such a way as might satisfy Congress. It did not, in fact, do anything more than instill vigor into the grasp-of-war theory upon which the congressional reconstruction policy had been based. The measure did not proceed from a broad authority in Congress to guarantee southerners republican forms of government. It imposed no solutions. As the Connecticut representative, Augustus Brandegee, observed, "...[I]t holds those communities in the grasp of war until the rebellion shall have laid down its spirit as two years ago it formally lay down its arms," until, in Bingham's words, "those people return to their loyalty and fealty in such a manner as shall satisfy the people of the United States, ... represented in Congress, of their fitness to be restored to their full constitutional relations."

On its face, the joint committee's proposition was a temporary measure to protect loyal men's lives and property, justified by Congress' war powers, and leaving southerners
free voluntarily and without coercion to demonstrate their loyalty and good faith. But Stevens, managing the bill as senior House member of the Reconstruction committee, presented it in a way which immediately eroded non-radicals' faith in its moderation. As Stevens interpreted the measure it became "a bill for the purpose of putting under governments ten States now without governments." As Stevens expressed its provisions, the bill appeared to erect formal governments, military governments. And he said nothing indicating such government would be temporary. Moreover, he justified the action on his theory that the confederacy of southern states had reached the status of a foreign power, that the United States held them as conquered provinces to be administered in any manner decreed by the conqueror and consistent with the customary laws and usages of war. Stevens had found in the new bill, originally suggested as a compromise, an opportunity to enact his theory of reconstruction into law, an opportunity to hold southerners indefinitely under national power, an opportunity to enact a program closer to his original scheme than he had believed possible only a month earlier, when he had been willing to settle for an enabling act which would assure quick restoration. From the time of Stevens' speech, the measure would be known as the Military Government bill.

When Stevens reported the bill February 6, he immediately moved to recommit it, a parliamentary tactic which foreclosed amendments. The following day he announced his determination
to press for a vote the next afternoon.

Shocked by Stevens' explanation of the committee's bill, conservative and moderate Republicans, as well as many radicals, announced their opposition. The dissident radicals might not have objected to a temporary military government over the South, but southern loyalists who had travelled to Washington wanted above all to gain control of their state governments. Permanent military rule held no charm for them. It would "prove a delusion & a snare," worried Judge John C. Underwood, one of the leaders of the radical wing of Virginia's fledgling Republican party. "The leading rebels would by their frauds and flatteries manage to control the military authorities as effectually as they did President Johnson . . . ."

It represented, complained the Louisiana radical, Thomas J. Durant, "the sheer desperation of incapacity or unfaithfulness." Julian, writing for his brother's newspaper, avowed his opposition to military reconstruction and commented on the plight of the southern lobbyists, who "with anxious and weary looks are still daily watching the action of Congress while despair begins to write itself in their faces."

More conservative Republicans objected as strenuously. Once more, Bingham took the lead. Endorsing the bill in principle (another indication of its essential conservatism), Bingham denounced Stevens' justification for it. He proposed to eliminate all wording which indicated that the southern states had ceased to exist, that southerners whether loyal or
disloyal had become alien enemies subject to the will of the conqueror without the rights and protection due American citizens. In particular, he demanded a new preamble because Stevens interpreted the one reported by the committee "as a solemn declaration on the part of this House that those States are foreign conquered territories . . . ." Denying the bill proceeded upon Stevens' theory of conquered provinces, he insisted it was based simply on Congress' duty to administer the South and would remain in force only until its citizens reorganized their governments in a fashion acceptable to the national government. To make this clear, he proposed to include in his version of the preamble the assurance that the military administration was intended only to enforce "peace and good order . . . until said States respectively shall be fully restored to their constitutional relations to the United States."

"I desire to put this amendment into the preamble," Bingham explained, "... to notify in the most solemn form the men who constitute . . . the majority of the people in those ten lately insurgent States, and who themselves were in open and armed rebellion, that . . . all they have to do, in order to get rid of military rule and military government, is to present to the Congress of the United States a constitutional form of State government in accord with the letter and spirit of the Constitution and laws of the United States, together with a ratification of the pending constitutional amendment."
One by one radicals like Shellabarger and Lawrence, conservatives like Griswold and Raymond avowed their dislike of military government, threatened to vote against the bill, or announced they would support it only with the understanding that it was temporary. Finally on February 8, as he had promised, Stevens demanded the previous question. If the House agreed to it, the vote would take place one hour later and again no amendments would be in order. Banks took the floor to oppose the motion. He urged the House to abandon the committee's temporary, inconclusive bill and try to reach a final solution to the reconstruction problem. He hinted the President might now be willing to come to an understanding with the party. The aspiring politician, whose career had become so entwined with the great issue, suggested no reconstruction program could be effective without the President's cooperation. Republicans should make a final effort to reach an agreement with him. If they failed, he indicated, impeachment was the only solution.

Stevens would have none of it. Once again the old radical felt success slipping away from his clutching fingers; he could feel the representatives waver, feel them balk. "I have seen enough in this House, and have heretofore noted its demoralization, to doubt if there is enough left of the spirit of the party that sent us here to carry out the will of the people and perfect the legislation they expect from us," he said. In an effort to gain support, he backed away from his
implication that the bill was more than a short-term expedient. He acknowledged it was designed only to protect loyalists "until we can have time to frame civil governments more in conformity with the genius of our institutions."

For Stevens, it was the critical moment. "I know not whether it is the desire of this House to pass any such bill or whether they prefer to go home and leave the President triumphant. I am quite sure that much of the opposition . . . comes from a modification of views coinciding with the President . . . . I have yet to learn to what extent this has prevailed, and after the previous question has been voted upon I shall be more satisfied whether it is worth while to proceed further in this attempt by Congress to resist the power of the President, or whether it is our duty . . . to submit to the powers which have conquered us and allow the southern States to remain in their present condition." But all Stevens' venom and will could not prevail. The House refused to second the previous question by a vote of 61 to 98, and it became clear the bill could not pass without amendment. By February 12, amendments by Bingham, Lawrence, Kasson, Ashley, Blaine, and Isaac R. Hawkins lay before the House. It did not seem possible to amend and pass any reconstruction bill in time to prevent a pocket veto.

The most conservative proposals, not offered formally until February 12, came from Bingham and James G. Blaine. Bingham proposed to combine the original Reconstruction bill
reported by the joint committee during the first session with the Military Government bill. Announcing that the southern states would be restored after they ratified the proposed constitutional amendment, conformed their laws and constitutions to it, and enacted impartial suffrage laws, Bingham's measure went on to enact the provisions of the Military Government bill—minus language which might suggest a recognition of Stevens' conquered provinces theory—until those conditions were met. Furthermore, any state which ratified the amendment could postpone payment of direct taxes not collected during the rebellion for ten years.

Blaine suggested simply adding one more section to the Military Government bill, embodying the same conditions for restoration as Bingham and using nearly the same language, except that Blaine would allow disfranchisement for participation in the rebellion and require southerners to ratify their constitutions as amended by popular vote. Ashley, abandoning the radical measure he had proposed earlier in the session, presented amendments similar to Bingham and Blaine's.

Occupying a sort of middle ground were proposals by Kasson and Lawrence. But these did not play an important role in the upcoming struggle. Then on February 11, as the Military Government bill floundered, a new reconstruction bill came before the House—a radical alternative—in what promised to be an important radical parliamentary coup.
Since the reference to the joint committee of Stevens' substitute for the original Reconstruction bill, radicals had been unable to bring a proposition embodying their program to the floor. House rules required that all reconstruction measures be referred to the joint committee without debate. The committee had not even considered any of these propositions, and its well-balanced membership made the report of a truly radical proposition virtually impossible. But early in the session the House had appointed a special committee to investigate the New Orleans riot of summer, 1866, and empowered it to report appropriate legislation. Radical Thomas D. Eliot, who suggested the committee, was named chairman; Samuel Shellabarger, another radical, was the second Republican member, with William B. Campbell representing the Democrats.

Taking the testimony and advice of military officers assigned to the South and the southern Republican lobby, Eliot and Shellabarger framed a bill to reestablish civil government in Louisiana and reported it to the House. The bill required Johnson to name a new provisional governor and a nine-member provisional council for the state. The consent of the Senate was required both for confirmation and removal, rendering the appointees relatively independent of the President for their tenure. The new governor and council must have been citizens of Louisiana who never indicated approval of secession nor support for the rebellion. They would have
complete legislative power in the state and would appoint all state officers provided for under the existing state constitution. These men would be required to take the test oath that they never voluntarily aided the rebellion (as distinguished from the governor and council who must not have aided the rebellion under any circumstances).

In June the voters would elect a provisional government, with the same officers as existed under the constitution of the Johnson government, all of whom, however, would have to meet the tests of loyalty required of the presidential appointees they were to replace. The bill enfranchised every adult male citizen of the United States living in Louisiana for a year and never having borne arms against the government who could take the test oath. Furthermore any former rebel who swore he had not voluntarily aided the rebellion and had held no rank higher than private in the rebel armed forces could vote if a person who never aided the rebellion at all would swear the petitioner opposed the rebellion after March 4, 1864. The Eliot-Shellabarger bill then ordered an election for delegates to a constitutional convention, all of whom must never have supported secession nor aided the rebellion. They would frame a constitution forbidding legal distinctions among men on grounds of color or race. The Constitution must be ratified by the voters. All elections would be conducted under regulations issued by the Secretary of War. The President was required to appoint a military commander over the
state who would protect the rights of citizens and enforce the laws whenever local authorities were unable or unwilling to do so, or whenever they requested aid. Finally, Congress had to approve all laws passed by the provisional government.

The difference among the three alternatives—-the Military Government bill, the bill as amended by Bingham or Blaine, and the Louisiana Reconstruction bill—were patent. The military bill itself was but a stopgap, designed to protect loyal southerners from the outrages condoned if not perpetrated by the Johnson state governments. Although it pronounced the Johnson governments illegal, it did not actually displace them, merely declaring void any attempts they might make to interfere with the military authority. Moreover the bill authorized the military to utilize local courts (and this meant the officials which made up the courts—-not only judges, but sheriffs and constables, who served judicial processes). Given the general hesitation of military men at this time to substitute military for civil authority, most of the state administration might very well remain in the hands of the "illegal" state governments if the Military Government bill passed. Moreover, the military was not known for its sympathy for the aspirations of southern blacks. And finally, Andrew Johnson as President also was the armed forces' commander-in-chief. Although the military bill at first vested the power to appoint military commanders in General Grant (whose radicalism was thoroughly suspect anyway), Congress reconsidered, and left
this power in the hands of the President.

As a compromise measure, the Military Government bill remained silent on the conditions for restoration. These might be prescribed in a future reconstruction bill, or southerners might be left free to frame their own constitutions and submit them to Congress, which would decide if they met satisfactory standards of republicanism and offered such security as the safety of the nation required. If Republicans chose the second alternative, then there would be a great chance that former rebels, having at their command the administrative machinery of the states and their patronage, as well as the patronage of the national government, would dominate the new reconstruction process as they did the old. They might frame new constitutions guaranteeing impartial if not universal suffrage, they might guarantee equality before the law and ratify the constitutional amendment (many had offered to do all these things anyway, in the compromise proposed by Governor Orr), but as the best organized force in each state, they would retain control of the administration. If the Republicans in Congress did not approve, southerners, Johnsonites, and Democrats could portray them as vindictive radicals refusing honest petitions of loyalty.

The Bingham and Blaine amendments merely spelled out in detail the conditions southerners must meet for restoration. As under the military bill, Congress might or might not enact a further reconstruction bill to erect machinery to oversee
southern efforts to reorganize their governments. Blaine, trying to secure maximum support for this amendment, argued it did not conflict with the terms of the Louisiana Reconstruction bill, and that Congress could create detailed machinery for restoring the states if it wished after passing the Military Government bill with his modification. Bingham, however, made no such concession. "The formation of a State government must be the voluntary act of the people themselves," he insisted. The state authorities recognized by Johnson would submit constitutional amendments meeting Congress' requirements to the people for ratification. The Johnson governments would not be dispersed. As soon as they met Congress' requirements, Congress would recognize their legitimacy. Under this process, former rebels were certain to be the dominant influence in "reorganization." Bingham recognized this. Indeed, this was what he desired—for the rebels themselves to accede to the conditions Congress laid down, for the rebels themselves to demonstrate their loyalty.

The Louisiana bill, of course, differed completely from the Bingham-Blaine alternative in this, dispersing the Louisiana government recognized by the President and replacing it with a provisional government which would be controlled by unionists. The people would reorganize their government under the surveillance of this provisional government and the military, under regulations framed by the Secretary of War.

The radical measure also took a far different approach
to voting than the more conservative. The Bingham-Blaine alternative required merely impartial suffrage, allowing any voting qualifications other than those based on race or color. This meant, as Senator Wilson observed later, "nothing more nor less than the exclusion of nearly all the colored persons from the polls." All white southerners need do was require literacy, property, or educational qualifications. Second, although Blaine's amendment would allow the disfranchisement of rebels, it did not require or encourage it. In fact, Bingham accepted Blaine's language into his own bill and denounced disfranchisement moments later. The Louisiana bill, it was true, required no permanent disfranchisement and only insisted upon impartial suffrage in the state constitution. But by disfranchising nearly every rebel in the reorganization process, and enfranchising every black man, the bill virtually guaranteed universal suffrage for blacks and encouraged some measure of disfranchisement of whites, as well as strict loyalty qualifications for office holders. Bingham bitterly attacked these provisions. "Has it, indeed, come to this," he asked, "that gentlemen are not content to secure the emancipated citizens of the Republic the elective franchise, and all the rights of citizens and men, but by act of Congress insists farther ... to secure to them even in a minority the whole power of the State, ... and compel the majority of white citizens to be their subjects for life?"

When Eliot reported the Louisiana Reconstruction bill to
the House, Bingham suggested that he wait until the House disposed of the Military Government bill before pressing his measure, but the press of business was so great that Eliot knew his bill would be lost if he agreed. Eliot and Bingham desperately scrounged for some parliamentary maneuver which would enable Eliot to accede to Bingham's request, which was, after all, a logical one. But none availed. There was no alternative. "Let him show his pluck," a representative challenged, "and call the previous question on it at once." This would bar amendments and allow only one hour for debate. 34 Eliot decided to try it. Although debate on the general merits of the bill was not in order, most representatives knew where they stood. On the first vote Republican disagreement was manifest as the House refused to second the previous question, 66 to 68. But Eliot called for a vote by tellers, and this time he won 79 to 70. An effort to reconsider the decision failed 64 to 66. Eliot had shown his pluck; he had won. 35 Now he moved to proceed to the main question, the last step before final debate and a vote. Most Republicans now united behind the bill rather than give the Democrats and Johnsonites the victory, and the House agreed to the motion 84 to 59. But high-power representatives committed to the Blaine or Bingham amendments joined the Democratic opposition—among them Bingham, Dawes, and Robert C. Schenck. Others abstained. 36 The next day, after Eliot steered his bill through more treacherous parliamentary shoals, Congress passed it, nearly all Republicans
finally acquiescing. Bingham was the only Republican leader to hold out.

Radicals were elated. Radical Senators hoped to substitute the Louisiana bill for any military bill which might pass the House. Julian predicted Congress would enforce similar provisions in North Carolina and Arkansas, where there were enough loyalists to support them, while it put Virginia, South Carolina, and other states with few white loyalists under purely military control. Southern Republican lobbyists urged Congress to reorganize all the rebel states upon the same principles.

But when Republicans returned to the consideration of the Military Government bill on February 12, conservatives and moderates were more determined than ever to modify its provisions. Now, Bingham and Blaine formally presented their amendments to the House (they had been circulating for some time). That determination increased as non-radicals made one final attempt to compromise with the President.

Two of Johnson's intimate supporters, W. W. Warden and General George P. Este, had been urging the President to compromise with the conservative Republicans in order to bring the reconstruction controversy to a close. They told him a majority of Republicans would settle for ratification of the constitutional amendment and black suffrage as a basis of reconstruction without overthrowing his state governments if he would cooperate. Johnson agreed to make an effort.
Informing conservative members of the New York and Ohio delegations—Raymond, Dodge, Delano, Bingham, and others—and isolated members of other delegations, like Banks, Blow, and Dawes, Warden convinced them to meet him and Este in their rooms at the Metropolitan Hotel the evening of February 12.

At the meeting about fifteen Republicans listened as Warden and Este reiterated their convictions that Johnson was willing to rejoin the party and restore its control over patronage if they could reach a compromise on reconstruction. The Republicans, assuring the two men that seventy to eighty of their colleagues would agree to a compromise if one could be reached, appointed Representatives Addison H. Laflin and Alexander H. Rice to meet Johnson. At the same time Banks visited the President and urged him to name Horace Greeley Postmaster-General. Johnson mused to his private secretary that if he named a new Cabinet including Greeley, Grant, Farragut, and Charles Francis Adams, the reconstruction question would be settled in two hours. Laflin anxiously kept Greeley abreast of the negotiations.

With the movement for compromise gaining momentum, Blaine determined to force a vote on his amendment. In a sharp parliamentary maneuver to circumvent the rule that no amendment is in order pending a motion to recommit (Stevens had never withdrawn that motion), Blaine moved to recommit the bill to the Judiciary committee with instructions to report it back immediately with his amendments. Then he moved that
the House proceed to an immediate vote upon his motion to recommit (that is, he moved that the House order the main question). The Democrats, aware of the backstage compromise efforts, were torn between conflicting desires to modify the bill and obstruct Republican efforts to harmonize with the President. With Democrats splitting evenly the House by an 85 to 78 vote agreed to proceed to a vote on Blaine's motion to recommit with instructions. Sixty-nine Republicans, including all the conservatives meeting with Este and Warden, voted with Blaine. They were joined by about fifteen radicals who hoped to open the military bill to radical amendments—among them Ashley, Donnelly, Hayes, and William Lawrence. Sixty-two Republicans voted with Stevens.

Once again Stevens took the floor in an effort, he believed, to avert disaster. "For the last few months Congress has been sitting here, and while the South has been bleeding at every pore, Congress has done nothing . . . . Although we are insensible to it, the whole country is alive to the effect of the supineness with which this Congress had conducted itself. . . . We are enjoying ourselves . . . while the South is covered all over with anarchy and murder and rapine." He had tried his best to get a bill passed, but he had been thwarted "in a most unparliamentary and discourteous manner" by Bingham. "I do not know whether that bill was good or bad; I thought it was a good bill; I had labored upon it in conjunction with several committees of loyal
men from the South for four months, I had altered and realtered it, written and rewritten it four several times . . . . It was, therefore, not altogether my fault if it was not so good a bill as might be found; but I did think that, after all, it was uncivil, unjust, indecent not to attempt to amend it and make it better, to see whether we could do something to enable our friends in the southern States to establish institutions according to the principles of republican government."

When the joint committee reported the Military Government bill, "it came here with a perfect understanding that if it was to pass and become a law it must pass without amendment. . . .

"But . . . this bill encounters precisely the same obstacles as the other, and is met in precisely the same spirit."

Then he made his final, impassioned appeal to the radicals who had joined Blaine, his voice so weak that his listeners left their seats to gather around him. "If, sir, I might presume upon my age, without claiming any of the wisdom of Nestor, I would suggest to the young gentlemen around me, that the deeds of this burning crisis, of this solemn day, of this thrilling moment, will cast their shadows far into the future and will make their impress upon the annals of our history, and that we shall appear upon the bright pages of that history, just in so far as we cordially, without guile, without bickering, without small criticisms, lend our aid to promote the great cause of humanity and universal liberty." When he
closed, the House defeated Blaine's motion, 69 to 94. Seventeen Republicans--mainly radicals--switched sides.

The conservatives, angry at the Democrats who had joined the radicals now united with their allies to pass the bill. Only nineteen Republicans dissented. Gratefully, Stevens turned to Colfax. "I wish to inquire, Mr. Speaker," he said, "if it is in order for me now to say that we indorse the language of good old Laertes, that Heaven rules as yet and there are gods above." 40

* * *

Yet the battle was not ended. The House sent two bills to the Senate--the Louisiana Reconstruction bill and the Military Government bill. In the form they arrived, the measures were complementary, and yet radicals understood the danger. The House nearly had accepted the Blaine amendment to the military bill, which would have outlined terms for reconstruction far milder than those incorporated in the other reconstruction bill. Pressure might prove even greater in the more conservative Senate. If the Senate did adopt provisions similar to those Blaine proposed, the two measures would be arrayed in open hostility to one another. Southern Republican lobbyists, therefore, began a campaign to persuade the Senate to extend the Louisiana bill's provisions to other southern states and abandon the military bill. 41 Wade, Sumner, Wilson, and Conness all expressed their preference for the Louisiana bill. 42
Still, Senate radicals announced their willingness to support both measures, but they emphasized that the two bills served different functions. "One is the beginning of a true reconstruction; the other is the beginning of a true protection," Sumner explained. "... Both must be had, and neither must be antagonized with the other. The two should go on side by side the guardian angels of this Republic." However, Fessenden took a different view. The Louisiana bill, he argued, was merely experimental and of narrow application. But the Military Government bill, with the Blaine amendment, would make "as complete a system ... as could possibly be offered now."

The Louisiana reconstruction bill, passed first by the House, came up in the Senate before its companion measure. Wade, its Senate manager, hoped to pass it before the military bill, with an amendment applying its provisions to all the rebel states. But Fessenden and Sherman urged the Senate to consider the Military Government bill first. Despite his announced preference for the bill under his control, Wade agreed (over Sumner's objections), with the understanding that the military bill's manager, Williams, would persevere in the fight until his bill passed, allowing no delays which might jeopardize both measures. Wade believed he had been assured that Fessenden and other conservatives would oppose all amendments to that bill, and the Blaine amendment in particular. This provides the only explanation for his decision to give up
the Louisiana bill's preferred place. It is not conceivable that he would have done so had he expected the Senate to adopt any amendment which would convert the "protection" bill into a "reconstruction" bill with provisions completely inconsistent with those of the bill he preferred. Indeed, Williams, who originally intended to propose an amendment similar to Blaine's but requiring universal rather than impartial suffrage, withdrew it and opposed all amendments from that time forward. 47

When Williams brought the Military Government bill before the Senate, Friday, February 15, it met the same hail of criticism it had in the House. But in the upper chamber, where there was no way to cut off amendments the criticism degenerated into confusion. Conservative Senators objected to unlimited military rule, demanding some provision for the return to civil government. The Maryland Democrat, Reverdy Johnson, proposed the Blaine-like amendment Williams had decided to abandon, and Senator after Senator moved amendments to it. Conservative and centrist Republicans like Stewart, Kirkwood, Lane, and Cragin announced their support for the modification, as did the radical Yates. 49 But most radicals opposed it vigorously, despite its acceptance of universal suffrage. The amendment was inconsistent with the bill, they pointed out. The measure itself pronounced the Johnson governments illegal, but the amendment recognized their power to amend their constitutions. "This must inevitably produce a collision between the Federal military authorities and the State authorities
which we thus recognize by this amendment," Howard predicted, 
with accurate prescience. Sumner worried the same problem.
"... [T]his whole proposition is ... thoroughly vicious
in every line and in every word from the first to the last
...," he insisted. In response to these criticisms, the
Senate amended the amendment to require the states to alter
their constitutions by conventions rather than through legis-
lative action. But Sumner objected to other provisions also.

As Friday night wore into Saturday morning, Senators fought over amendments to require only impartial suffrage, more
certainly to require universal suffrage, to require free pub-
lic education for children of all races, to guarantee equal
rights to pursue professions, and to declare the number of
states necessary to ratify the constitutional amendment. Demo-
crats moved adjournment time and again, but Williams fought
them off. Finally, shortly before 3:00 a.m., Wade and Hender-
son moved to substitute the Louisiana bill for the entire
mess. This was too much for Williams; he himself called for
an adjournment and his colleagues gratefully agreed.

The next morning, only a few hours after they had adjourned,
the weary and irritable Republican Senators caucused and after
some discussion decided to appoint a seven-member committee
to hammer out a bill. They named Sherman chairman and Fessen-
den, Sumner, Trumbull, Howard, Ira Harris, and Frederick T.
Frelinghuysen members. It was a distinctly conservative

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The caucus committee had a wide range of propositions to choose from—from the Bingham and Blaine amendments on the right to the Louisiana bill on the left—and after acrimonious debate, it reported an amendment to the Military Government bill incorporating elements of all three. In the most important concession to the radicals, the committee proposition required southerners to hold new state constitutional conventions. As nearly all Republicans demanded, delegates to them would be elected by all adult male voters meeting certain residency requirements, except those who might be disfranchised for their parts in the rebellion. The rest of the proposal embodied primarily the Blaine-Bingham program. The conventions would frame constitutions organizing republican governments and submit them to the voters for ratification. If these constitutions met the approval of Congress, and the state legislatures organized under them ratified the constitutional amendment, the states would be restored to normal relations with the United States and the other provisions of the Military Government bill would become inoperative.

The radicals remained dissatisfied. The committee had refused to disperse the Johnson state governments declared illegal in the military bill's preamble. It had not provided a new government under southern unionist control. It had abandoned the election machinery of the Louisiana bill, leaving the present state governments in a position possibly to organize and administer the election of convention delegates.
Adhering to that all-important illusion of voluntarism, the committee proposal required the incorporation of no specific provisions in the new state constitutions—it did not insist upon universal suffrage, nor a guarantee of free and equal public education, nor the disfranchisement of rebels. It effected no land redistribution. Many Senators no doubt argued that Congress could refuse to approve the state constitutions until such provisions were made, but this would mean new battles, perhaps with Republicans in a weaker position than now numerically, with the public impatient for an end to crisis. Further requirements would almost certainly be more difficult to effect later.

In the full caucus, Sumner and Wilson led a fight at least to require universal suffrage in the state constitutions. After a long and impassioned debate, the full caucus overruled the committee decision by one vote. Wilson was so elated that he grabbed Senators and danced with them, but Sumner, still unsatisfied, left the Senate in a rage and refused to vote on the bill. "Rarely have good and evil been mixed on such a scale," he said later. "Look at the good and you are full of grateful admiration. Look at the evil and you are impatient at such an abandonment of duty. You have done much; but you have not done enough." In the absence of detailed machinery and disfranchisement, the rebels could inaugurate the reconstruction process and dominate the elections. "With their experience, craft, and determined purpose,
there is too much reason to fear that all your safeguards would be overthrown, and the Unionist would continue the victim of rebel power."

Sherman proposed the amendment as finally agreed upon in caucus to the Senate that night. Republicans defeated several Democratic amendments, adopted one, and at six o'clock Sunday morning passed the bill. Sumner and Wilson tried to take up the Louisiana bill the next day, but conservatives forced an adjournment, and the bill was lost in the press of business.

In the House, conservative and center Republicans prepared to force the acceptance of the Senate amendment. They were buoyed by the possibility that if they succeeded, the President would sign the bill and rejoin the party. For on Friday evening, February 15, as the Senate had agonized over the mountain of amendments to the Military Government bill, a few of the representatives had met at Representative William E. Dodge's rooms to hear the report of the two men they had authorized to visit the President. Laflin and Rice told them Johnson had seemed willing to cooperate. The conservatives hoped to gain votes from representatives who believed the Senate would not accept a purely military bill under any circumstances, and they counted on the Democrats to give them the margin of victory.

When the House received the bill and amendments, Stevens immediately moved nonconcurrence. Radicals insisted that "[b]y the bill as now amended you transfer the reorganization of
these ten States to the rebels; you give to rebels the chief places in the work of reconstruction, possessing as they do for the time being, the means of influence, of trust . . . ." But Blaine argued this was "mere bugaboo and scarecrow." Congress retained the right, "plenary and absolute," to disapprove of any constitution brought before it.

The conservatives brought forward their most powerful men—Blaine, Wilson, Bingham, Garfield, and Schenck. Practical legislators, well inside what modern analysts would call the House "establishment," these representatives were disgusted at the radical display, complaining of idealists "who live among the eagles on the highest mountain peaks, beyond the line of perpetual frost" who denounced every practical effort to secure freedom as "poor and mean and a surrender of liberty." It was one of those battles again highlighting an essential difference between radicals and non-radicals—the unwillingness of radicals to settle for the politically practical when it appeared to put in jeopardy the goals shared by all Republicans.

As the vote approached the non-radicals appeared to possess the greater strength. But southern Republican lobbyists worked hard to prevent concurrence, and Fessenden, who had endorsed the Blaine amendment, urged representatives not to accede to the Senate’s more radical modification. Democrats decided to vote with the radicals against concurrence in an effort both to force conservative Republicans to kill
the bill and to prevent any compromise between the President and his party. As representatives recorded their votes, many held back, trying to determine whether their votes could carry the motion to concur. When it became apparent that they could not, they voted with the radical-Democratic coalition, swelling its margin of victory to twenty-five votes. Stevens had carried only a minority of Republican congressmen with him; the radicals owed their success to the Democrats. The House then agreed to request a conference, and Colfax named a tough committee—Stevens and Shellabarger representing the radical-Democratic majority and Blaine the minority.

Radical unity broke down completely in the Senate when word of the House's action arrived. Sumner, hoping for adical modification, urged Senators to agree to the conference. Wade, hoping to kill the bill and begin anew in the Fortieth Congress, tried to persuade his colleagues to refuse. But what aggravated and confused radicals most was Fessenden's course. They knew he had urged representatives to adhere to the military bill without amendment in hopes of preventing the adoption of any reconstruction terms more restrictive than the original Blaine amendment.

His colleagues were outraged. Fessenden had never indicated his opposition to the bill or its amendments in the Senate. He had served on the caucus committee which had framed the compromise modification. He had partaken in that debate and under the well-accepted custom was bound by its
decision. He had not announced his objections nor voted against the bill on its passage, instead going home while other Senators remained until early Sunday morning. Now he had employed his immense influence as Republican leader in the Senate to persuade representatives to resist the Senate's version of the bill. Radicals feared that if Fessenden had such secret doubts, then Sherman and Williams, who were almost certain to represent Senate Republicans in a conference committee and who had both favored milder amendments to the bill than those the Senate finally adopted, might share similar misgivings.

Fessenden attempted to justify himself by claiming he objected to the bill's conservatism. Pointing out that he and Stevens were in agreement, Fessenden smugly observed, "If gentlemen who glory in the name of radical are not quite so radical on that subject as I am, that is all the difference between us." Wade could not bear it. "He tells us that the fault we find with him is his radicalism. Well, sir, if he has become radical I shall be compensated for all that has happened here today," he retorted. Referring to Fessenden's role in the caucus debate, he observed archly, "If I were permitted to speak of what transpired in other places, I should say that I was entirely convinced it was not its radicalism that troubled him then." Unwilling to risk the concessions they had won, most radicals joined more conservative allies in refusing a conference.
As the bill returned to the House, Democrats determined to prevent its passage until the next day, enabling the President to pocket-veto it. At first Republicans resisted, with radicals abstaining while they tried to discover whether they could prevent another conservative effort to concur in the Senate amendments. Evidently deciding they could not, or at least that the vote was too close to forecast, many of them at last determined to join the Democratic efforts for adjournment and give the President an opportunity to kill the bill. The Republican majority, recognizing they could not pass the measure before midnight, finally agreed to adjourn.

The next morning the radicals met in caucus. James F. Wilson, who had been cooperating with the conservative forces, offered a compromise on their behalf, an amendment disfranchising all men disqualified from office under the constitutional amendment. The radicals insisted, however, on a further minimum condition for their support—an amendment prepared by Stevens and Shellabarger specifically declaring the Johnson state governments provisional and subject to the authority of the military. The commanders were empowered to modify or abolish those governments, men disqualified from holding office under the constitutional amendment were not to be allowed to hold office in them, and universal suffrage was required in any elections to fill vacancies. Blaine refused to accept this amendment, however, and when the bill came before the House once more, he moved the previous question to prevent its
submission. The House refused to support him by only four votes and then, over Democratic and conservative opposition, accepted the radical amendment and returned the bill to the Senate. There Wilson made a brief effort to amend the bill to require the dispersal of the Johnson governments, but he made no headway, and the Senate concurred in the House amendment, with all the Republicans present and one Democrat (Johnson) in the majority.

The bill had passed at last. "We have cast loose from the whole dead past and have cast our anchor out a hundred years ahead and now have to pull our civilization up to it," Howe wrote home.

"... Does it not seem grand? Alas! there was nothing grand about it. Congress has never seemed ... more querulous, distracted, incoherent and ignoble than when undergoing this very transformation."

* * * *

Passed on February 20, the Military Government bill (since its amendment called the Reconstruction bill) could not be enrolled and signed by the Speaker of the House and President pro tempore of the Senate until the next day. By not returning it to the Senate, the President could pocket veto the bill. But some observers, pointing to the negotiations in which he had engaged with conservative Republicans and to Reverdy Johnson's vote in favor of the measure, predicted he would sign it. Fearful of the consequences of a rapprochement,
radicals hoped for a veto.

But Johnson once again prevented the development of any nascent radical-conservative split. By signing the Reconstruction bill, he could have put the Republican coalition under tremendous stress. With the Fortieth Congress scheduled to meet immediately upon the dissolution of the Thirty-ninth, radicals were already preparing to press for a supplementary reconstruction bill to remedy the weaknesses of the measure just passed. Sumner announced his intention of bringing the Louisiana bill to a vote. Impeachment efforts were under way (see pp. 336-37, infra). With the President evincing an inclination to return to the fold, the tensions between more conservative Republicans who would welcome such a development and those who abhorred it would have intensified tremendously. At minimum the President would have been in a strong position to modify future legislation.

Despite the political advantages which would have accrued to him had he signed the bill, Johnson decided to veto it. But having decided this, his decision to send a veto to Congress rather than simply pocket the bill is simply inexplicable. Stevens, Sumner, Wade, Ashley, Julian and their radical cohorts would not have settled for a simple repassage of the Reconstruction bill they had fought so bitterly. The whole divisive contest would have been fought again, with congressmen anxious to return home, tempers shorter, recriminations greater. But once again the stubborn Johnson had come
to his enemies' rescue. The veto arrived March 2, and both houses promptly overrode it.

Johnson's veto and his continued hostility to all Republicans and their program decided conservatives and centrists to endorse a supplementary reconstruction bill. The quid pro quo those conservatives who hoped for a new understanding with Johnson offered him was the continued existence of his state authorities as provisional governments. Under the Reconstruction act as it passed, those governments might have called the required constitutional conventions, organized the elections, and generally exercised a great influence in the process of reorganization. When Johnson signified his continued opposition, these Republicans could not help but fear that if his southern governments did initiate the reconstruction process, they would do so in bad faith. Therefore, they endorsed a second law giving the military the sole authority to administer the registration and elections. Although William R. Brock believed this a radical measure, driving home the advantage radicals won when Congress agreed to declare the state governments provisional only, in fact it was framed by a House Judiciary committee whose Republican membership was evenly balanced between those who had generally cooperated with the Bingham-Blaine forces and those who had cooperated with Stevens. The bill went no further than the original law. Republicans intended it, as Blaine explained, simply "to secure to everybody entitled to vote at all an even
start in the race."  

Misconstruing the nature of the Supplementary Reconstruction bill, Brock remarked upon "the collapse of moderate opposition" which allowed its easy passage. But in fact there was no collapse of moderate opposition. In the House, where the Judiciary committee chairman moved the previous question to cut off amendments to the bill, it was the radical opposition which collapsed, recognizing the futility of opposing swift passage of the measure with congressmen anxious to adjourn the session and go home. But radicals and conservatives continued their battle in the Senate.

As petitions continued to arrive from southern Republicans asking Congress to disperse the Johnson state governments completely and erect territorial governments over their states, Sumner proposed a detailed new reconstruction bill. Although it was never published and is no longer in the Senate bill file in the National Archives, its general outline may be gathered by resolutions Sumner presented in the Senate on March 11. Pronouncing the passage of the Reconstruction act only a beginning, Sumner's resolutions called for the complete overthrow of the present southern governments, the creation of provisional governments, further measures to minimize rebel influence in the reconstruction process (meaning further disfranchisement and office-holding disqualifications), the establishment of free and equal systems of public education in the South, and the guarantee of a homestead to the head of
every family of freed slaves. But after a full, occasion- 76
ally acrimonious discussion, the Senate laid the resolu-
sions on the table, only ten Republicans dissenting.

Sumner, already burdened by the disintegration of his short marriage, was crushed. In his loneliness he scrawled a note to his intimate friend, Edward L. Pierce: "How few here sympathize with me! I sometimes feel that I am alone in the Senate.

"God bless you."

78

The most important conflict over the supplementary bill itself emanated from the fear of many Republicans, primarily radicals, that Congress was in too great a haste for final restoration. This anxiety manifested itself momentarily in the House when Benjamin F. Butler, entering Congress for his first term, proposed to eliminate provisions setting dates for the commencement of the reconstruction process. This would allow the military commanders to decide when the states were ready to begin. But Judiciary committee chairman Wilson, the bill's manager, refused to give Butler the floor and persuaded the House to second his motion for the previous ques-
tion without even a roll-call vote. 79 In the Senate the battle was joined over the question of whether to require an absolute majority of the registered voters to assent to the calling of conventions and to the ratification of proposed constitutions, or to allow a simple majority of the votes cast suffice. More divisive and confusing was an amendment
proposed by Fessenden to require the Johnson state legislatures to agree to call a convention before the reorganization process could begin. The radicals of the Thirty-ninth Congress divided on these questions. Some, like Howe, Pomeroy, and Wilson, wanted to bring southern unionists into power as soon as possible. Other Republicans—including Trumbull, Sherman, and Williams—feared the political consequences of delay, or simply wanted an early end to the crisis.

Taking the opposite view were radicals like Howard, Sumner, and Nye, who had never desired quick restoration and now saw a chance to let white southerners delay it by their own inaction. More conservative Republicans like Fessenden and possibly Morgan, Anthony, and Frelinghuysen, secretly convinced former rebels inevitably would control the southern states, joined the radicals in a simple effort to delay this inevitable evil. After prolonged wrangling, the advocates of delay won a minimal concession: a majority of all registered voters would have to vote in the election to ratify the new state constitutions.

Radicals agreed on two further amendments to the bill. First, they wanted to require irrevocable provisions in the new constitutions for voting by closed ballot rather than *viva voce*. The importance of such a security for blacks where whites held overwhelming economic power was patent. But Fessenden, still clinging to that illusion of voluntarism, objected to dictating the contents of the constitutions, and Roscoe Conkling and Oliver P. Morton, just elected Senators, denied Congress' power over subjects within state jurisdiction.
A Democratic-conservative-centrist coalition defeated the radical amendment, as its sponsor, freshman Senator Charles D. Drake, grumbled at discovering what veterans had long known, "that there is such a thing on the floor of this Senate as conservative radicalism."

Second, the radicals joined to support Sumner's effort to require constitutional provisions for free public education open to children of all races. But New Jersey's conservative new Senator, Frederick T. Frelinghuysen, denied Congress had the constitutional power to legislate for public education, and men like Trumbull, Sherman, Fessenden, and Williams, who had vehemently announced their opposition to any further conditions, joined him. Again a Democratic-conservative Republican coalition defeated the radicals.

With the passage of the supplementary reconstruction bill and its repassage over the inevitable veto, Republican reconstruction policy was fixed. This was radical reconstruction. But was it radical? Sumner publicly announced that he voted for it "not because it is what I desire, but because it is all that Congress is disposed to enact at the present time." Stevens expressed similar sentiments, and Ben Perley Poore, the knowledgeable Washington correspondent for the Boston Evening Journal, wrote other radicals felt the same way. Timothy Otis Howe felt more strongly. In his opinion the program was a "monstrous blunder."

Compare congressional reconstruction with the program
envisaged by radicals at the beginning of the Thirty-Ninth Congress. The radicals had insisted upon the complete dispersal of the Johnson state authorities; the Reconstruction acts recognized them as provisional governments. The radicals had advocated the creation of territorial governments in the South, through which southerners would govern themselves with congressional supervision until educated in the processes of democracy; the Reconstruction acts left most administration in the hands of governments dominated by rebels, placed paramount authority in military commanders, and encouraged virtually immediate restoration. Many radicals had wanted guarantees for black education, confiscation, and land reform; the Reconstruction acts embodied none of these. Radicals had wanted a rather widespread disfranchisement; the Reconstruction act disfranchised only rebels who had held state or national office prior to the rebellion and then joined it. The radicals had wanted to proceed upon the broad authority to reinstate civil government in the South implicit in Congress' power to govern territories or guarantee republican forms of government; the Reconstruction acts proceeded on the more restrictive "grasp-of-war" theory which relied on voluntary acceptance of peace conditions by southerners, leaving them free, for instance, to refuse to hold constitutional conventions by voting against them or to refuse to ratify the constitutions they framed. Moreover that theory left Congress without power to enforce the conditions southerners accepted.
once normal relations were restored, and it encouraged conservative resistance to requiring the incorporation of particular provisions in state constitutions, a policy which they believed consistent with voluntarism.

Nor did the Reconstruction acts correspond to the program radicals espoused when the second session began. It did not put Republicans in control of the restoration process as congressional and southern radicals pleaded; it minimized disfranchisement; it left officials of the Johnson state governments in office and in control of the state patronage; it encouraged speedier restoration than radicals wanted; it ignored necessities of education and land reform. Its radicalism lay in one provision: black suffrage. But by ignoring the other elements of the radical program, Republicans would learn they had minimized the effectiveness of the one element they had accepted.

Finally, by propelling the southern states into quick restoration, the Reconstruction act prevented that slow maturation of healthy public opinion and democratic capabilities that radicals had hoped to nurture in the South through territorialization. Radicals, dissatisfied with the Reconstruction acts when enacted, grew more dissatisfied as years passed. They blamed reconstruction's failure on this untoward haste to end it before it had barely begun. The Reconstruction acts, Julian insisted, were responsible for "the horrors of carpet-bag government, Ku Klux outrages, and a system of
pro-consular tyranny as inconsistent with the rights of these States as it has been disgraceful to the very idea of free government and fatal to the best interests of the colored race."

*     *     *

The radicals had yet another, more short-term reason to fear the practical effect of the new reconstruction bill: the House of Representatives had refused to impeach President Johnson. So long as he remained in office, Johnson remained commander-in-chief of the armed forces—the agency Congress had chosen to effect reconstruction. "As well commission a lunatic to superintend a lunatic asylum, or a thief to govern a penitentiary!" the Anti-Slavery Standard exclaimed. It was "an act of folly which no language can fitly describe."

The passage of the Reconstruction bill really marked the end of the battle for a fundamental reorganization of southern political and economic institutions. Radicals would continue to demand more—to call for confiscation, land redistribution, and guaranteed equal education—but their efforts would prove futile, receiving only slight attention after the fatal elections of 1867. Instead, radicals and conservatives would divide over the new issue of impeachment as a measure to ensure restoration under the Reconstruction laws. As they did so, many congressmen who had cooperated with one faction drifted to another—men like Representatives Francis Thomas and Schenck and Senator Stewart moving towards radicalism and

More radical and more conservative Republicans had already joined battle over impeachment during the second session of the Thirty-ninth Congress. Outside of Congress, the radical newspapers, Benjamin F. Butler, George Wilkes, editor of the radical Wilkes' Spirit of the Times, and Ebon B. Ward, president of the pro-soft-money, high-tariff Iron and Steel Association, led the movement. Inside Congress, Boutwell, Stevens, and James M. Ashley spearheaded efforts.

Bingham and Rufus P. Spalding led the opposition. Moving quickly after Ashley announced his intention to present resolutions calling for an investigation of Johnson's activities, Spalding called a caucus of House Republicans. To check Ashley's designs, Spalding moved that no measure of impeachment be presented in the House unless first approved by the caucus. Elihu B. Washburne proposed to add the further requirement that the caucus itself not approve any actual impeachment unless sanctioned by the House Judiciary committee. Over the objections of Stevens and Ashley, the Republicans agreed to the proposals overwhelmingly. But Ashley refused to be bound by the caucus decision and offered his resolution anyway. Two Missouri Republicans moved similar resolutions, which despite the efforts of Bingham and Speaker Colfax, came to the floor. However, although this handful of radicals had thwarted the will of the Republican majority, the Republicans acted on the second branch of their caucus decision and
CHART TWENTY-EIGHT

Radicalism in the House of Representatives
40th Congress, First Session.

GROUP#0 (DEMOCHATS)

George M. Adams, Ky.
Stevenson Archer, Md.
Demas Barnes, N.Y.
Boyer, Pa.
Brooks, N.Y.
Albert G. Burr, Ill.
Chanler, N.Y.
Eldredge, Wis.
John Fox, N.Y.
James L. Getz, Pa.
Glossbrenner, Pa.
Charles Haight, N.J.
Holman, Ind.
Julius Hotchkiss, Conn.
Humphrey, N.Y.
Kerr, Ind.
McCullough, Md.
Marshall, Ill.
John Morrisey, N.Y.
William Munson, Ohio
Nibleck, Ind.
Nicholson, Del.
Noell, Mo. (Conservative Unionist)
John Pruyn, N.Y.
Randall, Pa.
William E. Robinson, N.Y.
Ross, Ill.
Sitgreaves, N.J.
Frederick Stone, Md.
Taber, N.Y.
Daniel M. Van Auken, Pa.
Philadelph Van Trump, Ohio
Fernando Wood, N.Y.
Phelps, Md. (Conservative Unionist)

of thanks

---- Resolution to generals
removed from southern
commands, Reconstruction
appropriation, passage of
Second Supplementary
Reconstruction bill.
passage of Supplementary Reconstruction bill, resolution that President may not remove military commanders in South without the consent of the Senate, bill to reannex Alexandria to the District of Columbia, tabling of resolution to allow continuation of the Judiciary committee's impeachment investigation

GROUP #1 (CONSERVATIVE REPUBLICANS)

Thomas E. Stewart, N.Y.
Bingham, Ohio
Blair, Mich.
Thomas Cornell, N.Y.
Ferry, Mich.
Hubbard, Iowa
Hubbard, W.Va.
Ketcham, N.Y.
Bethuel M. Kitchen, W.Va.
Laflin, N.Y.
Rufus Mallory, Ore.
Marvin, N.Y.
Pike, Me.
Spalding, Ohio
Ginery Twitchell, Mass.
Beaman, Mich.
Dawes, Mass.
Griswold, N.Y.
George A. Halsey, N.J.
Lawrence, Pa.
William S. Lincoln, N.Y.
John A. Peters, Me.
William H. Robertson, N.Y.
Worthington C. Smith, Vt.
Thomas, Md.
Wilson, Iowa

Resolution to require Judiciary committee to determine if Ky., Del., and Md. have republican forms of government, motion to recede from House amendments to the Supplementary Reconstruction bill, adjournment
GROUP #2 (CENTER REPUBLICANS)

Clarke, Ohio
Dixon, R.I.
Orange Ferris, N.Y.
John Hill, N.J.
Koontz, Pa.
Allison, Iowa
Ames, Mass.
Blaine, Me.
Buckland, Ohio
Henry L. Cake, Pa.
John C. Churchill, N.Y.
Grenville M. Dodge, Iowa
Dennis McCarthy, N.Y.
Mercur, Pa.
William Moore, N.J.
Moorhead, Pa.
Carman A. Newcomb, Mo.
Perham, Me.
Price, Iowa
Green B. Baum, Ill.
Scofield, Pa.
Trowbridge, Mich.
Cadwallader C. Washburn, Wis.
Washburn, Ind.
Washburn, Mass.
Woodbridge, Vt.
Baldwin, Mass.
Eggleston, Ohio
William C. Fields, N.Y.
Hayes, Ohio
Benjamin F. Hopkins, Wis.
Hulburd, N.Y.
Julian, Ind.
William Loughridge, Iowa
Daniel J. Morrell, Pa.
Sawyer, Wis.
Upson, Mich.
Van Horn, N.Y.
Wilson, Pa.

---- Adjournment

GROUP #3 (RADICAL REPUBLICANS)

Baker, Ill.
Garfield, Ohio
Paine, Wis.
Boutwell, Mass.
Broomall, Pa.
John Coburn, Ind.
Cook, Ill.
CHART TWENTY-EIGHT (CONT.)

Lynch, Me.
Myers, Pa.
William A. Pile, Mo.
John F. C. Shanks, Ind.
John Taffe, Nebr.
Caleb N. Taylor, Pa.
Welker, Ohio
William Williams, Ind.
Windom, Minn.
Banks, Mass.
Benjamin, Mo.
Bromwell, Ill.
Cobb, Wis.
Eckley, Ohio
Darwin A. Finney, Pa.
Kelley, Pa.
William H. Kelsey, N.Y.
Sheilabeger, Ohio
Van Aernam, N.Y.

--- Amendment to adjournment resolution that Congress meet in July only if a quorum is present and that the Judiciary committee need not report on impeachment

GROUP #4 (ULTRA RADICAL REPUBLICANS)

Donnelly, Minn.
Ashley, Ohio
Benjamin P. Butler, Mass.
Clarke, Kans.
John Covode, Pa.
Cullom, Ill.
Driggs, Mich.
Ingersoll, Ill.
Norman B. Judd, Ill.
Lawrence, Ohio
Miller, Pa.
O'Neill, Pa.
Ward, N.Y.
Schenck, Ohio
Aaron F. Stevens, N.H.
Stevens, Pa.
Williams, Pa.

--- Tabling of adjournment resolution
CHART TWENTY-EIGHT (CONT.)

GROUP #5 (ULTRA RADICAL REPUBLICANS)

Anderson, Mo.
Ashley, Nev.
Jacob Benton, N.H.
Jacob H. Ela, N.H.
Parnsworth, Ill.
Joseph J. Gravely, Mo.
Loan, Mo.
John A. Logan, Ill.
McClurg, Mo.
Orth, Ind.
Henry H. Starkweather, Conn.
Van Horn, Mo.

NONSCALAR:  Denison, Pa. (Dem.); Cornelius S. Hamilton, Ohio; Hooper, Mass.; Jenckes, R.I.; Plants, Ohio;
Lewis Belye, N.Y.; John T. Wilson, Ohio (All Repubs.)

NOT VOTING:  Barnum, Conn. (Dem.); Eliot, Mass. (Repub.);
Harding, Ill. (Repub.); Richard D. Hubbard, Conn.
(Dem.); Pomeroy, N.Y. (Repub.); Charles H. Van Wyck,
N.Y. (Repub.)

For a list of the roll calls upon which this chart is
based, see Appendix X.
CHART TWENTY-NINE

Radicalism in the Senate
40th Congress, First Session.

Main Scale—reconstruction matters generally

GROUP #0 (DEMOCRATS AND JOHNSON CONSERVATIVES)

James A. Bayard, Del.
Buckalew, Pa.
Davis, Ky.
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Hendricks, Ind.
Patterson, Tenn.
Johnson, Md.

---- Arming Tennessee militia,
passage of second Supplementary
Reconstruction act (July
session), payment of contingent
expenses of Reconstruction act,
confirming Frank P. Blair
minister to Austria, confirming
John P. Stockton minister to
Austria, adjournment of March
session sine die, amendment to
second Supplementary Reconstruction
act to allow replacement of
removed southern provisional
state officials with civilians

GROUP #1 (CONSERVATIVE REPUBLICANS)

Van Winkle, W.Va.
Willey, W.Va.
Conness, Calif.
Roscoe Conkling, N.Y.
Henry W. Coroett, Ore.
Edmunds, Vt.
Fessenden, Me.
Frelinghuysen, N.J.
Grimes, Iowa
Henderson, Mo.
Morgan, N.Y.
Morrill, Me.
James W. Patterson, N.H.
Ramsey, Minn.
CHART TWENTY-NINE (CONT.)

Sherman, Ohio
Sprague, R.I.
Stewart, Nev.
Trumbull, Ill.
Williams, Ore.
(RADICAL-CENTER REPUBLICANS)
Craig, N.H.
Justin S. Morrill, Vt.
Thomas W. Tipton, Nebr.

--- Amendments to second
Supplementary Reconstruction
bill (July): prohibiting
discrimination in appoint-
ing registration boards,
declaring all provisional
state offices vacated;
Amendments to first
Supplementary Reconstruction
bill (March): requiring
¾ of registered voters to
vote on question of holding
constitutional conventions,
requiring free public
school systems (March);
adjuournment of March session;
adjuournment of July session;
tabling of Sumner resolutions
on further guarantees for
reconstruction

GROUP #2 (RADICAL-CENTER REPUBLICANS)

Howard, Mich.
Oliver P. Morton, Ind.
Ross, Kans.
(RADICAL REPUBLICANS)
Simon Cameron, Pa.
Cattell, N.J.
Chandler, Mich.
Cornelius Cole, Calif.
Charles D. Drake, Mo.
Fowler, Tenn.

James Harlan, Iowa
Howe, Wis.
Nye, Nev.
Pomeroy, Kans.
Sumner, Mass.
John M. Thayer, Nebr.
Wade, Ohio
Wilson, Mass.
Yates, Ill.

NOT VOTING: Guthrie, Ky.; Riddle, Del.; Saulsbury, Del. (all
Democrats)

For a list of the roll calls upon which this chart is
based, see Appendix IX.
Subscale -- Position of Republicans on the Supplementary Reconstruction bill

--- Passage of the Supplementary Reconstruction bill and its repassage over presidential veto

GROUP #0 (REPUBLICANS FAVORING QUICK RESTORATION WITH AS FEW RESTRICTIONS AS POSSIBLE)

Conness, Calif.
Stewart, Nev.
Trumbull, Ill.
Van Winkle, W.Va.
Willey, W.Va.
Williams, Ore.

--- Agreement to conference committee report on Supplementary Reconstruction bill, amendment to forbid racial discrimination in appointing registration boards in South, amendment to require fuller oath of prospective voters

GROUP #1 (REPUBLICANS FAVORING QUICK RESTORATION WITH SOME FURTHER RESTRICTIONS)

Cragin, N.H.
Drake, Mo.
Perry, Conn.
Frelinghuysen, N.J.
Harlan, Iowa
Howe, Wis.
Morton, Ind.
Pomeroy, Kans.
Ramsey, Minn.
Ross, Kans.
Sherman, Ohio

--- Amendment to Supplementary Reconstruction bill to require that a majority of all qualified voters vote in favor of ratifying new state constitutions before they are submitted to Congress, amendment requiring that three-fifths of
all qualified voters vote in a ratification election before new state constitution may be submitted to Congress, amendment to require a majority of registered voters to agree to a state constitutional convention before it may be called, amendment to require Johnson-authorized provisional governments to call constitutional conventions

GROUP #2 (REPUBLICANS FAVORING DELAY IN RESTORATION)

Fowler, Tenn.
Anthony, R.I.
Cameron, Pa.
Cattell, N.J.
Chandler, Mich.
Cole, Calif.
Conkling, N.Y.
Corbett, Ore.
Edmunds, Vt.
Pessenden, Me.
Henderson, Mo.
Howard, Mich.
Morgan, N.Y.
Morrill, Vt.
Morrill, Me.
Nye, Nev.
Patterson, N.H.
Sumner, Mass.
Thayer, Nebr.
Wade, Ohio
Yates, Ill.

NOT VOTING: Grimes, Iowa; Sprague, R.I.

For a list of the roll calls upon which this chart is based, see Appendix IX.
referred the resolutions to the Judiciary committee, which
began the long and tedious job of collecting evidence and
taking testimony.

After the passage of the unsatisfactory Reconstruction
bill, radicals concluded that the President's removal was a
necessity. Impatient with the Judiciary committee's slow pro-
gress, Butler called a secret caucus of radicals to prepare
a resolution appointing a special committee to investigate
Johnson in place of the Judiciary committee. Advocated by
Butler, John A. Logan (just entering Congress), and Schenck,
the resolution was defeated in caucus March 6 through the
efforts of Bingham, Blaine, and Judiciary committee chairman
Wilson, who promised all possible dispatch in his committee's
investigation.

Now radicals determined to prevent the customary adjourn-
ment to the following December, fearing what Johnson might do
during a long congressional recess and hoping to pressure the
Judiciary committee into an early report on the impeachment
resolutions. Over both radical and conservative objections,
centrists Republicans in the same caucus carried resolutions
to adjourn, but only until May 8.

Most Senators, however, were becoming more confirmed in
the conviction that impeachment was not a viable possibility.
In the Senate Republican caucus, only Chandler endorsed the
measure. Grimes wrote home, "We have very successfully and
thoroughly tied his [Johnson's] hands, and, if we had not, we
had better submit to two years of misrule . . . than subject the country, its institutions, and its credit, to the shock of an impeachment. I have always thought so, and everybody is now apparently coming to my conclusion."  

A hard-fought struggle ensued. Radicals, led by Stevens, Butler, Ashley, Schenck, and Ignatius Donnelly in the House and Sumner and Drake in the Senate, fought for a short adjournment to be followed by a reconvened session which would settle the impeachment question. Conservatives, led by Representatives Bingham and Blaine and Senators Trumbull and Fessenden, tried to force an adjournment to November or December. After these rival forces battled to a stalemate, conservatives joined centrists to pass an adjournment resolution providing that Congress might reconvene the first Wednesday in July if a quorum was present. If no quorum could be found, Congress would reconvene the first Wednesday of November. Behind the scenes, radical Representative Schenck and conservative Senator Morgan, the co-chairmen of the Congressional Campaign Committee, were delegated the responsibility of deciding whether it would be necessary to meet. All agreed a July meeting was unlikely; the radicals had received another setback.  

A correspondent of the New York Times had gauged the sentiment in Congress correctly in February. Impeachment was dead, he wrote. But "there is one qualification to be made . . . . If the President persistently stands in the way . . . ; if he fails to execute the laws in their spirit as well as in
their letter, if he will forget nothing, if he will learn nothing; if, holding the South in his hand, either by direct advice of personal example he shall encourage them to such resistance to progress as may tend to defeat the public will—
in such event . . . the President may, after all, come to be regarded as an 'obstacle' which must be 'deposed.'"
CHAPTER XII

PRESIDENTIAL OBSTRUCTION AND THE LAW OF IMPEACHMENT

Republicans had proved unwilling to take reconstruction completely out of the hands of the President. Rather than turn the administration of the southern states over to loyalists, they had left it in the hands of governments created under Andrew Johnson's authority. They had subordinated those governments to the armed forces of which he was commander-in-chief. They had decided against giving General Grant the responsibility for appointing district commanders under the law and left that power to the President also. Although many historians have argued the contrary, Republicans were surprisingly sensitive to the proper functions of the President and most reluctant to tamper with them. They had objected that Johnson usurped the rightful legislative powers of Congress by inaugurating his own system of reconstruction and then denying them any power in the premises. They would not now usurp his powers. They had fulfilled their duty by framing a reconstruction law. The President would fulfill his by administering it. The government simply could operate in no other way under the rather rigid concept of separation of powers to which most Americans adhered at mid-century.

It was because Republicans could not envision legislative
despotism or stripping the President of his powers that the impeachment question arose. "[W]e must have laws in which the President will cooperate, in order to make those laws effective," Banks insisted. "And if, after we ... have agreed as to what laws are necessary to secure the peace of the country and to maintain the existence of the Government, ... the President then refuses cooperation, it is our duty to the country to ... proceed to the consideration of the position and purposes of the President himself." Because Republicans respected the presidency, they would if necessary remove the President.

As Americans for the first time seriously discussed the possibility of impeaching a President, they arrived at two opposing concepts of the law of impeachment. These differing opinions were expounded and developed primarily through three discussions: the first an indirect exchange in the American Law Register in March and September, 1867, between Professor Theodore W. Dwight of Columbia College Law School and Representative (formerly Judge) William Lawrence of Ohio, a member of the House Judiciary committee; second, in the majority and minority reports on impeachment delivered by the House Judiciary committee in November; and third in the speeches Boutwell and James F. Wilson delivered on the floor of the House December 5 and 6 in defense of the majority and minority reports, respectively.  

Democrats, conservative Republicans, and most lawyers
argued that a government officer could be impeached only for an act actually criminal, a violation of a criminal statute. Many historians have accepted this view as embodying the proper law of impeachment, accusing those who insisted on a broader interpretation of using impeachment wrongly in a purely political vendetta. But those who espoused the narrow view had an extremely difficult task in sustaining it, because in fact it was a novel argument, running counter to precedent, the overwhelming weight of American legal authority, and logic.

The first problem conservatives faced involved the precedents. To bolster their arguments, proponents of the restrictive theory of impeachments turned to English law. Impeachment, they argued, was merely an alternative form of charging a man with a crime. The usual form was indictment, which was followed by a common law trial. Impeachment lay when the criminal was so powerful that he might overawe the ordinary courts. Since one could be indicted only for a violation of law, they averred, the same rule must apply to impeachments also. Yet, as the conservatives conceded, the English had impeached offenders for acts which did not constitute indictable crimes, although the supposed rule had been followed in most cases. These embarrassing inconsistencies conservatives attacked as "extreme cases" tried on "frivolous charges." But the conservatives' definition was self-serving. They insisted that impeachment lay only for indictable offenses and then charged that impeachments based on non-indictable
acts were frivolous and not entitled to consideration as precedents. Dwight even suggested that many of these cases probably were based on violations of statutes after all, but that the laws involved had been lost or forgotten.

The best English precedent conservatives found was the impeachment of Viscount Melville, in which Parliament's House of Lords asked their legal experts whether the defendant's acts were indictable. When the experts said they were not, Melville was acquitted. But the precedent was weakened because Melville's trial took place in 1806, nearly twenty years after the framers had incorporated the power of impeachment into the Constitution. The case could not explain the intention of the authors of the Constitution except insofar as it illustrated the English concept of impeachment before 1789.

Recognizing the weakness of the conservative case under English precedent, the Judiciary committee minority expressly denied the validity of those precedents in determining the scope of impeachment in America, arguing, "The power of Parliament over the subject is far greater than that which ... Congress can exercise over the citizen." Instead they turned to American precedents, but they treated these much as they had the English.

Americans studying impeachment in the United States had two distinct lines of precedents from which to draw. On one hand, an investigator might argue the true precedents for impeachment were those set by the House of Representatives in
presenting impeachments to the Senate. On the other, he might insist that the true precedents lay in how the Senate decided the cases. Since the House of Representatives had limited its accusations to indictable crimes in at most one of the five impeachments it had presented to the Senate before 1867, conservatives turned to the decisions in the Senate.

Senate proceedings on impeachment offered two strong precedents for the conservatives. In the impeachment trial of Supreme Court Justice Samuel Chase in 1805, the Senate refused to convict on any of the articles, none of which was indictable. The Senate reached a similar result in the trial of Judge James H. Peck in 1830. In Peck's case, the Senate's decision may not have turned upon the indictability of the Judge's conduct, there being substantive doubt as to the facts, but in the Chase trial there could be no doubt that the question was important. Yet politics clouded the issue; every Federalist Senator voted against convicting their political ally. Moreover a majority of Senators--although not the two thirds required for conviction--voted to convict on three of the eight articles. Advocates of a broad power of impeachment could argue that actually the precedent supported their arguments. On one of the articles, nineteen of thirty-four Senators found Chase guilty although no indictable crime had been charged. Peck escaped conviction with twenty-two Senators pronouncing him removable for his non-indictable conduct and twenty-one holding the other way.
To the further discomfiture of those who favored a narrow limit to the impeachment power, the Senate had on at least one occasion removed a judge on impeachment for conduct not indictable at law. The offender was Judge John Pickering, accused of drunkenness and profanity on the bench (in fact, his son had notified the Senate that Pickering was insane). In that case the Senate had gone so far as to imply their role was limited to determining only whether defendants had committed the acts of which they were accused. They conceded to the House the full right of deciding whether those acts were impeachable. Instead of voting on the question "Is John Pickering . . . guilty of high crimes and misdemeanors upon the charges . . . , or not guilty?" the Senate had voted on the following: "Is John Pickering . . . guilty as charged . . . by the House of Representatives?" (italics mine). The conservatives denied this case's value as a precedent, "a disgrace to the court that tried it," they called it. But its primary offense seems to have been that it contradicted their argument.

Since legal authorities almost unanimously had adopted the broad view of impeachment, conservatives proceeded to the lawyer-like task of citing their testimony on questions not quite in point. They argued that the power of impeachment should be determined primarily by the words of the Constitution. The framers had authorized the House of Representatives to impeach government officers for "treason, bribery, or other
high crimes and misdemeanors." Arguing that the language raised the presumption that impeachment lay only for actual crimes, despite the number of impeachments which seemed to imply the opposite, the conservatives cited the great English constitutional commentators Blackstone, Woodson, and Hale to the effect that a crime was a violation of law and that laws must be known to the people.

To bolster this contention those favoring the narrow view pointed to other provisions of the Constitution relating to impeachment. They emphasized that the Constitution required Senators to try cases of impeachment upon an oath of affirmation. This indicated they "were as much restrained by law as any other criminal court," conservatives argued. An impeached officer was still liable for his offense before the civil courts after removal, they pointed out. This too indicated impeachment was proper only in the case of indictable offenses. Article III, section 2 of the Constitution required all crimes to be tried by jury, except those tried on impeachment. Article II, section 2 empowered the President to pardon men for all "offences against the United States, except in cases of impeachment." The language in both constitutional provisions linked impeachment to crimes indictable before civil courts, conservatives insisted.

Surprisingly, the advocates of broad powers of impeachment did not reply to the fallacies perpetrated in these arguments, and the failure to do so materially weakened their
case before the nation, the legal community, and Congress. The oath of affirmation required of Senators, for instance, was not necessarily connected to the issue of proper grounds for impeachment at all. It might just as logically mean no more than Senators must be on oath to judge the evidence impartially in determining whether a defendant was guilty of conduct alleged by the House, whether that conduct constituted an indictable offense or not. The other conservative arguments constituted specific logical fallacies. That an impeached official can be tried in criminal court after his trial on impeachment does not imply only those who can be tried in a criminal court may be impeached. It means, rather, that where an officer is impeached for an indictable offense, the impeachment does not preclude a later indictment. The framers of the Constitution wished to prevent officials guilty of criminal conduct from pleading that their impeachments rendered them immune from the jurisdiction of criminal courts under common law doctrines forbidding double jeopardy. In fact, this constitutional provision should have bolstered radicals' contentions that impeachment was not a criminal process.

The provision requiring jury trial for all crimes except those for which the House instituted impeachment proceedings does not necessarily mean impeachment lay only for crimes which otherwise have to be tried by jury. It means only that where an impeachment is preferred for such a crime, the defendant cannot object to the absence of a jury trial. The
same holds true of the President's power to pardon men for crimes excepting those tried by impeachment. Logically, this means only that where an officer has been impeached for an offense against the nation, the President cannot pardon him. Once again this provision might have been cited to support the case of those who favored a wide scope for the impeachment power. The clear implication is that the framers feared the President might render the impeachment power nugatory by pardoning officers Congress might impeach, that they feared the President might seek to save from removal men to whom he had political obligations or who had political obligations to him. Once again this provision indicated the authors of the Constitution were much concerned by the political implications of impeachment.

 Radicals argued that the "misdemeanors" the Constitution referred to as grounds for impeachment included misfeasance and malfeasance in office as well as crimes indictable before criminal courts. In defending this position those who argued impeachment was a power of broad scope could not decide how to treat the English precedents. Lawrence, in his "Law of Impeachment," and Boutwell, in his speech before the House favoring impeachment, emphasized the essential differences between impeachment in England and America, differences which they believed explained why Englishmen may have circumscribed the impeachment power more tightly than Americans in the 1787 Constitution. In England impeachment was directed at the
punishment of crime. A defendant found guilty upon an impeachment could be sentenced even to death by the House of Lords which convicted him. In the United States impeachment was only a mode in which to remove officeholders and disqualify them from holding government positions. Furthermore, in England any subject might be impeached, tried, and punished. In the United States the already more limited impeachment power could proceed only against those who held public trust. Because of these basic differences, Boutwell and Lawrence minimized the importance of English precedents. The Judiciary committee's majority report in favor of impeachment, authored by Representative Thomas Williams, however, emphasized the English precedents to prove that impeachment was usually instituted there to punish acts detrimental to the welfare of the state. But all advocates of broad impeachment powers agreed the place of impeachment in American constitutional law should be determined primarily by looking at American precedents and American legal authorities.

Naturally, those who favored the broad conception of Congress' power to impeach turned to the line of precedents established by the House in presenting impeachments rather than to those established by the Senate in deciding them. In every impeachment the House had presented to the Senate, at least some of the articles had alleged nonindictable offenses. Of course the radicals also pointed with special emphasis to the convictions of Pickering and Humphries by the Senate.
But the radicals' greatest strength resided in the unanimity with which the great American constitutional commentators had upheld the broad view of the impeachment power. Those eminent legal writers had recognized that both the English and American precedents were mixed. They had eschewed legal authority, therefore, and had appealed to reason instead. In an age accustomed to analyzing government primarily in terms of its theoretical and legal foundations rather than its practical workings, such "appeals to reason" offered scholars an opportunity to offer assessments based on the actual relationships between the various institutions of government. In short, the great constitutionalists for a moment left the realm of law and entered what is now called political science.

As a practical matter, American constitutional commentators--Story, Duer, Kent, Rawle, and the authors of the Federalist--recognized that the maintenance of proper checks and balances in government, which they believed guaranteed liberty, depended upon the good faith and restraint of those entrusted with power. They recognized that the danger to liberty and the efficient workings of government lay not in the possibility that the President or lesser executive officers might act illegally, but rather that they might abuse the powers which the Constitution had delegated to them. Although earlier constitutional analysts had arrived at the same conclusion, this consideration was stated most distinctly by the great nationalist legal scholar John Norton Pomeroy, perhaps
because he was writing at the very time impeachment became a topic of popular discussion: "The importance of the impeaching power consists, not in its effects upon subordinate ministerial officers, but in the check which it places upon the President and the judges. They must be clothed with an ample discretion; the danger to be apprehended is from an abuse of this discretion. But at this very point where the danger exists, and where the protection should be certain, the President and the judiciary are beyond the reach of Congressional legislation. Congress cannot, by any laws penal or otherwise, interfere with the exercise of a discretion conferred by the Constitution.

If the offence for which the proceeding may be instituted must be made indictable by statute, the impeachment thus becomes absolutely nugatory against those officers in those cases where it is most needed as a restraint upon violations of public duty."

The abuses commentators feared were precisely those "too artful to be anticipated by positive law, and sometimes too subtle and mysterious to be fully detected in the limited period of an ordinary investigation." The rules of evidence required for indictment and conviction were too rigid to serve in an area so dangerous to society, worried William Rawle. Incriminating facts might be uncovered "which may be properly connected with others already known, but [which] would not form sufficient subjects of separate prosecution. Of these accounts a peculiar tribunal seems both useful and necessary,"
he reasoned, "a tribunal of a liberal and comprehensive character, confined as little as possible to strict forms, enabled to continue its session as long as the nature of the case may require, qualified to view the charge in all its bearings and dependencies, and to appreciate on sound principles of public policy the defense of the accused . . . ."

Without dissent, although often with less clarity and succinctness, the other major American constitutionalists echoed these opinions.

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Had Republicans acted upon these doctrines there can be no doubt that Andrew Johnson could have been impeached, tried, convicted, and removed at any time after December, 1865, for his activities fit precisely into the pattern which Pomeroy, Rawle, and others had outlined.

*    *    *

Republican congressmen had not passed a reconstruction law before the rebel armies lay down their arms in April and May, 1865, but they had passed a series of measures which should have had a large impact on the reorganization of southern political, social, and economic institutions after the war. The "Ironclad" test oath, required of all elected and appointed officers in the United States' public service, effectually barred former rebels from national office. The Confiscation act of July 17, 1862, made this prohibition explicit but was less effective than the law requiring the oath, because its disqualification provision referred only to
those convicted of treasonable activities.

The Confiscation act provided for the seizure of all the real and personal property of major rebel office-holders and all rebels who did not return to their allegiances within sixty days of a presidential warning proclamation. Title would be secured to the government through proceedings in rem, before Federal courts, and the property would be used in prosecuting the war or the proceeds of its disposal would be paid into the United States Treasury. An explanatory resolution limited the forfeiture to the life of the rebel, minimizing the law's utility.

The concept of confiscation had been fundamentally altered when Republicans passed the Freedmen's Bureau bill during the second session of the Thirty-eighth Congress (early 1865). By that act southern lands abandoned by their owners, which were subject to confiscation under the Confiscation act, were put under the administration of a new Bureau of Refugees, Freedmen, and Abandoned Lands. The Commissioner of the Bureau was to use the abandoned land to aid black men in the transition from slavery to freedom. He was specifically empowered, under the direction of the President, to set aside for the use of the freedmen and refugees abandoned land and land to which the government had acquired title through confiscation proceedings. The land was to be divided into forty-acre plots or less and rented to individual freedmen and refugees for three years. At the end of the three years, or any time earlier, the
occupants could purchase the land they were working, receiving from the government "such title thereto as the United States can convey."

The peculiar limitation Congress set upon the title which the freedmen could purchase indicates one of the problems the bill raised. Because federal courts were not yet operating in most areas conquered from the rebels, the national government had secured the title to hardly any land at all through confiscation proceedings. Of course, land liable to confiscation which lay behind rebel lines remained untouched. Most rebel land in government hands, therefore, was classified as "seized" or "abandoned." When it passed the Freedmen's Bureau bill, Congress evidently intended that government officers institute confiscation proceedings while freedmen worked the land. But the bill required no one to do so. Under the Confiscation act, treasury agents had spurred the small number of confiscation proceedings instituted, since it was the Treasury department which gained from them. With that spur removed, it was not clear who would accept the burden of litigation.

Nonetheless, the landholding provisions of the Freedmen's Bureau bill clearly demonstrated a desire on the part of Republicans to provide an economic foundation for black men's new freedom. Republicans further evidenced their intentions when each house of Congress passed legislation repealing the resolution which limited forfeiture under the
Confiscation act to the lifetime of the rebel. Since no single resolution to this effect passed both houses, however, the limiting resolution remained law.

Congress, therefore, had set rather specific parameters to the reconstruction process when the Thirty-eighth Congress had adjourned. If Lincoln, and later Johnson, intended to continue the policy of administering conquered areas through provisional governors, those provisional governors, as officers of the United States, would have to take the ironclad test oath. They would be thoroughly loyal men who had never endorsed or encouraged secession or resistance to national authority. Moreover, although former rebels could take part in the reorganization after taking the Amnesty oath, national patronage could go only to those who could take the test oath. Republicans believed that the best security for a loyal reconstruction would be a government politically allied to the Republican party, even if former rebels served in it. With national patronage by law required to be put in the hands of loyalists, with the all-important provisional governors required always to have been loyal Union men, Republicans could expect that their allies would control the reconstruction process in the South. Certainly this had been true in Tennessee, Arkansas, and Louisiana.

Furthermore a strong start had been made in solving the problem of transition from slave to free labor. The Freedmen's Bureau, funded by the income of abandoned, seized, and
confiscated lands, would cooperate with missionary organizations in educating black people, guard freedmen's interests in the unaccustomed process of contracting for wages, and begin the process of distributing land to establish black homesteads.

But within a year of Andrew Johnson's elevation to the presidency, the preliminary reconstruction program enacted by Congress had lain in utter ruin; Johnson had destroyed it without violating a law, using only his constitutional powers as President of the United States. Ignoring the Test Oath law of Congress, he appointed former rebels provisional governors in several southern states. He himself had excepted leading Confederates from his Amnesty proclamation (a somewhat more stringent measure than Lincoln's on the surface, but incredibly mild as a peacetime proposal), but he willingly pardoned virtually any rebel upon the recommendation of his provisional governors. The provisional governors were politicians, interested in political power, and they knew that their political futures would be more promising if they conciliated white, southern leaders. When Johnson made it obvious that he would support such a policy by pardoning rebel leaders and when he made alternatives impossible by opposing black suffrage, most of the provisional governors began to work with former Confederates and to proscribe former Unionists who refused to cooperate. By December, 1865, nearly every southern state had returned to Confederate leadership.
The Johnson administration also had ignored the congressional oath requirement in making ordinary appointments to the national civil service in the South. Postmaster-General Dennison and Attorney-General Speed found it possible to obey the law (although with difficulty), but Treasury Secretary McCulloch, encouraged by Secretary of the Navy Welles, had abandoned the oath requirement in August, 1865, staffing the southern Treasury department network with former rebels. After the Post Office department, the Treasury department was the largest single source of national patronage within the states, and its positions were far more lucrative and sought-after. In ignoring the oath requirement enacted by Congress, McCulloch's policy complemented the pro-rebel policy established at the state level by most of Johnson's provisional governors.

Johnson's decisions had been as disastrous to Republican race and labor policy as they had been to their protean reconstruction program. These decisions centered about enforcement of the Confiscation act and the President's absolute right of pardon under the Constitution.

By late July, Attorney-General Speed began to restrict the enforcement of the Confiscation law. It is not clear if he did so at the direct order of the President, but there can be no doubt that the decision was part of a uniform administration program to restore the Union by conciliating white southerners. At the urging of the provisional governor of
Florida, Speed ordered the United States attorney for the northern district of Florida to halt proceedings for the sale of confiscated lands there and to cease proceedings to confiscate railroads. The officer protested the individual case, but agreed no new confiscation proceedings should be instituted lest such a course "make desperadoes of ninety-nine in every hundred of the property holders of this country." In September Speed ordered the cessation of all confiscation proceedings in Virginia and ruled that the law could not be invoked to seize corporate property. From September, 1865, to December, 1867, the Attorney-General's office repeatedly ordered local officers to cease or suspend confiscation proceedings, bringing to a standstill nearly all the activity in this area. By fall and winter, 1865, Speed was informing his subordinates "that it is not the wish of the Government to harass or impoverish any of the citizens who desire in good faith to return to their allegiance and duty." Confiscation proceedings should be carried out only against "those who are still rebellious and contumacious ..." Both Speed and his successor, Henry Stanbery, finally decided confiscation was illegal in peacetime. In June, 1866, Speed ordered a complete end to all proceedings.

At the same time the Attorney-General acted to minimize enforcement of the Confiscation law, Johnson had effectively destroyed the capacity of the Freedmen's Bureau to fulfill its congressional mandate. Former Confederates pardoned under
the Amnesty proclamation or by special presidential action immediately began to demand the return of their abandoned and seized property. When bureau officials refused to accede to their demands, the pardoned rebels appealed to the President. Commissioner Howard argued that acquiescence in the rebels' demands would completely disrupt the bureau's activities and urged Johnson to consider property already condemned by the government beyond the reach of pardon. Instead, the President held that only confiscated land *already sold to third parties* should remain unreturned. Even land to which the government had received title under the Confiscation law would be restored to its former owners. Since little land had been subject to confiscation proceedings before war's end due to the absence of courts, and since even land to which the government had received title had been turned over to the Freedmen's Bureau rather than sold, Johnson's order effectually nullified both the Confiscation and the Freedmen's Bureau laws. Howard then asked Johnson to add a stipulation to the pardons he was granting former Confederates to require them to transfer five to ten acres of land to the head of each slave family living on their property. The President did not act on the proposal. After fall, 1865, one of the Freedmen's Bureau's primary functions was to administer the restoration of seized and abandoned property to pardoned rebels. The Freedmen's Bureau held roughly 800,000 acres of land in September, 1865. It never gained control of any more. By April, 1866, 414,652 acres
had been restored to former owners, including almost 15,000 acres which had been already turned over to freedmen.

Bad as the effect of these acts were on the Freedmen's Bureau, the real tragedy lay in their effect on the lives of individual men and women. Commissioner Howard recalled with anguish the meeting at which he informed black men who had been promised ownership of the soil they worked in the Sea Islands that they had to restore the land to their former owners. "Why ... do you take away our lands?" one of the freedmen had asked. "You take them from us who are true, always true to the Government! You them to our all-time enemies!" Silently agreeing, Howard could give no answer.

As the conflict between Johnson and Congress grew in intensity, the President became progressively more hostile to the Freedmen's Bureau, its agents, and its commissioner. After May, 1866, he began a program of harassment, authorizing political allies to "investigate" operations, removing and reassigning key bureau personnel, and holding the threat of dismissal over Howard.

Johnson used his presidential powers to moderate reconstruction in other ways also. One of the principal objects of his attacks was the Army's use of military tribunals to punish wrong-doers in the South when state courts would take no action. One type of military tribunal, the Freedmen's Bureau court, was an integral part of the bureau's operation. Other military commissions occasionally were organized in the
South due to the unwillingness of state courts to protect Union soldiers, loyal whites, or blacks. To put an end to such tribunals' jurisdiction over civilians, Johnson had issued a proclamation April 2, 1866, formally declaring an end to the insurrection and clearly intended to restore in all states the privilege of the writ of habeas corpus. The proclamation wrought chaos in the southern military establishment, as commanders urgently sought instructions. To circumvent the President's decree, Secretary of War Stanton and General Grant had been forced to issue a secret circular reminding commanders in the South that military courts were authorized under the Freedmen's Bureau law, which continued in force during peace. In response to direct queries, Grant stolidly insisted that he did not interpret the Peace proclamation as abrogating martial law. But on May 1, 1866, Johnson had forced the circulation of an order pursuant to his Peace proclamation. It required an end to all trials of civilians by military tribunal wherever civil courts were open. In July he had delivered yet another blow, ordering the release of all prisoners sentenced by military courts who had served six months, except those held for murder, rape, arson, and those in the Tortugas. On August 20 Johnson issued a second Peace proclamation, this one applying specifically to Texas, which had been excluded from the last, and affirming that "peace, order, tranquillity, and civil authority now exist in and throughout the whole of the United States of America."
But after some hesitation, Grant continued to insist the proclamations did not abrogate martial law.  

By May, 1866, Johnson's interference on behalf of the South had become so blatant that many Republicans had feared the President might attempt a coup d'etat. This apprehension, fanned by Johnson's intemperate language and by the open advocacy of such a course by southern and northern Democratic organs, continued until the impeachment.  

Finally, Johnson exercised the presidential power of removal and appointment in an effort to influence officeholders--and through them the public--to endorse his reconstruction policy. It is difficult to judge how much of the outcry against Johnson's partisan use of the patronage axe was inspired by Republican "ins" being forced out. But a good part of the complaint was based on principle. The man who first proposed curbing the President's power of removal was Lyman Trumbull. The Senate manager of the Tenure of Office act was George F. Edmunds. Both remained consistent and vociferous advocates of civil service reform after Republicans regained control of the presidency. Trumbull's firm convictions in the matter ultimately became important factors in his adoption of Liberal Republicanism.  

There may have been a profoundly principled objection to Johnson's use of the patronage on the part even of those who did not specifically repudiate the "spoils" system. There has been no intensive study of how men viewed political parties
and their relationship to government in the critical mid-nineteenth century, when so many concepts of politics changed fundamentally. But it is possible that Republicans, agreeing that "to the victors belong the spoils," objected on principle to Johnson's policy of delivering the spoils to the losers. So long as the people freely elected an administration, patronage distribution remained the result of democratic decision. Johnson was distributing national offices in disregard of that decision. Furthermore, Johnson was not using the patronage to bolster either of the political parties, stable organizations whose primary purpose was to reflect the public will accurately enough to win elections. His freely admitted purpose was to organize a new party around himself and his policy. No doubt he honestly believed in that policy, but along with its enactment he sought personal power. And in large measure he sought that power through his control of the civil service of the nation.

Beale argued in his *Critical Year* that Johnson did not make adequate use of his control of patronage. McKitrick, in an excellent rebuttal, has demonstrated how impotent the patronage "whip" was in influencing the voters in the 1866 election, but the myth persists that the President never really used all his power in this field. In fact Johnson and his supporters did crack the whip, and with great success, so far as the activities of Republican office-holders in 1866 were concerned. Beale's evidence to the contrary comes almost
totally from letters written before May, 1866, by men who had their own patronage axes to grind.

From December, 1865 through June, 1866, Johnson removed only 52 postmasters. In July, after he signalled his opposition to the Fourteenth Amendment and girded for war, he removed 56. Especially hard hit were Wisconsin and New York, where the President had active and vigorous allies long involved in factional disputes who now evened scores with old enemies. During the recess between the first and second sessions of the Thirty-ninth Congress, from July 28 to December 4, 1866, Johnson removed 1664 postmasters, 1283 of them for political reasons alone. Excluding the southern and border states, 1352 of 12,836 postmasters were replaced—1210 for political reasons only, nearly 10% of the total. And in many of those states—New York, Wisconsin, and Connecticut, for example, factions allied with Johnson had already controlled large amounts of the patronage before he began his assault.

The effect of these removals cannot be judged by their number alone. Johnson never intended to replace every federal office-holder; he meant to force them to endorse his policy of reconstruction. As they saw their colleagues fall, they began grudgingly to do so. As early as April the pleased Doolittle wrote his wife that "the tone of the office holders [in Wisconsin] is changing. They are becoming very conservative." Rush R. Sloane, a post office agent in Ohio who
supported Johnson until June, 1866, told the impeachment investigators (with some exaggeration, perhaps) that he was the only national office-holder in Ohio who had not responded to the July, 1866 call for a pro-Johnson convention in Philadelphia. He had been removed immediately. Most patronage employees probably tried to remain strictly neutral between the contestants during the elections of 1866, but not until Congress passed the Tenure of Office act did some of them cautiously begin to speak out for their principles once more.

The President's course, none of the elements of which clearly violated law, had a staggering effect on the South. He converted a conquered people, bitter but ready to accept the consequences of defeat, into a hostile, aggressive, uncooperative unit. He restored to them political and economic power and through these domination of the men and women they recently had held as slaves. He had set back the work of reconstruction, as it turned out, two full years and had insured that southerners would resist the process instead of cooperate. To a large degree, the failure of reconstruction could be blamed alone on President Johnson's abuse of his discretionary powers.

The Republicans' response to the President's activities was remarkably slow and unbelievably mild. In the attempt to conciliate Johnson before he vetoed the Freedmen's Bureau and Civil Rights bills, Republicans virtually had ratified his dismantling of their reconstruction and race policies.
In his Freedmen's Bureau bill Trumbull had confirmed for only three years black men's rights to the land they had been promised in the Sea Islands. He had recognized the end to hopes of land reform based on confiscation by authorizing the bureau to procure homesteads for black families in the public lands alone. Trumbull accepted Johnson's elimination of the bureau's independent financial support, which originally was to come from the income of confiscated and abandoned lands, by authorizing a specific appropriation. House Republicans roundly defeated Stevens' attempt to restore the freedmen's rights to homestead on confiscated property.

Moreover Republicans made no legal objections to the governments reorganized under Johnson's authority through provisional governors, none of whom had taken test oath and several of whom could not have taken it, even though those governments had been controlled by the very elements Republicans had wanted to proscribe. On the contrary, Republicans implicitly had offered to recognize those governments should they ratify the mild Fourteenth Amendment. Even when enacting the Reconstruction law most Republicans had not intended to disperse Johnson's governments, only at the last minute acquiescing in radical demands to disqualify from office under them those classes of men disqualified by the Fourteenth Amendment.

Republicans were only slightly more insistent that the Test Oath law be complied with in the national civil service.
They did not comply with McCulloch and Johnson's requests to repeal or modify the Test Oath act, but Sumner's opposition to paying men who had accepted government positions contrary to the law failed to impress his colleagues. Only the House's resistance prevented Congress from appropriating money to pay the former rebels' salaries.

Republicans responded most forcefully to the President's patronage offensive, but even here they had resisted the Senate Judiciary committee's effort to prevent political removals in the Post Office department in May, 1866. In December, 1866, when Johnson's success in neutralizing Republican office-holders became apparent, such conservatives as Sherman, Henderson, and Williams proposed bills to regulate the tenures of offices. Republicans passed the Tenure of Office bill almost without dissent.

But beyond this Republicans had not been willing to go. In July, 1866, with office-holders pleading with their representatives not to adjourn (so long as the Senate sat it could prevent removals by refusing to confirm replacements) and some congressmen fearing a coup d'état, radicals had proposed remaining in session through the summer and fall. "...[T]he most absurd idea... that was ever cherished outside of a Lunatic Asylum," Dawes fumed. Confiding their fears to a secret Republican caucus, radicals succeeded in having a special, overwhelmingly radical, committee appointed to recommend a course of action. But at the next caucus, held
three days later, conservatives and centrists had taken control. They repudiated the committee recommendation to remain in session, and by a 64 to 40 vote, Republicans had agreed to adjourn the session as usual. The radicals then carried the fight to the floor of the House, only to lose once more. Furious at the radicals, Dawes had written, "If the republic doesn't die of the combined effect of Johnson's treachery and our madness then it is immortal."

* * *

Given Johnson's history of disregard for congressional enactments which ran counter to his policy, radicals' insistence in spring, 1867, that his removal was an essential part of any new reconstruction program was not unreasonable. But despite their strenuous efforts, radicals had not convinced conservatives and centrists of the urgency and Republicans left Washington in April, 1867, without impeaching the President and only grudgingly agreeing to even the barest possibility of meeting again during the summer should the necessity arise.

But Johnson once again determined to use his presidential powers to obstruct congressional reconstruction in every way he could. After Sheridan, commander of the military district comprising Texas and Louisiana, removed the state and local officials responsible for the New Orleans massacre, Johnson demanded an explanation, making his displeasure manifest. Stung, Sheridan answered, "I did not deem it necessary to give any reason for the removal of these men, especially after the
investigations made by the Military Board on the massacre of July 30th, 1866, and the report of the Congressional Committee.

Johnson then ordered Sheridan to defer the removals, asking his conservative Attorney-General, Stanbery, for an opinion on Sheridan's power in the premises.

When other commanders indicated that they too had decided it necessary to remove officials in the states under their command, Johnson and Stanbery hurried the opinion. Stanbery read it to the Cabinet on May 14 and 21, and it appeared officially June 12, 1867. Stanbery's interpretation virtually emasculated the Reconstruction law. Holding all new laws should be narrowly construed, the Attorney-General insisted the military commanders had power only to keep the peace, to punish criminal acts. The Johnsonian provisional governments and the United States courts retained all other jurisdictions, and therefore the military authorities could not intervene to protect the rights enumerated in the Civil Rights act. They had no jurisdiction over crimes committed before Congress passed the Reconstruction act and none over acts not in violation of state or national law. Commanders could not remove the officials of the provisional governments, Stanbery insisted. Registration boards had to accept southerners' oaths that they were not disqualified by law from voting; they had no power to investigate whether the swearer had perjured himself. Finally, Stanbery affirmed that the President retained
supervisory power over the enforcement of the Reconstruction acts, "to see that all 'the laws are faithfully executed.'"

Welles, although despairing of its practical effect, agreed the Attorney General "had done more for popular rights, under a law which despottically deprived the people of the undoubted guaranteed rights, than I had supposed possible."

But General Sickles, whose acts in the Carolinas Stanbery had specifically denounced as illegal, angrily requested to be relieved from duty so he could defend his conduct before a court of inquiry. ". . . [T]he declaration of the Attorney General that Military authority has not superceded [the provisional governments] . . . prevents the execution of the Reconstruction acts, disarms me of means to protect life, property, or the rights of citizens and menaces all interests in these States with ruin." Sheridan and Pope hurriedly asked Grant if they must consider the circular notifying them of the Attorney General's opinion a direct order. The General of the Army told them to enforce their own constructions of the law until ordered otherwise.

As rumors circulated that Johnson would order the military commanders in the South to restore to office all officials they had removed, even conservative Republican congressmen and newspapers recognized that a July session of Congress would be necessary after all. But they worried lest radicals use the occasion to press for a more stringent reconstruction law or impeachment of the President. They determined to limit
the business of the session to repairing the damage Johnson and his law officer had done to the Reconstruction act, and assurances from Washington that Johnson did not intend to interfere further with the law's enforcement reinforced that determination. "I am disgusted with Johnson for giving [the radicals] such a pretense," Fessenden wrote Grimes. "God only knows what mischief will be done if we get together."  

When congressmen gathered in Washington, non-radicals seized control of the session. In caucus Senators agreed to Conkling's proposed resolution to limit the business of the session to amendments of the Reconstruction act. A similar resolution passed the House on July 5, with radicals making only ineffectual opposition. In the Senate Sumner opposed the resolution on the floor, despite the caucus decision, but only nine Senators sustained him.  

By July 6 radicals realized they could not hope to persuade their reluctant allies to remain in Washington's summer heat to impeach the President. Instead they decided to press for an October session for the purpose. "They are determined to ruin the Republican party," Dawes complained. But, like Fessenden, he lamented, "... [T]he President ... does continue to do the most provoking things. If he isn't impeached it wont [sic] be his fault."

On July 10 Boutwell proposed a resolution in the House to adjourn until October 16. In the course of the discussion Judiciary committee chairman Wilson announced the committee
at the moment opposed impeachment by a five to four margin. From the acrimonious debate it became clear that Wilson himself led the opposition to impeachment, sustained by two Democrats and Representatives Woodbridge and Churchill. Boutwell, William Lawrence, Williams, and Francis Thomas advocated the measure. As opposition to an October, "impeachment" session continued to mount, radicals warned their colleagues of the effect of timidity. The people were becoming impatient. "We want peace and quiet," Illinois representative Lewis Ross implored. "We want this disturbing element removed." But despite the earnest entreaties of radicals and those centrists who agreed with them, a Republican-Democratic coalition succeeded in amending Boutwell's resolution to provide for reconvening Congress in mid-November.

Even this was too much for Senate conservatives. Sherman amended the House resolution to provide for reassembly the first day of December, and again a conservative Republican-Democratic coalition passed this amended resolution over the radicals' objections.

But Senate radicals had seen enough. On July 20 Chandler launched a bitter attack on Fessenden, continually referring to him as "the Conservative Senator from Maine." He and conservative allies had steadily opposed provisions for a July session. Now they were following the same course in regard to an October session. The President had for all practical purposes announced his intention not to execute the law,
Chandler insisted. "... [W]hen we first captured this
monster there was one thing for us to do, and only one; but
instead of doing that we undertook to surround him with nets,
to hem him in, to bind him with nets of zephyr. The very
moment we left he thrust his paw through. ... Now we have
met here and what have we done? We have patched up the net.
It is the same net; but we have mended up the hole. ... And
now this Congress seems to hope that the same animal that
thrust his paw through the net when it was new will not thrust
it through again when it is merely a patched net. ..."

As Fessenden defended himself, naming the Senators who had
voted with him, it was evident that the gap separating rad-
cals and conservatives was widening.

But the conservatives would not weaken. In the conference
committee to iron out differences, the House was represented
by conservatives who had forced adjournment until November 13,
and the Senate by conservatives who had insisted on adjourn-
ment to December. They compromised on November 21. The rad-
cals had been routed.

While Congress debated the date to which it should adjourn,
it also passed another reconstruction measure. Both the Senate
Judiciary committee and the House Reconstruction committee
had reported bills patching, as Chandler said, the torn netting
of the previous law. Radicals in both houses tried and failed
once more completely to disperse the Johnsonian provisional
governments, and the Senate ruled Sumner's proposed amendment
to require free and equal systems of public education out of order under the rule limiting business to remedying defects in the Reconstruction act alone. The bill as passed did no more than restore the authority of the military commanders and voting registration boards to what it had been when Congress passed the original Reconstruction acts. Once again Congress had refused to take the steps radicals considered essential; the dispersal of the Johnson governments and impeachment. "... This is the third bill of reconstruction on which we have been called to act," Sumner lamented. "We ought never to have acted on more than one; and if the Senate had been sufficiently radical, ... there would have been no occasion for more than one."

As soon as Congress adjourned, Johnson proved the radicals had been right. Betraying the conservatives who had believed his interference ended, on August 5, he asked for Stanton's resignation. The Secretary of War, encouraged by Republican friends, refused, and on August 12 Johnson ordered his suspension and named Grant Secretary of War ad interim. Johnson followed this by ordering the removal of Sheridan from his southern command, against the advice of Grant and his entire Cabinet except the irrepressible Welles. Republicans reacted with stunned outrage. Even Grant, who had not yet publicly questioned Johnson's policy or motives, wrote that Johnson's course would embolden rebels to oppose the reconstruction laws and oppress loyal men. It would "be regarded
as an effort to defeat the laws of Congress," he warned. The conservative publisher of the Boston *Daily Advertiser* wrote Sumner, "Is the President crazy, or only drunk? I am afraid his doings will make us all favor impeachment." The *Chicago Tribune*’s editor, Horace White, now decided impeachment was necessary. Congressional leaders Colfax, Elihu B. Washburne, and Henry Wilson reached the same conclusion. Such conservative newspapers as the *N.Y. Times*, Boston *Daily Advertiser*, Boston *Evening Journal*, and *Providence Journal* began to threaten impeachment, as did the *Chicago Tribune*, which previously had opposed it.

But despite Republicans' violent reactions, Johnson continued the offensive, removing Sickles on August 27 and threatening the removal of General Pope from his command in Georgia, Alabama, and Florida. As Johnson's rampage continued, Republicans began to worry more than ever that he might finally transcend the bounds of reason. "What does Johnson mean to do?" former Attorney General Speed begged Sumner. "Does he mean to have another rebellion on the question of Executive powers & duties?" The *Times* uneasily worried, "Mr. Johnson has said and done so much that is wild and wanton that people have ceased to judge of the probabilities of his action according to any received standard of right or duty."

Radicals blamed conservatives for the destruction and the danger. "For every broken heart and desolate home in the South, for every murdered black there, we hold Fessenden,
Wilson, Edmunds, Conklin [sic], and their clan, responsible," the Anti-Slavery Standard railed.

One fact clearly emerged from the confusion: the conservative Republican policy had failed. As the observant French correspondent, Clemenceau, explained to the readers of Le Monde:

Congress may, when it pleases, take the President by the ear and lead him down from his high seat, and he can do nothing about it except to struggle and shout. But that is an extreme measure, and the radicals [i.e., the Republicans generally] are limiting themselves ... to binding Andrew Johnson firmly with good brand-new laws. At each session they add a shackle to his bonds, tighten the bit in a different place, file a claw or draw a tooth, and then when he is well bound up, fastened, and caught in an inextricable net of laws and decrees, more or less contradicting each other, they tie him to the stake of the Constitution and take a good look at him, feeling quite sure he cannot move this time.

But then ... Samson summons all his strength, and bursts his cords and bonds with a mighty effort, and the Philistines (I mean the radicals) flee in disorder to the Capitol to set to work making new laws stronger than the old, which will break in their turn at the first test. ... ?

Yet Johnson had broken no law; he had limited himself strictly to the exercise of his constitutional powers. Confused constituents turned to their congressmen: "Is it possible that there can be a wrong without a remedy ... ?", one asked Trumbull. "Must the great people who patriotically saved the Republic remain chained by an arbitrary rule until a usurper at Washington overthrows our liberties?"? Many
congressional Republicans were finally prepared to answer the question by removing the obstacle to peace. But they could not do so until Congress reconvened on November 21. And before that the people would be able to indicate their feelings in the elections of fall, 1867.
CHAPTER XIII

THE CRITICAL YEAR: THE ELECTIONS OF 1867

When Howard K. Beale wrote his great *The Critical Year*, he closed it with a detailed account of the elections of 1866. Those elections, he argued, marked the culmination of the critical year of conflict between the President and Congress. The people endorsed Congress and radical reconstruction over the President and reconciliation. But he and other historians have ignored the elections of the next year—elections perhaps as important to the future of reconstruction and the nation as those which have received so much attention. For the elections from March to November, 1867, marked the turning point in the battle between radical and non-radical Republicans. The Republican reverses of 1867 led to the defeat of radical hopes to impeach Andrew Johnson, stiffen the reconstruction laws, and elect a radical President upon a radical platform in 1868.

The victories Republicans won in 1866 had demonstrated popular support not for the radical Republican program but that of the conservatives and centrists. Refusing to make black suffrage an issue, bridding the radicalism of southern loyalists, and implying that the constitutional amendment embodied the final settlement of war issues, the moderates
had won their crushing victory.

In 1867 the situation was different; the radicals once more were on the offensive. Not only were Republican campaigners pointing to their recent legislation, with its imposition of black suffrage in the South, but radicals were promoting those elements of their program more conservative Republicans had excluded from the Reconstruction act. By the end of the July session of Congress, the impeachment issue had become completely entwined with the campaign. Despite opposition from conservatives like Trumbull, radicals also increased pressure for Sumner's proposal to enfranchise black citizens in all the states by congressional enactment. Radicals insisted that southern states fulfill more requirements prior to restoration. Sumner still argued that Congress should insist on the establishment of a free public school program in each state as a precondition for readmission. Some radicals still wanted southern states to undergo an indefinite period of probation before they returned to their normal places in the Union. Stevens continued to agitate for confiscation. Wendell Phillips articulated the program many radicals favored at the annual meeting of the American Anti-Slavery Society in New York city early in May. Anti-slavery men, he said, "will believe the negro safe when we see him with 40 acres under his feet, a school-house behind him, a ballot in his right hand, the sceptre of the Federal Government over his head, and no State Government to interfere with him, until
more than one-half of the white men of the Southern States are
in their graves."

In May Stevens fueled the radical campaign with a widely-
published letter to the Gettysburg (Pa.) Star and Herald,
edited by his friend, Edward M. McPherson, clerk of the House
of Representatives. Stevens de-emphasized arguments of justice
to blacks and appealed instead to the appetites of northern
whites. Stevens argued that southerners should be required
to pay reparations to loyalists whose property was damaged or
lost because of the war. This could most easily be accomplished,
Stevens suggested, by "the confiscation of a small portion of
the property of the wealthy rebels . . . ." 4 Benjamin Butler
joined the drive. In a letter to a Republican campaign meeting
in the capital, he argued landed aristocracy was inconsistent
with republican institutions and insisted land reform in the
South was necessary "as the very base of reconstruction
. . . ." 5

With pressure for confiscation apparently growing in the
North, southern blacks and their white radical allies renewed
hopes for meaningful land redistribution. Newspaper corre-
respondents touring the South informed northern readers that
"the confiscation humbug has taken hold of the negro mind,
especially in the towns, and . . . confidently they look to
being presented with a neat farm and stocks 'when Congress
meets.'" 6

The implications of confiscation were not lost upon more
conservative Republicans. The moderate *Daily Advertiser* conceded that confiscation was "bottomed . . . on a just and praiseworthy and eminently republican aspiration," but worried, "General Butler . . . says that a landed aristocracy is fatal to the advance of the cause of liberty and equal rights. Why a landed aristocracy? This mode of argument is two-edged. For there are socialists who hold that any aristocracy is 'fatal to the advance of the cause of liberty and equal rights'--socialists who would not hesitate to say that General Butler's large income places him in the ranks of an aristocracy whose existence is essentially hostile to progress." As the *Advertiser* concluded, "It is dangerous to prove too much . . . ."--the conservative Cincinnati *Commercial* began to refer to Butler and Stevens as "The Red Rads."

Moreover, conservative Republicans feared the impact of the confiscation issue on southern politics. The *New York Times* charged, "The ultraists . . . are determined to build up a party in the Southern States fully in accord with themselves. They scout and reject the moderation and tolerance of Senator Wilson, and hold such Senators as Sherman, Fessenden, and others of kindred temper, in quite as much disfavor as Democrats themselves. Their plan is to consolidate the negro vote with that of the 'original Union men' of the South. . . ." "And they rely upon confiscation to secure this result. A promise of a homestead . . . will be a most formidable weapon for the accomplishment of their object."
This prospect ran counter to the hopes of many Republican politicians. Southern whites, they hoped were tired of relying on northern Democrats. Whether or not to comply with the congressional reconstruction acts had become the new organizing issue in southern politics. Those former Confederates, like Georgia ex-Governor Joseph E. Brown and General James W. Longstreet of Louisiana, who argued for compliance to avoid harsher conditions were bitterly attacked by those more intransigent. As the battle lines developed, men like Brown and Longstreet began cooperating with Republicans. These men and their friends, conservative Republicans hoped, would form the nucleus of a southern Republican party appealing to both races. Talk of confiscation or delay in readmission could only drive them back to the Democrats.

Republican efforts to nurture this new party centered about Senator Henry Wilson. His enthusiasm was the chief catalyst of Republican hopes for the South. He had discovered new southern flexibility while on an extended speaking tour of the unreconstructed states. In letters and published interviews he urged northern Republicans to turn their attention south. Other Republicans caught his optimism. "The harvest is white," exclaimed the Boston Journal, "and we trust that our sagacious men will see that it is not neglected."

The whites, Wilson found, suspected compliance with the reconstruction laws would not guarantee immediate restoration. They were anxious about Republican intentions regarding matters
of race. Wilson decided to reassure them by admonishing southern blacks. "I do not want to see a white man's party nor a black man's party," he told a black audience in New Orleans. "I warn you to-night, as I do the black men of this country everywhere, to remember this: that while a black man is as good as a white man, a white man is as good as a black man. See to it while you are striving to lift yourselves up, that you do not strive to pull anybody else down." Going further, Wilson implicitly but clearly criticized southern radicals. "I sometimes hear men . . . adopt the language of a bloody contest, and not the language of two years of peace, and the mighty future which we hope will be peace," he complained. "He who causes alienation and distrust between the white men and the black men of this country is an enemy of the white man and of the black man alike." The Massachusetts Senator acknowledged that "prejudices still existing . . . may keep you for a little time out of the full possession of all your privileges." But, he insisted, "[t]he way to win a complete triumph is for you to be consistent, steady, inflexible, but loving, tender, kind to everybody, obedient to the law, never undertaking by lawless violence to right your wrongs." Finally, Wilson tacitly repudiated confiscation. Millions of acres of land, which can be bought low, will be in the market for some time to come; and the first thing the colored men of the Southern country should do is to get land. Money will do it . . . ."
Wilson returned North far more conservative than he had left. On his return he denounced confiscation and "the extreme measures proposed by Sumner, Stevens and others." Wade, receiving complaints from southern radicals, scrawled a note to Chandler. Wilson "is a ------ fool!" he wrote.

The erratic Horace Greeley shared Wilson's enthusiasm for building the new southern party. Speaking in Richmond, he too urged blacks to forego hopes of confiscation, advocating that they instead turn their attention to the public lands. Further to demonstrate Republican desire to conciliate the South, Greeley joined in raising money to bail Jefferson Davis. Greeley had consistently opposed punishment for leading rebels, but he was well aware of the political implications of this action. It "has immensely contributed to the acceptance and triumph of Republican principles in the South," his newspaper boasted.

But it also fired the controversy between radicals and conservatives in the North. Phillips criticized Greeley's endeavor, and Greeley hotly replied that Phillips "panders to mob passions for the gratification of his own." The Union League, the backbone of New York radicalism, called a special meeting to consider expelling the reformer, but Greeley issued a scathing reply to the League's invitation to attend the meeting, and the effort to oust him failed.

Trying to capitalize on good will Wilson and Greeley had won in the South, the Union Congressional Republican
Committee issued a conciliatory address to southerners. The committee argued there existed no fundamental conflict of interest between laboring men. While black men’s rights had been secured Republicans did not intend to invade the rights of whites. While the politicians adhered to the congressional reconstruction program, they clearly implied no further measures were contemplated. If southerners complied with the reconstruction acts, they averred, restoration would immediately follow.

As the Boston Advertiser pointed out, the congressional campaign committee represented all shades of Republican opinion in Congress. If it stood upon the platform of reconstruction as it was and rejected further requirements, dissatisfied radicals could hope to accomplish little. "[I]t appears that an end is made of Mr. Stevens' querulous objections," the Advertiser announced happily.

The conservative counter-offensive infuriated the radicals. Stevens bitterly attacked Wilson, Greeley, and their supporters, "a few Republican meteors, always erratic in their course, flitting and exploding in the Republican atmosphere." Phillips accused Sherman and Fessenden of "bartering principle for patronage." The Anti-Slavery Standard predicted the disruption of the party.

After the conservatives successfully prevented radical legislation in the July session of Congress, Sumner joined the public criticism. In a well-publicized interview with
the radical Boston journalist, James Redpath, Sumner launched a broadside against his Senate opponents. He complained of the positions taken by Conkling and other new-comers. Edmunds was "a prodigy of obstructiveness and technicality," but "of all these, Fessenden is the Captain..." Sumner concluded. "He is the head of the obstructives. If any person calling himself a Republican, takes the side of the President, it will be Mr. Fessenden."

With tempers beginning to fray, the Nation warned that if many radicals endorsed Stevens' position, the Republicans might very easily lose the upcoming elections. Other Republicans agreed. Nonetheless, radicals continued the assault. Opening Republican disharmony to full public view, Chandler accused the conservatives of responsibility for President Johnson's ability to impede reconstruction. Incapable of decisive action, they had prevented the total dissolution of Johnson's provisional southern governments, and had opposed the radicals' determination to remain in session to watch the President. "These Conservatives had fixed it so they supposed we could not get together, and Mr. Johnson so understood it," Chandler charged. But at the very last moment, when the session was given up as hopeless, and there was no intention of coming together, out came that opinion of Stanbery's, and the people rose up in their might and said Congress must get together, and watch this bad man... And, fellow citizens, your Conservatives dare not disobey their master's will,
and the very men who had been most opposed to the meeting of Congress, were there on the 3d of July, at 12 o'clock. They did not dare to be a quarter of a second behind."

As this agitation continued, the breach in the party widened. Fessenden professed to find Sumner's attack "exquisitely funny." "All the world . . . is laughing at him for making such an ass of himself," he wrote his friend, Grimes. The Iowa Senator was just as disgusted. "The truth is . . . we have some terrible 'scalawags' in our party & they will be sure to send us to the d---l as a party & I believe that we are in imminent danger of suffering them to send the country there to[o]."

The dispute clearly weakened the party. Those who had not realized the degree of the breach began to choose sides. Campaign contributions lagged. Popular campaigners decided to restrict their activities. Garfield worried to his close friend, Burke Hinsdale, that the political, economic, and social revolution inaugurated by the rebellion might not be arrested. He predicted "that unless our party could soon come to a stand-still the greatest of disasters must overtake us [.]"

* * * *

To add to Republican divisions, yet another issue was developing: the money question. When the Thirty-ninth Congress had assembled, nearly all congressmen had approved Secretary of the Treasury Hugh McCulloch's general policy of
contracting the currency as quickly as possible by withdrawing legal tender notes from circulation. Only six representatives had voted against a House resolution endorsing the program. When it came to specifics, however, unanimity broke down. McCulloch proposed to take the greenbacks out of circulation by exchanging interest-bearing bonds for them. This meant a quick contraction likely to lead to economic recession. When Congress considered a loan bill specifically authorizing McCulloch to pursue his program at a rate left to his personal discretion, many Republicans balked, and the measure lost 65-70. A second measure similar to the first but limiting the amount of legal tender McCulloch could withdraw from circulation passed. There was about a forty-vote majority in the House during the first session of the Thirty-ninth Congress in favor of limited, cautious currency contraction.

But by fall, 1866, even the slower contraction McCulloch enforced under the Loan act began to affect the economy. Business slowed and prices fell in the winter of 1866-67 and throughout 1867. The depression continued until 1868. Businessmen especially manufacturers reacted by demanding an end to contraction. Between the adjournment of the first session of the Thirty-ninth Congress and the meeting of the second, the controversy over fiscal policy led a large number of congressmen to alter their positions. The group of representatives which had refused to give McCulloch a completely free
hand in contraction but agreed to his program with limitations now joined anti-contractionists to repeal the authority they had delegated. Not only did the middle-of-the-road group vote to suspend contraction during the second session, but a large number of individual congressmen left the groups they had been voting with entirely and joined others. Thirteen Republicans and eight Democrats swung toward the position of currency expansionists. In a parallel shift, six Republicans became more firmly committed to contraction.

The shift towards inflationary monetary policies thoroughly alarmed those who held orthodox financial views. As noted in Chapter One, hard-money men, recognizing Stevens, Butler, Kelley, and Wade as the leaders of the movement for currency expansion, began to tend towards conservatism and to worry what the effect of Johnson's removal by impeachment would be.

Among those most committed to eventual return to a specie standard was Edward Atkinson, a New England textile manufacturer. An abolitionist, radical Republican, and genteel reformer, Atkinson had been among the leading advocates of free labor on southern cotton plantations, in which he had a direct interest due to his profession. Though never an office holder, Atkinson enjoyed politics. He particularly took pleasure in exercising behind-the-scenes influence. During the war he had travelled often to Washington to lobby for black men's rights and to offer his expertise in developing fiscal and
tariff policy. No dogmatist, Atkinson opposed precipitate contraction as impractical, but an eventual return to a specie standard was his unwavering goal. To combat growing support for inflation Atkinson enthusiastically began to create an informal but powerful propaganda organization.

As McCulloch pursued a vigorous contractionist policy, hard money men offered him cordial support. As early as fall, 1866, Atkinson, then radical, had written him, "Much as I differ from you [on reconstruction], I thank God you hold your present views and are thereby enabled to remain in the present cabinet." In the spring of 1867 Atkinson launched his accelerated campaign in defense of hard money with a carefully staged invitation to McCulloch to attend a dinner in his honor in Boston. Engineered by Atkinson, the call was signed by such Massachusetts luminaries as Richard Henry Dana, Theophilus Parsons, Alexander H. Rice, Amos A. Lawrence, William Whiting, and Peleg Chandler. As arranged, McCulloch courteously declined the invitation but defended his monetary policy in a letter published and broadcast by the Boston group.

As Atkinson turned his attention more and more to the money question his radicalism became less and less ardent. Although he had been intimately involved with the Sea Islands experiment, which had demonstrated the potential of black men when given their own land to work, Atkinson now warned Sumner that confiscation "would about ruin the freedmen . . . ." He informed McCulloch that he and his friends were trying to
"prevent the creation of an exclusive black men's party and also to kill the scheme of confiscation in the South." The increasingly conservative reformer feared the new Republican delegations from the reconstructed South would follow Thaddeus Stevens' lead not only on reconstruction matters but on tariff and currency questions. In an effort to obviate the danger he helped hard-money Boston men found the Massachusetts Reconstruction Association. Designed to raise funds and send political speakers and organizers South, its implicit goal was to educate southern Republicans in sound financial and tariff policy.  

Free-traders as well as hard-money men, Atkinson and his friends looked forward to the end of the reconstruction problem. Then, he wrote McCulloch, "the fight between Protection and Free Trade will be upon us, and Free-Trade views will win..." He urged the Secretary of the Treasury to divorce himself from President Johnson's continued opposition to congressional reconstruction and to accept the Reconstruction acts as a finality without specifically giving them his approval. "Only give the Republicans who hold sound views on financial questions a chance to support you as the Secy. of the United States Treasury and not as a member of the present cabinet and you can almost dictate the future policy," he argued.  

McCulloch, meanwhile, had also maintained close relations
with Fessenden and was well aware of the attitude held by the Senator and his friends toward the radicals. If Atkinson felt McCulloch could be weaned from Johnson, McCulloch believed Atkinson, Fessenden, and other conservatives might now divide from the radicals. McCulloch, seconded by Secretary of the Interior Orville H. Browning, urged Johnson not to force the Republicans to close ranks by removing Sheridan. The Administration, McCulloch argued, should let the Republicans go on fighting among themselves. "... [I]t would break them down. The better portion of them were already sick of their measures." He told them that no less an authority than James F. Wilson, embittered by the battles over impeachment in his Judiciary committee, had assured him that if the President did nothing rash, the "extreme Radicals" would be defeated and the Republicans would divide. But the unbending and bigoted Welles took a hard line, emphasizing to Johnson his duty to stand by the southerners, and Johnson evidently agreed with him. On August 3 McCulloch visited Welles and pleaded with him to prevent Johnson from taking hasty action against Sheridan, but Welles remained stolid. He wrote in his diary that McCulloch had "been intimate with ... conservative and timid Republicans ... ." They had "impressed him with their cowardly, shrinking views."

McCulloch's influence was weakened by his own tenuous position in the Cabinet. Widespread rumors held the Secretary was about to leave Johnson's official family, along with Seward.
Democrats pressured Johnson to name a Democratic Cabinet, Johnsonians complained McCulloch protected anti-Johnson Republicans in the Treasury department, and newspapers reported rumors of impending change. Finally McCulloch himself had to write the President to repel the attack. "In the discharge of my duties . . . I have no other aim, than to sustain your administration and promote the interests of the people," he wrote. "The charge, in whatever form it may be put, that I have sought to serve myself, at your expense, or at the expense of the political opinions of which you are the representative is false if not malicious." McCulloch remained in the Cabinet, but he was so situated that further suggestions of restraint might be interpreted as disloyalty.

Other friends of Johnson saw the possibilities of the situation. Henry A. Smythe, collector of the port of New York, urged the President to name a Republican Cabinet to cut the ground from under the impeachers, suggesting Massachusetts' ex-Governor Andrew as Secretary of State and Greeley Postmaster-General. William Tecumseh Sherman offered similar advice. He suggested the President name outgoing Governor Cox of Ohio Secretary of War and urged him to make overtures to Fessenden, Trumbull, Sherman, Morgan, Morton, and other conservatives. But Johnson, although tempted, did not follow his advice, possibly because the election returns were to convince him it was unnecessary.

Nonetheless, Republicans were so badly divided that shrewd political observers believed they were on the verge of
disruption and that Andrew Johnson's own intransigence once again was the prime factor holding the party together. After the elections, John Sherman would describe the Republicans' situation: "A class of our people want reconstruction, peace quiet [sic] and don't like Ben Butler and Ben Wade & the radicals, while another sett [sic] don't like Fessenden & the Conservatives, growled because we adjourned, and did not impeach the President. The truth is we were so strong that we quarreled among ourselves."

* * *

Closely related to the substantive issues dividing radical from conservative Republican was the struggle for the Republican presidential nomination. Among the Republicans striving for that prize were Wade, Butler, Chase, Colfax, and Andrew. But their chief competitor was not even known as yet as Republican: Ulysses S. Grant.

Grant's past politics made him suspect in radical eyes. It was well-known that the general had been apolitical prior to the war, and many considered him apolitical yet. In 1864 Republicans had feared the Democrats might nominate him for President. From 1862 until late in 1864 radicals regarded his rising fortunes with misgivings. In the House leading radicals had opposed the recreation of the rank of Lieutenant General of the Army for him. Stevens, Boutwell, Garfield, Kelley, Julian, Ashley, and Winter Davis had tried to prevent it, but they had failed.
During the war Grant had sought the removal of then-General Butler, who had won the radicals' respect and confidence. When Butler committed a military blunder in Virginia, Grant succeeded. Butler retaliated in speeches before his troops and in his home state, Massachusetts. He defended himself before the Joint Committee on the Conduct of the War, which exonerated him. But Grant's final report on the war cast grave doubts on Butler's military ability. The radical leader, feeling deeply wronged, had broken off all social intercourse with Grant. His bitterness continued through 1867 and made him a powerful opponent of Grant's ambitions.

When the Thirty-ninth Congress began its deliberations on reconstruction, the Democrats and pro-Johnson Republicans had relied upon Grant's favorable report of conditions in the South; it had been Grant's report, as well as the President's accompanying message, which Sumner had called a "whitewash." There is not much direct evidence on Grant's political opinions at that time, but William B. Hesseltine has suggested Grant generally supported Johnson's policies. And there is no doubt as to the position of his staff. Adam Badeau and John A. Rawlins, his intimate friends and aides, both endorsed Johnson.

During the 1866 election campaign, Grant had accompanied Johnson on his ill-fated "Swing 'Round the Circle." Although the general himself found the attentions of former copperheads distasteful, he had allowed himself to be used on an obviously political junket. But it was at this time that some
Republicans, hinting at future support for the Presidency, began to unsettle him. By the end of the trip, Welles believed he had deserted the President's camp, but Doolittle, evidently assured by Grant himself, had argued it was not so. As late as August, 1867, Montgomery Blair encouraged the nomination of Grant as a Conservative (i.e., Democratic-Johnsonian) candidate for President.

Actually Grant appears to have been primarily interested in protecting the interests of the army. Grant believed those interests would best be served by maintaining a strict neutrality between President and Congress. But as the reconstruction battle had developed, it became apparent that neutrality was impossible. Both Johnson and Congress determined that the army was the best available instrument for reconstructing the South. The President had used the armed forces to secure order during presidential reconstruction and afterwards had attempted a fait accompli by withdrawing its authority over the civil governments erected there. Congress had restored that authority and ordered the military to oversee a new reconstruction process. The President had responded by trying to gain control of the army's activities in the South. The President's attempts to obstruct congressional reconstruction had forced Grant to take sides, and by August, 1867, he had privately aligned himself with the conservative Republicans in Congress.

But it was a slow process. As late as August, his friend
General Sherman wrote his brother, "I don't think he has clearly defined political opinions." Johnson's policies had not alienated Grant until the President forced Sheridan's removal from his command in Louisiana, and Johnson would not give up his attempts to win Grant's support until they broke completely in February, 1868. Therefore, Grant was in no sense a committed Republican when his name first was pressed in spring, 1867. Many radicals were truly outraged and feared betrayal by those who urged his nomination. "I know this is not an anti-slavery speech on the model of the past two years," Wendell Phillips acknowledged before the American Anti-Slavery Society in May, "but when men tell me that they are going to nominate Gen. Grant for President, because if they don't take him, the Democrats will, it is time to talk as we used to in 1850."

Despite Phillips' apprehensions, Grant was not yet conceded the nomination. Hoosier congressman Godlove S. Orth reported Indianans dissatisfied with the prospect. They ask "[w]hether Grant is with us--and can be relied on &c. &c. Whether we must take him for the Presidency--or whether we have not the courage to speak right out and say we must have a true and tried civilian about whom there is no doubt or hesitancy." But already in Indiana, a pattern emerged which would reappear in other states. The conservative friends of ex-Governor (now Senator) Morton, Orth predicted, would "soon be found joining in the yelp for Grant."
In Ohio the battle was between Wade and Chase. Both were Ohio men; each would have to control the Ohio delegation at the Republican national convention if he hoped to receive the nomination. Rutherford B. Hayes, a Wade man, succeeded in winning the Republican gubernatorial nomination in 1867 over the strong opposition of the Chase interest, led by a mixed group of radicals and conservatives. Republican conservatives were disgusted. "I see that our V.P. is fairly in for the Presidency," Fessenden wrote Grimes. "I suppose he will divide the West with Colfax. Under which of these doughty champions will Iowa range itself? Were it not that the thing would look to sectional," he continued sarcastically, "I would suggest Chandler or Pomeroy for Vice . . . ."

New York too was a center for presidential politics. Thurlow Weed, detecting an intention on the part of leading Democrats to nominate Grant, determined that "the adversary should not steal our thunder . . . ." He decided to organize a Grant movement in New York, launching the campaign in his New York Commercial Advertiser and arranging an endorsement of the general's candidacy by the Republican General Committee of New York City, his anti-Greeley organization. The old Seward-Weed organ, the New York Times, fell into line.

Another old Whig stalwart, William Maxwell Evarts, endorsed the general at a Grant rally in Cooper Union in mid-October. It was apparent that the discredited conservative faction intended to ride Grant back into respectability and power in
the New York Republican party. "All that is fishy and mercenary in the Republican ranks combines with everything copperhead to escort Grant as the man destined to curb Radicalism and restore conservatives to power," Horace Greeley complained.

In Pennsylvania radical politicians also remained cool or hostile to Grant. The conservative former governor, Andrew G. Curtin, who hoped a Republican state legislature would elect him to the Senate, linked his name with Grant's. He urged leading Republicans to endorse the general for President before the 1867 elections, but radicals and friends of other candidates combined to prevent it.

Radicals especially complained of the general's reticence. "The great difficulty in his position," Sumner said, "is that we are left in harrowing uncertainty with regard to his opinions. Who could say that, as President, he would give to the freedmen, during the coming years, and through the processes of reconstruction, that kindly and sympathetic support which they need? Can we afford to be in any uncertainty on this point?

"I have from the beginning been insisting on 'irreversible guarantees. Our next President must be in himself an 'irreversible guarantee. Is Grant such? I wish I knew."

Despite his growing dislike for Johnson and his policies, Grant had not publicly spoken out. "It is not proper that a subordinate should criticize the acts of his superior in a
public manner," he wrote his close friend, Congressman Elihu B. Washburne. But Grant's chief of staff, General John A. Rawlins, determined to remedy the confusion Grant's silence occasioned. He prepared a speech endorsing congressional reconstruction, which he proposed to deliver in Galena, Illinois, where he and Grant made their homes. Before delivering the speech Rawlins submitted it to two of northwestern Illinois' leading Republicans, friends of Grant, who after careful consideration endorsed it. Rawlins spoke on June 14, 1867, not mentioning Grant's name, but clearly intending to define the general's position.

By July most Republicans were convinced that Grant was in the running. Washburne, vacationing in Europe, visited John W. Forney there. He told Forney that he was managing Grant's campaign for the presidential nomination, assuring him that Grant was as radical as Washburne himself and giving as evidence Rawlins' speech. But the publisher of the Philadelphia Press and Washington Chronicle told his visitor that "I shuddered at the idea of another doubtful man in that post and that many good and true Republicans had grave doubts as to General Grant &c." To Sumner Forney wrote, "I cannot tell you how this conversation has depressed me. If Genl Grant wants the nomination I presume with such agencies and his great military strength he will secure it. I fear his administration. God help us! Are we never to have the right man in that place?"
Radicals' doubts seemed to be justified as reports circulated that sentiment was growing among Democrats to nominate Grant on a union Democratic platform before the Republican convention. The independent Democratic New York Herald began to promote Grant as a non-partisan candidate. Pointing to the bitterness dividing Republicans, the Herald predicted, "There will be a tremendous struggle in the republican camp for the Convention of 1868, between the radical Chase faction ... and the republican conservatives supporting General Grant. The result, in all probability, will be a split of the republican party into two distinct parties for the succession. In this event the Northern democracy will hold the balance of power, and by casting their weight into the scale of the Grant, or anti-radical party, they will carry the election." But after the July session of Congress demonstrated the radicals' weakness, the Herald concluded few Republican politicians would risk opposing Grant. Moreover, the Herald observed, Johnson's continued obstruction "can only operate to hold the republican party of the North intact with Congress, and draw the radicals of both Houses in closer communion with the conservatives and General Grant, while Grant is drawn into closer relations with them all." The Herald prophesized that the southern states would emerge from reconstruction firmly Republican, the Negro question would fade from politics--except for the agitation of a few radicals--and that only a small splinter group led by Sumner and
Butler would reject the Republican nomination of Grant. The paper urged Democrats to join in Grant's support, obliterating party lines, and paving the way for new political organizations on new issues.

Democratic courtship of the popular general worried Republicans, who feared he might be seduced. John Sherman tried through his brother to warn Grant against the siren song. "They would deaden any man they praise," he cautioned. He assured General Sherman that the political strength lay not with the Democrats nor Republicans "of the Butler stripe, but with just that kind of men who would be satisfied with Grant."

But radicals' fears redoubled in August when Grant agreed to become Secretary of War ad interim after Johnson removed Stanton. Grant's acceptance made Stanton's removal far more palatable to the public than it would have been otherwise. Gen. Grant . . ., Tilton worried, "appears to have become a cat's paw for the President."

Grant's course gave Horace Greeley an issue on which to attack his candidacy and his New York supporters. "Does not every reasonable person know that had Gen. Grant declined the appointment--which being a civil office, he had a right to decline--the President would not have succeeded in removing the War Secretary?" the Tribune asked. "How is the conclusion to be avoided that the President sought and found in Gen. Grant the means by which he might break down Sheridan, and
with him the spirit of the people." Greeley recalled Grant's former opinions, reminding readers of his report on southern conditions in 1866 and his "swing 'round the circle" with Johnson during the 1866 elections. "It is suspicious," Greeley argued, "that the men who arranged [the Philadelphia National Union] Convention are now the busiest in 'arranging' Grant. The Times and the Post are as loud now as they were then, and they follow the same tactics... They are inherently treacherous, bad, anti-Republican. They tried to destroy us last year by the patronage and strength of Andrew Johnson's administration. They are trying the same game now with the dazzling and illustrious name of Grant."

As the campaign summer wore on, radical attacks on conservatives became more and more entwined with presidential politics. Fessenden, smarting under the radicals' biting attacks, wrote, "They would do the same by Grant if they dared... They don't want him if it can be avoided, and mean to dispose of me in case any happy accidents should kill off Grant. That's the story as I read it... [T]he malice of these fellows is equalled only by their meanness & cowardice."

Chicago Tribune editor Horace White warned Washburne of the effect of Grant's acceptance of the War Department. "It will confirm the impression which many people have that he is some sense tainted with Johnsonism... Second, it will give a new impetus to the impeachment movement, which, you
will learn, is an anti-Grant movement, the object being to get Wade into the Presidency long enough to give him prestige & patronage to control the next National Convention." If he had been Grant, White wrote, he would have refused the offer "even at the risk of Johnson's appointing Surratt Secretary of War. . . . [A]t the present the whole affair wears an unfavorable & unpromising aspect."

Washburne hastened to repair the damage. He visited Grant and encouraged him to make his position plain. Grant did so in his bitter letter to Johnson protesting Sheridan's removal. Joyously published in Republican newspapers, the protest restored the faith at least of conservative Republicans. Grant further informed Johnson that he would not participate in Cabinet meetings except to transact department business. This was followed on September 4 by visits from several radical congressmen, Schenck, Burton C. Cook, and John P. C. Shanks. Grant assured them his views corresponded with the congressional majority's and that he would say so if the opportunity arose.

Nonetheless, many radicals remained dissatisfied. The Tribune still insisted Grant had allowed Johnson to use him. Tilton's Independent was disturbed that Grant finally acquiesced in Sheridan's removal. "Gen. Grant has surrendered to the President," Tilton charged.

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Under these circumstances the elections of 1867 took on immense importance. They would exert a tremendous influence on the future of the Republican party, testing the political viability of radicalism. If the Republicans succeeded in an election in which radicals had taken such a prominent and unmuzzled part conservative arguments of expediency would lose much of their force. This would effect both program and candidate in 1868. The conservatives were worried. James G. Blaine wrote afterwards, "I felt ... that if we should carry everything with a whirl in '67 such knaves as Ben Butler would control our National Convention and give us a nomination with which defeat would be inevitable if not desirable."

In three states--Kansas, Minnesota, and Ohio--voters would decide whether to amend their state constitutions to enfranchise their black fellow-citizens. The results, especially in the swing state of Ohio, would indicate the temper of the people towards extending blacks the vote in the North. The implications were plain for Sumner's proposal to do this by congressional enactment or other propositions to accomplish it by constitutional amendment.

The people of twenty states went to the polls from March to November, 1867, and Republicans lost ground in nearly all of them. In March Connecticut had replaced its Republican governor with a Democrat and elected three Democratic congressmen and only one Republican. Republicans lost 12,000 votes
in Maine. The Democrats swept California, with Republicans running 20,000 votes behind their 1864 pace. The Republican vote in New Jersey fell 16,000 short of that polled in 1865, with seven of the twelve counties which voted Republican that year returning Democratic majorities in 1867. In Maryland the Republican vote was reduced for 40% of the total to 25%. In Massachusetts Republicans had won 77% of the vote in 1866; one year later they received only 58%. Republican percentages were also reduced in Vermont, New Hampshire, Iowa, Minnesota, Rhode Island, and Wisconsin. Only in Michigan and Kentucky did the party improve upon its showings of a year earlier.

But most ominous were the losses Republicans sustained in Ohio, Pennsylvania, and New York. All three swing states, all three carrying great weight in the electoral college, Republicans could not lose them again in 1868 and still expect to carry the presidential election. The Ohio contest had been especially important. Benjamin Wade's reelection to the Senate was directly at stake there as Ohioans elected a Democratic state legislature. Unable to carry his own state, Wade was eliminated as a presidential possibility. Since Chase too was an Ohioan, his chances also had been seriously, probably irreparably damaged. The correspondent of the *New York Times* had made the stakes perfectly clear before the election: Ohio "gives the key-note of the entire central West," he wrote. "If Ohio give [*sic*] a decided vote, you need not expect any of the ten States, west and north of it, including Missouri
and Colorado to go otherwise. These States give about one hundred electoral votes in the Presidential election... If Ohio carries the Constitutional Amendment [extending suffrage to blacks]... and gives the Radical candidate... a decided majority, you may rely upon it, that these one hundred electoral votes will be given to an uncompromising Republican candidate for the Presidency. By that I mean a Republican, and one whose principles on important questions cannot be mistaken. I say this by way of warning to those who think that any kind of machinery in New-York will be available to an amphibious candidate who is equally ready to walk on land or water..."

The Republicans had expected victory in Ohio. William Henry Smith had expected a two to one Republican majority in the state legislature, a 40,000 majority for the Republican candidate for governor, Hayes, and a 5-10,000 majority for the Negro suffrage amendment. Instead the Democrats won the legislature, the black suffrage amendment lost by 38,000 votes, and Hayes squeezed into the governorship by only 3000 votes of 484,000 cast. The Republicans lost 13,000 votes from their 1866 total, while the Democrats gained 27,000. Twelve of the 45 Republican counties returned majorities against Negro suffrage.

In Pennsylvania the Republican state ticket lost by 1000 votes, although the party retained control of the legislature by a slim margin. The previous year the Republican
state-wide majority had been 17,000 votes. In New York Republicans lost, the narrow 13,000-vote Republican majority of 1866 converted to a 50,000-vote deficit.

Francis Lieber wrote of "this sad day when the news from all quarters tells us that the party who ruined the country is returning to power." But actually Republicans had lost only a few major offices—the governorships of Connecticut and California and Wade's Senate seat. Conservative Republicans were not despondent. As Blaine wrote, "[The losses] will be good discipline in many ways and will I am sure be 'blessed to us in the edification and building up of the true faith' . . . ."  

But for the radicals the defeat was a disaster—"a crusher for the wild men," Banks wrote happily. The causes were many. In Maine and Massachusetts referenda on the prohibition of liquor complicated the issues. In California a bitter factional dispute disrupted the party. In Minnesota and New Hampshire taxation of United States bonds became involved in the campaigns, and in Iowa and Wisconsin there was dissatisfaction among the Germans. In Ohio the money question had damaged Republicans. As Colfax had complained, "[I]n nearly every State we have side issues weakening us . . . ."

But as Sherman recognized, "The chief trouble no doubt, is the [Negro] suffrage question. It is clearly right that suffrage should be impartial without regard to color. It is easy to convince people so, but harder to make them feel it—
and vote it. We will have to carry it because it is right
but it will be a burden in every election." Ben Wade put it
simply: "We went in on principle, and got whipped." The
consequences were clear. The perceptive John Binney wrote
hopefully, "The extreme Radicals must now open their eyes to
the palpable fact, that they must moderate their impetuosity
so as to carry the prudent conservative Republicans along with
them." But the unhappy Wade put it another way. "I fear its
effect will be to make the timorous more timorous and the
next session more inefficient than the last," he confided to
Chandler.

The defeats of 1867 signalled to conservatives that they
must continue their opposition to the radical program. The
*New York Times* declared the elections "a reaction against the
extreme acts and measures of the Republican party" and partic-
ularly against unqualified suffrage, "the menace of confis-
cation, [and] the bullying influence which such men as Wade,
Chandler, Nye, Ashley, and men of their stamp mistake for
statesmanship . . . ."

"Our friends Wade Chandler & Co. [*sic*] must feel par-
ticularly gratified with the result in Ohio," Fessenden wrote
Grimes with grim pleasure. "Most of our influential journals
. . . think it is owing to a general disgust with the leader-
ship of Stevens and his drove [?] . . . and such, I think,
will be the general verdict." "But for the loss of Wade's
invaluable service in the Senate," he continued drily, "you,
I suppose would think no great harm had been done. If Chandler is saved, however, perhaps the Country can stand the loss of Wade."

Radicals replied the fault lay with conservatives. "The Republican party--notwithstanding its boasted high mettle, and notwithstanding its more boasted high principle--even yet quakes at meeting a negro by day as at seeing a ghost by night," Theodore Tilton wrote disgustedly. "[W]hen Negro Suffrage is proposed for South Carolina . . . the Republican party uplifts a lion's paw, and magnificently enforces obedience; but when Negro Suffrage is at issue in Ohio . . . the Republican party borrows a hare's legs, and runs away from its own principles."

But most Republicans probably agreed with the Boston Journal's opinion. There was no reason to drive radicals out of the party or attack them bitterly, the Journal insisted. But conservatives should once more exert their dominance in the field of practical legislation. "If we remain true to [great principles] . . ., extreme men will trouble us no more than a fantastic figure-head troubles a good ship--they will ever serve the uses of their day and generation. But their place is not along the masters and helmsmen, and pilots. These must be taken from our wisest and most discreet." Radical idealists should be honored but impotent.

The elections' practical effects were felt immediately. The Independent's Washington correspondent found the change
among congressmen "startling." "Our friends have an over-
whelming majority," he wrote, "but with the people apparently
against the Radical members, it will be impossible to secure
Radical legislation." As the session opened, he gloomily
assessed the prospects. "First, the impeachment movement is
dead . . . .

"Second, all confiscation bills will fail. . . .

"Third, Congress will not pass a national Equal Suffrage
bill till after the presidential election. . . . It is
barely possible that a bill relating merely to congressional
and presidential elections will pass; but this is all that
can be expected now."

The elections of 1867 also gave a further impulse to
the organization of the hard money lobby, and this in turn
weakened the position of radicals in Congress. The economic
malaise which gripped the country led to stronger and more
persistent calls from businessmen for an end to contraction
of the currency. Centering especially in the midwest and
Pennsylvania, the financial issue had played an important role
in the Ohio and Pennsylvania campaigns. Western Democrats
accomplished a complete about-face, supporting during the
1867 elections what became known as the Pendleton plan. Ohio
Democrat George H. Pendleton, its foremost exponent, proposed
simply that as the war debt had been contracted in depreciated
currency, it should be repaid in the same currency rather
than in gold. Many Republicans interpreted this as a scheme
of repudiation and attacked it vigorously. But since pay-
ment of the bonds in greenbacks meant an expansion of the
currency, many Americans found the plan very attractive.
The issue was in part responsible for Republican losses, and
Republican congressmen and politicians began to urge their
leaders to bow to public pressure.

In response Atkinson increased his efforts to create a
hard money lobby. Through his friendship with Charles Eliot
Norton, editor of the North American Review, Atkinson con-
verted that journal into a mouthpiece for his views. With
the cooperation of John Murray Forbes he reactivated the
Loyal Publication Society, which had functioned so well during
the war, and through its facilities broadcast hard money argu-
ments and propaganda. Together he and Norton enlisted the
pen of the brilliant Charles Francis Adams, Jr. Atkinson
used his personal influence with Sumner in an attempt to
bring his powerful voice to the cause. He won to his views
William Boyd Allison, then a young member of the House Ways
and Means committee, and maintained cordial relations with
James A. Garfield, already recognized as a future leader on
financial questions, and corresponded with Horace White of
the Chicago Tribune, and David Ross Locke, editor of the
Toledo Blade and creator of "Petroleum V. Nasby."

Many Republicans felt as Grimes did, that "[t]he great
question in American politics today is the financial question,
and [i]t must override all reconstruction and impeachment
questions." Hard-money Republicans continued to drift
towards conservatism and their distaste for the fiscal poli-
cies many radicals advocated began in some cases to turn
almost to hatred. "There is not a man who fought against us
in the rebellion in whom I have not more confidence & for whom
I have not a greater respect that I have for Mr. B. F. Butler,"
Grimes wrote. And he added, "Thad. Stevens is no better."

As contractionists and free traders became more conserv-
ative, radicalism tended more and more to be limited to those
who advocated expansion of the currency. This became more
apparent with each session of the Fortieth Congress. Among
representatives who remained consistently radical or non-
radical throughout this Congress, the corresponding polariza-
tion on financial questions was nearly complete. 92 When fis-
cal conservatives like Henry D. Cooke, Jay's brother, insisted,
"Such men as Butler and Stevens must be put down--or driven
to associate with the Vallandighams and Pendletons of the . . .
Democracy . . .," this necessarily meant their reconstruction
policies would be "put down" with them. At the same time
conservatives had to be sustained, for most fiscal conserva-
tives agreed with Grimes, who warned, "Let Mr. Sumner's
'clogs & obstructions' be removed from Congress & Thad Stevens
& Butler be in controul [sic] as they then would be with
their revolutionary & repudiating ideas in the ascendancy &
the government would not last 12 mos." 93

The impact of the 1867 elections upon the race for the
Republican presidential nomination proved as dramatic as its
impact upon the issues of reconstruction and the finances. "The real victims of the victory of the Democrats," Clemenceau observed, "are Mr. Wade and Mr. Chase." The weakness of the Republican organization meant it needed a candidate stronger than the party. The other candidates are "good men as we all know," a correspondent wrote Elihu B. Washburne, "but we can only win with Grant." Other Republicans agreed. Washburne took the opportunity afforded by Republican apprehensions finally to lay at rest any lingering doubts about Grant's Republicanism. In a speech to an Illinois county party convention, Washburne announced Grant supported congressional reconstruction and Negro suffrage. He had accepted control of the War department after Stanton's ouster only to prevent presidential obstruction. Newspapers around the country reported the speech, and Republican conservatives expressed gratification.

The conservatives held the whip hand. "These Republican defeats lay a good many men on the shelf who will be more useful there than they have been elsewhere," Raymond wrote McCulloch. "They will compel the nomination of Grant or split and defeat the party." He repeated his convictions in the Times. The Republicans "dare not nominate anybody else," he concluded. Optimistic reports reached Washburne from leading Grant men in different states. From New York, where he was busily organizing a more broadly-based Grant movement than Weed's, John Cochrane wrote, "... I don't think Chase
has a corporal's guard. Former Chase men have whipped off their livery, and the general cry is for Grant." Curtin informed Washburne from Pennsylvania, where he had met so little success in urging the general's name before the election, "Now everybody is for Grant and on the first opportunity our party will declare for him." The reason was patent: "Grant is the only man living who can carry this State next year on present issues."97

But many radicals remained unreconciled to their prospective standard-bearer, so recently a recruit. As the likelihood of Grant's nomination increased, the Nation observed, "complaints that nobody knows 'where he stands' seem to grow louder." Not only were true radicals uncertain of what the general's position would be on future reconstruction issues, complained Tilton, but "that practiced soldier, but unpracticed civilian, could not even tell himself." And worse than the uncertainty was the class of men who supported him. "Out of every three Republicans whom one now meets," he continued, "two are chiefly anxious for the success of Negro suffrage, and the third for the success of Gen. Grant. On further inquiry the third Republican will most likely be found to have either refrained from voting at all in the late election, or to have voted for the Democrats."98

The "bread and butter" politicians and the conservatives were forcing on the radicals a candidate they did not want. Disheartened, Wade lamented, "It is very strange that when men talk of
availability they always mean something squinting toward Copperheadism. They never think of consulting the Radicals, who are the only working men in the party. Oh, no; we must take what we get . . . ." 

But the radicals had one hope left. They might remove Johnson through impeachment and install Wade in the presidency, where he could, as White had feared, use his prestige and patronage to control the party. Furthermore, Johnson's removal would remedy the defective Reconstruction law, which left so much obstructive power in the President's hands. Perhaps it would resurrect the confiscation and education issues. With radical influence diminishing, impeachment was a last resort, and as the second session of the Fortieth Congress approached, radicals in the House feverishly worked to secure the majority needed to pass an impeachment resolution.

Conservatives, on the other hand, determined to stop them. Bingham warned Washburne of the radicals' intentions. They would try to remove the President, to disfranchise former Confederates, insuring black domination of the reconstructed states, to confiscate rebel's property, and to enfranchise black Americans in all states by congressional enactment. "Such is in short, the forthcoming project of Mr. Stevens & it will require some care to see that he does not commit a majority of our friends in the House to it," Bingham cautioned. Washburne agreed. "If Congress will only be half decent and half honest," he wrote, "we will be through like a whirlwind."
But it would not be easy. The radicals were bitter. "You must look out for squalls," Fessenden warned Grimes. Firmly, he contemplated the coming session. "There will be plenty of crimination and recrimination."
CHAPTER XIV

CONGRESS ON THE PRESIDENT'S HIP

Despite the defeats of 1867 radicals determined to continue their campaign for impeachment. But they knew it would be more difficult now to win the majority needed to bring the impeachment before the Senate. For although the election reverses did not induce individual Republicans to break ranks—that is, most Republicans who had been radicals during the first session of the Fortieth Congress remained so in the second, and the same for centrists and conservatives—they did force each group to the right. The center groups, which might have favored impeachment had the elections demonstrated radical strength, now divided, most of them opposing impeachment. Confiscation, black enfranchisement by national law, and continued exclusion of southern states from the Union, all of which many radicals might have supported, now were out of the question. (for the factional composition of the second session of the Fortieth Congress, see charts no. 30 and 33.)

Impeachment received a further blow when President Johnson refused to fulfill dire predictions that the Republican defeats would embolden him in obstructing reconstruction. On the contrary, the President had acted with remarkable—for him—circumspection. He had removed no more military commanders
CHART THIRTY

Radicalism in the House of Representatives
40th Congress, Second Session.

Representatives from reconstructed states except Tennessee
not included

GROUP #0 (DEMOCRATS)

Adams, Ky.
Archer, Md.
Samuel B. Axtell, Calif.
Barnes, N.Y.
Barnum, Conn.
James B. Beck, Ky.
Boyer, Pa.
Brooks, N.Y.
Burr, Ill.
Samuel F. Cary, Ohio
Chanler, N.Y.
Eldredge, Wis.
Fox, N.Y.
Getz, Pa.
Glossbrenner, Pa.
Edward I. Golladay, Tenn.
Asa P. Grover, Ky.
Haight, N.J.
Holman, Ind.
Hotchkiss, Conn.
Hubbard, Conn.
Humphrey, N.Y.
James A. Johnson, Calif.
Thomas L. Jones, Ky.
Kerr, Ind.
James R. McCormick, Mo.
McCullough, Md.
Marshall, Ind.
Morrissey, N.Y.
Mungen, Ohio
Nibling, Ind.
Nicholson, Del.
Phelps, Md. (Conservative Unionist)
Pruyn, N.Y.
Randall, Pa.
Robinson, N.Y.
Ross, Ill.
CHART THIRTY (CONT.)

Sitgreaves, N.J.
Stone, Md.
Taber, N.Y.
Trimble, Ky.
Van Auken, Pa.
Van Trump, Ohio
Wood, N.Y.

--- Resolution to investigate corruption in the impeachment trial, admission of representatives from Ala., resolution affirming ratification of the XIV Amendment without ratification by southern states, motion to take up a new impeachment resolution in July, resolution condemning removal of Sheridan, passage of Ala. and Ark. restoration bills, bill to continue the Freedmen's Bureau, February impeachment resolution

GROUP #1 (EXTREME CONSERVATIVE REPUBLICANS)

Stewart, N.Y.
Griswold, N.Y.
Jenckes, R.I.
Lawrence, Pa.
Poland, Vt.
Woodbridge, Vt.
Blair, Mich.
Marvin, N.Y.

--- Bill to provide for sale of Sea Islands lands, tabling of resolution to continue Committee on the Treatment of Union Prisoners of War, tabling of resolution honoring former-President Buchanan on his death, amendment to Ala. restoration bill to give Ala. a provisional government instead of restoration
CHART THIRTY (CONT.)

GROUP #2 (CONSERVATIVE REPUBLICANS)

Smith, Vt.
Blaine, Me.
Dawes, Mass.
Dixon, R.I.
Dodge, Iowa
Hill, N.J.
Ingersoll, Ill.
Ketcham, N.Y.
Laflin, N.Y.
Peters, Me.
Robertson, N.Y.
Starkweather, Conn.
Twitchell, Mass.
Washburn, Mass.
Baldwin, Mass.
Benjamin, Mo.
Ferris, N.Y.
Hawkins, Tenn.
Hulburd, N.Y.
Kitchen, W.Va.
Mallory, Ore.

--- Amendment to strike Ala. from bill to restore southern states, resolution that southern states have forfeited land grants

GROUP #3 (CENTER REPUBLICANS)

Alexander H. Bailey, N.Y.
*Higby, Calif.
*Pile, Mo.
Ames, Mass.
Beaman, Mich.
Benton, N.H.
Bingham, Ohio
Buckland, Ohio
Cook, Ill.
Cornell, N.Y.
*Cullom, Ill.
Eliot, Mass.
Eliot, Mass.
Eggleson, Ohio
Fields, N.Y.
Garfield, Ohio
Halsey, N.J.
Hooper, Mass.
Hubbard, W.Va.
CHART THIRTY (CONT.)

Koontz, Pa.
Lincoln, N.Y.
Miller, Pa.
Moore, N.J.
Moorhead, Pa.
Pike, Me.
Plants, Ohio
Polsley, W.Va.
Sawyer, Wis.
Upson, Mich.
Van Aernam, N.Y.
Van Horn, N.Y.
Washburn, Wis.
Washburn, Ind.
Welker, Ohio
Wilson, Pa.
Wilson, Ohio
John Beatty, Ohio
*Boutwell, Mass.
*Covode, Pa.
*Eckley, Ohio
*Hopkins, Wis.
*Loan, Mo.
*Lynch, Me.
*Myers, Pa.
*O’Neill, Pa.
*Orth, Ind.
*Price, Iowa
*Scofield, Pa.
*Stokes, Tenn.
*Van Wyck, N.Y.

--- Motion to reconsider agreement to the previous question on the bill to admit southern states, December impeachment resolution, amendment to the Third Supplementary Reconstruction bill removing southern state officials elected during presidential reconstruction and authorizing the constitutional convention to replace them, amendment to strike Fla. from the bill to restore southern states, motion to take up the bill setting a quorum for the Supreme Court
GROUP #4 (RADICAL REPUBLICANS)

+Banks, Mass.
Bromwell, Ill.
Ela, N.H.
Gravely, Mo.
Kelsey, N.Y.
Logan, Ill.
Paine, Wis.
Schenck, Ohio
Stevens, N.H.
Trimble, Tenn.
Van Horn, Mo.
Ward, N.Y.
Williams, Ind.
Anderson, Mo.
Arnell, Tenn.
Ashley, Ohio
Broomall, Pa.
Butler, Mass.
Cade, Pa.
Churchill, N.Y.
Clarke, Ohio
Clarke, Kans.
Cobb, Wis.
Coburn, Ind.
Donnelly, Minn.
+Hamilton, Ohio
Harding, Ill.
Morton C. Hunter, Ind.
Judd, Ill.
Julian, Ind.
Kelley, Pa.
Lawrence, Ohio
Loughridge, Iowa
+McCarthy, N.Y.
McClurg, Mo.
Maynard, Tenn.
Mercur, Pa.
Morrell, Pa.
James, Mullins, Tenn.
Newcomb, Mo.
+Perham, Me.
Shanks, Ind.
Stevens, Pa.
Wilson, Pa.
Windom, Minn.

NONSCALAR: ++Allison, Iowa; ++Ashley, Nev.; ++Baker, Ill.;
++Driggs, Mich.; **Farnsworth, Ill.; **Ferry, Mich.;
++Hubbard, Iowa; **David A. Nunn, Tenn.; Raum, Ill.;
CHART THIRTY (CONT.)

++Spalding, Ohio; Taffe, Nebr.; ++Taylor, Pa.;
**Thomas, Md.; ++Washburne, Ill.; **Williams, Pa.
(All Repubs.)

NCT VOTING: Colfax, Ind.; Delano, Ohio; McKee, Ky.;
Pomeroy, N.Y.; Selye, N.Y.; Shellaberger, Ohio
(All Repubs.)

*Center Republicans voting for impeachment.
+Radical Republicans voting against impeachment.
**Nonscalar Republicans voting for impeachment.
++Nonscalar Republicans voting against impeachment.

For a list of the roll calls upon which this chart is based, see Appendix X.
in the South. He did not, as Republicans feared he would, recognize a rival Congress of southerners and northern Democrats. He had not even replaced his Johnson Republican Cabinet with a Democratic one. In fact, he had been on his best behavior.

But the radicals did not believe that Johnson had turned over a new leaf. They surmised (accurately, it proved) that he had determined to add no more fuel to the impeachment controversy, but that he would act with vigor once that threat were removed. They had every reason to fear that in that case the congressional reconstruction program would be defeated. The voters of the North clearly were growing tired of the controversy. If by use of the patronage and the army under docile commanders, Johnson and southern conservatives prevented ratification of the constitutions radical conventions were framing, Republicans would have to face the 1868 elections with a still unrestored Union. Exasperated northern voters might overwhelm them at the polls. Impeachment and removal would end that threat forever.

Presidential politics also played a role in the radicals' determination. The Grant movement was gaining strength rapidly, especially in New York, where leading conservative and apolitical businessmen, led by Hamilton Fish and Alexander T. Stewart, signed a call for a conservative, nonpartisan Grant meeting to be held December 4, 1867. Although Washburne had suggested the maneuver to his chief New York lieutenants,
John Cochrane and Waldo Hutchins, both radicals, Thurlow Weed had infiltrated the movement and was personally responsible for many of the signatures. James Gordon Bennet, the editor of the New York Herald, and Parke Godwin, of the Evening Post, supported the campaign. The Grant movement had become so manifestly the vehicle of conservatism that Elihu B. Washburne himself began to worry. Urgently he wrote Cochrane pressing him to secure radical support. With this a bitter struggle began between Washburne's forces and Weed's New York organization for control of the Grant campaign. The Weed faction tried to take over Grant meetings and clubs, calling leading conservatives to the rostrums and attacking radicals, in an effort, Cochrane wrote, "to use Grant as a banner to capture the Republican organization." The New York Tribune's public endorsement of Chase for the presidency aided Weed's efforts, encouraging the Tribune-led radical faction of the New York Republican party to remain aloof from the Grant boom. Finally Weed attempted to induce Hutchins to betray Washburne and Cochrane. He secretly promised Hutchins his organization's aid in fulfilling any personal political ambitions if he would turn over control of the December 4 meeting to Weed partisans. At the same time, Cochrane wrote, Weed arranged with the Tammany faction of the Democratic party to bring Grant forward as a Democratic candidate. This would have created the broad-based, conservative party Weed had dreamed of for years, leaving radicals isolated. Although Cochrane and Hutchins
managed to thwart Weed's machinations, the Committee of Twenty-Four appointed by the December 4 meeting to coordinate the Grant movement consisted entirely of rigidly nonpolitical businessmen. Washburne complained, but Cochrane explained there was nothing he could do. The businessmen had bitterly resisted all suggestions that they cooperate with mere politicians.

Given this situation, radicals looked upon the prospect of Grant's nomination with something less than enthusiasm. Nonetheless the radical correspondent of the *Indiana True Republican* estimated that two thirds of the Republican congressmen believed the nomination inevitable. One of Benjamin F. Butler's most important local Massachusetts allies warned him "the republican party in Massachusetts and New England are bound to have Grant for President" and urged him to come to terms with his enemy. But as conservatives sensed, the radicals hoped to use impeachment against Grant. Wade, who would replace Johnson if he were removed, had publicly declared his preference for Chase rather than Grant. Many of Chase's partisans still remained in the Treasury department, protected by McCulloch's reluctance to turn old Republicans out of office. Chase remained stronger than Grant with southern Republicans, who feared the general's conservatism. With Wade as President, Grant might be denied the nomination. At least the national convention would be certain to frame a radical platform which would commit Grant to radicalism or
force him to withdraw his candidacy. As Chase's intimate friend and biographer, James W. Schuckers wrote six years later, "The impeachment programme had ... two motives; the first and most important was, of course, to get Andrew Johnson out of the presidency, and the second and hardly less important was, to keep General Grant from getting in."³

When Congress met the impeachers appeared to be in a hopeless minority. The Judiciary committee had kept their proceedings strictly confidential, and most congressmen believed the majority report would be against impeachment, as the June vote in the committee had indicated. Since the whole House customarily concurred in majority reports from committees, many Republicans planned to vote against impeachment but to aver they had simply endorsed a committee report, thus side-stepping the issue. The Times' correspondent estimated that under these circumstances the impeachers could muster but fifty to fifty-five votes, with sixty Republicans and all forty-nine Democrats opposed, and fifteen undecided. But when the committee published its report November 25, Republicans learned that John C. Churchill had changed his mind as a result of Johnson's interference with the military. The majority report would favor impeachment. Churchill's reversal caused wild excitement, and radicals believed they could muster a fifteen to thirty-vote majority. In the confusion both sides predicted victory.⁴

Conservatives were dismayed. "I have never been more than
at this moment impressed with the peril of the Republican party," George G. Fogg, New Hampshire's just-retired Senator, wrote Washburne. "I had hoped that the late elections had taught us something. I had hoped we would be allowed to breathe before being rushed forward into new disasters under the lead of men who are now little better than paroled prisoners of war." Washburne grimly agreed. Other conservative and moderate Republicans—and some radicals—echoed Fogg's forebodings and urged their representatives to abandon the impeachment issue and wrestle with the finances instead. But the impeachers remained adamant. Fessenden gloomily anticipated a radical victory. He confessed, "This I shall regard as ruin to our party—and it will be a just punishment for our cowardice and folly." 5

Conservative and anti-Wade men determined to fight impeachment with all their resources. Garfield and Spalding, Chase's chief supporters in the House, Washburne and Bingham, leading Grant men, Blaine, Dawes, James F. Wilson, and others worked hard to defeat the impeachment resolution proposed by the Judiciary committee majority. By December 5 they believed they had succeeded. 6

Their work was made easier by the nature of the majority report. Written by Thomas Williams, it was an inflammatory indictment of the President, injudicious in language, even violent in spirit. Conservatives pointed to it as evidence that the impeachers were motivated more out of hatred for
Andrew Johnson than concern for the country's well-being. The Republican minority report, authored by James F. Wilson, assumed an air of moderation. Yet it too was more of a brief for the defense than a dispassionate analysis of the case. The Democratic minority report, agreeing on the legal points with Wilson's, was of little importance. Both of the Republican reports emphasized the law of the case, radicals relying on their broad interpretation of the impeachment power and conservatives trying to narrow it.

As the Republicans prepared to vote on the impeachment question, they were shocked by the President's annual message. Ending his passivity, Johnson's tone once again became defiant. Beginning with a rather conciliatory reaffirmation of his interpretation of the constitutional basis for reconstruction, Johnson went on to denounce the constitutionality of the Reconstruction acts in less moderate terms. But he went further. Abandoning constitutional arguments, he proclaimed black suffrage "worse than the military despotism under which [the southern states] . . . are now suffering." Black men were inherently unable to govern themselves under republican institutions. They were "corrupt in principle and enemies of free institutions." "If the inferior [race] obtains the ascendancy over the other, it will govern with reference only to its own interests--for it will recognize no common interest--and create such a tyranny as this continent has never yet witnessed."
But most ominous was the President's unsubtle threat: "How far the duty of the President 'to preserve, protect, and defend the Constitution' requires him to go in opposing an unconstitutional act of Congress is a very serious and important question, on which I have deliberated much, and felt extremely anxious to reach a proper conclusion. Where an act has been passed according to the forms of the Constitution by the supreme legislative authority, and is regularly enrolled among the public statutes of the country, executive resistance to it ... would be likely to produce violent collision between the respective adherents of the two branches of the Government. This would be simply civil war; and civil war must be resorted to only as the last remedy for the worst of evils. ... The so-called reconstruction acts, though plainly unconstitutional as any that can be imagined, were not believed to be within the class last mentioned." For the first time the President had clearly indicated that he had considered forcible resistance to Congress. He had decided against it not because his action would have been illegal or unconstitutional, but because in the President's opinion, the Reconstruction acts did not justify it.

The presidential message reinforced the radicals' opinion that his removal was a necessity. "The propositions which the President has laid down ... will lead to certain difficulty if they are acted upon," Boutwell warned. The Constitution authorizes Congress to pass bills, subject to the
President's veto. "If the House and Senate by a two-thirds vote pass a bill [over the veto] it becomes a law, and until it is repealed by the same authority or annulled by the Supreme Court the President has but one duty, and that is to obey it; and no consideration or opinion of his as to its constitutionality will defend or protect him in any degree."

Moreover the President's vehement denunciation of black suffrage boded only evil. "Are we to leave this officer, if we judge him to be guilty of high crimes and misdemeanors, in control of the Army and the Navy, with his declaration upon the record that under certain circumstances he will not execute the laws?" Boutwell asked. "He has the control of the Army. Do you not suppose that next November a single soldier at each polling place in the southern country, aided by the whites, could prevent the entire negro population from voting: And if it is for the interest of the President to do so have we any reason to anticipate a different course of conduct?"

The tone of the President's message, Ben Perley Poore reported, had influenced eight to ten Republicans to vote for impeachment. But he believed the impeachers still lacked the necessary votes.

As the senior signer of the majority report, George S. Boutwell opened debate on impeachment on December 5. He devoted his long address primarily to the legal question. The House, he knew, was well-aware of the President's activities. The question would turn on whether they were impeachable, for
he acknowledged "If the theory of the law submitted by the minority be in the judgment of this House a true theory, then the majority have no case whatever." He altered his address before it was published in the appendix of the Congressional Globe, but observers wrote the House listened in rapt attention. As published, Boutwell's speech embodied the clearest, most eloquent, and most convincing argument for the liberal view of the impeachment power. Boutwell began by expressing his sympathy for those who feared the effects of an impeachment. He acknowledged that the House could decide impeachment inexpedient even if members believed the President liable to the process. He affirmed he himself would be inclined to allow the President to finish his term if he did not believe evil consequences were sure to follow. Then, in a concise and convincing manner, he discussed the impeachers' view of the law of the case.

The facts, Boutwell believed, were self-evident. The President had taken upon himself the responsibility of reconstructing the southern states. The minority might argue that Congress had ratified that usurpation by acquiescing in the continued existence of his restored state governments. But, Boutwell reminded his listeners, the President had concealed his purposes. Congress had believed the President's plan temporary, to be annulled or approved by when Congress met. "The public mind did not comprehend the character and extent of the usurpation." The President had vetoed all Congress'
reconstruction bills, he urged the southern people to reject the XIV Amendment, he appointed to office men who could not take the test oath, he surrendered the abandoned lands and confiscated railroad property, he appointed and paid provisional governors in the southern states although Congress had neither created the office or appropriated money to reimburse its holders. The ultimate purpose of all this, Boutwell concluded, manifestly was to return the former rebels to power in the state and national governments despite Congress' judgment that this must not be done. "[W]hen you consider all these things, can there be any doubt as to his purpose, or doubt as to the criminality of his purpose and his responsibility under the Constitution?" Boutwell asked.

"It may not be possible, by specific charge, to arraign him for this great crime, but is he therefore to escape? These offenses which I have enumerated . . . are the acts, the individual acts, the subordinate crimes, the tributary offenses to the accomplishment of the great object which he had in view. But if, upon the body of the testimony, you are satisfied of his purpose, and if you are satisfied that these tributary offenses were committed as the means of enabling him to accomplish this great crime, will you hesitate to try him and convict him upon those charges of which he is manifestly guilty, even if they appear to be of inferior importance, knowing . . . that in this way, and this way only, can you protect the State against the final consummation of his crime?"
Wilson followed Boutwell's effort on December 6. Boutwell's attack on the minority's legal argument was so powerful that Wilson immediately retreated from it. No member of the minority believed their legal doctrine "of the slightest importance so far as a correct determination of this case is concerned." . . . "It is immaterial what opinion members may have of it," he shrugged. Nonetheless Wilson devoted half of his speech to defending his position that impeachment lay only for indictable crimes and attacking its opponents. In essence, Wilson turned the very superiority of Boutwell's argument against him. He pointed out the palpable fact that it was inconsistent with the committee report. In his speech Boutwell eschewed the value of English precedents as irrelevant to impeachment in American constitutional law; the report cited English cases. In his speech Boutwell pointed out that under the minority's view of the law an officer could commit murder in such a way as to be outside the jurisdiction of United States courts, and would be immune to impeachment. The report had stated murder would not be an impeachable offense since it did not relate directly to office-holding. Wilson's blunt analysis of the inconsistencies between Boutwell's brilliant speech and William's mediocre majority report did tremendous damage to the impeachers' case.

Wilson went on to emphasize the full implications of the majority position. Boutwell insisted the impeachment power "is subject to no revision or control, and that its exercise
is to be guided solely by the conscience of the House. Correctly interpreted, this doctrine, as it seems to me, comes to this: that whatever this House may declare on its conscience to be an impeachable offense, reduce to the form of articles, and carry to the Senate for trial, that body is only to be allowed to declare whether the officer impeached is guilty of the facts presented against him, but is not to be permitted to say that such facts do or do not constitute a crime or a misdemeanor," Wilson insisted. "Does he desire us to intrust the character, extent, and uses of this power to the shifting fortunes of political parties? What could be more dangerous to the peace and safety of the Government than this?"

Finally, Wilson discussed the individual charges. He pointed out that the report of the Joint Committee on Reconstruction, of which Boutwell was a member, assigned patriotic motives to the President when discussing his reconstruction policy in June of 1866, long after Boutwell claimed to have discerned the President's master-design to return power to the rebels. He reiterated his conviction that the return of property to the rebels was done by advice of the Cabinet and showed no evidence of criminal intent. But Wilson abruptly left this discussion and closed his address by returning to the legal issue. "Sir, we must be guided by some rule in the grave proceeding . . . . If we cannot arraign the President for a specific crime for what are we to proceed against him?
For a bundle of generalities such as we have in the volume of testimony reported by the committee to the House in this case? If we cannot state upon paper a specific crime how are we to carry this case to the Senate for trial?" So despite his disclaimer, Wilson relied after all on his legal objections, and with that he moved that the impeachment resolution be laid on the table. 13

The radicals were outraged. By moving to lay the resolution on the table, Wilson had cut off debate. Over forty radicals had prepared speeches on the question, many of them filled with vituperation towards the conservatives and their arguments which the radicals so sincerely believed to be specious. Moreover Wilson's maneuver again opened the possibility of dodging the issue, enabling members to say they favored tabling to avoid bitterly divisive argument which might disrupt the party. 14 Furious, the radicals began the difficult job of filibustering the House. Logan and Schenck led the radical forces. With seven roll-call votes on adjournment the radicals delayed the vote into the dinner hour, mustering from fifty to sixty votes against the anti-impeachers' one hundred plus. But at 5 o'clock the anti-impeachers broke ranks, over twenty of them voting with the radicals to adjourn, giving them an 80 to 77 victory.

The next day the radicals began where they had left off, but they could not continue forever. Logan implored his opponents to allow the minority ten minutes to explain the
reason for its filibuster. If the majority granted their request, Logan promised, the impeachers would agree to vote. But this would require unanimous consent, and although many of the anti-impeachers were willing, Rufus P. Spalding objected. "I will not give them a single minute now," he announced bitterly. Again the radicals moved an adjournment. Again the clerk read the name of each representative in turn. Again the effort failed.

Logan now asked Wilson to withdraw his tabling motion, promising to end the delay if the majority would agree to vote on the direct issue. Wilson agreed, and the House defeated the majority resolution 57-108. Three absent Republicans were announced in favor of impeachment and two against. All those who favored impeachment were Republicans; sixty-six Republicans voted against it; two more were so declared. The radicals had not been able to muster a majority even of their own party. "You will see how Congress backed down on impeach-

The conservatives had betrayed the nation with their pettifogging lawyer's arguments, radicals believed. They would sacrifice southern loyalists to preserve their political power. "If the great culprit had robbed a till; if he fired a barn; if he had forged a check; he would have been indicted, prosecuted, condemned, sentenced, and punished," Tilton exploded.
"But the evidence shows that he only oppressed the Negro; that he only conspired with the rebel; that he only betrayed the Union party; that he only attempted to overthrow the Republic—of course, he goes unwhipped of justice. . . . So a President of the United States begins by insulting, continues by bullying, and ends by conquering Congress. . . . At the last moment the brave men among them were denied even the right of opening the lips on the question. . . . [A] Republican majority of cowards gagged a Republican minority of statesmen. Thaddeus Stevens, George Boutwell, John Logan, and others of like heroic mold, stood by their country, and were throttled by their friends. . . ."

It seemed too much for the radicals to bear. "It is no use disguising the fact," the Anti-Slavery Standard's Washington correspondent wrote, "The Republican Party is not now one. There are two distinct parties in its midst." Butler bitterly informed a friend, "The party has lost its morale . . . it may as well break up or it will break down." In the gall of defeat radicals met at Stevens' residence to find a way to bring impeachment up again and keep the floor for speeches. They decided to meet again to perfect a parliamentary organization of radicals alone, to be led by Schenck and Stevens.

A splinter group of radicals determined to meet in Washington on February 22, 1868, to adopt a platform of principles. If the Republicans nominated Grant on a watered-down platform, they would bolt. The New York Times jumped at the opportunity
once again to call for a realignment of parties. "The true issue before the country to-day is between Radicalism and Constitutionalism—between a policy which recognizes and accepts the Constitution as the paramount rule of action, and one which virtually discards it as inadequate to the emergency, and accepts the abstract doctrine and sentiments ascribed to the Declaration of Independence in its stead." Editor Raymond urged the radicals to act on their threat, organize a radical party, and nominate Butler and Wade for President and Vice-President. 

20 \[T]he people will understand what they have to do hereafter."

If the radicals were furious, conservatives were elated. Republicans could turn to financial questions in peace now, Fessenden happily wrote. "It extinguishes the aspirations of the Radical-Radicals. . . . For once, Mr. Sumner cannot boast of the fulfillment of his prophecy, and his bitterness beats 'wormwood and gall,'" he exulted. "It is of no use, however. They are in a minority of their own party—and must stay there."

The Democrats happily recognized that they now faced a party divided. Some Democrats determined to emphasize Grant's early statements against Negro suffrage and his friendliness to Johnson, rather than attacking him. "I shd be sorry to have assisted in overcoming Radical hostility to his nomination in the Republican convention by persuading them that he is in sympathy with them," New York World editor Manton Marble
wrote Doolittle. But Andrew Johnson did not share such political wisdom. Freed, he thought, from the threat of impeachment, he now pursued a course which reunited the fragmented Republican party and nearly led to his removal.

The defeat of impeachment heartened Johnson's supporters. "It is generally thought that the President has Congress on the hip . . .," Johnson's friend, Thomas Ewing, Sr., wrote optimistically. In the South the anti-Republican forces increased their resistance to the Reconstruction acts. In Louisiana, Hancock determined to act. After Johnson had removed Sheridan, General Mower, Sheridan's second-in-command and temporary commander pending Hancock's arrival, had removed many officers of the Johnsonian provisional governments, appointing Republicans in their places. Now Hancock revoked the removals, restoring to office among others the Johnsonian state treasurer, auditor of public accounts, and several New Orleans police officials. On February 7 the conservative General removed the radical New Orleans city council which Sheridan had appointed. This was too much for Grant, and he ordered Hancock to suspend his removal order. Hancock protested, but Grant remained adamant, forcing his subordinate to rescind it. Bitterly, Hancock asked to be removed from his command. Despite Grant's rebuffs Hancock continued to aid the anti-reconstruction forces in Louisiana, removing the board of registrars appointed by the state constitutio
convention to oversee the ratification election and appointing
his own instead. The chairman of the board named by the con-
vention complained they were "notorious rebels, and open
enemies to reconstruction." 25

In Virginia the conservative commander John M. Schofield
continued his opposition to radical Republicans. He stolidly
resisted radical efforts to persuade him to remove officials
of the provisional government whose terms had expired, holding
over the conservative and Democratic officers of the Johnson
government rather than name radical Republicans. He was
determined, he later wrote, to execute the Reconstruction
acts in Virginia in such a way as "to save that State from
the great evils suffered by sister States . . . ." 26 Hoping
that Johnson would now act on their complaints, southerners
renewed their attacks on the remaining strict military
commanders in the South and increased their obstruction of the
reconstruction process. Disheartened with Johnson's failure
to support him, Pope wrote Grant, "The indications now are
that the managers of the disloyal faction in the South will
succeed in breaking down every General who performs his
duty." Pope suggested Johnson replace him with "some offi-
cer . . . whom the President will trust . . . ." 27 On
December 28 Johnson acted, relieving Pope, his subordinate,
Wager Swayne, who had held command in Alabama, and General
Edward O. C. Ord in Mississippi. General George Meade replaced
Pope and promptly instituted a more conservative policy,
ordering the military to consider itself subordinate to the civil authority, forbidding interference with the Johnson government officials without his direct order, and allowing these officials to remain in office despite the expiration of their terms. He also allowed the state courts to exclude blacks from jury duty. In Ord's place Johnson appointed conservative General Alvan C. Gillem.

Despairing, Oliver Otis Howard lamented, "The President ... musters out all my officers ... Measures are on foot ... which are doubtless intended to utterly defeat reconstruction." The angry, radical Washington correspondent of the Boston Commonwealth wrote, "Thus Johnson defeats Congress at every point. ... While Congress is passing acts to reconstruct the South, the President is driving a carriage and six through them."

Southern Republicans were desperate. Foster Blodgett, the chairman of the Central State Committee of the Georgia Republican party, pleaded with congressional Republicans for help. "The fact is that Reconstruction is now on a pivot ...," he warned. "The action of Congress for the next 10 or 15 days will decide whether the whole South will be Republican or Democratic." He concluded, "Our Northern friends seem to know nothing of the intense bitter hatred that is manifested towards us." Judge John C. Underwood, one of Virginia's leading radicals, appealed to Washburne to persuade Schofield to remove the Virginia provisional government.
"Every State, city & county office with very few exceptions [is] in the hands of the rebels holding over," he complained.

The chairman of the Alabama party joined the frantic appeal, as Republicans there blamed their failure to win a majority for the new constitution on Swayne's removal.

"Unfriendly military management has killed us," one of them wrote. "The rebels have had all their own ways in many counties. What next can we do?" From Texas, Mississippi, and Louisiana, Republicans urged their allies finally to erase the Johnson state governments. They echoed Underwood's plea: "Can Congress save us from annihilation?"

Even the Chicago Tribune, which had vigorously opposed impeachment, exploded, "Cannot Congress devise some means of checkmating the villainous conspiracy of Johnson and Co. to defeat the restoration . . . of the Southern States to the Union?" Privately, the Tribune's editor, Horace White, wrote Washburne that he shared the "rather gloomy feeling you express concerning the present phase of reconstruction." And he urged "that inasmuch as Johnson carries all his points, by sheer audacity and doggedness, it is necessary for Congress to meet him on the same ground, and to be as audacious and obstinate as he is."

The temporizing policies of the conservative and center Republicans had allowed the President to take the offensive. To radicals this was patent. "Our legislation on reconstruction was a monstrous blunder . . . ," Timothy Otis Howe fumed.
"We declared those State organizations illegal . . . . We asserted our complete authority over them & then instead of abolishing them as we ought, we declared them provisional & subordinated them to a military system at the head of which is Andrew Johnson."34 The entire congressional reconstruction policy had been predicated on the hope that the President would honestly enforce the law. He had not. But rather than remove him, the conservatives and centrists had forced Congress to amend its reconstruction laws continually. "Congress enacts measure after measure and adjourns in the pleasing delusion it has everything its own way," the Boston Commonwealth lamented. "While Congress acts as if he were an obstinate and stupid blockhead, [Johnson]. . . works quietly and steadily in the White House, saying nothing, devoting himself with an energy almost sublime to the accomplishment of his wicked ends . . . ."35

The conservative and centrist Republicans were truly on the horns of a dilemma. If only Congress had passed his Louisiana reconstruction bill, Eliot mourned. It rested "on a civil basis." . . . [Its provisions were such as would, I believe, in the shortest period have restored civil government within the confines of Louisiana; and under that bill loyal men would have presented themselves upon the floor of this House and would have represented, in my judgment, a State
loyal throughout." Now Congress must continually amend its reconstruction laws, although the original would have been sufficient, if only it had been "fairly and bona fide carried out . . . ."  

In response to the crisis, Republicans prepared once again to pass a supplementary reconstruction bill. On December 5, 1867, Ashley had proposed a comprehensive bill. It authorized the constitutional conventions to elect a provi-sional governor and a six-citizen executive committee to govern each state, with the power to remove all present (Johnson) state officers who opposed reconstruction or could not take the test oath. Moreover it revoked the authority of district commanders in the premises. Finally, it repealed the requirement under the former reconstruction laws that each constitution be ratified by an absolute majority of the registered voters.  

But when Ashley brought his bill before the House again on December 18, he agreed to let Stevens substitute a bill from the Reconstruction committee repealing the absolute majority requirement for ratification and adding authority for each State to elect congressmen in the same election at which its citizens voted on ratifying the constitution. The committee proposal also increased the number of representatives to which the southern states were entitled, but Stevens agreed to drop this last provision. Calling the previous question, Stevens refused to allow radicals to offer an amendment authorizing the conventions to organize provisional
governments, and the bill passed without Republican dissent.

The Reconstruction committee then turned to the question of how to counteract the damage being done by Johnson’s new military appointees in the South. Colfax had appointed an extremely radical Reconstruction committee, but despite this radical preponderance, Stevens alone—judging by later votes in the House—insisted on authorizing the conventions to organize provisional governments. On January 13, 1868, the number two man on the committee, Bingham, reported a more modest proposal. This prohibited the President from appointing or removing military commanders in the South and placed the duty instead upon the General of the Armies, Grant. Furthermore, it authorized Grant personally to replace any official of the Johnson state governments. Finally—and pointedly—the bill declared any interference with its provisions a "high misdemeanor." The conservatives and centrists had gone as far as they could go without impeaching the President or authorizing southern Republicans to take control of their states.

But why were many Republicans so disinclined to give control over the southern states to their allies? The answer lay in radical-conservative politics. In several of the southern states the Republican party was divided into factions. In Virginia the radicals, led by James W. Hunnicutt and John Hawxhurst, and supported by most blacks, were locked in a bitter duel with conservative Republicans, guided by
General Schofield, Governor Francis H. Pierpont, James H. Gilmer, and John Minor Botts. But by December, 1867, when the constitutional convention called pursuant to the Reconstruction acts met, the radicals had won overwhelming control of the party, despite Schofield's continued opposition. Pierpont and Botts were forced to acquiesce. In the convention itself, Schofield estimated, there were 54 radicals, 22 conservative and moderate Republicans, 12 Conservatives and 17 unreconstructed rebels. Congressional Republicans expressed grave concern that the radical Virginia convention might propose measures which would damage Republicans in the North. Republicans like Washburne—his fingers now in every pie—urged moderation. If the convention were given control of the state—and its patronage—Schofield's restraining influence would be at an end, and radicalism would reign supreme in Virginia, bringing with it black office-holding and pressure for social reform which might embarrass northern Republicans in an election year.

Similar divisions existed in Georgia, Louisiana, and Florida, with radical and conservative-center forces more evenly balanced, however. Nonetheless, many Republicans in Congress refused to risk disaster in the North by catering to their allies in the South.

Most House radicals did not share this timidity. Led by Butler, they wanted to amend the bill to give the conventions control of the state governments. But Bingham prevented
amendments by calling for the previous question. He then "graciously" yielded the floor to Butler. Acidly, Butler observed, "...[I]t is always an invidious task to argue a question after it has been virtually decided." "We are called radicals," he complained, "but by our legislation we only touch the topmost branches, never seeking to cut up the roots of all this trouble. We do not come to the trunk of the tree, much less at the root of the evil." With Democratic support, Butler succeeded in forcing a reconsideration of the main question, allowing him to move his amendment. But on the amendment itself the Democrats deserted him, and Butler lost 53-112, with over seventy Republicans opposing him. Butler abstained as the bill passed.

In the Senate the bill occasioned three weeks' debate between Democrats and Republicans, trying to make a record for the upcoming election. The endless debate wore on Republicans' nerves. Popular reaction to the "Military Dictator Bill," as Democrats labeled it, was not good. "We cannot be blind to the fact that a reaction has set in," Friedrich Hassaurek, the influential German Republican, warned Sherman. Hassaurek himself shared the feeling. "I [am]... not in favor of changing the American system of Government, merely because a certain individual happens to be in the Presidential chair," he informed Sherman bluntly. The Republicans must change their course. "We are losing ground daily. Men who have voted with us for many years, are going over to the
opposition. The train-bands and camp-followers who scent the coming storm, are leaving us by hundreds, and, if the brakes are not put on in time, not even Gen. Grant's great popularity will be able to save us next October and November." The Chicago Tribune, impatient with delay and everlasting agitation, warned, "The people demand that the reconstruction imbroglio be brought to an end, and they will not go back to fight the battle ever again, no matter how it ended." Grant too opposed the bill, and Republicans decided to abandon it. The conservative policy was no longer viable. Rather than take the politically radical step of removing Johnson, the conservatives and more conservative centrists had hedged him about with more and more restrictive laws, until these laws threatened a constitutionally radical alteration in the relations between Congress and the Executive from which many Americans recoiled.

The political situation was unravelling. Gloomily, Boutwell predicted again that Johnson and his southern allies would succeed in preventing southern blacks from voting in the next presidential election. "In February, 1869, we shall receive certificates of the election of electors who have given their votes to the candidates of the Opposition; and this country will be brought again to the extremity of civil war, or we shall be compelled to surrender . . . to the rebels, . . . who are yet struggling through their alliance with the Executive to destroy the Government." Republicans
feared they stood at the edge of disaster, not only for themselves, but for the nation. And it was all unnecessary. The nation would have been spared this "agony of strife," as Sumner called it, if only the President had remained true to his first reconstruction policy. Even as they discussed their new legislation, Republicans knew the truth of Boutwell's conviction: "I know Andrew Johnson will thwart these measures as he has thwarted others." And yet, from all their sources of information they knew the people would not support a new attempt at impeachment. There was no escape.
CHAPTER XV

IMPEACHMENT

As Republicans struggled to cope with the President's offensive in the South, Johnson continued the battle in Washington, D.C. On December 12, in compliance with the Tenure of Office act, the President sent the Senate his reasons for suspending Secretary of War Stanton. Not questioning the Senate's right to restore Stanton to his office, Johnson argued Stanton should have resigned when his opposition to the President's policy became irreconcilable and that his failure to do so and subsequent actions demonstrated Stanton's intent to embarrass the administration. He argued the necessity for confidence between a President and his immediate subordinates. He pointed out the injustice of holding an Executive responsible for acts of officers beyond his control. In all, it was a strong performance.

But of great importance for the future was the President's failure to insist that Stanton was not covered by the act. At the time he discussed the bill with the Cabinet, Johnson informed the Senate, all his advisors seemed to agree the tenure of office of Lincoln's appointees was not fixed by it. But he added that he did not recall whether the point was distinctly decided, and by conceding the Senate's jurisdiction
over the removal, abandoned that line of defense. The Senate referred the message to the Committee on Military Affairs, which spent nearly a month considering it and preparing a report.

But Johnson did not intend to acquiesce if the Senate decided adversely to his wishes. Shortly after his appointment as Secretary of War ad interim, Grant had agreed not to consent to his removal. Grant would either remain or turn the office back to the President. Johnson later claimed that he believed this would force Stanton to go into the courts to press his claim to the office, thereby offering a test of the Tenure of Office act's constitutionality. But Stanton's most recent biographer suggests Johnson was far more interested in gaining control of the Secretary of War office than in testing Congress' law. Even if Johnson did desire a court test, this does not mean that he was merely an honest statesman trying to win a legal decision against a law which he considered unconstitutional. The Tenure of Office act was part of a profound and bitter struggle over fundamental, political questions. To ask the courts to decide this struggle, in which millions of Americans passionately adhered to one side or the other, was to risk the disaster which followed the Supreme Court's Dred Scott decision under similar circumstances. Johnson and his supporters were well aware of the true nature of the question. Widespread rumors held five of the eight justices of the Supreme Court believed congressional
reconstruction unconstitutional. By appealing to these justices, Johnson hoped to win a victory against a policy which he had been unable to defeat by appealing to the popular voice. If the Court ruled the Tenure of Office act unconstitutional, Johnson would perfect his control of the army. By retaining the office, Grant would have signified his decision to support the President. If he returned the office to the President but did not retain it, Johnson could fill it with whomever he pleased and re-filled it with other friends if the Senate refused to confirm the first. When the Senate adjourned, he could appoint a supporter Secretary of War ad interim who would remain undisturbed until the Senate met again. With a loyal supporter as Secretary of War, with Grant cooperating, with more conservative military officers in the South, Johnson might prevent the ratification of the new constitutions framed under the reconstruction law and frustrate Congress' program. In light of the aggressive southern policy Johnson inaugurated after the failure of the first attempt at impeachment, there is every reason to believe this was his intention. The Supreme Court was not to be a neutral arbitor; it would be the President's weapon.

Grant could not help but understand the stakes involved. Even if he retained the secretaryship with every intention of seeing the Reconstruction acts faithfully executed, there would be nothing to prevent the President from removing him too if the court ruled the Tenure of Office act unconstitutional.
Moreover, such a course certainly would jeopardize his prospects for the Republican presidential nomination. Even if he were nominated the radicals would be more inclined than ever to bolt. Finally, Grant learned that if the court ruled that the Tenure of Office law was constitutional after all, he would be liable to a $10,000 fine and a five-year prison term. So when on January 10, 1868, the Military Affairs committee finally reported a resolution denying the Senate's advice and consent to Stanton's removal, Grant determined not to risk the consequences of resistance.

On January 11 Grant informed the President that he had decided that the law left him no alternative but to relinquish his office to Stanton if the Senate passed the committee's resolution. Johnson now offered Grant the argument he had not offered the Senate. He had not suspended Stanton under the provisions of the Tenure of Office law, he insisted, but under his presidential powers under the Constitution. He had appointed Grant by virtue of the same powers and not pursuant to the congressional law. In the heat of Johnson's personal plea that Grant honor his earlier commitment, the general must have tried to hedge. Johnson thought Grant had agreed. Grant later denied it, but there is no question as to the sincerity of Johnson's conviction that the general had agreed to fulfill the role he had assigned him. But upon further consideration Grant became more and more dissatisfied with his position.
Hoping to ease the situation Grant and William T. Sherman, in Washington to help recodify the army's war regulations, decided to suggest that the President name his old supporter, Jacob D. Cox, to replace Stanton. This, Sherman believed, was "a mode practicable & easy to get rid of Stanton forever." Cox, though one of the most conservative of Republicans, had not deserted the party. Radicals might have been disgruntled, but conservative and moderate Republicans would likely accede to the compromise, confident Cox would enforce the law. But when Sherman proposed his idea to Johnson, he found the President uninterested. He and Grant now realized that Johnson was intent on something more than ridding himself of an odious subordinate, that, as Sherman wrote, "there must be something behind the scenes."

The Senate considered the resolution to refuse its consent to Stanton's removal January 11 and 13. As a whole the Republicans were determined to sustain the Secretary of War. But not all were zealous. Edmund G. Ross, the Kansas Senator who had replaced Lane after his suicide, voted with the Democrats and Johnson Conservatives to amend the resolution to agree to Stanton's removal. Frelinghuysen, Harlan, Henderson, and Van Winkle, all of whom seem to have been present, did not vote. Henderson, Van Winkle, and Frelinghuysen had opposed making the Tenure of Office act applicable to members of the Cabinet. Ross had been absent. But the President himself seemed to concede that the bill applied to Stanton, so
any nascent opposition was blunted. Nonetheless, Sherman, who had insisted when the bill passed that Department heads were exempt from its operation, Grimes, Henderson, Ross, Sprague, and Van Winkle all abstained on the final vote. In this number were four of the seven Republicans who would vote to acquit Andrew Johnson of high crimes and misdemeanors after he removed Stanton in violation of the law. But two other Republicans who would vote for acquittal, Fessenden and Trumbull, were among Stanton's most vigorous defenders.\footnote{7}

The next day Grant turned the keys to the Secretary of War's office over to Stanton. Furious, Johnson accused the general of double-dealing. A bitter wrangle ensued which wedded Grant firmly and finally to the Republicans and reassured them of his position.\footnote{8} Johnson now turned to Sherman. The President was determined to remove Stanton in violation of the Tenure of Office act. He intended either to force him out of the War Office building and order other government officials to ignore him or to remove him and send Sherman's name to the Senate for confirmation. At the same time, Johnson determined to take the ominous step of creating a new army department, the Army of the Atlantic, with headquarters in Washington. Sherman would be placed in command. This, he told Welles, was in preparation for the crisis when it came. He agreed with his Secretary of the Navy that if an order went out for his arrest, as part of a "Radical" plot to seize the government, Grant would take Congress' part. With Sherman the
head of an army department centered in Washington, Johnson believed he too would have access to military power. Sherman resisted the appointment, but on Feb. 6 Johnson ordered Grant to issue an order creating the department and giving command to Sherman. At the same time he acted to promote Sherman to General of the Army—Grant's rank—sending the nomination to the Senate February 13. "This would set some of them thinking," his private secretary quoted the President as saying.

Sherman was thunder-struck. He wrote the President that he did not want the command and hinted at his resignation. He telegraphed his brother to oppose confirmation of his new rank in the Senate. "The President would make use of me to beget violence...", he wrote. "He has no right to use us for such purposes, though he is Commander-in-Chief." On February 19, Johnson acceded to Sherman's pleas and rescinded his transfer to the new command. Despite the apparent collapse of his plans, however, on February 21 Johnson finally ordered Stanton's removal. He had been "very determined to pursue an aggressive course," his secretary had written. He would follow it to the bitter end.

The message appointing a new Secretary of War ad interim in place of Stanton (the appointee was General Lorenzo Thomas, the nondescript Adjutant General of the Army) arrived at the Senate while it was debating the bill to repeal the absolute majority requirement for ratifying new constitutions in the southern states. Chandler had casually gone to President
pro tem Wade's table to read the incoming message. When he realized what it meant he dropped the papers and rushed to Ramsey, Howard, and Sumner. Senators ran up to Wade's place to see what had happened. As word spread through the chamber, representatives who had been on the floor rushed to their side of the Capitol to inform their colleagues, who had just received a message from Stanton telling them the situation. Thayer, Cameron, Chandler, and Cattell hurried to Stanton's offices to urge him to hold on. Representatives broke into agitated groups—Wilson, Bingham, Williams, Paine, and Pike at one end of the House and Blaine, Butler, Dawes, Lawrence, and others at the other. Covode rummaged through papers on his desk and found an old impeachment resolution. He jumped up to move its adoption, but other representatives shouted him down. On February 10 the House had transferred the impeachment question from the Judiciary to the Reconstruction committee, where Bingham with the support of the majority of Republicans and General Grant had smothered the question. Now Washburne moved the reference of Stanton's message to the committee, and Pike shouted, "Now all in favor of impeachment stand up." All the Republicans rose. Bingham was fuming. The President had not left well enough alone. He had revived "a contest which can exert no other than evil influence upon the welfare of the country," he said bitterly.

At the war office, Stanton did not know what to do. Radicals like Thayer, Chandler, Sumner, Yates, and Boutwell
were urging him to stay. Sumner sent a one-word telegram: "Stick." But if he were to risk defiance Stanton wanted the support of the united party. He sent his son, Edwin L. Stanton, to get the advice of the conservatives. Edmunds told him "Fessenden, Frelinghuysen, and all to whom he has spoken say you ought to hold on to the point of expulsion until the Senate acts." So Stanton determined to stay.

As Stanton waited in the war office, the Senate went into executive session. For seven hours Senators argued over what to do. Edmunds proposed a resolution simply disapproving the President's action, but other Senators moved amendments. Chandler tried to amend Edmunds' proposition by adding a provision that Johnson's act was disapproved "as a violation of the rights of the Senate and unauthorized by law." Yates suggested a resolution that Stanton's removal and the appointment of a replacement "is simple resistance to law and revolutionary in character . . . ." Both suggestions were defeated. Instead the Republicans turned to a substitute offered by Henry Wilson. Not as violent as Yates' proposal, Wilson's still averred "That we do not concur in the action of the President . . . ; that we deny the right of the President so to act, under the existing laws, without the consent of the Senate." Its effect if passed was clear. The House had refused to impeach Andrew Johnson in December at least in part because many representatives did not believe he had committed a specific violation of law; the Senate--the body
before an impeachment would be tried—would now declare its solemn judgment that he had. Fessenden, Edmunds, and probably others fought the resolution with all their resources. But all the great Senator's influence could not deter the outcome. The case seemed too clear, the emergency too great. Wilson's resolution passed 28-6. Edmunds was the only Republican to vote against it. But a significant number of Republicans did not vote. These were mainly conservatives—Conness, Corbett, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Morgan, and Sherman. But other conservatives had voted. Van Winkle and Trumbull voted with the majority. So did Edmund G. Ross. All three would change their minds. But that night, when Illinois representatives Shelby Moore Cullom and Burton C. Cook spoke to Trumbull, he was earnest for impeachment. In Fessenden's opinion, the worst had happened. The Senate had passed a resolution "upon the strength of which Mr. Johnson will probably be impeached—and that will end us," he prophesized gloomily. "... I am utterly discouraged and out of spirits," he confessed. "Either I am very stupid, or my friends are acting like fools, and hurrying us to destruction." But the radicals' anxiety was mixed with anticipation. The President had revived the radicals' sagging hopes for securing reconstruction through his removal. "Even the weak kneed Republicans may find it impossible not to stand up to the work," Schenck wrote hopefully. Except for a few self-characterized "grumblers" (Fessenden so described himself and
Grimes), Johnson had succeeded in uniting a party which had been on the verge of disruption. Welles knew it. "A little skillful management would have made a permanent break in that party," he wrote shortly afterwards. "But the President had no tact himself to affect it, he consulted with no others, the opportunity passed away, and by a final hasty move, without preparation, without advising with anybody, he took a step which consolidated the Radicals of every stripe . . . ."

The next day, February 22, the Reconstruction committee reported an impeachment resolution to the House of Representatives. Every Republican member endorsed it, including both Bingham and Stevens. Citing as evidence only Johnson's order removing Stanton and his order to Thomas to take his place, the committee proposed "That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors in office." To the Democrats, impeachment was the culmination of radical efforts. It had been defeated before, but now "a minority of the party on the other side, forcing its influence and power upon a majority of a committee of this House, has at last succeeded in compelling its party to approach the House itself in a united . . . form to demand . . . impeachment . . . ." But they completely misconstrued the situation. The radicals could not impeach the President alone. The President himself made it possible, and the conservatives were leading the movement. By his decision to disregard the laws Congress had passed to circumscribe his power to obstruct
reconstruction, Johnson left them no choice. Conservative Republicans could bear no more. "... I have been among those who have hesitated long before resorting to this measure," the arch-conservative Austin Blair conceded. "I thought it better, as I know many other persons did, that we should bear much and suffer very much rather than resort to this extreme measure. I had constantly hoped that we had got to the end of the usurpations and the defiance which have been hurled at Congress from time to time by the President of the United States; but at last I am convinced, as I believe all at least upon this side are, that there is to be no end of this course of conduct." The President must be removed.

James F. Wilson, who had led the battle against the first impeachment, bitterly agreed. "Guided by a sincere desire to pass this cup from our lips, determined not to drink it if escape were not cut off by the presence of a palpable duty, we at last find ourselves compelled to take its very dregs."

Republicans looked to the result with confidence. "I am glad ... that we have delayed thus long," Blair averred. "I was not willing, and should not be now, that this measure should be undertaken upon any doubtful case. I desired that we should have a complete and perfectly clear case upon which to present the President ... for trial, so that there would be no honest man in the United States that could look upon this case and not say that there was abundant reason for what the House of Representatives was doing." For the President
had acted in total defiance of Congress. He had not argued that the Tenure of Office act did not apply to Stanton. He had not denied Congress' right to advise and consent to Stanton's removal when he submitted his reasons for his action. He had suspended Stanton according to the letter of the Tenure of Office law; now he defied the Senate's decision. It was a challenge pure and simple. "...[T]here is no question of law involved at all," Blair insisted. "The President has openly and clearly violated the law. He has thrown down the gauntlet to Congress, and says to us as plainly as words can speak it: 'Try this issue now betwixt me and you; either you go to the wall or I do.' And there is nothing left to Congress but to take it up."

Yet the case was not so clearcut as Republicans may have believed. Lawyers know that an argument can be made on two sides of almost any question. The Democrats proceeded to make one. The President had as much authority as Congress to decide if a law is constitutional, they insisted. "...[T]he President of the United States has a primary right to judge of the Constitution of the United States and the laws passed under the Constitution, subject to all the penalties to which he may be liable if he violates any law when that law is adjudged to be constitutional by the Supreme Court of the United States." If the President can be impeached for violating the Tenure of Office law, the Democrats argued, then
Congress could pass any unconstitutional law, "and you then impeach the President because he wishes to test the constitutionality of your rule."

Democrats argued that the Tenure of Office act did not apply to Stanton. The Senate had refused to concur in the House's amendment subjecting Cabinet officers to the bill. The result had been a compromise which had provided that Cabinet members would be subject to the act for the term of the President who appointed them and one month thereafter. Democrats insisted that this meant Johnson's Cabinet was not covered. Johnson could have removed his Department heads any time since one month after President Lincoln died. Since Stanton had never been reappointed by President Johnson, he had merely been holding over at the will of the President. The only historian to have delved into the impeachment intensively has concluded that the Democrats were correct in their analysis. James G. Blaine, who voted for impeachment, reached the same conclusion twenty years later.

But the situation was not so simple. When Senators had met representatives in conference committee to reconcile their differences on the bill, they had found their counterparts, in Sherman's words, "very tenacious." In order to save the bill, the Senate members agreed to the amendment requiring that the Senate advise and consent to the removal of Cabinet officers during the term of the President who appointed them and one month thereafter. The senior House member of the
conference committee informed his colleagues that the amendment "is in fact an acceptance by the Senate of the position taken by the House."

In the Senate the chairman of the conference committee, George H. Williams, explained the amendment was designed to vitiate the objection that by refusing to consent to the removal of Cabinet members, the Senate might force an incoming President to retain his predecessor's Cabinet against his will. This was the entire purpose of the amendment. He and Sherman, the other Republican Senator on the conference committee, agreed that the protected term of Cabinet members would end under the bill one month after the President who appointed them left office. "If the President dies the Cabinet goes out; if the President is removed for cause by impeachment the Cabinet goes out; at the expiration of the term of the President's office the Cabinet goes out."

Left undiscussed was the question of the status of Cabinet members who the new President retained more than one month after the expiration of the term. Were they merely holding over? Could the new President remove them at will two years after the end of his predecessor's term?

After Sherman and Williams had made their explanations, Doolittle had insisted that by the terms of the bill Johnson's Cabinet was not covered. Sherman agreed, and Howe had followed by expressing sorrow the Senate had not concurred in the House's amendment. He too believed Johnson's Cabinet was not covered. No other Senator discussed the matter before
the Senator concurred in the conference committee report. So when the Tenure of Office bill passed, the meaning of the provision in question was hazy. The House believed the Senate had acceded to its demands. Two Republican Senators insisted on a different interpretation and the Senate, unaware of the House's interpretation, seemed to acquiesce in those Senators' opinions. But the President himself had not insisted his Cabinet was excluded and, by proceeding under the bill to suspend Stanton, inclined the Senate to accept the House position. The debate over the resolution denying Johnson's right to remove Stanton without the Senate's advise and consent was not made public, but Senators must have discussed the differing interpretations of the bill's applicability, and the final vote clearly shows that by this time they concluded the bill protected Stanton after all. By the terms of the amendment, Stanton's term as Secretary of War had ceased one month after President Lincoln's assassination. If he continued to act as Secretary of War after that time, it was because of a virtual reappointment by the new President.

The Republicans gave the Democratic arguments short shrift. The President had acted in conformity with the Tenure of Office act. He had waited for the Senate to express an opinion. It had. He could not now insist that he never believed Stanton to be protected by the bill; he could not now insist he had not intended to violate the law.

Furthermore, the President had not only violated the
Tenure of Office act. He had appointed Lorenzo Thomas Secretary of War ad interim to replace Stanton before he was confirmed by the Senate. This action of itself violated the Constitution. The President could replace an officer ad interim while the Senate was not in session, but while the Senate sat all appointees must be confirmed before taking office, Republicans argued.

Even if the Democrats were right, and the President could disobey a law to challenge its constitutionality in the courts, he could not claim that as a defense. "Suppose the courts should hold the act to be constitutional, would the fact that his intent was to have that question decided be a good plea to an indictment for a violation of its provisions? ... Whoever acts in the way and for the purpose suggested does so at his peril," Wilson insisted. If the court decided the law unconstitutional, the offender would be acquitted. If not, he would be liable to punishment. "... [W]e will gratify his desire by carrying his case to the highest court known to the Constitution of the Republic," Wilson affirmed, "the high court of impeachment." They would decide the constitutionality of the law. And since the Senate had passed the law over the President's veto in the first place, it was not hard to foresee its decision as to the law's constitutionality.

Moreover, Republicans denied the President's right to disobey a law merely because he believed it unconstitutional, even to get the question into the courts. This was the
prerogative of the citizen; he can challenge a law and risk the consequences. But this is not the prerogative of the office-holder. When the President accepts office, "he merges his individuality into that official creature which binds itself by an oath as an executive officer to do that which, as a mere individual, he may not believe to be just, right or constitutional. Such an acceptance removes him from the sphere of the right of private judgment to the plane of the public officer, and binds him to observe the law, his judgment as an individual to the contrary notwithstanding," James F. Wilson argued. If an office holder believes he can not in good faith execute the law as his duty requires, he must resign. To hold otherwise would be to give the President absolute power to decide which laws to execute and which to ignore. The implications for the reconstruction laws were clear. Bingham, the House's leading conservative, admitted, "I would be willing to delay indefinitely . . . the final action of the House upon this question, if I were fully assured that the President from this time forth would have respect to the obligations of law, and not undertake to usurp the authority of this Government in defiance of the people's Constitution and the people's laws. But . . . I have had evidence enough in the transaction . . . to satisfy me that the President of the United States is so bent upon his own destruction, or upon the destruction of the peace of this great country, that he is capable of rushing to any extreme of madness whatever.
"... I am precluded from the conclusion that he meant anything else than to defy your power and say to you... 'Whatever laws you have passed or whatever laws you may pass I will disregard them on my own judgment whenever I see fit as being not in pursuance of the Constitution of the United States, and let you do your worst.'"

The legal question melted into the political one. If the President's legal position were upheld, Republicans feared, he would use it to overthrow Congress' laws on the political question of reconstruction. As a result, no matter how grossly the President had violated the laws, his trial on impeachment could not help but acquire a political cast. This was one of the two great weaknesses of the Republican position. The other lay in the nature of the law the President had violated.

House Republicans had not been aware of how committed some of their Senate counterparts were to the opinion that the Tenure of Office bill did not cover Johnson's Cabinet. The House members of the conference committee which had fashioned the compromise amendment had assured them the Senate had given in. They knew the President had not challenged the House interpretation, that he had acted upon it by submitting Stanton's removal to the Senate for its consent, and that the Senate had acted upon it by refusing its consent. House Republicans did not know upon which fragile ground they stood.

Republicans would have recognized another problem arising out of the nature of the Tenure of Office law had they been
privity to the conclusion at which John Norton Pomeroy, the
great constitutional analyst, arrived at almost the same time
impeachment proceedings commenced. Pomeroy agreed totally
with the radical position on impeachment. In a brilliant dis-
cussion he would demonstrate that impeachment was a political
process and that no other conclusion was tenable. The case
became all the more certain when the President actually violated
a law or refused to carry it out. But, he added, "To the
general rule stated in the foregoing paragraphs, there are, I
think, two important exceptions. A statute may be passed of
such a form and character as to be addressed directly to the
President; it presumes to regulate his official action; no
private person and no subordinate officer is affected by its
provisions. If the Chief Magistrate enforces this law, no
question as to its validity can be raised . . . . It is only
by refusal to execute such a statute that the President can
possibly create an issue between himself and Congress. In such
a case the President, unless he chooses to acquiesce, may
plainly exercise an independent judgment, and act upon his own
separate convictions." And he illustrated his proposition
by citing the Tenure of Office law.

Despite their unanimous belief that the Senate would con-
vict the President for his violation of the Tenure of Office
act, many Republicans were loath to present such a narrow
impeachment. The Republicans who had voted for impeachment
in December believed subsequent events had vindicated their
course, and they again argued their interpretation of the law. Radicals like Kelley, Ashley, Stevens, and Sidney Clarke brought up Johnson's offenses prior to Stanton's removal and included them in their charges. Other radicals, like Logan and Butler, brought Johnson's earlier activities in indirectly, arguing that these proved the President's criminal intent in removing the Secretary of War. A few of the anti-impeachers of December conceded that they had voted against impeachment out of expediency and that the President was liable for his obstructionism before 1868. But nearly all of the early opponents of impeachment adhered to the positions they had then assumed. Bingham, Blair, Wilson, Poland, Spalding, and others all based their charges on Johnson's violation of law alone. That offense had been necessary for impeachment; it would be sufficient for conviction.

The House voted on the impeachment resolution February 24. It passed overwhelmingly, every Republican present voting for it. Of the fifteen absentees, ten were declared in favor. Colfax, carefully balancing his committees between conservatives and radicals, appointed Stevens and Bingham to inform the Senate of the House's action. This would demonstrate to the Senators the House Republicans' complete unanimity.

To the committee to frame the specific articles of impeachment, the speaker named Boutwell, Stevens, Bingham, Wilson, Logan, Julian, and Hamilton Ward. This committee was weighted in favor of the radicals, but still included the two most important
opponents of impeachment in December, Wilson and Bingham.

Radical-conservative differences on impeachment came into the open once more as the committee reported its impeachment articles. Despite the radical preponderance on the committee, the members had refused to follow Stevens' lead in framing the articles, accusing the President only of crimes connected to Stanton's removal. Disappointed, the ailing Stevens wrote Butler, "... [T]he Committee are likely to present no articles having any real vigor in them." Too weak to do the job himself, he suggested that Butler write several more, embracing broader grounds than the committee's, which would be "worth convicting on." The committee reported its articles February 29, and after two days of speeches pro and con, Butler gained an opportunity to offer another. The proposed article declared the President, "designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States ..., to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof ... and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted ..." As specific instances, Butler cited the President's speeches made during the "swing around the circle." Butler's article was clearly based on the radical conception of impeachable
"high crimes and misdemeanors." It asserted no violation of law, but rather a political offense. By a vote of 48 to 74 the House rejected it. Without Republican dissent, the House then approved the committee's articles.

As the House proceeded to select the men who would manage the impeachment, a new crisis erupted. The names had been decided upon in caucus, and when the ticket was printed Stevens and Butler preceded Bingham in order of preference. The implication was that Stevens would chair the committee, with Butler often replacing him due to his illness. Bingham was outraged. "I'll be damned if I serve under Butler," he shouted. "It is no use to argue, gentlemen, I won't do it." Boutwell tried to calm him but to no avail, and the radicals gave in, agreeing the committee itself would name a chairman. Of the seven men nominated by the caucus, Bingham received the most votes. Serving with him would be Boutwell, Wilson, Butler, Thomas Williams, Logan, and Stevens.

In committee Stevens, Logan, and Butler voted to name Boutwell chairman, with Bingham receiving the votes of Wilson and Williams. The angry Bingham again threatened to quit the committee, and to the dismay of his radical colleagues, Boutwell acquiesced, resigning the chair and nominating Bingham in his place. He knew impeachment could not succeed if the leading conservative in the House left the committee. With this decided, Butler renewed his efforts to broaden the grounds of the impeachment. With Wilson alone registering
opposition, Butler persuaded the managers to incorporate his proposed articles into the impeachment.

Butler reported the new article to the House next day, where it met the opposition of representatives who argued it charged no indictable crime. Butler retorted that he had supposed the doctrine that impeachment lay only for indictable crime "was dead and buried--I knew it stunk." The House agreed with Butler by an 87 to 43 vote, with eleven Republicans voting with the opposition and seven apparently present abstaining. The House then adopted another article, without Republican opposition, which incorporated the position several radicals had taken in the debate a week earlier. This article described the earlier acts of the President as demonstrating his criminal intent when he removed Stanton. Johnson had conspired to remove Stanton to prevent the execution of the law requiring all military orders to be issued through the office of the General of the Army and to obstruct execution of the Reconstruction acts. This was a compromise resolution. It alleged an indictable crime, but also listed non-indictable offenses which taken together with the crime, constituted a long-term criminal conspiracy. The two charges became the tenth and eleventh articles.

As the House framed its articles of impeachment, the Senate fashioned rules of procedure for the trial. Wade appointed Howard, Trumbull, Conkling, Edmonds, Morton, Pomeroy, and Reverdy Johnson a committee to consider the question and
report rules to the Senate. Just as in the House, Wade had carefully balanced radical and conservative sentiment on the committee.

The committee reported on February 29, proposing twenty-four rules to govern the trial. When the Senate considered them, some important problems came to the fore. The first was a disagreement as to the nature of the Senate when trying an impeachment. The original rules described the Senate during the trial as a "high court of impeachment." It would "resolve itself into a high court of impeachment," to hear evidence and arguments. Before the Senate could resume legislative duties, it would have to adjourn the "high court" and resolve itself once more into the Senate. Many Senators, led by Conkling and Morton, who obviously had objected to his in committee, objected to such procedure. They feared its implications. Surprisingly, no senator argued that the Senate should try the impeachment in a political capacity. All agreed impeachment was a judicial proceeding. Despite his opinions Sumner remained silent. What Senators did fear was that Chief Justice Chase, who would preside over the trial, might claim a vote as a member of the "high court." If the Senate retained its normal character while sitting in judgment, the Chief Justice could make no such claim, as he was not a member of the Senate. After two days of confusing debate, the Senate on a key vote agreed to Conkling's objections. Chase's position was unknown at the time, although
some Republicans suspected he opposed conviction. The division, therefore, did not run along conservative-radical lines. After the vote, the Senate agreed to eliminate the term "high court of impeachment" in the rules wherever it occurred.

Closely related to the nature of the proceedings was the question of the Chief Justice's role. The original rules authorized Chase to rule on all questions of law and evidence, his rulings to stand as the judgment of the "court" unless overruled by a majority vote. Senator Charles D. Drake opposed this provision and moved to strike it. Drake feared the prestige of a ruling by the Chief Justice of the United States on a matter of law or procedure. "It is not proper that the judgment of the Senate upon questions of law, which it must ultimately decide, . . . should be warped, in any degree affected by the previous announcement of an opinion upon that question by so high a judicial officer as the Chief Justice." Howard proposed instead to substitute a more ambiguous rule: "The Presiding Officer may in the first instance submit to the Senate, without a division, all questions of evidence and incidental questions; but the same on demand of one fifth of the members present, shall be decided by yeas and nays." Drake accepted this modification, indicating his conviction that this proposition meant all questions of law would have to be put to the Senators for decision, but on its face Howard's amendment was unclear on that point. The Senate accepted the modified proposition on a nonpartisan division.
A final source of controversy among the Senators was the proper limitation of time allotted to managers and counsel. The original rule from the special committee allowed each side one hour to argue preliminary and interlocutory questions. Senator Frederick T. Frelinghuysen proposed to allow two hours. Howard objected strenuously. Republicans were in a difficult situation. For political reasons speed was of the utmost importance. A long period of uncertainty would allow time for reflection and reaction among conservative Republicans, especially businessmen interested in stability. On the other hand, Republicans dare not move so quickly as to compromise the appearance of a fair trial. To a certain degree the two considerations were contradictory, and therefore more radical Senators inclined to speed at the expense of impartiality. "... [If I can prevail," Sumner informed Lieber, the trial "shall proceed ... without intermission, to the end." Many believed the proceedings would take three weeks, but Sumner hoped to arrive at a verdict within ten days of its commencement.

Howard was not in such haste, but he objected to allowing two hours for each point. He pointed to the issue of the jurisdiction of the Senate sitting without southern members. "Why, sir, an ingenious counselor could spend several days, not to say several weeks, in discussing that question." On this question, the Senate did display its attitude towards the imperatives of impeachment, and the result should have
sobered those who believed in the certainty of conviction. Frelinghuysen's proposal lost by only four votes, 20 to 24, with eleven Republicans joining the Democrats and Johnson Conservatives.

Senate passage of the rules proposed by the special committee as amended did not settle the issues raised, however. To the dismay of radicals, they came up again during the trial and were settled in a direction contrary to radicals' desires. Chase undermined the first decision--the status of Senate during the trial--by clever maneuvering. The Senate had decided that it did not become a distinct body while sitting in judgment. It did not become a "high court of impeachment." But on March 5, as Chase was administering an oath of affirmation to the Senators to do impartial justice, the Democrats objected to Wade's sitting as part of the "court," since he would become President were Johnson convicted. He could not do impartial justice. The more conservative Republicans suggested that such an objection must come from the President's counsel rather than the Senate itself, but more radical members suggested a different justification for swearing Wade. The Senate when sitting on trial, Morton insisted, is still the Senate and Wade was a Senator. He might be disqualified if the Senate became a court, but it did not. The Democrats proceeded to argue the question at length.

Finally Grimes moved an adjournment of the "court."
Howard objected that the Senate had decided that it did not resolve into a court when discussing impeachment. Anthony suggested "the proper motion would be that the Senate proceed to the consideration of legislative business." But the Chief Justice retorted, "The court must first adjourn," and he put the question on adjournment, to which the Senate agreed. From that day, the "court" always adjourned before resolving once more into the Senate.

The next day Howard, realizing the Democrats were using the issue of Wade's eligibility to stall the proceedings, raised a point of order to cut off debate. He pointed out that the rules of procedure adopted by the Senate required the presiding officer to administer the oath and did not provide for challenge. He objected that the motions to disqualify or delay Wade's swearing in were therefore out of order. But after some discussion Chase ruled that the rules adopted by the Senate would apply only after the Senate had organized for impeachment and that it had not yet done so. In other words, the Senate was indeed a distinct body when considering impeachment. Drake immediately appealed the ruling, but the Senate sustained the Chief Justice, 24 to 20. Fifteen Republicans had joined the Democrats and Conservatives to support Chase's interpretation. The Chief Justice administered his coup de grâce after the Democrats withdrew their objections to Wade's participation. He announced to the Senate that in his judgment, "the Senate is now organized as a distinct body
from the Senate sitting in its legislative capacity. . . . Under these circumstances, the Chair conceives that rules adopted by the Senate in its legislative capacity are not rules for the government of the Senate sitting for the trial of an impeachment, unless they be also adopted by that body." Chase announced he wanted to receive the opinion of the Senate on this issue, but he framed the question in an ambiguous way. "Senators," he said, "you who think that the rules of proceeding adopted on the 2d of March . . . shall be considered the rules of proceeding in this body will say 'ay'; contrary opinion, 'no.'" There was no way to vote no. If a Senator believed the Senate sitting on impeachment was not distinguished from the Senate discussing legislation, then the rules adopted March 2 were, of course, binding on the Senate now. Therefore he would have to vote 'ay.' If another Senator agreed with the Chief Justice, then the rules had to be readopted. To readopt them, he too would vote 'ay.' Chase could not lose. He interpreted the Senate vote as endorsing his position, effectively destroying the contrary opinion that the Senate was the same body in all its capacities. This opened the way for Chase to cast the deciding vote in case of a tie on points of law and perhaps would allow him to vote on the articles themselves if his vote would decide conviction or acquittal, although that would be a much more dubious proposition, as traditionally the presiding officer votes only in the case of an actual tie. In the case of conviction on
on impeachment, two thirds of the Senators must be voting for removal in order to render the presiding officer's the deciding vote.

The next step in undermining the Senate's original rules regarding the position of the Chief Justice came as the trial began. The rule regarding the Chief Justice's right to decide points of law and procedure preliminary to a Senate vote had been equivocal. The Senate had stricken a provision granting undoubted authority to Chase to make those decisions but had replaced it with the unclear provision discussed earlier (see p. 471). Now Chase stated his decision (which he may or may not have been authorized to state in the first place, depending on the interpretation given the rule) that the rule did allow him to make preliminary determinations on points of law, particularly upon objections to evidence. Drake appealed the decision, but Chase ruled him out of order. Only the managers for the House or the counsel for the President could appeal, he insisted. The managers promptly did so. "We have been too long in parliamentary and other bodies not to know how much disadvantage it is to be put in that position—the position... of appealing from the ruling of the presiding officer of the Senate," Butler observed. The ruling would endanger the House's case for another reason. The managers could raise the point of law, but once the Chief Justice decided it his decision could be appealed only by a Senator. The managers could not appeal it themselves. So unless a
Senator did appeal, the House managers could not debate the point at issue in an effort to change the ruling. As there was no court of appeal to correct an error, this enforced silence might be critical and a mistake irreparable. Bingham and Boutwell endorsed Butler's protest in an effort to demonstrate to conservative Senators that this was not the opinion of the most radical manager alone. Senator Wilson then moved that the Senate retire for consultation, but this immediately raised a new question, for on this motion the Senate divided 25 to 25, and Chase took immediate advantage of this to vote in the affirmative, breaking the tie and asserting his right to a casting vote.

In the critical conference which followed, Sherman proposed an order declaring all questions other than those of order must be submitted to the Senate, but a motion by Henderson to postpone Sherman's proposition passed 32 to 18. Henderson wrote years later that he felt the impeachment proceedings were "a monstrosity." That conviction, he wrote, was shared by "several of the lawyers in that body . . . , for the Senate was to act both as judge and jury." Henderson determined to "separate the jurisdiction of the jury from that of the judge . . . . I wanted a judge, preferably the Chief Justice, to decide the judicial points, as the Senate was like a mob, deciding everything for themselves." 59

To reach his objective, Henderson proposed a resolution declaring the presiding officer's decision the judgment of the
Senate unless a Senator asked for a formal vote. Sumner moved to substitute a declaration that the Chief Justice "is not a member of the Senate, and has no authority, under the Constitution, to vote on any question during the trial, and he can pronounce decision only as the organ of the Senate, with its assent. But the Senate defeated Sumner's amendment, 26 to 22, and a similar one by Drake, 20 to 30. The Senators then adopted Henderson's proposal 31 to 19, nineteen Republicans joining the Democrats and Conservatives. The next day the Senate refused to declare that Chase had cast his tie-breaking vote the previous day without authority. The conservative position of the duties and nature of the Senate during an impeachment had been accepted. The Senate was a court; the Chief Justice was a member of it. Implicitly, the impeachment was of a judicial nature, to be tried according to the forms of law and not by an essentially political tribunal.

The impeachment trial also would progress more slowly than many Republicans had hoped. The Senate summoned the President to answer the House's charges March 13. According to the rules adopted by the Senate, the President or his counsel were to be prepared with their answer. If they did not appear or failed to file an answer, an automatic plea of not guilty was to be recorded and the trial begin. But instead of meeting the Senate requirement, the defense lawyers asked forty days to prepare the President's answer, pointing
out more time had been granted in earlier impeachments.

"The managers appeared at the bar of the Senate impressed with the belief that the rule meant precisely what it says," Bingham argued pointedly. The defense argued that a requirement to appear and answer never meant the defendant had to answer the bill the same day. But manager Wilson pointed to the difference in the rule's wording, that it went so far as to provide for a constructive plea if the defense were not ready. But the President's lawyers hit the managers and the Senate in their weakest spot. "A case like this, Mr. Chief Justice, in which the President of the United States is arraigned upon an impeachment presented by the House of Representatives, a case of the greatest magnitude we have ever had, is, as to time, to be treated as if it were a case before a police court, to be put through with railroad speed on the first day the criminal appears." Henry Stanbery decried.

He erected the dichotomy for the Senators: speed or the appearance of a fair trial.

Bingham pleaded with the Senators to adhere to their own rule, but they were not disposed to do so. After a consultation, the Senate agreed to require the respondents to file an answer to the charges March 23, a delay of ten days. The managers then asked the Senate to authorize the trial to proceed immediately after the managers replied to the defense's answer, but the Senate refused by a vote of 25 to 26, sixteen Republicans joining the Democrats and Conservatives. But
the Senate then reversed itself, authorizing the trial to begin immediately after the managers' reply "unless otherwise ordered by the Senate for cause shown." When the President's counsel, after answering the House charges on March 23, asked for a thirty-day delay of the actual trial, the Senate refused to agree, the Republicans unanimous in denying the request.

Trying to speed the trial the House adopted a short reply to the President's answer and presented it the next day. But now Senator Reverdy Johnson moved a ten day delay in the trial. Sumner demanded the Senate adhere to its own rule, but again the radicals were overruled, and in consultation the Senate agreed to a one week delay—the trial to begin March 30. When the trial began, over one month had elapsed since the President had challenged Congress with Stanton's removal.

Throughout the trial radical attempts to speed the proceedings failed. Until April 17 the Senate heard the impeachment proceedings from noon until about 5 o'clock in the afternoon. The pattern was established early, on a roll-call vote April 2. The radicals had resisted Doolittle's motion to adjourn, but the Chief Justice broke the tie vote. The radicals did not challenge the 5 o'clock adjournment again until April 16, when Sumner tried but failed to get even enough support to require a record vote. The same day Sumner proposed a new order that the Senate sit in trial from
10:00 a.m. to 6:00 p.m. The next day the Senate refused to adopt Sumner's order, only thirteen Republicans favoring it. Instead the Senators agreed to meet at 11:00 a.m., leaving the adjournment time undetermined. Implicitly, this meant the Senate would continue to adjourn at 5 o'clock. One week later, the Senate moved its meeting time back to noon, on the motion of Grimes, who all knew now opposed conviction. Only thirteen Republicans refused to accede. Radicals made one more abortive attempt to pick up the trial's pace. On April 30 they tried to persuade the Senators to sit through night sessions. Again they failed.

Sumner had hoped for a trial of ten days; instead it had lasted five weeks. The entire proceeding had continued for over two and a half months before the Senate even approached a vote on the final questions. This was the result not only of Democratic delaying tactics. As Garfield wrote on April 28, "This trial has developed, in the most remarkable manner, the insane love of speaking among public men. . . . [W]e have been wading knee deep in words, words, words . . . and are but little more than half across the turbid stream. I verily believe there are fierce impeachers here, who, if the alternative of conviction of the President, coupled with their silence; and an unlimited opportunity to talk, coupled with his certain acquittal, were before them would instantly decide to speak. . . ." 70

The effects of this were to become clear. It would give
time for a reaction to set in. Hard money and low tariff
men would grow more and more fearful of a Wade administration.
The President would have time to allay fears of his intentions
and reach some sort of an accommodation with Republican con-
servatives. But despite these votes on procedural matters,
few doubted that the President would be convicted in the end.
As Ben Perley Poore wrote, "A Senator may have desired to
elevate the trial above the proceedings in a Magistrate's
Court, and yet have no desire to shield the great criminal."
CHAPTER XVI
TRIAL

Most historians have interpreted the attempt to remove President Johnson as blatantly political, insupportable in law, a blunder from which the nation was saved by seven noble Republican Senators who would not succumb to the political pressure around them. This is true even of those historians who have begun to recognize the circumstances in which impeachment took place and have debunked the idea that the President was an innocent victim unable any longer to disrupt the "Radical" program. But such a view is na"{i}ve in the extreme.

Extra-legal considerations did play a large part in the impeachment proceedings. But these considerations did not weigh only upon the Republicans who voted for conviction. It goes almost without saying that under no circumstances would the Democrats and Johnson Conservatives have voted to remove the President and turn the office over to the Republicans. In fact they were more consistently antipathetic to the entire proceeding than even the most hostile of the Republicans (see Chart No. 31). If one argues Johnson's conviction would have resulted from votes motivated by political considerations, one must concede that the same considerations secured his acquittal.

Moreover, not all the seven Republican hold-outs were
CHART THIRTY-ONE

Senators and Impeachment
40th Congress, Second Session

Main Scale—General impeachment issues

GROUP #0 (DEMOCRATS AND JOHNSON CONSERVATIVES)

Bayard, Del.
Davis, Ky.
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Thomas C. McCreery, Ky.
Patterson, Tenn.
Saulsbury, Del.
George Vickers, Md.
Buckalew, Pa.
Hendricks, Ind.
Johnson, Md.
Norton, Minn. (Johnson Conservative)

---- Motion declaring
impeachment illegal
without participation
of Senators from southern
states, motion to adjourn
sine die May 16, admissibility
of hearsay evidence showing
Johnson hoped only to test
the constitutionality of
the Tenure of Office act,
motion to deny a defense
request for delay, admiss-
ibility of report of Johnson
speeches of 1866, motion to
delay vote on articles,
motion to adjourn sine die
May 26

GROUP #1 (REPUBLICANS VOTING AGAINST CONVICTION AND/OR
TO SUSTAIN THE DEFENSE POSITION ON MOST QUESTIONS)

Fowler, Tenn.
Ross, Kans.
Fessenden, Me.
Grimes, Iowa

Henderson, Mo.
Trumbull, Ill.
Van Winkle, W.Va.
Anthony, R.I.
CHART THIRTY-ONE (CONT.)

---- Motion to postpone vote on conviction, admissibility of evidence Johnson hoped only to test the constitutionality of the Tenure of Office act, votes on the articles, motion to vote first on Article XI, motion to extend the hours of the trial, motion to adjourn over weekend, admissibility of testimony regarding Cabinet discussions of the Tenure of Office act, admissibility of testimony that Johnson attempted to bring the Tenure of Office law before the courts, votes on defense requests for delays, admissibility of evidence of Johnson's intentions as expressed after he attempted to remove Stanton

GROUP #2 (REPUBLICANS
APPEARANTLY UNCOMMITTED TO CONVICTION,
FAVORING DELAY, AND NOT STRONGLY COMMITTED
TO CONVICTION BY END OF TRIAL)

Edmunds, Vt.
Wolley, W.Va.
Frelinghuysen, N.J.
Morrill, Vt.
Morton, Ind.

Patterson, N.H.
Sherman, Ohio
Sprague, R.I.
Cole, Calif.

---- Motion to proceed with Article XI first, motion to adjourn after failure to convict on Article XI, admissibility of evidence of Johnson's intentions as expressed after his attempt to remove Stanton, motion to require defense to respond to impeachment articles without delay, admissibility of Gen. Sherman's evidence
GROUP #3 (REPUBLICANS APPARENTLY UNCOMMITTED TO
CONVICTION BUT OPPOSING DELAY AND COMMITTED
BY THE END OF THE TRIAL)

Cattell, N.J.
Corbett, Ore.
Cragin, N.H.
Ferry, Conn.
Howe, Wis.
Morrill, Me.
Williams, Ore.
Yates, Ill.

---- Motion to take up
resolution to investigate
Charges of intimidation
of Senators, motion to
extend hours of trial,
admissibility of evidence
that Johnson sought to get
a court test of the Tenure
of Office act, motion to
strip the Chief Justice of
power to decide legal
questions and to declare
him not a member of the
court of impeachment,
motions to speed voting
on articles

GROUP #4 (REPUBLICANS STRONGLY COMMITTED TO
CONVICTION)

Chandler, Mich.
Morgan, N.Y.
Pomeroy, Kans.
Tipton, Nebr.
Wilson, Mass.

---- Censure of defense counsel
for impugning the Senate,
admissibility of evidence
of Johnson's intentions as
expressed after he attempted
to remove Stanton, motions
to eliminate impeachment
rules authorizing Senators
to file written opinions
CHART THIRTY-ONE (CONT.)

GROUP #5 (REPUBLICANS STRONGLY COMMITTED TO CONVICTION)

Cameron, Pa.
Conkling, N.Y.
Conness, Calif.
Drake, Mo.
Harlan, Iowa
Howard, Mass.
Nye, Nev.
Ramsey, Minn.
Stewart, Nev.
Sumner, Mass.
Thayer, Nebr.

NOT VOTING: Wade, Ohio (Rep.)

For a list of the roll calls upon which this chart is based, see Appendix XI.
CHART THIRTY-ONE (CONT.)

Subscale--Divisive votes, primarily early in trial

GROUP #0 (DEMOCRATS, JOHNSON CONSERVATIVES, AND REPUBLICANS NOT STRONGLY COMMITTED TO CONVICTION)

Anthony, R.I. (Rep.)
Bayard, Del. (Dem.)
Buckalew, Pa. (Dem.)
Davis, Ky. (Dem.)
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Edmunds, Vt. (Rep.)
Fessenden, Me. (Rep.)
Fowler, Tenn. (Rep.)
Frelinghuysen, N.J. (Rep.)
Grimes, Iowa (Rep.)
Henderson, Mo. (Rep.)
Hendricks, Ind. (Dem.)
Johnson, Md. (Dem.)
McCleery, Ky. (Dem.)
Norton, Minn. (Johnson Conservative)
Patterson, Tenn. (Dem.)
Ross, Kans. (Rep.)
Saulsbury, Del. (Dem.)
Sherman, Ohio (Rep.)
Sprague, R.I. (Rep.)
Trumbull, Ill. (Rep.)
Van Winkle, W.Va. (Rep.)
Vickers, Md. (Dem.)
Willey, W.Va. (Rep.)
Williams, Ore. (Rep.)

--- Admissibility of General Sherman's testimony that Johnson intended only to test the Tenure of Office act's constitutionality, adjournment over weekend, admissibility of testimony Johnson illegally planned to gain control of the Treasury, motion to deny the Chief Justice's right to cast deciding votes in cases of ties, motion to vote on XI article by clause
CHART THIRTY-ONE (CONT.)

GROUP #1 (REPUBLICANS RELATIVELY COMMITTED TO CONVICTION)

Cattell, N.J.
Connens, Calif.
Corbett, Ore.
Cragin, N.H.
Drake, Mo.
Perry, Conn.
Howard, Mich.
Howe, Wis.
Morrill, Vt.
Morton, Ind.
Nye, Nev.
Patterson, N.H.
Wilson, Mass.

---- Motion to lengthen hours of trial

GROUP #2 (REPUBLICANS COMMITTED TO SPEEDY TRIAL AND CONVICTION)

Harlan, Iowa
Morgan, N.Y.
Morrill, Me.
Ramsey, Minn.
Tipton, Nebr.
Yates, Ill.

---- Adjournment to allow defense to prepare for trial

GROUP #3 (REPUBLICANS COMMITTED TO SPEEDY TRIAL AND CONVICTION)

Cameron, Pa.
Chandler, Mich.
Cole, Calif.
Conkling, N.Y.
Pomeroy, Kans.
Stewart, Nev.
Sumner, Mass.
Thayer, Nebr.

NOT VOTING: Wade, Ohio (Rep.)

For a list of the roll calls upon which this chart is based, see Appendix XI.
moved solely by legal requirements. Most Republicans believed impeachment was necessary for the future success of the Republican party and therefore for the security of southern black and white loyalists. The President had embarked on a bold offensive to defeat reconstruction in the South. Before the House impeached him he had removed every military commander in the South who was committed to carrying out the spirit of the Reconstruction acts; he had twice replaced Stanton, quarreled with Grant, and begun to create a new military headquarters in Washington to be commanded by a more friendly General equal in rank to the General of the Army. If impeachment failed, Republicans believed, "... The President will have schemes enough to endanger the peace of the country. It would open a Pandora's box."

Smarting under the blows of the President's "winter offensive" and apparently unable to cope with it, watching as the anti-Republican reaction gained strength among the voters, Republicans seized the opportunity Johnson had given them to escape from their predicament. "What we never could get of the virtue of the Republican party we seem likely to get from its fears," Phillips commented acidly. But other Republicans held different views. When Richard Henry Dana visited Washington he found some Republicans thought "it would be the ruin of the Rep. party to fail. Others say that it will lose us the election if we succeed. If the Pr. is convicted, we are responsible for Ben Wade, and all that happens, & shall
have distributed our offices before election. Wrongs to be
redressed & offices to be given are the stock of party." 4

Thomas Ewing, Jr., recognized the importance of the
political prospects. From New Hampshire, where he was cam-
paigning for the Democrats, he wrote "[T]he general cry and
belief, is the party will be damned if they don't convict,
and therefore the newspapers and leaders generally of the
radical wing threaten to shoot doubters. But if it begin to
appear from the spring elections that the radicals from some
cause are losing 4 or 5 per cent of their votes, then the
more conservative men and papers will cry out that the party
will be damned if they do convict, and Fessenden, Trumbull,
Sherman, Grimes, and others will rally courage enough to
refuse to perjure themselves for Ben Wade & Co." 5

In fact, the Republicans did lose votes in the spring
elections. They garnered 51.7% of the vote in New Hampshire
as compared to 52.3% the year before and 53.5% in 1866. This
represented a 1.1% loss in the Republican percentage between
1868 and 1867 and a 3.5% loss between 1868 and 1866. This
was not the 4 or 5% loss Ewing had hoped for, but it demon-
strated that impeachment had not reversed the downward trend
which began in 1867. The Republican decline continued in
Connecticut's election held April 6. Republicans lost the
gubernatorial race for the second successive year, winning but
47.9% of the vote compared to 49.6% in 1867 and 50.1% in 1866.
The Republican percentage here had been reduced by 3.6% over
the previous year and 4½ since 1866. 7 By May 3, Fessenden wrote, "... I am satisfied that with present light the thing never would have begun. People now see, as I always told them ... , that the result is to be disastrous any way."

Furthermore, men like Fessenden, Trumbull, and Grimes disliked the radicals nearly as much or more than they disliked Andrew Johnson, and it was the radicals who stood to gain most by Johnson's removal. The hatred Fessenden and Grimes bore Wade and Sumner should be obvious. Fessenden, in fact, preferred the President to the radicals in personal terms. He had not suffered so much as they in Johnson's use of the patronage. Secretary of the Treasury McCulloch had been reluctant to use the Treasury service as a political weapon and retained Republicans in office wherever he could, paying special attention to the personal appointments of his predecessor (Fessenden). The Senator from Maine could not generally get his friends appointed, but many of his allies already in office remained there. "It is quite evident that there had been a disposition to avoid treading on my toes," he wrote. Johnson's "wish to oblige me," as Fessenden put it, could not help but favorably impress the Maine Senator, especially when he compared the President's attitude towards him to the radicals'. "Say what they will, Andy is a good hearted fellow, and with all his faults stands, or ought to, a much better chance for 'Kingdom-come' than some men I could name who count
themselves as saints."  

In a way the impeachment was a personal victory for Sumner over Fessenden, or at least Fessenden might have so considered it. Sumner had predicted that reluctant Republicans would be forced to impeach Johnson eventually. When conservatives had defeated impeachment in December, 1867, Fessenden had crowed, "For once, Mr. Sumner cannot boast of the fulfillment of his prophecy . . . ." Sumner's obvious triumph may well have added to Fessenden's chagrin when impeachment finally came. At any rate he had, as he wrote his son, "opposed it from the beginning."

But far more than personal hostilities inclined several of the "recusant" Senators--as they came to be called--against removing Johnson. As Hans Trefousse has pointed out, the character and politics of Johnson's would-be successor played a large role in the President's acquittal. He had delivered a speech in Lawrence, Kansas, a year before which the Boston Daily Advertiser described as "simply and wholly" . . . an avowal of agrarian sympathies." He had expanded on it to question the fundamental value of freedom so long as working-men were at the mercy of capitalists. But these opinions were merely vagaries. What really aroused powerful interests against him (and for him, it should be remembered) were his high-tariff, soft-money opinions. The tariff and financial questions were living issues, over which men fought passionately, and far more controversial than scattered musings over the
rights of labor. When Iron Age, the organ of the protectionist iron industry, called for a meeting of high-tariff men to take advantage of Wade's presidency to pass a new tariff bill, the Chicago Tribune, which espoused free trade, warned, "... [T]hey are doing more to defeat the impeachment of Johnson than any other equal number of men in the country, and far more than the President's counsel." The rumor (well-founded judging from Wade's correspondence) that he intended to name E. B. Ward, a leading opponent of contraction, Secretary of the Treasury worried Edward Atkinson and his hard-money lobby.

Another rumor held Wade intended to name Butler Secretary of State. The controversial radical's intense hostility towards England was well known, and Republicans feared the damage he might do the delicate Alabama claims negotiations and the designs he might hold on Canada. By May 2, former representative John B. Alley warned Butler that leading Senators had determined to prevent anyone involved with impeachment, whether manager or Senator, from going into Wade's Cabinet.

"I have a few words to whisper in your private ear, concerning what conservative Republicans think," Garfield wrote James Harrison Rhodes May 7. "They say that 'Conviction means a transfer to the Presidency of Mr. Wade, a man of violent passions, extreme opinions, and narrow views; ... a grossly profane coarse nature who is surrounded by the worst and most violent elements in the Republican party ..."
that already the worst class of political cormorants from Ohio and elsewhere are thronging the lobbies and filling the hotels in high hopes of plunder when Wade is sworn in.\textsuperscript{15} The President's counsel, insistent as they were that political considerations should not enter into the trial, were not averse to making subtle appeals to these fears--especially William M. Evarts, who as the only defense counselor openly committed to Grant as the prospective Republican presidential nominee could hint of such matters with a particular authority. Johnson would be convicted for certain, the \textit{Chicago Tribune} concluded, if Wade were not the man who would replace him. Before the vote Fessenden called on the conservative Senator \textsuperscript{17} George F. Edmunds and virtually told him as much.

These fears must be placed in perspective. When Republicans spoke fearfully of the calamity of a Wade administration, they referred not only to the effect his policies might have on the country, but on the party. Naturally free traders believed high tariffs hurt the nation and hard money men believed the financial strength of the United States required a commitment to the resumption of specie payments. But these men, and others not strongly committed to one view or the other, knew that one of the strengths of the Republican party was that men of all economic opinions were united on the issues which now divided Republican from Democrat--security for northern and loyal southern interests in reconstruction. The Republican party could--and did--mute its position on the
other issues. So long as Andrew Johnson was President men of such opposite tariff and financial views as Horace Greeley and Edward Atkinson, William D. Kelley and James A. Garfield, Richard Henry Dana and Benjamin F. Butler could share the same platform and vote the same ticket. But let Ben Wade become President, let high-tariff and soft-money interests begin a campaign to put their views into law, and many believed with Atkinson, "the Republican party would cease to exist." The major political issue would shift from one on which Republicans were united, although with differing degrees of commitment, to one on which they were hopelessly divided. This was the real apprehension of the conservatives. It was this to which Fessenden referred when he wrote "the result is to be disastrous any way."

Chief Justice Chase too was deeply involved in politics. As soon as he showed his position on the "Senate as court" question, Democrats began to eye him as a possible presidential candidate, especially if impeachment succeeded. By April 19 he had informed Alexander Long, an extreme Peace Democrat from Ohio, that he would not refuse a Democratic nomination if that party accepted universal suffrage. They would make the issue against Republicans on amnesty for all former rebels, an end to military protection for southern loyalists, and opposition to confiscation. Despite his professed conviction that the impeachment proceedings should progress under rules similar to those pertaining to trials in court, he
privately informed correspondents and wavering Senators of his belief that the articles did not warrant conviction, a grave violation of judicial ethics.

Finally, neither the President nor his counsel were willing to rely solely on the strength of legal arguments for acquittal. In choosing his lawyers, Johnson carefully included conservative Republicans Benjamin R. Curtis and William M. Evarts, who had been one of Grant's earliest supporters for the presidency, and War Democrats William S. Groesbeck and Thomas A. R. Nelson, as well as his former Attorney-General, Henry Stanbery. The President's advisors urged him to appeal to the moderate Republicans, to make the case as much as possible an "inter-Republican issue."

But most important were the assurances the President gave of good behavior for the rest of his term. House conservatives had been impelled to vote for Johnson's impeachment because they were convinced that the removal of Stanton in apparent violation of law was merely the first step in a program to overthrow the Reconstruction acts. Despite their desire to decide Johnson's guilt or innocence on legal points alone, conservative Republicans (Welles later named Fessenden and Grimes) informed Evarts that they would feel freer to vote against conviction of the President if they were assured he did not intend to retaliate against Republicans or interfere in reconstruction. They suggested the President name the conservative military commander of Virginia, John M. Schofield,
Secretary of War. He had enforced the Reconstruction acts, but in such a way as to aid conservative Republicans against radicals. His presence in the War Department would reassure the people and the party. Evarts contacted Schofield on Johnson's behalf and asked him to accept the office. The general agreed on the condition that the President would enforce the Reconstruction laws. On April 23 Johnson prepared the nomination and on April 24 sent it in to the Senate, where Johnson's secretary, who had delivered the message, wrote "I could see it created considerable interest."

On May 4 Senator Edmund G. Ross, another who would vote for acquittal, informed acting Attorney-General Orville H. Browning that he hoped the President would demonstrate his good intentions by forwarding to the Senate the new constitutions Arkansas and South Carolina had adopted under the Reconstruction laws. Browning and Stanbery urged the President to send the constitutions in, over the objections of the uncompromising Welles, and Johnson did so May 5. In a final maneuver, Reverdy Johnson arranged a meeting between Grimes and the President. Grimes told the President that Senators inclined to acquit him were wavering out of fear of what Johnson might do after impeachment failed. Johnson assured him he intended to do nothing in violation of the law or the Constitution, and Grimes, satisfied, relayed the message to other conservatives.

Perhaps even more important than the President's assurances
to conservative Republicans was the actual cessation of his interference while impeachment progressed. In explaining "What Has Happened During the Impeachment Trial," the Chicago Tribune wrote simply, "... Andrew Johnson has been a changed man. The country has been at peace. The great obstruction to the law has been virtually suspended; the President ... has been on his good behavior." The President's new docility enabled Republicans to recoup some of their losses in the South. In six of the unreconstructed states Republicans were able to win ratification of the new constitutions framed under the Reconstruction laws, although by narrow margins in several. In Alabama, where the removal of General Swayne proved critical, Republicans failed to win the absolute majority of registered voters required to ratify the new constitutions. The opposition had refused to vote at all. But Congress decided to repeal the absolute majority requirement to enable them to restore Alabama nonetheless. By the time Senators voted on impeachment, it was clear only Virginia, Mississippi, and Texas would remain unrestored and liable to presidential interference. It is remarkable how quickly the sense of crisis gripping the capital a few months earlier eased.

To a large extent, therefore, impeachment had succeeded in its primary goal: to safeguard reconstruction from presidential obstruction. Only after the political exigencies which in part motivated impeachment were removed did the seven "recusant Republicans" vote to acquit the President.
All this evidence of politicking during the impeachment proceedings did not mean the seven "recreants" (the New York Tribune's term) voted to acquit Johnson solely for political reasons or out of personal hatred for Benjamin Wade and the radicals. Far from it. The recusants shared a real distaste for the political nature of the proceedings in which they were involved. Unlike a few radicals, they never suggested impeachment might be primarily a political proceeding. They were revolted at every political interference in the impeachment. They voted consistently to expand the role of the Chief Justice—the one non-elected officer sitting with the Senate. They voted in favor of considering the Senate a "court" during impeachment and continually referred to it as such. What the evidence does demonstrate was the futility of trying to separate politics from law in the impeachment proceedings. As the defense counsel had pointed out, this was not the trial of a petty thief, but of the President of the United States, a man whose office was political, whose duties were political, who had the support of a political party and millions of its adherents. From no court in the country could political considerations have been eliminated, much less the Senate, a political body, with political functions, elected through the political process. Yet, as the Boston Daily Advertiser pointed out, "... [T]he Constitution commits the trial of the President to a political body of that description; ... it requires the Senators to form their opinions upon questions of policy
in order to act as legislators, ... and ... it requires them afterwards, upon an impeachment by the House to sit in judgment upon the very matters ... which they may have had occasion to consider as legislators."  The Senators--had historians--who wanted the President judged purely through legal principles and procedures wanted the impossible.

Moreover there is a certain naiveté in the assumption, which many historians seem to make, that if all political influences had been removed from impeachment and only legal principles consulted, all the Senators would have reached the same conclusion, presumably acquittal. A case is seldom that clearcut, and the impeachment case was among the foggiest ever pleaded, for it turned largely on the construction of a law the language of which had been purposely obfuscated to satisfy the demands of both the Senate and House without appearing to require a concession of either. Of the six opinions filed by the seven recusant Senators, five of them turned on the disputed point--whether Secretary of War Stanton had been covered by the Tenure of Office act. They concluded the act did not protect him from removal without the Senate's consent. Nearly every Senator who voted to convict concluded the opposite.

In almost every legal case there is enough leeway for the judge to decide it according to the dictates of his concept of justice, his beliefs, and his attitudes. In the impeachment there was more leeway than in most, and various considerations led the seven recusants in a different direction
from their colleagues. But one should not assume that these were the only honest men, that the thirty-five Republicans who voted to convict the President had not wrestled with the legal principles involved in the case with as much diligence as those who acquitted him.

Such an interpretation overlooks the fact that more than half of the Republicans in the House who voted to impeach the President had refused to do so earlier, when he was charged with crimes of a manifestly political nature. Eminent, conservative lawyers in the House, including Bingham, James F. Wilson, Luke Poland, Garfield, and Blaine, had resisted all attempts to make the impeachment a political question. They had voted to impeach Johnson only when satisfied he was guilty of a criminal violation of a congressional statute.

Many Senators who finally voted to convict the President were motivated by the same desire for impartial justice which historians and partisans ascribed only to the recusants. George F. Edmunds, the highly-respected constitutional lawyer from Vermont, for example, had been the only Republican Senator to vote against the resolution of February 21 which declared the sense of the Senate that the President had acted contrary to law in removing Stanton. Yet he decided Johnson was guilty and later expressed his conviction that had Wade not been President pro tem of the Senate, Fessenden and others certainly would have reached the same conclusion. Six Senators who voted to convict Johnson voted with the acquitters on questions
pertaining to the Senate's status as a court during impeachment and the related issues of the proper role of the Chief Justice (see Chart No. 31). The Senators in Group #2 of the main scale of Chart No. 31 differed from those in Group #1—all of whom but Anthony voted for acquittal—primarily on a legal issue: the relevance of testimony showing Johnson intended only to force a test of the Tenure of Office act's constitutionality before the courts. Those who believed it was relevant—that such an intent could exculpate the President's guilt—voted to acquit him, with the exception of Anthony. Those who did not voted to convict.

Furthermore, these six Senators—and several others—quickly reversed themselves and voted to admit this evidence despite their first impression, deciding to allow the defense the widest range of freedom. Here they demonstrated their true commitment to full and fair trial. Despite their conviction that Johnson's intention to raise a court case, even if proven, could not vitiate his guilt, they allowed the President's counsel to present evidence on the subject, evidence which could only bolster the President's case and weaken the managers' before the nation.

Contemporaries recognized most Senators' commitment to impartial justice. Those who confidently expected conviction did so because they were so certain of the President's guilt. And the violent reaction against the Republicans who acquitted him must be understood as the reaction of men who believed
the President so patently guilty that they could not conceive of any impartial judge coming to a contrary conclusion unless influenced by extraneous and corrupt considerations.

Those who were not convinced of the President's guilt—with the exception of men like the myopic Welles, who did not comprehend the differences among Republicans—also believed most Senators would judge fairly. The New York Herald's Washington correspondent counted eleven Republicans certain to acquit the President and two more as doubtful. Grimes, the first Republican to decide for acquittal, wrote before the trial began, "About a dozen men are determined to convict, about the same number are determined to acquit, and the balance intend to hear the evidence and weigh the law before they pronounce judgment."

Historians should view the trial of impeachment for what it was: not as an attempt by a violent majority to remove an innocent President for partisan purposes, but as one of the great legal cases of history in which American politicians demonstrated the strength of the nation's democratic institutions by attempting to do what no one could justifiably expect them to do—to give a political officer a full and fair trial in a time of political crisis.

*   *   *

Despite the political crisis which gave birth to the impeachment, despite the political rewards and penalties resting on its success or failure, legal considerations
determined the votes of the critical middle group of Senators whose decision would either convict or acquit the President. It is not possible here to deal in detail with all the charges, defenses, and evidence presented to the Senate. This is a job that needs doing. The only detailed study of the trial, Dewitt's *Impeachment and Trial of Andrew Johnson*, is primarily a narrative account which draws superficial conclusions about the nature of the charges and defense, and is not marked by a real consideration of the questions involved. Here only the major points may be discussed.

There were four main thrusts to the House's charges, only three of which played important roles in the trial. First, the President had violated the Tenure of Office law by issuing orders to replace Stanton and appoint General Lorenzo Thomas Secretary of War *ad interim* after the Senate had refused its consent to Stanton's removal. Second, even if the Tenure of Office act were not applicable, the President had no authority to issue orders to remove an officer and name a replacement while the Senate was in session. The articles embraced several accusations subordinate to these two major charges—charges of conspiracy to violate the law by force, by threat and intimidation, made in different forms and involving slightly different points. The third major accusation, embodied in the eleventh article of impeachment, charged the President with devising means to prevent the execution of the Reconstruction laws and the law requiring the issuance of all
military orders through the General of the Army, as well as the Tenure of Office act. Although the article seemed to charge an indictable crime on its surface, as the managers, particularly Boutwell, interpreted it, this became essentially a political article embodying not only the President's indictable violations of law but all the things he had done to prevent a final settlement of the war issues, to perpetuate chaos in the South, and to resist the will of Congress. The House embodied a fourth charge in the tenth article of impeachment (Butler's article)—that the President had attempted to bring Congress into ridicule and disrepute—but the managers placed only slight emphasis on it.

The President's counsel delivered their formal answer March 23, as the Senate required, but it was not until they opened the case for the defense that it became clear in all its ramifications.

Once again opponents argued the nature of an impeachable offense. House managers Butler and Logan once more argued the political nature of impeachment. An impeachable offense, Butler insisted, was "one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose."
If the Senate accepted this definition, the House's case would be strengthened immeasurably. Not only would it buttress the eleventh article, which charged both indictable and non-indictable offenses, but it meant that the managers need not prove an actual violation of the Tenure of Office law. Even if he had the legal right to remove Stanton, the President was liable to impeachment if he did so for improper purposes.

The President's counsel, of course, denied the managers' contention and in their turn went as far as they could in the opposite direction. Nelson argued that a "high crime or misdemeanor" meant more than merely any infraction of law. The words referred to serious crimes punishable by both fine and imprisonment. Furthermore, he suggested the terms referred only to acts which were crimes and misdemeanors when the Constitution was adopted, not to those enacted by statute later. This was the most extreme position taken by any of the President's counsel. Evarts and Stanbery insisted impeachment lay not for any indictable violation of law, but only for a criminal act directly subversive of fundamental principles of government or the public interest. Under this restricted interpretation the counsel could argue that the removal of Stanton, even if it violated the law, did not warrant the President's removal. Only Groesbeck limited himself to the position taken by the anti-impeachers in December, 1867—that impeachment must be based on an indictable crime—without trying to restrict it further.
If more than one third of the Senate accepted Nelson's view or that propounded by Evarts and Stanbery on the nature of impeachable offenses, Johnson must have been acquitted. If over two thirds accepted the interpretation of Butler and Logan, then there could be no doubt of his conviction. But if enough Senators to determine the case believed an official became liable to impeachment for violation of law—any violation of law—then the case would turn on the main issues—the removal of Stanton and the appointment of Thomas ad interim.

The first task facing Johnson's defense counsel was to show that the President could not be convicted for issuing his order to remove Stanton after the Senate had refused its consent. This would be no easy job. The facts were clear: the President had issued the order. The counsel would have to vitiate his guilt somehow despite his act.

Johnson's counsels' first line of defense was that the Tenure of Office act itself was unconstitutional and therefore null. Johnson had violated no law then in trying to remove Stanton. But the Senate had already registered its conviction that the law was constitutional by passing it over the President's veto. The defense could have had slight confidence in this tack. They next insisted that Johnson had not in fact removed Stanton. "There is not a judge or a lawyer in this Senate who does not know that in every law-book which has been written in 200 years a distinction is taken between a crime and an attempt to commit a crime," Nelson argued. "...
That there was an attempt to remove there is no sort of question; . . . [but] how is it that [Johnson] can be found guilty of removing Mr. Stanton from his office . . . when there was no removal at all?  

This technical objection underlined the importance of the question of the nature of impeachment and the Senate's status while trying it. For as Butler acknowledged, if the Senate sitting in judgment on trial of impeachment was a court, then all the rules and procedures and technicalities of the common law applied to its proceedings. The managers urged a more relaxed rule. They agreed, in Logan's words, 'that in determining this general issue senators must consider the sufficiency or insufficiency in law or in fact of every article of accusation. But the insufficiency which they are to consider is not the technical insufficiency by which indictments are measured. No mere insufficiency of statement—no mere want of precision—no mere lack of relative averments—no mere absence of legal verbiage, can inure to the benefit of the accused. The insufficiency which will avail him must be such an entire want of substance as takes all soul and body from the charge and leaves it nothing but a shadow.'  

The President's counsel naturally argued in the opposite vein, pointing to precedents for their position and warning of the consequences of accepting the managers' position. If the Senate swerved from a purely judicial proceeding, Evarts insisted, then its conviction would be no more than a bill of
attainder—"a proceeding by the legislature, as a legislature, to enact crime, sentence, punishment, all in one."

This controversy helps to put the opposing interpretations of impeachment in perspective and illustrates the inherent problems involved. What Evarts objected to was the implication he found in the managers' arguments that the Senate was not bound to observe the rules of law. In fact, the managers did more than merely imply this doctrine—they stated it openly. "You are a law unto yourselves, bound only by the natural principles of equity and justice . . .," Butler insisted. In Evarts' opinion, this meant the House and Senate, whenever the support of two thirds of their members could be mustered, might impeach and remove any government officer without averring any legal grounds at all. This would destroy the checks and balances which maintained the stability of the three branches of the national government. Certainly the fears had merit.

But the managers also felt impelled by weighty considerations. The traditional safeguards of the common law were intended to afford every possible protection to the innocent. In the abstract, society decided its interests were best served by risking the escape of the guilty in order more certainly to protect the rights and liberty of the innocent. It is not at all certain that the same decision should obtain in cases of impeachment, where the person accused of wrong-doing might hold tremendous power over society itself, and where
conviction means no more than removal from office. The managers took this view of the case. "... [I]t is a question only of official delinquency, involving, however, the life of a great state, and with it the liberties of a great people," Williams insisted. "... [I]n cases such as this, the safety of the people, which is the supreme law, is the true rule and the only rule that ought to govern."

The question of the President's liability for the mere attempt to commit a crime demonstrates the strength of the managers' argument. Should the President of the United States be allowed to retain his office after attempting to commit a crime, merely because he did not succeed? Is not the fact that a man in such a responsible and powerful position attempted to violate the law reason to fear for the safety of the nation and reason enough to take steps to avert the danger? Should wrong-doers in high office retain the capability for evil because of the technical insufficiency of charges against them? The House managers and President's counsel arrived at opposing conclusions. There were strengths and weaknesses in each.

The third line of defense was that Stanton was not covered by the Tenure of Office act at all. President's counsel pointed, of course, to the disputed proviso that department heads should hold office during the term of the President who appointed them and one month thereafter unless removed with the advice and consent of the Senate. They
argued Stanton's protected term ran only through Lincoln's first term and one month thereafter, ending under the law on April 4, 1865. To this the managers answered simply that the law protected department heads not during the presidential term when appointed, but "during the term of the President by whom they may have been appointed." The language had been framed in that way to cover any term which the appointing President might hold. The President's counsel then argued that if this were true, then Stanton's protected term ended one month after the death of the President who had appointed him, Lincoln, and that since then he had been holding office at the pleasure of President Johnson under the 1789 law which created the War Department. The managers answered that Johnson had no term. The Constitution sets the President's term at four years; if the President does not complete that term, "the powers and duties of the said office . . . shall devolve on the Vice-President" (the Constitution's words) not the term. President Johnson was completing President Lincoln's term, and Stanton was protected until one month after it ended: April 4, 1869.

The President's lawyers denied this interpretation. The President's term was not absolute, but conditional, they insisted. It lasted, in effect, only if he lasted. If he resigned, died, or was removed, his term ended and his replacement entered upon a term of his own. If this were not the case, they asked, then when did the protected term of department
heads appointed by Johnson cease? When was one month after the term of the President who appointed them if that President had no term? There seems to have been no right or wrong answer to this dispute. The United States Constitution defines the President's term at four years and does not indicate that the President's term devolves upon his successor with the powers and duties of the office. On the other hand, the provisions of the Tenure of Office law cited by the President's counsel certainly did not make much sense if Johnson had no term. Once again, there was leeway for each Senator to decide this question as he saw fit. 43

The managers presented two further arguments on the point. The managers and President's counsel had agreed that the Tenure of Office law forbade the removal of any government official whose term was not set by law until his replacement was confirmed by the Senate. If nothing had been added, Stanton clearly would have been covered. All agreed to that. The additional proviso did except department heads, giving them a fixed term—the term of the President who appointed them and one month thereafter. If that term had ended one month after Lincoln's first term ended or one month after Lincoln's death, then Stanton's term was no longer fixed by law and he was protected like other government officials until the Senate confirmed a successor. He was not serving at the pleasure of the President under the law of 1789, but until the Senate confirmed a successor under the law of 1867.
Johnson's counsel answered that the office of Secretary of War, not Stanton himself, had been excepted by the proviso from the operation of the bill. The proviso gave that office a fixed term and nowhere else was it mentioned. Bingham pointed out, however, that the general provisions of the law covered "every person holding any civil office" had been confirmed by the Senate "except as herein otherwise provided." If Stanton were no longer among those excepted, then he certainly fit in the category of "every person holding any civil office."

On the face of it the managers had the better of the argument, but Evarts weakened their position by pointing out that if their interpretation was correct, then Stanton could never in the future be removed without the Senate's consent, even when a new President took office. Yet the Senate had insisted upon excepting department heads from the general operation of the bill precisely to allow incoming Presidents freedom of action. Again the law was unclear; again Senators would decide for themselves.

Finally, the managers argued that Johnson himself had acknowledged the law protected by Stanton by suspending him according to its provisions in August and then sending in reasons for that suspension when Congress met as the law required. The President, the managers argued, was estopped from now contending that the act did not cover Stanton after all. Johnson's lawyers attacked this argument vigorously.
Estoppel related to facts, they insisted, not matters of law. A party's deeds could not prevent the judge from construing the law in a civil court, and it could not prevent Senators from construing the law in deciding the impeachment. Moreover, the rule did not apply to criminal cases but to civil actions, where the opposing party put reliance on the estopped party's words or behavior. "That the President of the United States should be impeached and removed from office, not by reason of the truth of his case, but because he is estopped from telling it, would be a spectacle for gods and men," Curtis declared. "Undoubtedly it would have a place in history which it is not necessary for me to attempt to foreshadow." But Stevens retorted with a different interpretation. "The gentleman treats lightly the question of estoppel, and yet really nothing is more powerful, for it is an argument by the party against himself . . . ." Still another point to be weighed and decided by the Senators individually.

Concluding arguments on the construction of the law, the President's counsel posed an argument which showed how they had won their reputations as among the most astute legal practitioners in the United States. They argued that even if the President's interpretation were wrong, even if Stanton was in fact protected by the law's terms, Johnson's only crime was to have made a mistake. It was a brilliant maneuver. All their arguments as to whether Stanton was covered had been aimed not so much at convincing the Senate that he was not,
as at convincing them a reasonable man might believe he was not.

Once again the question of the nature of impeachment loomed in importance. If the process could be based only on a criminal violation of statute, then two elements were necessary: a guilty act and a guilty intent. Defense counsel already had argued the President had not succeeded in committing the act. Now they argued he had no criminal intent. There was no question that the charges relating to the removal of Stanton in violation of the Tenure of Office act and the appointment of Thomas contrary to its provisions would fall if Johnson's lawyers could prove the President did not believe Stanton was covered. But that was the rub. This was a matter of fact, an assertion to be proven.

Johnson's defenders pointed to the brief phrase in the President's message to the Senate giving reasons for Stanton's suspension, in which Johnson mentioned that at least one Cabinet member had suggested Lincoln's appointees were not covered under the bill. This evidence was weakened, however, by the immediately following sentence, "I do not remember that the point was distinctly decided . . . ."

The counsel for the President also proposed to submit the message Johnson sent to the Senate in response to the resolution it passed condemning Stanton's attempted removal and Thomas' appointment as a violation of law. In that message,
prepared February 22, Johnson insisted he had always believed that Stanton was not covered by the Tenure of Office act and justified his removal under that construction. The managers objected immediately. The President had not sent that message until after the House Reconstruction committee had reported articles of impeachment. It was no more, Bingham insisted, "than a volunteer declaration of the criminal, after the fact, in his own behalf [ . . . ]" Chief Justice Chase ruled the evidence inadmissible.

Finally, the defense offered to prove that the subject had come up when the Cabinet discussed the bill after its passage. They asked Welles to testify to that effect, but again the managers objected. Other questions confused the issue, and the Senators refused to admit the testimony 22 to 26. But eleven Republicans voted to overrule the managers' objections, including the seven recusants, Sherman, Anthony, Sprague, and Willey.

In a second argument that Johnson lacked criminal intent, his counsel suggested he could, without intending to commit a crime, violate or refuse to enforce a law he believed unconstitutional. In their broadest assertions, Johnson's counsel argued that the President has a right independent of Congress or the Supreme Court to decide the constitutionality of the laws. If he believes an enactment to violate the Constitution, his oath binds him not to enforce it. "A private individual, if he violates the laws of the land, is amenable for
their violation . . . ," Nelson argued, "but the President of the United States, having the executive power invested in him by the Constitution, has the right to exercise his best judgment in the situation in which he is placed, and if he exercises that judgment honestly and faithfully, not from corrupt motives, then his action cannot be reviewed by Congress or by any other tribunal than the tribunal of the people in the presidential election . . . ."

"How can it be said that he had any wrongful or unlawful intent when the Constitution gave him the power to judge for himself in reference to the particular act?" he concluded.

The managers quickly pointed out the implications of this argument. "If [the President] . . . has the power to sit in judgment judicially--and I use the word of his advocate--upon the tenure-of-office act of 1867, he has like power to sit in judgment judicially upon every other act of Congress," Bingham argued. Under this interpretation of presidential power, Boutwell warned, "for the purpose of government, his will or opinion is substituted for the action of the law-making power, and the government is no longer a government of laws, but the government of one man." And he added, "This is also true if, when arraigned, he may justify by showing that he has acted upon advice that the law was unconstitutional." Moreover, the requirement of criminal intent did not mean the President's motives had to be inherently evil. "His offence is that he intentionally violated a law. Knowing
its terms and requirements, he disregarded them."

The Senate received an opportunity to vote upon the issue April 18, when the defense tried to introduce evidence that the entire Cabinet advised the President that the Tenure of Office bill was unconstitutional when it first came before them in February, 1867. After a full discussion by both managers and counsel, the Senate declared the evidence inadmissible, 20-29. But over a third of the Senators had indicated conviction that the evidence had been relevant. Among that number were nine Republicans, including the seven who would vote not guilty.

Winning even more support were Curtis' and Groesbeck's more limited arguments on the subject. Taking ground similar to that John Norton Pomeroy was assuming in his treatise on the Constitution, Curtis conceded the President ordinarily could not refuse to enforce a congressional enactment. The President "asserts no such power," Curtis insisted. "He has no such idea of his duty." But under certain circumstances the President may disobey or refuse to enforce a law. In particular, he might do so "when . . . a question arises whether a particular law has cut off power confided into him by the people, through the Constitution, and he alone can raise that question . . . ." Even in this case, Curtis acknowledged, the President could not determine for himself whether or not to execute the law. He could only, by refusing once, bring the case before the Supreme court to enable it
to decide who is right, he or Congress. In raising such a case, the President manifested no criminal intent and therefore could not be removed.

But Curtis' argument had one great weakness. If Senators conceded the President could protect his prerogatives in the way Curtis indicated, they must still be convinced that the offending law actually threatened those prerogatives. The Senate, by passing the Tenure of Office act, had already decided that an absolute right or removal was not a presidential prerogative, and this substantially diminished the power of Curtis' argument. Groesbeck remedied the flaw by broadening slightly the circumstances under which the President could challenge a law to include those doubtful cases in which a congressional enactment contradicts long-standing constitutional doctrine. This fit the case at hand perfectly. Even if the removal power did not reside solely in the President, constitutional theorists had long held that it did. The Tenure of Office law denied that well-established doctrine.

The managers tried their best to ignore the difference between the broad and narrow interpretations of the President's right to resist the law, opposing the narrow with the same arguments as they did the broad. Bingham argued the President might interpret any law as somehow restricting the powers of his office, and with an effective flourish, quoted Curtis' own work, Executive Power, in which the President's
defender had insisted "the powers of the President are executive merely. He cannot make a law. He cannot repeal one. He can only execute the laws. He can neither make nor suspend nor alter them." But despite Bingham's efforts, the defense lawyers had opened a wide hole in the prosecution's case. The Senate overruled the managers when they objected to defense testimony that Johnson desired a court test of the law—testimony primarily from General Sherman—on the grounds that this was no defense and that even if it were, Johnson's mere statement to Sherman that this was his intention did not prove it really was. On the key votes between twenty-three and fifteen Republicans voted to admit the evidence.

The managers received an even worse setback when the Senate voted to accept testimony that Johnson desired a court test of the law after he had removed Stanton and impeachment was already under discussion. "If, after this subject was introduced into the House of Representatives, the President became alarmed at the state of affairs, and concluded that it was best to attempt by some means to secure a decision of the court upon the question of the ... tenure-of-office act, it cannot avail him in this case," Wilson argued. "We are inquiring as to the intent which controlled and directed the action of the President at the time the act was done; and if we succeed in establishing that intent ..., no subsequent act can interfere with it or remove from him the responsibility which the law places upon him because of the act done."
Retreating under the power of this attack, the defense limited their argument as to what the testimony proved, now saying they intended only to show Johnson intended no use of force. After this modification in the defense position, the Senate accepted the testimony, overruling repeated objections by the managers, with from fifteen to eighteen Republicans voting in the majority.

But while more than enough Senators to acquit Johnson seemed to agree that he should not be removed if he merely intended to challenge the Tenure of Office act's constitutionality before the courts, this did not mean the defense had won its case. They had to prove that this was in fact Johnson's intention. And here was where the real case for estoppel lay. For Johnson had never indicated any intention to challenge the law before the courts until the Senate refused to accede in Stanton's removal. He had suspended Stanton in conformity to the law, he had dominated his successor Secretary of War ad interim, clearly implying he did not consider Stanton's removal final, he had sent his reasons for the suspension to the Senate as the law required. How could he now insist he had always intended to challenge its constitutionality?

The same considerations constituted a forceful argument for estoppel in the President's contention he did not believe Stanton covered by the law. The defense's arguments against estoppel—that it could not prevent the Senate from deciding a point of law—did not apply here. The President's actual
intent was a matter of fact, to be determined from the evidence. And all his acts indicated he had not questioned Stanton's protection under the law.

Second, the two averrals were patently inconsistent. If Johnson had wanted to bring the Tenure of Office act's constitutionality before the courts for adjudication, how could he have intended to do so by removing an officer to whom he believed the act did not apply? Why did he not instead remove a non-Cabinet officer, one to whom the law clearly pertained? He had had nearly a year to do so, and yet he had taken no such action.

Finally, the managers introduced a damning piece of evidence, a letter from Johnson to McCulloch: "In compliance with the requirements of the act entitled 'An act to regulate the tenure of certain civil offices,' you are hereby notified that on the 12th instant [August] Hon. Edwin M. Stanton was suspended from his office as Secretary of War, and General U. S. Grant authorized and empowered to act as Secretary ad interim." There can be little doubt, in light of this evidence and other evidence to which the managers had no access, that the "intent" arguments put forward by the defense had no foundation in fact.

After the events leading to impeachment, after a year of presidential obstruction centering upon the Army's role in reconstructing the South, after the President's recent winter offensive, it is difficult to understand how anyone could have
accepted at face value the moderate and reasonable interpretation Johnson's lawyers put on his activities. In explaining why the President had acted in consonance with the Tenure of Office act's requirements until February, 1868, for instance, Groesbeck told the Senate, "[I]t was an overture from the President . . . to get out of this difficulty, and to conciliate you in the hope you would relieve and let him have a cabinet such as any of you would demand if you were in his place." Given the actual circumstances of Stanton's suspension and the removal of Sheridan and Sickles immediately afterward, Groesbeck's apologia was manifestly false.

Yet it was not easy to disprove the defense counsel's endless affirmations that Johnson had no offensive motives, that he intended no violation of the Reconstruction laws, that he was motivated solely by a desire to preserve intact the powers of the presidency. How could they prove all that happened over a three year period? How could they prove a feeling, a tension, a universal knowledge that the President and the congressional majority were involved in a deathly struggle, arrayed in unending hostility? These problems once again put into perspective the question of the Senate's status while trying an impeachment. The managers, insisting it was not simply a court, urged Senators themselves to recall the circumstances in which the alleged crime took place. If they did so, they knew, defense avowals of good faith, honest mistakes, and the like, could not stand.
In arguing the opposite, for the adherence to common law rules of procedure and standards of evidence, the defense demanded the managers document all their charges. "[T]he glory and the boast of the English law and of the American Constitution are that we have certain fixed principles of law, fixed principles of evidence that are to guide, to govern, to control in the investigation of causes," Nelson announced. "... There sits the judge; there are the jury; here are the witnesses who are called upon to testify; they are not allowed to give in evidence any rumor that may have been afloat in the country; they are compelled to speak of facts within their own knowledge." Isolating the violation from its attendant circumstances, the defense counsel ridiculed the seriousness of the crime, an infraction in which "[s]ix cents fine, one day's imprisonment ... may satisfy the public justice." To counteract these tactics, the managers emphasized the eleventh article, which alleged the violation of the Tenure of Office act as part of a conspiracy to violate the Reconstruction laws. That set forth the real offense; that put it in context; and that is why the managers and Senators felt it was the article on which conviction was most likely.

The second major point at issue was the President's right, notwithstanding the Tenure of Office law, to remove an appointee while the Senate was in session and appoint an ad interim replacement. The managers argued the President
could not do this. While the Senate was in session, the only way he could remove an officer was to name another in his place. The incumbent would retain his office until the Senate confirmed his successor. The new appointment and its confirmation worked the removal. 71 To concede the President power to remove an officer and then name an ad interim appointment, which needed no confirmation, nullified the Senate's constitutional power to advise and consent to appointments. Johnson "thus assumes and demands for himself and for all his successors absolute control over the vast and yearly increasing patronage of the government," the managers warned. "If . . . this Senate concede the power arrogated to the President, he is henceforward the government." 72

Johnson's lawyers answered that the President of the United States possessed an inherent and absolute power of removal. As support they cited the decision of Congress when it created the executive departments in 1789 to leave the authority to remove the department heads with the President alone rather than require the Senate's consent as some congressmen had urged. During that debate, the defense insisted, Congress had fully discussed where the Constitution had vested the removal power and concluded it lay in the executive department alone. 73 The managers denied that interpretation of the 1789 debate. In the bill creating the Department of State, Boutwell pointed out, the House had stricken language making the head of the department removable by the President.
Instead it substituted detailed prescriptions concerning who should take temporary custody of department property if the President did remove its chief officer. This change, Boutwell argued, left the scope and character of the removal power itself undefined. When Congress considered legislation creating the Treasury department one month later, Boutwell noted, the Senate objected even to this language, striking it and leaving no mention of removal at all. The House insisted on its version, and the Senate, by the casting vote of the Vice President, receded. "All this shows that the right of removal by the President survived the debate only as a limited and doubtful right at most," Boutwell concluded.

Boutwell's interpretation of the language finally incorporated in the bills was palpably wrong. Contrary to his opinion, the original language had implied that Congress had the power to make such removal provisions as it chose and simply had decided to vest that power in the President alone so far as department heads were concerned. By acknowledging the President could remove department heads without specifically granting the power in the bill, the changed language implied Congress had no power in the premises. Nonetheless, Boutwell's observation that the concession had passed by the narrowest of margins was correct. Moreover, later historical analysis would show that the amended language was passed in the House only after a brilliant parliamentary maneuver which had totally confused the issue. Although his reasons were
wrong, Boutwell's statement that the 1789 congressional debates were inconclusive precedents was accurate. 75

To determine the true scope of the President's power of removal, both sides turned to the actual practice of his predecessors. The managers introduced a list compiled by Secretary of State Seward of all the department heads ever removed by means other than the confirmation of a successor while the Senate was in session. It consisted of one name: Timothy Pickering, removed by President John Adams in 1800. They then introduced a list of all the department heads appointed without the Senate's advice and consent while it was in session. That list, giving approximately fifty instances of such appointments, consisted only of men appointed Acting Secretary or Secretary ad interim while the department heads were absent from the capital. Not one had replaced an officer who had been removed. 76

The President's counsel presented an immense mass of evidence from each of the departments, but very little of it bore on the question at issue. Besides the Pickering episode, the defense presented the name of one man in the Treasury department service who was dismissed while the Senate was in session apparently (but not certainly) before a replacement was confirmed, two lists from the Department of the Navy, and one each from the Department of the Interior and the Postmaster General. The first Navy Department list gave three instances of such dismissals, all for defalcation. In one case a successor was nominated the day of the incumbent's removal, but an ad interim replacement filled the office until his confirmation. Two others could not be checked. 77
The first Navy department list specified the removals of Thomas Eastin, Isaac Henderson, and James S. Chambers, all navy agents. The second Navy Department list named thirty navy agents removed before the expiration of their four year terms. But only eight of these removals took place during a session of the Senate, and of these two at most really had been removed before their term's end or by means other than the confirmation of a successor. Inspection demonstrates the others were included either by mistake or deliberately to mislead. The list from the Post Office department was more in point. It disclosed two instances of removals of post office officials during a Senate session by means other than the confirmation of a successor.

The Interior department list included all department officers ever removed by Presidents, whether removed while the Senate was in session or during recess. A spot check of those removed while the Senate met fails to disclose one case in which officers were removed by means other than the confirmation of a successor.

The second, closely related half of this issue was whether Johnson had authority for naming an ad interim replacement for Stanton after his removal. The President's lawyers cited as his justification a law of 1795: "In case of vacancy in the office of Secretary of State, the Secretary of the Treasury, of the Secretary of the Department of War . . . , whereby they cannot perform the duties of their
said respective offices, it shall be lawful for the President of the United States ... to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or such vacancy be filled: Provided, That no one vacancy shall be supplied, in the manner aforesaid, for a longer term than six months."

The managers pointed to the language, insisting a "vacancy ... whereby they cannot perform the duties of their said respective offices" could not refer to vacancies created by removal, but only to those which happened naturally in the course of administration—the death of the incumbent, his absence, sickness, or resignation. Furthermore, they argued, the 1795 act was repealed by a new law, passed in 1863 giving the President the same authority to make ad interim appointments "in case of the death, resignation, absence from the seat of government, or sickness of the head of an executive department ..., whereby they cannot perform the duties of their respective offices ... " The case of removal was conspicuously absent from the list.

The defense argued that the 1795 law did apply to vacancies created by removal. Under rules of statutory construction, they insisted, the 1863 law repealed only so much of the 1795 law as it covered—that is, the cases of death, resignation, sickness, or absence. So far as it related to removal, the 1795 law continued in force. This was a rather
weak argument. It pertained, of course, only if the 1795 act did authorize *ad interim* appointments after removal, and a far less strained interpretation of the 1863 law was that it represented a legislative interpretation of the 1795 law to cover vacancies created by removal. Finally, the managers pointed out that Johnson had appointed Grant Secretary of War *ad interim* August 12, 1867, after suspending Stanton. The 1795 law limited the term for which any office could be so filled to six months. Yet Johnson had appointed Thomas Secretary *ad interim* February 21, 1868, more than six months after the office had become vacant.

From this argument, the defense had no escape. If Johnson had suspended Stanton by virtue of his inherent power of removal, as he now insisted, then the vacancy had exceeded the maximum allowable time. If he changed his ground and argued he suspended Stanton in consonance with the Tenure of Office act, then he violated that act by removing Stanton after the Senate refused to agree to his removal. The President's counsel determined to ignore the question completely.

Once again the antagonists turned to the practice of the government to prove their points. The defense again presented long lists of men appointed *ad interim* under the 1795 law. But of all the names presented, only ten appear to have been in point. Two State department and two Post Office officials were named *ad interim* replacements for predecessors removed during a recess of the Senate. Although the Senate
was not in session at the time, the appointments indicated that on these two occasions the 1795 act was construed to apply to vacancies created by removal. Three of the other four ad interim appointees replaced the navy agents who had been removed for defalcation (see p. 522, supra). These temporary appointments were made during a session of the Senate and were exactly in point. The Navy department forwarded one more instance, in which an officer was instructed to assume the duties of yet another fallen navy agent, pending his resignation. The Post Office department supplied two more. None of the instances included in the mountains of further evidence offered by the defense appear to have been in point.

It is difficult not to conclude that the President's lawyers presented their massive lists in an effort to obfuscate the weakness of their case. Only fourteen of perhaps a thousand instances of removals and temporary appointments they presented to the Senate bore on the case, and all but one involved malfeasance in office. Moreover, they presented the evidence in such a way as to bury the facts. Many of the compilations did not indicate whether the removals and appointments listed took place while the Senate was in session or not. The managers and Senators were left to compare the dates on the lists with the dates of Senate sessions. Most of the compendia did not indicate how the removals were made, by a sort of presidential fiat or by the confirmation of
successors; nor did they indicate the circumstances under which Johnson's predecessors made their *ad interim* appointments, whether the vacancies they filled were created by removals or occasioned by other causes. The defense lawyers left the managers and Senators to sift through this evidence themselves, hoping the sheer bulk of it would impress them. Only after careful analysis does it become apparent that on this issue the defense fortress was a theatrical prop--an imposing front with no back.
CHAPTER XVII

VERDICT

As Republican Senators voted on the legal issues involved in rejecting and accepting evidence, it became apparent that a large number of them would not vote guilty on all the articles. Many concluded that impeachment lay only for a positive violation of law and dismissed Butler's tenth article, which alleged no such violation. A large number decided Johnson had never intended to use force to remove Stanton and would therefore vote against article nine and probably articles six and seven as well. The Senate had refused to accept evidence the managers offered to prove article eight, and that too would probably fail. Moreover, a number of Republicans had shown signs of accepting the defense argument that the President should not be removed if he violated the Tenure of Office law only to raise a court case. Combined with Democrats and Johnsonites, these were more than enough to prevent the President's removal. Pomeroy carefully canvassed the Senate and determined that only about twenty-five of the forty-two Republican Senators intended to convict on all the articles.

By mid-April, Republicans suspected impeachment might fail. Senator Joseph S. Fowler clearly signified his intention
of voting not guilty, leaving his seat each day as the Senate resolved into a quasi-court to try the impeachment and taking a new place among the Democrats. Grimes too freely acknowledged his intention to vote against conviction. Four Senators were voting to accept all testimony and evidence offered by either side—Ross, Sprague, Anthony, and Sumner. Republicans feared all but Sumner might vote to acquit. Peter G. Van Winkle, Trumbull, and Fessenden were considered doubtful. As Republican gloom developed, the hopes of Johnson's Cabinet and lawyers rose. By May 5, Evarts, Seward, and McCulloch were confident of acquittal, Evarts—who had been negotiating with conservative Republicans and had arranged Schofield's appointment as Secretary of War, it must be remembered—being especially certain.

As the trial drew to a close, wavering Republicans urged delay of the final decision. Having won Schofield's appointment as Secretary of War, they were now confident they could force the President to appoint a new, Republican Cabinet. On May 7, in a closed meeting of the Senate, Fessenden urged the postponement of the final vote to allow him to study the case and especially Bingham's closing argument. Radicals suspected he had motives beyond those he announced and demanded that the Senate open its doors and proceed to a final vote on the impeachment immediately. "[T]his trial of impeachment, after that of Warren Hastings, has occupied more time than any other," Sumner complained, "more days and a shorter time each
day. There had been postponement after postponement, and it [is] . . . now proposed to postpone the final question . . . ."
But his motion to vote immediately was defeated, garnering
the support of only sixteen members, and the Senate agreed
to delay the final decision until the following week. Over-
coming radical objections once more, the Senate decided to
set aside May 11 for closed-door discussion of the article and
delivery of opinions.

On that day the seriousness of the Republican situation
became apparent. Howe and Sherman declared their opinions
that the Tenure of Office bill as finally amended did not
cover Stanton. Ignoring the managers' argument that in that
case Stanton was protected under the law's general provisions,
they announced they would vote not guilty on the first article
and all articles which relied on a violation of the Tenure of
Office law. Since Sherman had been the chairman of the con-
ference committee which had framed the amendment, his words
carry great weight. Van Winkle, Fowler, Fessenden, and Grimes
announced they would sustain none of the articles, while
Trumbull, without finally committing himself, indicated the
same. Henderson declared against all but the eleventh. None-
theless, the well-informed Poore believed Johnson would be
convicted on the second article, which alleged he had violated
the law by removing Stanton during a session of the Senate
and appointing an ad interim replacement. Those Senators who
believed Stanton unprotected by the 1867 law would find him
guilty on this, he believed. Since the eleventh and third articles included this charge, Senators hoped they could muster two thirds of their number to convict on these also. But the other articles were lost. Of the forty-two Republicans, at least seven would acquit on the seventh and eighth, eight on first and fifth, nine on fourth and sixth, ten on the tenth, and twelve on the ninth. And the doubtful Senators, Anthony, Ross, Sprague, and Willey, had said nothing at all.

As the vote neared, both sides turned their attention to the wavering Senators. Grimes won the President's promise not to take drastic action and used it to firm anti-removal sentiment. Chase's daughter Katherine continued to pressure her husband, Senator Sprague. Henderson was assured the support of Missouri Democrats in his campaign for reelection to the Senate if the state's Republicans should shunt him aside for voting not guilty. Pro-Johnson lobbyists and politicians touted a proposal to nominate Chase for the presidency in an effort to give conservative Republicans an alternative to the regular party and the Democrats.

Republicans brought political pressure to bear upon the wavering Senators. "Great danger to the peace of the country and the Republican cause if impeachment fails," Schenck telegraphed leaders as chairman of the Republican Congressional Committee. "Send to your Senators before Saturday public opinion by resolutions, letters and delegations." Letters, some of them harsh, poured in upon the recalcitrants.
Fessenden's friend, Vermont Senator Justin Morrill, urged "... [T]he best legal learning of the Senate will sustain the 1st, 2d, & 3d articles of Impeachment. My opinion is of no value but with a very close attention to the subject for two months I think there is no doubt about it." Morrill reminded Fessenden that like himself he was "[n]ot much in favor of this act nor of Impeachment as original questions, but I must do my duty at all hazards." Finally he warned his friend of the consequences. "[Y]ou could do nothing which would fulfill the ancient grudge of a certain clique of yours foes sooner than a vote on your part in favor of Andrew Johnson." Within six months Sumner, Chandler, Wade, and Fessenden's other enemies would drive him into the Johnson camp, Morrill worried. But Fessenden would not budge.

To understand the urgency with which Republicans pressured their hesitating colleagues, one must look at the legal arguments acquittal would endorse. The question of whether the 1867 law covered Stanton was rather unimportant. But at minimum Johnson's lawyers also had argued the President could refuse to execute a law he believed unconstitutional if in his opinion it restricted his rightful powers. Second, they had argued he might replace officials appointed by the consent of the Senate and replace them with his own ad interim appointees without going to the Senate for confirmation. If these doctrines were sustained, Johnson would be free to remove every Republican office-holder the Senate had forced upon him through the Tenure of Office act and replace them
with his own devotees _ad interim_ with a presidential election only a few months away. As a practical matter, it would force government officers to endorse the President and work for the candidate he favored or face immediate removal.

At worst, the President's lawyers had argued he might violate any statute his Cabinet advised him was unconstitutional. If Johnson acted on that doctrine, he might overthrow the Reconstruction acts and restore complete authority to his state governments. Not only would that be disastrous to the rights of freedmen and southern white loyalists, but in 1869 Congress would be faced with Democratic electoral votes from all those states, and the decision whether to count them would involve a real possibility of violence.

As the date set for the final vote, May 16, approached, the dissident Senators wavered and urged delay. On May 12 and 13 Ross told his colleague, Pomeroy, he would vote to convict on the first three articles and the eleventh. Anthony, Willey, and Frelinghuysen finally assured colleagues they would sustain the key articles. Henderson indicated he would resign rather than cast the deciding vote for acquittal and held out the possibility he would convict on the eleventh article. On May 12 the Missouri congressional delegation assured him they did not want his resignation and suggested he abstain on the articles on which he could not vote guilty. The Senator seemed to agree but added he would speak to Sprague, Van Winkle, Anthony, and Willey. If they intended
to convict on the eleventh article, the President would be removed regardless of Henderson's vote.

On May 14 Ross, Henderson, Van Winkle, Willey, and Trumbull met in Van Winkle's rooms. When Pomeroy found them there they urged another delay in the vote, assuring him it would bring a reorganization of the Cabinet, with Massachusetts Republican Representative Samuel Hooper named Secretary of the Treasury, Evarts Secretary of State, and Reverdy Johnson and Groesbeck in other positions. Despite their reluctance, Republicans still believed Willey and Ross ultimately would cooperate with the party.

The result, of course, is well known. Ross voted with Fessenden, Fowler, Grimes, Henderson, Trumbull, and Van Winkle against conviction, and the seven recusants were recorded in history as the seven martyrs. Of the seven Fessenden, Fowler, Grimes, Henderson, Trumbull, and Van Winkle formally filed their opinions. All averred impeachment lay only for positive violations of law. With the exception of Van Winkle's curious discussion, each of the Senators began with the affirmation that prior to the passage of the Tenure of Office act, the President of the United States had the power to remove government appointees in the manner Johnson had removed Stanton. For support, Fowler, Grimes, and Henderson relied on the erroneous but widely held understanding of the first Congress' debates on the subject (see pp. 521-22, supra). Only Henderson acknowledged that the accuracy of that
understanding had been questioned (by the time Henderson filed his opinion, several Senators had pointed out the true circumstances of that debate), but he simply averred, "I think otherwise." Fessenden bolstered his argument with the assertion, which he did not support with proof, that "instances have not infrequently occurred during the session where the President thought it proper to remove an officer at once, before sending the name of his successor to the Senate." Since the defense had been able to produce only seven such instances, it is clear Fessenden's conclusion was inaccurate. Trumbull made the same assertion, offering three examples from the defense evidence.

Having concluded Johnson could remove Stanton as the law stood prior to the passage of the Tenure of Office act, Fessenden, Fowler, Grimes, Henderson, and Trumbull each decided that by the terms of the proviso governing the tenure of department heads Stanton's term had expired. This involved several points which could have been decided either way; the dissidents decided them for the President. But none of them answered the prosecution argument that he was protected under the general provisions of the bill if his term as department head had ended.

Finally, all but Van Winkle determined that Johnson had the authority to appoint Thomas Secretary of War ad interim after removing Stanton under the 1795 law governing ad interim appointments. In arriving at this conclusion, each asserted
the word "vacancy" in the law included vacancies created by removal, and each argued that the 1795 law had not been completely repealed by that of 1863 (see pp. 524-25, supra). Trumbull argued that even if Johnson had not the power to appoint Thomas, it was not an impeachable offense because Congress had not enacted a law making it a crime. None but Fessenden attempted to reconcile their justification of Johnson's act under the 1795 law with the provision of that law limiting to six months the length of time any vacancy could be filled by an ad interim appointment. To solve that problem, Fessenden argued that Johnson had suspended Stanton in August, 1867, under the Tenure of Office act. When the Senate refused to acquiesce, Stanton was legally restored to the office and therefore could not be held ever to have been actually removed. Therefore six months had not elapsed before Johnson made his 16 ad interim appointment of Thomas.

It is evident that Fessenden was straining the law. The 1795 law limited to six months the time any vacancy could be filled by an ad interim appointment. Granting Stanton's suspension did not work a removal, it had vacated the office. The President never revoked that suspension. On the contrary, Johnson had specifically reaffirmed it when he notified the Senate of Stanton's removal February 21: "On the 12th day of August, 1867, by virtue of the power and authority vested in the President by the Constitution and laws of the United States, I suspended Edwin M. Stanton from the office of
Secretary of War. In further exercise of the power and authority so vested in the President, I have this day removed Mr. Stanton from the office . . . ." That suspension had ceased only if the Senate’s vote had legally restored Stanton to office. That it could not do—despite Fessenden’s insistence that it had—unless Stanton was covered by the Tenure of Office act. Fessenden was interpreting the law both ways. To acquit Johnson of its violation, the Tenure of Office act did not cover Stanton. To acquit him of a violation of the 1795 statute, it did.

Van Winkle’s opinion was truly remarkable in its reasoning. Unlike his fellow dissenters, the portly West Virginia Senator conceded that the Tenure of Office act did protect Stanton from replacement. But, he argued, Johnson had not violated the act. The only evidence that Johnson had attempted to remove Stanton was the written order to that effect. That order could not effect a removal of itself. "There is not even an allegation that the order in writing was ever delivered to, or served on, Mr. Stanton, or ever directed to be so delivered or served, or that any attempt was made to deliver or serve it; or, in fact, that Mr. Stanton ever saw or heard it." This was the pettifogging the managers had feared when they argued against considering the Senate a court; this was the legal quibble in its ultimate degree. All knew Stanton had received the removal order. He had sent a copy of it to the House and that very copy had precipitated the impeachment. The President’s answer to the articles admitted the
delivery of the order. "To this I reply that the answer cannot confess what is not charged," Van Winkle reposted.

The articles did allege that Johnson had actually delivered a letter of ad interim appointment in violation of the Tenure of Office law. But Van Winkle denied that the delivery of that appointment violated the act. The penal section of that law made a crime "every . . . appointment, or employment made, had, or exercised contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority, for . . . any such appointment or employment . . . ." The question, therefore, was not whether Johnson issued a letter of authority to Thomas, but whether the appointment that letter embodied was contrary to the Tenure of Office law. Van Winkle decided it was not. It was not an appointment at all. "The letter . . . simply empowers and authorizes him to act, and does not use the word appoint, or any equivalent term." The Tenure of Office act forbade only such appointments contrary to the act as required the advice and consent of the Senate. Thomas' was not such an appointment.

Finally, Van Winkle had to consider the problem of whether the President had the right to make such a non-appointment, to authorize a man to fill a position without sending his name to the Senate for confirmation. Although he might have relied on the 1795 law as had Fessenden, Trumbull, and the other recusants, Van Winkle chose not to. He conceded
that an ordinary appointment, if not sent to the Senate for confirmation, violated the Constitution. But the letter purported to make the appointment only ad interim, and as "the Constitution makes no mention of such appointments, it does not appear that it can be such a violation." This argument denied one of the fundamental tenets of mid-nineteenth-century constitutional law, that the President had only such powers as enumerated or implied in the Constitution. Van Winkle held that "it can hardly be intended to assert that every act for which a special or general permission of law is not shown is unlawful and a misdemeanor." This might be true of the conduct of private individuals, who in the United States retain the right to do what they wish as long as they do not violate statutory or common law. But it is a more doubtful proposition when applied to public officials, whose public trusts involve not rights but duties and powers granted by the people.

In framing his opinion, Van Winkle demonstrated almost a perverseness, a compulsion to arrive at his conclusions by a different route than his colleagues, and one requiring a far more strained interpretation of the law, which at times appears to be almost a parody of the legal dissertations prepared so painstakingly by his peers.

Essentially, the seven recusant Senators (with the exception of Van Winkle) had decided every doubtful point in favor of the President. In some cases, especially Van Winkle's, they had adopted a rigidly legalistic approach to a question
which in many ways transcended legalism—"narrow special pleading worthy of an Old Bailey lawyer," Massachusetts jurist 23 prudent George S. Sewall complained.

Republicans realized that there had been great leeway in the case. They knew the seven Republicans who voted not guilty had decided doubtful points in favor of Johnson in the same way those who voted for conviction had decided them against him. Totally convinced of the President's guilt, most Republicans could only view the recusants' defections as political rather than legal acts. As Blaine observed shortly before the vote, "The class of men who hold the whole thing in their hands are men who take a position deliberately; counting the cost, and then maintain it . . . ." 24

But actually, another consideration impelled the recusant Senators to decide as they did. They were not reluctant to acknowledge it in their opinions; "In the case of an elective Chief Magistrate of a great and powerful people, living under a written Constitution, there is much more at stake in such a proceeding than the fate of the individual. The office of President is one of the great co-ordinate branches of the government . . . . Anything which conduces to weaken its hold upon the respect of the people, to break down the barriers which surround it, to make it the mere sport of temporary majorities, tends to the great injury of our government, and inflicts a wound upon constitutional liberty. It is evident, then, . . . that the offence for which a Chief Magistrate is
removed from office, and the power intrusted to him by the people transferred to other hands . . . should be of such a character to commend itself at once to the minds of all right thinking men as, beyond all question, an adequate cause. It should be free from the taint of party; leave no reasonable ground of suspicion upon the motives of those who inflict the penalty, and address itself to the country and the civilized world as a measure justly called for by the gravity of the crime and the necessity for its punishment. Anything less than this . . . would . . . shake the faith of the friends of constitutional liberty in the permanency of our free institutions and the capacity of man for self-government."

James Dixon, the Johnsonite Senator from Connecticut, put it more simply in a letter of thanks he wrote Fessenden a few months later. "Whether Andrew Johnson should be removed from office, justly or unjustly, was comparatively of little consequence— but whether our government should be Mexicanized, and an example set which would surely, in the end, utterly overthrow our institutions, was a matter of vast consequence. To you and Mr. Grimes it is mainly due that impeachment has not become an ordinary means of changing the policy of the government by a violent removal of the Executive." With Senators committed to those considerations, it is clear that impeachment never could have won their votes.

But if Fessenden and other conservative Senators sincerely feared the consequences of successful impeachment,
radical Senators were just as frightened of the consequences of failure where a President appeared so manifestly guilty. If Andrew Johnson could not be convicted for his actions, for what crimes would a President ever be removed. How could a Chief Executive who threatened the well-being of the nation be checked? And more immediately, how could Johnson be checked? "My life has been a failure," Thaddeus Stevens averred, despairing. "With all this great struggle of years in Washington, and the fearful sacrifice of life and treasure, I see little hope for the Republic."  

Historians now recognize that the recusants' votes against conviction did not affect their political lives as decisively as once believed. 28 Radicals like Julian demanded that Republicans drive them into the Johnson camp, but conservatives and centrists resisted. 29 Republicans immediately recognized the dangerous consequences of taking of such advice with a presidential election approaching and the Democrats considering the nomination of Chase. "The impeachment trial is a failure," the Cincinnati Commercial observed, "it need not be a disaster." 30

The key battle over the party's future relations with the recusants was fought at the Republican national convention in Chicago, May 19 and 20. More than the impeachment issue was at stake. Fessenden, Trumbull, and Grimes were at the core of the conservative Republican faction in the Senate. Their opinions carried great weight with less committed
members, and the radicals had been struggling to overcome that influence since 1865. As Justin Morrill had warned Fessenden, his vote on impeachment delivered to the radicals the weapon for which they had been searching. But despite the urging of radical and many centrist congressmen, the delegates to the national convention, spokesmen for local political interests rather than an ideology, refused to condemn the dissenters. The Nation happily noted that the proceedings seemed "to indicate great weakness on the part of the extreme Radicals . . . ." 31 Congressmen travelled from Washington to Chicago especially to urge the convention to read the recusants out of the party. Logan and Representative Norman B. Judd bitterly attacked Trumbull before the Illinois delegation, but were rebuffed. The same no doubt occurred in meetings of other delegations. Horace White mentioned the Massachusetts delegation in particular as making radical demands. The National Union League passed resolutions condemning the seven and attempted to persuade the delegates to endorse them, but they too failed. John Cochrane, the New York radical who had been the vice-presidential candidate on the 1864 Fremont radical ticket, proposed a similar resolution on the floor, but Carl Schurz, the presiding officer, opposed it, and Cochrane withdrew his proposal. 32 As Republicans swung into the campaign, the Boston Evening Journal noted, "It is surprising to see how far the whole subject of impeachment seems to have been thrown into the background and
dwarfed in importance . . . ." In Kansas, Iowa, West Virginia, Illinois, and Maine, Republicans quickly ceased their attacks on their Senators and concentrated upon the canvass.

To secure Fessenden's position beyond doubt, Massachusetts hard-money men decided to invite him to a formal dinner in his honor in the same manner they had invited Secretary of the Treasury McCulloch a year earlier. Avowing that many of the signers disagreed with his vote on the impeachment, they endorsed Fessenden's courage and his statesmanship. The invitation was signed by Atkinson, Dana, Charles Francis Adams, Jr., the son of the minister to England, Peleg W. Chandler, the publisher of the Boston Daily Advertiser, Samuel Bowles, editor of the Springfield Republican, James Russell Lowell, the great essayist and poet, Charles Eliot Norton, the editor of the North American Review, former Governor Alexander H. Bullock, and others. It was a high-powered list. Dana, Bowles, Eliot, and Chandler formerly had been Sumner's political opponents within the state party, and the Senator--up for reelection--immediately interpreted the effort as an attack upon him. Atkinson and Dana denied it, but there is no doubt that Grimes hoped Fessenden would use the opportunity to expound "in the strongest terms your conviction of the revolutionary tendencies of the demands of the impeacherites and insist as is the fact that we have saved the country." And Atkinson acknowledged his antipathy to the soft-money radicals. "I have little confidence in the stability or permanent success
of a party which submits to the leadership in the House, of B. F. Butler and attempts to cast out Fessenden," he warned. "If Butler is to be allowed to take upon the Republican party the odium of the present corruption by defeating the efforts of honest men to reform the revenue system [i.e., by opposing tariff reduction and payment of national bonds in gold], all men who have any self-respect will leave the party which he thus betrays as soon as the exigencies of reconstruction will allow them to do so."

Nor did the conservatives' friends and allies in the Senate desert them. Influential Senators like Anthony, Sherman, and Justin Morrill maintained their former cordial relations. When the Forty-first Congress convened in March, 1869, the Republican caucus named Trumbull one of the all-important men to make committee assignments. Grimes wrote, "I am satisfied than I am stronger in the Senate in every respect . . . than I ever was before I was tried in the furnace of impeachment." The greatest radical-conservative confrontation over impeachment had ended, and the uneasy Republican alliance in Congress had returned to normal.
CHAPTER XVIII

RESTORING THE STATES . . . AND STATE RIGHTS

The proceedings of spring, 1868 which restored all but three of the unreconstructed states to normal relations in the Union marked the fundamental turning point in the history of congressional reconstruction legislation. For although Republicans had been divided on the specific program best suited to securing loyalty and the rights of loyal men in the South, they had been united in their convictions that Congress had the power to secure some guarantees to insure future loyalty in the South and the safety of those who had supported the nation during its trial. They had attempted to accomplish that program despite the obstacles presented by their own traditional constitutional conceptions of the nature of federal government. Republicans had overcome those obstacles by denying that traditional limitations on the powers of the national government pertained to the crisis. They had argued that the states were out of normal relations with the Union, subject to the paramount control of the national government until they should be restored. By justifying themselves on these grounds such constitutional conservatives as Lyman Trumbull, John A. Bingham, James W. Grimes, Roscoe Conkling, and William Pitt Fessenden had been able to cooperate with Charles Sumner, Thaddeus Stevens,
Zachariah Chandler, Benjamin F. Wade, and others, who shared far less restrictive views of the proper role of the national government. But with the restoration of normal relations, that justification for "extraordinary" power in Congress no longer existed, and those Republicans who wished to preserve the old, narrow conception of the proper role of the national government began to draw apart from those who were willing to see the national government assume broad, new responsibilities for the protection of citizen's rights.

Because Republicans could maintain a united front only so long as conservative constitutionalists believed normal federal relations between the national government and the southern states did not exist, it had been apparent—most of all to the conservatives themselves—that the southern states must not be restored to normal relations in the Union until they were thoroughly reconstructed. For that reason many conservatives in the Senate had joined radicals in March, 1867, in efforts to make it more difficult for southerners to qualify for restoration under the Reconstruction acts. After numerous defeats the coalition had succeeded in incorporating a minimum protection into the Supplementary Reconstruction act: the requirement that one half the registered voters participate in the elections in which new state constitutions were to be ratified.¹

But as the President launched his offensive in January, 1868, as Democrats showed a resurgence in the
elections of fall, 1867, and spring, 1868, as northern voters expressed their impatience with the continuing struggle, further delay in restoration seemed to threaten Republican political dominance. And if Republicans were vanquished in the congressional and presidential elections of 1868, the battles of the past two years would end in disaster. Yet Republicans received continuing evidence that loyalty was not yet secure in the southern states, that reconstruction was not complete, that southern Republican organizations (the only loyal political organizations in the South, in Republicans' estimation) would be hard pressed to stand without the military presence provided by the Reconstruction acts.

In December the House reacted to the new situation by repealing the provision of the Reconstruction acts requiring majority participation in the ratification elections, but despite the House's proddings, the Senate Judiciary committee delayed action.  

The Republican dilemma became critical in February, 1868, when Alabama Democrats waged a successful stay-at-home campaign against the new constitution drawn in conformity with the Reconstruction laws. Nearly 70,000 Alabamans voted to ratify the new fundamental law and only 1,000 voted against it, but the combined total did not equal the one half of the registered voters the law required for successful ratification. Therefore, under the law Alabama remained unreconstructed, its pro-Johnson
provisional government remaining in office. Similar Democratic campaigns in other southern states promised to be equally successful.

With the Alabama election bringing the crisis to a head, Senate Republicans apparently decided that repeal of the majority requirement was necessary, and on February 28 the measure passed. Southern Democrats were forced to give up their nonparticipation strategy, and six states ratified new constitutions by June, 1868. The New York Tribune proclaimed the results "The Triumph of Reconstruction," but congressional Republicans could hardly be so sanguine. Despite the disfranchisement required in the Reconstruction act, had Congress not relaxed the ratification requirements at least one and possibly two of those constitutions would have been rejected. Five or six of the ten unreconstructed states would have remained out of normal relations with the Union. Moreover, the people of Florida had ratified their new constitution over radical objections after a virtual coup d'etat supported by Democrats, conservative Republicans, and the Army. If Republicans had insisted on complete demonstrations of loyalty (which they believed southerners could show only by offering clear Republican victories), only three states certainly would have been restored to the Union in 1868--Louisiana, North Carolina, and South Carolina.

Forced by political necessities to admit these southern states to normal relations with the national
government, many Republicans expressed their apprehensions. "You are hastening back States where rebelism is pervading them from end to end," complained the radical Missouri Senator Charles D. Drake. And this reluctance to surrender authority over the South was not limited to radicals. Even Dawes, perhaps the most conservative Republican in the House, acknowledged, "I . . . have undergone some change of views during the years I have spent in this House touching the questions of granting representation in Congress to those portions of the country that have been under the control of the rebellion. . . . I have become satisfied that representation in Congress, instead of being the first thing to be secured to these States, should be the last thing; that the State should first be built up, personal rights should be secured, the damage done by rebellion should be repaired, the stability and securing of the State as an organized and peaceful community should be made certain; and representation in Congress should follow and grow out of that security . . . ." These often hidden misgivings pervaded the Republican camp as Republicans reluctantly restored the Union. Despite the apparent unanimity by which the final restoration acts were passed, "there are not ten men . . . who believe it a safe thing to do at this time," Timothy Otis Howe concluded. 8

When Congress first considered the situation in Alabama in March, 1868, sentiment for delay wherever possible was still strong. The likelihood that President
Johnson would be removed from office on the impeachment charges made the end of military control in the South less urgent. The impeachment had restored the morale of the Republican party. Nonetheless, on March 10 the House Reconstruction committee reported a bill recognizing the restoration of Alabama to the Union under the constitution which had failed of ratification at the polls. The committee justified its course with a catalogue of obstacles which had prevented the free expression of Alabamans' opinions on the ratification question. A violent storm had made polling places inaccessible to many voters, loyal men were deterred from voting by "the most atrocious and outrageous threats," "a system of ostracism, social and financial, prevailed," the committee insisted. Since Congress had already passed a law repealing the requirement that a majority of registered voters participate in the ratification election, "the committee could see no reason why Alabama should not have the benefit of that principle as well as the other States . . . ."9 But while the Reconstruction committee believed the successful intimidation of loyal southerners justified Congress in restoring Alabama to its place in the Union under the constitution Alabamans had rejected, other Republicans pointedly asked, "/W/ hat assurance ː\canc7 the gentlemen . . . give the House that if we admit the State of Alabama under these circumstances the next election will not find it in the hands of the rebel party?"10 Under this pressure, the Reconstruction committee agreed to take
the bill under advisement once again.

But with Alabama Republicans warning Stevens that they had polled their maximum strength in the ratification elections and that they could not hope to ratify their constitution in a new one, Stevens' Reconstruction committee once again reported a restoration bill.11 Torn between the apparent necessity to restore Alabama to normal relations in the Union and the clear indications that reconstruction there was neither thorough nor secure, the committee proposed to require the state to agree to "fundamental conditions" as part of its readmission to congressional representation. By the terms of those conditions the state constitution could never be amended to restrict the vote of citizens which it now enfranchised (i.e., black Alabamans), nor to enfranchise any person disqualified from holding office under the XIV Amendment. Congress would have the power to annul any law or amendment to Alabama's constitution which contravened the condition.12 The fundamental conditions were a direct outgrowth of Republicans' fears that restoration was premature, that their reconstruction policy was in jeopardy in the South. "We must try to shackle [the southern states]... in some way that while we are admitting these fraudulent white men we are securing the poor ignorant black man from their impositions," Stevens explained.13

The proposal of fundamental conditions to which Alabama (and presumably other southern states) would have
to adhere after restoration was a radical departure from the theory of reconstruction upon which Republicans had acted. Desperately trying to salvage some remedy for the dangers they foresaw from early restoration, Republicans for the first time attempted to preserve some congressional power over the southern states after they were restored to the Union. Stevens proposed an amendment which went even further. It provided that if Alabama reduced the right of suffrage below the standard required in the condition, the legislation restoring the state to the Union would be null and void. Implicitly, in that case Alabama would revert to direct congressional control and the national government might begin the reconstruction process there anew. 14

The proposal to impose fundamental conditions and through them to broaden the powers of the national government to protect the rights of citizens led to the first of a series of the intra-Republican confrontations on constitutional questions which would mark the reconstruction legislation of the post-1868 era. Conservative constitutionalists in the Republican party, led by Bingham, were unprepared to cooperate in this new attempt to limit state prerogatives. Congress conceded a constitutional amendment was to interfere with the states' rights to regulate the franchise when it passed the XIV Amendment, Bingham insisted, "... T/he American system of government is a total failure if the people cannot be intrusted with the right of altering and amending their constitutions of government at their pleasure,
subject to the general limitations of the Federal Con-
stitution."15 Bingham advocated the simple admission of
Alabama with no conditions whatsoever.

But other conservatives, also unwilling to acquiesce
in the extension of national power implied by the fundamental
conditions were less willing to restore the state in its
present condition. Instead, they joined with those radicals
who opposed admission, advocating that Congress refuse to
recognize the states' restoration. They suggested that
Congress replace the pro-Johnson provisional government
with a new one consisting of the Republicans who would have
been elected to state office had the constitution been
ratified.16 But other Republicans were rapidly losing
patience with the entire reconstruction question. They
longed for peace and a return to traditional American
governmental institutions. John F. Farnsworth, the Alabama
Restoration bill's manager, was one of these (he would join
the Liberal Republican movement in 1872). "... things
cannot drift along in this way forever," he warned his
allies. "Those States must be admitted some time. There
must be an end of the confusion, the anarchy now prevailing.
We must have civil law and civil order. We cannot always
control those States by the bayonet."17

When the House voted, the disunity in Republican
ranks became apparent. A coalition of Republican constitu-
tional conservatives and Democrats carried Bingham's amend-
ment to strike the fundamental conditions from the bill.
Stevens' version of the conditions failed without even a division of the House. With the conditions eliminated, most of those Republicans who had favored Alabama's admission with conditions joined those who had advocated continued exclusion to amend the bill to inaugurate a new provisional government instead. Republicans circumvented the problem of extending the national government's power to protect citizens after restoration of the southern states by refusing to restore Alabama at all.

However, by May, as it became apparent that the President would not be convicted on the impeachment, Republicans almost unanimously agreed that the danger of leaving southern states unreconstructed far outweighed that of restoring those states, even with rebel elements still strong within them. Republicans expected Johnson to exercise far greater control over the military commanders in the South with the threat of impeachment eliminated than he had before. Even with the possibility of impeachment and removal before him the President had worked with remarkable diligence to disrupt the operation of the Reconstruction acts. Republicans viewed with apprehension the possibilities which victory in impeachment opened to him. Therefore they made almost no resistance to speedily restoring the southern states which ratified their new constitutions between February and June, 1868.

Stevens reported a bill to restore the first of these states, Arkansas, on May 7. Once again the bill included a
fundamental condition: "that the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at the common law, whereof they shall have been duly convicted." 19 By this version of the condition, however, Congress did not reserve to itself the power to annul any changes made in contravention of the condition. The question of enforcement was never clarified, and many Republican congressmen announced their opinions that it would be unenforceable. 20 Moreover, the new condition did not include the provision disfranchising rebels disqualified from holding office by the XIV Amendment and left the way open for the enfranchisement of all former rebels by the state governments.

Despite the modification, conservative Republican Representatives Jehu Baker and Rufus Spalding questioned the provision's constitutionality and opposed Stevens' effort to call the previous question, cutting off amendments. But other conservatives, notably the influential Blaine, urged Stevens to press on. "If there is any subject which has been talked to death in this country," Blaine complained, "it is the subject of reconstruction. What is wanted now is action." 21 With this clear indication that many conservatives were willing to acquiesce in the imposition of fundamental conditions on the returning southern states,
the House seconded the previous question and quickly passed the bill. 22

Several days later Stevens reported for the Reconstruction committee a bill recognizing the restoration of North Carolina, South Carolina, Louisiana, Georgia, and—signalling the end of all efforts to delay restoration in the House— Alabama. After minimal debate, the House passed the legislation with the same fundamental conditions included in the Arkansas bill. 23

Like their allies in the House, Senate Republicans were unwilling to risk the consequences of delaying southern restoration. Howe's plea to reconsider went unheeded. ("I wish the Senate to answer the question to themselves whether they are entirely satisfied that this loyal constituency . . . is a constituency combining those numbers and that intelligence and that influence which will enable us to maintain this government in loyal hands," he begged.) Howe's proposal to instruct the Senate Judiciary committee to report a bill organizing a provisional government in Arkansas based on the new constitution was defeated without even a formal division. 24

But in the Senate, with its unlimited freedom of debate, the concept of fundamental conditions met its most powerful opposition. Despite the opposition of several of its most important members (including Chairman Trumbull and the influential Conkling) to the imposition of fundamental conditions, the Senate Judiciary committee reported the
House bill restoring Arkansas—including the conditions—to the Senate without amendment. Again constitutional conservatives refused to acquiesce in this effort permanently to restrict state prerogatives through national power. ".../While these States were in their deranged and disordered condition, resulting from the rebellion, their governments gone, we had a right to come in and reconstruct republican governments by any means that were necessary and proper for that purpose," Oliver P. Morton conceded. "/But when these States are admitted, when they have complied with all our conditions and come back and are received, then they stand upon the same platform with every other State in the Union; they have every right and every power that belongs to every other State."25 Conkling and Trumbull echoed Morton's objections. Congress' power over the South was only temporary, arising out of the war. It would cease when southern states were restored to normal relations in the Union. ".../The people of Arkansas will have the same right to change their constitution when they are recognized... as the people of Wisconsin or the people of Illinois," Trumbull averred.26

But such arguments had slight appeal to those who took a less restrictive view of the proper role of the national government in the protection of civil and political rights. State rights had been a mere pretense in the defense of slavery, Charles Sumner argued, and yet Republicans were making similar arguments now. "Shall the pretension be
CHART THIRTY-TWO

Republicans and "Fundamental Conditions" for Southern Readmission
40th Congress, Second Session.

REPUBLICAN SENATORS VOTING FOR FUNDAMENTAL CONDITIONS THROUGHOUT THE SESSION

Cameron, Pa.
Cattell, N.J.
Chandler, Mich.
Cole, Calif.
Cragin, N.H.
Edmunds, Vt.
Harlan, Iowa
Howard, Mich.
Howe, Wis.
Morgan, N.Y.
Morrill, Vt.
Morrill, Me.
Morton, Ind.
Nye, Nev.
Pomeroy, Kans.
Ramsey, Minn.
Sherman, Ohio
Sprague, R.I.
Stewart, Nev.
Thayer, Nebr.
Tipton, Nebr.
Wade, Ohio
Wilson, Mass.
Yates, Ill.

REPUBLICAN SENATORS VOTING AGAINST FUNDAMENTAL CONDITIONS

Anthony, R.I.
Conkling, N.Y.
Corbett, Ore.
*Drake, Mo.
Ferry, Conn.
Fessenden, Me.
Fowler, Tenn.
Frelinghuysen, N.J.
Henderson, Mo.
Patterson, N.H.
Ross, Kans.
Trumbull, Ill.
Van Winkle, W.Va.
Willey, W.Va.
Williams, Ore.

NOT VOTING: Conness, Calif.; Grimes, Iowa

This chart is based on roll calls found in the Cong. Globe, 40 Cong., 2 Sess., 2701-2702 (May 30, 1868), 2749-2750 (June 1, 1868).

*Drake voted against the fundamental conditions as embodied in the House bill in an effort to add his own.
allowed to prevail, now that slavery has disappeared? The principal has fallen; why preserve the incident? . . .

/T/here can be no State Rights against Human Rights," he proclaimed.27 But on May 30 the Senate defeated Orris S. Ferry's amendment to strike out the House's fundamental condition by a bare 21 to 20 margin. Voting with the Democrats to eliminate the condition were thirteen Republicans, including the architects of the Republican reconstruction policy in the Senate, Fessenden and Trumbull (see Chart 32).28 Substituting a fundamental condition worded slightly differently than the House version, the Senate passed the Arkansas restoration bill on June 1.29 After a conference both houses agreed to a fundamental condition somewhat modified again.30

Having completed action of the Arkansas admission bill, the Senate turned its attention to the bill restoring North and South Carolina, Louisiana, and Georgia, in a debate which demonstrated how completely radicals had abandoned any hope of delaying readmission. The Senate Judiciary committee, to which the general restoration bill had been referred, had decided to strike Alabama from among the states restored while adding Florida, which had just ratified its new constitution. Now the radicals led the fight to restore Alabama to the bill, afraid to leave the state under the President's control. Only when several Senators attacked the wisdom of the original legislation requiring one-half of the registered voters to vote in the ratification elections did radical
Senators clearly evidence the agonizing position in which they had been placed. "That vote was given at a time when a different state of feeling prevailed from that which seems to prevail now," the radical Senator Yates retorted. "Those Senators who voted in favor of requiring the largest number of voters to sanction the new constitutions were in favor of more loyalty than is now contended for . . . . It may yet appear, sir, that that vote was right, and that those who cast that vote were more far-seeing than those who denounced it. Perhaps the time will come when the wisdom of it will be shown to those who now denounce it, when perhaps at the very first election these States shall send into the House of Representatives and into the Senate those rebel leaders who organized war, who sought and worked for their country's murder. When they come here, and, uniting with the Democratic party of the North, resume their former positions and power in this country to upset and to destroy our plan and policy of reconstruction which has cost us so much time and labor, it may then appear, sir, that those who required /in/ a vote the indication of the highest loyalty and of repentance on the part of these southern rebels, acted the part of statesmen . . . ." But Yates too would vote for the admission of all the states. "/T/here is danger either way," he acknowledged sadly.31

Overcoming conservative objections to including Alabama in the bill because it had not met the requirements set forth by the reconstruction law as it stood when its
CHART THIRTY-THREE

Radicalism in the Senate
40th Congress, Second Session

Main Scale--General Reconstruction issues

GROUP #0 (DEMOCRATS, JOHNSON CONSERVATIVES, AND EXTREME CONSERVATIVE REPUBLICANS)

Bayard, Del.
Buckalew, Pa.
Davis, Ky.
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Hendricks, Ind.
Johnson, Md.
McCreery, Ky.
Norton, Minn. (Johnson Conservative)
Patterson, Tenn.
Saulsbury, Del.
Vickers, Md.
William P. Whyte, Md.

---- Passage of second Supplementary Reconstruction bill, discontinuance of the Freedmen's Bureau, Miss..Va.., Texas Reconstruction bill

GROUP #1 (CONSERVATIVE REPUBLICANS)

Ross, Kans.
Anthony, R.I.
Corbett, Ore.
Frelinghuysen, N.J.
Grimes, Iowa
Pomeroy, Kans.
Sherman, Ohio
Trumbull, Ill.
Van Winkle, W.Va.
Willey, W.Va.
Williams, Ore.
Morgan, N.Y.

---- Seating of Philip F. Thomas, reduction of cotton tax
GROUP #2 (CENTER REPUBLICANS)

Cattell, N.J.
Cole, Calif.
Fessenden, Me.
Howe, Wis.
Cragin, N.H.
Drake, Mo.
Edmunds, Vt.
Ferry, Conn.
Morrill, Vt.
Morrill, Me.
Morton, Ind.
Patterson, N.H.
Ramsey, Minn.
Wilson, Mass.
Conkling, N.Y.
Yates, Ill.

--- Motion to take up bill to regulate counting of electoral votes, restrictions on Secretary of the Treasury and Secretary of State

GROUP #3 (RADICAL REPUBLICANS)

Cameron, Pa.
Chandler, Mich.
Conness, Calif.
Harlan, Iowa
Howard, Mich.
Nye, Nev.
Stewart, Nev.
Sumner, Mass.
Thayer, Nebr.
Wade, Ohio

NONSCALAR: Fowler, Tenn. (Rep.); Henderson, Mo. (Rep.);
Sprague, R.I. (Rep.); Tipton, Nebr. (Rep.)

NOT VOTING: Guthrie, Ky. (Dem.) and all Republicans from southern states admitted at end of session.

For a list of the roll calls upon which this chart is based, see Appendix IX.
CHART THIRTY-THREE (CONT.)

Subscale—Readmission of southern states and southern representation in the electoral college

GROUP #0 (DEMOCRATS)

Bayard, Del.
Buckalew, Pa.
Davis, Ky.
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Hendricks, Ind.
Johnson, Md.
McCreery, Ky.
Norton, Minn. (Johnson Conservative)
Patterson, Tenn.
Saulsbury, Del.
Vickers, Md.
Whyte, Md.

----- Passage of Arkansas restoration bill, passage of the bill to restore the reconstructed southern states, passage of the bill to regulate the counting of electoral votes

GROUP #1 (CONSERVATIVE REPUBLICANS)

Conkling, N.Y.
Edmunds, Vt.
Fessenden, Me.
Fowler, Tenn.
Frelinghuysen, N.J.
Henderson, Mo.
Howe, Wis.
Morgan, N.Y.
Morrill, Vt.
Patterson, N.H.
Ross, Kans.
Trumbull, Ill.
Yates, Ill.

----- Amendment to add Alabama to southern restoration bill, amendment that no-one ineligible for office under XIV Amendment be allowed to take office in southern governments
GROUP #2 (CENTER REPUBLICANS)

Conness, Calif.
Corbett, Ore.
Cragin, N.H.
Drake, Mo.
Perry, Conn.
Harlan, Iowa
Morrill, Me.
Morton, Ind.
Ramsey, Minn.
Sherman, Ohio
Tipton, Nebr.
Van Winkle, W.Va.
Williams, Ore.

--- Dilatory motion to adjourn before voting on Arkansas restoration, motion to exclude electoral votes only of rebel states not represented in Congress July, 1868, motion to exclude President's message from executive documents to be printed

GROUP #3 (RADICAL REPUBLICANS)

Anthony, R.I.
Cameron, Pa.
Cattell, N.J.
Chandler, Mich.
Howard, Mich.
Nye, Nev.
Pomeroy, Kans.
Stewart, Nev.
Sumner, Mass.
Thayer, Nebr.
Wade, Ohio
Wilson, Mass.

NONSCALAR: Fowler, Tenn. (Rep.); Henderson, Mo. (Rep.)

NOT VOTING: Grimes, Iowa (Rep.); Guthrie, Ky. (Dem.); Sprague, R.I. (Rep.)

For a list of the roll calls upon which this chart is based, see Appendix IX.
citizens voted on the state constitution, Republican Senators finally passed the bill after a long debate.32 It included the fundamental condition both houses had agreed to in the Arkansas restoration bill. After an abortive attempt by a handful of House radicals to prevent the restoration of Florida under its conservative Republican-Democratic constitution, the House agreed to the bill as it passed the Senate. Although three states in which conservative military commanders had obstructed Republican policy remained unreconstructed (Mississippi, Texas, and Virginia), as a practical matter reconstruction was complete. The final policy had been set; there would be no confiscation, no nationally-enforced education policy, no long-term probation for southern states. The reconstruction of the Union would rest upon one pillar: the black man's right to vote. And some Republicans already were arguing that once southern states were restored, the national government no longer had the power to guarantee that right.
XIX.  EPILOGUE: THE FIFTEENTH AMENDMENT

For many Republicans, the passage of the Fifteenth Amendment represented the real culmination of the quest for racial justice which had continued almost since the birth of the nation. But William Gillette has pointed out it was not really the culmination of the battle over reconstruction. The Fifteenth Amendment would not offer any rights to southern blacks which they did not already possess under the new constitutions of their states and the fundamental conditions to which those states had to agree. The Amendment's primary effect would be to enfranchise blacks in the North. However, Gillette argues this grew out of the determination of Republicans to secure an accession of black votes in closely-contested northern states, that the Fifteenth Amendment was a political expedient designed to secure Republican ascendancy in the North. Recently, LaWanda and John H. Cox and Glenn M. Linden have challenged that interpretation, pointing out that Republicans had a long history of racially liberal legislation and that such legislation may well have lost rather than gained votes in the North. In fact, Gillette's evidence is critically weak, and in emphasizing the northern-centeredness of the Amendment, he minimized too much the losing struggle
to broaden the Amendment to make it more of a protection for southern, black Republicans.¹

Gillette's conclusion is based almost entirely on inference. He lays special emphasis on the number of northern and border states in which the Democratic and Republican parties were evenly matched, arguing that the accession of loyally Republican black voters in those states would provide an important cushion for the party there. But, as the Coxes indicate, this is a rather naive approach to American politics. No Republican could discount the danger that by enfranchising northern blacks the party might alienate that minority of its white adherents who still opposed black political participation in the North. As the Amendment's author and House manager, George S. Boutwell, explained, "... I doubt not that nine tenths of the Republican party of the country are in favor of manhood suffrage. One tenth of the party are not in favor of it, and they constitute the great obstacle in the way of perfecting this benign measure."²

The problem of the relation between Republican politics and the party's commitment to racial justice is far more complex than Gillette's simple analysis, or even the Coxes' more sophisticated answer, and it deserves an intensive discussion beyond the scope of this chapter. But an insight into the complexities of the question can be discerned in a colloquy on the subject between Senators Henry Wilson and Samuel C. Pomeroy, both radicals but Wilson the more sensitive
to conservative pressures. Wilson had answered Democratic Senator Davis' charge—similar to Gillette's—"that in proposing this /suffrage/ amendment we are seeking to perpetuate power."

"A word to the Senator on that point," Wilson began. "He knows and I know that this whole struggle in this country to give equal rights and equal privileges to all citizens of the United States has been an unpopular one; that we have been forced to struggle against passions and prejudices engendered by generations of wrong and oppression . . . . I say to the Senator that the struggle of the last eight years to give freedom to four and a half millions of men who were held in slavery, to make them citizens of the United States, to clothe them with the right of suffrage, to give them the privilege to be voted for, to make them in all respects equal to the white citizens of the United States, has cost the party . . . a quarter of a million of votes. There is not to-day a square mile in the United States where the advocacy of the equal rights and privileges of those colored men has not been in the past and is not now unpopular."

But if this view appears to support the Coxs' contention, Pomeroy's answer to it introduces yet another factor which must be considered. He conceded that Republicans may have lost votes by pursuing their crusade against racial discrimination in civil and political rights. But, he added, "let it be known in this country that the Republican party have abandoned the cause of the rights of man, of the rights of the
colored men of this country, and . . . the party itself would not be worth preserving. The strength of the Republican party consists in its adherence to principle, and to that embodiment of its principles, equality of rights among men. . . . It was that for which it was organized; and instead of being a source of weakness it is, in my opinion, a source of strength and power."\(^4\)

So, for many Republicans the essence of the party lay in its devotion to equal rights. When the party refused to endorse black suffrage extension throughout the Union in its platform for the presidential election of 1868, many Republicans had been outraged. "It is like most of the Republican platforms for the last six years—tame and cowardly," Stevens wrote. Butler predicted the party would "go to pieces" if it did not espouse universal male suffrage in the North.\(^5\) Only when the Democrats rejected suggestions that they nominate Chase on a platform acquiescing in reconstruction and nominated instead men committed to overthrowing the reconstructed governments in the South had Republicans begun to work for their ticket enthusiastically.\(^6\) If Republicans would not have pressed the Fifteenth Amendment, Pomeroy was implying, the resulting drop in morale might have destroyed the party. Most Republicans never had to choose between political expediency and political morality, for to a large extent the political fortunes of the Republican party were best served by fulfilling its liberal ideological
commitments. 7

* * *

The passage of the Fifteenth Amendment found Republicans divided once again on the issue of permanently expanding the power of the national government. Once more those Republicans who hoped to end the reconstruction era with minimum possible alteration in the federal system resisted efforts to broaden the power of the national government to protect citizens' rights.

The events of 1868 amply justified Republicans' fears that reconstruction advances were not secure in the South. In several states terrorist organizations became active, among them the Ku Klux Klan. In Tennessee Republicans received 20,000 fewer votes in the 1868 elections than they had in those of 1867. Only four thousand of those votes could be accounted for in Democratic gains. The larger portion of the decline, suggested John W. Patton, who studied Tennessee reconstruction, was due to Ku Klux terrorism. 8 The leading historian of Arkansas reconstruction stated that Republicans managed to retain power in that state in the 1868 elections only through their control of the voting mechanisms. Had they not made fraudulent use of that power the Democrats would have carried the state through their use of fraud and intimidation. 9 In Florida, the Republicans were so uncertain of victory that they decided to have the state legislature name presidential electors rather than allow the people to vote. 10 The election in Louisiana was marked by widespread violence, including several outright massacres of black men. The terrorists
succeeded in frightening Republicans from the polls, and
despite the black majority in the state the Democratic pres-
idential candidate, Horatio Seymour, carried it by 45,000
votes. 11

But by far the greatest disaster occurred in Georgia.
There the Republicans had succeeded in ratifying the new
constitution in spring, 1868, and had won a narrow majority
in the state legislature. Among the Conservatives (i.e.,
Democrats) elected were a large number who could not take the
oath required of office-holders by the Reconstruction acts.
Republicans had protested against seating these men in the
legislature, but the conservative General Meade had decided
the Reconstruction act's requirements did not apply to officers
elected under the state constitution, which required no such
oaths. Grant had endorsed Meade's decision, and the Conser-
vatives were seated. They then challenged the right of the
black members of the legislature to hold office, arguing that
the new Georgia constitution did not specifically grant
Negroes that privilege. Supported by conservative, anti-
black Republicans, the Conservatives proceeded to expel their
black colleagues, thus creating a Conservative majority in
the legislature. In the 1868 presidential election the
demoralized Republicans were easily intimidated by an active
and effective Ku Klux Klan, and here too Seymour defeated
Grant. 12
The southern situation appeared so menacing to Republicans that on January 5, 1869, Senator Stewart, the second-ranking Republican on the powerful Judiciary committee, proposed a bill to repeal the restoration of Alabama, Georgia, Florida, and North and South Carolina, continuing the governments of those states as provisional only and subject to the Reconstruction laws. 13

The critical conditions in the South put Republicans in an awkward position. Constitutional conservatives among them believed Congress had lost authority over the states once they had been restored to normal relations. They would be inclined to resist further interference as unconstitutional. The best solution was to secure the black political power on which reconstruction was based by constitutional amendment. Yet here too constitutional conservatives inclined to preserve the traditional balance of power between state and national government. They would work to minimize the scope of any change in the fundamental law.

In the case of Georgia another alternative presented itself. The states' Senators and representatives had not arrived in time to be admitted to seats in the second session of the Fortieth Congress, which adjourned in July, 1868, before the crisis in the state arose. Republicans could argue that Georgia's restoration was not yet complete, that the state remained under the paramount authority of Congress. In the House the problem did not arise when
Congress reassembled in December, 1868. Representatives from Georgia were seated without challenge, and at the same time the House agreed to a resolution instructing the Reconstruction committee to investigate affairs in the state. But in the Senate, where Republican constitutional conservatism centered, radical Senators objected to seating the Georgia Senator-elect, Joshua Hill. John Sherman, Hill's personal friend, argued that Hill disapproved of the legislature's ejection of its black members, that he had been elected before that action had been taken by the united vote of the Republican members, black and white. "It seems to me it would be very hard indeed to make a gentleman duly elected by the whole Legislature, and a Union man, ... suffer for conduct which he does not approve, and which he hopes, by having a seat here among us, to be able in part to correct." 15

But the radical Charles D. Drake, fearing the implications of seating Hill, answered, "The question that is involved in the matter now before us is whether the power of the Senate over a reconstructed rebel State ends with the moment that that State may have been recognized as a State restored to her position in the Union. I contend not ... I hold, sir, that Congress has a continuing and undiminished power over those States, to preserve what was built up there in their reconstruction, and I do not intend to vote for the admission of any Senator from any one of those States that has attempted to undo the ascendancy there of loyal men and
put rebels there into the ascendency." At Hill's request, Sherman finally agreed to refer the Georgian's credentials to the Judiciary committee, which reported against seating him on January 25. But, signalling the deep division over the constitutional issue threatening Republicans, Chairman Trumbull disagreed with the decision and presented a minority report. 17

Hoping to avoid a debate which would widen Republican differences, the party leaders decided not to take any action on the Georgia question during the remainder of the Fortieth Congress and the first session of the Forty-first which would immediately follow it. They would leave the problem for the long, second session in 1869-1870. As part of this determination, Republicans decided to avoid the issue of whether Georgia's electoral vote for Seymour should be counted when Congress canvassed the official results of the presidential election in February, 1869. On February 8, therefore, Congress passed a concurrent resolution providing that the results of balloting in the electoral college would be announced as they stood both with and without the votes of the Georgia electors. Despite the conciliatory effort, Trumbull and Fowler in the Senate and Jehu Baker and Farnsworth in the House opposed the resolution's passage. 18

But hearing of the Republicans' intentions, Georgia's Republican Governor Rufus Bullock wrote Butler, named chairman of the Reconstruction committee after Stevens'
death in August, 1868, that the rebels were "jubilant & defiant," expecting the conservative Grant to oppose congressional legislation on Georgia after his inauguration. Bullock urged Butler to take some action to circumvent the danger that Grant might follow in Johnson's footsteps, and Butler decided he would use the ceremony of counting the electoral vote to force the issue of Georgia's status. Other House radicals determined to follow the same course with regard to Louisiana.

When the two houses met on February 10 to count the electoral vote, Representative James Mullins of Tennessee objected to counting the votes cast by the Louisiana electors, and Butler objected to counting those cast by Georgia's, despite the concurrent resolution passed only two days before. As the rules provided, each house met separately to consider the objections. In the Senate, Trumbull's motion to count the Louisiana vote passed over the objections of seven radicals. The Senate then decided by a vote of 32 to 27 that Butler's objection to counting the Georgia vote was out of order under the terms of the concurrent resolution passed February 8. Twenty-two Republicans joined the Democrats in the majority.

As in the Senate, a coalition of conservative Republicans and Democrats in the House overcame radical objections to counting Louisiana's electoral votes.
CHART THIRTY-FOUR

Radicalism in the Senate
40th Congress, Third Session.

GROUP #0 (DEMOCRATS AND JOHNSON CONSERVATIVES)

Bayard, Del.
Buckalew, Pa.
Davis, Ky.
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Hendricks, Ind.
McCreery, Ky.
Norton, Minn. (Johnson Conservative)
Patterson, Tenn.
Saulsbury, Del.
Vickers, Md.
Whyte, Md.
Fowler, Tenn. (Republican)

---- Amendment to require ratification of the XV Amendment by state conventions, amendment to strike protection of voting rights from the XV Amendment, amendment to bill to remove disabilities providing amnesty for all former rebels, motion to require delay of XV Amendment's ratification until after the next state elections, motions to take up the XV Amendment, amnesty amendments to the XV Amendment, resolution on counting Georgia's electoral votes, passage of the XV Amendment, dilatory motion on the XV Amendment
CHART THIRTY-FOUR (CONT.)

GROUP #1 (CONSERVATIVE REPUBLICANS)

Van Winkle, W.Va.
Cragin, N.H.
Edmunds, Vt.
Morrill, Me.
Stewart, Nev.
Anthony, R.I.
Conness, Calif.
Ferry, Conn.
Grimes, Iowa

---- Amnesty amendment to the XV Amendment, amendment to limit XV Amendment's effect to states only, dilatory motion on the XV Amendment

GROUP #2 (CONSERVATIVE-CENTER REPUBLICANS)

Corbett, Ore.
Cattell, N.J.
Cole, Calif.
Pessenden, Me.
Frelinghuysen, N.J.
Morrill, Vt.
Morton, Ind.
Pomeroy, Kans.
Frederich A. Sawyer, S.C.
George E. Spencer, Ala.
Trumbull, Ill.
Williams, Ore.
Yates, Ill.
Howe, Wis.

---- Counting Georgia's and Louisiana's electoral votes, motion to reconsider recession from Senate amendments to the XV Amendment

GROUP #3 (RADICAL-CENTER REPUBLICANS)

Joseph C. Abbott, N.C.
Chandler, Mich.
Conkling, N.Y.
Drake, Mo.
Harlan, Iowa
John S. Harris, La.
CHART THIRTY-FOUR (CONT.)

William Pitt Kellogg, La.
Alexander McDonald, Ark.
Morgan, N.Y.
Nye, Nev.
Patterson, N.H.
John Pool, N.C.
Thomas J. Robertson, S.C.
Sherman, Ohio
Sprague, R.I.
Sumner, Mass.
Willard Warner, Ala.
Howard, Mich.

---- Enfranchisement bill,
counting La. electoral
vote, relief bills

GROUP #4 (RADICAL REPUBLICANS)

Thomas W. Osborn, Fla.
Thayer, Nebr.
Tipton, Nebr.
Wade, Ohio
Wilson, Mass.

NONSCALAR: Cameron, Pa.; Ramsey, Minn.; Benjamin F. Rice,
Ark.; Ross, Kans. (All Repubs.)

NOT VOTING: Adonijah S. Welch, Fla.; Willey, W.Va. (both Repubs.)

For a list of the roll calls upon which this chart is
based, see Appendix IX.
But Republicans nearly unanimously deserted the concurrent resolution regarding Georgia's votes. By a margin of 150-41 the House sustained Butler's objection to counting the Georgia ballots.\textsuperscript{22} When news of the Senate's position arrived, however, Republican lines began to waver, and conservative Republicans moved to reconsider the vote just taken. Butler and his allies succeeded in tabling the reconsideration, but this time twenty Republicans joined the opposition.\textsuperscript{23}

With the Senate and House taking diametrically opposed positions on counting Georgia's electoral vote, president pro tempore of the Senate Benjamin Wade, who by law presided over the joint session, decided to enforce the Senate's decision and ordered the tellers to read the results both with and without Georgia's votes, as provided by the February 8 resolution. Butler, Schenck, and other radicals immediately objected, but Wade instructed the tellers to proceed. Over Butler's continued objections the tellers did as told. In the chaos, outraged radical representatives nearly assaulted the Senators, and the anger and excitement "exceeded anything ever seen in that body, even during the years of the war."\textsuperscript{24} After the Senate retired to its chamber, the furious Butler proposed a resolution protesting Wade's course as "a gross act of oppression and an invasion of the rights and privileges of the House." Although most representatives agreed, many Republicans joined
Democrats to table the resolution out of deference to Wade, who they felt had meant to do right.  

"You cannot ... imagine how the scene looked from the chair," the mortified Speaker of the House, Schuyler Colfax, wrote Elihu B. Washburne. It had been solely a Republican fiasco. "... /t was declaring the result of an election in which our own party had triumphed, by a Vice President pro tem of our own party, under a concurrent resolution passed by nearly a party vote in each branch ... ."  

A clear confrontation on the Georgia question had been avoided and with it the issue of continuing congressional power over the reconstructed states. But the division was clear; it was reflected in the chaos on the floor of the House of Representatives. There were Republicans who would resist the further assumption of power by the national government. And there were Republicans determined to press for that same extension of power.  

The constitutional amendment the House Judiciary committee proposed to the House on January 11, 1868, represented a clear effort to minimize the change in federal relations involved in enfranchising black Americans. Like the conservative Fourteenth Amendment, it was worded in the negative, limiting only the power of the state and national governments to deny citizens the ballot
on grounds of race, color, or previous condition of slavery. The same was true of the version reported to the Senate, which differed primarily in guaranteeing citizens rights to hold office as well as to vote. 27 As the New York Tribune commented on a similar version of the amendment proposed earlier, "The amendment ... confers no power whatever on Congress, but only limits the power of the States. It does not give Congress the power to pass a national uniform Suffrage law, but, in effect, it is such a law embodied in the Constitution. It leaves the States free to make such changes in their Suffrage laws not affecting these points as may be called for." 28 It did not remove the locus of power to regulate suffrage from the states. It prevented any unjust regulation. "We want to give the people to opportunity to say that the States in regulating suffrage shall not destroy it ...," explained the conservative Republican Senator Frelinghuysen. 29

Many Republicans objected to such a narrow protection for the right to vote, including some conservatives. Rhode Island Representative Thomas A. Jenckes and Oregon Senator Williams, both among the most conservative Republicans in Congress, favored more positive action. Jenckes argued for a positive statement of uniform, national voting qualifications, while Williams proposed a constitutional amendment giving Congress the
power to regulate suffrage, as did the more radical Julian. James M. Ashley proposed an amendment along the lines advocated by Jenckes, enfranchising all citizens over 21 years old and setting forth residence qualifications. None of these proposals won much support.

Republicans objected to the proposed narrow amendment because it did not offer adequate guarantees for the political rights of southern blacks. With support for the Republican reconstruction governments in the South eroding, they feared resurgent Democrats would attempt to reverse black men's hard-won political advances. An amendment simply barring discrimination on account of race or former condition of slavery, they recognized, could be easily circumvented. "It does not determine who shall vote and hold office," Alabama Republican Senator Willard Warner complained of the Senate version. "... It does not protect any class of citizens against disfranchisement or disqualification. It simply and only provides that certain classes indicated shall not be disfranchised for certain reasons.... For any other reason any State may deprive any portion of its citizens of all share in the Government.... Under it and without any violation of its letter or spirit, nine tenths of black men in the South... might be prevented from voting and holding office by the requirement... of an intelligence or property qualification." Such a proposition was worth virtually nothing at all. "Is
this the Dead Sea fruit which we are to gather from the plantings of a hundred years?" Willard pleaded. "Is this to be the sum of the triumph of the grand struggle of a century past in this country for equal rights? . . .."  

One group of radicals, led by Sumner, Wilson, and Yates in the Senate, met the difficulty by insisting Congress already had the power to eliminate discriminatory state suffrage regulations. That position necessarily implied that Congress might overrule any state regulation which limited suffrage in such a way as to bring the state below the high standard of republicanism those radicals set. The House Judiciary committee reported a bill to enfranchise black men throughout the United States at the same time it reported the constitutional amendment, but Boutwell, its manager, quickly realized the bill could not pass and abandoned it. In the Senate Sumner's attempt to substitute such a universal suffrage bill for the constitutional amendment was overwhelmingly defeated; only eight Senators joined him.  

If radicals hoped to secure an "iron-clad" guarantee of black men's right to vote, it would have to be through constitutional amendment.

The only clear, concerted effort to alter the proposed amendment to alleviate radical objections to its shortcomings came in the House when Samuel Shellabarger proposed a substitute on behalf of a large number of Ohio representatives. Specifically designed to make circumvention
impossible, Shellabarger's proposition forbade states to pass "any law which shall deny or abridge to any male citizen of the United States of the age of twenty-one years or over . . . an equal vote at all elections in the State in which he shall have . . . actual residence . . ., except to such as have or may hereafter engage in insurrection or rebellion against the United States . . . ." 34 Shellabarger made an impassioned plea for his amendment: ". . . I implore that we shall make no mistake here. Sir, a mistake here is absolutely fatal. Let it remain possible, under our amendment to still disfranchise the body of the colored race in the late rebel States and I tell you it will be done," he warned. 35

But the mistake was made despite the radicals' warnings. Eighty-nine Republicans, including some radicals following the lead of the Judiciary committee, joined 37 Democrats to defeat the proposed substitute. 36

Republicans received one more opportunity to prevent the imposition of the literacy tests which one day would deprive black southerners of their right to suffrage when Henry Wilson offered a substitute for the proposed constitutional amendment which forbade any discrimination in voting or the right to hold office based on race, color, nativity, property, education, or creed. Although Wilson never indicated his amendment was intended to secure stronger guarantees for southern blacks' political rights, the support Ohio representatives gave it
in the House and southerners gave it in the Senate indicates that they may have had those considerations in mind. Defeated in the Senate at first, Wilson carried his proposal on a second vote February 9. Twelve southern and border-state Republicans voted for the substitute when it passed; only two opposed it. Northern Republicans divided almost evenly, 18 in favor and 17 against. 37

In the House, Bingham, oddly out of character (the conservative Ohioan had actually voted against the constitutional amendment when it first had passed the House several weeks earlier), led the fight to concur in the Senate's broad version of the proposed amendment. Despite his efforts (or perhaps because many Republicans distrusted him), the House voted overwhelmingly to adhere to its own, narrow version. 38

With this, the proceedings became more complex. The Senate had shelved its version of the constitutional amendment, passing the House version as amended by Wilson instead. When the House rejected the proposed amendment to their version, the Senate had three courses open to it. It could recede from its amendment and agree to the House version of the amendment, it could agree to a conference in an attempt to hammer out a compromise, or it could reject the House version entirely and pass its own amendment which it had shelved earlier. The
CHART THIRTY-FIVE

Senators and the Scope of the XV Amendment
40th Congress, Third Session.

GROUP #0 (SENATORS FAVORING NARROW AMENDMENT)

Anthony, R.I.
Bayard, Del. (Democrat)
Buckalew, Pa. (Democrat)
Chandler, Mich.
Cole, Calif.
Conkling, N.Y.
Corbett, Ore.
Davis, Ky. (Democrat)
Dixon, Conn. (Johnson Conservative)
Doolittle, Wis. (Johnson Conservative)
Edmunds, Vt.
Fessenden, Me.
Frelinghuysen, N.J.
McCreery, Ky. (Democrat)
Morgan, N.Y.
Morrill, Me.
Morrill, Vt.
Norton, Minn. (Johnson Conservative)
Nye, Nev.
Patterson, N.H.
Patterson, Tenn. (Democrat)
Stewart, Nev.
Trumbull, Ill.
Vickers, Md. (Democrat)
Whyte, Md. (Democrat)
Howard, Mich.

--- Amendment to ban discrimination on account of race, color, nativity, property, education or religion (Feb. 9)

GROUP #1 (SENATORS FAVORABLE TO A BROADER AMENDMENT)

Cameron, Pa.
Ferry, Conn.
CHART THIRTY-FIVE (CONT.)

Hendricks, Ind. (Democrat)
Wolley, W.Va.
Cattell, N.J.
Williams, Ore.
Yates, Ill.

---- Amendment to ban
discrimination on
account of race, color
nativity, property,
education or religion
(Feb. 17)

GROUP #2 (SENATORS STRONGLY COMMITTED TO A
BROAD AMENDMENT)

Cragin, N.H.
Harris, La.
Morton, Ind.
Pomercy, Kans.
Sherman, Ohio
Thayer, Nebr.
Van Winkle, W.Va.
Grimes, Iowa
Harlan, Iowa
McDonald, Ark.
Wade, Ohio
Welch, Fla.

---- Passage of the narrow
Amendment, recession
from the broad Senate
version of the Amendment,
agreeing to the narrow
Amendment reported from
the conference committee

GROUP #3 (SENATORS EXTREMELY STRONGLY COMMITTED
TO A BROAD AMENDMENT)

Abbott, N.C.
Osborn, Fla.
Pool, N.C.
Ross, Kans.
Sumner, Mass.
Warner, Ala.
Wilson, Mass.

NONSCALAR: Fowler, Tenn.; Kellogg, La.; Ramsey, Minn.;
CHART THIRTY-FIVE (CONT.)

Rice, Ala.; Robertson, S.C.; Sawyer, S.C.; Spencer, Ala. (All Repubs.)

NOT VOTING: Conness, Calif.; Henderson, Mo.; Howe, Wis.; Sprague, R.I.; Tipton, Nebr. (All Repubs.)

Roll calls involved in this scale—Group #1: Cong. Globe, 40 Cong., 3 Sess., 1040 (Feb. 9, 1869; vote for broad Amendment= yea; final vote= 31-27-8), Group #2: 1029 (Feb. 9, 1869; yea; 19-24-23), 1300 (Feb. 17, 1869; yea; 24-32-10), Group #3: 1300 (Feb. 17, 1869; nay; 31-27-8), 1295 (Feb. 17, 1869; nay; 33-24-9), 1481 (Feb. 23, 1869; nay; 32-17-17), in order of marginal frequency.
constitutional amendment's manager, Stewart, advocated the first course, but more radical Republicans offered bitter resistance. Abandoning hope for the broad, Wilson-sponsored version of the constitutional amendment (it was "too broad, too comprehensive, too generous, too liberal for the American people of to-day," Wilson commented bitterly), radicals determined at least to protect black men's rights to hold office, a right the House version omitted. With Georgians already denying their black fellow-citizens that right, such an omission would be disastrous. It would encourage whites in other southern states to follow the same course. 39 But although they had the support of Democrats who wanted to prevent the House and the Senate from agreeing on any measure at all, the radicals were unable to muster a majority. The Senate voted to recede from its amendments to the House version. 40

Having receded from their amendments, Senators now had to muster a two-thirds majority to pass the House version of the amendment to the Constitution. But despite pressure from their more conservative allies, radicals refused to vote for it: "I do not feel bound here, to vote for an amendment to the Constitution which accomplishes nothing and under which any State may pass a law which shall disfranchise four fifths of the colored population without mentioning the word 'color' . . . ," South
Carolina's Senator Frederick A. Sawyer announced. "I had rather have nothing than to have this; and when I go back to my constituents they will say to me that I have voted right." When the Senate voted on the House version of the constitutional amendment only 31 Senators voted for it and 27 against.

The House version of the proposed amendment defeated, Republicans wearily took up the Senate version and began anew the tedious business of discussing and voting on amendments to it. Through the night the exhausted men fought Democratic dilatory motions and defeated both Democratic and Republican amendments to the proposition. Finally, after hours of grinding discussion, Republicans passed the Senate's proposed constitutional amendment, protecting both the right to vote and the right to hold office from discrimination on the grounds of color, race, or previous condition of servitude.

On February 20, a fresh House of Representatives took up the Senate's proposition and wreaked havoc upon it. An amendment to delete the provision guaranteeing the right to hold office, sponsored by erstwhile-radical John A. Logan in deference to his southern Illinois constituents, was defeated 70 to 95, 36 Republicans joining Democrats in the effort to narrow the amendment's scope. Then, reversing its decision of five days before which had precipitated the crisis, the House agreed to
Bingham's amendment to ban discrimination in voting and office holding based on race, color, nativity, property, creed, or previous condition of servitude. Conspicuously absent was a ban on educational requirements, but nonetheless the House clearly had changed its position profoundly and radicals appeared on the verge of a major success. 44

On February 23, with only eight Republicans in opposition—seven southerners and Ross—the Senate agreed to appoint a conference committee to meet with House representatives and compromise on the wording of the proposed amendment. 45 Logan, Boutwell, and Bingham represented the House in the conference and Stewart, Conkling, and Edmunds represented the Senate. With both houses having indicated a preference for a broad amendment, at least protecting office holding, radicals looked to the result with confidence. But when the committee reported, the shocked radicals found it had not only eliminated the broad protections but also the guarantee of the right to hold office, even though both houses had agreed to that guarantee in the respective versions of the amendment which had been submitted to the conference. Logan had never favored the office-holding protection, but Boutwell, Bingham, Stewart, and Conkling had betrayed their friends. Edmunds refused to sign the report.
The House concurred in the report without debate on February 25, 1869, only one Republican in opposition, but in the Senate outraged radicals voiced their dismay. Radicals assailed the committee's high-handed conduct. "[U]nparliamentary and almost unprecedented," Pomeroy complained. Without authority, the committee had altered "the substance, I may say because I feel it, the life of the text of the resolution," mourned Edmunds.

But there was nothing the radicals could do. If this report were non-concurred in, the constitutional amendment was dead. Republicans no longer had the heart to fight. "I have acted upon the idea that one step taken in the right direction made the next step easier to be taken," Wilson said sadly. "I suppose, sir, I must act upon that idea now; and I do so with more sincere regret than ever and with some degree of mortification." Southern Republicans were particularly bitter. "We have for two years been subject to the charge . . . that the Republican party of the northern States put the negro in one platform in the loyal States and upon another platform in the lately disloyal States," Sawyer complained. "... We have been constantly asserting that this could not properly be laid at the feet of the National Republican party, but that it was on account of some few weak-kneed Republicans . . . . Now, . . . we are asked to accept an amendment of the Constitution which pleads guilty to the charge."
On February 26 the Senate concurred in the House report. North Carolina Senator John Pool and Tennessee Senator Joseph Fowler joined the Democrats in opposition, Pool out of bitterness at the betrayal of his friends and Fowler because the amendment included no provision for amnesty. Seven Republican Senators--including Edmunds, Pomeroy, Sawyer, and Sumner--did not have the heart to vote.49

*   *   *

The admission of most of the southern states to normal relations with the Union, the passage of the Fifteenth Amendment, the inauguration of Grant and the retirement of Andrew Johnson combined to close an era. The justification for extraordinary legislation had disappeared. Except for three states, the federal Union was restored. Congressional legislation once again would be based on a peacetime Constitution, and in many ways this was the most significant change of all. For two convictions had unified Republicans in the face of Johnson's opposition between 1866 and 1869: first, they agreed the southern states were not in normal relations with the national government and, second, they should not be so restored until the rights and well-being of loyal men in the South were secure. Republican differences had been important, but they had not been nearly so wide as the constitutional and moral chasm which separated even conservative Republicans from the President and the Democrats.

With restoration the gap separating the constitutional
convictions of a Lyman Trumbull and the Democratic party would narrow rapidly. And the gap separating him from a Sumner or a Chandler would grow wider. With the impetus for harmony provided by Andrew Johnson no longer present, the personal animosities and differences of principle which marked a Bingham and a Butler would become more gratating. The alliance between radical and conservative Republicans had been uneasy before 1869, it had often appeared on the verge of disintegration, but the chaos of the third session of the Fortieth Congress--the bitterness of the fight over the Georgia electoral vote, the confusion and mistrust engendered during the passage of the Fifteenth Amendment, the unwillingness of leading Republicans to continue to use national power to preserve reconstruction--portended the rupture of the party and the collapse of Republican reconstruction policy.
APPENDIX A

Representatives and the Money Question

39th Congress


GROUP #1 (SUSPENSIONISTS): Hubbard, Conn.; Allison, Iowa; Ashley, Ohio; Clarke, Kans.; Cullom, Ill.; Delano, Ohio; Donnelly, Minn.; Dumont, Ind.; Marston, N.H.; Morris, N.Y.; Rice, Me.; Sawyer, Wis.; Upson, Mich.; Van Horn, Mo.; Warner, Conn.; Whaley, W.Va.; Randall, Ky. (Republicans)
   Jones, N.Y.; Kerr, Ind.; *Ross, Ill.; Taylor, N.Y.; *Thornton, Ill. (Democrats)

GROUP #2 (SUSPENSIONISTS): Boutwell, Mass.; Farquhar, Ind.; Moulton, Ill.; Barker, Pa.; Bromwell, Ill.; Buckland, Ohio; Clarke, Ohio; Defrees, Ind.; Grinnell, Iowa; Hubbard, Iowa; Ingersoll, Ill.; Julian, Ind.; Orth, Ind.; Plants, Ind.; Shellabarger, Ohio; Cook, Ill.; Hubbard, W.Va.; Kelley, Pa.; Longyear, Mich.; Lynch, Me.; Maynard, Tenn.; McKee, Ky.; Rice, Mass.; Van Aernam, N.Y. (Republicans)
   Goodyear, N.Y.; *Hubbell, N.Y.; Johnson, Pa.; Marshall, Ill.; *Trimble, Ky. (Democrats)

GROUP #3 (EXFANIONISTS): Myers, Pa.; Price, Iowa; *Anderson, Mo.; *Beaman, Mich.; *Bingham, Ohio; Blow, Mo.; Bundy, Ohio;
APPENDIX A (CONT.)

*Ferry, Mich.; *Hardin, Ill.; Hayes, Ohio; Higby, Calif.; Hubbell, Ohio; Kelso, Mo.; *Lawrence, Ohio; Loan, Mo.; McClung, Mo.; Miller, Pa.; *O'Neill, Pa.; Paine, Wis.; Sloan, Wis.; Starr, N.J.; Thomas, Md.; Trowbridge, Mich.; *Welker, Ohio; *Williams, Pa.; *Wilson, Iowa; Wilson, Pa.; Windon, Minn.; Eckley, Ohio; Stevens, Pa. (Republicans)
Kuykendall, Ill. (Johnson Conservative)

GROUP #4 (EXPANSIONISTS): Baker, Ill.; Cobb, Wis.; *Thayer, Pa. (Republicans)

Hawkins, Tenn.; Hise, Ky.; Leftwich, Tenn.; Niblack, Ind.; Noell, Mo.; Phelps, Md.; Shanklin, Ky.; Stillwell, Ohio (Democrats and Johnson Conservatives)

NOT VOTING: Colfax, Ind.; Culver, Pa.; Driggs, Mich.; J. Humphrey, N.Y.; McIndoe, Wis.; J.L. Thomas, Md. (Republicans)
Harris, Md.; McCullough, Md.; Radford, N.Y.; Rousseau, Ky.; Smith, Ky.; Ward, Ky.; Wright, N.J.; Voorhees, Ind. (Democrats and Conservatives)

*Inconsistent on subscale

For a list of the roll calls upon which this compilation is based, see Appendix IV.

40th Congress

APPENDIX A (CONT.)

Axtell, Calif.; Barnum, Conn.; Brooks, N.Y.; Chanler, N.Y.; Hotchkiss, Conn.; Hubbard, Conn.; Robinson, N.Y.; Taber, N.Y.; Barnes, N.Y. (Democrats)


Fox, N.Y. (Democrat)

GROUP #2 (EXPANSIONISTS): Stevens, N.H.; Baker, Ill.; Beatty, Ohio; Bromwell, Ill.; Buckland, Ohio; Butler, Mass.; *Butler, Tenn.; Cobb, Wis.; Coburn, Ind.; Cook, Ill.; John T. Dewese, N.C.; Donnelly, Minn.; Eggleston, Ohio; Farnsworth, Ill.; John R. French, N.C.; James H. Goss, S.C.; Gravely, Mo.; Hawkins, Tenn.; Hopkins, Wis.; Hunter, N.Y.; Ingersoll, Ill.; Lawrence, Ohio; Loughridge, Iowa; Orth, Ind.; Shanks, Ind.; Stokes, Tenn.; Taffe, Nebr.; Washburn, Ind.; Wilson, Ohio (Republicans)


NONSCALAR: Cake, Pa.; William P. Edwards, Ga.; Ela, N.H.; Harding, Ill.; Pike, Me.; F. Thomas, Md. (Republicans)


APPENDIX A (CONT.)

McClurg, Mo.; Stevens, Pa.; Trimble, Tenn.; Washburne, Ill.; Wilson, Pa. (Republicans)
Adams, Ky.; Glossbrenner, Pa.; McCullough, Md.;
James Mann, La.; Morgan, Ohio; Morrissey, N.Y.; Van Auken, N.Y. (Democrats)

41st Congress

GROUP #0 (ANTI-EXPANSIONISTS): Jacob A. Ambler, Ohio;
Blair, Mich.; Brooks, N.Y.; James Buffington, Mass.;
*Horatio C. Burchard, Ill.; Churchill, N.Y.; *Noah Davis,
N.Y.; Dawes, Mass.; *Dixon, R.I.; Joseph B. Donley, Pa.;
*Isaac H. Duval, W.Va.; Ela, N.H.; Ferriss, N.Y.; John
Fisher, N.Y.; Garfield, Ohio; Calvin W. Gilfillan, Pa.;
*Eugene Hale, Me.; George P. Hoar, Mass.; Hooper, Mass.;
*Giles W. Hotchkiss, N.Y.; Kelley, Pa.; Kellogg, Ala.;
*Kelsey, N.Y.; Ketcham, N.Y.; *Charles Knapp, N.Y.;
Lefflin, N.Y.; James C. McGrew, W.Va.; McKee, Ky.; Mercur,
Pa.; Moore, N.J.; Morrell, Pa.; *Morrill, Vt.; Myers, Pa.;
O'Neill, Pa.; *Peters, Me.; *James H. Platt, Va.; Poland,
Vt.; Aaron A. Sargent, Calif.; *Scofield, Pa.; Porter
Sheldon, N.Y.; *Smith, Vt.; Starkweather, Ohio; Stevens,
N.H.; Julius L. Strong, Conn.; Adolphus Tanner, N.Y.;
Washington Townsend, Pa.; Ward, N.Y.; Washburn, Ind.;
*Washburn, Mass.; William A. Wheeler, N.Y.; Whittemore,
S.C.; *Charles W. Willard, Vt.; *James J. Winans, Ohio;
Alfred E. Buck, Ala.; Randolph Strickland, Mich. (Republicans)
*Arteill, Calif.; Barnum, Conn.; *Samuel S. Cox, Ohio;
*Getz, Pa.; *Haight, N.J.; *Richard J. Haldeman, Pa.;
*Clarkson Not Potter, N.Y.; *Randall, Pa.; *John R.
*John D. Stiles, Pa. (Democrats)

GROUP #1 (MODERATE EXPANSIONISTS): Benjamin, Mo.; George
W. Cowles, N.Y.; *Gustavus A. Finkelnberg, Mo.; *Logan,
Ill.; Stokes, Tenn.; William H. Armstrong, Pa.; *Joel F.
Asper, Mo.; *Richard S. Ayer, Va.; *Henry W. Barry, Miss.;
Bingham, Ohio; Blaine, Me.; *Samuel S. Burdett, Mo.;
*Omar D. Conger, Mich.; *Covode, Pa.; Edward Degener, Tex.;
*Dickey, Pa.; Farnsworth, Ill.; Ferry, Mich.; *George E.
Harris, Miss.; John B. Hawley, Ill.; *Jones, N.C.; *Judd,
Ill.; Julian, Ind.; *Lash, N.C.; McCarthy, N.Y.; John B.
Packer, Pa.; Frank W. Palmer, Iowa; Erasmus D. Peck, Ohio;
*Legrand W. Perce, Miss.; *Charles W. Pomeroy, Iowa;
Charles H. Porter, Va.; *Schenck, Ohio; *William L.
Stoughton, Mich.; Van Wyck, N.Y.; *Alexander S. Wallace,
S.C.; Welker, Ohio; Morton S. Wilkinson, Minn.; Williams,
Pa.; Boles, Ark.; Clarke, Kan.; Hamilton, Fla.; *George
W. McCrady, Iowa; Jesse H. Moore, Ill.; *Paine, Wis.;
*William F. Prosser, Tenn.; *Shanks, Ind. (Republicans)
APPENDIX A (CONT.)

Heaton, N.C.; John G. Schumaker, N.Y.; *Lionel A. Sheldon, La.; Thomas Swann, Md. (Democrats)


Benjamin T. Biggs, Del.; John T. Bird, N.J.; Brooks, N.Y.; Hervey C. Calkin, N.Y.; Mungen, Ohio (Democrats)


Orestes Cleveland, N.J.; Stephen A. Coker, Ga.; Fox, N.Y.; Golladay, Tenn.; George W. Greene, N.Y.; Samuel Hambleton, Md.; Truman H. Hoag, Ohio; John Moffet, Pa.; Morrisey, N.Y.; Henry H. Reeves, N.Y.; Voorhees, Ind. (Democrats)
APPENDIX I

Scale Analysis

In analyzing the factional and ideological alignments of Congress during reconstruction, I have utilized the method of scale analysis Louis Guttman developed as a tool to help psychologists measure attitudes. The method assumes that if a common attitude dictates a series of responses by several respondents, then a pattern will emerge in which respondents will range themselves in a continuum according to their attitudes. In the case of measuring attitudes towards reconstruction (that is, radicalism), the individual responses consist of the votes on questions (items) involving reconstruction. The method assumes there will be propositions (items) so mild, so conservative, that only the most conservative respondents would vote against the radical position upon them. As items become more radical, more and more respondents will vote against the radical position, until only the respondents with the most radical attitude towards reconstruction continue to vote for the radical position. In that case the following pattern will emerge:

<table>
<thead>
<tr>
<th>Items (propositions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respondents</td>
</tr>
<tr>
<td>A</td>
</tr>
<tr>
<td>B</td>
</tr>
<tr>
<td>C</td>
</tr>
</tbody>
</table>
APPENDIX I (CONT.)

Respondents 1 2 3 4 5
D X X X 0 0
E X X X X 0
P X X X X

X= radical vote; 0= anti-radical vote

A's responses indicate his is the most conservative or anti-radical attitude, while F's is the most radical. The Guttman method further presumes that if a respondent votes against the radical position when it is mild (as in item #1 above), then he should not vote in favor of the radical position when it is more radical. If he does, the response has deviated from the pattern. That is, if Respondent A had voted as follows:

1 2 3 4 5
0 0 0 X 0

then the vote on item #4 breaks the pattern. Either it is deviant or items 1 through 3 are deviant. Given the clarity of the pattern, we may presume that the vote on item #4 is indeed a deviant vote. If enough respondents break the pattern on a given response, then we must presume the item itself does not test the same attitude as the others, and it is eliminated from the group. In this way we devise a unidimensional universe of responses—a group (universe) in which only one attitude (hence, "unidimensional") dictates the responses. Most analysts desire strict unidimensionality and therefore will tolerate few deviant responses on an item before it is eliminated. Customarily,
APPENDIX IX (CONT.)

any item on which 10% of the responses are deviant will be removed from the universe. Those eliminated are checked to see if they form viable patterns; if they do, they are "subscales."

Where there have been responses to a large number of propositions, or items, the analyst often will fashion "artificial items." The artificial item consists of propositions on which responses are so similar that they are grouped together and counted as one item. In my analysis, where as many as one hundred items may make up the universe, I have nearly always combined large numbers of items into artificial items, which I have called groups. Congressmen's attitudes towards reconstruction, railroads, black men, and financial matters have been measured in reference to these groups. For example, when measuring radicalism, those respondents who voted against the radical position on the majority of items making up the first group and all succeeding groups have been classified "Group #0." Those voting for the radical position on the majority of items in the first group but not on the second or succeeding groups have been denominated "Group #1," and so on. A respondent who has voted against the radical position on the majority of items in the first group but in favor of the radical position on those items in the second has deviated, and generally is denominated as "unscalable."

The actual steps involved in the process were as follows:
APPENDIX I (CONT.)

1. A list was made of all votes which the analyst believed to have involved the particular attitude in which he was interested. The responses of individual congressmen were recorded.

2. The votes were put in marginal frequency order. That is, the vote on which the largest number of respondents agreed to the radical position was put first, the vote on which the next largest number supported the radical position was put second, and so on.

3. The responses were checked for deviations. Two methods were used: pairwise comparison and Yule's Q. In pairwise comparison each vote (item) was compared to all the others, and those on which more than 15% of the responses were deviant were eliminated. Yule's Q is a formula to test the scalability of pairs of roll calls. The results are expressed in a range of -1.0 to 1.0, signifying negative or positive scalability. The higher the numerical value, whether positive or negative, the greater the degree of scalability. In Guttman analysis, only items scaling positively are used, and my Qmin (the minimum numerical expression of scalability acceptable to the analyst) was set at .6. All items with over 15% deviation or a scalability below the Qmin were eliminated and checked for subscales. In some cases the deviation or low Q was caused by the conscious decision of some respondents to vote against their own principles in an effort to defeat legislation of
APPENDIX I (CONT.)

which they disapproved. In these cases, those votes were
adjusted and checked for scalability once again.

4. Items still included in the universe after checking
for deviation were combined into artificial items, or
"groups."

5. Individual respondents were classified according to
the attitudes they displayed through their responses to the
items.

A few caveats should be added here. First, although
one of the primary goals in Guttman analysis is unidimen-
sionality, I have consciously liberalized my universes,
particularly those involving reconstruction, as much as
possible, by allowing more deviation (15%) and a lower Qmin
(.6) than is customary. I did not want separate scales on
each piece of reconstruction legislation, which I certainly
would have gotten had I been stricter (see, for instance,
Edward L. Gambill, "Who Were the Senate Radicals?" Civil War
History, XI (June, 1965), 237-43; Gambill found nine separate
scales for only one session of Congress). The relaxed re-
quirements for scalability lead to a lower "reproducibility"
in a few cases than is customarily allowed ("reproducibility"
is an expression of the degree of perfection in the scale;
a perfect scale has no deviating responses). Therefore, the
reader must recognize that the charts giving the factional
alignments in Congress define not static but fluid groups,
gaining and losing members from vote to vote. Second, I
have not taken Charles D. Farris' advice to eliminate nearly unanimous and partisan roll calls ("partisan" roll calls are those on which a certain percentage of one party votes in opposition to a similar percentage of the other; the analyst sets the significant percentage, usually 90%, 60%, or 50%). Farris' warning that nearly unanimous roll calls inflate the "reproducibility" of the scale, while true, does not pertain here where "reproducibility is deemphasized. As to Farris' second stricture, I simply do not agree. Finally, it should be pointed out that the scales on reconstruction are not as "dichotomized" as one would expect. Instead of sharply defined, hostile groups, the reconstruction scales marked a gradual shading among Republicans from conservatism to radicalism. But this is in part a result of my method. Had only "significant" roll calls been analyzed (that is roll calls marked by nearly even division), as in the program most analysts follow, an artificial dichotomy would have appeared, fostered by the nature of the input. The same would have been true if "partisan" roll calls had been excluded.

For a more detailed, but elementary, explanation of roll call analysis, including the formula for computing Yule's Q, see Lee F. Anderson, Meredith W. Watts, Jr., and Allen R. Wilcox, Legislative Roll-Call Analysis (Evanston, Ill.: Northwestern University Press, 1966), 89-121 (I am
APPENDIX I (CONT.)
giving complete cites to these works as they are not in-
cluded in the bibliography). Major contributions to the
development of scale analysis are George M. Belknap, "A
Method for Analyzing Legislative Behavior," Midwest Journal
of Political Science, II (Nov., 1958), 377-402; Charles D.
Parris, "A Method for Determining Ideological Groupings in
the Congress," Journal of Politics, XX (May, 1958), 308-38;
Bert F. Green, "Attitude Measurement," in Gardner Lindsey
(ed.), Handbook of Social Psychology (2 vols., Cambridge,
Mass.: Addison-Wesley Publishing Co., 1954); Louis Guttman,
"A Basis for Scaling Qualitative Data," American Sociological
Review, IX (Apr., 1944), 139-50; Duncan MacRae, Jr. Dimen-
sions of Congressional Voting: A Statistical Study of the
House of Representatives in the Eighty-first Congress
(Berkeley, Calif.: University of California Press, 1958);
Samuel A. Stouffer, et. al., Measurement and Prediction
The last-cited work is volume IV of the monumental Studies
in Social Psychology in World War II, sponsored by the
Social Science Research Council.
APPENDIX II

The Tariff in the Senate
39th Congress

The tariff did not lend itself to scale analysis, and votes on it were not arranged in marginal frequency order.

APPENDIX III

The Tariff in the House of Representatives
39th Congress, Second Session.


APPENDIX IV

The Money Question in the House of Representatives
39th-41st Congresses

Representatives in Group #0 of Appendix VIII voted against the inflationist position on roll calls in Group #1 of this Appendix and in all succeeding groups. Representatives in Group #1 of Appendix VIII voted for the inflationist position on roll calls in Group #1 of this Appendix but against the inflationist position on roll calls in all succeeding groups. The representatives in Group #2 voted for the inflationist position on roll calls in Group #2 of this Appendix but not for the inflationist position in succeeding groups, and so on.

39th Congress
Main Scale

GROUP #1: Cong. Globe, 39 Cong., 2 Sess., 1426 (Feb. 21, 1867; anti-contractionist vote= yea; final vote= 95-65-30), 1666-67 (Feb. 28, 1867; nay; 56-83-51), 992 (Feb. 4, 1867; yea; 87-66-41), 992 (Feb. 4, 1867; nay; 71-82-37), 1 Sess., 1468 (Mar. 16, 1866; nay; 64-70-49), in order of marginal frequency.


GROUP #4: Cong. Globe, 39 Cong., 1 Sess., 75 (Dec. 18, 1865; nay; 144-6-32).

Subscale: Cong. Globe, 39 Cong., 1 Sess., 4154 (July 25, 1866; yea; 28-87-71), 2 Sess., 49 (Dec. 10, 1866; nay; 94-60-47).

40th Congress
Main Scale

GROUP #1: Cong. Globe, 40 Cong., 3 Sess., 1325 (Feb. 17,
APPENDIX IV (CONT.)

1869; nay; 65-107-50), 1816 (Mar. 2, 1869; nay; 70-108-44), 1333 (Feb. 18, 1869; yea; 106-77-39), 1331 (Feb. 18, 1869; yea; 97-76-49), 1325 (Feb. 17, 1869; yea; 93-86-43), 2 Sess., 1761 (Mar. 9, 1868; nay; 56-63-68), 3 Sess., 1327 (Feb. 17, 1869; nay; 92-78-52).

GROUP #2: *Cong. Globe*, 40 Cong., 3 Sess., 1883 (Mar. 3, 1869; nay; 118-57-48), 1538 (Feb. 24, 1869; nay; 120-60-42), 1471 (Mar. 3, 1869; yea; 53-119-51), 1538 (Feb. 24, 1869; yea; 54-133-35).

Subscale


GROUP #2: *Cong. Globe*, 40 Cong., 3 Sess., 1538 (Feb. 24, 1869; yea; 72-100-50).

41st Congress

Main Scale (Roll calls relating to currency expansion)

GROUP #1: *Cong. Globe*, 41 Cong., 2 Sess., 1460 (Feb. 21, 1870; yea; 108-72-38), 76 (Dec. 11, 1870; nay; 64-89-58), 1293 (Feb. 14, 1870; nay; 73-93-52).

GROUP #2: *Cong. Globe*, 41 Cong., 2 Sess., 4478 (June 15, 1870; yea; 77-95-58), 76 (Dec. 11, 1870; nay; 99-57-55), 4471 (June 15, 1870; yea; 51-103-76).

Subscale (Roll calls relating to payment of government bonds in gold and allowing private contracts to require performance in gold).

GROUP #1: *Cong. Globe*, 41 Cong., 2 Sess., 4970 (June 29, 1870; nay; 53-127-49), 1 Sess., 60 (Mar. 12, 1869; yea; 86-57-51).

GROUP #2: *Cong. Globe*, 41 Cong., 1 Sess., 61 (Mar. 12, 1869; nay; 98-47-53), 2 Sess., 5070-71 (July 1, 1870; nay; 128-43-58), 5059 (July 1, 1870; yea; 41-127-61).
APPENDIX V

The Money Question in the Senate
40th-41st Congresses

Democratic vote not included where Democrats vote inconsistently for partisan reasons.

First Scale (40th Congress; all but one roll call relating to contraction of the currency). Those voting to expand the currency on roll calls in Group #3 were the most committed inflationists. Those voting against expanding the currency on roll calls in Group #1 were the most committed contractionists.

GROUP #1: Cong. Globe, 40 Cong., 2 Sess., 501 (Jan. 14, 1868; anti-contracting vote= nay; final vote= 1-40-12), 537 (Jan. 15, 1868; yea; 33-4-16), 503 (Jan. 14, 1868; nay; 6-37-10), in order of marginal frequency.


GROUP #3: Cong. Globe, 40 Cong., 3 Sess., 1126 (Feb. 2, 1869; yea; 8-39-19), 1661 (Feb. 27, 1869; yea; 7-36-23), 2 Sess., 3998 (July 13, 1868; yea; 6-29-22).

Second Scale (Primarily 41st Congress; relating to payment of national bonds in gold and allowing private contracts specifically requiring performance in gold). Those voting against requiring a gold standard on roll calls in Group #3 were the most opposed to resumption of mandatory use of gold in contracts and in payment of government bonds. Those voting in favor of requiring gold payments on roll calls in Group #1 favored quickest resumption.

GROUP #1: Cong. Globe, 41 Cong., 2 Sess., 943 (Feb. 1, 1870; yea; 39-21-8).

GROUP #2: Cong. Globe, 41 Cong., 2 Sess., 970 (Feb. 2, 1870; yea; 29-29-10), 40 Cong., 3 Sess., 1834 (Mar. 3, 1869; nay; 31-24-11), 1678 (Feb. 27, 1869; nay; 30-16-20), 41 Cong., 1 Sess., 46 (Mar. 11, 1869; nay; 36-18-11).
APPENDIX V (CONT.)

GROUP #3: Cong. Globe, 41 Cong., 1 Sess., 56 (Mar. 11, 1869; yea; 14-32-19), 53 (Mar. 11, 1869; yea; 12-31-22), 70 (Mar. 12, 1869; nay; 42-13-10), 2 Sess., 968 (Feb. 2, 1870; nay; 44-13-11).
APPENDIX VI

Race Questions in the House of Representatives
38th-41st Congresses

38th Congress. Democratic votes changed where they voted with radicals.

GROUP #1: Cong. Globe, 38 Cong., 1 Sess., 1226 (Mar. 22, 1864; pro-Negro vote= nay; final vote= 18-81), 75 (Dec. 21, 1863; nay; 41-103), 2 Sess., 1418 (Mar. 3, 1865; nay; 30-65-87), in order of marginal frequency.

GROUP #2: Cong. Globe, 38 Cong., 1 Sess., 427 (Feb. 1, 1864; yea; 80-46), 1325 (Mar. 28, 1864; nay; 38-69), 2772 (June 6, 1864; yea; 72-43), 2774 (June 6, 1864; nay; 44-66), 2001 (Apr. 30, 1864; yea; 78-51), 2 Sess., 1402 (Mar. 3, 1865; nay; 52-77-53), 1 Sess., 71 (Dec. 21, 1863; yea; 87-63), 2920 (June 14, 1864; yea; 82-57-42), 427 (Feb. 1, 1864; nay; 50-75), 2 Sess., 80 (Dec. 20, 1864; nay; 51-71-60), 1 Sess., 2000 (Apr. 30, 1864; yea; 80-49), 3403 (June 29, 1864; yea; 67-47-68), 2000 (Apr. 30, 1864; nay; 52-84), 3402 (June 29, 1864; nay; 47-66-69), 2002 (Apr. 30, 1864; yea; 73-54), 659 (Feb. 15, 1864; nay; 58-79), 3079 (June 18, 1864; nay; 60-76), 3061 (June 17, 1864; nay; 38-95-99), 23 (Dec. 14, 1863; nay; 68-87), 2 Sess., 566 (Feb. 2, 1865; nay; 67-83-32), 1 Sess., 660 (Feb. 15, 1864; yea; 78-62), 2 Sess., 1004 (Feb. 22, 1865; nay; 66-77-39), 1004 (Feb. 22, 1865; yea; 74-63-45).

GROUP #3: Cong. Globe, 38 Cong., 2 Sess., 694 (Feb. 9, 1865; yea; 64-62-56), 1 Sess., 895 (Mar. 1, 1864; nay; 62-68), 1652 (Apr. 15, 1864; nay; 66-66), 895 (Mar. 1, 1864; yea; 69-67), 1652 (Apr. 15, 1864; nay; 75-67), 22 (Dec. 14, 1863; nay; 82-73), 71 (Dec. 21, 1863; yea; 73-85), 2475 (May 25, 1864; nay; 18-123), 1652 (Apr. 15, 1864; yea; 54-85).

GROUP #4: Cong. Globe, 38 Cong., 1 Sess., 2386 (May 20, 1864; nay; 102-28).

APPENDIX VI (CONT.)

39th Congress. Democratic votes changed where they vote with radicals.

GROUP #1: Cong. Globe, 39 Cong., 1 Sess., 1977 (Apr. 16, 1866; nay; 16-79-38), 2 Sess., 344 (Jan. 8, 1867; yea; 113-38-41), 1 Sess., 1974 (Apr. 16, 1866; yea; 79-28-76), 2429 (May 7, 1866; nay; 29-76-78), 310 (Jan. 18, 1866; nay; 47-123-12), 2 Sess., 138 (Dec. 14, 1866; yea; 118-46-28), 399 (Jan. 10, 1867; yea; 104-38-49), 1 Sess., 311 (Jan. 18, 1866; yea; 116-54-12).

GROUP #2: Cong. Globe, 39 Cong., 2 Sess., 481 (Jan. 15, 1867; yea; 84-63-44), 481 (Jan. 15, 1867; yea; 87-70-34).

GROUP #3: Cong. Globe, 39 Cong., 1 Sess., 2373 (May 3, 1866; yea; 37-95-51), 4275 (July 27, 1866; nay; 62-52-72), 2378 (May 3, 1866; nay; 81-57-45).

40th Congress. Nearly all legislation involving racial questions in this session deal primarily with reconstruction. The few which do not find Republicans united on the sode of racial liberalism. These votes may be found in the Cong. Globe, 40 Cong., 2 Sess., 96 (Dec. 9, 1867) and 781 (Jan. 27, 1868).

41st Congress.


GROUP #2: Cong. Globe, 41 Cong., 1 Sess., 79 (Mar. 15, 1869; yea; 111-46-40), 510 (Apr. 5, 1869; yea; 87-44-65), 2 Sess., 1046 (Feb. 4, 1870; yea; 112-56-50), 3 Sess., 1665 (Feb. 25, 1871; nay; 73-107-60).
APPENDIX VII

Race Questions in the Senate
38th-41st Congresses

38th Congress

GROUP #1: Cong. Globe, 38 Cong., 2 Sess., 63 (Dec. 19, 1864; pro-Negro vote= yea; final vote= 26-5-18), 167 (Jan. 9, 1865; nay; 6-32-11), 167 (Jan. 9, 1865; nay; 7-30-12), 1 Sess., 2970 (June 15, 1864; nay; 8-20-12), 1715 (Apr. 19, 1864; nay; 9-31), 2 Sess., 294 (Jan. 17, 1865; yea; 24-6-19), 1 Sess., 555 (Feb. 10, 1864; yea; 20-10), 1364 (Mar. 31, 1864; yea; 29-8), 1709 (Apr. 19, 1864; yea; 26-10), 3264 (June 25, 1864; yea; 29-10-10), 2 Sess., 743 (Feb. 11, 1865; yea; 25-11-15), 1 Sess., 1806 (Apr. 22, 1864; nay; 9-26), 3350 (June 28, 1864; yea; 21-9-19), 2 Sess., 168 (Jan. 9, 1865; yea; 27-10-12), 1 Sess., 1806 (Apr. 22, 1864; nay; 10-27), 3176 (June 22, 1864; nay; 8-28-13), 3293 (June 15, 1864; nay; 8-20-12), 2 Sess., 604 (Feb. 6, 1865; yea; 26-10-15), 1 Sess., 2931 (June 14, 1864; yea; 23-11-15), 3191 (June 23, 1864; nay; 9-29-11), 3177 (June 22, 1864; yea; 26-12-11), 2970 (June 15, 1864; nay; 13-23-13), 3191 (June 23, 1864; yea; 27-12-10), 3177 (June 22, 1864; nay; 25-11-13), 1207 (Mar. 21, 1864; nay; 14-22), 3327 (June 28, 1864; yea; 23-15-11), in order of marginal frequency.

GROUP #2: Cong. Globe, 38 Cong., 1 Sess., 3264 (June 25, 1864; yea; 23-14-12), 3177 (June 22, 1864; nay; 15-22-12), 3350 (June 28, 1864; nay; 13-16-20), 2963 (June 15, 1864; nay; 14-21-14), 3261 (June 25, 1864; yea; 22-16-11), 3129 (June 21, 1864; yea; 25-17-5), 3178 (June 22, 1864; nay; 12-22-15), 1361 (Mar. 31, 1864; yea; 22-17), 3178 (June 22, 1864; nay; 17-17-11), 2 Sess., 115 (Jan. 5, 1865; nay; 15-19-15), 1 Sess., 1161 (Mar. 17, 1864; yea; 19-17), 3191 (June 23, 1864; nay; 17-22-10), 2 Sess., 1308 (Mar. 2, 1865; nay; 12-16-22), 1 Sess., 3137 (June 21, 1864; yea; 17-16-16).

GROUP #3: Cong. Globe, 38 Cong., 2 Sess., 590 (Feb. 4, 1865; yea; 19-20-12), 1 Sess., 565 (May 28, 1864; yea; 32-20-11), 3134 (June 21, 1864; yea; 14-16-19),
APPENDIX VII (CONT.)

1714 (Apr. 19, 1864; nay: 24-17), 3256 (June 25, 1864; yea: 13-20-16), 2 Sess., 990 (Feb. 22, 1865; yea: 14-24-12).

GROUP #4:  **Cong. Globe, 38 Cong., 1 Sess., 3158 (June 22, 1864; yea: 14-22-13), 2351 (May 10, 1864; nay: 26-13-10).**

GROUP #5:  **Cong. Globe, 38 Cong., 1 Sess., 2545 (May 28, 1864; yea: 8-27-14).**

GROUP #6:  **Cong. Globe, 38 Cong., 1 Sess., 3449 (July 1, 1864; yea: 5-24-20), 2512 (May 27, 1864; nay: 26-12-12).**

39th and 40th Congresses. Democratic and Johnson Conservative votes are changed where they are cast on the radical side of a question for conservative reasons.


41st Congress

GROUP #1:  **Cong. Globe, 41 Cong., 2 Sess., 1568 (Feb. 25, 1870; yea: 48-8-12).**

GROUP #2:  **Cong. Globe, 41 Cong., 2 Sess., 5177 (July 4, 1870; yea: 20-17-35), 5176 (July 4, 1870; yea: 21-20-31), 1678 (Mar. 4, 1870; yea: 21-26-22).**
APPENDIX VIII

Landgrants to Railroads in the House of Representatives
40th Congress

Main Scale (General Issues). Those voting against aid on
the roll calls in Group #1 opposed aid throughout
the 40th Congress; those voting in favor of aid on
the roll calls in Group #3 supported aid throughout
the Congress. Those who supported aid on roll calls
in Groups #1 or #2 but not in Group #3 began opposing
aid at some time during this Congress.

GROUP #1: Cong. Globe, 40 Cong., 2 Sess., 1632 (Mar. 3,
1868; pro-landgrant vote= yea; final vote= 78-44-67),
3588 (June 29, 1868; yea; 96-33-65), in order of
marginal frequency.

GROUP #2: Cong. Globe, 40 Cong., 1 Sess., 797 (Nov. 26,
1867; nay; 70-66-45), 3 Sess., 587 (Jan. 25, 1869;
nay; 86-92-44).

GROUP #3: Cong. Globe, 40 Cong., 3 Sess., 424 (Jan. 18,
1869; nay; 90-67-65).

Subscale (Midwestern Railroads): Cong. Globe, 40 Cong.,
2 Sess., 571 (Jan. 16, 1868; yea; 105-27-55), 571
(Jan. 16, 1868; nay; 27-92-69), 106 (Dec. 10, 1867;
nay; 35-111-41), 570 (Jan. 16, 1868; nay; 33-104-51),
APPENDIX IX

Radicalism in the Senate
38th-41st Congresses.

38th Congress
First Scale. Primarily first session.

GROUP #1: Cong. Globe, 38 Cong., 1 Sess., 1425 (Apr. 5, 1864; radical vote=nay; final vote=2-34), 3461 (July 1, 1864; yea; 26-3-20), 2 Sess., 110 (Dec. 22, 1864; yea; 27-4-18), 1 Sess., 1424 (Apr. 5, 1864; nay; 5-32), 1809 (Apr. 22, 1864; nay; 5-31), 1490 (Apr. 8, 1864; yea; 38-6), 1370 (Mar. 31, 1864; nay; 6-28), 2963 (June 15, 1864; nay; 6-26-17), 522 (Feb. 8, 1864; nay; 8-31), 3378 (June 29, 1864; nay; 8-25-16), in order of marginal frequency.

GROUP #2: Cong. Globe, 38 Cong., 1 Sess., 54 (Dec. 18, 1863; nay; 15-26), 2 Sess., 611 (Feb. 6, 1865; yea; 23-14-14), 1 Sess., 102 (Jan. 6, 1864; nay; 16-21), 3491 (July 2, 1864; yea; 18-14-17), 3160 (June 22, 1864; yea; 16-15-18).

GROUP #3: Cong. Globe, 38 Cong., 1 Sess., 3326 (June 21 1864; yea; 19-23-7), 96 (Jan. 5, 1864; nay; 20-15), 3460 (July 1, 1864; nay; 17-16-16), 3461 (July 1, 1864; yea; 11-21-17), 2 Sess., 521 (Jan. 31, 1865; nay; 27-13-9).

Second Scale. Primarily second session.

GROUP #1: Cong. Globe, 38 Cong., 2 Sess., 595 (Feb. 4, 1865; nay; 7-30-14), 1 Sess., 3368 (June 29, 1864; yea; 27-6-16), 2 Sess., 595 (Feb. 4, 1865; yea; 29-10-12), 1129 (Feb. 27, 1865; yea; 34-12-4), 583 (Feb. 3, 1865; nay; 12-31-8), 582 (Feb. 3, 1865; nay; 12-30-9).

GROUP #2: Cong. Globe, 38 Cong., 2 Sess., 582 (Feb. 3, 1865; nay; 16-22-14), 561 (Feb. 2, 1865; nay; 11-26-14).

GROUP #3: Cong. Globe, 38 Cong., 2 Sess., 1107 (Feb. 25, 1865; yea; 12-18-20), 1107 (Feb. 25, 1865; yea; 12-19-19), 1107 (Feb. 25, 1865; yea; 12-17-21), 1107 (Feb. 25, 1865; yea; 11-18-21), 1108 (Feb. 25, 1865; yea; 8-19-23).
APPENDIX IX (CONT.)

GROUP #4: *Cong. Globe*, 38 Cong., 2 Sess., 1011 (Feb. 23, 1865; yea; 8-29), 1 Sess., 2906 (June 13, 1864; yea; 5-32-12).

39th Congress, first session.

GROUP #1: *Cong. Globe*, 39 Cong., 1 Sess., 3040 (June 8, 1866; nay; 11-35-5), 3042 (June 8, 1866; yea; 33-11-5), 3842 (July 16, 1866; yea; 33-12-4), 606 (Feb. 2, 1866; nay; 12-34-5), 606 (Feb. 2, 1866; yea; 33-12-4), 2899 (May 30, 1866; nay; 8-34-7), 2900 (May 30, 1866; nay; 11-31-7), 2921 (May 31, 1866; yea; 31-11-7), 1288 (Mar. 9, 1866; nay; 12-31-7), 28 (Dec. 12, 1865; nay; 14-29-6), 575 (Feb. 1, 1866; yea; 31-10-9), 1205 (Mar. 6, 1865; yea; 32-5-13), 748 (Feb. 8, 1866; nay; 8-25-17), 883 (June 30, 1866; nay; 9-21-18), 832 (May 24, 1866; nay; 9-17-23), 3839 (July 16, 1866; nay; 13-31-5), 1809 (Apr. 9, 1866; yea; 33-15-1), 2942 (June 14, 1866; nay; 9-26-14), 47 (Feb. 8, 1866; nay; 11-28-11), 943 (Feb. 20, 1866; yea; 30-18-2), 1146 (Mar. 2, 1866; nay; 17-29-4), 1027 (Feb. 26, 1866; nay; 17-29-4), 1147 (Mar. 2, 1866; yea; 29-18-3), 1677 (Mar. 27, 1866; nay; 27-16-6), 918 (Feb. 19, 1866; nay; 17-29-4), 918 (Feb. 19, 1866; nay; 17-28-5), 777 (May 2, 1866; nay; 8-21-19), 984 (Feb. 23, 1866; yea; 26-19-5).

GROUP #2: *Cong. Globe*, 39 Cong., 1 Sess., 2339 (May 2, 1866; yea; 19-11-19), 918 (Feb. 19, 1866; nay; 19-25-6), 1667 (Mar. 27, 1866; nay; 18-23-9), 677 (Mar. 16, 1866; nay; 11-20-18), 587 (Mar. 6, 1866; nay; 17-17-19), 1677 (Mar. 27, 1866; yea; 22-21-6), 1679 (Mar. 27, 1866; yea; 22-21-6), 1601 (Mar. 23, 1866; yea; 19-21-10).

GROUP #3: *Cong. Globe*, 39 Cong., 1 Sess., 2066 (Apr. 20, 1866; nay; 18-16-15), 4000 (July 21, 1866; yea; 16-22-10), 3741 (July 11, 1866; yea; 13-17-19), 2615 (May 17, 1866; yea; 14-23-12), 4245 (July 27, 1866; nay; 21-11-18), 1787 (Apr. 5, 1866; nay; 33-12-4), 1284 (Mar. 9, 1866; yea; 8-39-3), 1287 (Mar. 9, 1866; yea; 7-38-5), 4000 (July 21, 1866; yea; 4-34-10), 4219 (July 27, 1866; nay; 35-2-13).

39th Congress, second session.

GROUP #1: *Cong. Globe*, 39 Cong., 2 Sess., 277 (Jan. 4, 1867; yea; 27-7-18), 381 (Jan. 10, 1867; yea; 26-7-19), 404 (Jan. 11, 1867; nay; 6-23-23), 550 (Jan. 18, 1867; yea; 29-9-14), 1966 (Mar. 2, 1867; yea; 35-11-6), 948 (Feb. 1, 1867; yea; 31-5-15), 1461 (Feb. 16, 1867;...
APPENDIX IX (CONT.)

nay; 8-28-16), 1467 (Feb. 16, 1867; yea; 32-3-17),
1467 (Feb. 16, 1867; nay; 7-30-15), 1469 (Feb. 16,
1867; yea; 29-10-13), 1645 (Feb. 20, 1867; yea; 35-
7-10), 1645 (Feb. 20, 1867; nay; 8-34-10 ), 1796
(Mar. 2, 1867; yea; 8-33-11), 1795 (Feb. 23, 1867;
yea; 25-6-21), 1963 (Mar. 2, 1867; nay; 9-30-13),
1963 (Mar. 2, 1867; nay; 9-29-14), 1964 (Mar. 2, 1867;
yea; 36-8-8).

GROUP #2:  
Cong. Globe, 39 Cong., 2 Sess., 1855 (Feb. 26,
1867; nay; 8-28-6), 1391 (Feb. 15, 1867; nay; 8-26-
18), 1518 (Feb. 18, 1867; yea; 22-10-20), 1394 (Feb. 15,
1867; nay; 9-25-18), 1461 (Feb. 16, 1867; nay; 4-22-12),
1834 (Feb. 25, 1867; yea; 25-10-17), 633 (Jan. 22, 1867;
nya; 15-24-13), 1849 (Feb. 26, 1867; yea; 23-11-18),
1636 (Feb. 20, 1867; yea; 23-12-17), Senate Executive
Journal, XV, 335-36 (Mar. 2, 1867; nay; 20-22-10).

GROUP #3:  
Cong. Globe, 39 Cong., 2 Sess., 1224 (Feb. 13,
1867; yea; 23-19-10), 9 (Dec. 4, 1866; yea; 21-21-
10), 354 (Jan. 9, 1867; yea; 16-17-19), 547 (Jan. 18,
1867; yea; 16-21-15), 1047 (Feb. 6, 1867; yea; 17-28-7),
548 (Jan. 18, 1867; yea; 13-27-12).

GROUP #4:  
Cong. Globe, 39 Cong., 2 Sess., 1911 (Feb. 28,
1867; nay; 27-12-13), 1903 (Feb. 28, 1867; nay; 33-
13-6), 338 (Mar. 2, 1867; nay; 5-10-11), 1009 (Feb. 5,
1867; yea; 10-30-12), 1902 (Feb. 28, 1867; nay; 37-
10-5), 1397 (Feb. 15, 1867; yea; 7-23-22), 338
(Mar. 2, 1867; nay; 33-6-14), 403 (Jan. 11, 1867;
yea; 1-30-21).

40th Congress, first session.
Main Scale. General reconstruction issues.

GROUP #1:  
Cong. Globe, 40 Cong., 1 Sess., 181 (Mar. 18,
1867; yea; 39-5-9), 644 (July 15, 1867; yea; 29-3-21),
732 (July 19, 1867; yea; 32-4-17), 586 (July 11, 1867;
yea; 21-8-24), 732 (July 19, 1867; yea; 30-6-17),
572 (Mar. 28, 1867; nay; 5-35-13), 665 (July 16, 1867;
nya; 7-28-18), Sen. Exec. Jour., XV, (Apr. 10,
1867; nay; 8-27-18). Cong. Globe, 40 Cong., 1 Sess.,
438 (Mar. 29, 1867; nay; 7-32-14), 250 (Mar. 21, 1867;
yea; 32-7-14), 437 (Mar. 29, 1867; yea; 22-11-20),
552 (July 10, 1867; yea; 20-15-18).

GROUP #2:  
Cong. Globe, 40 Cong., 1 Sess., 582 (July 11,
1867; yea; 18-18-17), 584 (July 11, 1867; yea; 20-
11-22), 163 (Mar. 16, 1867; yea; 21-18-14), 170 (Mar.
16, 1867; yea; 20-20-13), 360 (Mar. 26, 1867; nay;
21-17-15), 755 (July 20, 1867; yea; 13-19-21).
APPENDIX IX (CONT.)

303 (Mar. 23, 1867; yea; 19-28-6), 734 (July 19, 1867; nay; 22-15-16), 303 (Mar. 23, 1867; yea; 18-27-8), 359 (Mar. 26, 1867; yea; 17-23-11), 359 (Mar. 26, 1867; yea; 16-25-12), 734-35 (July 19, 1867; nay; 23-14-16), 308 (Mar. 23, 1867; nay; 16-29-8), 360 (Mar. 26, 1867; yea; 15-26-12), 533 (July 9, 1867; yea; 11-21-21), 573 (July 11, 1867; nay; 24-13-16), 360 (Mar. 26, 1867; nay; 14-27-12), 303-04 (Mar. 23, 1867; yea; 14-31-8), 441 (Mar. 29, 1867; yea; 13-28-12), 581 (July 11, 1867; yea; 11-22-20), 408 (Mar. 28, 1867; yea; 14-27-12), 441 (Mar. 29, 1867; nay; 28-12-13), 408 (Mar. 28, 1867; nay; 25-14-14), 56 (Mar. 11, 1867; nay; 36-10-7).

Subscale. Supplementary Reconstruction bill.

GROUP #1:  
Cong. Globe, 40 Cong., 1 Sess., 171 (Mar. 16, 1867; yea; 38-2-13), 303 (Mar. 23, 1867; yea; 40-7-6), 628 (July 13, 1867; yea; 31-5-16), 586 (July 11, 1867; yea; 21-8-24), 163 (Mar. 16, 1867; yea; 26-15-12).

GROUP #2:  
Cong. Globe, 40 Cong., 1 Sess., 151 (Mar. 16, 1867; yea; 24-14-15), 185 (Mar. 18, 1867; yea; 21-24-8), 149 (Mar. 16, 1867; nay; 22-21-10), 147 (Mar. 16, 1867; yea; 19-25-9), 150 (Mar. 16, 1867; yea; 19-21-13), 161 (Mar. 16, 1867; yea; 17-22-14), 118 (Mar. 15, 1867; yea; 14-33-6).

40th Congress, second session.  
Main Scale. General Reconstruction issues.

GROUP #1:  
Cong. Globe, 40 Cong., 2 Sess., 3958 (June 11, 1868; nay; 5-28-21), 3960 (June 11, 1868; yea; 23-5-26), 2769 (June 2, 1868; yea; 29-8-17), 1417 (Feb. 25, 1868; yea; 28-6-19), 4251 (July 20, 1868; nay; 3-29-30), 4451 (July 25, 1868; yea; 42-5-17), 3956 (July 11, 1868; yea; 34-3-20), 4506-7 (July 27, 1868; nay; 7-33-26), 1037 (Feb. 7, 1868; yea; 32-9-12), 3955 (July 11, 1868; nay; 3-26-28), 2736 (June 1, 1868; yea; 37-11-6), 778 (Jan. 27, 1868; yea; 26-5-22), 2735 (June 1, 1868; nay; 11-30-13), 3179 (June 16, 1868; nay; 12-23-19).

GROUP #2:  
APPENDIX IX (CONT.)

GROUP #3: *Cong. Globe, 40 Cong., 2 Sess.,* 3632 (July 1, 1868; yea; 19-20-18), 1787 (Mar. 10, 1868; yea; 16-23-15), 1809 (Mar. 11, 1868; yea; 16-26-14), 1496 (Feb. 28, 1868; nay; 23-13-16), 3022 (June 10, 1868; yea; 16-24-16), 1028 (Feb. 7, 1868; yea; 8-30-15).

Subscale. Readmission of southern states and representation in the electoral college.

GROUP #1: *Cong. Globe, 40 Cong., 2 Sess.,* 2749 (June 1, 1868; yea; 34-8-12), 3363 (June 22, 1868; yea; 30-7-17), 3029 (June 10, 1868; yea; 31-5-18), 4236 (July 20, 1868; yea; 45-8-7), 4466 (July 25, 1868; yea; 35-8-13), 3607 (June 30, 1868; yea; 34-6-16), 3926 (July 10, 1868; yea; 29-5-23), 2658 (May 29, 1868; nay; 12-35-7).

GROUP #2: *Cong. Globe, 40 Cong., 2 Sess.,* 3013 (June 10, 1868; yea; 28-15-13), 3017 (June 10, 1868; nay; 16-24-14), 2965 (June 9, 1868; yea; 22-21-11), 2701 (May 30, 1868; nay; 21-22-11).

GROUP #3: *Cong. Globe, 40 Cong., 2 Sess.,* 2701 (May 30, 1868; nay; 23-17-14), 3385 (June 23, 1868; nay; 30-16-8), 3926 (July 10, 1868; nay; 23-14-20), 38 (Dec. 5, 1867; yea; 9-36-8).

40th Congress, third session.

GROUP #1: *Cong. Globe, 40 Cong., 3 Sess.,* 1040 (Feb. 9, 1869; nay; 11-45-10), 1304 (Feb. 17, 1869; nay; 6-29-31), 1315 (Feb. 17, 1869; nay; 10-39-17), 27 (Dec. 8, 1868; nay; 9-44-13), 28 (Dec. 8, 1868; yea; 46-6-14), 1040 (Feb. 9, 1968; nay; 13-43-10), 1314 (Feb. 17, 1869; nay; 12-40-14), 121 (Dec. 17, 1868; yea; 44-3-19), 1318 (Feb. 17, 1869; yea; 35-11-20), 543 (Jan. 23, 1869; yea; 37-11-18), 542 (Jan. 23, 1869; yea; 33-9-24), 1306 (Feb. 17, 1869; nay; 5-30-31), 1641 (Feb. 26, 1869; yea; 39-13-14), 978 (Feb. 8, 1869; yea; 34-11-21), 1030 (Feb. 9, 1869; nay; 12-42-12), 1305 (Feb. 17, 1869; nay; 13-30-23), 908 (Feb. 5, 1869; nay; 9-19-38), 1003 (Feb. 8, 1869; nay; 11-37-18), 1481 (Feb. 23, 1869; nay; 14-36-17), 908 (Feb. 5, 1869; nay; 9-13-44), 1044 (Feb. 9, 1869; yea; 39-16-11), 1302 (Feb. 17, 1869; nay; 8-24-34), 908 (Feb. 5, 1869; nay; 10-20-36), 323 (Jan. 13, 1869; yea; 32-10-24), 1043 (Feb. 9, 1869; nay; 17-38-11), 1301 (Feb. 17, 1869; nay; 18-31-17), 1300 (Feb. 17, 1869; nay; 21-35-10), 1303 (Feb. 17, 1869; nay; 14-23-29).
APPENDIX IX (CONT.)

GROUP #2:  Cong. Globe, 40 Cong., 3 Sess., 1029 (Feb. 9, 1869; yea; 21-32-13), 1305 (Feb. 17, 1869; yea; 18-22-26), 716 (Jan. 29, 1869; yea; 20-29-17), 1055 (Feb. 10, 1869; yea; 28-25-13).

GROUP #3:  Cong. Globe, 40 Cong., 3 Sess., 1055 (Feb. 10, 1869; yea; 25-34-7), 1050 (Feb. 10, 1869; yea; 24-35-7), 1300 (Feb. 17, 1869; yea; 24-32-10).

GROUP #4:  Cong. Globe, 40 Cong., 3 Sess., 1644 (Feb. 26, 1869; yea; 26-8-32), 1041 (Feb. 9, 1869; yea; 9-45-10), 1050 (Feb. 10, 1869; yea; 51-7-8), 1840 (Mar. 3, 1869; yea; 34-3-29).

41st Congress.
First Session. Primarily second session.

GROUP #1:  Cong. Globe, 41 Cong., 3 Sess., 82 (Dec. 13, 1870; yea; 48-8-18), 2 Sess., 2990 (Mar. 30, 1870; yea; 48-8-13), 1 Sess., 663 (Apr. 9, 1869; yea; 41-9-13), 2 Sess., 644 (Jan. 21, 1870; yea; 47-10-8), 3684 (May 20, 1870; yea; 9-41-22), 232 (Dec. 20, 1869; yea; 45-9-11), 3 Sess., 1820 (Mar. 1, 1871; yea; 23-29-22), 2 Sess., 1366 (Feb. 17, 1870; yea; 50-11-7), 3687 (May 20, 1870; yea; 39-9-24), 2272 (Mar. 29, 1870; yea; 47-11-11), Sen. Exec. Jour. XVII; 322; (Dec. 20, 1870; yea; 46-11), Cong. Globe, 41 Cong., 3 Sess., 1817 (Mar. 1, 1871; yea; 12-49-13), 2 Sess., 3671 (May 20, 1870; yea; 9-36-27), 3678 (May 20, 1870; yea; 36-9-27), 1870 (May 25, 1870; yea; 48-11-13), 3 Sess., 1772 (Feb. 28, 1871; yea; 39-10-25), 2 Sess., 2267 (Mar. 29, 1870; yea; 47-12-10), 3690 (May 21, 1870; yea; 43-8-21), 3685 (May 20, 1870; yea; 10-39-23), 2349 (Apr. 1, 1870; yea; 40-12-19), 3684 (May 20, 1870; yea; 12-38-22).


GROUP #4:  Cong. Globe, 41 Cong., 2 Sess., 2825 (Apr. 19, 1870; yea; 32-24-16), 2820 (Apr. 19, 1870; yea;
APPENDIX IX (CONT.)

37-24-11), 5378 (July 8, 1870; nay; 34-22-16), 2821 (Apr. 19, 1870; nay; 36-23-13), 2823 (Apr. 19, 1870; nay; 38-23-11), 3 Sess., 822-23 (Jan. 30, 1871; yea; 19-36-17), 2 Sess., 2821 (Apr. 19, 1870; yea; 23-39-10), 3 Sess., 871 (Feb. 1, 1871; yea; 19-36-17).

GROUP #5: Cong. Globe, 41 Cong., 2 Sess., 5366 (July 8, 1870; yea; 10-34-28), 464 (Jan. 14, 1870; yea; 11-44-10), 416 (Jan. 13, 1870; yea; 11-44-10).

GROUP #6: Cong. Globe, 41 Cong., 2 Sess., 5367 (July 8, 1870; nay; 44-6-22).


GROUP #2: Cong. Globe, 41 Cong., 2 Sess., 644 (Jan. 21, 1870; yea; 39-20-6), 549 (Jan. 18, 1870; yea; 34-21-10), 1366 (Feb. 17, 1870; nay; 23-36-9), 575 (Jan. 19, 1870; yea; 34-26-5).

GROUP #3: Cong. Globe, 41 Cong., 2 Sess., 424 (Jan. 13, 1870; yea; 29-26-10), 643 (Jan. 21, 1870; yea; 31-28-6), 1366 (Feb. 17, 1870; nay; 27-32-9), 643 (Jan. 21, 1870; yea; 30-29-6), 643 (Jan. 21, 1870; yea; 31-29-5), 352 (Jan. 11, 1870; yea; 25-26-14), 610 (Jan. 20, 1870; yea; 23-24-18), 643 (Jan. 21, 1870; yea; 28-32-5), 608 (Jan. 20, 1870; yea; 27-29-9), 512 (Jan. 17, 1870; nay; 25-23-17), 613 (Jan. 20, 1870; yea; 23-25-17), 572 (Jan. 19, 1870; yea; 28-32-5), 466 (Jan. 14, 1870; yea; 17-22-26), 611 (Jan. 20, 1870; yea; 20-25-20), 464 (Jan. 14, 1870; yea; 23-35-7).

Third Scale. Primarily third session.


APPENDIX IX (CONT.)


APPENDIX X

Radicalism in the House of Representatives
38th-41st Congresses.

38th Congress
First Session. Primarily first session.

GROUP #1: Cong. Globe, 38 Cong., 1 Sess., 879 (Feb. 29, 1864; radical vote= yea; final vote= 109-0), 47 (Dec. 17, 1863; yea; 166-1), 47 (Dec. 17, 1863; yea; 152-1), 3436 (July 1, 1864; nay; 11-89), 261 (Jan. 18, 1864; yea; 112-16), 1519 (Apr. 9, 1864; yea; 93-18), 261 (Jan. 18, 1864; nay; 27-101), 878 (Feb. 29, 1864; nay; 22-96), 1519 (Apr. 9, 1864; nay; 23-80), 127 (Jan. 7, 1864; yea; 88-24), in order of marginal frequency.

GROUP #2: Cong. Globe, 38 Cong., 1 Sess., 768 (Feb. 23, 1864; yea; 71-23), 2579 (May 30, 1864; yea; 79-42), 14 (Dec. 10, 1863; yea; 106-46), 2 Sess., 4 (Dec. 6, 1864; yea; 82-37-63), 1 Sess., 399 (Jan. 28, 1864; yea; 100-44), 2 Sess., 501 (Jan. 30, 1865; yea; 97-43-42), 1 Sess., 2771 (June 6, 1864; nay; 35-67), 846 (Feb. 26, 1864; yea; 82-44), 399 (Jan. 28, 1864; nay; 47-94), 2427 (May 23, 1864; nay; 54-79), 334 (Jan. 25, 1864; yea; 92-54), 2772 (June 6, 1864; yea; 72-37), 46 (Dec. 17, 1864; nay; 60-100), 629 (Feb. 12, 1864; nay; 48-87), 21 (Dec. 14, 1863; yea; 98-59), 3179 (June 22, 1864; nay; 50-78-54), 2289 (May 16, 1864; yea; 76-53), 259 (Jan. 18, 1864; yea; 91-56), 879 (Feb. 29, 1864; nay; 47-76), 2030 (May 2, 1864; yea; 67-56), 2995 (June 15, 1864; yea; 93-65-23), 631 (Feb. 12, 1864; yea; 94-60), 2030 (May 2, 1864; yea; 70-50), 71 (Dec. 21, 1863; yea; 79-55), 184 (Jan. 13, 1864; yea; 78-54), 8 (Dec. 7, 1863; nay; 74-101), 8 (Dec. 7, 1863; yea; 101-71), 1518 (Apr. 9, 1864; yea; 81-58), 258 (Jan. 18, 1864; yea; 79-56), 45 (Dec. 17, 1863; yea; 90-66), 2612 (May 31, 1864; nay; 55-76), 3278 (June 25, 1864; nay; 57-78-47), 22 (Dec. 14, 1863; yea; 88-66), 45 (Dec. 17, 1863; nay; 67-90), 1635 (Apr. 14, 1864; yea; 78-63), 14 (Dec. 10, 1863; yea; 94-73).

GROUP #3: Cong. Globe, 38 Cong., 1 Sess., 3525 (July 2, 1864; yea; 65-53-64), 1532 (Apr. 11, 1864; yea; 81-64),
APPENDIX X (CONT.)

2253 (May 12, 1864; yea; 75-64), 629 (Feb. 12, 1864; yea; 83-67), 2578 (May 30, 1864; yea; 81-66), 2108 (May 4, 1864; yea; 73-59), 1634 (Apr. 14, 1864; yea; 80-69), 1634 (Apr. 14, 1864; nay; 70-79), 501 (Feb. 4, 1864; nay; 71-83), 508 (Feb. 5, 1864; nay; 72-80), 519 (Feb. 5, 1864; yea; 83-74), 3058 (June 17, 1864; yea; 70-61-51), 34 (Dec. 15, 1863; yea; 91-80), 1626 (Apr. 14, 1864; yea; 75-71), 3357 (June 28, 1864; yea; 82-77-23), 3145 (June 21, 1864; nay; 75-76), 16534-35 (Apr. 14, 1864; nay; 71-69), 760 (Feb. 19, 1864; nay; 76-69), 507 (Feb. 4, 1864; yea; 81-79), 519 (Feb. 5, 1864; nay; 75-73), 759 (Feb. 19, 1864; yea; 67-74), 760 (Feb. 19, 1864; nay; 76-64), 2107 (May 4, 1864; yea; 57-76).

GROUP #4: Cong. Globe, 38 Cong., 1 Sess., 1289 (Mar. 25, 1864; nay; 53-39), 3148 (June 21, 1864; nay; 100-50-32), 687 (Feb. 16, 1864; yea; 53-104), 38 (Dec. 16, 1863; yea; 52-114), 1289 (Mar. 25, 1864; nay; 52-30), 2910 (June 13, 1864; nay; 104-37-44), 3468 (July 1, 1864; yea; 26-102-54), 6 (Dec. 7, 1863; yea; 100-73).

Second Session. Primarily second session.


GROUP #2: Cong. Globe, 38 Cong., 2 Sess., 1160 (Feb. 27, 1865; nay; 27-95-60), 531 (Jan. 31, 1865; yea; 112-57-13), 530 (Jan. 31, 1865; nay; 57-111-14), 531 (Jan. 31, 1865; yea; 119-56-8), 1160-61 (Feb. 27, 1865; yea; 83-46-53), 275 (Jan. 16, 1865; yea; 84-51-48), 1264 (Mar. 1, 1865; nay; 49-80-53).

GROUP #3: Cong. Globe, 38 Cong., 2 Sess., 1025 (Feb. 23, 1865; yea; 67-54-61), 1025 (Feb. 23, 1865; nay; 52-61-69), 7 (Dec. 7, 1864; yea; 60-55-67), 1026 (Feb. 23, 1865; yea; 72-71-39), 1025-26 (Feb. 23, 1865; nay; 68-68-46).

GROUP #4: Cong. Globe, 38 Cong., 2 Sess., 930 (Feb. 20, 1865; yea; 54-58-70), 974 (Feb. 21, 1865; nay; 71-64-47), 1002 (Feb. 22, 1865; nay; 80-65-37), 1333 (Mar. 2, 1865; nay; 79-64-39), 1332-33 (Mar. 2, 1865; nay; 80-58-44), 970 (Feb. 21, 1865; nay; 91-64-27), 971 (Feb. 21, 1865; nay; 92-57-33).

APPENDIX X (CONT.)

Subscale. Civil Rights in wartime.


39th Congress, first session.
Main Scale. General reconstruction issues.

GROUP #1: Cong. Globe, 39 Cong., 1 Sess., 60 (Dec. 14, 1865; yea; 152-0-30), 921 (Feb. 19, 1866; yea; 134-8-40), 645 (Feb. 5, 1866; yea; 116-14-52).

GROUP #2: Cong. Globe, 39 Cong., 1 Sess., 81 (Dec. 19, 1865; yea; 138-21-23), 946 (Feb. 20, 1866; nay; 18-115-50), 3089 (June 11, 1866; yea; 105-19-59), 921 (Feb. 19, 1866; yea; 117-23-42), 3089 (June 11, 1866; yea; 97-20-66), 698 (Feb. 6, 1866; nay; 34-131-17), 921 (Feb. 19, 1866; yea; 120-26-36), 2572 (May 14, 1866; nay; 19-84-30), 2430 (May 7, 1866; yea; 100-24-59), 920 (Feb. 19, 1866; nay; 29-119-34), 2878 (May 29, 1866; nay; 28-93-67), 720 (Feb. 7, 1866; yea; 102-25-55), 2572 (May 14, 1866; yea; 87-22-74), 688 (Feb. 6, 1866; yea; 136-33-13), 3562 (July 3, 1866; nay; 25-102-55), 71 (Dec. 18, 1865; nay; 32-125-25), 688 (Feb. 6, 1866; nay; 34-131-17), 2372 (May 3, 1866; nay; 29-109-45), 3326 (June 21, 1866; yea; 91-23-68), 1530 (Mar. 20, 1866; yea; 112-31-40), 6 (Dec. 4, 1866; yea; 129-35-18), 3149 (June 13, 1866; yea; 120-32-32), 6 (Dec. 4, 1865; yea; 133-36-13), 1032 (Feb. 26, 1866; yea; 108-38-37), 6 (Dec. 4, 1865; nay; 37-133-12), 4056 (July 23, 1866; yea; 93-26-62), 255 (Jan. 16, 1866; yea; 125-35-22), 1296 (Mar. 9, 1866; nay; 32-118-33), 508 (Jan. 30, 1866; nay; 37-133-12), 4104 (July 24, 1866; yea; 90-28-63), 1368 (Mar. 13, 1866; yea; 107-32-44), 159 (Jan. 9, 1866; yea; 107-32-43), 2316 (May 1, 1866; nay; 27-91-65), 2725 (May 21, 1866; yea; 92-30-61), 33 (Dec. 12, 1865; yea; 126-42-14), 920 (Feb. 19, 1866; yea; 104-33-45), 2725 (May 21, 1866; yea; 84-27-72), 3850 (July 16, 1866; yea; 104-33-45), 2725 (May 21, 1866; yea; 86-30-67), 2878 (May 29, 1866; yea; 96-32-55), 69-70 (Dec. 18, 1866; nay; 35-106-41), 3845 (July 16, 1866; yea; 88-32-62),
APPENDIX X (CONT.)


GROUP #4: Cong. Globe, 39 Cong., 1 Sess., 3948 (July 19, 1866; yea: 59-69-54), 4156 (July 25, 1866; nay: 68-54-64), 3913 (July 18, 1866; nay: 77-57-48), 3949-50 (July 19, 1866; yea: 43-63-76), 3949 (July 19, 1866; yea: 46-68-68), 3985 (July 20, 1866; yea: 48-75-59), 3949 (July 19, 1866; nay: 71-34-77).


GROUP #6: Cong. Globe, 39 Cong., 1 Sess., 3976 (July 20, 1866; nay: 87-48-47), 3980 (July 20, 1866; nay: 125-12-46), 3975 (July 20, 1866; nay: 104-29-49), 2724 (May 21, 1866; yea: 12-97-74).

Subscale. Adjournment.

3913 (July 18, 1866; nay: 75-59-48), 3913 (July 18, 1866; yea: 56-75-51), 1495 (Mar. 19, 1866; nay: 80-63-40), 3912 (July 18, 1866; yea: 52-78-52).
APPENDIX X (CONT.)

39th Congress, second session.


GROUP #2: Cong. Globe, 39 Cong., 2 Sess., 115 (Dec. 13, 1866; yea; 80-55-56), 1133 (Feb. 11, 1867; yea; 84-59-47), 1399-1400 (Feb. 15, 1867; yea; 99-70-21), 970 (Feb. 2, 1867; yea; 82-63-55).

GROUP #3: Cong. Globe, 39 Cong., 2 Sess., 969-70 (Feb. 2, 1867; yea; 75-66-49), 94 (Dec. 12, 1866; yea; 77-81-33), 93-94 (Dec. 12, 1866; nay; 77-78-36), 943-44 (Feb. 1, 1867; yea; 76-78-36), 1215 (Feb. 13, 1867; nay; 69-94-27)*, 993 (Feb. 4, 1867; yea; 60-82-48), 817 (Jan. 28, 1867; nay; 88-65-38).

GROUP #4: Cong. Globe, 39 Cong., 2 Sess., 1340 (Feb. 19, 1867; nay; 73-98-19)*, 1213 (Feb. 13, 1867; nay; 85-78-27)*, 75 (Dec. 11, 1866; yea; 18-132-41), 1321 (Feb. 18, 1867; nay; 103-60-27)*.

GROUP #5: Cong. Globe, 39 Cong., 2 Sess., 1213 (Feb. 13, 1867; nay; 85-78-27)**, 1321 (Feb. 18, 1867; nay; 103-60-27)**.

40th Congress, first session.

GROUP #1: Cong. Globe, 40 Cong., 1 Sess., 504 (July 5, 1867; yea; 111-17-39), 500 (July 5, 1867; yea; 110-18-39), 695 (July 17, 1867; yea; 100-18-52), 637 (July 13, 1867; yea; 108-20-42), 638 (July 13, 1867; yea; 112-22-36), 314 (Mar. 23, 1867; yea; 114-25-25).
APPENDIX X (CONT.)


GROUP #4: Cong. Globe, 40 Cong., 1 Sess., 451 (Mar. 29, 1867; nay: 88-26-50)*.

GROUP #5: Cong. Globe, 40 Cong., 1 Sess., 16 (Mar. 7, 1867; yea: 34-102-24)*.

40th Congress, second session.

APPENDIX X (CONT.)

37), 543 (Jan. 15, 1868; yea; 114-30-35), 333 (Jan.
6, 1868; nay; 28-80-79), 2217 (Mar. 28, 1868; yea;
102-30-57), 489 (Jan. 13, 1868; yea; 116-39-33),
488 (Jan. 13, 1868; nay; 39-113-36), 1997 (Mar. 19,
1867; nay; 35-101-53), 489 (Jan. 13, 1867; yea;
111-38-39), 784 (Jan. 27, 1868; yea; 103-37-48),
1400 (Feb. 24, 1868; yea; 126-47-17), 664 (Jan. 21,
1868; yea; 123-45-20), 95 (Dec. 9, 1867; yea; 112-
43-32), 2528 (May 18, 1868; nay; 27-69-93).

GROUP #2: Cong. Globe, 40 Cong., 2 Sess., 1793 (Mar. 10,
1868; yea; 75-34-80), 2232 (Mar. 31, 1868; nay;
37-82-70), 475 (Jan. 13, 1868; nay; 51-98-39),
865 (Jan. 30, 1868; yea; 97-57-34), 2810-11 (June 3,
1868; yea; 74-46-69), 2216 (Mar. 28, 1868; yea; 77-
54-58).

GROUP #3: Cong. Globe, 40 Cong., 2 Sess., 2463-64 (May
14, 1868; nay; 60-74-55), 985 (Feb. 5, 1868; nay;
68-85-36), 979 (Feb. 4, 1868; nay; 63-80-45), 315
(Dec. 20, 1867; yea; 50-44-94), 985 (Feb. 5, 1868;
yea; 86-73-30), 985 (Feb. 5, 1868; yea; 68-59-62),
985-86 (Feb. 5, 1868; yea; 83-75-31).

GROUP #4: Cong. Globe, 40 Cong., 2 Sess., 662 (Jan. 21,
1868; yea; 83-75-30)*, 68 (Dec. 6, 1867; yea; 57-
108-22), 663 (Jan. 21, 1868; yea; 53-112-23), 3097
(June 12, 1868; yea; 45-99-45), 477 (Jan. 13, 1868;
nay; 72-89-27)*.

40th Congress, third session.

GROUP #1: Cong. Globe, 40 Cong., 3 Sess., 674 (Jan. 28,
1869; yea; 128-34-60), 745 (Jan. 30, 1869; yea;
150-42-31), 1428 (Feb. 20, 1868; yea; 140-37-46),
35 (Dec. 9, 1868; yea; 128-38-55), 1563-64 (Feb.
25, 1869; yea; 144-44-35), 744 (Jan. 30, 1869;
yea; 144-45-33).

GROUP #2: Cong. Globe, 40 Cong., 3 Sess., 1428 (Feb. 20,
1869; nay; 70-95-57).

GROUP #3: Cong. Globe, 40 Cong., 3 Sess., 1696 (Feb. 27,
1869; yea; 57-130-35).

GROUP #4: Cong. Globe, 40 Cong., 3 Sess., 1062 (Feb. 10,
1869; nay; 117-57-48)*.
APPENDIX X (CONT.)

41st Congress

GROUP #1


Subgroup B:  *Cong. Globe*, 41 Cong., 1 Sess., 636 (Apr. 8, 1869; yea; 125-25-47), 2 Sess., 5441 (July 11, 1870; yea; 138-32-60), 3 Sess., 1010 (Feb. 6, 1871; yea; 121-44-74), 1 Sess., 699 (Apr. 9, 1869; yea; 110-36-55), 700 (Apr. 9, 1869; yea; 107-39-55).


GROUP #3:  *Cong. Globe*, 41 Cong., 2 Sess., 1045 (Feb. 4, 1870; yea; 88-77-53), 340 (Jan. 10, 1870; nay; 66-80-64), 5255-56 (July 6, 1870; yea; 96-77-56), 3733 (May 23, 1870; yea; 94-78-56), 1014 (Feb. 3, 1870; nay; 83-100-35), 3700 (May 23, 1870; yea; 79-71-78), 2849 (Apr. 20, 1870; yea; 78-72-76), 5143 (Jul12, 1870; yea; 67-64-98), 339 (Jan. 10, 1870; yea; 76-76-58), 502 (Jan. 14, 1870; nay; 98-95-117), 2850 (Apr. 20, 1870; yea; 79-83-64), 2851 (Apr. 20, 1870; nay; 85-80-61), 4796 (June 24, 1870; nay; 98-90-42).
APPENDIX X (CONT.)

GROUP #4:  *Cong. Globe*, 41 Cong., 2 Sess., 2851 (Apr. 20, 1870; yea; 74-96-56), 2852 (Apr. 20, 1870; nay; 96-68-62), 751 (Jan. 25, 1870; nay; 103-73-34), 2851-52 (Apr. 20, 1870; nay; 100-69-57), 1770 (Mar. 8, 1870; nay; 115-71-34).


*Democratic and Conservative votes changed from positive to negative.*

**Democratic, Conservative, and conservative Republican votes changed from positive to negative.**
APPENDIX XI

Impeachment in the Senate
40th Congress, Second Session.

First Scale


GROUP #2: Cong. Globe, 40 Cong., 2 Sess., 495 (May 26, 1868; nay; 15-39-0), 494 (May 26, 1868; yea; 35-18-1), 507 (Apr. 13, 1868; nay; 15-35-4), 487 (May 16, 1868; yea; 35-19-0), 496 (May 26, 1868; yea; 35-19-0), 435 (May 16, 1868; yea; 34-19-1), 633 (Apr. 17, 1868; yea; 29-14-11), 1533 (Feb. 29, 1868; nay; 12-23-18), 488 (May 16, 1866; nay; 20-34-0), 336 (Apr. 3, 1868; nay; 16-29-9), 693 (Apr. 18, 1868; nay; 19-30-5), 489 (May 16, 1868; yea; 32-21-1), 474 (May 6, 1868; yea; 28-20-6), 693 (Apr. 18, 1868; nay; 20-29-5), 276 (Apr. 2, 1868; yea; 27-17-10), 508 (Apr. 13, 1868; nay; 18-32-4), 716 (Apr. 18, 1868; nay; 20-26-8), 35 (Mar. 13, 1868; yea; 28-20), 247 (Apr. 2, 1868; nay; 20-29-5), 701 (Apr. 18, 1868; nay; 18-26-10), 85 (Mar. 24, 1868; yea; 28-24-2), 214 (Apr. 2, 1868; yea; 28-22-4), 494 (May 26, 1868; nay; 24-30-0), 697 (Apr. 18, 1868; nay; 22-26-6), 481 (Apr. 11, 1868; nay; 23-28-3), 488 (May 16, 1868; nay; 24-30-0), 491 (May 26, 1868; yea; 29-25-0), 1578 (Mar. 2, 1868; nay; 20-24-9).

APPENDIX XI (CONT.)


Second Scale


FOOTNOTES

CHAPTER I


Trefousse's book, The Radical Republicans, requires special notice. It is a broad history of the radical faction of the Republican party, but the author never defines radicalism satisfactorily nor explains precisely who the radicals were. Until the outbreak of war, he seems to consider nearly every Republican radical—a not unjustified conclusion—but even afterward he included in that category men like Fessenden and Lyman Trumbull, who few Republican contemporaries would have placed there. Moreover, Trefousse is especially concerned with the radicals' relations with Lincoln and gives only a general outline of radical-conservative tensions during reconstruction.
The best discussions of radicalism during the war are T. Harry Williams’ *Lincoln and the Radicals* (Madison, 1941) and Trefousse's *The Radical Republicans*, 137-265. Williams' intense anti-radicalism should be taken into account by his readers, however.

*Congressional Globe*, 40 Cong., 1 Sess., 100-101 (Mar. 14, 1867; Drake), 638 (July 13, 1867; Stevens). Fessenden referred to Radical-Radicals in a letter to Elizabeth Fessenden Warriner, Dec. 15, 1867, Fessenden Ms. Bowdoin College Library, Brunswick, Me. See also James W. Nye's castigation of Henry Wilson on one of Wilson's frequent alliances with the less extreme elements of his party, *Cong. Globe*, 40 Cong., 1 Sess., 114 (Mar. 15, 1867), and Henry S. Lane's disgust with "a few extreme Radicals" in the House, *ibid.*, 39 Cong., 2 Sess., 1557 (Feb. 19, 1867).

The Rice index of cohesion is a measure of party or group solidarity. Maximum cohesion is represented by 100, minimum by 0.00. The index is found for any roll call by subtracting the percentage of the voting members of a group voting in the minority from the percentage voting in the majority and multiplying by one hundred. In the case noted here, the average Reconstruction-connected vote found Republicans divided 84% in the majority and 16% in the minority. See Lee F. Anderson et al., *Legislative Roll-Call Analysis* (Evanston, Ill., 1966), 32-35.


Howe to Grace T. Howe, Feb. 21, 1866. Howe Ms.


There is no definitive work on the institutional structure of Congress in the 1860s, but anyone working extensively with congressional records will recognize patterns similar to those described in Woodrow Wilson's *Congressional Government: A Study in American Politics* (Boston & N.Y., 1913),
first published in 1885. I am indebted to Mrs. Nancy Bowen for allowing me to benefit from her study of the influence of selected Senate committees in the 1860s, "The Top of an Iceberg: Quantitative Analysis Applied to the Finance and Judiciary Committees of the 39th Congress" (unpublished seminar paper, Rice University, under the direction of Professor Harold M. Hyman, February, 1969).

9 See pp. 260-62, 318-19, infra. I have counted twenty such meetings held from December, 1865 until July, 1867, when party harmony deteriorated so badly that Republicans feared a caucus would formalize a division rather than promote unity. Reported by newspapers the following day or the next, these caucuses met Dec. 2, 11, 1865; Jan. 10, 16, 1866; Feb. 23, 1866; May 25, 28, 29, 1866; July 11, 14, 1866; Dec. 1, 5, 1866; Jan. 5, 1867; Jan. or Feb., 1867 [discussed in the Cong. Globe, 40 Cong., 1 Sess., 489-95 (July 5, 1867)]; Feb. 16, 1867; Mar. 6, 7, 11, 1867; July 5, 16, 1867.

10 Glenn M. Linden was the first scholar to attempt an intensive roll call analysis of Republican votes during reconstruction. Linden determined who were radicals and who conservatives simply by determining the percentage of radical votes each Senator and representative cast. Anyone who voted for the radical position on 75% or more of the votes qualified as a radical. The crudity of his method plus the artificial cohesiveness Republicans maintained render his findings suspect. He includes among the radicals such conservative and centrist leaders as Representatives Nathaniel P. Banks, John A. Bingham, James G. Blaine, Henry L. Dawes, John H. Ketcham, and Alexander H. Rice, and Senators George F. Edmunds, Frederick T. Frelinghuysen, and John Sherman. Linden's list of radicals includes 130 representatives and thirty-three Senators. My analysis discloses the names of only thirty-seven representatives and nine Senators who merit the designation "radical." Some of the discrepancy may be accounted for by the longer period Linden covered, but certainly not all of it. And twenty-six of the fifty-eight Senators and representatives I have identified as consistent centrists or conservatives are included in Linden's list of radicals. Much of the information in Linden's dissertation, "Congressmen, 'Radicalism,' and Economic Issues, 1861-1873" (Ph.D. dissertation, University of Washington, 1963) appears in two articles: Linden, "'Radicals' and Economic Politics: The Senate, 1861-1873," Journal of Southern History, XXXII (May, 1966), 189-99, and "'Radicals' and Economic Policies: The House of Representatives, 1861-1873," Civil War History, XIII (Mar., 1867), 51-65. Another study, "'Radical' Political and Economic Policies: The Senate, 1873-1877," ibid., XIV (Sept., 1968), 240-49, covers a
different time-span than my analyses. For my compilation of consistent radicals and non-radicals, see Charts Nos. 1 and 2.

Edward L. Gambill used scale analysis, a more sophisticated technique than Linden's, to determine "Who Were the Senate Radicals?" *ibid.*, XI (June, 1965), 237-44. Gambill limited his study to the first session of the Thirty-ninth Congress. Although he does not give the roll calls on which he based his study (the decision, probably, of his editor), the resulting statement of the relative radicalism of individual Senators roughly parallels my findings.

Brock makes a brief attempt at roll call analysis in his *American Crisis*, studying only one vote, however, on a motion to refer Thaddeus Stevens' reconstruction bill to the Reconstruction committee January 28, 1867. This was one of the most divisive motions Republicans voted on and offers a very rough breakdown of the more radical and more conservative Republican factions in the second session of the Thirty-ninth Congress. Brock, *American Crisis*, 71-72.

Donald's *Politics of Reconstruction* is based almost entirely on roll call analysis. Donald really did not take a statistical approach, however; instead he analyzed carefully the voting patterns of each representative in order to determine the group to which he belonged. The list which emerged was an accurate statement of the Republican alignment during the second session of the Thirty-ninth Congress, which in general agrees with that I found (see Chart No. 26). But Donald's list pertains only to divisions over reconstruction legislation, and does not attempt to delineate the changes which occurred as the reconstruction issues receded in importance and impeachment-related questions came to the fore. Donald, *Politics of Reconstruction*, passim.


11 For an explanation of the process of scale analysis, see Appendix I.

12 The results of these analyses are presented in appropriate places throughout this work.
CHAPTER II

1 Greeley to Alonzo B. Cornell, Oct. 16, 1871. Greeley Ms. L. C.

2 Greeley to Justin S. Morrill, Mar. 12, 1872, quoted in William Belmont Parker, The Life and Public Services of Justin Smith Morrill (Boston & N.Y., 1924), 239-40.

3 The long story of factional strife in New York before 1869 is well documented by historians. The profession has done less well in elucidating the origins of the liberal movement in that state. Glyndon G. Van Deusen's three studies of the old liberal Whig triumvirate, taken together, offer an excellent panorama of New York politics. They are: Horace Greeley, Nineteenth Century Crusader (N.Y., 1964; originally published 1953); William Henry Seward (N.Y., 1967); Thurlow Weed: Wizard of the Lobby (Boston, 1947). Sidney David Brummer, Political History of New York State During the Period of the Civil War (N.Y., 1911) and Homer Adolph Stebbins, A Political History of the State of New York, 1865-1869 (N.Y., 1913) are detailed accounts of politics in the state. Greeley has been the subject of numerous biographies. Most useful are Jeter Allen Isely, Horace Greeley and the Republican Party, 1853-1861: A Study of the New York Tribune ([Princeton, N.J.], 1947) and Don C. Seitz, Horace Greeley: Founder of the New York Tribune (Indianapolis, 1926). The Coxes discuss Seward and Weed's machinations during the first year of Andrew Johnson's presidential term in their Politics, Principle, and Prejudice, 1-49, 68-87, 107-28. The development of the liberal Republican movement in New York wants doing. Sources I have used in my sketch of that development include the Horace Greeley, Whitelaw Reid, Hamilton Fish, and Roscoe Conkling Ms. at the Library of Congress, the Charles Eliot Norton Ms. at the Houghton Library at Harvard University, Cambridge, Massachusetts (particularly George William Curtis to Norton, Sept. 17, 1870), the N.Y. Times and N.Y. Tribune and Donald Barr Chidsey, The Gentleman from New York: A Life of Roscoe Conkling (New Haven, Conn., 1935); Alfred R. Conkling, The Life and Letters of Roscoe Conkling: Orator, Statesman, Advocate (N.Y., 1889); Chauncey M. Depew, My Memories of Eighty Years (N.Y., 1924); Thomas Collier Platt, The Autobiography of


William Salter, The Life of James W. Grimes: Governor of Iowa, 1854-1858; Senator of the United States, 1859-1869 (N.Y., 1876); Stanley P. Hirshson, Grenville M. Dodge: Soldier, Politician, Railroad Pioneer (Bloomington, Ind., 1967).

6 Brother J. Robert Lane's A Political History of Connecticut During the Civil War (Washington, D.C., 1941) gives a thorough account of wartime factional disputes. There is no account of intraparty struggles in Connecticut during the reconstruction era. In developing the outline here presented I have used Lane; the N.Y. Times' account of the 1866 battle for Foster's Senate seat, to be filled in 1867, May 16, 1866, p. 5; the Foster scrapbook in the Lafayette S. Foster Ms. in the Massachusetts Historical Society, Boston, Mass.; Gideon Welles, Diary of Gideon Welles--Secretary of the Navy Under Lincoln and Johnson (3 vols., Boston & N.Y., 1911), II, 502 (May 5, 1866), 507-508 (May 14, 1866); William M. Grosvenor to Charles Sumner, Sept. 5, 1865. Sumner Ms. Houghton Library; E. W. Palmer to Lyman Trumbull, May 3, 1866. Trumbull Ms. L.C.; James Rood Doolittle to Mrs. Mary Doolittle, May 20, 1866. Doolittle Ms. State Historical Society of Wisconsin. Due to the scarcity of secondary literature on the factional disputes in this and other states during reconstruction, I have had to make inferences and deductions from evidence I have found in light of the information which is available for the earlier period during the war.


9 The politics of Ohio during the Civil War and reconstruction are detailed in Eugene H. Roseboom, The Civil War Era, 1850-1873 (Columbus, 1944), 313-483; George H. Porter, Ohio Politics during the Civil War Period (N.Y., 1911);
Donnal V. Smith, Chase and Civil War Politics (Columbus, 1931); Felice A. Bonadio, North of Reconstruction: Ohio Politics, 1865-1870 (N.Y., 1970). I have also used the Sherman and Chase Ms. in the Library of Congress, the Schenck Ms. in the Rutherford B. Hayes Library in Fremont, Ohio, the William Henry Smith Ms. in the Ohio Historical Society Library, Columbus, Ohio; James R. Therry, "The Life of General Robert Cummings Schenck" (Ph.D. dissertation, Georgetown University, 1968); and Hans L. Trefousse, Benjamin Franklin Wade: Radical Republican from Ohio (N.Y., 1963).

10 Campbell to Sherman, Jan. 18, 1866, Sherman Ms. L.C.

11 Bonadio, North of Reconstruction, passim.

12 Foulke, Morton, I, 152-53; Centreville Indiana True Republican, Nov. 30, 1865, p. 86; Riddleberger, Julian, 139-40, 195-97, 217-18.

13 Senate Executive Journal, XV, 136, 156.

14 Clark to John Sherman, Feb. 25, 1866. Sherman Ms. L.C.


16 E. C. Ingersoll to John H. Bryant, Dec. 18, 1865; Bryant to Trumbull, Dec. 19, 22, 30, 1865, Jan. 8, 1866; E. Emery to Trumbull, Jan. 5, 1866; Clark E. Carr to Trumbull, Jan. 8, 1866; Bryant to Trumbull, May 16, 1866; Emery to Trumbull, May 22, 1866; John Olney to Trumbull, Nov. 16, 1865, Apr. 19, 1866; J. C. Sloo et al. to Trumbull, May 3, 1866; Peter Page to Trumbull, May 18, 1866; E. Ketchill to Trumbull, Oct. 21, 1865; E. W. Weldeon, Oct. 23, 1865; J. G. D. Pettijohn to Trumbull, Nov. 20, 1865; T. J. Johnson to Trumbull, Dec. 3, 1865; D. Clarke to Trumbull, Dec. 6, 1865; Pettijohn to Trumbull, Dec. 6, 1865; E. S. Condit to Trumbull, Dec. 9, 1865; Pettijohn to Trumbull, Jan. 15, 1866; J. L. Hallam to Trumbull, May 14, 1866; C. D. Hay to Trumbull, May 16, 1866. Trumbull Ms., L.C.
CHAPTER III

1 Rhodes, History of the United States from the Compromise of 1850 to the Final Restoration of Home Rule at the South in 1877 (7 vols., N.Y., 1907-10), VI, 39.


4 Beale, The Critical Year: A Study of Andrew Johnson and Reconstruction (N.Y., 1930). In his excellent historiographical essay, "Victims of Circumstance," Kincaid points out that the economic interpretation of men's motivation was so fundamental to historians when Beale wrote that it was not necessary for him to prove that motivation. Its existence was axiomatic. Beale rather attempted to explain why the northern masses, whose economic interests should have led them to support Johnson, supported the northeastern, business-dominated Congress instead. Kincaid, "Victims of Circumstance," 56-58.


6 McKittrick studied and rejected the notion that radicalism could be defined in terms of support for black suffrage or opposition to restoring southern states to normal
relations in the Union in 1866. Finally he suggested that radicals were bound together by a suspicion of President Johnson in summer and fall, 1865, but only after he has already conceded that most men known to contemporaries as radicals viewed Johnson with benevolence. McKitrick, Johnson and Reconstruction, 53-67. Donald, the Coxes, and Brock have also emphasized the difficulty of differentiating a radical program or ideology from those of the Republican moderates. Donald, "Devils Facing Zionward," in McWhiney (ed.), Grant, Lee, Lincoln and the Radicals, 72-88; LaWanda and John Cox, Politics, Principle, and Prejudice, 208-10; Brock, An American Crisis, 73-74. Hyman, tracing the factors which influenced historians to condemn Republican post-war reconstruction policy, drew a distinction between older, more idealistic Republican leaders and the rising, practical, young politicians of the 1860s. Hyman (ed.), The Radical Republicans, lxvii-lxviii. Among the recent studies which try to determine what radicals did and did not have in common are Stanley Coben, "Northeastern Business and Radical Reconstruction: A Re-examination," Mississippi Valley Historical Review, XLVI (June, 1959), 67-90; Peter Kolchin, "The Business Press and Reconstruction," Journal of Southern History, XXXIII (May, 1967), 183-96; Gambill, "Who Were the Senate Radicals?"; Linden's dissertation, "Congressmen, "Radicalism," and Economic Issues, 1861-1873," his articles, "'Radicals' and Economic Policies: The Senate, 1861-1873," "'Radicals' and Economic Policies: The House of Representatives," and "'Radical' Political and Economic Policies: The Senate, 1873-1877"; Donald's Politics of Reconstruction and his "Devils Facing Zionwards," in McWhiney (ed.), Grant, Lee, Lincoln and the Radicals, 72-91; and T. Harry Williams, "Lincoln and the Radicals," ibid., 92-117.

7Linden names ten "Radical" Senators who voted similarly on 75% of the roll-call votes involving economic issues during their Senate terms. Of the ten, only two qualified as radicals in my analysis. One more was a centrist. In the House, Linden found only twenty-one "Radical" representatives who voted similarly on economic questions. Linden, "Radicals' and Economic Policies: The Senate, 1861-1873," 197n.; "Radicals' and Economic Policies: The House," 60-61.

8The seven opponents of the tariff were B. Gratz Brown (Mo.), Joseph S. Fowler (Tenn.), James W. Grimes (Iowa), Henderson, Samuel J. Kirkwood (Iowa), Henry S. Lane (Ind.), and Trumbull (Ill.). Fowler, Grimes, Henderson, and Trumbull voted against removing the President.
In the Thirty-ninth Congress, the Senate passed a loan bill, which among other things had authorized steady contraction of the currency. Voting against it were Chandler, Howard, Timothy Otis Howe, Norton, Ramsey, and Sherman. All continued to oppose contraction in later Congresses. 
Congressional Globe, 39 Congress, 1 Session, 1866 (Apr. 9, 1866).


It is extremely difficult to prove a negative statement such as this. But in all my reading in the *Congressional Globe* from the 38th to the 41st Congresses, I have never seen the issues connected by a radical, and only once by a conservative. Moreover, Sharkey also seems to have been unable to find such references. He offers none in his work. But he does find numerous indications that *conservatives* connected the two issues, that conservatism and contractionism went together. This offers the real key to the relationship, I believe.


McKittrick, *Johnson and Reconstruction*, 55-61; LaWanda and John Cox, *Politics, Principle, and Prejudice*, 207-12; Brock, *An American Crisis*, 62-75. David Donald has anticipated by six years this suggestion that in the abstract Republican and radical principles were indistinguishable. See his "Devils Facing Zionwards," 75-82.

*Cong. Globe*, 38 Cong., 1 Sess., 146 (March 31, 1864).


The Republican candidate for governor of Connecticut in April, 1865, won 42,374 votes; in March, 1866, the gubernatorial candidate won 43,974. In October, 1865, a proposition to amend the Connecticut constitution to allow blacks to vote won 27,217 votes—roughly two thirds of that cast for
the Republican candidates in the regular elections. In Minnesota the Republican candidate for governor garnered 17,335 votes; a black suffrage amendment to the state constitution received 12,138. In Wisconsin, the Republican gubernatorial candidate received 58,332 votes while a Negro suffrage amendment received 46,588. All statistics come from the American Annual Cyclopaedia and Registry of Important Events for 1865 and 1866 (N.Y., 1866 and 1867, respectively). Hereafter these volumes shall be cited Appleton's Annual Cyclopaedia.

18 D. W. Vaughan, "Conservatism," The Radical, II (Apr., 1867), 474, 476.

19 Boston Evening Journal, Nov. 9, 1867, p. 4; Joseph A. Wheelock to Ignatius Donnelly, Oct. 9, 1865. Donnelly was the editor of the St. Paul Press, the organ of the state party.

20 It is difficult to separate issues involving race from those involving reconstruction. To test racial attitudes as accurately as possible, I studied only those votes not directly involving reconstruction in the South—issues such as black suffrage in the territories, legislation to forbid discrimination in D.C. streetcars, allowing black testimony in U. S. courts, etc.

21 Unfortunately, relatively few congressmen voted consistently on all three issues—reconstruction legislation, race legislation not directly connected to reconstruction, and fiscal questions. Therefore the sample is too small to be considered conclusive. But it is certainly suggestive of the conservative effect of hard-money views.

22 See pp. 389-91, infra.

23 See also the discussion of the impact of tariff and financial questions on impeachment, pp. 487-90, infra.

24 For roll calls on questions relating to landgrants see Appendix VIII.

25 Proponents and opponents of currency expansion during the Fortieth Congress are listed in Appendix A.

27. The index is the average amount by which each representative exceeded or fell short of the median percentage of the vote received by successful Republican candidates from 1862 to 1868 expressed as a percentage of that median. That is, if the median vote the successful Republican congressional candidates received in Ohio amounted to 60% of the total, and candidate A received 55%, then he fell 5% short of the median. This shortage equals 5/60, or 8.3% of the median. His index for this campaign would be -8.3. The index given in Chart 19 is the average index of comparative security over all elections from 1862 to 1868 in which the individual representatives were candidates.

28. Donald found that the association between radicalism and degree of safety held even for safe states like Massachusetts. Since there appears to be no logical reason for this, Donald seemed to be proving too much. It is reassuring to find that the association is limited to those states in which comparative political weakness made a difference.


30. Julian, Political Recollections, 331; Blaine et al., "Ought the Negro to be Disfranchised?" 270-71.

31. Spalding in the Congressional Globe, 39 Congress, 2 Session, 290 (Jan. 5, 1867); Grinnell, ibid., 287 (Jan. 4, 1867). See also Hamilton Ward, ibid., 116 (Dec. 13, 1866).

32. Sidney H. Morse, "Concerning the Nation's Soul," The Radical, i (Apr., 1866), 287.

33. Fessenden, ibid., 1 Sess., 705 (Feb. 7, 1866), 1275 (Mar. 9, 1866); Sumner, ibid., 673 (Feb. 6, 1866).
CHAPTER IV

1 Early efforts to formulate a reconstruction policy in Congress are discussed in Herman Belz, Reconstructing the Union: Theory and Policy during the Civil War (Ithaca, N.Y., 1968). For legislation of the Thirty-seventh Congress, see Leonard Curry, Blueprint for Modern America: Non-military Legislation of the First Civil War Congress (Nashville, 1968).


4 Williams, Lincoln and the Radicals, 318.


6 Durant to Salmon P. Chase, Feb. 21, 1864; Mar. 5, 1864. Chase Ms. Library of Congress; Flanders to Lincoln, Jan. 16, 1864; Durant to Lincoln, Feb. 26, 28, 1864. Robert Todd Lincoln collection of the papers of Abraham Lincoln (Hereafter Lincoln Ms.), L.C.


8 Criticisms: Davis in the Cong. Globe, 38 Cong., 1 Sess., 682 (Feb. 16, 1864); Ashley, ibid., 1358-59 (Mar. 30, 1864); Smithers, ibid., 1742-43 (Apr. 19, 1864); Kelley, ibid., 2080 (Mar. 3, 1864). Support: Beaman, ibid., 1245-46 (Feb. 16, 1864); Ashley, ibid., 1357 (Mar. 30, 1864); Broomall, ibid., 1769 (Apr. 20, 1864); Donnelly, ibid., 2035 (May 2, 1864); Gooch, ibid., 2071 (May 3, 1864); Boutwell, ibid., 2102 (May 4, 1864).

9 Ibid., 2108 (May 4, 1864), 3491 (July 2, 1864).

10 On only nine of these roll-call votes was the Republican index of cohesion below 70 (that is, a division of 85% in the majority and 15% in the minority). These involved the seating of Virginia representatives, a resolution declaring the purposes of the war, Arkansas restoration, excusing unauthorized Democratic absences from the House, the preamble to the Wade-Davis bill, a bill regulating the counting of the electoral vote, and the Conscription bill. Cong. Globe, 38 Cong., 1 Sess., 6 (Dec. 7, 1863), 38 (Dec. 16, 1863), 687 (Feb. 16, 1864), 1289 (Mar. 25, 1864), 2107 (May 4, 1864), 2910 (June 13, 1864), 3148 (June 21, 1864), 3468 (July 1, 1864).

11 Cong. Globe, 38 Cong., 1 Sess., 1829 (Apr. 23, 1864), 2079-80 (May 3); Hutchins to Chase, Feb. 12, 24, 1864. Chase Ms.; George S. Denison to Chase, Feb. 19, Mar. 5, 1864 in Bourne et al., Diary and Correspondence of Salmon P. Chase, 430-32 and 432-35, respectively; Frank E. Howe to Chase, Feb. 6, 1864; Chase to Howe (copy), Feb. 20, 1864; Benjamin Rush Plumly to Chase, Mar. 4, 1864. Chase Ms. L.C.


Cong. Globe, 38 Cong., 1 Sess., 1769 (Apr. 20, 1864). See also Sumner's observation to the same effect, ibid., 2898 (June 13, 1864); Representative Daniel Gooch, ibid., 2071 (May 3, 1864); Fernando C. Beaman, ibid., 1246 (Mar. 22, 1864); George S. Boutwell, ibid., 2102 (May 4, 1864).


Luther v. Borden, 7 Howard, 1 (1849). The Court would follow this precedent in 1866, when it simply added West Virginia to the circuit, thus virtually deciding the state's legitimacy before any case was even brought before it.


Ibid., 681, 682 (Feb. 16, 1864).

Ibid., 2038 (May 2, 1864).

Cong. Globe, 38 Cong., 1 Sess., 33-34 (Dec. 15, 1863). The Republican dissenters were Jacob B. Blair, James T. Hale, Calvin T. Hulburd, William H. Randall, Green Clay Smith, and Henry W. Tracy. Among the extreme conservatives who agreed
with Davis were Francis Thomas, Edwin H. Webster, and Kellian V. Whaley.


26 *Ibid.*, 2392 (May 21, 1864), 2458-59 (Jan. 25, 1864), 2842 (June 10, 1864), 2585-2906 (June 13, 1864).

27 *Cong. Globe*, 38 Cong., 1 Sess., appendix, 85 (March 22, 1864); *ibid.*, 1245 (Mar. 22).


29 *Cong. Globe*, 38 Cong., 1 Sess., appendix, 85 (Mar. 22, 1864). Davis may have been over-sanguine regarding the limitations the Court acknowledged on its power to challenge state constitutions. In 1866 the Court would void a provision of a state constitution as conflicting with the national Constitution's ban on *ex post facto* laws, although that ban had apparently applied only to restrict the power of the national government. If that decision were carried to its logical conclusion, then an abolition provision in a state constitution might be held to violate the national Constitution (which the Court had decided protected citizens' rights to slave property in *Dred Scott*) in the same way, especially if it took national action to recognize the state government. *Cummings v. Missouri*, 71 U.S. 277 (1866).

30 For a discussion of Ashley's bill, see Belz, *Reconstructing the Union*, 176-82. Belz suggests Ashley's bill was really more conservative than the Wade-Davis bill, despite Ashley's inclusion of black suffrage in its provisions, because given the situation the later measure was "charged with a radical purpose"—the overthrow of the Louisiana and Arkansas regimes. Belz correctly indicates Ashley did not consider his bill to conflict with Lincoln's policy. We differ in my conclusion that the Wade-Davis bill's primary purpose was no different than Ashley's: to regularize and legalize Lincoln's program. Thus, in my view, Ashley's bill, incorporating black suffrage where the Lincoln plan and the Reconstruction bill did not, is the more radical measure.
As noted above, Davis' bill restricted suffrage to whites. Davis at this time opposed black suffrage, perhaps in deference to his constituents, for he was one of the few Republicans radical on most questions who did not support it.

Ibid., 1345-46 (Mar. 30, 1864), 1361-64 (Mar. 31, 1864). One Republican who voted against the amendment abstained on the vote passing the bill; five others voted for it.

The vote provides a clue to the position of the special committee which reported the reconstruction bill. Only Ashley voted to concur in the Negro suffrage amendment. Davis, Nathaniel E. Smithers (both Republicans), James C. Allen, and William S. Holman (Democrats) opposed it. Republicans Reuben E. Fenton and Henry T. Blow did not vote, nor did Democrat James E. English, although there was no doubt as to his position. Ibid., 1652 (Apr. 15, 1864).

Ibid.

Ibid., 1706 (Apr. 19, 1864).


Ibid., 2349 (May 19, 1864).

Ibid., 2104 (May 4, 1864).

Ibid., 2107 (May 4, 1864).

Three Republicans on the committee—Wade, Wilkinson, and Lane of Kansas—voted with the radicals in the first session of the Thirty-eighth Congress. John P. Hale, although his voting record was erratic, favored Negro suffrage.

Ibid., 3448 (July 1, 1864).

Cong. Globe, 38 Cong., 1 Sess., 3862 (June 29, 1864).
The text of Brown's amendment may be found ibid., 3449.

Ibid., 3449-50, 3460-3461 (July 1, 1864), 3491 (July 2, 1864). Belz suggests the five Senators who had supported the amendment July 1 but were absent the next day had been subject to backstage pressures. But close analysis of the Globe indicates they were absent for the whole evening of July 2, during which the reconstruction bill was only a small part of the business. However, five other Republicans do seem to have abstained from this particular roll call. Belz, Reconstructing the Union, 222-23.

Provisions forbidding high-ranking rebels from holding office and repudiating debts incurred during the rebellion also were required in the constitutions.

Belz discusses the differences and similarities between the Wade-Davis bill and presidential reconstruction in Reconstructing the Union, 231-43. Differences in our interpretations are apparent.

Cong. Globe, 38 Cong., 1 Sess., 1354, 1356 (March 30, 1864).

Carl Schurz, The Reminiscences of Carl Schurz (3 vols., N.Y., 1908-1909), III, 222. See also Harold M. Hyman's discussion of the dangers of reviving one's allegiance to the Union during the war in his "Deceit in Dixie," Civil War History, III (Mar., 1957), 68-69.

Richardson, (ed.), Messages and Papers of the Presidents, VI, 189. Schurz offered a similar analysis in his Reminiscences, III, 221-22.

Richardson (ed.), Messages and Papers of the Presidents, VI, 189, 214-15.

For Lincoln's involvement in reconstruction in Arkansas, Tennessee, Virginia, and Louisiana, see McCarthy, Lincoln's Plan of Reconstruction, 1-141, passim.; Hesseltine, Lincoln's Plan of Reconstruction, 48-94, passim.; Belz, Reconstructing the Union, 143-47, 150-52, 188-93; Willie Malvin Caskey, Secession and Restoration of Louisiana ([Baton Rouge], 1938), 57-58, 63, 92-96.

John Hay, Lincoln and the Civil War in the Diaries and Letters of John Hay, ed. Tyler Dennett (N.Y., 1939), 204; Nicolay and Hay, Lincoln, IX, 120. The Constitution provides that any bill not signed by the President within ten days of his receipt becomes law unless Congress first adjourns. If the President withholds his signature in such a situation, and Congress adjourns, he is said to have executed a "pocket veto."

Denison to Chase, Aug. 12, 1863, Feb. 19, Mar. 5, 1864, in Bourne et al., Diary and Correspondence of Salmon P. Chase, 399-402, 430-32, and 432-35, respectively; Chase to Frank E. Howe, Feb. 20, 1864; J. L. Whitaker to Chase, May 20, 1864. Chase Ms.; Stephen Hoyt to Banks, Apr. 25, 1864; J. R. Hamilton to Henry J. Raymond, (copy) May 27, 1864; B. R. Plumly to Banks, June 24, Aug. 9, 1864. Banks Ms. L.C.


Bélz, Reconstructing the Union, 228-31; Hans L. Trefousse, Benjamin Franklin Wade: Radical Republican from Ohio (N.Y., 1963), 227-29; Trefousse, The Radical Republicans, 293-94.
CHAPTER V

Radical-conservative lines in the Senate were so altered during the second session of the Thirty-eighth Congress that the votes taken during its course displayed configurations similar to only two votes taken during the first. That this shift is due primarily to the change in issue is indicated by the fact that those two votes dealt with reconstruction: the recognition of Arkansas.

3 For accounts of the election of 1864 generally, see Trefousse, The Radical Republicans, 289-98; Zornow, Lincoln & the Party Divided, passim; and more specialized studies, such as Smith, Chase and Civil War Politics; Harbison, "Indiana Republicans and the Re-election of President Lincoln," Indiana Magazine of History, XXXIV (Mar., 1938), 42-64; Zornow, "The Kansas Senators and the Re-election of Lincoln," Kansas Historical Quarterly, XIX (May, 1951), 133-44.

The President's patronage power was by no means absolute. Custom dictated that the President honor the advice of local politicians in making appointments. Each congressman could name the postmaster of his home town. Where a state or local party was united, the President appointed offices not suggested by party workers only at his peril. But where there were factional disputes, his options multiplied. He could favor one side or the other or he could try to deal even-handedly so as to give neither an advantage. Presidential favor could be critical in local disputes, therefore, and here his power was great. For the only major study of Lincoln's use of the patronage, see Harry J. Carman and Reinhard H. Luthin, Lincoln and the Patronage (N.Y., 1943).

4 Weed, after taking a leading role in forcing Lincoln's renomination on New York Republicans, threatened to sit out the campaign unless Lincoln appointed men acceptable to him to powerful patronage positions in New York, according to the recollections of his old enemy, radical Reuben Fenton, the Republican candidate for governor at the time. At the urging of Fenton and other radicals, who probably foresaw their own defeats as well as Lincoln's if Weed made his threat good, Lincoln acquiesced. Allen Thorndike Rice (ed.), Reminiscences of Abraham Lincoln by Distinguished Men of his Time (N.Y., 1888), 68-70; Glyndon G. Van Deusen, Thurlow Weed: Wizard of the Lobby (Boston, 1947), 308-12; Pahreney, Horace Greeley and the Tribune in the Civil War, 175-91, 194-210.


10. Caskey, Seccession and Restoration of Louisiana, 92-140; Harrington, Fighting Politician, 100-102, 144-50; Capers, Occupied City, 133-41; McCarthy, Lincoln’s Plan of Reconstruction, 61-76. Inside views of the radical-conservative (or perhaps more accurately Flanders-Hahn) split were steadily sent to Chase and are a valuable source of information. See the George S. Denison-Chase letters in Edward G. Bourne et al. (eds.), Diary and Correspondence of Salmon P. Chase, 297-458.

11. Cong. Globe, 38 Cong., 1 Sess., 895 (March 1, 1864), 3350 (June 28, 1864). In the first session four Republican representatives who abstained or voted against the Freedmen’s Bureau bill on passage had supported it in preliminary votes. In the second session twenty-three representatives who either abstained or opposed the bill on the final vote had joined in defeating Democratic efforts to table it. Only two Republicans had aided the tabling effort. Cong. Globe, 38 Cong., 1 Sess., 1895 (Mar. 1, 1864); ibid., 2 Sess., 566 (Feb. 2, 1865), 694 (Feb. 9), 1402 (Mar. 3).

12. See Thomas D. Eliot’s justification of the bill, Cong. Globe, 38C., 1S., 573 (Feb. 10, 1864); William D. Kelley’s, ibid., 774 (Feb. 23).

13. All knew Davis bitterly opposed the Lincoln-Banks-Hahn Louisiana government. Four of the five Republicans on his committee were known as pronounced radicals. But James F. Wilson, the respected chairman of the Judiciary committee, had been the strongest radical on his committee during the first session. Three other members, though radical, had not been as consistent in their votes as members of the Reconstruction committee.


20. Chase mentioned this conversation to Lincoln and George S. Denison. Chase to Lincoln, Apr. 12, 1865, in Lincoln, *Works*, ed. Basler, VIII, 399-401n; Denison to Chase, Jan. 15, 1865, quoted in Bourne et al., *Diary and Correspondence of Salmon P. Chase*, 455-56. Denison informed Chase that he doubted the Louisianans would agree to extend the vote to blacks, however. Eliot announced in the House, while advocating recognition of Louisiana, that he was satisfied "from information derived from the highest sources" that the Louisiana legislature would quickly enfranchise qualified blacks. *Cong. Globe*, 38 Cong., 2 Sess., 300 (Jan. 17, 1865).
21 Harrington, Fighting Politician, 42, 50-51. Hooper had been defending Banks' activities at least since October. Hooper to Banks, Oct. 7, 1864. Banks Ms. L.C.


23 A. P. Field et al. to Banks, Dec. 12, 1864. Banks Ms. L.C.


25 Sumner to Bright, Jan. 1, 1865, quoted in Pierce, Sumner, IV, 221.

26 Lincoln to Trumbull, Jan. 9, 1865, in Lincoln, Works, ed. Basler, VIII, 206-207.


31 Hay, Diaries, ed. Dennet, 244-46 (Dec. 18, 1864).

33. Cong. Globe, 38 Cong., 2 Sess., 290 (Jan. 16, 1865). Kelley proposed amendments to enfranchise all black men in the South. Ibid., 281 (Jan. 16, 1865), 968 (Feb. 21, 1865). Both Stevens and Julian opposed Ashley's proposition on test votes until he eliminated the provision recognizing Lincoln's reorganized governments. Ibid., 310 (Jan. 17, 1865), 970, 971 (Feb. 21, 1865), 1002 (Feb. 22, 1865). Julian acidly attacked the Lincoln administration's conservatism in a prepared speech February 7, 1865. Ibid., appendix, 65-68. See also Phillips, The Immediate Issue, in Stearns (comp.), The Equality of All Men, 30, and the Boston Commonwealth, Jan. 21, 1865, p. 2; Feb. 4, 1865, p. 2; Feb. 25, 1865, p. 2.

34. Both amendments are in the Cong. Globe, 38 Cong., 2 Sess., 280-81 (Jan. 16, 1865).

35. Ibid., 301 (Jan. 17, 1865), 628 (Feb. 6, 1865), 643-44 (Feb. 7, 1865), Belz, Reconstructing the Union, 263.

36. Ibid., 934-37 (Feb. 20, 1865).

37. Ibid., appendix, 73-75 (Feb. 20, 1865).

38. Ibid., 968 (Feb. 21, 1865).

39. Ibid., 970-71 (Feb. 21, 1865).

40. Ibid., 970 (Feb. 21, 1865). Radicals made one last futile effort in the House to pass a reconstruction law. On February 22 Wilson reported a bill similar to his delaying amendment from his Judiciary committee. Ashley succeeded in defeating his effort to prevent amendment by calling the previous question and once more proposed his reconstruction bill, as a substitute for the Wilson measure. But the whole subject was again--and finally--laid upon the table. Ibid., 997-1003 (Feb. 22, 1865).

The majority consisted of Republicans Portus Baxter, Glenni W. Scofield, Green Clay Smith, and Dawes, and Democrats James S. Brown and John Ganson. The Republican dissenters were Nathaniel G. Smithers and Charles Upson.

\[42\] Cong. Globe, 38 Cong., 2 Sess., 870 (Feb. 17, 1865).


\[45\] Ibid., 582 (Feb. 3, 1865). The entire debate may be found ibid., 532-33, 534-37 (Feb. 1, 1865), 548-63 (Feb. 2, 1865), 574-86 (Feb. 3, 1865), 590-95 (Feb. 4, 1865).

\[46\] Ibid., 711 (Feb. 9, 1865).

\[47\] Ibid., 1011 (Feb. 23, 1865).

\[48\] Ibid., 1107 (Feb. 25, 1865).

\[49\] Ibid., 1108 (Feb. 25, 1865).

\[50\] Ibid., 1108 (Feb. 25, 1865).

\[51\] "We killed the Louisiana Bill . . . so dead, that it will not pass this session," Zachariah Chandler wrote his wife after the Senate adjourned. Chandler to Mrs. Letitia Chandler, Feb. 27, 1865, quoted in Sister Mary Karl George, "Zachariah Chandler: Radical Revisited" (unpublished Ph.D. dissertation, St. Louis University, 1965), 170; Sumner to George Bancroft, Feb. 28, 1865. George Bancroft Ms. Massachusetts Historical Society. Boston, Mass.

\[52\] Ibid., 1129 (Feb. 27, 1865). The entire debate may be found ibid., 1011-12 (Feb. 23, 1865), 1061-70 (Feb. 27, 1865), 1091-99, 1101-11 (Feb. 25, 1865), 1126-29 (Feb. 27, 1865).


56 Welles, Diary, II, 237 (Feb. 6, 1865).

57 It was not at all legally certain that a presidential pardon would exempt the pardoned individual's property from confiscation. What Lincoln evidently intended was to order United States officials in Virginia to cease enforcing the Confiscation acts. Lincoln may have been showing himself willing to disregard a congressional law once again, as he considered the possibility of disregarding the proposed Reconstruction bill in December, 1864 (see pp. 97-98, supra).

58 Lincoln expressed these hopes to Welles. Welles, Diary, II, 279-80 (Apr. 13, 1865).


61 Sumner to Lieber, Apr. 11, 1865, in Pierce, Sumner, IV, 236; Adolphe de Chambrun, Impressions of Lincoln and the Civil War: A Foreigner's Account, trans. Aldebert de Chambrun (N.Y., 1952), 94.

62 For Lincoln's efforts to employ the Virginia rebel legislature to secure peace, and Republican reaction, see U. S., House of Representatives, Committee on the Judiciary, Report on the Impeachment of the President, House Report No. 7, 40 Cong., 1 Sess. (Nov. 25, 1865) appendix, 400; Welles, Diary, II 279-80 (Apr. 14, 1865); Thomas and Hyman, Stanton, 353-56.

63 Ibid., 357-58.


65 Phillips, Abraham Lincoln, in his Speeches, Lectures, and Letters (2d series, Boston, 1894), 446, 448; Alley to Sumner, May 6, 1865. Sumner Ms.
CHAPTER VI


2 The Coxes have devoted more energy to exploring the byzantine politics of 1865 than any other historians, but they approached the subject from the vantage-point of Johnson and his allies, tracing their hopes and expectations rather than those of the conservative and center Republicans who did not follow Johnson out of the party. Nonetheless they recognized the conservative Seward and Weed's intention to build a broad Union organization which would isolate both radicals and Peace Democrats. LaWanda and John H. Cox, Politics, Principle, and Prejudice, passim; McKitrick, Johnson and Reconstruction, 42-92; W. R. Brock, American Crisis, 15-48.


4 John Savage, The Life and Public Services of Andrew Johnson, Seventeenth President of the United States (N.Y., 1866), 338, 348.

5 Sumner to John Bright, Apr. 18, 1865, quoted in Pierce, Sumner, IV, 239-40; Blaine, Twenty Years of Congress: From Lincoln to Garfield (2 vols., Norwich, Conn., 1884-86), 7-15.

6 De Chambrun to Martha Corcelle de Chambrun, Apr. 21, 1865, quoted in de Chambrun, Impressions of Lincoln and the Civil War, 109-16.

7 Thomas and Hyman, Stanton, 405-18; Raoul S. Naroll, "Lincoln and the Sherman Peace Fiasco—Another Fable?" Journal of Southern History, XX (Nov., 1954), 459-83.

8 Welles, Diary, II, 294 (Apr. 21, 1865), 301 (May ?, 1865), 301-304 (May 9, 1865).

9 Stearns to Sumner, Apr. 30, 1865. Sumner Ms.; Sumner to Bright, May 1, 1865, quoted in Pierce, Sumner, IV, 241-42.
The pamphlet was Stearns' *Equality of All Men before the Law*, previously cited.


Phillips to Sumner, May 5, 1865; Edwin L. Pierce to Sumner, Mar. 12, 1865; George Bailey Loring to Sumner, Apr. 23, May 1, 1865. Sumner Ms.

18 Chase to Johnson, Apr. 18, 1865. Johnson Ms. L.C.

19 Sumner to F. W. Bird, Apr. 25, 1865; Sumner to Bright, May 1, 1865, quoted in Pierce, Sumner, IV, 241, 241-42.

20 Morton's speech is in Foulke, Morton, I, 440-41. The President's reply is in McPherson, Political History of Reconstruction, 45-47.


22 Sumner to Bright, May 1, 1865; Sumner to Lieber, May 2, 1865, quoted in Pierce, Sumner, IV, 241-42 and 243, respectively.

23 Sumner to Lieber, May 2, 1865, quoted in Pierce, Sumner, IV, 243; Sumner to Stearns, May 4, 1865, quoted in Stearns, Stearns, 344.

24 Chase to Johnson, May 4, 7, 12, 17, 21, 23, 1865. Johnson Ms. L.C.

25 Sumner to Lieber, May 2, 1865, quoted in Pierce, Sumner, IV, 243; Sumner to Stearns, May ?, 1865, quoted in Stearns, Stearns, 344; Rutherford B. Hayes to Sophie B. Hayes, May 7, 1865. Hayes Ms. Rutherford B. Hayes Library, Fremont, Ohio; Stearns to Sumner, May 8, 1865. Sumner Ms. Houghton.

26 Welles, Diary, II, 281-82 (Apr. 14, 1865), 301 (May ?, 1865).

27 McPherson, Political History of Reconstruction, 8-9.

28 Stevens to Sumner, May 10, 1865. Sumner Ms.

29 Thomas and Hyman, Stanton, 403-404.

30 Welles, Diary, II, 301-303; Thomas and Hyman, Stanton, 444-46.

31 Julian, Political Recollections, 263; Riddleberger, Julian, 211.
32 Stevens to Johnson, May 15, 1865. Johnson Ms.

33 Richardson (ed.), Messages and Papers of the Presidents, VI, 312-14.

34 Sumner to Bright, June 5, 1865, quoted in Pierce, Sumner, IV, 253.


38 Richardson (ed.), Messages and Papers of the Presidents, VI, 313.

39 N.Y. Independent, June 22, 1865, p. 3.

40 Sumner to Lieber, May 7, 1865. Sumner Ms. Also Henry Winter Davis, Letter to a Friend, May 27, 1865, in Davis, Speeches and Addresses Delivered in the Congress of the United States, and on Several Public Occasions (N.Y., 1867), 556-63, at 562; Isaac F. Redfield, to Solomon Foot, Sept. 9, 1865, quoted in Joel Parker, Revolution and Reconstruction. Two Lectures Delivered in the Law School of Harvard College in Jan., 1865, and Jan., 1866 (N.Y., 1866), 78-79.

41 Sumner to Wade, June 9, 1865. Sumner Ms.

42 Sumner to Wade, June 9, 1865. Sumner Ms.

43 Stevens to Sumner, May 10, 30, Oct. 7, 1865. Sumner Ms.
Phillips to Moncure D. Conway, Sept. 12, 1865. McKim-Garrison Ms. N.Y. Pub. Library; Davis to Sumner, June 20, 1865; Wade to Sumner, July 29, 1865. Sumner Ms.; Welles, Diary, II, 325 (June 30, 1865); Senator William Sprague to Chase, Sept. 6, 1865. Chase Ms.

N.Y. Independent, June 8, 1865, p. 8.

Boutwell to Sumner, June 12, 1865. Sumner Ms.


Sumner to Chase, June 25, 1865. Chase Ms.

Harlan to Sumner, June 15, 19, Aug. 21, 1865. Sumner Ms.; Sumner to McCulloch, July 12, 1865; McCulloch to Sumner, Aug. 15, 1865. McCulloch Ms. L.C.

George S. Boutwell, Reminiscences of Sixty Years in Public Affairs (N.Y., 1902), 103-104; Boutwell to McCulloch, July 1, 1865. McCulloch Ms. L.C.

McCulloch to Forbes, June 27, July 3, July 10, 1865; R. D. Mussey to McCulloch, July 11, 1865; McCulloch to Atkinson, June 30, 1865; Medill to McCulloch, June 16, 1865; Reid to McCulloch, July 9, 1865; McCulloch to Sumner, Aug. 15, 1865. McCulloch Ms. L.C.


See pp. 356 - 60, infra.
55 Hooper to Banks, Aug. 27, 1865. Banks Ms. Illinois State Historical Library, Springfield, Illinois; Chase to Sprague, Sept. 6, 1865; Sprague to Chase, Sept. 6, 1865. Chase Ms. L.C.; Boutwell to McCulloch, Sept. 29, 1865. McCulloch Ms. L.C.

56 Davis, Letter to a Friend, May 27, 1865, in Davis, Speeches and Addresses, 556-63.


58 N.Y. Tribune, May 29, 1865, p. 4; May 30, p. 4; May 31, p. 4; June 1, p. 4; June 6, p. 4; June 13, p. 4; June 14, p. 4; June 15, p. 4; June 23, p. 4; New York Nation, July 6, 1865, p. 4; July 20, p. 68; July 27, p. 101-102; Boston Evening Journal, June 21, 1865, p. 4; Sept. 16, p. 4; Boston Daily Advertiser, June 6, 1865, p. 2; Harris L. Dante, Reconstruction Politics in Illinois (Ph.D. dissertation, University of Chicago, 1950), 108-109.

59 N.Y. Times, June 22, 1865, p. 5; June 25, p. 6. A copy of Andrew's letter may be found in the Andrew Ms., dated June 19, 1865, at the Mass. Hist. Soc. It is quoted in the N.Y. Times, June 25, p. 6. The committee consisted of Dana, Parsons, Charles G. Loring, John Greenleaf Whittier, Jacob M. Manning, Samuel Gridley Howe, George Luther Stearns, John Murray Forbes, and William Endicott, Jr.

60 Forbes to N. M. Beckwith, June 25, 1865, quoted Forbes, John Murray Forbes, 143-45.

61 Boston Liberator, Aug. 25, 1865, p. 134; Boston Daily Advertiser, Sept. 26, 1865, p. 2. Among the signers were Loring, Emory Washburn, Peleg W. Chandler, John B. Alley, Nathaniel Thayer, and Jared Sparks.


the Hon. Richard Yates delivered at Elgin, Ill., on the 4th of July, A.D., 1865 (Jacksonville, Ill., 1865); Boutwell, Reconstruction: Its True Basis, in Boutwell, Speeches, 372-407; Boston Liberator, July 14, 1865, p. 112; July 21, p. 113; Banks, An Address Delivered at the Custom-house, New Orleans, on the Fourth of July, 1865 (New Orleans, [1865]).

64 Dixon to Sumner, June 6, 1865; Morgan to Sumner, July 21, 1865; Sumner to Wade, Aug. 3, 1865. Sumner Ms.


66 Medill to McCulloch, June 16, 1865; Boutwell to McCulloch, July 1, 1865. McCulloch Ms. L.C.

67 N.Y. Times, June 21, 1865, p. 4; June 28, 1865, p. 4.

68 Morgan to Sumner, July 21, 1865; Howard to Sumner, July 26, 1865; Morrill to Sumner [July or August?], 1865; Sumner to Wade, Aug. 3, 1865; Connell to Sumner, Aug. 22, 1865; Brown to Sumner, Sept. 12, 1865. Sumner Ms.; Sprague to Chase, Sept. 6, 1865. Chase Ms.; Grimes to E. H. Stiles, Sept. 14, 1865, quoted in William Salter, The Life of James W. Grimes, Governor of Iowa, 1854-1858; Senator of the United States, 1859-1869 (N.Y., 1876), 280-82; Grimes to Charles H. Ray, Oct. 28, 1865, quoted in Logsdon, "White," 148n.; Welles, Diary, II, 322-23 (June 24, 1865).

69 McCulloch to Susan McCulloch, June 25, 1865. McCulloch Ms. Lilly Library, University of Indiana, Indianapolis, Indiana; Welles, Diary, III, 363 (Aug. 19, 1865). The Maine convention, as noted, endorsed black suffrage. Welles concluded hostile elements controlled Pennsylvania's convention because although it endorsed President Johnson, it averred Congress had ultimate control over the reconstruction, a position neither Lincoln, Johnson, nor any other member of the Cabinet yet contravened.

70 Johnson to Governor William Sharkey, Aug. 15, 1865, quoted in McPherson, Political History of Reconstruction, 19-20.


Dana to Sumner, Sept. 1, 1865. Sumner Ms.

Phillips to Moncure D. Conway, Sept. 12, 1865. McKim-Garrison Ms.

Springfield Illinois State Journal, Aug. 16, 1865, p. 2. The Journal was the most important Republican paper in southern Illinois. Phillips was United States marshal for the southern Illinois district. Other newspapers which took similar views, at least arguing against premature attacks against the President, were Forney's Philadelphia Press and Washington Chronicle, the San Francisco Alta California, the Philadelphia North American, edited by Mayor Morton McMichael, Dana's Chicago Republican, the Toledo Blade, Cincinnati Commercial, Boston Liberator, the New York Times, New York Evening Post, the Indianapolis Daily Journal, Governor Morton's organ, and the Madison Wisconsin State Journal, edited by state party chairman Horace Rublee.

Indianapolis Daily Journal, Oct. 24, 1865, p. 2; Nov. 1, 1865, p. 2; Nov. 3, 1865, p. 2; Foulke, Morton, I, 448-51; Riddleberger, Julian, 212-18; Thornbrough, Indiana in the Civil War Era, 228-31.

N.Y. Times, Mar. 2, 1865, p. 4; May 6, 1865, p. 4; May 7, 1865, p. 4; July 13, 1865, p. 4; Aug. 26, 1865, p. 4-5; LaWanda and John H. Cox, Politics, Principle, and Prejudice, 1865-1866: Dilemma of Reconstruction America (Glencoe, Ill., 1963), 31-87. The Coxes view the Seward-Weed offensive as an effort to build a national conservative party as well as to gain control of New York.

Stebbins, Political History of New York, 57-63; N.Y. Times, Sept. 16, 1865, p. 8; Sept. 20, 1865, p. 1; Sept. 21, 1865, p. 1; N.Y. Tribune, Sept. 21, 1865, p. 1; Boston Daily Advertiser, Sept. 26, 1865, p. 1; "Though the Convention was Radical in sentiment, the Conservatives had their way in it, because it was deemed best to attach President Johnson more firmly to the Union party, and not drive him over to the
Democracy," Greeley recalled. N.Y. Tribune, Mar. 5, 1866, p. 4. Greeley's language implied he had shared this spirit, but his statements at the time clearly demonstrate he did not. Instead, he complained of the lack of radical leadership. Putting the two statements together, the implication is that because radicals had no individual leader, a number of them were convinced to support the conservative program for fear of alienating the President with a radical one.

79 See, for instance, Greeley's speech at a Union meeting held in Cooper Union, October 20, attended by members of both factions of the party. N.Y. Times, Oct. 21, 1865 pp. 1, 8; N.Y. Tribune, Oct. 20, 1865, p. 4. Other radicals feared a New York victory would entrench conservatives in the great state's party, and hoped for a Republican defeat to demonstrate the unviability of the conservative position. Stevens to Sumner, Oct. 25, 1865. Sumner Ms. Simeon Draper, the former collector of the port of New York and ally of the radical faction, refused to contribute to the Republican cause, and, Weed suspected, did not vote the Republican ticket after his removal in August. Weed to Seward, Nov. 14, 1866. William Henry Seward Ms. Rush Rhees Library, University of Rochester, N.Y.


81 Smith, A Political History of Slavery (2 vols., N.Y. & London, 1903), 239. Smith was an influential Ohio politician, later Rutherford B. Hayes' campaign manager.

82 Baber to Seward, Nov. 4, 1865. Seward Ms.; Lewis D. Campbell to Johnson, Aug. 21, 1865. Johnson Ms.

83 The letter and Cox's answer are quoted in the N.Y. Independent, Aug. 17, 1865, p. 4.

84 Bannister to Chase, Sept. 19, 1865. Chase Ms.; Baber to Johnson, July 4, 1865. Johnson Ms.

85 Cox to Garfield, July 21, Dec. 13, 1865. Garfield Ms. L.C.
86. N.Y. Times, Aug. 21, 1865, p. 3.


88. Flamen Ball to Chase, Aug. 22, 1865. Chase Ms.; Porter, Ohio Politics during the Civil War, 206-19.

89. Welles, Diary, II, 349 (Aug. 2, 1865); Philadelphia North American, Aug. 18, 1865, p. 2; Aug. 19, 1865, p. 2. At Stevens' urging the convention took a strong stand on the issue of black civil rights, saying no southern state should be readmitted until the security of the freedmen was guaranteed. By this time radicals had given up hope of winning endorsements of black suffrage, and Stevens was pleased. Stevens to Sumner, Oct. 25, 1865. Sumner Ms.


91. S. F. Daily Alta California, July 17, 1865, p. 1; Aug. 17, p. 1; Aug. 18, p. 1; Aug. 22, p. 2; Berrier, "Negro Suffrage Issue in Iowa," 241-45; Cole, Era of the Civil War, 392-95.

92. N.Y. Times, June 25, 1865, p. 6. Andrew was leaving office. His friends clearly intended to make him President of the United States, but most avenues of advancement were closed to him. In January and February the governor's friends had dickered for a seat in the Cabinet for him. These hopes did not vanish. Andrew also began to stake out a position independent of Sumner, whose Senate seat was the next available. He retained his cordial relationship with the Blairs, who believed him secretly the President's supporter even after open warfare broke out between Johnson and the party. Montgomery Blair to Andrew, Mar. 13, 1866; Andrew to Francis Preston Blair, Sr., Mar. 18, 1866; Andrew to Montgomery Blair, Mar. 26, 1866; F. P. Blair, Sr. to Andrew, Apr. 26, 1866; William L. Burt to Andrew, May 21, 24, 1866; William S. King to Andrew, June 21, 1866; M. Blair to Andrew, July 1, 1866. Andrew Ms.; William S. Robinson to Sumner, Mar. 7, 1866. Sumner Ms.; Smith, Blair Family, II, 332.

Andrew to Sumner, Nov. 21, 1865. Sumner Ms.; Sumner to Andrew [Dec., 1865?]. Andrew Ms. The second letter is filed under November, 1865 in the Andrew Ms. at the Massachusetts Historical Society. The letters are reprinted, with changes in punctuation, in Pearson, *Andrew*, II, 273-76.

*N.Y. Times*, Oct. 21, 1865, p. 4.

*N.Y. Independent*, Sept. 28, 1865, p. 4; *N.Y. Tribune*, Sept. 12, 1865, p. 4; Sept. 14, 1865, p. 4; William M. Grosvenor to Sumner, Sept. 5, 1865. Sumner Ms.


*Appleton's Annual Cyclopaedia*, V (1865), 301-302, 304, 823; *Tribune Almanac and Political Register for 1867* (N.Y., 1867), 64 (hereafter *Tribune Almanac, 1867*).


CHAPTER VII


2 Harrington, Fighting Politician, 166.

3 N. C. Brooks to Johnson, May 5, 1865; Banks to Preston King, May 6, 1865; A. P. Dostie to Johnson, May 16, 1865; George Ashmun to Johnson, May 7, 1865; Hahn to Seward, May 19, 1865; Wells to Johnson, May 22, 1865. Johnson Ms.; Wells to Johnson, May 26, 1865. McCulloch Ms. L.C.; Harrington, Fighting Politician, 168-69; Capers, Occupied City, 143-44; Caskey, Secession and Restoration in Louisiana, 164-70; Emily Hazen Reed, Life of A. P. Dostie; or, The Conflict in New Orleans (N.Y., 1868), 189-200.

4 Caskey, Secession and Restoration in Louisiana, 172-78.

5 Ibid., 179-80; Harrington, Fighting Politician, 168-69; Capers, Occupied City, 143-44; Reed, Dostie, 175-81.

6 Harrington, Fighting Politician, 168.

7 Covode report to Stanton, undated copy in the Covode Ms. L.C. Also Covode to Wade, July 11, 1865. Wade Ms. L.C.

8 Schurz to Johnson, Sept. 4, 1865, and enclosures. Johnson Ms.

9 Wells to Johnson, Sept. 23, Oct. 6, 1865. Johnson Ms.

10 Taliaferro to Mrs. Susan B. (Taliaferro) Alexander, July 15, 1865. Taliaferro Ms. Louisiana State University Archives, Baton Rouge, Louisiana; Schurz to Johnson, Sept. 23, 1865. Johnson Ms.
Field to Banks, Nov. 20, 1865. Banks Ms. L.C.


Cutler to Trumbull, Dec. 6, 1865. See also Cutler to Trumbull, Aug. 29, 1865. Trumbull Ms. L.C.

Fessenden to Grimes, July 14, 1865; Morrill to Fessenden, July 19, 1865. Fessenden Ms. Bowdoin; Andrew to Sumner, Nov. 21, 1865. Sumner Ms.; S. F. Wetmore to Andrew, Nov. 14, 20, 1865. Andrew Ms.

Raymond to George Jones, Aug. 6, 1865. George Jones Ms. New York Public Library.

N.Y. Times, Aug. 18, 1865, p. 4.


See chapters II and III and Belz, Reconstructing the Union for further discussions of war-time reconstruction.


Boston Evening Journal, June 27, 1865, p. 4.

See also Thaddeus Stevens, Reconstruction: Speech of the Hon. Thaddeus Stevens, Delivered in the City of Lancaster, September 7th, 1865 (Lancaster, Pa., 1865), 3, 7; Oliver P. Morton in the Cong. Globe, 40 Cong., 2 Sess., 2603 (May 27, 1868); William Whiting, The Return of the Rebellious States to the Union League of Philadelphia (Philadelphia, 1864), 3-4; Carl Schurz, "The Logical Results of the War," in Carl Schurz, Speeches, Correspondence, and Political Papers of Carl Schurz, ed. Frederic Bancroft (N.Y., 1913), 378-9; Alpheus Crosby, The Present Position of the Seceded States and the Rights and Duties of the General Government in Respect to Them: An Address to the Phi Beta Kappa Society of Dartmouth College, July 19, 1865 (Boston, 1865), 12; T. W. Higginson, "Fair Play the Best Policy," Atlantic Monthly, XV (May, 1865), 628; and Count A. de Gasparin, Reconstruction, A Letter to President Johnson (N.Y., 1865), 13.


27 The text may be found in the N.Y. Times, June 24, 1865, p. 8. I have omitted italics in the quoted material.

29 A word should be inserted here about the use Republicans made of the clause of the Constitution obligating the national government to guarantee each state a republican form of government. Some historians have suggested Republicans used this as their constitutional basis for reconstruction. In general, however, Republicans were reluctant to use the guarantee clause as a source of power in Reconstruction, because it implied a permanent authority in Congress to regulate suffrage in states—all states, whether they had been in rebellion or not. See, for instance, Senator Richard Yates' exposition of the guarantee power in the Congressional Globe, 40 Cong., 2 Sess., 2746 (June 1, 1868) and Sumner's ibid., 3 Sess., 903 (Feb. 5, 1869). When in 1869 Sumner and Senator Henry Wilson proposed to enfranchise all black Americans by act of Congress under the guarantee clause rather than by constitutional amendment, they received the support of only eight Republicans. Cong. Globe, 40 Cong., 3 Sess., 5 (Dec. 7, 1868), 38, 43 (Dec. 10, 1868), 378 (Jan. 15, 1869), 1041 (Feb. 9, 1869). Republicans preferred to use the guarantee clause as a vague guide in setting the conditions that southern states had to meet under the "grasp of war" approach. For instance, the report of the Reconstruction committee in 1866 said, "The first step towards that end [of placing the state in a condition to resume its political relations to the Union] would necessarily be the establishment of a republican form of government by the people." U.S. Congress, Report of the Joint Committee on Reconstruction at the First Session Thirty-Ninth Congress (Washington, D.C., 1866), xiv. For a study which contradicts some of these conclusions, see Charles O. Lërche, "Congressional Interpretations of the Guarantee of a Republican Form of Government During Reconstruction," Journal of Southern History, XV (May, 1949), 192-211.


31 Boston Daily Advertiser, June 6, 1865, p. 2.

32 The best discussion of the relations between the President and the Democrats is in Lawanda and John H. Cox, Politics, Principle, and Prejudice, 50-106, passim.


34 Johnson to Governor W. L. Sharkey, Aug. 15, 1865; Johnson to Gov. W. W. Holden, Oct. 18, 1865; Seward to Gov. James Johnson, Oct. 28, 1865; Johnson to Gov. B. F. Perry, Oct. 28, 31,
Nov. 6, 20, 1865, quoted in McPherson, Political History of Reconstruction, 19-20, 19, 20-21, 22-23, respectively; Seward to Holden, Nov. 21, 1865; Seward to Perry, Nov. 9, 10, 20, 1865; Seward to Gov. Wm. Marvin, Nov. 20, 1865, quoted in Senate Executive Document No. 26, 39 Cong., 1 Sess., 47, 198, 198-99, 200, 215, respectively.

35 N.Y. Times, Nov. 6, 1865, p. 4.


37 McCulloch to Sumner, Aug. 22, 1865. Sumner Ms.

38 LaWanda and John Cox suggest Seward wished to win the support of the Democratic masses and combine them in a party with conservative and moderate Republicans, leaving both the Democratic leaders and the radicals in opposition. See their Politics, Principle, and Prejudice, 31-49.

39 See also the N.Y. Times, June 15, 1865, p. 4.

40 Seward to Sharkey, July 24, 1865, quoted in Senate Executive Document No. 26, 39 Cong., 1 Sess., 60.

41 Seward to Marvin, Sept. 12, 1865, quoted in McPherson, Political History of Reconstruction, 25. Seward later admitted that the messages had been prepared in haste and that Johnson had not thoroughly considered them. "The language used was stronger than he [Johnson] considered it to be," the Secretary conceded. See Seward’s testimony on impeachment, House Report No. 7, 40 Cong., 1 Sess., appendix, 382.

42 Welles, Diary, II, 378-79 (Oct., 1865).

43 N.Y. Times, Nov. 15, 1865, p. 4; Sept. 21, 1865, p. 4.

44 N.Y. Nation, Nov. 16, 1865, p. 614.
45 Springfield (Mass.) Republican, Nov. 14, 1865, p. 2; Springfield Illinois State Journal, Sept. 26, 1865, p. 2; Oct. 6, 1865, p. 2; Nov. 8, 1865, p. 2; Boston Evening Journal, Oct. 24, 1865, p. 4; Philadelphia North American, Nov. 15, 1865, p. 2; Buffalo (N.Y.) Morning Express, Nov. 27, 1865, p. 1.

46 Howard to Sumner, Nov. 12, 1865. See also James M. Scovel to Sumner, Nov. 13, 1865. Sumner Ms.; Edwin D. Morgan to Lieber, Oct. 6, 1865. Morgan Ms.: "I believe we shall all agree upon some plan by which we shall as friends of the Administration continue to act harmoniously—Of course I hope this, but I also believe it."

47 Johnson to Humphreys, Nov. 17, 1865, quoted in the Illinois State Journal, Nov. 27, 1865, p. 2. Italics mine. Historians have not recognized the importance of Johnson's apparent shift, nor Seward's central role.

48 Quoted in the N.Y. Times, Nov. 20, 1865, p. 1.

49 Indianapolis Daily Journal, Nov. 24, 1865, p. 2; Buffalo Morning Express, Nov. 21, 1865, p. 1; Springfield Illinois State Journal, Nov. 28, 1865, p. 2; Washington Daily Chronicle, Nov. 27, 1865, p. 2.


51 Johnson to Perry, Nov. 27, 1865, quoted in McPherson, Political History of Reconstruction, 24.

52 This wording, however, was far less explicit and firm than the earlier demand Johnson made of Humphreys.


54 Alice M. Hooper to Sumner, Nov. 22, 1865; Sumner to Lieber, Dec. 3, 1865. Sumner Ms.; Bancroft to Johnson, Dec. 1, 1865. Johnson Ms.

56. Before receiving the message, the House passed a joint resolution to appoint a joint committee on reconstruction (to be discussed in Chapter VIII).

57. Seward draft of the annual message in the Johnson Ms.

58. Richardson (ed.), Messages and Papers of the Presidents, VI, 353-71.

59. In a brilliant analysis, the Coxes demonstrate the ambiguity of the message in their Politics, Principle and Prejudice, 129-34.


CHAPTER VIII


2 \textit{Ibid.}

3 \textit{Ibid.}, 293 (Jan. 18, 1866).

4 \textit{The (Boston) Right Way}, Dec. 2, 1865, p. 2.


6 Although Congress finally abandoned confiscation as an element of reconstruction, as of fall, 1865, black men had good reason to believe Republicans intended to inaugurate land redistribution in the South. The expectation of "forty acres and a mule" at which historians have scoffed was a real one and one with foundation in fact. See especially LaWanda Cox, "The Promise of Land to the Freedmen," \textit{Mississippi Valley Historical Review}, XLV (Dec., 1958), 413-40. The problem of confiscation and land redistribution will be considered in Chapter XII. Wendell Phillips, Thaddeus Stevens, Benjamin F. Butler, and the American Anti-slavery Society continued to advocate such a program through 1867, and southern blacks hoped to receive land as part of the congressional program in spring, 1867. See pp. 380-81, \textit{supra}.

National supervision over the education of freedmen loomed large in the drive for a national bureau of education from 1864-1867. Although educators envisioned the bureau as non-coercive, its special goal was to be the extension of the free school system into the South. Moreover, some of its proponents suggested financial inducements to the states to meet certain educational standards. Many educators advocated a national system of education for freed blacks operated separately from the proposed bureau. E. E. White, "National Bureau of Education," \textit{American Journal of Education}, XVI (Mar., 1866), 177-86; Andrew Jackson Rickoff, "A National Bureau of Education," \textit{ibid.} (June, 1866), 299-310; J. P. Wickersham, "Education as an Element of Reconstruction," \textit{ibid.}

7 Radicals, conservatives, and centrists recorded their positions on reconstruction in numerous speeches in and out of Congress. The foregoing discussion is based on analysis of their opinions. Conservatives and centrists—John A. Andrew (Governor of Massachusetts): *Andrew, Valedictory Address to the Two Branches of the Legislature of Massachusetts, Jan. 4, 1866* (Boston, 1866); Delos R. Ashley (Nevada representative): *Cong. Globe*, 39 Cong., 1 Sess., 1314-16 (Mar. 10, 1866); John A. Bingham (Ohio representative): *ibid.*, 156-59 (Jan. 9, 1866), 428-31 (Jan. 25, 1866); Reader W. Clarke (Ohio representative): *ibid.*, 1006-10 (Feb. 24, 1866); Schuyler Colfax (speaker of the House of Representatives): speech of Nov. 18, 1865, quoted in the *N.Y. Times*, Nov. 20, 1865, p. 1; Henry C. Deming (Connecticut representative): *Cong. Globe*, 39 Cong., 1 Sess., 331 (Jan. 19, 1866); Lucius Fairchild (Governor of Wisconsin): message to state legislature, quoted in the *N.Y. Times*, Jan. 4, 1866, p. 1; James R. Hubbell (Ohio representative): *Cong. Globe*, 39 Cong., 1 Sess., 659-62 (Feb. 5, 1866); James H. Lane (Kansas Senator): report of pro-Johnson rally in Leavenworth, Kans., *N.Y. Times*, Jan. 21, 1866, p. 3; Henry J. Raymond (N.Y. representative; ed. *N.Y. Times*): *Cong. Globe*, 39 Cong., 1 Sess., 120-25 (Dec. 21, 1865), 483-92 (Jan. 29, 1866); Rufus P. Spalding (Ohio representative): *ibid.*, 133 (Jan. 5, 1866).


8 Generally historians have not realized how certain moderate Republicans must have been of the President's cooperation, especially after they read his annual message. This is due in large part to their failure to recognize that the non-radicals were proceeding on the same constitutional theory as they believed the President espoused. Failing to see how close the conservatives and centrists believed they were to Johnson, they naturally failed to see how far they believed they were from the radicals.

9 See, for instance, Doolittle to Johnson, Sept. 9, 1865; Dixon to Johnson, Sept. 26, Oct. 8, 1865. Johnson Ms.; Welles, Diary, II, 330 (July 10, 1865), 369 (Aug. 30, 1865).

10 Robert P. L. Baber to Doolittle, Feb. 28, 1866. Doolittle Ms. L.C.

11 For an example of this confusion, see the entries in Welles' Diary from July to December, 1865, and try to determine whom he refers to by the term "radical."

12 Morton, of course, was engaged in his bitter duel with Julian (see pp. 23-24, supra). Doolittle was battling a radical faction in the Wisconsin state party, led by the formerly conservative Timothy Otis Howe. See pp. 143-44, supra.


Welles, Diary, II, 387 (Dec. 3, 1865).

N.Y. Tribune, Dec. 4, 1865, p. 1; Boston Evening Journal, Dec. 4, 1865, p. 2; Rutherford B. Hayes, Diary and Letters of Rutherford B. Hayes, Nineteenth President of the United States, ed. Charles Richard Williams (5 vols., Columbus, Ohio, 1922-26), III, 7-8 (Dec. 1, 1865); Cong. Globe, 39 Cong., 1 Sess., 6-7 (Dec. 4, 1867); Marvin Schlegel, "The Dawes Plan" (unpublished paper, courtesy of Professor Schlegel). Schlegel is the first scholar to have suggested that Dawes and not Stevens himself originated the plan for a joint committee on reconstruction. His thesis is corroborated by several facts omitted from his analysis. First, the correspondent who first reported that "an old and respected member of Congress" had suggested the plan also served as clerk to Dawes' Elections committee, according to the Indianapolis Daily Journal, Nov. 1, 1865, p. 2. Second, the plan bears a definite resemblance to Dawes' proposition of the first session of the Thirty-eighth Congress to appoint a presidential commission to report to Congress on conditions in the southern states where civil government was being restored under President Lincoln's authority. See Cong. Globe, 38 Cong., 1 Sess., 3178 (June 22, 1864).


Sumner to Lieber, Dec. 16, 1865, Sumner Ms.
21 Cong. Globe, 39 Cong., 1 Sess., 72-75 (Dec. 18, 1865); quoted material at p. 74.

22 Ibid., 120-25 (Dec. 21, 1865).


25 Alice Hooper to Sumner, Dec. 16, 1865. Sumner Ms.

26 Phillips to Sumner, Dec. 25, 1865. Sumner Ms.


30 For Harris' statement to Welles, see Welles, *Diary*, II, 401 (Dec. 21, 1865).

31 Fessenden to Samuel Fessenden, Dec. 31, 1865. Fessenden Ms. Bowdoin College Library.

32 See Charts Nos. 24 and 25. Older historians of reconstruction, men like Bowers, Randall, and Beale, did not recognize the essential differences among Republicans. More recent historians--McKitrick, Brock, and the Coxes, for example--realize Republicans settled on a moderate policy during the first session of the Thirty-ninth Congress, but only Brock has remarked on the radicals' attempt to seize the initiative early in its early months. Brock, *An American Crisis*, 97-104. McKitrick recognized the importance of Sumner's failure to win a place on the Reconstruction committee. McKitrick, *Johnson and Reconstruction*, 276-77.

33 Welles, *Diary*, II, 412-13 (Jan. 8, 1866).


35 See pp. 173-76, above.


37 *N.Y. Times*, Dec. 5, 1865, p. 4.

38 *N.Y. Times*, Dec. 25, 1865, p. 4.

39 *Chicago Tribune*, Jan. 11, 1866, p. 2; *Boston Evening Journal*, Dec. 20, 1865, p. 2; Dec. 23, 1865, p. 4; Jan. 15, 1866, p. 4.


42 Poore ("Perley") in the *Boston Evening Journal*, Jan. 21, 1866, p. 4.

43 Fessenden to Elizabeth Fessenden Warriner, Jan. 14, 1866. Fessenden Ms. Bowdoin College Library.


45 *Cong. Globe*, 39 Cong., 1 Sess. (Feb. 8, 1866).

46 Springfield Illinois State Journal, Jan. 27, 1866, p. 2; Welles, *Diary*, II, 435 (Feb. 19, 1866); Krug, *Trumbull*, 231-43. McKittrick and the Coxes have dealt with the Freedmen's Bureau.
and Civil Rights bills in some detail, noting their importance in finally defining Johnson's position to the party. But they have not discussed the measures' essential constitutional conservatism, which made them so acceptable to most Republicans, including those who supported and would continue to support the President. Furthermore, they have not viewed these bills from the perspective of this work, i.e., their place as part of a conservative-center Republican program fundamentally different from that favored by radicals. McKitrick, Andrew Johnson and Reconstruction, 274-325, passim; LaWanda and John Cox, Politics, Principle, and Prejudice. Brock recognizes the important point that Trumbull intended by his bills "to provide a superstructure which could be placed upon the foundations of Johnson's Reconstruction." Brock, An American Crisis, 115. But he too considers Trumbull's legislation from the standpoint of the relations between Johnson and Congress, rather than radical and conservative Republicans.

47 Trumbull speaking at a reception for him in Chicago in summer, 1866. Trumbull scrapbook. Trumbull Ms. Illinois State Historical Library; Welles, Diary, II, 489 (Apr. 19, 1866); Trumbull in Cong. Globe, 39 Cong., 1 Sess., 1760 (Feb. 4, 1866); Oliver Otis Howard, Autobiography of Oliver Otis Howard, Major General United States Army (2 vols., N.Y., 1907), II, 208.

48 The bill is described in the Cong. Globe, 39 Cong., 1 Sess., 211-12 (Jan. 12, 1866).


50 The original version of the bill may be found in the Cong. Globe, 39 Cong., 1 Sess., 211-12 (Jan. 12, 1866).

51 Ibid., 474 (Jan. 29, 1866). This was later modified to read "All persons born in the United States and not subject to any foreign Power, excluding Indians not subject to tribal authority, are hereby declared to be citizens of the United States . . . ."

52 On constitutional questions not involving reconstruction, Trumbull, Fessenden, Daniel Clark, Dixon, Doolittle, Foster, Grimes, Henderson, Cowan, Lot M. Morrill, Daniel Norton, Peter G. Van Winkle, Waitman T. Willey, Sprague, and Samuel J. Kirkwood would join the Democrats in voting against proposals to increase the functions of the national government. See the votes on proposals for a nationwide quarantine to
protect against cholera, Cong. Globe, 39 Cong., 1 Sess., 2586, 2589 (May 15, 1866); to facilitate interstate commerce and communications, ibid., 2870, 2876 (May 29, 1866); to repair levees on the Mississippi River, ibid., 4083 (July 24, 1866).

53 Ibid., 476 (Jan. 29, 1866. This interpretation is in flat disagreement with that expounded by the Supreme Court in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), and Robert L. Kohl in "The Civil Rights Act of 1866, Its Hour Come Round at Last: Jones v. Alfred H. Mayer Co.," Virginia Law Review, LV (March, 1969), 272-300. Both the opinion and the article are long on inference but short on evidence. The Supreme Court in the Jones case cites the provisions of the Freedmen's Bureau bill as evidence for interpreting the meaning of the Civil Rights bill. But, as the Court recognizes, Trumbull left the key word "prejudice" out of the Civil Rights bill when defining the conditions when discrimination in civil rights was illegal. To one familiar with Trumbull's extreme conservatism in constitutional matters, the reason is clear: the Freedmen's Bureau bill, a war measure, was justified under Congress' war powers, which were in Trumbull's opinion limited only by the law of nations. Therefore a provision against denial of rights based on personal prejudice was constitutionally justifiable. The Civil Rights bill he justified under peacetime provisions of the Constitution. That legislation would be permanent, and Trumbull intended no permanent extension of federal power of this magnitude. The statement just quoted in the text is a clear implication of this.

Kohl, in defending the Court's decision, argues the Civil Rights bill was framed in response to extra-legal as well as legal discrimination against black men in the South. He gives no hard evidence to this effect, relying instead on the fact that testimony before the Joint Committee on Reconstruction indicated such discrimination existed. Kohl assumes that the prohibition on discrimination in civil rights due to "custom" in the Civil Rights bill must have been intended to combat this type of discrimination. But Trumbull framed the section involved before the Reconstruction committee had received any testimony, and the bill was reported not from the Reconstruction committee, but from the Judiciary committee. This does not mean that Trumbull could not have had such discrimination in mind; he had access to Freedmen's Bureau correspondence which offered testimony similar to that the Reconstruction committee heard. It only means that it is not certain that he had it in mind. Given this uncertainty, it would be helpful to have just one indication that Trumbull did indeed intend to combat extra-legal prejudice. But instead, his statements, such as the one I have given in the text, imply a
contrary view. Moreover, Trumbull later opposed legislation operating directly on extra-legal criminal conspiracies to violate citizens' rights. See his arguments on the Ku Klux Klan act of 1871 in the Cong. Globe, 42 Cong., 1 Sess., 578-79 (Apr. 11, 1871). Of course this may indicate no more than Trumbull had changed his mind along with his politics (by 1871 he was in open revolt against the Republican party). Nonetheless, a more thorough study is needed than the somewhat superficial ones offered thus far.

54 Doolittle's bill authorized the President to maintain the bureau in the slave states until all discriminatory laws "have been repealed or modified so as to secure the equal protection of all persons in all the civil rights of person and property known to or secured by the common law, without distinction of class, race, or color . . . ." He specifically included all the rights Trumbull had listed. Senate bill number 50, Senate bill file, 39 Cong. R.G. 46, N.A.


56 Washington Daily Morning Chronicle, Feb. 20, 1866, p. 1. Newspaper correspondence from "Herman" in the Trumbull scrapbook at the Illinois State Historical Library makes similar observations. Trumbull Ms. Illinois State Historical Library.


58 Cong. Globe, 39 Cong., 1 Sess., 585-90 (Feb. 1, 1866).

59 See pp. 357 - 60, below.

60 Ibid., 298-99 (Jan. 18, 1866, 323 (Jan. 19, 1866).

61 Ibid., 655 (Feb. 5, 1866).

62 Ibid., 658 (Feb. 5, 1866).
Ibid., 688 (Feb. 6, 1866).

Cong. Globe, 39 Cong., 1 Sess., 606-607 (Feb. 2, 1866). Doolittle was absent when the Civil Rights bill passed, but he had voted with the Republican majority on preliminary roll calls and declared he would have voted for the bill if present. Ibid., 1804-1805 (Apr. 6, 1866), 575 (Feb. 1, 1866), 606 (Feb. 2, 1866).


The votes are in ibid., 538 (Jan. 31, 1866). The entire debate may be found ibid., 351-59 (Jan. 22, 1866), 376-89 (Jan. 23), 403-12 (Jan. 24), 422-35 (Jan. 25), 447-60 (Jan. 26), 483-94 (Jan. 29), 508-509 (Jan. 30), 535-38 (Jan. 31); McPherson, Political History of Reconstruction, 51-52; Boston Evening Journal, Jan. 30, 1866, p. 4; Chicago Tribune, Jan. 30, 1866, p. 1; Boston Daily Advertiser, Feb. 1, 1866, p. 1.

Conway, "Sursum Corda:" The Radical, I (Apr., 1866), 291.

Fessenden to Elizabeth Fessenden Warriner, Feb. 3, 1866, Bowdoin College Library.

Smith to Sumner, Mar. 23, 1866; Schurz to Sumner, Feb. 8, 1866; Theodore Tilton to Sumner, Feb. 3, 1866; Israel Washburn to Sumner, Feb. 8, Mar. 8, 1866; Edward L. Pierce to Sumner, Feb. 8, 1866; Garrison to Sumner, Feb. 11, 1866; Elizabeth Cady Stanton to Sumner, Feb. 15, 1866; Loring to Sumner, Feb. 18, 1866; Thomas Wentworth Higginson to Sumner, Feb. 18, 1866; Susan B. Anthony to Sumner, Mar. 8, 1866; Edward Channing Larned to Sumner, Mar. 10, 1866; Pillsbury to Sumner, Mar. 12, 1866; William E. Whiting to Sumner, Mar. 12, 1866; Elizur Wright to Sumner, Mar. 14, 1866; Wendell Phillips to Sumner, Mar. 17, 1866. Sumner Ms; Senate Miscellaneous Document No. 56, 39 Cong., 1 Sess.; N.Y. Independent, Feb. 8, 1866, p. 4; Gerritt Smith to Sumner, ?, quoted in the Cong. Globe, 39 Cong., 1 Sess., 1281 (Mar. 9, 1866).

Ibid., 1274 (Feb. 6, 1866).

Ibid., 685 (Feb. 6, 1866).
Ibid., 673 (Feb. 6, 1866).

Ibid., 1224 (Mar. 7, 1866).

Ibid., 1225 (Mar. 7\^, 1866).

Ibid., 704-705 (Feb. 7, 1866).

Ibid., 1239 (Mar. 9, 1866).

Ibid., 1281 (Mar. 9, 1866); Sumner and Fessenden's speeches are ibid., 673-87 (Feb. 5, 6, 1866), 702-708 (Feb. 7, 1866), 1224-33 (Mar. 7, 1866), 1275-82 (Mar. 9, 1866).

Springfield Illinois State Journal, Feb. 6, 1866, p. 1; Chicago Tribune, Feb. 3, 1866, p. 2; Feb. 4, 1866, p. 4; Washington Daily Morning Chronicle, Feb. 9, 1866, p. 2; N.Y. Tribune, Feb. 10, 1866, p. 1; newspaper correspondence from "Herman" in the Trumbull scrapbook. Trumbull Ms. Illinois State Historical Library; Schurz, Reminiscences, III, 255.

David W. Bartlett ("D.W.B.") in the N.Y. Independent, Feb. 15, 1866, p. 1; McPherson, Political History of Reconstruction, 52-56.


Fessenden to Elizabeth Fessenden Warriner, Feb. 17, 1866. Fessenden Ms., Bowdoin College Library; Fessenden to George Harrington, Feb. 3, 1866, quoted in Charles A. Jellison, Fessenden of Maine, Civil War Senator (Syracuse, 1962); Dawes to Mr. Electa Dawes, Feb. 1, 1866. Dawes Ms. L.C.

Welles, Diary, II, 425-26 (Feb. 2, 1866), 432 (Feb. 13, 1866).

Seward's draft is in the Johnson Ms.; LaWanda and John Cox, "Andrew Johnson and his Ghost Writers," Mississippi Valley Historical Review, XLVIII (Dec., 1961), 465-66, 467, 472-73;

84 Cong. Globe, 39 Cong., 1 Sess., 915-17 (Feb. 19, 1866).

85 Boston Daily Advertiser, Feb. 20, 1866, p. 1; Feb. 21, 1866, p. 2.


87 Trumbull's rebuttal is in the Cong. Globe, 39 Cong., 1 Sess., 936-43 (Feb. 20, 1866).

88 Ibid., 991 (Feb. 23, 1866). Fessenden discussed the veto ibid., 984-91 (Feb. 23, 1866).

89 Kendrick (ed.): Journal of the Joint Committee, 71-72 (Feb. 20, 1866).

90 Cong. Globe, 39 Cong., 1 Sess., 950 (Feb. 20, 1866).

91 Ibid., 966 (Feb. 21, 1866).

92 Ibid., 1143-47 (Mar. 2, 1866). Fessenden's discussion of the effect of the concurrent resolution was correct. A concurrent resolution is passed by the separate action of each house. It is not an act of Congress, and may be repealed by either house without the consent of the other.


94 Cong. Globe, 39 Cong., 1 Sess., 943 (Feb. 20, 1866). On Feb. 23 James H. Lane joined the dissenter after the Senate refused to take up his resolution to seat Arkansas' Senators-elect. Ibid., 1026-27 (Feb. 26, 1866).
95. Ibid., 920-21 (Feb. 19, 1866).


98. William S. Robinson to Sumner, Mar. 7, 1866; Samuel A. Stone to Sumner, Mar. 16, 1866; George L. Sawin to Sumner, Mar. 21, 1866. Sumner Ms.; Montgomery Blair to Andrew, Mar. 13, 1866; Andrew to Francis Preston Blair, Sr., Mar. 18, 1866. Andrew Ms.


101. Cox to George B. Wright, Feb. 26, 1866, quoted in N.Y. Times, Feb. 27, 1866, p. 1; Welles, Diary, II, 440 (Feb. 26, 1866).

102. Boston Evening Journal, Feb. 28, 1866, p. 2; Welles, Diary, II, 441 (Mar. 3, 1866), 446-47 (Mar. 8, 1866), 447-50 (Mar. 9, 1866); Hayes to Sardis Birchard, Mar. 4, 1866, quoted in Hayes, Diary, III, 19-20.

103. Bingham and Grider were the other two members.

104. Kendrick (ed.), Journal of the Joint Committee, 63-64 (Feb. 15, 1866), 64-69 (Feb. 17, 1866), 69-71, 73-78 (Feb. 20, 1866), 78-81 (Mar. 5, 1866); House Report No. 29, 39 Cong., 1 Sess. (Mar. 6, 1866); Chicago Tribune, Mar. 11, 1866, p. 2; Boston Evening Journal, Mar. 3, 1866, p. 4; Mar. 5, 1866, p. 4; Mar. 6, 1866, p. 4; Boston Daily Advertiser, Mar. 6, 1866, p. 1; N.Y. Independent, Mar. 15, 1866, p. 4; Boston Right Way, Mar. 17, 1866, p. 1; Boston Commonwealth, Feb. 17, 1866, p. 2.

106. Ibid., 1296 (Mar. 9, 1866).

107. Ibid., 1284, 1287, 1288 (Mar. 9, 1866).

108. Ibid., 1289 (Mar. 9, 1866); Stevens to Sumner, Mar. ?, 1866; Chase to Sumner, Mar. 9, 1866. Sumner Ms.

109. Stevens in Cong. Globe, 39 Cong., 1 Sess., 2459 (May 8, 1866); Fessenden to Elizabeth Fessenden Warriner, Mar. 10, 1866. Fessenden Ms. Bowdoin College Library; Dawes to Mrs. Electa Dawes, Mar. 16, 1866. Dawes Ms.; Toledo Blade, Mar. 10, 1866, p. 2; N.Y. Tribune, Mar. 10, 1866, p. 2.

CHAPTER IX

1 Cong. Globe, 39 Cong., 1 Sess., 1367 (Mar. 13, 1866). The three were Columbus Delano, Andrew J. Kuykendall, and Kellian V. Whaley. Raymond, and three other administration supporters, Robert S. Hale, Thomas E. Noell, and Thomas N. Stilwell, did not vote.

2 Ibid., 1413 (Mar. 15, 1866).

3 McCulloch to Wilson, Mar. 12, 1866. Wilson Ms. L.C.; Welles, Diary, II, 446-47 (Mar. 8, 1866).


5 Sherman, speech at Bridgeport, Conn., quoted in the N.Y. Times, Mar. 19, 1866, pp. 1, 8; N.Y. Tribune, Mar. 17, 1866, p. 1; Chicago Tribune, Mar. 27, 1866, p. 2.


7 E. B. Sadler to Sherman, Mar. 23, 1866. Sherman Ms. Sadler was one of the leading Republicans in the Ohio state senate. He had been in close contact with Sherman in the previous months, during Sherman's campaign for reelection to the Senate. D. L. Phillips wrote Trumbull in the same vein. Phillips to Trumbull, Mar. 22, 1866. Trumbull Ms. L.C.

8 Cox to Johnson, Mar. 22, 1866. Johnson Ms.; Foulke, Morton, I, 467; Welles, Diary, II, 463-64 (Mar. 26, 1866); LaWanda and John Cox, Politics, Principle, and Prejudice.

9 Welles, Diary, II, 463 (Mar. 26, 1866).

10 Seward's draft is in the Johnson papers at the Library of Congress; Seward to Johnson, Mar. 27, 1866. Johnson Ms. L.C. See the Coxes', "Johnson and his Ghost Writers," 474-75.
The veto message is quoted in Richardson (ed.), *Messages and Papers of the Presidents*, VI, 405-16.

Morgan to Thurlow Weed, Apr. 8, 1866. Weed collection. Rush Rhees Library, University of Rochester, Rochester, N. Y.; Raymond to Seward, n. d. [April, 1866]. Seward Ms.

Willard Warner to Sherman, Mar. 28, 1866. Sherman Ms.; N.Y. Independent, Mar. 31, 1866, p. 1. Warner was an important Ohio state legislator. He later served the Freedmen's Bureau in Alabama and was elected to the United States Senate from that state in 1868.


Ibid., 1809 (Apr. 6, 1866).

Howe to Grace T. Howe, Apr. 7, 1866. Howe Ms.; N.Y. Independent, Apr. 12, 1866, p. 4.

Ibid., 1861 (Apr. 9, 1866).


Wendell Phillips to Sumner, Mar. 24, 1866. Sumner Ms.

*Chicago Tribune*, Mar. 28, 1866, p. 2.

Dawes to Mrs. Electa Dawes, Mar. 31, 1866. Dawes Ms. L.C.; Lafayette S. Foster to Anna ? (Foster's sister) Apr. 17, 1866. Foster Ms. Massachusetts Historical Society.

Bateman to Sherman, Feb. 21, 1866. Bateman's letter was endorsed by E. B. Sadler and William Henry Smith. Smith was Ohio secretary of state; Bateman and Sadler Ohio state senators; Bateman to Sherman, Mar. 30, 1866. Sherman Ms.


Kendrick (ed.), *Journal of the Joint Committee*, 100-106 (Apr. 28, 1866).


Quoted in Charles Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights: The Original Understanding," *Stanford Law Review*, II (Dec., 1949), 96. The scope of the Fourteenth Amendment has been a center of whirling controversy since its proposal, but nearly all scholars agree that it was intended to protect civil rights from discrimination due to state action. The real battles have raged first over the range of the "fundamental rights" in which states could make no discrimination and which they could not deny; and second over whether the framers conceived of segregation laws as derogating the equality before law they proposed to guarantee.

Supreme Court Justice Hugo Black has been the leading proponent of the view that the framers of the amendment intended to protect only the rights enumerated in the Bill of Rights. Fairman, in his 1949 article on the subject, offers compelling evidence that the Republicans were not specific enough about what they conceived as fundamental rights to warrant such a conclusion. On the other hand, Howard Jay Graham, Jacobus tenBroek, Alfred H. Kelley, and others have convincingly argued that the Republicans intended to guarantee more than the limited rights which courts and constitutionalist were willing to concede from the 1870s to the mid-
twentieth century, that the terms which the framers employed referred to a vague but broad mass of rights, privileges, and immunities which guaranteed the full liberty of American citizens. These terms, the scholars have demonstrated, related to cogent, systematic, constitutional doctrines developed by anti-slavery leaders during the thirty-five years preceding the Fourteenth Amendment's passage. For some of the most important studies of the Fourteenth Amendment, see Howard Jay Graham, Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the "Conspiracy Theory," and American Constitutionalism (Madison, 1968), especially "The Early Antislavery Backgrounds of the Fourteenth Amendment," at pp. 152-241; "The Fourteenth Amendment and School Desegregation," at pp. 266-94; and "Our 'Declaratory' Fourteenth Amendment," at pp. 295-336; Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights"; John P. Frank and Robert F. Munro, "The Original Understanding of 'Equal Protection of the Laws,'" Columbia Law Review, L (Feb., 1950), 131-69.

The debate over the relation of segregation statutes to the Fourteenth Amendment is distinct from but closely related to the debate over the scope of the amendment's protection. The distinction is this: once one determines what rights states could not deny or discriminate in, then one must determine whether "separate but equal laws" are in fact a discrimination. Lawyers and historians have not been able satisfactorily to answer whether Republicans believed segregation laws constituted discriminations which ran afoul the Fourteenth Amendment, despite a great deal of investigation. The reason is rather obvious. Republicans in the 1860s had little experience with "separate but equal" laws. Laws which had enforced separations between whites and free blacks had never pretended to be equal in most areas. The one major exception was in the Massachusetts school system, where an attempt was made to institute equal, segregated school facilities. In the legal challenge to that attempt, the court ruled that segregation was not discriminatory, Roberts v. Boston, 59 Mass. 198 (1850). Other instances of "separate but equal" arguments occurred in Washington, D. C., and Philadelphia, where street railroads segregated passengers. Congress' disposition of the Washington case offers important insights into the meaning of the Fourteenth Amendment; the Philadelphia experience is less enlightening. In general Republicans simply were not presented with the sophisticated arguments segregationists later developed to justify separation. For that reason the Supreme Court in Brown v. Board of Education, by eschewing reliance on the framers' words and instead trying to determine whether segregation was in fact discriminatory, probably arrived closer to the original framers' intentions than they would have by any other approach. For no one who has read the debates on the Civil Rights bill and

The power of Congress to legislate affirmatively to protect the fundamental rights of citizens presents a thorny problem. Although some scholars have argued differently, it appears to me from the entire tenor of the constitutional discussion of 1865-1866 that Republicans did not intend to change the locus of police power from state to national government, even where the police power protected fundamental civil rights. See Kelly, "The Fourteenth Amendment Reconsidered," who says no certain answer to this question can be given (p. 1077); Frank and Munro, "The Original Understanding of 'Equal Protection of the laws,'" 163-64, and Graham, "Our 'Declaratory' Fourteenth Amendment," in *Everyman's Constitution*, 295-36. Both Graham and Frank and Munro use the 1871 debates over the Ku Klux Klan act to argue with telling effect that Congress did intend to authorize direct congressional legislation over civil rights when it adopted the Fourteenth Amendment. But this was not undisputed. Graham, who offers long excerpts from the colloquy between Mathew Hale Carpenter and Lyman Trumbull, simply accepts Carpenter's interpretation and rejects Trumbull's although Trumbull had framed the Civil Rights bill and voted for the Fourteenth Amendment while Carpenter entered Congress only in 1869. Frank and Munro simply allude to the fact that Congress passed the KKK bill.

Not only Trumbull, but John F. Farnsworth and James A. Garfield denied Congress intended to arrogate to itself primary jurisdiction over civil rights. Bingham answered that Farnsworth and Garfield were wrong, that he had intended to do just that when he framed the first and fifth sections of the Amendment. But the fact remains that he never indicated this during the 1866 debates. Those who reject Trumbull, Farnsworth, and Garfield's statement of the case have yet to produce one statement from the congressional proceedings of 1866 which clearly states that the Fourteenth Amendment protected citizens against private, extra-legal action.
Once again, the reason is surprisingly simple. The
denial of civil rights before 1866 was accomplished almost
always through state action. Since antislavery men believed
American citizens possessed inherent, fundamental rights, it
was through statutory change of the natural law alone that
these rights could be denied. It was through the decision of
legal institutions alone that slavery found its support,
Republicans believed. It was through legal enactments that
it threatened to reappear in disguised forms. Prevent the
legal enactments and one guaranteed the rights. It was incon-
ceiveable that states should not pass general criminal laws for
the protection of whites' lives and property. If discrimina-
tion was forbidden, then blacks would be protected by the same
laws. The Republicans easily could have intended positively
to guarantee all civil rights without realizing authority for
direct legislation would become necessary. By 1871 the entire
situation had changed. Republicans were aware how inadequate
their earlier understanding had been. To fulfill their intent,
they legislated directly. There were numerous constitutional
justifications for doing so; Bingham and Carpenter used them.
But lack of any evidence to the contrary indicates they did
not realize in 1866 that such legislation would be necessary.
For the Carpenter-Trumbull debate, see Graham, ibid., 323-31.
For Bingham, Farnsworth, and Garfield's remarks, see the
Cong. Globe, 42 Cong., 1 Sess., appendix, 81-85, 115-16
(Mar. 31, 1871), 151-54 (Apr. 4, 1871), respectively. For a
clear indication of how state-centered Republicans believed the
constitutional amendment to be as they passed and ratified
it, see the compendia of Republican arguments offered in Fair-
man, "Does the Fourteenth Amendment Incorporate the Bill of
Rights?", especially at pp. 41-134. The evidence is all the
more impressive because Fairman was dealing with another point
entirely.

31 Boutwell, Reminiscences, II, 42.

32 Kendrick (ed.), Journal of the Joint Committee, 82-120
(Apr. 21, 23, 25, 28, 1866). Three monographs have dealt
specifically with the activities of the Reconstruction
committee and the framing of the XIV Amendment. They are
Horace Edgar Flack, The Adoption of the Fourteenth Amendment
(Baltimore, 1908); the second part of Kendrick's Journal of
the Joint Committee; and Joseph B. James, The Framing of the
Fourteenth Amendment (Urbana, Ill., 1956). James' work is
the most recent and takes advantage of more resources than
were available to the earlier historians.

33 Cong. Globe, 39 Cong., 1 Sess., 2459 (May 8, 1866).

35 Chicago Tribune, May 1, 1866, p. 2; Medill to Trumbull, May 2, 1866. Trumbull Ms. L.C.

36 Boston Daily Advertiser, May 12, 1866, p. 1; N.Y. Herald, May 12, 1866, p. 1; N.Y. Tribune, Apr. 30, 1866, p. 4; N.Y. Independent, May 3, 1866, p. 4; Julius Bing to Sumner, May 3, 1866. Sumner Ms.; Thomas Richmond to Trumbull, May 12, 1866; Daniel Richards to Trumbull, May 7, 1866. Trumbull Ms. L.C.; Richards to E. B. Washburne, May 7? 1866. Washburne Ms. L.C.; Virginia Unionist Convention, reported in the Buffalo Morning Express, May 23, 1866, p. 4; N.Y. National Anti-Slavery Standard, May 5, 1866, p. 2; May 26, 1866, p. 2; Boston Right Way, May 5, 1866, p. 2.

37 N.Y. Independent, June 7, 1866, p. 1; Colfax to Samuel Sinclair, quoted in Hollister, Colfax, 284. Hollister did not give the exact date.

38 Ibid., 2462-63 (May 8, 1866).

39 Ibid., 2543-45 (May 10, 1866).

40 Ibid., 2545 (May 10, 1866).

41 Hayes to Bateman, May 15, 1866. Transcript in the Hayes Ms., Rutherford B. Hayes Library. Original owned by the Western Reserve Historical Society.

42 Cong. Globe, 39 Cong., 1 Sess., 2767-68 (May 23, 1866); Trumbull to Mrs. Julia Swayne Trumbull, May 13, 1866. Trumbull Ms. Illinois State Historical Library; Salter, Grimes, 297.

43 Ibid., 2766 (May 23, 1866).

44 Seward's address is quoted in the Boston Daily Advertiser, May 23, 1866, p. 1. Most newspapers carried it in full.

45 Ibid.
N.Y. Times, May 30, 1866, p. 8; May 31, 1866, p. 4; June 4, 1866, p. 4; Forney ("Occasional") in Washington Daily Morning Chronicle, May 31, 1866, p. 1; June 2, 1866, p. 1.

Trumbull to Julia Jayne Trumbull, May 27, 1866. Trumbull Ms. Illinois State Historical Library; N.Y. Times, May 26, 1866, p. 1; May 29, 1866, p. 1; May 30, 1866, p. 8; Boston Daily Advertiser, May 30, 1866, p. 1; James, The Framing of the Fourteenth Amendment, 140-41.

Ibid., 3042 (June 8, 1866).

Ibid., 3149 (June 13, 1866).

N.Y. Independent, June 21, 1866, p. 4.

Cong. Globe, 39 Cong., 1 Sess., 3148 (June 13, 1866); N.Y. Independent, June 21, 1866, p. 4.

Trumbull to Mrs. Julia Jayne Trumbull, May 15, 1866, Trumbull Ms. Illinois State Historical Library.

Cox to Garfield, June 22, 1866. Garfield Ms. L.C.; Toledo Blade, June 22, 1866, p. 2.


Welles, Diary, II, 535-37 (June 22, 1866).

Cong. Globe, 39 Cong., 1 Sess., 3349 (June 22, 1866); Welles, Diary, II, 528-29 (June 15, 1866), 529-31 (June 18), 532 (June 19), 533 (June 20), 533-35 (June 21), 538-40 (June 23), 541 (June 26), 542 (June 28); N.Y. Times, June 26, 1866, p. 4.
57 Cong. Globe, 39 Cong., 1 Sess., 2313 (May 1, 1866); House Resolution No. 543 in House Bill file, 39 Cong. R.G. 233, N.A.

58 Cong. Globe, 39 Cong., 1 Sess., 2313 (May 1, 1866).

59 Ibid., 2597 (May 15, 1866).

60 Ibid., 2880 (May 29, 1866).

61 Introduced ibid., 2858 (May 28, 1866); quoted ibid., 4157 (July 25, 1866).

62 Ibid., 2869 (May 29, 1866).


64 Raymond to Weed, June 12, 1866. Weed Ms.; Boutwell to Sumner, June 17, 1866. Sumner Ms.

65 Cong. Globe, 39 Cong., 1 Sess., 3568 (July 3, 1866).

66 Ibid., 3948-49 (July 19, 1866).

67 Ibid., 3977 (July 20, 1866).

68 Ibid., 3980-81 (July 20, 1866). The vote was 125-12, but one more radical paired against the resolution; fifteen more Republicans were declared to be in favor. The radical dissenters were John B. Alley, John F. Benjamin, Boutwell, Eliot, William Higby, Thomas A. Jenckes, Julian, Kelley, Benjamin F. Loan, Joseph W. McClurg, Paine, Thomas Williams, and John M. Broomall (who was paired).

69 Ibid., 3981 (July 20, 1866).

70 Ibid., 4000 (July 21, 1866).

71 Ibid., 4007 (July 21, 1866); N.Y. National Anti-Slavery Standard, July 26, 1866, p. 2.
Howard K. Beale and Eric L. McKitrick discuss the elections of 1866 and Andrew Johnson's remarkable political ineptitude in The Critical Year, 300-406, and Andrew Johnson and Reconstruction, 364-447, respectively. But neither discuss the lengths to which more moderate Republicans went to control their radical allies. This aspect of the 1866 campaign has been left largely undone. Anyone interested in this should look at the proceedings of the Southern Loyalists' Convention held in Philadelphia the first week of September and in newspaper reports of the backstage maneuvering.

N.Y. Independent, Aug. 2, 1866, p. 4.
CHAPTER X

1Brock, An American Crisis, 169-71; McKitrick, Johnson and Reconstruction, 452-53.


3McKitrick has dealt competently with the issues separating radicals from non-radicals early in the second session, when moderates and conservatives still hoped southern states might ratify the proposed XIV Amendment, but he has not described the underlying differences between radical and non-radical policy later, when the groups fought their tremendous battle over the "Blaine amendment." Donald virtually abandoned analysis of ideology and policy in his mechanistic study of "the pendulum of legislation." Describing a highly formalistic pattern of thesis and antithesis in the legislative battle, he has given only secondary attention to the hostile programs which occasioned the struggle. The English historian, Brock, has offered probably the best study of session's conflicts, but he has paid less attention to the details of the congressional struggle than his colleagues, and has not pointed out the intense bitterness the struggle engendered between the Republican factions. McKitrick, Johnson and Reconstruction, 473-85; Donald, Politics of Reconstruction, 53-82; Brock, An American Crisis, 473-85.

Special attention must be given to a new doctoral dissertation by Larry G. Kincaid, "The Legislative Origins of the Military Reconstruction Act, 1865-1867" (Ph.D. dissertation, Johns Hopkins University, 1968). Thoroughly researched, well-written, and carefully thought out, this dissertation when published will certainly become the recognized study of the genesis of the Reconstruction act. Working independently, Kincaid and I have reached essentially the same conclusion. He reached it first, and it is profoundly gratifying to find my own conclusions paralleling those of so fine a work. There is only one, very minor defect I will note, and that is
slight weakness in understanding some House rules and procedures. I will draw attention to these in footnotes where they lead us to differing understandings of events. Kincaid also omits discussion of the supplementary Reconstruction acts, a gap I hope he will fill before publishing his work.

4 Julian, Political Recollections, 305-308; Julian in the Cong. Globe, 39 Cong., 2 Sess., appendix, 77-80 (Jan. 28, 1867); Josiah B. Grinnell, Men and Events of Forty Years: Autobiographical Reminiscences of an Active Career (Boston, 1891), 158; Detroit Post and Tribune, Zachariah Chandler: An Outline Sketch of his Life and Public Services (Detroit, 1880), 288, 292-93; Sumner to John Bright, May 27, 1867, in Pierce, Sumner, IV, 319-20; Stevens in the N.Y. Herald, July 8, 1867, p. 6; Timothy Otis Howe to Horace Rublee, Jan. 15, 1868. Howe Ms.; Wendell Phillips in James G. Blaine et al., "Ought the Negro to be Disfranchised? Ought he to Have Been Enfranchised?" North American Review, CXXVIII (Mar., 1879), 257-62. Julian was the only congressman to refuse to concede defeat for territorialization. He was the only congressman to propose legislation to erect territorial governments in the South, and even his bill implied rather quick restoration, specifically outlining steps to that end. House Resolution 894, House of Representatives bill file, 39 Cong. N.A., R.G. 233; see his correspondence to his brother's newspaper, The Centreville Indiana True Republican, Jan. 24, 1867, p. 114; Cong. Globe, 39 Cong., 2 Sess., appendix, 77-80 (Jan. 28, 1867).

5 Cong. Globe, 39 Cong., 2 Sess., 117 (Dec. 13, 1866). See also similar comments by Rep. Frederick A. Pike, ibid., 255 (Jan. 3, 1867); Broomall, ibid., 351 (Jan. 8, 1867); Glenni W. Scofield, ibid., 598 (Jan. 19, 1867); Julian, ibid., appendix, 78 (Jan. 28, 1867); Farnsworth, ibid., 99 (Feb. 7, 1867).

6 J. C. Emerson to Daniel Richards, Jan. 11, 1867. Fessenden Ms. L.C.

7 Jonathan F. Turner to Richards, Jan. 12, 1867. See also O. B. Hart to Richards, Jan. 8, 1867; Norman Brownson to Richards, Jan. 12, 1867. Richards forwarded these letters to Fessenden in a letter Jan. 15. They are in the Fessenden Ms. in the Library of Congress. Also Alexander H. Jones to Schuyler Colfax, Dec. 3, 1866, in the papers of the Joint Committee on Reconstruction, 39 Cong., R.G. 128, N.A.; Memorial of Citizens of Louisiana, quoted in the Cong. Globe, 39 Cong., 2 Sess., 537 (Jan. 17, 1867); Memorial of Citizens of Arkansas, quoted in the Boston Right Way (Jan. 12, 1867), p. 4. Richards and Hart were leading Florida unionist
politicians. Jones was a representative-elect from North Carolina. He would represent the reconstructed state in Congress upon its restoration. The Louisiana petition was organized by Thomas J. Durant, one of the radical leaders since the Banks administration.

Boutwell in a speech at Tremont Temple, Boston, in the week of Jan. 5-12, quoted in the N.Y. National Anti-Slavery Standard, Jan. 12, 1867, p. 1. Radicals proposed several bills embodying their ideas. Of those which Congress considered, only Stevens' and the bill to restore civil government in Louisiana embodied the radical position. These are at Cong. Globe, 39 Cong., 2 Sess., 250 (Jan. 3, 1867) and 1128-29 (Feb. 11, 1867), respectively. Note the modification of Stevens' bill under radical pressure. See Ashley's amendment to H. R. 543, ibid., 255-54 (Jan. 3, 1867); Hezekiah S. Bundy's Texas territorial government bill (H. R. 223); Julian's bill to establish territorial governments in the rebellious states (H. R. 894), and Henry D. Washburne's bill to reestablish civil governments in the rebellious states (H. R. 985), all in the House of Representatives bill file, 39 Cong., N.A., R.G. 233; Hamilton Ward's bill to guarantee republican forms of government in the rebellious states (H. R. 856), resubmitted as H. R. 5 in the 40th Congress, in the House bill file, 40 Cong. N.A., R.G. 233 and in the Thaddeus Stevens Ms. in the Library of Congress. For radicals' views as expressed in Congress, see ibid., 349-52 (Jan. 8, 1867. Brooxall); ibid., 264-66 (Jan. 3, 1867. Holmes); ibid., appendix, 77-80 (Jan. 28; Julian); ibid., 86 (Dec. 12, 1866. Resolution by George F. Miller); ibid., 282-86 (Jan. 4, 1867. Newell); ibid., 499 (Jan. 16; Paine); ibid., 254-56 (Jan. 3, 1867; Pike); ibid., 211-14 (Dec. 20, 1866. Senator Edmund G. Ross); ibid., 596-98 (Jan. 19, 1867. Scofield); ibid., 15 (Dec. 5, 1866. Resolutions by Sumner); ibid., 115-18 (Dec. 13, 1866. Ward). Outside Congress: Wendell Phillips' speech to the Pennsylvania Anti-Slavery Society, Nov. 22, 1866, quoted in the N.Y. National Anti-Slavery Standard, Dec. 1, 1866, p. 2.

For impeachment: Stevens to Schenck, Aug. 31, 1866. Norcross Collection, Massachusetts Historical Society; Schenck to Stevens, Sept. 23, 1866. Stevens Ms.; Wendell Phillips in a speech at Cooper Institute, Oct. 25, 1866, quoted in the N.Y. National Anti-Slavery Standard, Nov. 3, 1866, pp. 1-2; Boutwell in a speech at the Mercantile Library, Boston, in Nov., 1866, quoted in the Boston Commonwealth, Nov. 17, 1866, p. 1; William Lloyd Garrison in the N.Y. Independent, Jan. 17, 1867, p. 1; Julian in the Centreville Indiana True Republican, Jan. 18, 1867, p. 106; Sidney H. Morse, "Impeachment," Radical, II (Feb., 1867), 373-75. Radical newspapers endorsed impeachment. See, for instance, the Boston Right Way, Jan. 12, 1867, p. 2; Jan. 19, 1867, p. 2; Boston Commonwealth,
Jan. 12, 1867, p. 2; Jan. 19, 1867, p. 2; Wilkes' Spirit of the Times, quoted in the N.Y. National Anti-Slavery Standard, Jan. 26, 1867, p. 1. The Right Way reprinted opinions favorable to impeachment appearing in other newspapers, Feb. 9, 1867, p. 3; Feb. 16, 1867, p. 3. The N.Y. Independent and National Anti-Slavery Standard indicated their support for the action by printing Garrison and Phillips' opinions.

9 Fessenden to F. H. Morse, ?, 1868, quoted in Fessenden, Fessenden, II, 306-308.


13 Kincaid has reached the same conclusion. See his excellent discussion in "The Military Reconstruction Act," 135-37.

Kincaid submits Stevens' bill had firmer radical backing than it probably did, arguing even the radicals who had presented bills of their own waited for his lead. Actually they had no choice. Under the rules, their bills went directly to the joint committee without debate. Only the committee could report them, and it had not met. Kincaid, "The Military Reconstruction Act," 122n.

Bingham's entire speech is in ibid., 500-505 (Jan. 16, 1867).

Chase to Greeley, Nov. 21, 1866. Greeley Ms. L.C.; Welles, Diary, II, 619 (Nov. 17, 1866); Beale, The Critical Year, 399-403. The message may be found in the Cong. Globe, 39 Cong., 2 Sess., appendix, 1-5.


E. R. Hill to Banks, Dec. 8, 1866; W. A. Harrington to Banks, Dec. 13, 1866; David K. Hitchcock to Banks, Feb. 13, 22, 1867; Ebenezer Nelson to Banks, Feb. 24, 1867;
D. N. Haskell to Banks, Feb. 24, 1867; A. C. Mayhew to Banks, Feb. 25, 1867; Thomas Russell to Banks, Mar. 25, 1867. Banks Ms. Illinois State Historical Library.

29 N.Y. Times, Dec. 6, 1866, p. 1.


32 See, for instance, W. M. Dickson to Rutherford B. Hayes, Feb. 25, 1867. On January 30 Hayes had assured his uncle that reconstruction legislation was dead for the session. Hayes to Sardis Birchard, Jan. 30, 1867. Hayes Ms.
CHAPTER XI

1 Since Bingham, like Stevens, believed only three fourths of the loyal states were required to ratify the constitutional amendment, in his opinion it had already been adopted. Therefore any state which met the requirements of the bill would be admitted to normal relations immediately. Impartial suffrage meant the ballot could be restricted—by a property or educational requirement, for instance—so long as the qualification applied to blacks and whites alike. This meant, of course, that under the conservative plan the number of black voters in reality would be minimal.


3 Kendrick quotes the bill in his Journal of the Joint Committee on Reconstruction, 380-82. This version, which he reprinted from newspaper reports, varies slightly with the version in the Senate bill file, 39 Cong. N.A., RiG. 46 (Senate Bill No. 564). For some reason, Donald, McKitrick, and Brock attribute the inception of this bill to Julian. In fact, Julian vigorously opposed it, arguing not for a military government but territorial government, with civil officials elected by the southerners themselves. See the Cong. Globe, 39 Cong., 2 Sess., appendix, 77-80 (this is the speech historians usually cite to support their suggestion); Julian in the Centreville Indiana True Republican, Jan. 24, 1867, p. 114; Feb. 28, 1867, p. 133.

4 Kendrick (ed.), Journal of the Joint Committee on Reconstruction, 124-29 (Feb. 6, 1867).


6 Bradegee in the Cong. Globe, 39 Cong., 2 Sess., 1076 (Feb. 7, 1867); Bingham, ibid., 1082 (Feb. 7, 1867). See also Thayer, ibid., 1097; Abner C. Harding, ibid., 1098-99; Shella-barger, ibid., 1102; Garfield, ibid., 1104; John A. Kasson, ibid., 1105 (all Feb. 8, 1867).
7 See Banks' comments for an example of the impact of this upon him. *Ibid.*, appendix, 174-75 (Feb. 9, 1867).

8 *Ibid.*, 1076 (Feb. 7, 1867). See also Wendell Phillips' similar exposition in the N.Y. National Anti-Slavery Standard, Feb. 16, 1867, p. 2. One should not imagine that the Williams bill conformed exactly to what Stevens had hoped for in 1865, when the question was still fresh. His ideal would have been to provide territorial governments for the southerners. In fact, he specifically objected to placing them under military governments. See his speech in the *Cong. Globe*, 39 Cong., 1 Sess., 72-75 (Dec. 18, 1865). Nonetheless, with Republican opinion as strongly in favor of quick restoration as it was, the Military Government bill must have seemed a godsend at first.

McKittrick either missed the clear implication in Stevens' speech that he considered the new bill to be more than merely a temporary measure, or he rejected that interpretation. He suggests that Stevens merely believed that he could pass a measure more to his liking in the Fortieth Congress and wanted only to prevent the Thirty-ninth from passing a more conservative measure. But this does not explain why so many Republicans themselves immediately assumed the Military Government bill would be a long-term measure and why they worked so feverishly to obviate that possibility. McKittrick himself discusses those efforts. McKittrick, *Andrew Johnson and Reconstruction*, 478-79. See John A. Griswold's comments in the *Cong. Globe*, 39 Cong., 2 Sess., 1101 (Feb. 6, 1867), and Banks', *Ibid.*, appendix, 174-75 (Feb. 9, 1867).

9 *Ibid.*, 1037 (Feb. 6, 1867), 1076 (Feb. 7, 1867).

10 Underwood to Banks, Feb. 11, 1867. Banks Ms. Illinois State Historical Library; Durant to Benjamin F. Flanders, Feb. 10, 1867. Flanders Ms. Louisiana State University archives, Baton Rouge, Louisiana.


13 *Ibid*.

15 Ibid., 1104-1105 (Feb. 8, 1867).
16 Ibid., 1104-1105 (Feb. 8, 1867).
17 Ibid., 1105 (Feb. 8, 1867).
20 Ibid., 1182 (Feb. 12, 1867).
21 Ibid., 1106 (Feb. 9, 1867).
22 Kasson's amendment may be found ibid., 1104-1105 (Feb. 8, 1867); Lawrence's ibid., 1083-84 (Feb. 7, 1867). Banks prepared an amendment but did not offer it. He did frame a version applying to Louisiana. It is in his papers in the Library of Congress and was published in several newspapers on February 11.
23 Ibid., 28 (Dec. 6, 1866).
24 The New Orleans riot was a particularly gory episode in the bloody history of Louisiana reconstruction. The Louisiana constitutional convention held in 1864 and dominated by adherents of the Banks-Hahn political machine had never adjourned sine die. In summer, 1866, with rebels in control of the state government the convention had organized, Republican delegates determined to reconvene it. They had the support of the mercurial Governor Wells, who had swung back to radicalism when Democrats appeared ungrateful for his services in turning the government over to them. But Louisiana's lieutenant governor and the city authorities of New Orleans, dominated by former rebels, avowed their intention of dispersing the convention, which they regarded as a revolutionary body. President Johnson's course and personal assurances persuaded the state authorities he either would keep the military occupation forces neutral or order them to support state and city officials. General Absalom Baird telegraphed Secretary of War Stanton for instructions, adding that for the moment he intended to prevent any confrontation and to force the question of the reconvened convention's authority into the courts.
Stanton, probably aware that Johnson would order Baird to sustain local officials in dispersing the convention, did not show the telegram to him and sent no reply, relying on Baird to proceed as he indicated he would. But local officials assured Baird there would be no violence, and he did not take steps to prevent it until too late. The police, mainly bitterly anti-Negro Irish, attacked the convention delegates and black onlookers with guns, chains, and knives, massacring forty and injuring 160 more. For accounts, see McKitrick, Andrew Johnson and Reconstruction, 422-27; Caskey, Secession and Restoration of Louisiana, 165-204; Reed, Dostie, 286-330.

25 Ibid., 1128-29 (Feb. 11, 1867).

26 In 1865 and 1866, when the military held paramount authority in the South while southerners reorganized their governments under Johnson's direction, the commanders had carefully avoided interference with the civil authorities. The most significant exception was a conflict between General Henry W. Slocum and Mississippi Provisional Governor William L. Sharkey over Sharkey's right to reorganize the state militia. Army officers also had circumscribed the liberties of the newly-freed blacks, like white southerners believing them unprepared to cope with freedom—a perhaps not unreasonable conclusion but one which did little to assure radicals of the Army's good intentions. Finally radicals had distrusted the regular Army officer corps throughout the Civil War, believing them secretly pro-slavery and disinclined to bring all their resources to bear in conquering the South. The only study of the Army's role in reconstruction on the local level in the South is James E. Sefton's The United States Army and Reconstruction, 1865-1877 (Baton Rouge, 1967). Extremely thoroughly researched, Sefton's book suffers from a lack of interpretation, especially of the Army's impact on southern social and political institutions. Did it encourage radicalism or conservatism? Within the framework of Republican politics, did the military authorities favor radicals or conservatives or neither? For the period of presidential reconstruction, Sefton clearly implies that the military tried to limit its role, giving Johnson's civil authorities maximum freedom, shared with white southerners a concern for social and economic stability which worked against what radicals believed to be the black men's interests, and tried to conduct itself in such a way as to minimize the hostility of white southerners (with all that implies as to the situation of black southerners). See his pp. 25-59.

For the period of congressional reconstruction, Sefton's conclusions are less apparent. It is clear that the
Army considered it a duty to enforce the Reconstruction acts and encourage southern compliance with them and the formation of new state constitutions. But Sefton pays more attention to details than the broad questions outlined above. It seems important to note that although nearly every important state official in the Johnson governments held office in violation of the disqualification clause of the constitutional amendment, and although the Reconstruction act specifically declared offices thus held must be vacated, very few officials were ever removed, including only three governors, one of whom—J. Madison Wells of Louisiana—was not disqualified by the act and had allied himself with the extreme radicals of his state. See also Sefton, *Army and Reconstruction*, 138-41, 162, 195-96. Some indications that the military commanders generally did not play the radical role historians have assigned to them are in J. G. de Roulhac Hamilton, *Reconstruction in North Carolina* (Gloucester, Mass., 1964), 233; Staples, *Reconstruction in Arkansas*, 1862-1874, 127-40; William Watson Davis, *The Civil War and Reconstruction in Florida* (N.Y., 1913), 465, 509-15 (here is a brief but significant account of how the military aided a virtual coup d'état by Republican moderates and southern Conservatives in the Florida 1868 constitutional convention); John M. Schofield, *Forty-Six Years in the Army* (N.Y., 1897), 394-405; James L. McDonough, "John Schofield as Military Dictator of Reconstruction in Virginia," *Civil War History*, XV (Sept., 1969), 237-56; W. A. Swanberg, *Sickles the Incredible* (N.Y., 1956), 287-93.

27 Ibid., 1182 (Feb. 12, 1867).

28 Ibid., 1210 (Feb. 13, 1867).

29 Ibid., 1212 (Feb. 13, 1867).

30 Ibid., 1083 (Feb. 7, 1867), 1211 (Feb. 13, 1867).

31 Ibid., 1375 (Feb. 15, 1867).

32 Ibid., 1210, 1211 (Feb. 13, 1867).

33 Ibid., 1211 (Feb. 13, 1867).

34 Ibid., 1130-31 (Feb. 11, 1867).

35 Ibid., 1130-33 (Feb. 11, 1867).
36 Ibid., 1133 (Feb. 11, 1867).

37 Ibid., 1175 (Feb. 12, 1867). Kincaid goes to great lengths to explain why conservative and centrist Republicans finally passed the Louisiana bill, but he failed to note the close vote on the previous question—an example of the weakness on House procedure which occasionally mars his work. Once the House seconded the previous question, it was the norm for the majority party to unite. A refusal to do so might well have signalled a rupture in the party. Kincaid, "The Military Reconstruction Act," 193-97.


39 Laflin to Greeley, Feb. 17, 1867 (misdated February 1). Greeley Ms. L.C.; N.Y. Tribune, Feb. 15, 1867, p.1; Feb. 17, 1867, p. 1; Feb. 18, 1867, p. 1; Moore, notes, Feb. 14, 1867. Johnson Ms.; Unpublished testimony before the Select Committee . . . on a Corrupt Bargain with the President, in the papers of that committee, 39 Cong., R.G. 233, N.A. Warden and Este were uncertain as to the date of the first meeting at the Metropolitan Hotel in their testimony, placing it on either February 12 or 13. The 12th appears more likely because they mentioned the House passed the Military Government bill between the meetings. That bill passed February 13, and if the first meeting had been held on that day, the bill would have been passed already.

40 Ibid., 1213-15 (Feb. 13, 1867). Not all Republicans who voted with Blaine to commit the bill to the Judiciary committee with instructions did so out of conservatism. Committee chairman Wilson had quietly informed friends that he would not only report the Blaine amendment, as he would have been required to do, but also an amendment to disfranchise leading rebels. This helps to explain the votes such radicals as William Lawrence, Kelso, and McClurg cast in favor of Blaine's motion on both roll calls and the votes of Ashley, Hayes, and other radicals on the first.

41 Senator Henderson mentioned that southern lobbyists had informed him that they favored the Louisiana bill and opposed the other. We may surmise they approached other Senators too, especially since the Southern Republican Association,
the lobbyists' organization, sent a formal memorial to the Senate embodying these views. Henderson at *ibid.*, 1371 (Feb. 15, 1867); the memorial at *ibid.*, 1553 (Feb. 19, 1867). Virginia radicals sent a petition at this time asking that Virginia be given a territorial government, with Judge Underwood as its governor. *Ibid.* This petition joined one from Arkansas specifically asking the extension of the Louisiana bill's provisions to that state. *Ibid.*, 1223 (Feb. 13, 1867).

42 *Ibid.*, 1303 (Feb. 13, 1867); Wilson, *ibid.*, 1511 (Feb. 18, 1867); Conness, *ibid.*, 1555 (Feb. 19, 1867). Sumner's position is easily determined by his course. See *ibid.*, 1302-1303 (Feb. 13, 1867).


47 *Ibid.*, 1304 (Feb. 14, 1867), 1360 (Feb. 15, 1867). Reverdy Johnson proposed Williams' amendment when the Oregon Senator decided not to propose it. It may be found *ibid.*, 1361 (Feb. 15, 1867).


49 The issues involved in the Blaine amendment were not voted upon in the Senate until a Republican caucus had smoothed differences. The issues which determined radicalism and conservatism in Chart No. 27, therefore, related primarily to circumscription of the President's powers, a fundamentally different issue from reconstruction. On that issue, Stewart, Kirkwood, Lane, and Cragin voted with the radicals. I use the term conservative and centrist here with reference to their positions on reconstruction, best delineated by their positions during the first session. See Chart No. 25.


The entire debate is in *ibid.*, 1364-98 (Feb. 15, 1967).

It is also interesting to note that all the members of the caucus committee were men who voted consistently with one faction or another. The Republicans wanted no "floaters" here. See Chart No. 25.


*N.Y. Tribune*, Feb. 18, 1867, p. 1; Testimony in the papers of the Select Committee on a Corrupt Bargain with the President, 39 Cong., R.G. 233, N.A.


*Garfield, ibid.*, 1320 (Feb. 18, 1867).


See Wade's comments, *ibid.*, 1558 (Feb. 19, 1867).


66 The entire debate is *ibid.*, 1555-70 (Feb. 19, 1867).


70 Howe to Grace T. Howe, Feb. 26, 1867. Howe Ms.


73 Kincaid points out positive gains which a strong veto might secure, but Johnson still could have delivered that veto if the Fortieth Congress passed a reconstruction measure. Kincaid, "The Military Reconstruction Act," 281-84.


75 *Cong. Globe*, 40 Cong., 1 Sess., 63 (Mar. 11, 1867). Colfax appointed James P. Wilson (chairman), Boutwell, Francis Thomas, Thomas Williams, Frederick Woodbridge, William Lawrence, John C. Churchill (all Republicans) and Samuel S. Marshall and Charles A. Eldridge (Democrats) to the committee. Woodbridge and Thomas inclined towards conservatism; Wilson had cooperated with Bingham and Blaine but supported compromise efforts at the end of the session; Boutwell, Williams, and Lawrence were radicals, although the last had voted with Bingham and Blaine in hopes of opening the military bill to radical amendment. See Brock, *An American Crisis*, 204.

77 **Ibid.**, 50-56 (Mar. 11, 1867). The nine who supported Sumner were Cole, Howe, Morton, Pomeroy, Thayer, Tipton, Wade, Wilson, and Yates.

78 Sumner to Pierce, Mar. 11, 1867. Sumner Ms.

79 **Ibid.**, 66 (Mar. 11, 1867).

80 For the debates and votes on these questions see **ibid.**, 109-18 (Mar. 15, 1867), 147-51 (Mar. 16, 1867), 158-63 (Mar. 16, 1867), 182-85 (Mar. 18, 1867). As modified in conference between representatives of both houses, the bill required that at least 50% of the registered voters vote in each election. See **ibid.**, appendix, 39-40 for the final terms of the bill.


82 **Ibid.**, 165-70 (Mar. 16, 1867).

83 **Ibid.**, 165 (Mar. 16, 1867).


85 Although congressmen might have justified the Reconstruction acts upon Congress' obligation to guarantee republican forms of government to the states, none did so, arguing the grasp-of-war theory instead. See Brandegee's constitutional defense of the Military Government bill, Cong. Globe, 39 Cong., 2 Sess., 1076 (Feb. 7, 1867); Bingham, **ibid.**, 1082 (Feb. 7, 1867); William Lawrence, **ibid.**, 1083 (Feb. 7, 1867); Martin Russell Thayer, **ibid.**, 1097 (Feb. 8, 1867); Abner C. Harding, **ibid.**, 1098-99 (Feb. 8, 1867); Shellabarger, **ibid.**, 1102 (Feb. 8, 1867); Garfield, **ibid.**, 1104 (Feb. 8, 1867); Kasson, **ibid.**, 1105 (Feb. 8, 1867); Garfield again ("All I ask is, that Congress shall place civil governments before these people of the rebel States, and a cordon of bayonets behind them.") **ibid.**, 1184 (Feb. 12, 1867); Stewart, **ibid.**, 1364
(Feb. 15, 1867); Jacob M. Howard, ibid., 1365 (Feb. 15, 1867); Sherman, ibid., 1462 (Feb. 16, 1867); Lyman Trumbull, Argument of Hon. Lyman Trumbull in the Supreme Court of the United States, Mar. 4, 1868, in the Matter of Ex Parte William H. McCordie, Appellant, (Washington, 1868), 14, 20-26; Edwin Dennison Morgan in a speech at Cooper Institute, quoted in J. Rawley, Edwin D. Morgan, 1811-1883: Merchant in Politics (N.Y., 1956), 226.

Richard Henry Dana, who had popularized the grasp-of-war doctrine in his Faneuil Hall speech, wrote Charles Francis Adams, Jr., "I must shock and dismay you by expressing my great satisfaction in the Reconstruction Bill. . . . [T]hat is on the principle which I had the honor to be the first to lay down in my Faneuil Hall speech of June, 1865--what my flattering friends call my 'Grasp-of-war Speech.' Not that my speech had any agency in the result, but that the result justifies it." Dana to Adams, Apr. 14, 1867, quoted in Charles Francis Adams, Jr., Richard Henry Dana: A Biography (Boston & N.Y., 1891), 334-35.

86 See pp. 162-63, supra.

87 Julian, Political Recollections, 306; Grinnell, Forty Years, 158. See also Butler, Butler's Book, 960-61; Wendell Phillips in Blaine et al., "Ought the Negro to be Disfranchised," 257-62.


89 Boutwell, Speech in Tremont Temple, week of Jan. 5-12, ibid., Jan. 12, 1867, p. 1; Boston Right Way, Jan. 12, 1867, p. 2; Jan. 19, 1867, p. 2; Feb. 9, 1867, p. 3; Feb. 16, 1867, p. 3; Wilkes' Spirit of the Times, quoted by the N.Y. National Anti-Slavery Standard, Jan. 26, 1867, p. 1; Sidney H. Morse, "Impeachment," Radical, II (Feb., 1867), 373-75; Boston Commonwealth, Jan. 12, 1867, p. 2; Jan. 19, 1867, p. 2; Garrison article in the N.Y. Independent, Jan. 17, 1867, p. 1; Julian in the Centreville Indiana True Republican, Jan. 18, 1867, p. 106. Ward circulated petitions for impeachment which reached Congress from Michigan, Ohio, Iowa, Alabama, Illinois, Pennsylvania, Wisconsin, and Indiana. See the papers of the House Committee on the Judiciary, 39 Congress, R.G. 233, N.A.; Ward to Butler, Jan. 27, 1867. Butler Ms. (impeachment correspondence). L.C.

91 N.Y. Times, Mar. 7, 1867, p. 4; Boston Evening Journal, Mar. 6, 1867, p. 4; Mar. 7, 1867, p. 4.


93 Grimes to Mrs. Grimes, Mar. 12, 1867, quoted in William Salter, The Life of James W. Grimes, Governor of Iowa, 1854-1858; Senator of the United States, 1859-1869 (N.Y., 1876), 323; N.Y. Times, Mar. 8, 1867, p. 4.

94 John W. Forney to Sumner, July 10, 1867. Sumner Ms. (Forney, the secretary of the Senate was so certain there would be no July session--he received "the assurances of experienced Senators" to this effect--that he left for Europe.); Zachariah Chandler, speaking at Ashtabula, Ohio, in McPherson scrapbook: campaign of 1867, II, 135-36. McPherson Ms. L.C.; Cong. Globe, 40 Cong., 1 Sess., 16 (Mar. 7, 1867), 303-308, 315-20 (Mar. 23, 1867), 321-22, 331, 334 (Mar. 25, 1867), 352-60 (Mar. 26, 1867), 387-91 (Mar. 27, 1867), 401-408, 419-20, 425-27 (Mar. 28, 1867), 438-41, 446-54 (Mar. 29, 1867).

CHAPTER XII

1 Cong. Globe, 39 Cong., 2 Sess., 1105 (Feb. 8, 1867).


3 Dwight, "Trial by Impeachment," 264. See also the report of the Judiciary committee minority, House Report No. 7, 40 Cong., 1 Sess., 69-70, 71-72, where chairman Wilson and his fellow dissenter, Frederick E. Woodbridge, listed English impeachments brought for partisan purposes, negating their own argument that impeachment lay for indictable offenses alone, and then denied the authority of the precedents because they were partisan.

4 Dwight, "Trial by Impeachment," 267-68.


6 Ibid., 68. That did not prevent the minority from citing English precedents supporting its case for whatever value they might be, however. Especially the Melville case.

7 The one case where an indictable crime was alleged was the impeachment of West H. Humphries in 1862. Humphries, a United States district judge, had joined the rebellion. Wilson suggested the essential charge against Humphries was treason. But at least one article charged only that he had not held court during his assigned term. Cong. Globe, 37 Cong., 2 Sess., 2247-48, 2277-78 (May 22, 1862), 2943-53 (July 26, 1862).

8 United States Senate, Trial of Samuel Chase, an Associate Justice of the Supreme Court of the United States, Impeached
by the House of Representatives, for High Crimes and Mis-
demeanors, before the Senate of the United States (2 vols.,
Washington, D.C., 1805); United States Senate, Report of the
Trial of James H. Peck, Judge of the United States District
Court for the District of Missouri, before the Senate of the
United States, on an Impeachment Preferred by the House of
Representatives Against Him for Misdemeanors in Office
(Boston, 1833).

9 U. S. Senate, Record of Proceedings in the Case of
William Blount; Trial of John Pickering, Judge of New Hampshire
District; Trial of Samuel Chase, One of the Associate Justices
of the Supreme Court (Washington, 1805).

10 U. S. Constitution, Article II, section 4.


12 Ibid., 62-64.

13 Lawrence, "Law of Impeachment," 642-45; Boutwell in the

14 House Report No. 7, 40 Cong., 1 Sess., 47-49. Lawrence,
trying to have his precedents both ways, also offered such
English precedents as supported his arguments. Lawrence, "Law
of Impeachment," passim.

15 Ibid., 667-73. Lawrence also pointed to impeachment
cases in the states. Ibid., 674-77; Boutwell in the Cong. Globe,
40 Cong., 2 Sess., appendix, 58-60 (Dec. 6, 1867).

16 Pomeroy, An Introduction to the Constitutional Law of
the United States (N.Y., 1870), 491-92. Although first pub-
lished in 1870, Pomeroy had completed the text by 1868, when
he had it copyrighted.

17 Rawle's essay on impeachment is in his A View of the
Constitution of the United States of America (2d ed., Phila-
delphia, 1829), 209-19. The quoted material is at pp. 211-12.
Pomeroy's entire discussion is in his Constitutional Law of
the United States, 440-45, 482-92. See also Alexander Hamil-
ton, The Federalist, Nos. 65, 66, and 81, in Hamilton, James
Madison, and John Jay, The Federalist on the New Constitution,
Written in the Year 1788 . . . (Washington, D.C., 1818),

18 U.S. Statutes at Large, XII, 502-503 (the test oath law), 589-92 (the Confiscation act; the disqualification provision is section 3, on p. 590).

19 Ibid. In rem proceedings lie against property rather than persons. That is, if the property were tainted by ownership by someone adhering to the rebellion, the court would find against it and transfer title to the government.

20 The development and passage of the Confiscation bill and supplementary resolution is discussed in Curry, Blueprint for Modern America, 75-100.

21 U.S. Statutes at Large, XIII, 507-509.


The most intensive study of the problem of loyalty oaths during the Civil War and reconstruction is Harold M. Hyman's The Era of the Oath: Northern Loyalty Tests During the Civil War and Reconstruction (Philadelphia, 1954). Jonathan Truman Dorris studied the pardon and amnesty question exhaustively in Pardon and Amnesty under Lincoln and Johnson: The Restoration of the Confederates to Their Rights and Privileges, 1861-1898 (Chapel Hill, N.C., 1953).


William Stewart (clerk) to Perkins Bass (U.S. atty., N. Dist., Ill.), Sept. 1, 1865; Ashton to Usher, Sept. 1, 1865; H. F. Pleasants (clerk) to Chandler, Sept. 2, 1865; Ashton to William A. Grover (U.S. atty., Mo.), Sept. 2, 1865; Ashton to William J. Jones (U.S. atty., Maryland), Sept. 2, 1865; Speed to Benjamin F. Smith (U.S. atty., W. Va.), Sept. 6, 1865; Speed to William N. Glover (?) Sept. 6, 1865; Speed to James Q. Smith (?), Sept. 22, 1865; Speed to Horace H. Harrison (U.S. atty., Middle Dist., Tenn.), Sept. 27, Oct. 20, 1865; Speed to Isaac Murphy (Gov. of Ark.), Nov. 28, 29, 1865; Speed to Harrison, Nov. 30, 1865; Speed to ? Jennings, Apr. 11, 1866; Speed to Bennet Pike (U.S. atty., W. Dist., Mo.), Apr. 11, June 15, 1866; Stanbery to Pike, June 23, 1866; Pleasants (acting chief clerk) to John L. Williamson (U.S. atty., Tenn.), Aug. 20, 1866 (halting confiscation proceedings against Confederate General P. G. T. Beauregard); Ashton to C. C. Carrington (U.S. atty., Washington, D.C.), Nov. 10, 1866;
Stanbery to James Q. Smith, Jan. 16, 1867 (halting proceedings against Cassius C. Clay); Ashton to the district attorney and U.S. marshal, Georgia, Mar. 27, 1867; Stanbery to L. V. B. Martin (U.S. atty., Ala.), Mar. 29, 1867; Pleasanton to Henry A. Fitch (U.S. atty., Ga.), Apr. 15, 1867; F. U. Still (acting chief clerk) to Francis Bugbee (U.S. atty., N. Dist., Fla.), Nov. 4, 1867; Binckley (Asst. Att'y-Gen'1.) to Usher, Nov. 29, 1867; Binckley to Bugbee, Dec. 6, 1867. Att'y-Gen'1. Letterbooks, Gen'1. Corres., R.G. 60, N.A.

27 Speed to Usher, Dec. 9, 1865. See also Speed to Daniel R. Goodloe (U.S. atty., La.), Nov. 27, 1865; Speed to Crawford W. Hall, Jan. 11, 1866. Att'y-Gen'1. Letterbooks, Gen'1. Corres., R.G. 60, N.A. Also the testimony of D. H. Starbuck before the Judiciary committee on impeachment, House Report No. 7, 40 Cong., 1 Sess., app. 154-55.


29 Howard to Stanton, Sept. 4, 1865. Johnson Ms.; Howard's testimony on impeachment, House Report No. 7, 40 Cong., 1 Sess., app., 89.


32 Howard, Autobiography, II, 280, 283-84; Carpenter, Sword and the Olive Branch, 118-20. McFeeley deals with Johnson's relations with Howard and the Bureau throughout his Yankee Stepfather.

33 Richardson (ed.), Messages and Papers of the Presidents, VI, 429-32; Thomas and Hyman, Stanton, 477-79; Grant to General George H. Thomas, Apr. 10, 1866. Headquarters of the
Army, letters sent. R.G. 108, N.A.; Davis Tillson to O. O. Howard, Apr. 7, 1866; E. D. Townsend to Tillson, Apr. 17, 1866, quoted in McPherson, Political History of Reconstruction, 17n.

34 General Order No. 26, May 1, 1866, quoted in Richardson (ed.), Messages and Papers of the Presidents, VI, 440-42; Gen. Order No. 46, July 13, 1866, quoted in McPherson, Political History of Reconstruction, 198-99.

35 Richardson (ed.), Messages and Papers of the Presidents, VI, 434-38; Thomas and Hyman, Stanton, 498-99.

36 The only study of the fears of renewed strife during reconstruction is William A. Russ, Jr., "Was There Danger of a Second Civil War During Reconstruction?" Mississippi Valley Historical Review, XXV (June, 1938), 39-58. Russ' study is suggestive, but incomplete. Russ also did not seem to believe that Republican apprehensions were completely honest, even though he offered no evidence to indicate they were not and a great deal which indicated they were. A new look at this question would be most useful. For Republican fears as to Johnson's intentions in spring, 1866, see William Lloyd Garrison to James Miller McKim, Mar. 3, 1866, McKim Ms. in Maloney collection; Justin S. Morrill to Jewett, May 4, 1866, quoted in Parker, Morrill, 229-30; Boutwell's speech in secret Republican caucus, July 11, 1866, reported in the N.Y. Times, July 16, 1866, pp. 4-5; John A. Krout (ed.), "Henry J. Raymond on the Republican Caucuses of July, 1866," American Historical Review, XXXIII (July, 1928), 837-39; Sumner to Bright, Sept. 3, 1866, quoted Pierce, Sumner, IV, 298-99. Republican fears were aroused again in fall, 1866 when rumors held Johnson intended to recognize a counter-Congress of southerners and northern Democrats. N.Y. Independent, Aug. 9, 1866, p. 4; Samuel F. Miller to David Davis, Oct. 12, 1866. Davis Ms. Illinois State Historical Library; Boutwell, Reminiscences, II, 107-108; Grant's testimony on impeachment, House Report No. 7, 40 Cong., 1 Sess., app., 833-34; Badeau, Grant in Peace: From Appomattox to Mount McGregor--A Personal Memoir (Hartford, Conn., 1887), 51. They rose again as the date approached for the assembly of the Fortieth Congress. N.Y. Independent, Jan. 31, 1867, p. 1. The rumors became especially pronounced and more prevalent in the fall of 1867. Schurz, Reminiscences, III, 252; Speech of John Sherman in Cincinnati, quoted in the McPherson scrapbook: Campaign of 1867, II, 111 in the McPherson Ms. in the Library of Congress; Schurz to Mrs. Margarethe Meyer Schurz, Aug. 31, Nov. 9, 1867, quoted in Carl Schurz, Intimate Letters of Carl Schurz, 1841-1869, ed. Joseph Shafer (Madison, Wis., 1928), 392-93 and 424-26,
respectively; John Binney to Schuyler Colfax, Sept. 9, 1867, enclosed with Binney to John A. Andrew, Sept. 12, 1867. Andrew Ms.; Boston Daily Advertiser, Aug. 29, 1867, p. 2; Sept. 2, 1867, p. 2; N.Y. Times, Sept. 17, 1867, p. 4; Chicago Tribune, Sept. 27, 1867, p. 2; Oct. 1, 1867, p. 1; Oct. 3, 1867, p. 1; Oct. 11, 1867, p. 2; N.Y. National Anti-Slavery Standard, Oct. 27, 1866, p. 2; [anonymous], "The Conspiracy at Washington," Atlantic Monthly, XX (Nov., 1867), 633-38. As can be seen, apprehensions were not limited to radical alarmists alone.

37 Ari Hoogenboom's Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865-1883 (Urbana, Ill., 1961) does not deal with this aspect of the spoils system at all.

38 For the process through which the collector of the port of New York--one of the most important positions in the nation both in its patronage and responsibility--was filled early in 1866, see the Coxes' Politics, Principle, and Patronage, 113-27.

39 Beale, Critical Year, 117-21; McKitrick, Johnson and Reconstruction, 377-94.

40 In his discussion, Beale cites only three letters written after May, 1866. The others dated from October, 1865, to April, 1866. Since Beale assumed the confrontation between Johnson and the party (whom he lumps together as "Radicals") was inevitable, he concluded Johnson had delayed nearly nine months before beginning to bring government officers into line. Actually, as has been noted, there were many conservative and center Republicans who hoped to cooperate with Johnson. Their hopes for harmony materially weakened the radicals. If Johnson had begun an attack through the patronage, the non-radicals would certainly have realized their hopes were ephemeral.

41 In Wisconsin, where Doolittle wielded the axe, sixteen postmasters were decapitated. In New York, fourteen. This information was derived from a tedious search of the Senate Executive Journal, XVI. It is possible a few more removals escaped my attention.

42 House Executive Document No. 96, 39 Cong., 2 Sess.

43 Doolittle to Mrs. Mary Doolittle, Apr. 9, 1866. Doolittle Ms.; House Report No. 7, 40 Cong., 1 Sess., app., 270.

Cong. Globe, 39 Cong., 1 Sess., 688 (Feb. 6, 1866).

Cong. Globe, 39 Cong., 2 Sess., 1903, 1911 (Feb. 28, 1867); Hyman, Era of the Oath, 60-68.

The Judiciary committee had agreed to the measure at the urging of its chairman, Trumbull, who represented a state (Illinois) with numerous local factional rivalries among Republicans. Timothy Otis Howe, of Wisconsin, also spoke for the measure. Both were beginning to feel the effect of the "axe," long before other Republican Senators. Trumbull's papers were filled with complaints re the patronage at this time, as disappointed office-seekers and veterans, jealous of civilians' domination of Illinois offices, began to use the dispute between Johnson and congressional Republicans to urge the removal of their opponents from their positions. See also Howe to Horace Rublee, June 21, 1866. Although a dissenting member of the Judiciary committee led Republicans opposing the patronage restriction, Howe blamed Fessenden for its defeat. Howe to Rublee, Apr. 13, 1867. Howe Ms. The votes on the measure are in the Cong. Globe, 39 Cong., 1 Sess., 2339 (May 2, 1866), 2423 (May 7, 1866), and 2559 (May 11, 1866).

Ibid., 39 Cong., 2 Sess., 1739, 1966 (Mar. 2, 1867). Williams' bill was the one which passed. Sherman's (Senate Bill No. 452) and Henderson's (S.B. No. 315) are in the Senate bill file, 39 Cong., R.G. 46, N.A. Sherman and Williams had opposed the 1866 version.

Dawes to Mrs. Electa Dawes, July 12, 1866. Dawes Ms. L.C.

N.Y. Times, July 16, 1866, pp. 4-5; July 18, 1866, p. 4; Krout (ed.), "Raymond on the July Caucuses," 835-42.
51 Cong. Globe, 39 Cong., 1 Sess., 3912-13 (July 18, 1866), 3933-34 (July 19, 1866), 3981-85 (July 20, 1866), 4009, 4017 (July 21, 1866), 4113-15, 4155-56 (July 25, 1866). Dawes to Mrs. Dawes, July 17, 1866. Dawes Ms.

52 Sheridan to Grant, Apr. 19, 1867. Headquarters of the Army (hereafter HQA), letters rec'd. R.G. 108, N.A.

53 Thomas and Hyman, Stanton, 534-35.

54 U.S. Department of Justice, Opinions of the Attorneys General of the United States, XII, 182-206.

55 Welles, Diary, III, 110 (June 20, 1867); Sickles to the Adjutant General, June 19, 1867. Stanton Ms. L.C.

56 Gorham, Stanton, II, 381.

57 Fessenden to Grimes, June 18, 1867, quoted in Jellison, Fessenden, 221; N.Y. Times, June 12, 1867, p. 4; Schenck to R. B. Hayes (sent to all representatives), June 21, 1867. Hayes Ms.; E. D. Morgan to Fessenden, June 22, 1867; Morgan to Conkling, June 22, 1867; Conkling to Morgan, June 24, 1867. Morgan Ms.; Boston Daily Advertiser, June 21, 1867, p. 2.

58 Boston Daily Advertiser, July 4, 1867, p. 1; Cong. Globe, 40 Cong., 1 Sess., 480 (July 3, 1867).

59 The nine Senators voted with Sumner either to amend the resolution to remove its restriction, or against the resolution itself. They were Chandler, Drake, Fowler, Howe, Ross, Thayer, Tipton, and Wade among the Republicans and Buckalew among the Democrats. Ross, at least, was primarily interested in legislation to protect the frontier against Indian raids. Ibid., 481-99 (July 5, 1867). The votes are at pp. 487 and 498.

60 Dawes to Mrs. Electa Dawes, July 9, 16, 1867. Dawes Ms.; Boston Evening Journal, July 5, 1867, p. 4; July 7, 1867, p. 4; July 8, 1867, p. 4.

61 Cong. Globe, 40 Cong., 1 Sess., 589 (July 11, 1867).

62 Ibid., 590 (July 11, 1867).

64. *Ibid.*, 749 (July 20, 1867).

65. The Chandler-Fessenden exchange is *ibid.*, 749-52 (July 20, 1867).

66. *Ibid.*, 757, 761, 764 (House), 753, 753-54, 755 (Senate; July 20, 1867). In the House 47 Republican radicals and centrists opposed the conference report, which was carried by the united effort of 51 conservative and centrist Republicans and 10 Democrats and Johnsonians. In the Senate 15 conservatives and centrists and two Democrats defeated 14 radicals and centrists.

67. Stevens, managing the Supplementary Reconstruction bill in the House, refused to accept Butler's amendment to remove all state officers. Butler then opposed seconding the previous question, which cut off the possibility of amendment, but he lost. *Ibid.*, 541, 542 (July 9, 1867). Stevens probably agreed with Butler himself, but as manager of the bill he represented the Reconstruction committee which reported it, not his own inclinations. In the Senate, Henry Wilson proposed an amendment similar to Butler's, but it too was defeated, 21 to 11. *Ibid.*, 528-33 (July 9, 1867). Sumner's amendment was ruled out of order by a vote of 22 to 11. *Ibid.*, 581 (July 11, 1867). The Senate generally rejected a series of amendments Sumner offered, although it finally accepted one forbidding discrimination on account of color in appointing registration boards. *Ibid.*, 580-84, 586 (July 11, 1867).

68. *Ibid.*, 625 (July 13, 1867). See also Schenck's and Logan's remarks, *ibid.*, 596 (July 11, 1867) and appendix, 15 (July 12, 1867), and Julian's letter to his brother's newspaper: Centreville *Indiana True Republican*, July 18, 1867, p. 10. The text of the passed measure is in the *Cong. Globe*, 40 Cong., 1 Sess., appendix, 39-40.


72 Grant to Pope, Sept. 9, 1867. HQA, letters sent. R.G. 108, N.A.; Swanberg, Sickles the Incredible, 290-93.

73 Speed to Sumner, Sept. 12, 1867. Sumner Ms.; N.Y. Times, Sept. 14, 1867, p. 4. For a full compilation of sources indicating Republicans seriously worried the possibility of a coup d'etat, see note 36. pp. 723-24. supra.


75 Clemenceau, American Reconstruction, 102-103 (Sept. 10, 1867).

76 Logan Uriah Reavis to Trumbull, Aug. 30, 1867. Trumbull Ms. L.C. Reavis was a well-known western nationalist, who among other things advocated moving the national capital to St. Louis. This was not then considered so outlandish a proposition as it seems today.
CHAPTER XIII

1 Beale, _The Critical Year_, passim.

2 In a long letter to Tilton, Sumner urged his measure as a necessity, without which Republicans would eventually lose power in the North. Tilton published the letter in the Independent and endorsed Sumner's position. Sumner's proposition received further support from the Border State Convention, meeting in Baltimore early in September. As the only national Republican meeting of 1867, it was given wide publicity. Presided over by Horace Maynard, many leading border state Republicans attended, including Congressman Robert T. Van Horn, former Senator John A. J. Creswell, and Tennessee leader (soon to be Representative) Roderick R. Butler. _N. Y. Independent_, May 2, 1867, p. 4; _McPherson scrapbook: campaign of 1867_, I, 68-73; _N. Y. Times_, Sept. 13, 1867, p. 1. Trumbull argued Congress had no power to enfranchise northern blacks. _Ibid._, Sept. 2, 1867, p. 2.


4 Gettysburg Star and Herald, quoted in the _N. Y. Times_, May 29, 1867, p. 1. The letter was reported across the nation by the Associated Press.

5 _N. Y. Times_, June 7, 1867, p. 5.

6 _N. Y. Times_, June 14, 1867, p. 4; Boston Daily Advertiser, May 16, 1867, p. 2.
Boston Daily Advertiser, June 13, 1867, p. 2; Cincinnati Commercial, June 15, 1867, p. 4.

N.Y. Times, May 2, 1867, p. 4.

N.Y. Independent, May 9, 1867, p. 1; June 6, 1867, p. 1; Cincinnati Commercial, July 8, 1867, p. 5; Boston Daily Advertiser, July 4, 1867, p. 2.


N.Y. Tribune, May 31, 1867, p. 4.

Van Deusen, Greeley, 352-56; N.Y. Tribune, May 24, 1867, p. 4.


Stevens in Gettysburg Star and Herald, quoted in the N.Y. Times, May 29, 1867, p. 5; Stevens speech before the American Anti-Slavery Society, quoted in the N.Y. Tribune, May 8, 1867, p. 1; N.Y. National Anti-Slavery Standard, Mar. 30, 1867, p. 2; Apr. 6, 1867, p. 2; Oct. 26, 1867, p. 2. The influential abolitionist, Parker Pillsbury, called upon the anti-slavery vanguard to leave the party in a letter published by the Standard, Nov. 2, 1867, p. 1.


Cong. Globe, 39 Cong., 1 Sess., 75 (Dec. 18, 1865).

Ibid., 1468 (Mar. 16, 1866).

Ibid., 1614 (Mar. 23, 1866, 1854 (Apr. 9, 1866).

The second Loan bill passed 83-53. Ibid. But the division in the whole House was about 84 to 43 in favor of some contraction. Groups 0 and 1 detailed in Appendix A favored limited contraction, while groups 2, 3 and 4 opposed it.

Ibid., 2 sess., 1426 (Feb. 21, 1867). This was defeated by the Senate, however. Sharkey, Money, Class, and Party, 86-88.

Those who shifted noticeably toward expansionist views: William Boyd Allison (Iowa), Shelby Moore Cullom* (Ill.), Columbus Delano (Ohio), John W. Farnsworth (Ill.), John H. Farquhar (Ind.), Godlove S. Orth (Ind.), William H. Randall* (Ky.), Philetus Sawyer (Wis.), Thomas N. Stilwell (Ind.),
Charles Upson (Mich.), Samuel L. Warner (Conn.), Henry D. Washburn (Ind.), and Kellian V. Whaley* (W. Va.), (all Republicans); Michael C. Kerr, Samuel S. Marshall* (Ill.), Burwell C. Ritter (Ky.), Lewis W. Ross* (Ill.), Nathaniel Taylor (Tenn.), Anthony Thornton* (Ill.), Lawrence S. Trimble* (Ky.), (all Democrats); and Thomas E. Noell (Mo.), (a conservative Unionist who ranked with Democrats by the second session). Those who shifted toward contractionism: Roswell Hart (N. Y.), Demas Hubbard (N. Y.), Calvin T. Hulburd (N. Y.), George F. Miller (Pa.), James K. Moorhead (Pa.), Thomas Williams (Pa.), (all Republicans). An asterisk (*) denotes a shift of major proportions. Representatives from Illinois, Indiana, and Ohio seem to have been most inclined to shift toward expansionism. Sharkey, Money, Class and Party, 84-88.

For more on the career of this interesting and important reformer, see Harold Francis Williamson's Edward Atkinson: The Biography of an American Liberal, 1827-1905, (Boston, 1934).

Atkinson to McCulloch, Oct. 12, 1866. Atkinson Ms.


Atkinson to Sumner, July 8, 1867. Sumner Ms.

The Association's leaders included such financial conservatives as Emory Washburn, ex-Governor Andrew, Richard Henry Dana, Alexander H. Rice, John Murray Forbes, Governor William Claflin, and John G. Palfrey. Although men of conservative tendencies preponderated in its membership, radicals like Forbes and George Bailey Loring joined the organization also. The association's circular is quoted in the N.Y. National Anti-Slavery Standard, July 20, 1867, p. 3.


38 McCulloch to Johnson, Aug. 19, 1867. Johnson Ms.

39 William G. Moore, Johnson's private secretary, recorded that the attacks had an effect on the President, who began to suspect McCulloch of harboring presidential aspirations. Moore, notes, Aug. 14, 1867. Johnson Ms.

40 Andrew's supporters were busily putting him in a position to run for the presidency. When Smythe suggested to one of his principal adherents, Frank E. Howe, that Andrew join the Cabinet, Howe immediately demanded that the ex-governor be given a major say in any further Cabinet changes. The importance of this for Andrew's presidential aspirations is obvious. But Howe encouraged Andrew to accept the overture in any case. If he could not dominate the Cabinet, he suggested, "Would not an issue with the Pres. and a resignation perchance do you good?" Howe to Andrew, Sept. 25, 1867. Andrew Ms. General Sherman mentioned his suggestions to his brother. William T. to John Sherman, Oct. 7, 1867, quoted in Thorndike (ed.), Sherman Letters, 297-98.

41 Sherman to Colfax, Oct. 20, 1867. Colfax Ms. Rush Rhees Library, University of Indiana.

42 The legislation had the support of the Military Affairs committee, led by a fellow radical, Robert C. Schenck, Cong. Globe, 38 Cong., 1 Sess., 427-31 (Feb. 1, 1864); Williams, Lincoln and the Radicals, 334-37; Zornow, Lincoln & the Party Divided, 87-88, 94.

Hesseltine, Grant, 61.


Welles, Diary, II, 592, 593, 595 (Sept. 17, 1866), 646-47 (Dec. 24, 1866); Browning, Diary, II, 103-104 (Oct. 25, 1866); Sylvester Mowry to Doolittle, Dec. 12, 29, 1867, quoted in "Doolittle Correspondence," Publications of the Southern History Association, XI (Jan., 1907), 6-9; Hesseltine, Grant, 72-78.

Welles, Diary, III, 184-85 (Aug. 26, 1867); Thomas Ewing, Jr., to Thomas Ewing, Sr., Sept. 4, 1867. Ewing Family Ms. L.C.


Orth to Colfax [spring, 1867]. Orth Ms. Indiana State Library, Indiana Division.


Fessenden to Grimes, June 18, 1867. Fessenden Ms. Wade, as president pro tempore of the Senate was next in line for the presidency if something happened to Johnson, hence Fessenden's reference to him as "V. P."

Barnes, Memoir of Thurlow Weed, 457-58; Van Deusen, Weed, 327-28; Hesseltine, Grant, 91-92.

N.Y. Times, Oct. 17, 1867, p. 4; Nov. 10, 1867, p. 4; Nov. 27, 1867, p. 4.
55 Chester L. Barrows, William Maxwell Evarts: Lawyer, Diplomat, Statesman (Chapel Hill, 1941), 138.


57 Curtin to Washburne, Oct. 17, 1867. Washburne Ms.


59 Badeau, Grant in Peace, 59-60.


61 Forney to Sumner, July 10, 1867. Sumner Ms.

62 Cincinnati Commercial, July 15, 1867, p. 2. Weed discerned this intention among New York Democrats, and Montgomery Blair discussed the possibility with Gideon Welles, who believed that though Grant preferred Democrats to Republicans, he would rather accept a Republican nomination if offered. Barnes, Memoir of Thurlow Weed, 457-58; Welles, Diary, III, 121 (June 27, 1867).

63 N.Y. Herald, July 6, 1867, p. 4.

64 N.Y. Herald, July 14, 1867, p. 6; July 24, 1867, p. 4.


66 N.Y. Independent, Aug. 29, 1867, p. 4; Phillips in the N.Y. National Anti-Slavery Standard, Aug. 24, 1867, p. 2; Clemenceau, American Reconstruction, 93.

67 N.Y. Tribune, Aug. 15, 1867, p. 4; Aug. 21, 1867, p. 4; Aug. 17, 1867, p. 4; Aug. 20, 1867, p. 4.
68 N.Y. Tribune, Aug. 15, 1867, p. 4.

69 Fessenden to Grimes, Sept. 20, 1867. Fessenden Ms. Bowdoin College Library.

70 White to Washburne, Aug. 13, 1867. E. B. Washburne Ms. L.C.


72 Boston Evening Journal, Sept. 6, 1867, p. 2.

73 N.Y. Independent, Sept. 5, 1867, p. 4.

74 Blaine to Israel Washburn, Sept. 12, 1867 [?], quoted in Gaillard Hunt, Israel, Elihu and Cadwallader Washburn: A Chapter in American Biography (N.Y., 1925), 122-23, at 122. The letter seems to have been dated earlier than one would expect, in light of Blaine's confidence that Republicans were not to succeed at the polls. However, it is dated after the Maine elections, in which Republicans did less well than the previous year.


77 Lieber to ?, Nov. 6, 1867. Lieber Ms. L.C.

78 Blaine to Israel Washburn, Sept. 12, 1867, quoted in Hunt, Washburne, 122-23, at 122.
Banks to Mrs. Banks, Nov. 13, 1867. Banks Ms. Essex Institute, Salem, Massachusetts.


Binney to John A. Andrew, Sept. 13, 1867. Andrew Ms.; Wade to Chandler, Oct. 10, 1867. Z. Chandler Ms.


Fessenden to Grimes, Oct. 20, 1867. Fessenden Ms. Bowdoin College Library.

N.Y. Independent, Oct. 17, 1867, p. 4; Nov. 14, 1867, p. 4.

Boston Evening Journal, Nov. 9, 1867, p. 4.


Historical Society; William Endicott, "Reminiscences of Seventy-five Years," *Proceedings of the Massachusetts Historical Society*, XLVI (Nov., 1912), 230-31. Unger's Greenback Era is not organized chronologically before 1868, treating the development of differing financial theories and interests before that date separately. Nonetheless, it is indispensable to an understanding of the financial issue at this time.


91 Grimes to Atkinson, Sept. 15, 1867. Atkinson Ms.

92 See Chart 16, Chapter One, *supra*.

93 Cooke to John Sherman, Oct. 12, 1867. Sherman Ms.; Grimes to Atkinson, Oct. 14, 1867. Atkinson Ms. Grimes was referring to Sumner's Redpath interview, in which he had complained of the conservatives' obstructiveness. See pp. 385-86, *supra*.


97 Cochrane to Washburne, Nov. 9, 1867; Curtin to Washburne, Oct. 17, 1867; John Meredith Read to Washburne, Nov. 7, 1867; E. H. Rollins to Washburne, Oct. 11, 1867. E. B. Washburne Ms.; Fessenden to Grimes, Oct. 20, 1867. Fessenden Ms. Bowdoin College Library; E. D. Morgan to C. E. Bishop, Nov. 17, 1867. Morgan Ms.

N.Y. Times, Nov. 8, 1867, p. 8.

CHAPTER XIV

1. Cochrane to Washburne, Nov. 16, 18, 22, 25, Dec. 5, 6, 9, 1867; Jan. 1, 1868; Cochrane, Prosper M. Whetmore, and James Wadsworth to Washburne, Nov. 25, 1867. E. B. Washburne Ms. L.C.; Welles, Diary, III, 249-50 (Dec. 27, 1867); Barnes, Memoir of Thurlow Weed, 457-58; Van Deusen, Weed, 327-28.

2. Centreville Indiana True Republican, Dec. 12, 1867, p. 93 (the dispatch was dated Dec. 12); N.Y. Herald, Nov. 30, 1867, p. 5; E. J. Sherman to Butler, Dec. 6, 1867. Butler Ms. L.C.


Report on the Impeachment of the President, House Report No. 7, 40 Cong., 1 Sess. (Nov. 25, 1867). The law of impeachment and the Judiciary committee reports are discussed in Chapters XII and XIV, supra.

Richardson (ed.), Messages and Papers of the Presidents, VI, 558-81.

The President in reality was warning Congress against any attempt to suspend him from office pending a trial on impeachment. He gave as an example of an act to which resistance would be justified one "to abolish a coordinate department of the Government." Ibid., 569. On November 30 Johnson asked his Cabinet's advice on his course in case Congress should attempt to suspend him during an impeachment trial. The members agreed he should not submit. The critical voice was that of Grant, who would control the army. He told the President he would support the President with military force, even at the risk of civil war. Browning, Diary, II, 167-68 (Nov. 30, 1867).


Boutwell's speech may be found in the Cong. Globe, 40 Cong., 2 Sess., appendix, 54-62 (Dec. 5, 6, 1867).

Wilson's speech may be found in the Cong. Globe, 40 Cong., 2 Sess., appendix, 62-65 (Dec. 6, 1867).


Julian to Mrs. Grace Giddings Julian, Dec. 8, 1867, Julian Ms.

N.Y. Independent, Dec. 12, 1867, p. 4.


20 N.Y. Times, Dec. 21, 1867, p. 4.

21 Fessenden to Elizabeth Fessenden Warriner, Dec. 15, 1867; Fessenden to William H. Fessenden, Dec. 7, 1867; Fessenden to Samuel Fessenden, Dec. 7, 1867; Fessenden Ms. Bowdoin College Library; John Binney to Fessenden, Dec. 9, 1867. Fessenden Ms. L.C.

22 Marble to Doolittle, Dec. 29, 1867, quoted in "Doolittle Correspondence," Publications of the Southern Historical Association, XI (Jan., 1907), 5-7.


24 Hancock to Grant, Jan. 15, Feb. 7, 9, 11, 27, 1868; Hancock to Lorenzo Thomas, Feb. 27, 1868. Headquarters of the Army (hereafter HQA), letters received. N.A., R.G. 108; Grant to Hancock, Feb. 21, 29, 1868. HQA letters sent. N.A., R.G. 108. Some of this correspondence and more not cited may be found in House Executive Documents Nos. 172 and 209, 40 Cong., 2 Sess.


30. Blodgett to John Sherman, Dec. 30, 1867. Sherman Ms. This was a circular letter sent to many congressmen; Underwood to E. B. Washburne, Dec. 9, 1868. Washburne Ms.


33. White to Washburne, Jan. 16, 1868. E. B. Washburne Ms.


It is possible that some of the committee members agreed with Stevens in committee but voted against him on the floor of the House. But it is clear he did not command a majority as the committee bill did not reflect his views.


This survey may be found in the subject file: Virginia constitutional convention in the Schofield Ms. L.C.


CHAPTER XV

1. U.S. Senate, Message of the President of the United States, and the Report of the Committee on Military Affairs, Etc., in Regard to the Suspension of Hon. E. M. Stanton from the Office of Secretary of War (Washington, 1868), 3-11. The President's message is also printed in the Senate Executive Journal, XVI, 95-105 (Dec. 12, 1868).

2. Thomas and Hyman, Stanton, 589.

3. For the best and most insightful analysis of the Supreme Court's role during reconstruction, see Stanley I. Kutler, Judicial Power and Reconstruction Politics (Chicago & London, 1968).

4. See the correspondence between Grant and Johnson debating what actually occurred at this meeting in McPherson (ed.), Political History of the U. S. during Reconstruction, 283-88 and the written testimony of Johnson's Cabinet in support of the President's contentions, ibid., 289-92.

5. Sherman was quite confident of this. It is probable he discussed his plan with his brother, the Senator. He certainly knew the reluctance of such men as his brother, Fessenden, Grimes, Trumbull, and others to force a confrontation with the President. Before the Senate voted on accepting Stanton's removal, Thomas Ewing, Jr., told Johnson he had been assured Cox's nomination would settle the matter. Ewing to Johnson [Jan. 12?, 1868]. Johnson Ms.


7. Senate Executive Journal, XVI, 129 (Jan. 11, 1868), 129-30 (Jan. 13, 1868). The Senators I have identified as abstaining had voted on roll calls taken shortly before the votes in question. Ibid., 129 (Jan. 11, 1868); Cong. Globe,

8 Thomas and Hyman, Stanton, 570-71. The correspondence involved in the controversy may be found in McPherson (ed.), Political History of Reconstruction, 282-93.


10 N.Y. Herald, June 22, 1868, p. 5; Cong. Globe, 40 Cong., 2 Sess., 1325-27 (Feb. 21, 1868). For impeachment in the Reconstruction committee, see ibid., 1087-88 (Feb. 10, 1868); Bingham to Mrs. Bingham, Feb. 16, 1868. Bingham Ms. Ohio State Historical Society Library.


12 Senate Executive Journal, XVI, 170-72 (Feb. 21, 1868). Of those not voting, Howard, Corbett, Chandler, and Fessenden were almost certainly present. Connell, Frelinghuysen, Henderson, and Howe had voted on an earlier question. Sherman and Howe had both committed themselves in debate on the Tenure of Office act to the position that Cabinet members were not covered by it.

13 Cullom, Fifty Years of Public Service (N.Y., 1911), 154.

14 Fessenden to Elizabeth Fessenden Warriner, Feb. 22, 1868. Fessenden Ms. Bowdoin College Library.
Schenck to Sally Schenck, Feb. 21, 1868. Schenck Ms. Rutherford B. Hayes Library, Fremont, Ohio.

Welles, Diary, III, 315 (Mar. 17, 1868).


Ibid., 1367 (Feb. 22, 1868).

Ibid., 1386 (Feb. 24, 1868).

Ibid.

Ibid., 1368 (Feb. 22, 1868).

Ibid., 1337 (Feb. 22, 1868).

Ibid.


Ibid., 1515 (Feb. 18, 1867).

Ibid., 1514-18 (Feb. 18, 1867).

Ibid., 1352 (Feb. 22, 1868).

Ibid., 1387 (Feb. 24, 1868).


Ibid., 1342 (Feb. 22, 1868).
32 Pomeroy, Constitutional Law, 444-45, 482-92. Pomeroy's work was published in 1870, but his language clearly indicates he wrote his section on impeachment prior to the proceedings against Johnson.

33 Dewitt suggests that Republicans arraigned the President's conduct prior to Stanton's removal because they doubted the sufficiency of their impeachment on that action alone. A reading of the debate on impeachment in the House uncovers no such doubts. Dewitt's conclusion reflects his misunderstanding of the division among Republicans on the law of impeachment.

34 The House debate on impeachment may be found in the Cong. Globe, 40 Cong., 2 Sess., 1336-69 (Feb. 22, 1868), 1362-1402 (Feb. 24), appendix, 155-258, 263-66 (Feb. 22, 24, 1868).

35 Stevens to Butler, Feb. 28, 1868. Butler Ms.

36 The original article may be found in the Cong. Globe, 40 Cong., 2 Sess., 1542-43 (Feb. 29, 1868), a slightly amended version ibid., 1613-14 (Mar. 2). Butler's proposed article is quoted ibid., 1615 (Mar. 2).

37 Ibid., 1616-18 (Mar. 2, 1868).


42 Ibid., 1642 (Mar. 3, 1868).

43 Ibid., 1642 (Mar. 3, 1868).
They may be found _Cong. Globe_, 40 Cong., 2 Sess., 1515-16 (Feb. 29, 1868).

_Ibid._, 1592 (Mar. 2, 1868).

Daniel Sickles to E. B. Washburne, Mar. 1, 1868. Washburne Ms.

For the discussion of this question, see _Cong. Globe_, 40 Cong., 2 Sess., 1521-26 (Feb. 29, 1868), 1591-92, 1593-94, 1602-1603 (Mar. 2, 1868).

_Ibid._, 1598 (Mar. 2, 1866).

_Ibid._, 1596 (Mar. 2, 1866).

_Ibid._, 1601 (Mar. 2, 1866).


Sumner to Lieber, Mar. 27, 1868. Sumner Ms.


_Ibid._, 1578 (Mar. 2, 1868).

The whole discussion may be found in _U.S. Senate, The Trial of Andrew Johnson, President of the United States, Before the Senate of the United States, on Impeachment by the House of Representatives for High Crimes and Misdemeanors_ (3 vols., Washington, 1868), III, 360-88 (Mar. 5, 1868).

_Ibid._, III, 388-94 (Mar. 6, 1868).

_Ibid._, I, 12 (Mar. 6, 1868).
58. Ibid., I, 176 (Mar. 31, 1866).

59. John B. Henderson, "Emancipation and Impeachment," Century Magazine, LXXXV (Dec. 1912), 202. Henderson wrote his efforts were "in vain." That did not mean he failed to win approval for his motions. In fact, they passed. He must have meant that despite their passage the Senate did not act in accordance with proper judicial procedure. Others, of course, disagreed.

60. The discussions and votes on these issues are in Trial of Andrew Johnson, I, 175-87 (Mar. 31, 1866), 187-88 (Apr. 1, 1866).

61. Rule VIII, quoted ibid., I, 14.

62. Ibid., I, 17-34, 35 (Mar. 13, 1868).

63. Ibid., I, 82 (Mar. 23, 1868).

64. Ibid., I, 84-86 (Mar. 24, 1868).

65. Ibid., I, 276 (Apr. 3, 1868).

66. Ibid., I, 632 (Apr. 17, 1868).

67. Ibid., I, 631 (Apr. 16, 1868), 632-33 (Apr. 17, 1868).

68. Ibid., II, 141 (Apr. 24, 1868).


70. Garfield to J. H. Rhodes, Apr. 28, 1868. Garfield Ms. L.C.

CHAPTER XVI

The only monographic study of impeachment is Dewitt's, previously cited. Other historians of the period have generally accepted this "devil" theory, with the "Radicals" cast as the devils. See Claude G. Bowers, The Tragic Era: The Revolution after Lincoln (Boston, 1929); Milton Lomask, Andrew Johnson: President on Trial (N.Y., 1960); George Fort Milton, The Age of Hate: Andrew Johnson and the Radicals (N.Y., 1930); Robert W. Winston, Andrew Johnson: Plebeian and Patriot (N.Y., 1928). David Donald, Hans L. Trefousse, and Eric L. McKitrick have pointed out the circumstances of impeachment, but they still argue the flimsiness of the case and disparage its political motivation. See Donald, "Why They Impeached Andrew Johnson," American Heritage, VIII (Dec., 1956), 21-25, 101-102; McKitrick, "Afterthought: Why Impeachment?" in McKitrick (ed.), Andrew Johnson: A Profile (N.Y., 1969), 164-92; Trefousse, "Radical Republicans, Reconstruction, and the Executive and the Impeachment of Andrew Johnson" (unpublished paper delivered at the 1968 convention of the American Historical Association). Harold M. Hyman details the critical battle for control of the army which led to impeachment and offers a chronology and interpretation completely at odds with the justifications presented by Johnson's counsel during the trial. Hyman, "Johnson, Stanton and Grant: A Reconsideration of the Army's Role in the Events Leading to Impeachment," American Historical Review, LXVI (Oct., 1960), 85-100; Thomas and Hyman, Stanton, 589-90.

The best essay upon impeachment is William A. Dunning's "The Impeachment and Trial of President Johnson," in his Essays on the Civil War and Reconstruction (N.Y., 1898), 253-303. Without judging the case, Dunning clearly recognized the weakness of many of the arguments Johnson's lawyers presented and discussed the points of law with a fuller understanding and deeper insight than any historian since.

The anti-impeachment bias has taken deep root in more general constitutional histories and studies of the presidency. See, for example, John W. Burgess, Reconstruction and the Constitution, 1866-1876 (N.Y., 1902), 184; Frederick Trevor Hill, Decisive Battles of the Law: Narrative Studies of Eight Legal Contests Affecting the History of the United States Between the Years 1800 and 1886 (N.Y. & London, 1907), 144, 156;

James E. Sefton has made a more detailed analysis of the literature on impeachment. Sefton, "The Impeachment of Andrew Johnson: A Century of Writing," Civil War History, XIV (June, 1968), 120-47.


3 N.Y. National Anti-Slavery Standard, Apr. 4, 1868, p. 2.

4 Dana to Mrs. Sara Dana, Mar. 22, 1868. Dana Ms. Massachusetts Historical Society.

5 Ewing to Hugh Ewing, Mar. 8, 1868. Hugh Ewing Ms.

6 That is, the .6% decline in the Republican share of the total vote amounted to 1.1% of the 52.3% of the vote Republicans received the year before.

7 Due to Connecticut's well-gerrymandered legislative districts, however, Republicans actually increased their narrow control of the state legislature slightly.

8 Fessenden to William H. Fessenden, May 3, 1868; Fessenden to James D. Fessenden, Apr. 22, 1868. Fessenden Ms. Bowdoin College Library.
Fessenden to Elizabeth Fessenden Warriner, Dec. 8, 1866; ibid., May 13, 1866, Mar. 4, 1867. Fessenden Ms. Bowdoin College Library; Jellison, Fessenden, 213. Fessenden was the only Republican to write McCulloch regularly on patronage matters, and McCulloch regularly obliged him. Fessenden to McCulloch, Aug. 15, 17, 29, Sept. 7, 11, 15, Nov. 11, 1866, Jan. 9, 27, June 4, 15, July 27, Sept. 2, 1867. McCulloch Ms. L.C.; Fessenden to Elizabeth Fessenden Warriner, Feb. 6, 1867. Fessenden Ms. Bowdoin College Library; McCulloch to Fessenden, Sept. 11, 1866. Fessenden Ms. L.C. Postmaster-General Alexander W. Randall also willingly helped Fessenden at least once in 1867. Randall to Fessenden, Sept. 16, 1867. Frederick M. Dearborn collection, Houghton Library.

Fessenden to Elizabeth Fessenden Warriner, Dec. 15, 1867. Fessenden Ms. Bowdoin College Library.

Fessenden to William H. Fessenden, May 3, 1868. Fessenden Ms. Bowdoin College Library.

Boston Daily Advertiser, June 17, 1867, p. 2.

Chicago Tribune, Apr. 21, 1868, p. 2.

Alley to Butler, May 2, 1868. Butler Ms. L.C.

Garfield to Rhodes, May 7, 1868, quoted in Smith, Garfield, I, 425.

Trial, II, 270-71 (Apr. 28, 1868).


18 Atkinson to Sumner, Mar. 4, 1868. Sumner Ms.

19 Chase to Long, Apr. 19, 1868, quoted in Warden, Chase, 686-87.


21 Gaillard Hunt, "The President's Defense: His Side of the Case as Told by his Correspondence," Century Magazine, LXXXV (Jan., 1913), 430-33; Thomas Ewing, Sr. to Johnson, Mar. 1, 1868. Johnson Ms.

22 See pp. 462-64, supra.


24 Browning, Diary, II, 195 (May 5, 1868); Richardson (ed.) Messages and Papers of the Presidents, VI, 632.

Chicago Tribune, May 14, 1868, p. 2.

Boston Daily Advertiser, Jan. 22, 1867, p. 2. The Advertiser made these observations when the impeachment question first arose, in January, 1867.

Senate Exec. Journal, XVI, 171 (Feb. 21, 1868); Edmunds, "Ex-Senator Edmunds on Reconstruction," 863-64.

The six were Anthony, Edwards, Frelinghuysen, Sherman, Sprague, and Willey.

Senator Willey often voted with the acquitters on this question. Significantly, Henderson later informed the great historian, William A. Dunning, that Willey had pledged to vote for acquittal if his vote was needed. Dunning, Reconstruction, Political and Economic, 1865-1877 (N.Y. & London, 1907), 107.


See Boutwell's argument in Trial of Andrew Johnson, II, 109-17 (Apr. 23, 1868).


Ibid., I, 94-95 (Mar. 30, 1868). The managers' arguments on the definition of an impeachable crime may be found ibid., I, 88-89, 94-95, 123-47 (Mar. 30, 1868. Butler); ibid., II, 19-23 (Apr. 22, 1868. Logan).

Ibid., II, 139-40 (Apr. 23, 1868).

Ibid., II, 286-89 (Apr. 29, 1868). Stanbery argued the alleged violation was merely one of form, of a law to regulate the mode of executive administration, not of an act that of itself was a crime. Ibid., II, 364 (May 2, 1868).
37 Ibid., II, 190 (Apr. 25, 1868).

38 Ibid., II, 153 (Apr. 24, 1868); Curtis at ibid., I, 383 (Apr. 9, 1868); Stanbery at ibid., II, 363-64, 370-71 (May 2, 1868).

39 Butler in ibid., I, 89-90 (Mar. 30, 1868); Logan, ibid., II, 18 (Apr. 22, 1868); Bingham, ibid., I, 24 (Mar. 13, 1868).

40 Ibid., II, 276-80 (Apr. 28, 1868; quoted material on p. 278).

41 Ibid., I, 90 (Mar. 30, 1868).

42 Ibid., II, 259, 260 (Apr. 28, 1868).

43 Boutwell, ibid., II, 93-94 (Apr. 22, 1868); Logan, ibid., II, 48-49 (Apr. 22, 1868); Stevens, ibid., II, 221-22 (Apr. 27, 1868); Bingham, ibid., II, 452 (May 5, 1868); Curtis, ibid., I, 379-82 (Apr. 9, 1868); Groesbeck, ibid., II, 194-95 (Apr. 25, 1868); Stanbery, ibid., II, 366-70 (May 2, 1868).

44 Stevens, ibid., II, 223-24 (Apr. 27, 1868); Williams, ibid., II, 237 (Apr. 27, 1868); Bingham, ibid., II, 450 (May 5, 1868); Evarts, ibid., II, 350-51 (May 1, 1868).

45 Estoppel is a legal term. It arises when a party to an action by word or deed accepts the truth of a certain set of facts and then later denies that truth. The law estops him from so doing.

46 Curtis, ibid., I, 394 (Apr. 9, 1868).


48 Curtis, ibid., I, 378 (Apr. 9, 1868); Groesbeck, ibid., II, 192-93, 197 (Apr. 25, 1868); Stanbery, ibid., II, 372-73 (May 2, 1868).
According to the notes kept by Johnson's secretary, William Moore, the President consciously rejected the alternative of removing Stanton in August in disregard of the Tenure of Office act. At the same time Moore recorded that "it seemed to be well understood that the bill had been passed for the purpose of retaining Mr. Stanton in President Johnson's Cabinet." Moore notes, Aug. 11, 13, 1867. Johnson Ms. Johnson sent his message to the Senate explaining the grounds for Stanton's suspension specifically in compliance with the law. Ibid., Dec. 12, 1867. Shortly before he removed Stanton in February, Johnson expressed to Democrat Jerome B. Stillson his determination to replace Stanton come what may. "He expects to crush his enemies," Stillson wrote S. L. M. Barlow, "and he will." Stillson to Barlow, Feb. 12, 1868. Barlow Ms. Huntington Library.

Ibid., II, 209 (Apr. 25, 1868).

Butler, ibid., I, 121 (Mar. 30, 1868).

Ibid., II, 135 (Apr. 23, 1868).

Evarts, ibid., II, 289 (Apr. 29, 1868).

See especially Williams, ibid., II, 231-34 (Apr. 27, 1868).

Boutwell, ibid., II, 75-77 (Apr. 22, 1868).

The first quote is Boutwell's, ibid., 67-68 (Apr. 22, 1868); the second Logan's, ibid., 42 (Apr. 22, 1868).

Curtis, ibid., I, 384-85 (Apr. 9, 1868); Groesbeck, ibid., II, 195-96 (Apr. 25, 1868); Stanbery, ibid., 380-82 (May 2, 1868).
Richardson (ed.), Messages and Papers of the Presidents, VI, 587-88.

Ibid., 622-27, at 622-25.

Trial of Andrew Johnson, I, 540 (Apr. 15, 1868). At this time accused criminals were not allowed to testify on their own behalf in the courts of most jurisdictions, including those of the United States. The movement to change this, begun in Maine, was only then beginning to gain momentum.

The entire discussion is in ibid., 437-45 (Apr. 15, 1868).

Ibid., 693-97 (Apr. 18, 1868). The issue was not clear because at the time Welles offered to testify, the defense counsel were pursuing the argument that Standon had indicated in the Cabinet that he did not believe himself covered by the bill. They wanted to show this in order to argue Johnson had not intended to use force in removing him, believing he would step down without resistance. The Senators considered this an invalid defense and therefore voted to sustain the managers' objections.

Ibid., II, 167, 169 (Apr. 24, 1868). Also Stanbery, ibid., II, 382-83 (May 2, 1868).

Bingham: ibid., II, 407-408 (May 4, 1868); Boutwell: ibid., II, 72-75 (Apr. 22, 1868); quoted material on p. 72. Also Stevens, ibid., II, 229 (Apr. 27, 1868); Williams, ibid., II, 256 (Apr. 27, 1868).

Ibid., I, 676-79 (Apr. 17, 1868), 680-93 (Apr. 18, 1868).

Ibid., I, 386-88 (Apr. 9, 1868).

Ibid., II, 200-206 (Apr. 25, 1868).

Ibid., 411-12 (May 4, 1868).

Ibid., 515-518, 521 (Apr. 13, 1868).
Ibid., 84-87 (Apr. 22, 1868).

Charles C. Thach, Jr., The Creation of the Presidency, 1775-1789: A Study in Constitutional History (Baltimore, 1922), 140-58. Thach says the issue was clear in the Senate, however, where the House language was finally sustained by vice presidential casting vote. See also James Hart, Tenure of Office Under the Constitution: A Study of Law and Public Policy (Baltimore, 1930), 217-22 and Edward S. Corwin, The President's Removal Power Under the Constitution (N.Y., 1927), 10-23.

Ibid., I, 357-59 (Apr. 4, 1868).

The removed Treasury agent was Richard Coe, but there is no indication when his successor was confirmed. I assume Coe was removed independently of the confirmation. Ibid., 560 (Apr. 14, 1868).

Ibid., 569-72 (Apr. 14, 1868).

The list is ibid., 573 (Apr. 14, 1868). Of the agents claimed to have been removed during a session of the Senate and before the expiration of their terms, three were replaced after or at the expiration of those terms (Amos Binney, James Beatty, and Miles King). See the Senate Executive Journal, III, 419, 424, 442, 445, 469, 473, 531 for Binney, whose term expired either February 15 or March 3, 1825. The Senate refused to confirm his renomination three times. After the last rejection, President John Quincy Adams dismissed him, May 6, 1826. Both Beatty and King were refused confirmation for new terms and left the service at the expiration of the ones they were serving. Ibid., 635, 645 (Beatty) and ibid., (King). In these cases, Adams renominated the two men to terms beginning March 3, 1829. The Senate postponed consideration of the appointments and when President Andrew Jackson took office March 4, he notified the men he had revoked the appointments. Three other agents (John Thomas, Charles H. Ladd, and William Hindman) were removed upon the confirmation of their successors. Ibid., V, 423, 424 (Thomas); VII, 128, 130 (Hindman); 133, 135 (Ladd). Two more could not be checked due to changes in the format of the executive journal. They were the removals of Henderson and Chambers, the same men in the first list. The inaccuracy of the recounting certainly renders these instances suspect.
Trial of Andrew Johnson, I, 581-82 (Apr. 14, 1868).

The Interior department list is ibid., 654-60 (Apr. 17, 1868).

U.S. Statutes at Large, I, 415.

Ibid., XII, 656.

Boutwell in The Trial of Andrew Johnson, II, 89-90 (Apr. 22, 1868); Williams, ibid., 258 (Apr. 27, 1868); Bingham, ibid., 414 (May 2, 1868); Groesbeck, ibid., 210-13 (Apr. 25, 1868); Stanbery, ibid., 385-86 (May 2, 1868). Evarts argued the Senate did not consider the 1795 law when it passed that of 1863, but this simply depended upon how one interpreted Trumbull's report that "there have been several statutes on the subject." Ibid., 334-35 (Apr. 30, 1868).

The two names (John Gardner, appointed Sept. 15, 1839, and August Piexoto, appointed Dec. 7, 1864) were among a list of twenty-one ad interim appointments submitted by the State department. The others all replaced men who resigned, died, or—in one case—could not meet necessary requirements. Ibid., I, 662-63 (Apr. 17, 1868). The Post Office appointees replaced Samuel F. Marks and [?] Deutzell. Ibid., 581-82 (Apr. 14, 1868).

Ibid., 569-72, 581-82 (Apr. 14, 1868). The Post Office cases involved Isaac V. Fowler and Mitchell Steever. Two more ad interim appointees on its list served only while the department head was absent.

The defense emphasized the appointment of John Nelson Secretary of State ad interim February 29, 1844. But the incumbent, A. P. Upshur had died. Ibid., 557 (Apr. 14, 1868). They also pointed to the ad interim appointment of General Winfield Scott Secretary of War in place of George W. Crawford, July 23, 1850. Crawford had resigned. Ibid., 558 (Apr. 14, 1868). They returned several times to Buchanan's appointment of Joseph Holt Secretary of War ad interim in 1861, replacing John B. Floyd, but Floyd had resigned to join the rebellion. Curtis, ibid., I, 385-86 (Apr. 4, 1868); Groesbeck, ibid., II, 211-13 (Apr. 25, 1868). The President's lawyers presented a
list of ad interim Cabinet appointments April 14. Of over 150 such appointments listed, only two were for reasons other than the absence or sickness of the incumbent. Incoming President John Quincy Adams named Samuel L. Southard Secretary of War ad interim pending the confirmation of his permanent appointee. The incumbent, John C. Calhoun, had resigned to become Vice President. Andrew Jackson appointed Benjamin F. Butler (not the Republican radical) Secretary of War ad interim to replace Lewis Cass, who had resigned to become minister to France. So none of the appointees replaced a removed incumbent. Ibid., I, 574-81 (Apr. 14, 1868).

The defense presented a new, even longer list a few moments later. This list offered no explanation of how the vacancy occurred, nor whether during a session or recess of the Senate. But a second list, offered as a continuation of this one, was more complete. It contained no instance of an ad interim appointment following a removal. It is unlikely that the first did either. Ibid., 585-88 (Apr. 14, 1868), 590-94 (Apr. 15, 1868).
CHAPTER XVII

1 Ibid., I, 257-68 (Apr. 2, 1868).

2 Sumner to Edward L. Pierce, July 20, 1868. Sumner Ms.


4 Edwards Pierrepont to Stanton, May 3, 1868. Stanton Ms.; Welles, Diary, III, 345-46 (May 5, 1868), 349-50 (May 9, 1868); Moore, notes, May 1, 3, 6, 1868. Johnson Ms.

5 Boston Evening Journal, May 8, 1868, p. 4; Trial of Andrew Johnson, II, 475-79 (May 7, 1868).

6 Boston Evening Journal, May 12, 1868, p. 4; Edmund G. Ross, History of the Impeachment of Andrew Johnson, President of the United States, by the House of Representatives, and his Trial by the Senate, for High Crimes and Misdemeanors in Office, 1868 (Santa Fe, N.M., 1896), 131-33.

7 Cox, Three Decades of Federal Legislation, 592-94; Thomas Graham Belden and Marva Robins Belden, So Fell the Angels (Boston, 1956), 187-94; House Report No. 75, 40 Cong., 2 Sess., 1-5, 16-17. Butler argued the "Chase movement" was really the cover for operations to bribe Senators into voting against conviction, but his evidence is scanty, although it is clear a bribe was offered to Senator Pomeroy and that he was very tempted to accept it. Ibid., 8-12; Moore, notes, Mar. 18, 1868. Johnson Ms.

8 Schenck to ?, May 12, 1868. Schenck Ms.

9 Morrill to Fessenden, May 10, 1868. Fessenden Ms. Bowdoin College Library. The letter is quoted in Fessenden, Fessenden, II, 205-207.
See, for instance, the fears of the N.Y. Tribune, May 13, 1868, p. 4, and (as always, with more restraint), the N.Y. Nation, Apr. 30, 1868, p. 344-45.


Henderson opinion, Trial of Andrew Johnson, III, 296; Grimes opinion, ibid., 329-31; Fowler opinion, ibid., 194-95.

Fessenden opinion, ibid., 18.

Trumbull opinion, ibid., 320-21.

Fessenden opinion, ibid., 18-22; Fowler opinion, ibid., 195-98; Grimes opinion, ibid., 331-33; Henderson opinion, 301-302; Trumbull opinion, ibid., 321-23.

Fessenden opinion, ibid., 25.

Quoted in Richardson (ed.), Messages and Papers of the Presidents, VI, 621 (italics mine).


Van Winkle also made the uncontrovertial observation that Johnson's employment of Thomas and his appointment involved the same question, in a sentence which should be regarded one of the classics of legal literature: "... [T]he section includes only appointments and employments made, had, or exercised, contrary to the provisions of the tenure-of-office act, and certain acts relating to such appointments and employments. As the latter are a consequence of the former, and as if the former was legal, the latter, in the same case, would be legal also; and, in fact, there could be no employment without a previous appointment--the former may
be considered as included in the latter—so that if the appointment of General Thomas was legal, or the reverse, his employment would bear the same character." Van Winkle opinion, ibid., 149.

20 Ibid.

21 Ibid., 150.

22 Van Winkle's entire opinion is ibid., 147-52.

23 Sewall to Sumner, June 4, 1868. Sumner Ms.


25 Fessenden opinion, Trial of Andrew Johnson, III, 30. See also Trumbull's opinion, ibid., 328.

26 Dixon to Fessenden, Aug. 9, 1868. Fessenden Ms. Bowdoin College Library; see also Grimes to Fessenden, June 16, 1868. Fessenden Ms. Bowdoin College Library.


29 Julian wrote to allow Fessenden, Trumbull, and the other recusants to remain in the party would be to "haul down the flag under which we have fought." Centreville Indiana True Republican, May 21, 1868, p. 186.

30 Cincinnati Commercial, May 16, 1868, p. 6. See also ibid., May 13, 1868, p. 4; May 21, 1868, p. 4; Chicago Tribune, May 11, 1868, p. 2; N.Y. Nation, May 14, 1868, p. 384-85; John Murray Forbes to Fessenden, May 23, 1868, quoted in Hughes (ed.), Forbes, II, 164-65; Henry J. Bowditch to Sumner, May 18, 1868; F. V. Balch to Sumner, May 18, 1868; Atkinson to Sumner, June 1, 1868. Sumner Ms.


34. The invitation may be found in Fessenden, Fessenden, II, 228-29. Fessenden's answer is ibid., 230-38. Grimes to Fessenden, June 10, 16, 1868. Fessenden Ms. Bowdoin College Library; Atkinson to Sumner, June 22, 27, 1868; Dana to Sumner, June 29, 1868. Sumner Ms. See also the radical Boston Commonwealth on the invitation, June 13, 1868, p. 2; June 27, 1868, p. 2; July 4, 1868, p. 2; July 11, 1868, p. 2.

CHAPTER XVIII

1See pp. 330-32, supra.


4Cong. Globe, 40 Cong., 2 Sess., 1417 (Feb. 25, 1868).

5N.Y. Tribune, May 12, 1868, p. 4.

6In Florida, Louisiana, North Carolina, and South Carolina, the new constitutions won the approval of an absolute majority of the registered voters, so that even if every person who had voted against the constitutions in those states had refused to vote, the constitutions would have been ratified under the original Reconstruction laws. In Arkansas only 37.8 percent of the registered voters had approved the constitution; in Georgia, 46.5. House Exec. Docs, Nos. 278 and 284, 40 Cong., 2 Sess.; Senate Exec. Doc. No. 53, 40 Cong., 2 Sess. None of these documents give the election results in Florida. Trumbull offered them in the Senate, Cong. Globe, 40 Cong., 2 Sess., 2858 (June 5, 1868).

7The Florida Republican party had been rent by a factional struggle between followers of Dean Richards, Liberty Billings, and William U. Sanders, those of Colonel O.B. Hart, and those of Colonel Thomas W. Osborn. In their efforts to win control of the party Richards, Billings, and Saunders appealed to black Republicans by advocating radical measures and fanning distrust of the southern-born Hart. In the constitutional convention held in compliance with the Reconstruction acts, the Richards-Billings faction maintained a narrow majority over a Union Conservative (i.e., Democratic) and conservative Republican minority of which Harrison Reed,
a postal agent appointed by the Johnson administration, became the leader. In an effort to check the radicals' activities, the conservative coalition withdrew from the constitutional convention, depriving it of a quorum. The military forces refused to force the bolters back into the convention, and the radicals were forced to frame a constitution without the presence of a quorum of the convention.

On February 10, the bolters slipped into the convention hall, and at their behest the military forced two radicals to join them, making a quorum. The army then protected the new convention from the outraged radicals as it elected Osborn president and framed a second, more conservative constitution. After some confusion, the commanding general fashioned a "compromise," by which Richards, Billings, and Saunders were expelled from the convention and the rest of the radicals forced to remain. With the cooperation of the armed forces, the conservative coalition succeeded in winning ratification for their constitution over radical opposition. In the election for state officers the coalition collapsed, however, and conservative Republicans succeeded in electing Reed governor over a Conservative (i.e., Democratic) opponent.


8 Drake in the Cong. Globe, 40 Cong., 2 Sess., 2629 (May 28, 1868); Dawes ibid. at 2213-14 (Mar. 28, 1868); Howe ibid. at 2744-45 (June 1, 1868). See also the comments of Representative Benjamin F. Loan, ibid., 1819-20 (Mar. 10, 1868); Thomas Williams, ibid., 2909-10 (Mar. 28, 1868); Senator George F. Edmunds, ibid., 2662-63 (May 29, 1868), 3009 (June 10, 1868); William M. Stewart, ibid., 2862 (June 5, 1868); Richard Yates, ibid., 2868 (June 5, 1868); Representative Benjamin F. Butler, ibid., 3092 (June 12, 1868).

9 Ibid., 1818 (Mar. 11, 1868).

10 Representative Benjamin F. Loan, ibid., 1819-1820 (Mar. 11, 1868).

11 Ibid., 2137 (Mar. 26, 1868); C. Tucker to Stevens, Mar. 21, 1868; J.L. Peasington to Stevens, Mar. 22, 1868. Stevens Ms. L.C.

This proposal was embodied in an amendment to the Alabama Restoration bill suggested by Representative Rufus P. Spalding, quoted *ibid.*, 2216 (Mar. 28, 1868). Alabamans had voted for state officers at the same time they voted on the ratification question. Since the Democrats had refused to participate in an effort to prevent ratification, Republican state candidates won overwhelming majorities of the votes cast.

The bill was read *ibid.*, 2390 (May 8, 1868).

*Trumbull, ibid.*, 2601-2602 (May 27, 1868); Conkling, *ibid.*, 2604 (May 27, 1868); Sherman, *ibid.*, 2607 (May 27, 1868). Even Stewart, who strongly advocated the conditions in the Senate, finally had to concede, "I do not pretend to say that the insertion of this declaration in the bill will alter either the constitution of the State or of the General Government. It is a notice, however, to these parties; it is a compact; it is a declaration of principle, which has generally been respected." *Ibid.*, 2605 (May 27, 1868).

*Baker, ibid.*, 2391; Spalding, *ibid.*, 2397; Blaine, *ibid.*, 2391 (all May 8, 1868).


*Ibid.*, 2744-45 (June 1, 1868).


*Ibid.*, 2699 (May 30, 1868); Conkling, *ibid.*, 2663-67 (May 29, 1868); Frelinghuysen, *ibid.*, 2692 (May 30, 1868); Fowler, *ibid.*, 2743-44 (June 1, 1868).
Ibid., 3024-25 (June 10, 1868).

Ibid., 2701 (May 30, 1868). The amendment came up a second time when the bill was reported to the Senate from the committee of the whole, a parliamentary procedure. This time it lost 18-22, with two opponents of fundamental conditions absent. Ibid., 2749-50 (June 1, 1869).

Ibid., 2748, 2750 (June 1, 1868).

The new version is given ibid., 2901 (June 6, 1868).

Ibid., 2867-68 (June 5, 1868).

Ibid., 3029 (June 10, 1868). Besides the long wrangle over restoring Alabama to the bill, Republicans discussed several specific provisions of the state constitutions involving water rights and stay laws and answered Democratic attacks upon the entire Republican reconstruction policy.

The movement to strike Florida from the restoration bill was led by Illinois representative Farnsworth, a personal and political friend of Daniel Richards, the leader of the defeated radical faction of the Florida Republican party. But archradical Benjamin F. Butler defended the triumphant Reed-Hart-Osborn faction, dividing radical forces in the House. Ibid., 3092-96 (June 12, 1868). The House agreed to the Senate's version of the bill ibid., 3096 (June 12, 1868).
CHAPTER XIX


3Ibid., 672 (Jan. 29, 1869).

4Ibid., 708 (Jan. 29, 1869).


6Julian, Political Recollections, 319-20; Report on Stevens' comments, in the N.Y. Herald, July 20, 1868, p. 5.

7Besides simply pointing to the possible impact of black voters on state elections, Gillette asserted that Republicans in Congress consistently referred to the Amendment's impact on the North during the debates on its passage. Gillette, The Right to Vote, 46-50. But this is a matter of interpretation. Gillette sees arguments pertaining to the North as the most important elements of the debate; another reader might disagree. In analyzing the discussions I found Republican speakers clearly referred to the Amendment's impact in the North twelve times and in the South nine times. But three of the speakers who specifically referred to the enfranchisement of northern blacks indicated the primary purpose of that enfranchisement was to quiet southern white complaints that the North was discriminating against the South in giving black men votes there while resisting the measure at home. Boutwell in the Cong. Globe, 40 Cong., 3 Sess., 561 (Jan. 23, 1869);

The only solid piece of evidence Gillette gives of the essentially political motivation behind the Fifteenth Amendment is a letter from Thaddeus Stevens to his friend and ally, Edward McPherson, Aug. 16, 1867: "We must establish the doctrine of National jurisdiction over all the States in State matters of the Franchise, or we shall finally be ruined--We must thus bridle Penna. Ohio Ind. et cetera, or the South, being in, we shall drift into democracy." Gillette, *The Right to Vote*, 35. But this letter is susceptible of a quite different interpretation than Gillette gives it. It was written long before the Fifteenth Amendment was put upon its passage (December, 1868-February, 1869), and may have referred to Republican fears that reconstruction was not secure in the southern states. Stevens may have meant this: to obviate the danger that southern whites, once restored to the Union, might with impunity repudiate black suffrage, the right to regulate suffrage must be lodged in the national government. The northern states would have to accept such national control ("We must bridle Penna. . . ") in order to safeguard against black disfranchisement in the South. With that evidence rendered questionable, little remains to support Gillette's thesis but carefully culled political justifications for an essentially moral act. See *Ibid.*, 48-49. Despite disagreements in interpretation, however, all historians owe Gillette their thanks for his careful and detailed analysis of the Amendment's ratification.


13 Cong. Globe, 40 Cong., 3 Sess., 171 (Jan. 5, 1869). A copy of the bill is in the Benjamin F. Butler papers in the Library of Congress. Although its title referred to Georgia, the text applied to several southern states.


16 Ibid.
17 Ibid., 43 (Dec. 10, 1868), 568 (Jan. 25, 1868).
18 Ibid., 972, 978 (Feb. 8, 1869).
20 Ibid., 1150 (Feb. 10, 1869).
21 Ibid., 1045 (Feb. 10, 1869).
22 Ibid., 1057, 1059 (Feb. 10, 1869).
23 Ibid., 1062 (Feb. 10, 1869).
24 Richmond Radical, Feb. 18, 1869, p. 134.
25 Ibid., 1062-67 (Feb. 10, 1869).
27 The House version is quoted in the Cong. Globe, 40 Cong., 3 Sess., 286 (Jan. 11, 1869) and the Senate version at ibid., 379 (Jan. 15, 1869). The same battle which has raged among constitutional analysts regarding the scope of the Fourteenth Amendment pertains also to the Fifteenth. See footnote 30a, pp. 692-95, supra.
29 Cong. Globe, 40 Cong., 3 Sess., 978 (Feb. 8, 1869).
30 Jenckes, ibid., 728 (Jan. 29, 1869); Williams, ibid., 491 (Jan. 21, 1869). Julian's proposition is in the House joint resolution file in the National Archives; House Resolution No. 371, 40 Cong. R.G. 233, N.A.
31 H.R. No. 381, ibid.
32 Cong. Globe, 40 Cong., 3 Sess., 862 (Feb. 3, 1869). See also Howard, ibid., 999 (Feb. 8, 1869); Representative William Lawrence, ibid., 1226 (Feb. 25, 1869); Hamilton Ward, ibid., 724 (Jan. 29, 1869); Senator Morton, ibid., 863 (Feb. 3, 1869); Williams, ibid., 900 (Feb. 5, 1869); Abbott, ibid., 981 (Feb. 8, 1869).
33 Ibid., 1041 (Feb. 9, 1869). For arguments that Congress possessed the power to oversee state voting regulations, see the comments of Representative William A. Pile,
ibid., 725 (Jan. 29, 1869); M. C. Hamilton, ibid., appendix, 100 (Jan. 29, 1869); Broomall, ibid., appendix, 102 (Jan. 30, 1869); Senator Sumner, ibid., 902-904 (Feb. 5, 1869); Ross, ibid., 982 (Feb. 8, 1869); Yates, ibid., 40 Cong., 2 Sess., 2746 (June 1, 1868).

34Ibid., 639 (Jan. 27, 1869). Schenck announced this amendment was offered with the support of a large number of Ohio representatives. Ibid., 743 (Jan. 30, 1869).

35Ibid., appendix, 97 (Jan. 29, 1869).

36Ibid., 744 (Jan. 30, 1869).

37Ibid., 1029, 1040 (Feb. 9, 1869).

38Ibid., 1226 (Feb. 15, 1869).

39Wilson at ibid., 1291 (Feb. 17, 1869).

40Ibid., 1295 (Feb. 17, 1869).

41Ibid., 1299 (Feb. 17, 1869).

42Ibid., 1300 (Feb. 17, 1869).

43Ibid., 1318 (Feb. 17, 1869).

44Ibid., 1428 (Feb. 20, 1869).

45Ibid., 1481 (Feb. 23, 1869).

46Ibid., 1563-64 (Feb. 25, 1869).

47Pomeroy at ibid., 1623 and Edmunds at 1624 (Feb. 26, 1869).

48Ibid., 1626 (Wilson), 1628-29 (Sawyer; Feb. 26, 1869).

49Ibid., 1641 (Feb. 26, 1869).
BIBLIOGRAPHY

GOVERNMENT PAPERS AND DOCUMENTS

Unpublished

United States. Adjutant-General. Letters Received (Main series), 1861-1870. Record Group No. 94, National Archives, Washington, D.C.


United States. Congress. House of Representatives. Select Committee on Alleged Private Meetings of Members of the House with a View to a Corrupt Bargain with the President. 39th Congress. Papers. R.G. 233, N.A.
Select Committee on Emancipation, 38th Congress. Papers. R.G. 233, N.A.

Select Committee on Freedmen's Affairs, 39th-40th Congresses. Papers. R.G. 233, N.A.

Select Committee on the Rebellious States, 38th Congress. Petitions and memorials. R.G. 233, N.A.

Select Committee on Reconstruction, 39th Congress. Papers. R.G. 233, N.A. (These evidently are papers referred to the Joint Committee on Reconstruction but filed under this heading.)

Select Committee on Reconstruction, 40th-41st Congresses. Papers. R.G. 233, N.A.


United States. Department of Justice. Executive and Congressional Letterbooks. R.G. 60, N.A.

United States. Department of Justice. Instruction Books. R.G. 60, N.A.

United States. Department of Justice. Letters Received, 1865-1873. R.G. 60, N.A.
United States. Department of Justice. Letters Received from United States Attorneys. R.G. 60, N.A.

United States. Department of Justice. Letters Received from United States Marshals. R.G. 60, N.A.


Published

Congressional Globe

House Executive Documents, 38th-40th Congresses

House Miscellaneous Documents, 38th-40th Congresses

House Reports, 38th-40th Congresses

Senate Executive Documents, 38th-40th Congresses

Senate Miscellaneous Documents, 38th-40th Congresses

Senate Reports, 38th-40th Congresses


PRIMARY SOURCES

Unpublished manuscript collections

John Albion Andrew Mss. Massachusetts Historical Society.

Edward Atkinson Mss. Massachusetts Historical Society.


George Bancroft Mss. Massachusetts Historical Society.

Nathaniel Banks Mss. Illinois State Historical Library.


Montgomery Blair Mss. Lilly Library, Indiana University.


Orville H. Browning Mss. Illinois Historical Survey, University of Illinois.

---------. Illinois State Historical Library.
Orestes Brownson Mss. Archives, Notre Dame University.


Benjamin F. Butler Mss. Manuscripts Division, Library of Congress.

Simon Cameron Mss. Manuscripts Division, Library of Congress.

Lewis D. Campbell Mss. Division of Archives and Manuscripts, Ohio State Historical Society.


Zachariah Chandler Mss. Manuscripts Division, Library of Congress.

Salmon P. Chase Mss. Cincinatti Historical Society.

---------- Manuscripts Division, Library of Congress.


---------- Manuscripts Division, Library of Congress.


Schuyler Colfax Mss. Indiana Division, Indiana State Library.

---------- Smith Library, Indiana State Historical Society.

---------- Manuscripts Division, Library of Congress.

---------- Rutherford B. Hayes Library (a collection made up of copies of correspondence from various collections at the Hayes Library).

---------- Rush Rhees Library, University of Rochester.

Roscoe Conkling Mss. Manuscripts Division, Library of Congress.

John Covode Mss. Manuscripts Division, Library of Congress.
Will Cumbach Mss. Lilly Library, Indiana University.

Benjamin Robbins Curtis Mss. Manuscripts Division, Library of Congress.


Richard Henry Dana Mss. Massachusetts Historical Society.

David Davis Mss. Illinois State Historical Library.

Henry L. Dawes Mss. Manuscripts Division, Library of Congress.

Frederick M. Dearborn Mss. Houghton Library, Harvard University.


James Rood Doolittle Mss. Manuscripts Division, Library of Congress.

----------. Wisconsin State Historical Society Library.

----------. New York Public Library.

Frederick Douglass Mss. Headquaters of the National Capitol Parks--East.


Hugh Boyle Ewing Mss. Division of Archives and Manuscripts, Ohio Historical Society.

Philemon B. Ewing Mss. Division of Archives and Manuscripts, Ohio Historical Society.

Thomas Ewing, Sr. Mss. Division of Archives and Manuscripts, Ohio Historical Society.


Reuben E. Fenton Mss. New York State Library.

William Pitt Fessenden Mss. Bowdoin College Library.

----------. Manuscripts Division, Library of Congress.
Hamilton Fish Mss. Manuscripts Division, Library of Congress.

Flagg Family Mss. Illinois Historical Survey, University of Illinois.


LaFayette E. Foster Mss. Massachusetts Historical Society.

Joseph S. Fowler Mss. Manuscripts Division, Library of Congress.

James A. Garfield Mss. Manuscripts Division, Library of Congress.

---------. Division of Archives and Manuscripts, Ohio Historical Society.


Ulysses S. Grant-Elihu B. Washburne Correspondence. Illinois State Historical Library.

Horace Greeley Mss. Manuscripts Division, Library of Congress.

Horace Greeley-Schuyler Colfax Correspondence. New York Public Library.

Murat Halstead Mss. Cincinnati Historical Society.

John Hanna Mss. Lilly Library, Indiana University.

Friedrich Hassaurek Mss. Division of Archives and Manuscripts, Ohio Historical Society.


Rutherford B. Hayes Mss. Rutherford B. Hayes Library.


Oliver Otis Howard Mss. Bowdoin College Library.

Timothy Otis Howe Mss. Wisconsin State Historical Society Library.


Andrew Johnson Mss. Manuscripts Division, Library of Congress.

George C. Jones Mss. New York Public Library.

George W. Julian Mss. Indiana Division, Indiana State Library.

Elisha Keyes Mss. Wisconsin State Historical Society Library.

Nathan Kimball Mss. Lilly Library, Indiana University.

Henry S. Lane Mss. Smith Library, Indiana State Historical Society.

--------. Indiana Division, Indiana State Library.

--------. Lilly Library, Indiana University.

Amos A. Lawrence Mss. Massachusetts Historical Society.

Francis Lieber Mss. Huntington Library.

--------. Manuscripts Division, Library of Congress.


Hugh McCulloch Mss. Lilly Library, Indiana University.

--------. Manuscripts Division, Library of Congress.

James Miller McKim Mss. New York Public Library.


Margaret S. Maloney Collection. New York Public Library.

Edmund D. Morgan Mss. New York State Library.

Oliver P. Morgan Mss. Indiana Division, Indiana State Library.

----------. Smith Library, Indiana State Historical Society.

Otis Norcross Mss. Massachusetts Historical Society.


Ohio Historical Society Individual Letters. Division of Archives and Manuscripts, Ohio Historical Society.


Godlove S. Orth Mss. Indiana Division, Indiana State Library.


George W. Patterson Mss. Rush Rhees Library, University of Rochester.

Daniel D. Pratt Mss. Indiana Division, Indiana State Library.

John M. Palmer Mss. Illinois State Historical Library.

Charles A. Bay Mss. Chicago Historical Society Library.


Whitelaw Reid Mss. Manuscripts Division, Library of Congress.

Horace Rublee Mss. Wisconsin State Historical Society Library.

James W. Schuckers Mss. Manuscripts Division, Library of Congress.


William Henry Seward Mss. Rush Rhees Library, University of Rochester.

Horatio Seymour Mss. New York State Library.

John Sherman Mss. Manuscripts Division, Library of Congress.

William T. Sherman Mss. Archives, Notre Dame University.

William Henry Smith Mss. Division of Archives and Manuscripts, Ohio Historical Society.

--------- Smith Library, Indiana State Historical Society.


Thaddeus Stevens Mss. Manuscripts Division, Library of Congress.

John D. Strong Mss. Illinois State Historical Library.

Charles Sumner Mss. Houghton Library, Harvard University.

Charles Sumner-Storer Correspondence. Cincinnati Historical Society.

Richard W. Thompson Mss. Indiana Division, Indiana State Library.

--------- Lilly Library, Indiana University.


Lyman Trumbull Mss. Illinois State Historical Library.

--------- Manuscripts Division, Library of Congress.


Benjamin F. Wade Mss. Manuscripts Division, Library of Congress.

Benjamin F. Wade-Storer Correspondence. Cincinnati Historical Society.

Amasa Walker Mss. Massachusetts Historical Society.

Lew Wallace Mss. Smith Library, Indiana State Historical Society.


---------. Manuscripts Division, Library of Congress.

Israel Washburn Mss. Manuscripts Division, Library of Congress.

Thurlow Weed Mss. Rush Rhees Library, University of Rochester.

Gideon Welles Mss. New York Public Library.


Robert C. Winthrop Mss. Massachusetts Historical Society.

Horatio Woodman Mss. Massachusetts Historical Society.

Charles J. Worden Mss. Indiana Division, Indiana State Library.

Richard Yates Mss. Illinois State Historical Library.

Published collections of works, diaries, letters, memoirs


Breen, Matthew P. Thirty Years of New York Politics. N.Y.: by the author, 1899.


Depew, Chauncey M. *My Memories of Eighty Years.* N.Y.: Charles Scribner's Sons, 1924.


Edmunds, George F. "Ex-Senator Edmunds on Reconstruction and Impeachment." *Century Magazine,* LXXXV (Apr., 1913), 863-64.


Grinnell, Josiah Bushnell. Men and Events of Forty Years: Autobiographical Reminiscences of an Active Career from 1850 to 1890. Boston: D. Lothrop, 1891.


--- Speeches on Political Questions [1850-1868].


Owen, Robert Dale. "Political Results from the Varioloid." Atlantic Monthly, XXXV (June, 1875), 660-70.


Articles, books, pamphlets, and speeches on contemporary politics


Cox, Jacob D. Speech of Jacob Cox at Columbus, Ohio, August 26, 1866. Columbus: Glenn & Heide, 1866.


L.C.K. "The Power of the President to Grant a General Amnesty." American Law Register, VIII, new series. (Sept., 1869), 513-32, (Oct., 1869), 577-89,


----------. *What is Our Constitution,--League, Pact, or Government?: Two Lectures on the Constitution of the United States Concluding a Discourse on the Modern State, Delivered in the Law School of Columbia College, During the Winter of 1860 and 1861*. N.Y.: Board of Trustees of Columbia University, 1861.

Loring, George Bailey. *The Present Crisis: Speech ... at Lyceum Hall, Salem, April 26, 1865; Dr. Loring's Letter to the Samlem Gazette, on Reconstruction. South Danvers, Mass.: Wizard, 1865.

Lothrop, S.K. *Oration Delivered Before the City Authorities of Boston, on the Fourth of July, 1866*. Boston: Alfred Mudge & Son, 1866.


Morse, Sidney H. "Impeachment." *The Radical*, II (Feb., 1867), 373-75.

Morton, Oliver P. *Speech of Governor Oliver P. Morton at the Union State Convention Held at Indianapolis, Ind., February 23, 1864*. N.p., 1864.


Stearns, George Luther (comp.)? *The Equality of All Men Before the Law Claimed and Defended; in Speeches by William D. Kelley, Wendell Phillips, and Frederick Douglass, and Letters from Elizur Wright and Wm. Heighton.* Boston: Rand & Avery, 1865.


Newspapers

Boston Commonwealth

Boston Daily Advertiser

Boston Evening Journal

The Liberator (Boston)

The Right Way (Boston)

Buffalo Morning Express

Centreville Indiana True Republican

Chicago Tribune

Cincinnati Commercial

Indianapolis Daily Journal

Indianapolis Indiana State Herald

Madison Wisconsin State Journal

New York Herald

The Independent (New York)

The Nation (New York)

New York National Anti-Slavery Standard
New York Times

New York Tribune

Philadelphia North American

Springfield Illinois State Journal

San Francisco Alta California

The Free American (San Francisco)

Toledo Blade

Washington Daily Morning Chronicle

Washington National Intelligencer

Washington New (National) Era

Periodicals

American Journal of Education

American Law Register

American Law Review

Atlantic Monthly

Monthly Law Reporter

The New Englander

North American Review

The Radical

The Reporter

SECONDARY SOURCES

Unpublished dissertations, theses, and papers


Schlegel, Marvin W. "The Dawes Plan: The Conservative Republicans and the Joint Committee on Reconstruction." Unpublished paper, by courtesy of Professor Schlegel.


Published monographs, biographies, and synthetic works


Chadsey, Charles Ernest. The Struggle Between President Johnson and Congress Over Reconstruction. Volume VIII
of the Studies in History, Economics and Public Law
Edited by the Faculty of Political Science of Col-

Chamburn, Adolphe de. The Executive Power in the United
States: A Study of the Constitutional Law. Lancaster,
Pa.: Inquirer Printing and Publishing Co., 1874.

Chidsey, Donald Barr. The Gentleman from New York: A
Life of Roscoe Conkling. New Haven: Yale University
Press, 1935.

Clarke, Grace Julian. George Julian. Indianapolis:
Indiana Historical Commission, 1932.

Cleaves, Freeman. Rock of Chickamauga: The Life of George

Cohen, Stanley. "Northeastern Business and Radical
Reconstruction: A Re-examination." Mississippi
Valley Historical Review, XLVI (June, 1959), 87-90.

Cole, Arthur Charles. The Era of the Civil War, 1848-

----------. "President Lincoln and the Illinois Radical
Republicans." Mississippi Valley Historical
Review, IV (Mar., 1918), 417-36.

Coleman, Charles H. The Election of 1868: The Democratic
Effort to Regain Control. Volume CCCXCI1 of the
Studies in History, Economics and Public Law Edited
by the Faculty of Political Science of Columbia
University. N.Y.: Columbia University Press, 1933

Conkling, Alfred. Life and Letters of Roscoe Conkling, Orator,
Statesman, Advocate. N.Y.: C.C. Webster, 1869.

Cooley, Thomas McIntyre. The General Principles of Consti-
tutional Law in the United States of America. Ed.

Conway, Alan. The Reconstruction of Georgia. Minneapolis:

States of America: Analysis and Interpretation.

----------. The President--Office and Powers, 1787-1957:
History and Analysis of Practice and Opinion. 4th


-----


-----


Gambill, Edward L. "Who Were the Senate Radicals?" *Civil War History,* XI (June, 1965), 237-43.


--------. "The President’s Defense: His Side of the Case, As Told by His Correspondence." *Century Magazine,* LXXXV (Jan., 1913), 422-34.


Lane, Brother J. Robert. A Political History of Connecticut During the Civil War. Washington: Catholic University of America, 1941.


Moore, Frederick W. "Representation in the National Congress from the Seceding States, 1861-1865." *American Historical Review,* II (Jan., 1897), 279-93; (Apr., 1897), 461-71.

Morrill, James Roy III. "North Carolina and the Administration of Brevet Major General Sickles." *North Carolina Historical Review,* XLII (Summer, 1965), 292-305.


----------. "The 'Rule of Law' Under the Lincoln Administration." *Historical Outlook*, XVII (Oct., 1926), 272-78.


Roske, Ralph J. "The Seven Martyrs?" American Historical Review, LXIV (Jan., 1959), 323-30.


Swift, Donald C. "John A. Bingham and Reconstruction: The Dilemma of a Moderate." *Ohio History,* LXXVII (Winter, Spring, and Summer, 1968), 76-94, 192-94.


