Exhibit 52
(207-end)

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fourth of even the loyal states had then adopted its principle. They did not openly mention the second reason, but it was none the less potent on that account. Such an amendment as the fifteenth would not at that time have been of any political value to the Republican party. The only method whereby the radicals might have received any addition to their number through negro suffrage in the South, would have been that employed by them a year later in the Reconstruction act. Few of them, however, dared go so far at this time. Simply to have prescribed negro suffrage in such terms as those of the fifteenth amendment, and left the southern state governments, controlled as they then were by the native whites, to put in operation the machinery for its enforcement, would not have resulted in the election of any more representatives by negroes then, than are elected by them to-day.

The Democrats were quite as much opposed to having the representation in the South cut down as the Republicans were to having it increased. Hence they too were actuated most by considerations of party, but like their opponents, they brought forward arguments not of a partisan character. The principal grounds upon which they based their opposition were:

First, there is a difference between the right to vote and the right to representation. This difference the Republicans do not appear to perceive. It is the interests of the entire people of a given section that are represented by their chosen delegates in Congress; and the interests of those people are generally identical whether they all have the right to vote or not. Thus the negroes in the South draw their sustenance from the same industries as do the white people, and it is equally to their advantage that those industries be adequately represented in the national legislature. For instance, the colored agricultural laborer or small farmer in

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Georgia or Mississippi would suffer just as much from the tax of three cents a pound on cotton as his white employer or landlord. In fact, since taxes of that sort are generally shifted from the employer to the employee, or the landlord to the tenant, he probably would suffer even more in proportion than his former master. Likewise high protective duties on such manufactured articles as are required in the agricultural regions of the South would bear quite as heavily on the colored population as on the white.[1]

Second, the proposition violates the doctrine sacred to Americans, that there shall be no taxation without representation. It inflicts upon the states for refusing to the colored population an unqualified right of suffrage a penalty which it does not inflict upon them for refusing the same thing to the white population. While it denies representation to the states for their negroes, they are counted when direct taxes are levied; and in that indirect way, the states are compelled to grant unqualified negro suffrage in order to obtain their rights under the present organic law.[2]

Third, since the Republicans were doing so much for human rights, the Democrats very pertinently asked why they were neglecting the rights of the women, who surely were as capable of voting as were the negroes.[3] It was therefore moved that if any person be disfranchised by a state on account of sex, that all persons of that sex be deducted from the basis of representation.[4] It is not probable

[1] Reverdy Johnson, *Globe*, pp. 763-770.

[2] Rogers, *Globe*, pp. 353-356. [3] Brooks, *Globe*, pp. 379, 380.

[4] James Brooks, of New York, presented a petition signed by Mrs. E. Cady Stanton, Susan B. Anthony and others, in which they said: "We respectfully ask an amendment of the Constitution that shall prohibit the several states from disfranchising any of their citizens on the ground of sex—for justice and equality, your petitioners will ever pray." They subsequently asked that at least no new barrier be interposed against woman's right to the ballot. *Globe*, p. 380.

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that the Democrats were at heart any more in favor of woman suffrage than were the Republicans, and they made this move with the sole idea of embarrassing their opponents; they were doubtless sincere, however, in declaring that they preferred woman suffrage to negro suffrage.

Fourth, if the Republicans are so desirous of readjusting representation on a basis of perfect fairness, why, asked the Democrats, do they not change the composition of the Senate? It is true that there was a time when it would have been sufficient to reply to this question with the simple statement that in the Senate the states are represented in their sovereign capacity as equals; but now, when talk of state sovereignty and state equality is scoffed at, why should the Senate be spared? New England, for instance, has twelve senators, and thereby exercises a preponderating influence; whereas, by a just reapportionment according to voting strength or population she would not be entitled to nearly so many.[1]

Fifth, the Democrats had two objections that were not directed against the merits of the amendment but against the methods employed in passing it. (1) It was being passed without consulting the very people whom it most concerned —the white people of the South. (2) The amendment should not be submitted to those partisan state legislatures in the North which had not been elected when this question was an issue; for those legislatures would act solely with a view to party advantage. The only fair method would be to submit it to state conventions whose members should be elected with reference to their attitude on this question alone. The people of the northern states were too fair-

[1] Buckalew, *Globe*, pp. 957 *et seq.* *Cf.* also editorial in *New York World*, January 23, 1866. New England members exercised preponderating influence at that time by holding the chairmanships of the more important Senate committees.

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minded to force upon the South universal negro suffrage, as this measure was calculated to do, when they had not adopted it for themselves.[1]

The opinions of the press varied from the extreme radical position taken by the *Independent*[2] that the amendment was calculated to put the negroes back into the hands of the rebels, to that of the Democratic New York *World*,[3] which declared that its object was the permanent disfranchisement of the southern states. The Republican press as a whole did not support the measure with enthusiasm. *Harper's Weekly*[4] opposed the amendment at first on the ground that it would fail in its purpose of forcing the southern whites to grant suffrage to the negroes. Later, however, the same journal withdrew its opposition, not because it viewed the amendment with any more favor, but because it had come to understand that it was only the first of a series of measures which the committee would propose for securing the negroes in their civil and political rights. The New York *Times*,[5] voicing the sentiment of the administration Republicans, strongly opposed the resolution and declared that the first duty of Congress was to restore the Union; amendments could be considered later. Even the New York *Tribune*[6] was at first lukewarm, for it, like *Harper's Weekly*, desired that Congress should make negro suffrage one of the conditions precedent to the readmission of the southern delegations. The *Tribune*, however, being too good a party organ not to see the value of the amendment as a party measure, soon came to its de-

[1] Rogers, *Globe*, pp. 353-356.

[2] *Ibid.*, February 1, 1866.

[3] *Ibid.*, January 23, 1866.

[4] *Ibid.*, February 10 and 17, 1866.

[5] *Ibid.*, February 17, 1866.

[6] *Ibid.*, January 24 and 29, 1866.

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fense and declared it to be intrinsically just and proper. The New York *Herald*,[1] which at that time was friendly to the administration, saw nothing unfair in the amendment, but opposed it on the ground that it would necessitate further delay in restoring the Union. Moreover, it declared that the position taken by the extreme radicals as to the power of Congress over civil and political rights, was correct; and it asked the radicals why they did not grant the negroes the right to vote by a simple legislative enactment. Replying to its own question, it said the answer was clear; the radicals dared not face the American people on the direct issue of negro suffrage. The New York *Sun*[2] saw in the amendment an attempt to force the southern people to grant unqualified negro suffrage, and feared that their love for political power would bring about such a result. This it opposed, and declared that already there were too many illiterate voters in the country; to add a million more to their number, would be an act treasonable to enlightened democratic government.

The consensus of opinion among the thinking non-political element of the Republican party was no doubt well expressed by an editorial in the *Nation*[3] on the question of apportioning representation. An epitome of this editorial may well conclude the discussion of the subject.

The amendment as reported has two advantages over the proposition to make legal voters the basis of representation. (1) It does not punish, as the other would have done, the older states for sending large drafts of their young men to the West. (2) It does not tempt the states into competing for voters, thus cheapening the suffrage. The amendment,

[1] Rogers, *Globe*, January 10 and 24, 1866.

[2] *Ibid.*, January 23, 1866.

[3] *Ibid.*, February 1, 1866.

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however, does not secure any human being in any of the revolted states in the possession of his rights. It does not provide for freedom of speech, of the person, or of instruction.[1] It does nothing for the restoration of industry. It does not furnish any southerner with a single reason for laying aside his old fear or hatred for the Union or for desiring to be in feeling, as well as in fact and in law, one of its citizens. It does not remove any of the causes, whatever they may be, which now either hinder or retard the assimilation of society in both sections into one homogeneous whole. The fact that it fails to do any of these things is not necessarily a good reason for opposing it. It may have good ends without accomplishing one of these results. But these are the great ends of any process of reconstruction. Any amendment now up, or likely to come up for consideration, that does not materially help to obtain these results ought to have striking merits of some kind to entitle it to the solemn confirmation of a national vote.

The only thing the amendment will accomplish is the reduction of the southern delegation—and this is a gain only so long as there is a disposition in that part of the country to embarrass the national credit by desiring the repudiation of the debt, or so long as they exhibit any disposition to make the national government pay for the damage done them during the war. But it is likely that they will soon cease to show any such disposition, after which what position does this amendment leave us in? The South would have a few delegates less in Congress and one great cause of northern uneasiness would have been removed, but the problem of social and political inequality in the South would remain as far from solution as ever. A large portion of the southern population might still, probably would still, be permanently excluded from citizenship on grounds which we all hold to be absurd and unchristian, if not utterly repugnant to the spirit of our institutions. Caste

[1] One of the chief complaints of northern people, traveling or dwelling in the South, was the restraint under which they were placed in expressing their sentiments in regard to slavery and questions connected with it.

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at the South might still be created and perpetuated. A feudal system, based on serfdom, would still be possible under the Constitution.

The *Nation*[1] then demanded that Congress frame an amendment that would put into the hands of the national government the safeguarding of the civil and political rights of all persons within its jurisdiction. This journal, like its radical contemporaries, was confident that the moral force of such an amendment would prove irresistible and was certain that it would be ratified by the states. That the radicals in Congress did not share the confidence of their party organs, however, is made evident by their action in regard to a resolution to amend the Constitution so as to give Congress the power to enforce equal civil rights in all the states of the Union.

At this time laws discriminating against the negroes and denying to them civil rights on an equality with white people, were being passed by the legislatures in the southern states.[2] To the North these laws seemed harsh and unjust, and on the very day that the 39th Congress met, Charles Sumner introduced some resolutions, providing among several other things for equal civil rights.[3] By a reference to the journal of the committee, it will be seen that on January 9th Fessenden proposed that in addition to an amendment modifying the basis of representation, another giving the national government the power to secure all persons in their civil rights should be passed before representatives from the insurgent states could be permitted to resume their seats in Congress.[4] On January 11th, a bill giving Congress

[1] *Ibid.*, February 1 and 8, 1866.

[2] Dunning, *Reconstruction, Political and Economic*, pp. 54-59.

[3] *Globe*, p. 2.

[4] See *supra*, p. 42.

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power over the subject was reported to the Senate from the judiciary committee,[1] and though there was not much doubt that it would become law, yet some of the Republicans, either because they doubted the constitutionality of the bill or because they feared that it might be repealed by some subsequent Congress, desired to insert the guarantee of civil rights in the Constitution and thus place the subject beyond cavil or repeal.

Therefore, as soon as the committee had disposed of the resolution on the basis of representation it began to devote its attention to the formulation of a resolution amending the Constitution in regard to civil rights.[2] The task was not an easy one, as there was much diversity of sentiment on the question, even among the Republican members, and it was not until February 3rd that the committee by a vote of 7 to 6 adopted the following resolution:[3]

The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each state all privileges and immunities of citizens in the several states (Art. 4, Sec. 2); and to all persons in the several states equal protection in the rights of life, liberty and property (5th amendment).

It was not until the 13th, however, that Bingham reported the resolution, as adopted by the committee, to the House.[4] That body did not receive the proposition with wild enthusiasm, and even denied it the privilege of being considered as a special order. Since to have placed it on the regular calendar would have meant its indefinite post-

[1] Flack, *Adoption of the Fourteenth Amendment*, p. 19.

[2] See *supra*, pp. 46 to 62.

[3] *Ibid.*, p. 61.

[4] *Globe*, p. 813.

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ponement, it was recommitted, its friends hoping to present it on a later and more propitious occasion. Nearly two weeks elapsed before such an occasion offered itself, and Bingham had the temerity to bring it again to the attention of the House.[1] After a debate lasting three days, it became evident that the resolution could not secure the two-thirds majority necessary for its passage as a proposed amendment to the Constitution. It was therefore agreed with the tacit consent of Bingham to defer its further consideration until the second Tuesday in April.[2] When the second Tuesday in April arrived, nothing was said about the proposed civil rights amendment. Indeed, it was never heard of again as a separate proposition, but a few weeks later, clothed in different language, it appeared as section 1 of the fourteenth amendment.

This difference in language is worthy of notice, as the proposition under consideration differs from the latter in that in express terms it conferred upon Congress positive power to enforce the bill of rights in the states.[3] Bingham so stated when he introduced the resolution into Congress.[4] He stood almost alone as its champion and defender, and made the only important speech advocating its adoption.

[1] *Globe*, p. 1033, February 26.

[2] *Globe*, p. 1095. In addition to the Democrats, a great many Republicans, including practically the entire New York delegation, were opposed to the amendment. The Republicans, when postponing it, gave as their reason a desire for further conference concerning its exact terms. As a matter of fact they considered it poor political ammunition, and feared it would have an adverse effect on the Connecticut election which then was held early in April. *Cf.* editorial in New York *World*, Mar. 3, 1866. Even in the fall campaign the Republican orators attempted to make but little political capital out of this measure. See *infra*, ch. vii.

[3] The language employed was adapted from section 2 of article iv and from the fifth amendment.

[4] *Globe*, p. 1033.

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Before proceeding with the consideration of his speech, however, some notice will be taken of the principal points made against it.

The opponents of the measure believed it to be the embodiment of centralization, and thought that by it the states would be deprived of those rights which were reserved to them by the organic law.[1] It was impolitic and out of harmony with the whole theory of the Constitution, which was intended to give Congress power over matters of a general nature only, and leave to the individual states control over their own municipal concerns. It was especially uncalled for at this time, when, after five years of centralization, the tendency should all be the other way. During those five years the government had destroyed the heresy of state sovereignty; let not another heresy of the opposite kind, and still more dangerous to freedom, rise in its place.[2]

Not every immunity and privilege, granted to citizens in one state, should be forced upon any other state. This amendment if adopted would coerce all states into giving the franchise to negroes and would annul all laws on marriage, divorce, and so forth, in the several states. Under it all state legislation in codes of criminal and civil jurisprudence and procedure, affecting the individual citizen, might be over-ridden, repealed, or abolished, and the law of Congress established instead. In this respect it was an ultra departure from every principle ever dreamed of by the men who framed the Constitution.[3]

Finally the Democrats opposed it on the grounds that its language was too vague and general; that the states most to be affected by it and which would be expected to conform

[1] Rogers, *Globe*, appendix, pp. 133 *et seq.*

[2] Davis of New York (Rep.), *Globe*, pp. 1083 *et seq.*

[3] Hale of New York (Rep.), *Globe*, pp. 1063 *et seq.*

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to it as the fundamental law of the country, had no representatives present to participate in its consideration; and that it would be submitted to state legislatures partisan in their character and not representative of the true sentiment of the people on this question.[1]

As Bingham's speech[2] in defense and advocacy of his amendment comprehends practically everything that was said in the press or on the floor of the House in favor of the resolution, an abridgment of his speech is here inserted as a summary of the points made in the debate on the affirmative side of the question.

The amendment is for the simple purpose of arming Congress, by consent of the people of the entire nation, with a weapon with which it will be able to enforce the bill of rights in every state. The friends of the measure are not seeking to take away from the various states or their citizens any rights that belong to them under the Constitution. The Constitution, however, does not reserve to any state the right to withhold from a citizen of the United States within its limits, under any pretext whatsoever, any of the privileges of a citizen of the United States; or to impose upon him, no matter from what state he may have come, any burden contrary to that provision which declares that the citizen shall be entitled in the several states to all the immunities of a citizen of the United States.

The opposition to the amendment has not come from gentlemen because they are opposed to protecting all alike in their rights of life, liberty, and property. No doubt every one desires that. What they do object to then is giving to the national government the power of protecting the rights of citizens. This they wish to be left in the hands of the states. No one will deny the right and the duty of

[1] Randall, *Globe*, p. 1057.

[2] *Globe*, pp. 1088-1095.

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the United States to protect its citizens in foreign lands or on the high sea. Then why should it not also protect their rights in the several states? Is this not an anomaly? Gentlemen remember the case of Martin Koszta,[1] who, as a declared citizen of the United States, had his rights vindicated by prompt and summary action, when they were threatened by the government of Austria. But the United States, in the presence of the laws of South Carolina or Alabama, is powerless to protect the rights of its citizens within the limits of those states.

Though the bill of rights is not now binding upon the states, there are three provisions in the Constitution which show that it is the duty of the states to observe and enforce the bill of rights. In the first place, the Constitution declares itself to be the supreme law of the land. From this it results that the citizens of each state, being also citizens of the United States, ought to be entitled to all the privileges and immunities of citizens of the United States, in every other state; and all persons, now that slavery has been abolished, should be entitled everywhere to equal protection in their rights of life, liberty, and property. Second, the Constitution provides that the members of the several state legislatures and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath to support it and all the rights secured by it. Finally, all state judges are especially bound by the United States Constitution, "anything in the constitution and laws of any state to the contrary notwithstanding."

The Constitution certainly imposes upon the states the duty of enforcing the bill of rights; but since they have been negligent and unmindful of their duty, it is now neces-

[1] For an account of the Koszta affair, see Moore, *American Diplomacy*, pp. 154-159.

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sary that Congress be empowered to enforce by penal enactment those great canons of the supreme law.

Gentlemen who oppose this amendment, simply declare to those rebel states, go on with your confiscation statutes, your statutes of banishment, your statutes of unjust imprisonment, your statutes of murder and death against men because of their loyalty to the Constitution and Government of the United States.

That is the issue that is before the American people, and God helping me, without respect for persons in high places who show a disposition to betray this great cause, I will not betray it so long as it is given me to know the right.

Unless this amendment be adopted before the eleven seceded states are again admitted as integral parts of the Union, it will be impossible for the loyal minority in them to maintain a government there after the military is withdrawn. Then where will Congress derive the power, unless this or some similar amendment be adopted, to prevent the re-enactment of all those baneful laws discriminating against the colored people? The rule now is that the citizens must rely upon the state for their protection. If the rebel states are unqualifiedly admitted, some of their officials will violate their oaths as they have done before, and clothed with perjury, avenge themselves upon the loyal men for their fidelity to the sacred cause of the Constitution and the laws.

Sir, we are no longer permitted to doubt that whole communities are capable of so great perfidy. We are told they will be in terror of the prowess of your arms, and doubtless they will avoid an armed conflict again. But the point I desire to make clear is, that unless you put them in terror of the power of your laws, made efficient by the solemn act of the whole people to punish the violators of oaths, they may defy your restricted legislative power when reconstructed; they may dismember your Union and drive into banishment every loyal man in all the rebel states, and hold as their heritage a territory one-half as large as continental Europe, without firing a gun or daring again to commit the overt act of treason.

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I speak in behalf of this amendment in no party spirit, in no spirit of resentment toward any state or the people of any state, in no spirit of innovation, but for the sake of a violated Constitution and a wronged and wounded country. I urge the amendment for the enforcement of those essential provisions of your Constitution, which declare that all men are equal in the rights of life and liberty before the majesty of the American law; and that no man, no matter what his color, no matter how poor, friendless or ignorant, shall be deprived of those rights without due process of law.

In spite of Bingham's plea, Congress, as has been seen, was not moved to adopt his civil rights resolution at this time. Before proceeding to the consideration of how it and the other provisions of the fourteenth amendment were adopted later, it is necessary to discuss two other matters with which the committee concerned itself. One of these was a resolution—occasioned partly by Johnson's veto of the Freedmen's Bureau bill and partly by the insistent demand for the admission of the Tennessee delegation—wherein Congress declared its power over everything connected with reconstruction. The other was the evidence, taken by the committee, relative to conditions in the South. These two questions will form the subject of the two succeeding chapters.

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CHAPTER IV

Uniting the Republican Congressmen against the President [1]

Tennessee was the only rebel state that, even according to the severe tests applied by Congress, needed no reconstruction by that body. Apparently if it had not been for fear of setting a precedent that later might have proved troublesome in the cases of the other ten states, her representatives and senators would have been admitted soon after the assembling of Congress. In order to understand how Tennessee came to be in a class different from the other rebel states, it is necessary to review briefly the political history of that state from the passage of the act of secession, May 6, 1861, to the meeting of the 39th Congress in December of 1865.

Statistics show that about 40,000 men, living principally in eastern Tennessee, voted against secession.[2] Unlike the "original" Union men in the other states, who, when once their state had seceded, threw in their lot with the Confederacy, the Union men of east Tennessee not only voted against secession but supported the Union cause throughout

[1] For part of the journal relating to this chapter, see *supra*, pp. 63 to 81.

[2] *House Reports*, 39th cong., 1st sess., no. 30, part i, p. 91. This volume, divided into four parts, contains all the testimony taken by the four sub-committees of the joint committee. (See *supra*, p. 47). Hereafter it will be referred to as *Testimony*, part i—Tennessee; part ii—Va., N. C., and S. C.; part iii—Ark., Ga., Miss., and Ala.; part iv—Fla., La., and Tex.

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the struggle. During the first two years of the war, these men suffered many persecutions at the hands of the rebels. Had the Confederate government let them alone, it is probable that they would have remained neutral, for the east Tennesseean had no more love for the "Yankees" than he had for the large planters of the South. Such action on the part of that government, however, was impossible, as east Tennessee was one of the principal seats of war. When the Confederate congress passed its first Conscription act and attempted to enforce it in that section, thousands of Union men there left their homes and fled either into the mountains or into Kentucky, where they joined the Union forces and gradually fought their way back home again.[1]

On the 3rd of March, 1862, President Lincoln appointed as military governor of Tennessee, Andrew Johnson, who, during the three years he held that office, gained for himself a national reputation for courage and fidelity to the Union cause.[2] On September 19, 1863, Lincoln, in accordance with his cherished plan of establishing loyal civil governments in the rebel states whenever the expulsion of the Confederate forces seemed likely, authorized Johnson to exercise whatever powers might be necessary to enable the loyal people to organize such a republican form of government in Tennessee as would entitle her to the guarantee of the United States therefor.[3] Though Johnson was in thorough sympathy with Lincoln's plan, continued military contests and the disorder attendant thereon, rendered it impossible for him to make definite preparations for holding a convention until late in the fall of 1864. The convention was called to meet in Nashville on December 19th, but the re-

[1] *House Reports, op. cit.*, p. 115.
[2] *Ibid.*, pp. 1, 5.
[3] *Ibid.*, p. 5.

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entrance of Hood's army into Tennessee after its disastrous campaign around Atlanta, caused the postponement of the convention. After Hood's army had been practically destroyed in the battles of Franklin and Nashville, and the power of the Confederacy had been forever broken in Tennessee, the convention was again called.[1]

It assembled on January 9, 1865, and proceeded to undo everything that had been done by the rebel legislature, and to create a new state government in harmony with the Government of the United States. In order to accomplish these purposes, it proposed for ratificatioin by the people an amendment to the state constitution for the abolition of slavery.[2] It further proposed what was called a "schedule" to the constitution, declaring that the adoption of the ordinance of secession and the convention between Tennessee and the Confederate government was an "act of treason and usurpation, unconstitutional, null and void;" that all laws passed by the rebel legislature were likewise null and void; that all debts incurred in aid of the rebellion were never to be paid; that the acts of Andrew Johnson as military governor, together with his appointments to office, were valid and binding.[3] The amendment and "schedule" were duly ratified by the people on February 22d, about 20,000 votes being cast for them and only a few hundred against.[4] Only those persons who swore loyalty to the United States and enmity to the Confederacy, were allowed to vote. An election for state officers was held on March 4th, at which the celebrated "Parson" Brownlow was chosen governor,

[1] *House Reports, op. cit.*, p. 6.

[2] The thirteenth amendment at this time had not been submitted to the states, as it did not pass Congress until January 31st. Rhodes, vol. v, p. 50.

[3] *Testimony*, part i, pp. 6, 7, 99.

[4] *Ibid.*, pp. 8, 9, 92.

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and men noted for their "unconditional Unionism" were selected as members of the legislature.[1]

The new government was inaugurated on April 3, 1865. Among the acts passed by the legislature, demonstrating its loyalty, was one fixing the qualifications of voters. In general, it provided that all former civil and military officers under the Confederate government or the rebel government of Tennessee, should be disfranchised for fifteen years, and that all other rebel soldiers and sympathizers should be disfranchised for five years. It also ratified the thirteenth amendment, and provided that the freedmen should have the same rights as other people in civil, but not political, affairs.[2] The legislature also elected two United States senators, and at a general election held in August, eight members of Congress were chosen. Though at least two of these ten men for a short time at the beginning of the war had held commissions as judicial officers under the Confederate government, there were no objections to the delegation as a whole on grounds of personal disloyalty to the United States Government.[3]

When Congress met, the Tennesseeans were insistent that they be admitted to their seats. One of their number, Horace Maynard, who was well-known for his Union sentiments, had been selected by Johnson as an instrument with which to thwart Stevens in his purpose of excluding all the southern members. As has been seen, however, Stevens outgeneraled his adversary, and though Maynard made repeated efforts to obtain the floor, it was "imperatively and

[1] *Testimony*, part i, p. 98.

[2] *Ibid.*, pp. 30-32, 73, 99.

[3] *Globe*, p. 33. As a mark of special favor to the Tennessee members, the House allowed them the right to occupy seats in the hall, a privilege persistently denied the members-elect from the other seceded states.

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peremptorily" refused him.[1] There was a strong feeling, however, among Republicans both in and out of Congress, that though the general rule of temporarily excluding the southern representatives was just, the Tennessee members ought to be excepted from its operation. One of the most difficult tasks that fell to the lot of Thaddeus Stevens was the fight he was forced to carry on against this sentiment within his own party and among his own followers.

The sub-committee[2] on Tennessee began taking testimony and examining witnesses on January 25th, and concluded its labors on February 13th. It took the depositions of most of the members of the Tennessee delegation, all of whom declared that their admission into Congress would strengthen the position of the loyalists, whereas their continued exclusion would diminish if not destroy their influence.[3] Only eight other witnesses were called, five of whom were army officers[4] stationed in Tennessee, and the other three, loyal citizens. Upon being asked whether in their opinion the complete restoration of Tennessee to her place in the Union would tend to strengthen the loyal government in the state or no, each of the eight answered, "yes," thereby confirming the opinion of the members-elect. The tenor of this testimony together with other pressure that was being brought to bear upon the committee[5] made it impera-

[1] Letter of Maynard to the *Washington Chronicle*, copied in *New York Evening Post*, December 6, 1865; *Globe*, pp. 3 *et seq.*

[2] See *supra*, pp. 47, 48; this sub-committee was composed of Bingham, Grimes and Grider. The last was a Democrat, and Bingham and Grimes were not extreme radicals.

[3] *Testimony*, pt. i, pp. 110-128.

[4] Including Gens. G. H. Thomas and C. B. Fisk.

[5] See *New York Tribune*, February 19, 1866, for a letter written a few days before from Washington, in which the correspondent said there was a strong undercurrent in Congress among Republicans in

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tive that some immediate action be taken in regard to admitting the Tennessee delegation.

Consequently, when the committee had disposed of the resolutions for amending the Constitution in regard to the basis of representation and civil rights, it began to devote its attention to the admission of Tennessee. In order to understand the close relation between this matter and the development of the breach between Johnson and Congress, it is necessary to make constant reference to the journal. On February 15th, the sub-committee on Tennessee, consisting of Bingham and Grimes, both conservatives, and Grider, a Democrat, reported a resolution stating simply that Tennessee had adopted a constitution republican in form and therefore was entitled to representation in Congress.[1] This resolution was discussed at this meeting and the next, February 17th, and though it was amended, its principle was not departed from. However, eight members of the committee apparently did not desire so simple a resolution, and just before the adjournment of this meeting voted that a new sub-committee be appointed to whom "the whole subject of Tennessee" should be referred.[2] This

favor of the unconditional admission of Tennessee. This, the *Tribune* opposed, saying: "Such action would mean the abandonment of the guarantee policy of the Republican majority in Congress; and that principle once abandoned, the majority will hopelessly flounder about in the mazes of arbitrary theories and special pleadings. Then, without a fixed policy to guide them, they will unconsciously yield point after point, until Tennessee, with all her good and laudable qualities, will prove the Trojan horse carrying all rebeldom concealed in her belly." This statement well expresses the reason why the extreme radicals strenuously objected to admitting the representatives from Tennessee.

[1] See *supra*, p. 63.

[2] See *supra*, p. 67.

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new sub-committee was composed of Williams, Conkling, and Boutwell, all radicals.

As has been said, up to the appointment of this new sub-committee on Tennessee, the basis of the committee's discussion was a simple resolution, reciting the fact that Tennessee had adopted a constitution, republican in form, and was therefore to be admitted unconditionally to an equal position with the other states. That the three Democrats, and the four most conservative Republicans, Grimes, Harris, Bingham, and Blow, were in favor of such unconditional admission may fairly be inferred from the fact that they voted against the motion to raise a new committee on Tennessee. Had Fessenden, who was the most conservative of the eight Republicans who voted for the motion, changed his vote to the negative, no new committee would have been appointed, and it is not too much to suppose that a resolution for the admission of Tennessee without condition would have been carried at this or the next meeting of the committee. Had such action been taken by the committee and favorably considered by Congress, to that extent it would have been a virtual approval of the President's policy. It is fair to assume that those members of the committee who favored such action were desirous of working in harmony with the President and coming to some sort of understanding with him.

But harmony between the President and the conservatives was exactly what Stevens and his fellow-radicals were seeking to prevent. In order to understand what their purpose was in having the question of Tennessee's admission referred to this new radical sub-committee, it is necessary, though at the risk of some repetition, to review the relations between the President and Congress for the preceding two and a half months. Johnson suspected when the committee was appointed, that the whole proceedings both in the Re-

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publican caucus and in the House were revolutionary and a preconcerted design aimed at him and his policy of reconstruction.[1] He had hoped that the demand of Horace Maynard and his colleagues for recognition as duly qualified representatives from Tennessee, would frustrate the scheme of the radicals; but, as already said, Maynard was put aside.[2] When this move on the part of the President failed, he expected that the Senate would refuse to concur in the House resolution creating the joint committee on reconstruction; and his friends, the administration Republicans, certainly did their utmost to accomplish this result, but with slight success. Though some of the sting was taken out of the resolution,[3] its main purpose was accomplished; whereupon the President became thoroughly convinced that a deep and extensive intrigue, with Stevens and Sumner as the chief plotters, was going on against him.[4]

Andrew Johnson has been severely denounced[5] for not taking steps toward compromising with Congress, and viewed in the light of present knowledge, he certainly made a great mistake in not doing so. When it is remembered, however, that Congress from the beginning acted under the leadership of two men who were violently opposed to his policy and who publicly arraigned him in bitter terms, it is hardly to be expected that he, a man naturally combative,

[1] *Diary of Gideon Welles*, vol. ii, pp. 387, 388.

[2] See *supra*, pp. 142, 224. *Cf.* also Welles, vol. ii, p. 388. Welles thought the putting aside of Maynard was by common consent of that gentleman and the radical leaders. Maynard did, in fact, along with several of his colleagues, ally himself with the radicals when a definite break was made between them and Johnson. This would tend to prove the correctness of Welles' suspicion.

[3] See *supra*, ch. i, pp. 145 *et seq.*

[4] Welles, vol. ii, p. 398.

[5] Rhodes, vol. v, pp. 570 *et seq.*

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and under unfriendly criticism, obstinate, would make overtures of peace to such a body. Moreover, the leaders of the conservative Republicans, Grimes and Fessenden, with whom he should have compromised, were unwilling to support him unless they could at the same time largely modify or even control his policy.[1] In spite of many assertions to the contrary, Andrew Johnson was not a weak man, and did not allow himself to be controlled by anybody. Hence Grimes and Fessenden found themselves drifting toward the radicals; and while they wished very much to avoid a rupture,[2] when it came, these two able and honorable men, as well as most other conservatives, naturally supported the radicals for a time, at any rate, in what they considered the lesser of two evils.

But so long as there was no open rupture between Congress and the President, there was always a possibility that the President might come to an understanding with the conservative Republicans in both houses, especially with those in the Senate. Such an understanding Stevens knew would defeat all his cherished plans for a thorough reconstruction of the southern states. It was therefore his policy to make, as soon as possible, an irreparable breach between the legislative and executive departments. It is almost certain that he correctly understood the character of Johnson, and believed that under stress of opposition and bitter denunciation, the latter sooner or later would retort in kind and thereby give his opponent exactly the opportunity he desired of bringing about the long-sought rupture. Therefore, during January and February, Stevens and his satellites embraced every opportunity that presented itself for raising

[1] Welles, vol. ii, p. 449.

[2] See *supra*, ch. ii, pp. 173 *et seq.* *Cf.* also Welles, vol. ii, p. 434, and *New York Herald*, February 20, 1866, Washington correspondence.

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the ire of Johnson to the bursting point. They calculated that any violent speech of his against themselves could be so distorted as to make it appear that Johnson had gone over to the rebels. Then by insidiously appealing to prejudice they realized that they could overwhelm him before the bar of public opinion. A few incidents will illustrate the methods they employed in baiting their adversary.

On January 8th, Williams, of Pennsylvania, whom Gideon Welles described as "a revolutionary and whiskey-drinking radical,"[1] introduced a resolution stating that it was the sense of the House that the military should not be withdrawn from the South, until Congress "shall have ascertained and declared their further presence there unnecessary."[2] The resolution was passed as a party measure, though a large number of members abstained from voting when their names were called. Such a usurpation of executive prerogative by a branch of the legislative department was, as Welles points out, "purposely offensive;" and he foresaw that sooner or later the President would have "a square and probably a fierce fight with these men."[3]

On January 29th, there appeared in the papers an authorized utterance of the President, entitled, "Conversation between the President and a distinguished senator."[4] In this interview, Johnson expressed himself rather freely in regard to some measures then pending in Congress. This was the first time he had done so, and though he was guarded and moderate in his language, he left no room to doubt that he would veto a bill which the House had just passed, granting unqualified suffrage to the negroes in the

[1] Welles, vol. ii, p. 412.

[2] *Globe*, p. 137.

[3] Welles, vol. ii, p. 413.

[4] *New York Herald*, January 29, 1866. The "distinguished senator" was Dixon of Connecticut, one of the administration Republicans. Welles, vol. ii, p. 449.

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District of Columbia. It should be remarked in passing that Sumner and the other radicals in the Senate, with all their keenness for universal suffrage, seem to have been aware that on the direct issue of enfranchising the great mass of ignorant negroes who, during the war, had drifted into Washington, they would hardly be sustained by the country. At any rate the bill was not pressed to a vote in the upper house. It was certainly most unfortunate for Johnson that it was not passed, for on this issue it is likely that he would have been sustained by the country, while certain defeat awaited him on such issues as the fourteenth amendment and the Civil Rights and Freedmen's Bureau bills.

At the time the interview was given out the House of Representatives was debating the proposed amendment on the basis of representation.[1] The President expressed himself as opposing the further amendment of the Constitution, but thought that if there was to be a change in the method of apportioning representatives, it should be according to the number of qualified voters in each state. The radicals professed to take great umbrage at this utterance by the executive, as an intrusion upon the prerogative of the legislative branch of the government.

Stevens, alive as always to the occasion, seized this as an excellent opportunity for saying something that would serve the double purpose of drawing from Johnson a further expression of his hostility to Congress, and at the same time creating an *esprit de corps* among his colleagues against executive encroachment. On January 31st, he rose in his place, ostensibly to debate the resolution for amending the Constitution, but in reality to read into the record and make comments on the much-discussed "conversation be-

[1] See *supra*, ch. iii.

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tween the president and a distinguished senator."[1] He declared this utterance clearly was meant as a proclamation or command from the President, made and put forth in advance and at the time when Congress was legislating on the questions; made in violation of the privileges of the House; made in such a way that centuries ago, had it been made to Parliament by a British King, it would have cost him his head. "But sir," said he in concluding, "we pass that by; we are tolerant of usurpation in this tolerant government of ours." He then resumed his seat, patiently to await the echo of his words which he expected from the direction of the White House.

But no echo came immediately. Meanwhile the sentiment in favor of admitting the Tennessee delegation was growing apace, and even Stevens, with all his tenacity and influence, could hardly have withstood it much longer. There is no doubt that Johnson would have been very much pleased had the Tennessee representatives been admitted unconditionally, for he was most interested in his own state where he had been the principal instrument in putting the presidential policy of reconstruction into operation. Whether such unconditional admission of Tennessee would have been regarded by Johnson as a peace offering, and caused him to make concessions to the conservatives or no, it is difficult to tell with any degree of certainty.[2] At any rate, Stevens seems to have feared that it might lead to mutual concessions and an understanding between them. He therefore determined that if Tennessee must be admitted

[1] *Globe*, pp. 536 *et seq.*

[2] The correspondents for nearly all the New York dailies and weeklies believed the President would make concessions to Congress if that body would admit Tennessee. *New York World*, January 3, 1866; *The Independent*, January 4, 1866. *Cf.* also Welles, vol. ii, p. 434. Welles, however, did not think the President would concede anything, even though Tennessee were admitted.

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it should be with such conditions as would put the President in an embarrassing situation. If he should sign the resolution admitting Tennessee with conditions additional to those which he had required, he would thereby commit himself to the fundamental principle of the radicals that his conditions were not sufficient; if, on the other hand, he should veto it, then the argument that the radicals were alone in their policy of excluding the rebel states, would lose its force.[1] Thus it is seen that the question whether Tennessee should be re-instated by a simple act declaring her entitled to representation, or by a resolution with several conditions attached, was significant.

On February 19th Conkling, from the select committee on Tennessee, reported a resolution providing that senators and representatives from that state should be entitled to admission upon certain conditions being complied with.[2] The conditions were that Tennessee should not pay her rebel debts, that she should forever maintain in her constitution the provision disavowing the doctrine of secession, that all rebels should be disfranchised for at least five years, and finally that the qualified voters of the state at a special election should accept the foregoing conditions.

No action was taken on Conkling's resolution, however, and the committee adjourned without deciding whether Tennessee should be admitted with or without conditions. It is probable that the settlement of the question was purposely deferred to await the announcement of the President's action on the Freedmen's Bureau bill, which it was expected would be made during the day.[3] His veto of that

[1] See Welles, vol. ii, p. 442, for this view of Stevens' intentions; also *New York World*, February 19, 1866.

[2] See *supra*, p. 68.

[3] This was a bill to continue indefinitely and enlarge the operation of the Freedmen's Bureau which had been established a year before. For its exact terms, see Flack, pp. 12-14.

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bill alienated the conservatives and caused them to change their attitude in regard to preventing the radicals attaching conditions to the admission of Tennessee. In fact, it caused a loss of interest in the whole Tennessee question, as it gave Stevens an opportunity to commit Congress against the policy of the President without bringing in Tennessee at all.

In his veto message, Johnson not only expressed disapprobation of the Freedmen's Bureau bill's provisions, but went so far as to question the right of Congress to legislate on questions affecting so vitally the southern states while they were still unrepresented.[1] This attitude on the part of the executive so highly incensed every Republican congressman who was jealous of the prerogative of the legislative branch of the government, that when the committee met the next morning, February 20th, even the conservatives were ready to adopt a resolution proposed by Stevens in the following words:[2]

> Be it resolved by the House of Representatives, the Senate concurring, that in order to close agitation upon a question which seems likely to disturb the action of the government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven states which have been declared to be in insurrection, 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 such representation.

This resolution was adopted, all the Republicans voting in the affirmative, and it was ordered to be reported to the House immediately.[3]

Before following the progress of the above resolution

[1] For the text of message, see *Globe*, p. 915.

[2] See *supra*, p. 71.

[3] *Ibid.*, p. 72.

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through Congress it is necessary to make a brief statement of the reasons that led Johnson to veto the Freedmen's Bureau bill, and to note the reception by the country of that veto. This was the first of a series of events—one leading to the other—that made the breach between him and Congress irreparable.

In the first place, Johnson certainly opposed the bill on principle, but as the New York *Sun*[1] pointed out at the time:

> The difference between Congress and the President as to the contents of the bill is not sufficient to justify a veto. It is justifiable, however, on the ground that the President has a policy of his own for the restoration of the southern states, and Congress has an antagonistic policy of its own for the same purpose. It has been evident for some time that these conflicting methods must sooner or later come into collision, and the Freedmen's Bureau bill is simply the medium that has brought the opposing elements into contact. The President saw clearly that the bill was only the advance guard of a long procession of others that are even more obnoxious to him. He saw that his policy was being ignored by Congress and that that body was determined to force its own program upon the South. He knew it was impossible to avoid the issue eventually and he determined to meet it firmly at the outset.

Moreover, Johnson believed that the bill was championed principally by the radicals, who, in their commitee of fifteen, had intrigued against him and assumed to dictate the policy of the administration.[2] No doubt, he thought a large number of Republicans who were not classed as radicals would, now that the issue was clearly defined, come to his support. Johnson's great mistake was in thinking the

[1] *Globe*, February 21, 1866.

[2] Welles, vol. ii, p. 435.

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Freedmen's Bureau bill a measure for which the radicals alone were responsible.[1] As a matter of fact, there were very few Republicans who did not desire such modification of the President's policy as would give protection and assistance to the newly-emancipated negroes. The Freedmen's Bureau bill was designed to render such protection and assistance, and since most conservative Republicans were committed to its principles, they could not now abandon them honorably and sustain the veto. The mere veto, had it been placed simply on the grounds of the inexpediency and unconstitutionality of the Freedmen's Bureau bill, would hardly have constrained the conservatives to go over to the radical position and support Stevens' declaratory resolution. They were forced into that position by that part of the President's veto message [2] in which he expressed the opinion that it was highly improper for Congress to legislate upon a subject concerning almost solely those very states which were then unrepresented in that body.[3]

The response from the country showed the President had chosen badly in making the Freedmen's Bureau bill the issue on which he proposed to fight it out with the radicals. The great majority of the Republican papers were not supporters of the radicals, but desired to have the President and the conservatives come to a common understanding. They were unanimous, however, in their support of the principles involved in the Freedmen's Bureau bill.[4] The

[1] Welles, vol. ii, p. 435.

[2] *Globe*, p. 915.

[3] Fessenden stated that he had no particular interest in the Freedmen's Bureau bill, and would have felt inclined to sustain the veto had Johnson not taken this attitude in regard to the rights of Congress. *Globe*, p. 987.

[4] For a confirmation of this statement, see *New York Tribune*, Mar. 3rd, in which editorials on the subject of the veto are reprinted from

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New York *Tribune* had all along expressed the hope that the President and Congress would act in harmony, and while it favored negro suffrage, it was distinctly unfriendly to the extreme measures advocated by Stevens and Sumner. It deeply lamented the President's veto and said regarding his action:

Mr. Johnson has made a grave mistake. He has relieved those who elected him of a great responsibility by taking it on his own shoulders. Hereafter, whatever wrongs may be inflicted upon or indignities suffered by the southern blacks, will be charged to the President, who has left them naked to their enemies. Time will show that he has thereby precluded a true and speedy restoration of the South, and inflicted more lasting misery on her Whites than on her Blacks.[1]

The *Chicago Republican* believed the veto meant an irreparable break between Congress and the President, and said:

The point at which the President deserts the Republicans is well defined. No other point could be worse for him, none could be better for those he abandons. The Republicans propose to fulfil the pledge of the nation by protecting the freed people against the unjust, discriminating, barbarous laws of the states lately in rebellion. That is the whole sense and purport of the vetoed bill. The President refuses his consent to a measure so just and necessary. He will give the luckless freedmen, no matter though they may have borne arms and suffered wounds for the nation, no other protection than that of the ferocious clutches from which they have but just been snatched. They shall have no safeguard, no law, no administration of justice, except such as the rebel states will afford

twenty-two Republican newspapers representing all parts of the country. All of them expressed regret that there was to be a conflict between the President and Congress.

New York Tribune, February 20, 1866.

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them! That is the whole sense and purport of his veto. It is not a question of political rights. Negro voting has nothing to do with it. And on this monstrous proposition to deny to the freedmen all national protection against local legislation of an oppressive, discriminating, caste character, the President flouts and spits upon the earnest convictions of the loyal masses and makes an ostentatious appeal to the country.[1]

The *Boston Advertiser*, speaking more solemnly, said:

The grave character of the issue thus suddenly joined between the legislative and executive branches of our government is one which it was worth much serious effort to avoid, not for the interests of party which are temporary and inconsiderable, but for the sake of the national interests which are momentous and eternal. But if it indeed has come, we do not see how Congress can decline to meet it openly and firmly; relying upon the certain support of the great majority of the American people in a steadfast adherence to the course marked out alike by self-respect and by the demands of public safety.[2]

Harper's Weekly was one of the last of the Republican papers to give up hope that the President and Congress might be reconciled. It was not until after the veto of the Civil Rights bill that it was fully assured the President would yield nothing of his policy for the sake of acting harmoniously with the conservative Republicans. On April 14th, it announced that there was no longer room to doubt that the breach was beyond repair, and announced its departure from him in these words:

President Johnson must see that the Union party cannot accept the indiscriminate support of all his views and measures

[1] Quoted in *New York Tribune*, March 3, 1866.

[2] *Ibid.* Quoted in *New York Tribune*, March 3, 1866.

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as the test of constitutional fidelity; and he makes a profound mistake if he regards the situation as a struggle between himself and Mr. Thaddeus Stevens. When he sees those who have as little respect for Mr. Stevens' wisdom as he has himself, gravely questioning his course, it is a fatal delusion if he sees only Mr. Stevens.

As has been said, the declaratory resolution was passed by the committee to rebuke Johnson for intimating in his veto message that the extent of the power of Congress over reconstruction was the right of each house to determine the election, returns, and qualifications of its own members; and for questioning the propriety of Congress legislating on matters pertaining to the southern states while they were unrepresented. Stevens, relying on the resentment occasioned by the veto message, believed he and his friends could push the resolution through both houses. If this could be accomplished, the breach between the President and Congress would be so widened as to make reconciliation almost impossible. The methods adopted by the radicals in railroading the resolution through the House on February 20th, and the incidents attendant thereon, marked that as the second important event in the progress of the rupture. A perusal of that day's proceedings, as faithfully recorded in the *Globe*,[1] will convince any one that thereafter there was not even the shadow of a chance that the President and the Republican representatives could ever be brought to act in harmony.

In presenting the declaratory resolution to the House, Stevens said:

Until yesterday [Feb. 19] there was an earnest investigation into the condition of Tennessee to see whether by act of Congress, the state could be admitted to representation; but since

[1] *Globe*, pp. 943-950; *cf.* also accounts in newspapers of February 21.

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yesterday there has arisen a state of things which the committee deems puts it out of its power to proceed further without surrendering a great principle and the rights of this body to the usurpation of another power.[1]

The previous question was then called. The radicals either were or feigned to be in an angry state of mind. Should a Democrat protest against the proceedings, he was silenced with shouts of "Order! Order!" from all parts of the hall. Mr. Rogers hoped the resolution would not be driven through under gag law. (Order!) Mr. Eldridge (Dem.) submitted the point of order that the committee had no right to report its proceedings by piecemeal; and that the House ought not to receive any other than a final report from it. The point of order was overruled by the speaker.

Mr. Grider—I rise to a privileged question. I appeal to the courtesy of the gentleman from Pennsylvania to allow me to make one or two statements.

The Speaker—This is not a privileged question.

Mr. Grider—I make an appeal to the gentleman from Pennsylvania.

Mr. Stevens—There are earthquakes around me, and I tremble; I dare not yield.

Mr. Grider—I ask to be heard on this proposition and that it be postponed and printed. (Shouts of "Order! Order!")

The Speaker—The gentleman from Kentucky is not in order.

Mr. Rogers—I ask the gentleman from Pennsylvania to yield to me for a question. (Cries of "Order!")

Mr. Stevens—Not until after the vote is taken.

Mr. Rogers—Will he not allow me to be heard?

(Loud shouts of "Order!") This is gag law. (Renewed shouts of "Order!")

Mr. Randall (Dem.)—I rise to a question of order; that

[1] *Cf. supra*, p. 71.

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this House has no constitutional power to dismember the Union, and no authority in law to destroy the rights of the states.

The speaker ruled against the point of order. The Democrats then spent an hour or two in making motions to adjourn, demanding the yeas and nays, tellers, and applying all other methods of delay known to parliamentary procedure. Mr. Eldridge, their floor leader, proposed to Mr. Stevens that if he would withdraw his demand for the previous question and allow debate, the Democrats would consent to go on with the business.

Mr. Stevens—It is simply the return of the rebels of 1861. I sat thirty-eight hours under this kind of a fight once, and I have no objection to a little of it now. I am ready to sit for forty hours.

Mr. Eldridge—I appeal to the gentleman from Pennsylvania to—(Cries of "Order!").

In vain did the Democrats plead for just one hour in which to debate the question.

Mr. Voorhees (Dem.)—Will the opposite side of this House allow me to make a proposition? (Cries of "No! No!")

Mr. Washburne hoped his side would hear Mr. Voorhees for a moment. Other radicals objected.

Mr. Eldridge—Will they allow nobody to make a proposition to them? (Cries of "No! No!").

After six hours, the Democrats saw the uselessness of continuing their dilatory tactics and gave up the unequal contest. The vote was then taken and the resolution passed 109 to 40, only eight Republicans voting with the Democrats. About 30 Republicans, however, had absented them-

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selves, thinking thus to escape the responsibility of voting; but Thaddeus Stevens was too shrewd a party manager to allow so considerable a number of his colleagues to shirk. Therefore, on the next day he moved to reconsider the vote by which the resolution was passed, in order to allow these wavering gentlemen to place themselves on record. Most of them, under the influence of the party lash, were forced to vote in the affirmative.[1] The victory lay with the great radical; three-fourths of the members of the House of Representatives were irrevocably committed to his leadership against the policy of Andrew Johnson.

On February 21st, Fessenden, in the Senate, moved[2] the postponement of the regular order of business in order to take up the resolution for consideration. Objection was made, so, under the rules, it went over until the next legislative day, which, since the twenty-second was a holiday, was the twenty-third. In the meantime occurred the third, and what by most writers has been considered the most important event in the progress of the breach between Johnson and the Republicans in Congress. This was a speech delivered by the President on Washington's birthday.[3] In this speech, Johnson made a defense of his policy. Since that policy was being assailed, it was perfectly natural and proper that he should defend it. However, he made two mistakes. In the first place, he denounced the reconstruction committee as an irresponsible central directory that had assumed all the powers of Congress and was using them to keep the southern states out of the Union. This was an error in fact,[4] for, as has been seen, the committee previous

[1] *Globe*, p. 966.

[2] *Ibid.*, pp. 954-957.

[3] McPherson, *Reconstruction*, p. 58.

[4] For a fair and just defense of the committee, see Fessenden's speech cited *infra*, pp. 244 *et seq.*

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to the veto of the Freedmen's Bureau bill was not controlled by the radical faction in it. His second mistake was one of policy. He arraigned by name Charles Sumner and Thaddeus Stevens as traitors, and classed them with Jefferson Davis and Robert Toombs as destroyers of the fundamental principles of the government. From his standpoint of zealous defender of the Constitution and the rights of the states, this was certainly not a misstatement of fact; but at that time, when it was not customary for the President to denounce members of a co-ordinate branch of the government, it was considered in bad taste. Though Johnson lost practically nothing with conservative senators by this personal assault on two men whom they themselves heartily disliked, he certainly must have lost popular support by it. Republicans of the rank and file were accustomed to hearing only rebels and copperheads speak disparagingly of such men as Stevens and Sumner, and it was easy to convince them that whoever did so belonged in one or the other of those categories. However, Johnson did injure himself among conservative senators by his derogatory remarks concerning the reconstruction committee. This is evident from the tenor of their speeches in the debate, which commenced on the succeeding day on the declaratory resolution. As its passage by the Senate constitutes the fourth event in the series, a brief account of the most significant points brought out in the debate is now in order.

After the morning hour on February 23d, Fessenden moved to lay aside the regular order of business and take up the consideration of the resolution.[1] Sherman (Rep.) objected. "The Senate," said he, "like the House three days ago, is now in a state of great excitement, and to de-

[1] *Globe*, pp. 981-983.

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bate the resolution at present will needlessly irritate the controversy." Fessenden replied that he personally was calm, and that he was aware of no effort to get up a wrangle with the President. He had not tried to do so, but he believed that when the latter in a message to the Senate tells that body it has nothing to do with the matter of reconstruction, it is time the judgment of Congress be expressed on that subject. Though Sherman again pleaded for delay and other members spoke to the same effect, Fessenden's motion was carried, 26 to 19, five not voting.

Fessenden then made an elaborate speech advocating the resolution and defending the committee on reconstruction.[1] He declared his committee was not an "irresponsible central directory," as its members considered themselves merely as servants of Congress. It was created by Congress in order to obtain information in regard to conditions in the southern states. This information the Senate and House had a right to, and should obtain before agreeing to admit their representatives, even if they should be good and loyal men. He continued:

I had no particular interest in the Freedmen's Bureau bill and would have been inclined to sustain the veto had not the President in his message questioned the right of Congress to enact any law affecting the interests of the late Confederate states while they are not represented. To have voted to sustain the veto would have meant the endorsement of all the President said, including this last part of his message. I do not see how any senator could endorse this part of his message and at the same time retain his own self-respect and a proper respect for the rights of the Senate. I believe the President meant to say both in his message and his speech that the extent of the power of Congress is for it to judge of the credentials of representatives. For my part, I believe it is for

[1] *Globe*, pp. 985 *et seq.*

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Congress and Congress alone to settle the question of whether those states are entitled to representation, and I believe it should do so without dictation or even advice from anybody.

I confess the committee was influenced by the President's message containing the foregoing ideas, when it saw fit to propose that Congress distinctly state its power over the subject of reconstruction. This resolution is substantially resuming the form of the original proposition as introduced into the House at the beginning of the session.[1] Though I did not originally think this part of the resolution necessary, I do now, because, under the circumstances of this case, with this attempted limitation of its powers with regard to its own organization, Congress is prepared to say to the executive and to the country: "Over this subject we have, and mean to exercise, the most full and plenary jurisdiction; we will be limited with regard to it by no considerations arising from the views of others, except so far as those considerations may affect the minds of individuals; we will judge for ourselves, not only upon credentials and the character of men, but upon the position of states that sent those men here." In other words, to use the language of the President, when the question is to be decided whether they obey the Constitution, whether they have fitting constitutions of their own, whether they are loyal, whether they are prepared to obey the laws; we will say whether those preliminary requirements have been complied with, and not he.

In concluding, Fessenden expressed a kindly feeling towards Johnson and said he did not believe the latter would intentionally injure any of the country's institutions. He thought his feelings in regard to Tennessee had carried him further in expressing his disappointment, than in calmer moments he would have been willing to go.

Three days later John Sherman made an able speech in

[1] See *supra*, p. 37.

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opposition to the resolution.[1] He admitted the Senate's legal right to pass it but saw no use in doing so, as it certainly would neither quiet the public mind nor close agitation on the subject as the committee seemed to think. The true way to assert the power of Congress over reconstruction was to exercise it and say nothing about it. "Suppose," said he, "the two houses cannot agree on a plan of reconstruction, must these eleven states stand in their present isolated condition beyond the pale of civil law until they can agree upon some proposition? Should the two houses thus tie each other's hands?" He didn't think so. In fact they couldn't do so. For if the majority in either house, even after the passage of the resolution, should desire to exercise its undoubted power to admit senators or representatives from the southern states, the other house could not prevent it.[2] After twitting the members of the committee for their long delay in formulating a plan of reconstruction, he passed on to the most interesting part of his speech, wherein he commented on Johnson's past actions and, as Rhodes says, "held out the olive branch" to him.[3]

He regarded it as a great misfortune that Congress and the President had come to no agreement in regard to a plan of reconstruction before the war had ended, and he maintained that in all essentials Johnson had followed the policy suggested by the Wade-Davis bill. Congress could complain of nothing in Johnson's actions up to and including the veto of the Freedmen's Bureau bill. He regretted the 22d of February speech, but realized that the gentlemen whom Johnson had denounced by name had given him cause

[1] *Globe*, appendix, pp. 124-133.

[2] Fessenden later admitted that Sherman was correct in his contention as to the power of each house. *Globe*, p. 1143.

[3] Rhodes, vol. v. p. 579.

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to be greatly provoked, and he intimated that they richly deserved what had been said of them.

He believed Tennessee and Arkansas were then in a condition warranting the readmission of their delegations to seats in Congress. The weakness of the position of Congress was not that any one denied its power, but that it held no lantern to the ex-rebels; no mode by which they could get back into the folds of the Union. Let the reconstruction committee, instead of asserting the power of Congress, report a resolution fixing the manner by which the southern states may come back into the Union, by which their loyal sons might be represented in Congress.

Fessenden defended the committee from the charge of delay, and declared that nearly all the information which the committee wanted was in the hands of the President; that although the House and Senate had both asked him to furnish it to the committee, he had not seen fit to do so. It was therefore necessary that the committee obtain information for itself independently. This would necessarily take time; hence if there were any delay the blame should be imputed not to the committee but to the President.[1]

Several other senators spoke on the resolution but only a few of the points brought out by them need be noticed here. Dixon, an administration Republican from Connecticut, put his finger on the main difficulty when he showed that it was the question of negro suffrage and the desire of his party associates to add to their political strength thereby, that really prevented the immediate readmission of the southern members to their seats in Congress. Any other reasons given for their continued exclusion were insincere and manufactured for the occasion. He then appealed to all members of his party whose actions were not prompted

[1] *Globe*, p. 1147.

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by partisan motives, and who were not obsessed with the idea of universal negro suffrage, to join with him in taking up immediately the question of admitting the southern representatives. They should consider in the case of each state whether it is in the Union, whether it has a legislature, whether its people are loyal, whether the public safety will permit its admission and whether the men elected are fit to be admitted.[1]

Nye, a Republican from Nevada, quoted the words of Cobden to the effect that the American conflict had been an "aristocratic rebellion against a democratic government." Since the battle had been between those two opposing principles, he contended that a settlement should be made in accordance with the exact issue on which the contest had been waged. He therefore favored the passage of the resolution and hoped that Congress would continue to exclude the southern states, until a "nationalizing and democratizing" policy of reconstruction could be formulated for them.[2]

Stewart, also a Republican of Nevada, who had voted to sustain the President's veto, but later went over to the radicals, stated that the resolution contained an untruth. "When and by whom," said he, "were eleven states declared in insurrection?" Lincoln's proclamation of August 16, 1861, said: "I do hereby declare that the inhabitants of certain states and parts of states . . . are declared in a state of insurrection against the United States." He protested against putting the late President in a false position, for if there was any point upon which he was careful, it was always to speak of *inhabitants,* and not *states, in insurrection.* That had always been Lincoln's theory, the theory on which the war had been fought, and had been incorporated as a principle in the Union platform. "If this

[1] *Globe*, pp. 1039 *et seq.*

[2] *Globe*, pp. 1069 *et seq.*

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resolution be correct, it means that if a portion of the people of a state go into insurrection, that state shall be excluded from representation just so long as Congress may elect. I do not say that principle ever will be applied to any other section, but I ask you, are you willing so to apply it?"[1]

Reverdy Johnson opposed the resolution on the ground that it would delay still further the restoration of the Union. When his opponents talked about danger to the government resulting from the admission of the southern representatives, he feared that they were confusing their party with the government. The mass of the southern people were honest and had accepted the results of the war in good faith; he was therefore certain the admission of their representatives would, instead of endangering the country, prove the surest way to the establishment of its peace and prosperity.[2]

The vote was taken on March 2nd, and the resolution passed, 29 to 18, Sherman, in spite of his speech, voting in the affirmative.[3] Its adoption by the Senate had a significance quite different from that of the House. In the latter body it was in the nature of an ultimatum to Andrew Johnson from the radicals that they meant to wage war upon him and his policy, and they clearly indicated that they had no desire to co-operate with him. The conservative Republicans in the Senate, who held the balance of power, meant to tell him, kindly but firmly, that they could not endorse his policy *in toto*; that he must pay some respect to the prerogative of the legislative branch of the government. This is the interpretation one naturally puts on Fessenden's opening speech. In closing the debate, he clearly told the radicals in the House, that the majority in the Senate had a

[1] *Globe*, pp. 1079 *et seq.*

[2] *Ibid.*, pp. 1107 *et seq.*

[3] *Ibid.*, p. 1147.

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perfect legal right, in spite of the resolution, to act independently and admit members from the southern states whenever they might see fit. Moreover, he warned them that if matters should go so far as to show that they were acting unreasonably, wilfully, or from temper, so as to produce improper delay, he would advocate the Senate's reversing its action in regard to the resolution.[1]

Andrew Johnson occupied an excellent strategic position during the early days of March. Two courses of action lay open before him. In the first place he could vigorously maintain his stand upon the firm ground of the justice and sufficiency of his policy of reconstruction. Had he chosen this course he should have recognized at once the fact that the Republican party had, as a body, gone on record against him. This he should have announced boldly to the public and called to his support every man both in public and private life, regardless of past party affiliations, who desired an immediate restoration of the Union on the principles so definitely enunciated by his predecessor and himself. He should have reorganized his cabinet so as to have secured a body of men as his advisers, distinguished for their patriotism and ability, in perfect accord with his policy, and aggressive in action. In a day when patronage was a justifiable weapon to use in a political fight, and when politicians played the game largely for the spoils, he should have wielded this cudgel on behalf of his friends to the discomfiture of his foes. True, this is the course of action which he did eventually pursue, but not with sufficient vigor and not until it was too late to be effective.

His second course of action, as heretofore said, would have been to come to an understanding with about a dozen naturally conservative men in the Senate. This he never

[1] *Globe*, pp. 1143 *et seq.*

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had a better opportunity to do than at this very time. In the contest over the declaratory resolution, Johnson retained the entire following that had sustained his veto. In addition, John Sherman rendered him a partial support, while Lane of Kansas went entirely over to his side. The latter, on February 26th, had introduced a resolution providing that the credentials of the Arkansas and Tennessee senators be taken from the desk and referred to the judiciary committee, so that they might be acted upon immediately. This resolution was lost by a vote of only 27 to 18, the absentees being about equally divided between the advocates and opponents of the measure.[1] Thus a further defection of five or six Republican senators from the policy of exclusion would have meant the entire frustration of the radicals' plans. These half-dozen recruits Johnson could easily have secured by signing the Civil Rights bill, which was designed to render inoperative the southern "black codes."

Conservatives of the type of Grimes, Fessenden, and Trumbull desired only three conditions before agreeing to admit properly qualified men from the southern states. One was that the basis of representation be changed; but after proposing what seemed to them a fair adjustment of that question, to have it ruthlessly spurned by the extreme radicals so thoroughly disgusted them that it is quite probable they would have been willing to abandon the proposition altogether.[2] The second condition was that the negroes in the South be secured in their civil rights. The third, and to them the most important condition, was that the President vindicate their contention that Congress did have au-

[1] *Globe*, pp. 1025-1027.

[2] See *supra*, p. 205. The exceedingly acrimonious debate on this proposition between the extreme radicals and conservatives, as respectively represented by Sumner and Fessenden, occurred between March 2nd and March 9th.

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thority over the rebel states while they were still unrepresented, and over the question of reconstruction. These men had been trained in that old school of politics which taught the strict separation of governmental powers and the rigid independence of the legislative, judicial and executive departments. Their honesty, and their fidelity to the principle of the equality of the co-ordinate branches of the government, caused them to uphold the prerogative of the legislative against the overgrown pretensions of the executive; as later, the same principle caused them to vote against the conviction of Andrew Johnson when his removal would have aggrandized the legislative to the serious detriment of the executive. As previously indicated, these last two conditions—guaranteeing the negroes' civil rights and the prerogative of Congress—the President could have fulfilled by approving the Civil Rights bill.

Before entering upon the last phase of the breach between Johnson and Congress, something must be said of a sort of compromise, which for a short time appeared to give some promise of being successful. Its purpose was to get all the factions of the Union party, including the President, the conservatives and the radicals, to unite in adopting a common policy of reconstruction. Indeed its author hoped it would prove acceptable to the southern people and even to the Democrats. This all-embracing scheme was embodied in a resolution introduced into the Senate on March 16th, by Stewart of Nevada.[1] After reciting the fact that negro

[1] *Globe*, pp. 1437, 1438. Stewart was a cosmopolitan sort of person who had settled in Nevada only a short while previous to its admission as a state. He was the son-in-law of Henry S. Foote, a former member of the Confederate Congress from Mississippi, but who was then living in New York. It was supposed at the time that he had suggested the plan to Stewart, but this was denied by both men. Foote approved the plan, however, and thought if it should be offered in good faith it would be accepted by the South. See letter of Foote in *New York World*, March 23, 1866.

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suffrage was the principal stumbling-block in the way of a speedy restoration of the Union, it provided:

1. That each of the states, whose people were lately in insurrection, shall be recognized as having resumed its former relations with this government, and its chosen representatives shall be admitted into the two houses of the national legislature whenever said state shall have amended its constitution so as, 1st to give the negroes equal civil rights; 2nd to repudiate its war debts; 3rd to yield all claims for slaves liberated; 4th to provide for the extension of the elective franchise to all persons upon the same terms and conditions, making no discrimination on account of race, color or previous condition of servitude: provided, that those who were qualified to vote in the year 1860 by the laws of their respective states shall not be disfranchised by reason of any new tests or conditions which have been or may be prescribed since that year.

2. That when the aforementioned conditions shall have been complied with and ratified by a majority of the present voting population, a general amnesty shall be proclaimed.

3. That all the loyal states be respectfully requested to incorporate in their constitutions an amendment corresponding with the one above described.

4. That it is not intended to assert a coercive power on the part of Congress in regard to the regulation of the suffrage in the different states, but only to make an appeal to their own good sense and love of country, with a view to the prevention of serious evils now threatened.[1]

Stewart's resolution was referred to at the time as a plan to restore the Union on the basis of universal amnesty and universal suffrage. As a matter of fact, it practically invited the South, so far as negro suffrage was concerned, to adopt the principle of the present day "grandfather clause." Nevertheless it was a sincere attempt to solve in a patriotic

[1] The resolution as here printed is somewhat abridged.

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way the knotty problem of reconstruction and as such received respectful consideration from thoughtful people who were not carried away by racial or sectional prejudice. Stewart was not a great man nor was he, as a general rule, free from party bias, but it is not too much to say that his was the only plan of reconstruction ever offered by a man in public life which took into consideration the feelings of the people both of the South and of the North. Had it been adopted, the great amount of bitterness, suspicion, and misunderstanding which was engendered by the actual process of reconstruction would most certainly have been avoided.

In explanation of his resolution, Stewart said he had carefully observed events since Congress assembled, and had come to the conclusion that a proposition of this kind corresponded with the prevailing sentiment in Congress and also in the country as indicated by the public press. Not having heard from the southern states on the proposition, he believed it but fair and just that the best terms Congress was willing to grant should be submitted for them to adopt or reject. His plan was neither coercive nor odious in its provisions, and at the same time it avoided the long delay attendant upon a constitutional amendment. By his method of procedure alone could the South be heard from during the first session of Congress, and should his offer be refused there would be plenty of time to adopt other measures. He pointed out that what he proposed in the way of negro suffrage accorded with the telegram sent to Governor Sharkey of Mississippi by the President, in which he recommended that negroes possessing certain educational or property qualifications be allowed to vote. He therefore believed that he could be depended upon to give the proposition his hearty support.

At the conclusion of his speech some of the extreme radicals gathered around Stewart and welcomed him as a new

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convert to the doctrine of universal suffrage.[1] As a matter of fact, he had been very careful to refrain from expressing himself as to the propriety of allowing the negroes to vote. At the same time, all of the radicals, except Henry Wilson, who congratulated him refrained from committing themselves to the doctrine of universal amnesty.

Stewart's plan was well received by the country. Speaking on his resolutions a week or so later, he said they had been indorsed by practically every important Union newspaper in the North, and that he had received numerous letters from prominent persons, including ex-Governor Andrew, of Massachusetts, urging their adoption.[2] Moreover, at least three prominent southerners favored the proposition as a final settlement.[3] The New York *Sun*[4] and *Tribune*[5] both gave it their hearty indorsement and hoped that it would be adopted. Even such radical journals as the *Nation*[6] and the *Independent*[7] recognized its justice but doubted if the South would accept it in good faith and sincerity. Finally Andrew Johnson does not seem to have been entirely hostile to the idea.[8] His veto of the Civil Rights bill, however, put its adoption as a compromise measure beyond the realm of possibility; and though, in a somewhat modified form, it will be referred to again, it will be rather as one of the suggested congressional plans of reconstruction than as a compromise.

[1] *Globe*, pp. 1438, 1439.

[2] *Ibid.*, pp. 1753, 1754. *Cf.* Stewart's *Reminiscences*, ch. xxii.

[3] *Ibid.* A. H. Stephens, Henry S. Foote, Gov. Sharkey of Miss.

[4] *Ibid.*, March 19, 1866.

[5] *Ibid.*, March 17 and 21, 1866.

[6] *Ibid.*, March 22, 1866.

[7] *Ibid.*, March 29, 1866.

[8] Welles, vol. ii, p. 457.

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It is now in order to give an account of the final events in the progress of the breach between Johnson and Congress; and towards its consummation as in its beginning, the question of Tennessee's restoration was vitally involved.

On March 5th, the committee after considerable discussion finally adopted a resolution admitting Tennessee which contained essentially the same conditions as that which Conkling had reported on February 19th.[1] This resolution Bingham reported to the House on the same day (March 5th) it was adopted by the committee.[2] He asked that it be recommitted and stated that he would bring it up again within a fortnight. As a matter of fact, over four months elapsed before he did so. The disposal made of it by Congress at that late date does not concern us here, but it will be considered below in another connection.[3] There are two reasons which may explain why the Republicans on the committee, after reporting the resolution, allowed action on it to be deferred for so long. Neither of these reasons is absolutely susceptible of proof, however, and it is generally unsafe to speculate on the motives of men when one has no direct documentary evidence to sustain his statements. Nevertheless two hypotheses are here suggested, but with the qualifying remark that either, neither, or both may be incorrect. The former involves the motives of the conservatives, while the latter has to do with those of the radicals.

Bingham, who had charge of the resolution and who on account of the similarity of his and Fessenden's views, was probably influenced by him, asked that it be recommitted, in order to await, no doubt, the action of the President on the

[1] See *supra*, p. 68 and p. 75.

[2] *Globe*, p. 1189.

[3] Chap. vii.

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Civil Rights bill. His object in reporting it was to let Johnson see that Congress was serious in the demand that its power over reconstruction be recognized. Had the Civil Rights bill been signed, it seems clear that the conservatives would have made every effort to pass the Tennessee resolution forthwith.[1] Without directly approving it and without contradicting his former statements, he might have allowed it to become law by reason of the "ten day lapse,"[2] and thereby tacitly agreed to the assertions made by Congress of its prerogative. If he had done this, as he should have, the conservatives would have begun to pass similar resolutions with regard to such states as Arkansas, North Carolina, and Georgia,[3] which according to the evidence then being taken, were most deserving of consideration. If the conservatives in the House had not been able to obtain a majority for such resolutions, and they probably could not have done so at first, their friends in the Senate doubtless would have acted alone, and eventually the majority of the representatives of necessity would have joined them.

That men like Fessenden and Grimes in the Senate and Bingham and Blow in the House had in mind the adoption of such a policy as is above outlined, would seem to be proved by: (1) the abhorrence in which they held the extreme radicals and the reluctance with which they eventually were led to act with them; (2) the general tenor of their speeches, especially those of Sherman and Fessenden in the Senate; (3) the fact that in committee they passed

[1] Welles, vol. ii, pp. 441, 442.

[2] The New York *World* of February 17th advised the President to allow the resolution for admitting Tennessee, if containing obnoxious conditions, to become law by this means. From a statement made to Welles, March 3rd, he had evidently decided to accept the advice. Welles, vol. ii, p. 443.

[3] Men like A. H. Stephens, however, would hardly have been admitted.

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the resolution for admitting Tennessee, which they certainly meant should be acted on by Congress in case the Civil Rights bill were signed; (4) that the committee, controlled by conservatives,[1] took no steps whatever toward formulating a congressional plan of reconstruction until after the veto and repassage of the Civil Rights bill; and this in spite of the fact that radicals both in and out of Congress, who considered the breach with the President final after the 22nd of February speech, were making a persistent demand that the committee report a plan counter to that of the President.

If the purpose of the conservatives was as above stated, the question naturally arises as to why Thaddeus Stevens voted for the resolution and favored having it reported to the House. The probable answer is that he expected by making public the resolution with its conditions and declarations obnoxious to Johnson to arouse still further his pugnacity and obstinacy and thereby cause him to veto the Civil Rights bill, as the radicals wished him to do. Stevens did not desire to have the resolution passed, however, for as previously stated he did not wish to have a precedent set to which persons advocating the admission of other states might refer. Moreover, like most other Republicans probably, he knew that one and perhaps both of the Tennessee senators would help to sustain the President's vetoes. Finally, the anger raised in Johnson's breast at first seeing the language of the resolution, might be partially allayed by passing it; for he so very much desired the admission of Tennessee that even he would hardly have been disposed to

[1] I class as conservatives, Fessenden, Grimes, Harris, Bingham and Blow, who, with the three Democrats, constituted a majority. Conkling and Williams, though later violent radicals, at this time tended to be conservative. Fessenden as chairman controlled the time of the committee's meetings.

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quarrel a great deal with the method of its accomplishment. Though Stevens was correctly interpreting the attitude of Johnson towards the Tennessee resolution,[1] he must have felt alarmed at the possible rupture which might grow out of the differences between radical and conservative senators in regard to the amendment on the basis of representation, the debate on which was still continuing with much acrimony.[2] Moreover, Stevens doubtless knew what the intentions of the conservatives were to be with regard to the other states in case the President accepted the Civil Rights bill and the Tennessee resolution. And early in March it seemed to most observers that he would certainly sign the former[3] and give his tacit consent to the latter.[4] Indeed, there is little doubt that when the bill was being considered in the Senate, it was his intention to sign it. At least three senators so understood his attitude, and one of them, Trumbull, its author, thought it had been framed in entire harmony with Johnson's views and with what he had been doing for the protection of freedmen in their civil rights throughout the South.[5] Finally every member of his cabinet except two, advised him, in fact urged him, to sign the bill.[6]

Why did he not do so? The answer is that Thaddeus Stevens understood what the effect of his signing the bill would be and therefore set himself the task of preventing

[1] Welles, vol. ii, p. 444.

[2] See *supra*, p. 205.

[3] Rhodes, vol. v, pp. 581-583.

[4] See *supra*, p. 257, note 2.

[5] *Globe*, p. 1760. The other two senators were Sherman and Stewart; see Sherman, *Letters*, p. 276, and Stewart's *Reminiscences*, pp. 198-200.

[6] Welles, vol. ii, pp. 463, 464. Rhodes, vol. v, p. 583, note 4, says McCulloch was for the veto; Welles says McCulloch hoped the President could see his way clear to sign the bill. Seward and Welles advised the veto.

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it. His method of accomplishing this result was to wield with such telling effect the weapons of sarcasm and slander that his antagonist would be forced to fight back with whatever weapon he could lay his hand on easiest.

During the early days of March the House for the first time was taking a brief recess from discussing reconstruction. Every Saturday, however, was given over to general debate on the President's message, when new members had an opportunity to deliver their maiden speeches, which were generally filled with sentiment for delighting their admiring "folks back home." The old and well-known members who could talk at any time, did not as a rule attend these debating sessions, but on Saturday, March 10th, Thaddeus Stevens was in his seat. Though everybody knew what his views on reconstruction were, he rose ostensibly to debate that much-discussed question.[1] He begged the pardon of the members for imposing upon them a speech prepared several weeks before when radical ideas were not so common. He feared his opinions would now appear stale and ultra-conservative in comparison with some that recently had been expressed. After these introductory remarks, he declared in a very serious tone that he had no feelings of hostility toward the President and expressed for him friendship and respect. He remembered the courageous and patriotic course he had pursued during the war and for his past record he could say nothing except in the highest praise.

What followed these laudatory words can best be understood and its spirit best preserved by the epitome of a page from the old Congressional *Globe*.

Mr. Price [radical of Iowa]—When I remember that the press for the last few weeks has been repeating the name of a

[1] *Globe*, pp. 1307-1310.

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certain "Thaddeus Stevens" as having been used by the President in a recent speech at the White House, and when I hear a gentleman whom I suppose to be the Thaddeus Stevens referred to, speak in such terms in favor of the President, I wish to know whether he is the same gentleman (laughter).

Mr. Stevens—Does the gentleman suppose the speech to which he refers was a fact? (Laughter.) What I am going to say now, I do not wish to have reported. It is a confidential communication, and I presume gentlemen will not violate the confidence I repose in them (renewed laughter). Sir, that speech was one of the grandest hoaxes ever perpetrated. I am glad to have this opportunity to exonerate the President from ever having made that speech (renewed laughter). It is a part of the cunning contrivance of the copperhead party, who have been persecuting our President since the 4th of March last. Why, sir, taking advantage of an unfortunate incident which happened on that occasion[1] (laughter), they have been constantly denouncing him as addicted to low and degrading vices. To prove the truth of what I say about this hoax, I send to the clerk's desk to be read, a specimen of this system of slander, printed in the leading paper of the Democratic party. (The clerk read as follows from an editorial in the New York *World* of March 7, 1865.)

"The drunken and beastly Caligula raised his horse to the dignity of a consul. The consulship was scarcely more disgraced by that scandalous transaction than is our Vice-Presidency by the late election of Andrew Johnson. That office has been adorned in better days by Adams and Jefferson, Calhoun and Van Buren. And now to see it filled by this insolent, drunken brute, in comparison with whom even Caligula's horse was respectable! And to think that only one frail life stands between this insolent, clownish, drunkard and the Presidency! May God bless and spare Abraham Lincoln."

Mr. Stevens—We never credited this slander. But our ene-

[1] Johnson is said to have been under the influence of alcohol when inaugurated as Vice-President.

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mies, being unable to fix such odium upon our President by evidence which the lawyers would call *aliunde,* they resort to another expedient. If my friend before me (Bingham) were trying a case *de lunatico inquirendo,* and if the outside evidence were doubtful, he would lead the alleged lunatic to speak upon the subject of the hallucination, and if he could be induced to gabble nonsense, the intrinsic evidence of the case would make out the allegation of insanity. So, Mr. Speaker, if these slanderers can make the people believe that the President ever uttered that speech, then they have made out their case (laughter). But we all know he never did utter it. They had wrought it up in such a cunning way, however, as to impose upon the people. They even went into attendant circumstances in minute detail. For instance, they said he was accompanied by a former rebel mayor of this city and the counsel for the assassins of the late President. Now I know the gentleman is satisfied it is all a hoax.

If any doubt remains as to whether this episode was prearranged and the slanderous remarks were made by Stevens with malice aforethought, the opinion of Gideon Welles[1] should be convincing. Welles had a remarkable faculty for understanding the character and interpreting the motives of men.

Thaddeus Stevens has to-day made a blackguard and disreputable speech in the House. Beginning with the false assertion that the speech was prepared two months ago, and continuing with the equally false assurance that an interlude, or byplay, which was introduced was unpremeditated, this wretched old man displayed more strongly than in his speech those bad traits of dissimulation, insincerity, falsehood, scandal-loving, and defamation that have characterized his long life. The radical managers and leaders were cognizant of his speech, and had generally encouraged it, but I shall be disap-

[1] *Diary,* March 10, 1866, vol. ii, pp. 451, 452.

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pointed if they do not wish the vain old man had been silent before many months. The people may not in the first excitement and under the discipline of party be enabled to judge of the conspirators correctly who are striving to divide the Union, not by secession but by exclusion. It is clearly a conspiracy, though not avowed.

Whether Welles, in thinking Stevens' speech indicated the existence of a conspiracy to divide the Union, was right or not, there is little room for doubt that the speech itself was intended to prevent an understanding between Johnson and the conservatives. Welles was under the same delusion as Johnson in thinking the Freedmen's Bureau and Civil Rights bills were fathered by the radicals. Since Stevens' speech stimulated Welles' combativeness, how much more must it have fired the same sort of spirit in Johnson! Certainly it must have determined him, in spite of the advice of his best friends, to veto the Civil Rights bill. Therefore, on March 27th, he returned it to the Senate without his signature, but a week or so later it was repassed by a two-thirds majority in both houses, and thus became law, the objections of the President to the contrary notwithstanding.[1] The breach between Johnson and Congress was completed. The conservatives were now forced to unite with the radicals in enunciating what purported to be a congressional plan of reconstruction.

Before following its development in the committee and in Congress, a brief examination should be made of the evidence which was supposed to show why such a separate plan was necessary.

[1] Flack, pp. 35-40.

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CHAPTER V

Testimony Taken by the Committee—The Raison d'etre of the Fourteenth Amendment

The sub-committees which were appointed on January 15th[1] began taking testimony about January 20th, and continued their labors until about the end of April. There had been some discussion as to the feasibility of allowing these committees to travel through their respective districts and examine witnesses in the localities visited, but this plan was not followed, and all witnesses were examined in Washington.

This was the first enquiry by congressional committee into conditions in the South after the cessation of hostilities, but it was not the last; for from this time until the close of the Reconstruction period in 1877, whenever any extraordinary event occurred in any portion of the southern states, Congress took it upon itself to appoint a committee of enquiry. The report of the findings of these periodic investigating committees generally served a double purpose—first as an excuse for some proposed legislation, and second, as a kind of chamber of horrors where the crimes of southern "rebels and traitors" against "loyalists" were exhibited as an ominous warning to the northern voter to put none but loyal men on guard. So the testimony taken by the joint committee on reconstruction served as the *raison d'être* of the fourteenth amendment and as a campaign document for the memorable election of

[1] See *supra*, p. 48.

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1866. 150,000 copies were printed in order that senators and representatives might distribute them among their constituents.[1]

It seems strange to us now how little each section really knew of the other, and how eagerly the people of the North especially perused all sorts of information concerning conditions in the South. That this testimony was read by the people generally in the North, is proved by the fact that the newspapers of the time published copious extracts from it, as it was made public, together with editorial comments upon it. Moreover, nearly all the larger newspapers had kept one or more correspondents traveling through the South and making daily reports of what they saw and heard there. To us who are accustomed to news columns almost, if not entirely, free from partiality and political bias, it is a source of wonder how not the views only but the news of these correspondents varied with the political alignment of the proprietors and editors of their respective journals.

The evidence that was given before the committee is by no means free from bias, and in many instances it is *ex parte*. In the winter of 1865-66, there were in Washington a large number of army officers who had seen service in the South, Freedmen's Bureau agents, so-called southern refugees, both black and white, as well as congressmen-elect from the southern states, who were awaiting admission to their seats. It was from these people that the sub-committees summoned their witnesses. The first three classes mentioned were hoping that Congress would undo the work of the President in the South, and provide for the establishment of governments there after the manner of the existing governments in Tennessee and Missouri, where none could vote but loyalists. Consequently in giving their tes-

[1] *Globe*, pp. 3325, 3326.

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timony they never lost sight of the idea of influencing in this direction such legislation as would follow.

The agents of the Freedmen's Bureau, and to some extent the army officers, were of the type who later became, under the operation of the Reconstruction acts, genuine "carpet baggers;" while the refugees in response to the same stimuli developed into full-grown "scalawags." The real southerners, on the other hand, in general did their cause no good, but harm rather; as they after the manner of their class at that time, and being encouraged by the position of the President, were inclined not to take, as a matter of course and as results of the war, whatever changes Congress might see fit to make in the fundamental law of the land; but seized the opportunity afforded them on the witness stand to give expression to their outworn political philosophy. A perusal of Alexander H. Stephens' testimony will illustrate the truth of this statement.[1] It is no exaggeration to say that Stephens' political philosophy, as given before the committee in April of 1866, is a political curio. In a nutshell, it is that a state may secede at will, may return to its allegiance at will, and having so returned, is entitled to resume its former relations without submitting to any conditions precedent. However prevalent such political philosophy then was in the South, it was not very palatable to those northern people who desired that all the fruits of the war should be harvested before southern members were again admitted into Congress.

As has been seen, there was not entire unanimity, however, among Republicans as to what the "fruits of the war" were, but even the most conservative believed that all of the guarantees later embraced in the fourteenth amendment should be included. These guarantees, it will be remembered, were four in number: (1) Equality of civil

[1] *Testimony*, part iii, pp. 158-166.

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rights, without regard to race or color; (2) The guarantee of the validity of the United States debt, including debts incurred for payment of pensions and bounties, the repudiation of all rebel debts and a constitutional denial of the validity of claims for slaves emancipated or property destroyed during the war; (3) Exclusion of the more prominent rebels from office; (4) A more equitable basis of representation, so that the vote of a southern "traitor" should not equal the votes of two loyal soldiers in the North. The questions asked the witnesses generally had a bearing on these matters and were intended to show the necessity for some such guarantees as the foregoing. Numerous resolutions proposing amendments to the Constitution and containing one or more of these guarantees, had been introduced into Congress during December of 1865 and January of 1866. So the testimony served not to create in the minds of the committee and of Congress any new ideas as to what measures ought to be passed, but simply to confirm them in the opinion that these four guarantees introduced previous to the taking of the testimony were necessary.

Since the first measure which Congress proposed to pass was that one giving equal civil rights to the negroes, it was necessary that the sub-committee produce evidence, showing that no such equality then existed and that as a consequence the rights of the freedmen in the South were not respected. Therefore, one of the first and most important questions asked of almost every witness was in regard to the condition of the freedmen and the treatment accorded them by the whites. Of a hundred and twenty-five persons who were asked whether there was not general hostility and even frequent cruelty towards the freedmen on the part of southern whites, eighty-nine replied in the affirmative, while only thirty-six gave a negative answer.[1] A still

[1] *Testimony*, part iv, pp. 171-173.

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further proof that these "wards of the nation" could not be entrusted with safety to the tender mercies of their former masters, is attested by the fact that seventy-three witnesses emphatically declared that the presence of the Freedmen's Bureau and of United States troops was necessary in the South, while only nine denied the existence of any such necessity.[1] These witnesses said, moreover, that so long as equality of civil rights was denied the freedmen, United States authority must be continued; but if the negro were given free entrance to the witness stand, and some said, to the ballot-box, he would be able to protect his own interests without outside assistance. That this hostility towards the negroes was not caused by their alleged shiftlessness and general tendency to idleness and crime, but rather by the natural prejudice and ill-temper of the whites, is indicated by the fact that fifty-nine witnesses declared their belief in the fitness and disposition of the freedmen for free labor, while only four thought that slavery was the only condition to which they were adapted.[2] Eleven persons testified that the southern people were hostile to the idea of free labor, while only four thought that they were reconciled to it.[3] Before reading such typical parts of the testimony as is given below one should remind himself that while possibly the witnesses did not as a rule perjure themselves, they gave neither a fair nor a complete picture of conditions in the South during the winter of 1865-66. As has already been said, a great many of them expected to benefit themselves by persuading Congress to pursue a course of legislation favorable to their own political ambitions. Moreover, their inquisitors likewise had personal ends to serve and were bent upon proving by the evidence that their

[1] *Testimony*, part iv, pp. 170-171.

[2] *Ibid.*, pp. 173-174.

[3] *Ibid.*, part iv, p. 174.

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favorite nostrums were the correct prescriptions for the maladies in the body politic of the South. Therefore, as a revelation of the actual social, economic and political conditions in the South the testimony is not very reliable, and hence it is not analyzed primarily with the idea of making such a revelation. The purpose of the analysis is to present the more or less questionable facts which served the double purpose of corroborating the ideas of the members of Congress as to the proper mode of reconstruction, and promoting the defence of these ideas before the people.

The following extracts from the testimony in regard to the treatment of the freedmen will tend to show why Congress was determined to pass such measures as the Freedmen's Bureau bill, the Civil Rights bill, and the civil rights resolution for amending the Constitution.

Dr. Daniel Norton (colored), of Yorktown, Va., upon being asked what the whites would do with the negroes in case the military force and Freedmen's Bureau should be removed, replied: [1]

I do not think that the colored people would be safe. They would be in danger of being hunted and killed. The spirit of the white against the black is much worse than it was before the war; a white gentleman with whom I was talking made this remark: he said he was well disposed toward the colored people, but that finding that they took up arms against him, he had come to the conclusion that he never wanted to have anything to do with them, or to show any spirit of kindness toward them.

Rev. William Thornton (colored), of Hampton, Va.[2]

Question. What acts of unkindness can you mention?
Answer. Some days ago an old gentleman named Hough-

[1] *Testimony*, part ii, p. 52. [2] *Ibid.*, p. 53.

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ton, a white man living in the neighborhood of my church, was in the church. In my sermon I mentioned the assassination of Mr. Lincoln. Next day I happened to meet Houghton, who said to me, "Sir, as soon as we can get these Yankees off the ground and move that Bureau, we will put you to rights; we will break up your church, and not one of you shall have a church here." Said I, "For what? I think it is for the safety of the country to have religious meetings, and for your safety as well as everybody else's." "We will not have it, sir," said he, and then he commenced talking about two classes of people whom they intended to put to rights, the colored people and the loyal white men. I asked him in what respect he was going to put them to rights; said he, "That is for myself."

Question. Is he a man of standing and condition in the neighborhood?

Answer. He owns property there.

Question. Is he a rebel?

Answer. Oh, yes.

Question. Can you speak of any acts of violence committed by the whites upon the blacks?

Answer. Yes, sir; about three weeks ago a colored man got another one to cut some wood for him, and sent him into the woods adjoining the property of a Mr. Britner, a white man. The colored man, not knowing the line between the two farms, cut down a tree on Britner's land, when Britner went into the woods and deliberately shot him as he would shoot a bird.

Question. Was he not indicted and punished for that?

Answer. They had him in prison.

Question. Is he not in prison now?

Answer. I heard that they had let him out last Sunday morning.

Question. Do you know any other instances of cruelty?

Answer. I have church once a month in Matthews county, Virginia, the other side of the bay. The last time I was over there an intelligent man told me that just below his house a lady and her husband, who had been at the meeting, received

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thirty-nine lashes for being there, according to the old law of Virginia, as if they had been slaves. This was simply because they were told not to go to hear a Yankee darky talk. They said he was not a Yankee but a man born in Virginia, in Hampton.

Question. Why did they not resist being flogged?

Answer. They are that much down.

Question. Did they know that they had a right to resist?

Answer. They dare not do it.

Question. Why.

Answer. I do not know. On the 1st of January we had a public meeting there, at which I spoke. The next night when I was coming from the church, which is about a mile and a half from my house, I met a colored man who told me that there was a plot laid for me; I went back to the church and got five of my church members to come with me. I afterwards learned that a fellow named Mahon, a white man, had determined, for my speech that day, to murder me the first chance.

Question. Did that come to you in so authentic a form as to leave no doubt upon your mind?

Answer. I believe he made the threat. The next day he said to me, "We hope the time will soon come that these Yankees will be away from here, and then we will settle with you preachers." That gave me to understand that the threat was made.

Mr. Ezra Heinstadt, a loyalist attorney of New Orleans, La.[1]

Question. Would it or not, in your judgment, be safe for the loyal people of Louisiana, both white and black, to withdraw from that state at this time the military power and supervision of the Federal Government?

Answer. I unhesitatingly say that I do not consider it would be safe for them to do so. My opinion is that if the

[1] *Testimony*, part iii, p. 24.

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entire force of the Federal Government were withdrawn from the state of Louisiana the Union men, as we call those who were loyal during the rebellion, would be driven from almost all the rural portions of the state at least, if not from the city of New Orleans, and the condition of the blacks would, to a certain extent, be worse than it was when slavery existed there, for they would be controlled by force in such a way as to be left very little liberty whatever.

Question. What is the feeling there generally among those who have been in the rebellion as to managing the blacks properly without physical compulsion?

Answer. The general impression is that it cannot be done; that the negroes will not work unless by the application of physical force to compel them to do so.

Question. Suppose the power of the Federal Government were withdrawn, in your judgment what would be the course of the people in legislating in regard to the blacks? Would they seek in spirit to restore a system of servitude, or would they in good faith carry out the spirit of the emancipation amendment of the Constitution?

Answer. As to that I would refer you to the enactments of the legislature of Louisiana recently in session. They passed most stringent laws, making it a highly penal offence for any one to do anything that might be construed into encouraging the blacks to leave the persons with whom they had made contracts for labor; and also making it a misdemeanor for the blacks to do so, subjecting them to be arrested as vagrants and sold as such during the remaining portion of the time for which they had contracted, and giving the preference in buying them at such rate to the persons with whom they had made contracts. There have been several instances in the parishes where the local authorities have passed most stringent ordinances upon the subject, but which have been overruled by the military authorities. I will refer here to what was done in one instance. When Brigadier-General Fullerton assumed the control of the affairs of the Freedmen's Bureau in the city of New Orleans, some time during last fall—I do not remember the

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exact date—he issued an order that all persons of color in and about the city of New Orleans who did not produce evidence immediately of being employed should be arrested as vagrants. The consequence was that in the course of twenty-four or forty-eight hours a very large number of colored persons who were found upon the streets without evidence of employment with them were put in prison. After that state of things had continued for some forty-eight hours the order of General Fullerton was revoked by order of General Canby, the commander of the department, and those persons were set at liberty. I will make this general statement, that from the habits, the universal and long continued habits of life of the white population of Louisiana in the government of slaves, it is very generally believed by them that the negroes will not work—that they will become an idle and thriftless population unless their labor can be controlled by force; that is the general impression. My own opinion upon that subject, formed from long experience in Louisiana, and a pretty general acquaintance with the planting interests, is that in a short time, when the negroes shall experience the necessity of labor in order to live, they will become an industrious population. A great deal of the labor of the city of New Orleans is now being performed by them.

Question. Are the negroes now willing to work for those who they believe treat them kindly, and give them fair wages?

Answer. Well, sir, so far as my observation extends—and I have looked into this subject considerably—the disposition of the negroes generally is to go to work for those who will treat them properly and pay them a fair compensation.

Question. What is the prevailing sentiment among the rebels in regard to allowing negroes to become landholders in the state?

Answer. There is a very general opposition to that, as well as to the education and moral improvement of the negro race. But the opposition to negroes holding property is not so great in Louisiana as it is in some of the adjoining states, from the fact that from time immemorial free negroes have been land-

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holders in Louisiana. I will add that this is more particularly directed against those negroes who were lately slaves than against what we call in Louisiana free colored persons, of whom there have been a very large number in the state for a great many years.

Question. Judging from your observation and means of information, what would you suggest as the suitable remedy to be employed by the Federal Government for the evils to which you have referred as existing in the state of Louisiana?

Answer. The first great requisite, that which I imagine would have the best influence in settling the state of things in Louisiana, would be to maintain for some years a rigid administration of the Freedmen's Bureau to protect the blacks in their rights, as well as to see that they complied with the reasonable and proper contracts they might make. I consider that such an establishment would stand as a barrier to the encroachments of one class upon the rights of the other. In regard to political matters, I consider that it would be a solecism in government for us to have states containing different classes of population, one class of which, almost equal in numbers to the other class, being entirely debarred from the exercise of the elective franchise.

Major General Edward Hatch,[1] who had been stationed in Mississippi and Alabama after the close of the war, gave the following testimony:

Question. What is the disposition of the people there towards the colored population?

Answer. The poorer classes of the white people have an intense dislike towards them. So far as any love, or regard or care for the negro, or the slave, I have never seen any of it, and do not believe it ever existed, except so far as his former money value may have caused care for him. There are men in Mississippi who are willing to accept the state of affairs as

[1] *Testimony*, part iii, p. 5.

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they are now, and to employ the negro and pay him a fair reward for his services. But a great portion of the people of Mississippi are not of large enough views to understand this matter. They wish to control the negro and his labor in such a way that he will be compelled to remain with them for never less than a year, and upon their own terms.

Question. According to your observation, what is the disposition of the negroes in reference to working, if they can be assured of pay for their work?

Answer. We have always found them very ready to work. I have seen no instance where they were not willing to work when they have been assured of their rights. The superintendent, who by the way was a northern man, of the work of opening the Mobile and Ohio railroad, told me that the negro men whom he had to work for eight dollars a month and army rations worked as well as any men; that men never worked better. We issued the rations to those negroes working on that road. We issued no rations to indigent negroes, though we issued a large amount of rations to indigent whites; also a large amount of Confederate corn that we had taken, and I run one or two mills to grind corn to feed them. We never issued a ration to an indigent negro while I was there.

Question. Why not.

Answer. They never asked for any. I stopped issuing to the whites, but they made so many complaints that I was ordered to commence issuing again. They were in a starving condition, as the armies, the Confederate as well as our own, had gone over the country and nearly eaten it up. I have always found the negro ready to work when he was assured that he would be paid according to his contract.

Question. As a general thing, would northern men be kindly received who might go to Mississippi to live?

Answer. No, sir; there is a very intense antipathy towards northern men in all Mississippi, with perhaps an occasional exception. I have heard them say that no northern man should come there and work their plantations and live among them, unless he was an overseer under them, or something of that

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kind; that he could not come there and expect to own a plantation. There is no doubt at all that there is an intense hatred felt towards northern men. They may from policy sometimes perhaps consent to use a northern man for some purpose. But in the portion of the state where I have been I have seen no evidence of good feeling towards northern men.

Question. Is there a disposition among the people of that state to discourage the negro from purchasing land?

Answer. From all that I heard the people say, I should say that the disposition was to discourage the negro from purchasing land. The owners of the large plantations do not wish to cut up their plantations at all, and all the good land in Mississippi is generally owned by the large planters. The valley of the Tombigbee contains a very large negro population, and the planters have always hoped to work their plantations with the negroes since the surrender. I suppose that at one time they found a great deal of trouble in doing so. The negroes were afraid to contract with their old masters for fear they would be brought into slavery again, although they knew they were free. Their masters wanted to work the negroes for $75 a year, although they used to pay $200 a year for their work. The negro was shrewd enough to understand the difference in price, and thought it strange he was not worth as much as before. We found the negroes willing to go to work on their old plantations whenever they were assured that they would be paid. I myself told the negroes at the time of the surrender that it would be much better for them to go back on the plantations to work, and that they would be secured under their contracts as long as I was there and the troops were there; and a large portion of the negroes did so. This was some time before the Freedmen's Bureau took charge of them.

The testimony of former provisional Governor James Johnson, of Georgia,[1] while general in its nature, was perhaps fair and impartial.

[1] *Testimony*, part iii, p. 129.

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Question. The object of the committee is to ascertain the condition of Georgia, and the sentiments of the people with reference to this Government; how far they are loyal, and how far they are disloyal; and we would be glad to have you give your opinions upon that subject, and any facts you may have.

Answer. The condition of public affairs in Georgia, in my estimation, is improving now, and has been improving for some time past. Our people are becoming better satisfied, with the lapse of time, and their passions are gradually abating. As an evidence of this fact, I could point to the legislation of the state on particular subjects; the provisions which are being made by law for the protection of freedmen, and securing them in their rights. While I say that our people are gradually improving, it is due to truth that I should say there are individual exceptions. We have some bad men among us, whose passions have not yet abated; but there are not a great many of them. Immediately after emancipation went into actual effect, there was some hostility manifested towards the negroes, by some classes of persons. But that hostility is abating, particularly on the part of those who formerly owned slaves. I would qualify this general remark, by saying that, whilst it is true of the most, there are individual exceptions; there are individual cases of outrage and wrong perpetrated upon the freedmen. But such acts do not meet the approval of the great masses of our people. This being true, that there are violent men, evil-disposed men, as a matter of course they easily associate themselves together; and a few men can do a great deal of harm and make a great deal of noise. For this reason, in my judgment, a few troops of the United States should still be kept in Georgia for the present, for the purpose of keeping in restraint these evil-disposed men to whom I have referred. These troops are further necessary to aid and assist the Freedmen's Bureau, whilst it remains, in my judgment. And, in my opinion, it is proper, at present, that that bureau, or something akin to it, should be continued in the state for a time. In my judgment, when the

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district and circuit courts of the United States are properly organized in the state, and when our own legislature shall have perfected their system of laws in reference to negroes, then the bill which has already passed one branch of Congress, which proposes to declare and secure the civil rights of persons, if passed by the other branch, will dispense with the necessity of the presence of the Freedmen's Bureau, or of the troops of the United States. But until that is done, I think it is proper that both should be continued.

General Robert E. Lee.[1]

Question. How do the people in Virginia, the secessionists more particularly, feel toward the freedmen?

Answer. Every one with whom I associate expresses kind feelings towards the freedmen. They wish to see them get on in the world, and particularly to take up some occupation for a living, and to turn their hands to some work. I know that efforts have been made among the farmers, near where I live, to induce them to engage for the year at regular wages.

Question. Do you think there is a willingness on the part of their old masters to give them fair living wages for their labor?

Answer. I believe it is so. The farmers generally prefer those servants who have been living with them before. I have heard them express their preference for the men whom they know, who had lived with them before and they wish to get them to return to work.

Question. Are you aware of the existence of any combination among the whites to keep down the wages of the negroes?

Answer. I am not. I have heard that, in several counties, land owners had met in order to establish a uniform rate of wages; but I never heard, nor do I know, of any combination to keep down wages, or establish any rate which they did not think fair. The means of paying wages in Virginia are very

[1] *Testimony*, part ii, p. 130.

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limited now, and there is a difference of opinion as to how much each person is able to pay.

Question. How do they feel in regard to the education of the blacks? Is there a general willingness or a general unwillingness to have them educated?

Answer. Where I am, and have been, the people have exhibited a willingness that the blacks should be educated, and they express an opinion that that would be better for the blacks and better for the whites.

Question. General, you are very competent to judge of the capacity of black men for acquiring knowledge; I want your opinion on that capacity as compared with the capacity of white men?

Answer. I do not know that I am particularly qualified to speak on that subject, as you seem to intimate; but I do not think that he is as capable of acquiring knowledge as the white man is. There are some more apt than others. I have known some to acquire knowledge and skill in their trade or profession. I have had servants of my own who learned to read and write very well.

Question. Do they show a capacity to obtain knowledge of mathematics and the exact sciences?

Answer. I have no knowledge on that subject. I am merely acquainted with those who have learned the common rudiments of education.

Question. General, are you aware of the existence among the blacks of Virginia, anywhere within the limits of the state, of combinations having in view the disturbance of the peace, or any improper and unlawful acts?

Answer. I am not. I have seen no evidence of it, and have heard of none. Wherever I have been they have been quiet and orderly, not disposed to work or rather not disposed to any continuous engagement to work, but just very short jobs, to provide them with the immediate means of subsistence.

Question. Has the colored race generally as great a love of money and property as the white race possesses.

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Answer. I do not think it has. The blacks with whom I am acquainted look more to the present time than to the future.

Question. Does that absence of a lust of money and property arise more from the nature of the negro than from his former servile condition?

Answer. Well, it may be, in some measure, attributable to his former condition. They are an amiable, social race. They like their ease and comfort, and, I think, look more to their present than to their future condition.

No doubt a more important factor in determining Congress to provide for equality in civil rights was the black codes passed by the southern legislatures during the winter of 1865-66. These codes were not, as a rule, read into the testimony. Alex. H. Stephens, however, offered an extract from an act passed by the Georgia legislature declaring the rights of persons of color. This act is not typical of the black codes, but is here inserted to show that under favorable circumstances the southern states would doubtless have dealt justly with the negroes, without the stimulus of an amendment to the Federal Constitution on civil rights.[1]

Question. What, at present, are the relations subsisting between the white people and black people, especially in the relation of employer and employed?

Answer. Quite as good, I think, as in any part of the world that ever I have been in between like classes of employer and employee. The condition of things in this respect on my return last fall was very different from what it was when I left home for my present visit to this city. During the fall, and up to the close of the year, there was a general opinion prevailing among the colored people that at Christmas there would be a division of the lands, and a very general indisposition on their part to make any contracts at all for the present year. Indeed,

[1] *Testimony*, part iii, p. 160.

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there were only very few contracts, I think, made throughout the state until after Christmas, or about the first of January. General Tillson, who is at the head of the bureau in the state, and whose administration has given very general satisfaction to our people, I think, was very active in disabusing the minds of the colored people from their error in this particular. He visited quite a number of places in the state, and addressed large audiences of colored people; and when they became satisfied that they were laboring under a mistake in anticipating a division of lands after Christmas and the first of January, they made contracts very readily generally; and since that time affairs have, in the main, moved on quite smoothly and quietly.

Question. Are the negroes, generally, at work?

Answer. Yes, sir; they are generally at work. There are some idlers, but this class constitutes but a small proportion.

Question. What, upon the whole, has been their conduct? Proper, under the circumstances in which they have been placed, or otherwise?

Answer. As a whole, much better than the most hopeful looked for.

Question. As far as you know, what are the leading objects and desires of the negro population, at the present time, in reference to themselves?

Answer. It is to be protected in their rights of persons and property—to be dealt by fairly and justly.

Question. What, if anything, has been done by the legislature of your state for the accomplishment of these objects?

Answer. The legislature has passed an act, of which the following is a copy:

("No. 90.)

"An act to define the term 'persons of color,' and to declare the rights of such persons.

"Sec. 1. *Be it enacted, etc.*, That all negroes, mulattoes, mestizoes, and their descendants having one-eighth negro or African blood in their veins, shall be known in this state as 'persons of color.'

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"Sec. 2. *Be it further enacted,* That persons of color shall have the right to make and enforce contracts, to sue, be sued, to be parties and give evidence, to inherit, to purchase, and to have full and equal benefit of all laws and proceedings for the security of person and estate, and shall not be subjected to any other or different punishment, pain, or penalty, for the commission of any act or offence, than such as are prescribed for white persons committing like acts or offences."

The third section of this act simply repeals all conflicting laws. It was approved by the governor on the 17th of March last.

Question. Does this act express the opinions of the people and will it be sustained?

Answer. I think it will be sustained by the courts, as well as by public sentiment.

The next matters with which the committee concerned itself were the questions settled by section iv of the fourteenth amendment, viz., the guarantee of the validity of the National debt, the declaration of the invalidity of the rebel debt, and of all claims for slaves and damages done to the property of rebels during the war. Of fifteen witnesses who were asked whether there was an expectation among southerners of compensation for slaves emancipated and property destroyed during the war, twelve replied in the affirmative, and three in the negative.[1] Twenty-eight witnesses declared there was a general reluctance to pay taxes and the National debt, and thought that if it were paid, the Confederate debt should also be paid, while only one thought otherwise.[2] Some of the typical answers in reply to these questions follow:

General A. L. Chetlain, of Galena, Illinois, who had been serving in Alabama since Lee's surrender:[3]

[1] *Testimony*, part iv, p. 169.

[2] *Ibid.*, p. 175.

[3] *Testimony*, part iii, p. 150.

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Question. Do you know anything of the expectations of the people in regard to payment for their slaves and compensation for their losses during the war?

Answer. They talk very freely in regard to an effort being made by their members, when once in Congress, to get pay for all the negroes they have lost, or that have been freed under the President's proclamation. They also expect that a majority in Congress will be secured, after the admission of their members, to give the disabled soldiers of the South the benefits of the pension act. They also speak freely of the matter of claims. They say that, now that they are pardoned and again in the family, they expect the Government will pay them for the damages which they sustained by Sherman's, Grierson's and Rousseau's raids.

Judge John C. Underwood, of New York, whom Lincoln made federal judge of the district court in Virginia:[2]

Question. Let me put a hypothetical case to you. Suppose that by means of a combination with the so-called Democratic party, *alias* copperhead party, *alias* conservative party, they, the rebels, should again obtain political power in Congress, and in the executive department; suppose this to be the result of a combination between the ex-rebel party in the South and this so-called Democratic party in the North; what would be the effect of that ascendancy upon the rebel states? What measures would they resort to.

Answer. They would attempt either to accomplish a repudiation of the National debt, or an acknowledgment of the Confederate debt, and compensation for their negroes. I think these would be their leading measures, their leading demands; and I think if either the rebel debt could be placed upon an equality with the National debt, or both could be alike repudiated, they would be satisfied. But the leading spirits would claim compensation for their negroes, and would expect to get it by such a combination.

[2] *Testimony*, part ii, p. 8.

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Homer A. Cooke,[1] a former quartermaster in the United States army, who had been stationed in North Carolina:

Question. How do the ex-rebels feel about the payment of the Federal war debt? If it was left to them to vote *yes* or *no* on the question of paying it, what way would they vote generally?

Answer. They would vote *no*, without doubt.

Question. It would not be a very close struggle?

Answer. It would be about as unanimous as the vote in this district on the question of negro suffrage.

Question. Suppose the question were referred to them whether or not they would pay the rebel war debt, how would they vote there generally, *yes* or *no*?

Answer. I think their vote would be in the affirmative, to pay it; because the mass of voters are under the influence of a few men, and those men are directly interested in the debt, as they hold the bonds.

Brigadier-General C. H. Howard,[2] an inspector in the Freedmen's Bureau, and brother of Gen. O. O. Howard, testified as to conditions in Georgia and Florida:

Question. What is the general feeling, according to your observation, in regard to the payment of the Confederate rebel debt, or the state rebel debt, in any of those states?

Answer. I think there is a pretty universal feeling in favor of paying the state rebel debt, but for pretty obvious reasons they would not be willing to shoulder any further the Confederate debt.

Question. How do they feel in regard to the payment of the Federal debt for carrying on the war?

Answer. Their feeling is unquestionably opposed to it; but still they generally expect to be compelled to aid in the payment.

[1] *Testimony*, part ii, p. 204.

[2] *Testimony*, part iii, pp. 39, 40.

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Question. Suppose the question was left to the votes of the constituents in South Carolina, Georgia, and Florida. Suppose the electors at the polls were voting on the question of paying the Federal debt, would they vote for it?

Answer. They would not; I think not.

Question. Would they then, knowingly and willingly, elect representatives to Congress who would vote to pay the Federal debt, supposing that question should be made an issue at the polls or in the caucus?

Answer. If that question were the main issue?

Question. Suppose it to be the sole issue?

Answer. If it were the sole issue, I have no doubt that the man who advocated the payment of the Federal debt would lose his election. But there might be personal considerations in favor of candidates which would affect that question very much. Your question has brought to my mind something which has been quite frequently expressed to me directly, and has been told to me by northern men, as being found to be the invariable sentiment—that the Government of the United States should take measures to pay for the slaves.

Question. Do they seem to entertain that expectation.

Answer. A large number of men in the interior seem to think that since the late indication of the sentiments of the Government (as being conciliatory and disposed to grant them favors) some measure would be taken to remunerate them for the loss of their slaves. I would not say that was very unanimous or universal, but I found that there were quite a number thinking that way.

Question. What is the foundation of that expectation—any party combinations?

Answer. Not that I know of. I have an idea that the expectation would never have arisen in the form of an expectation but for a certain policy which they think has been put in operation by the Government. They regard it as a change of policy since the first establishment of peace.

There was a feeling among congressmen, that the leaders

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in the rebellion should be disfranchised or at least disqualified from holding offices of trust under the state or national governments. Among the questions asked the witnesses was one to bring out the fact that the people of the South had been and still were to a very large degree under the influence of their leaders, and that in order to build up there a loyalist party, it was necessary to strip these leaders of as much of their influence as possible. Forty-three persons out of forty-five gave it as their opinion that the President's special pardons and leniency to these leading rebels had had a very bad effect upon them and had caused them —humbled and meek at the close of the war—to assume again all their former hauteur and insolence toward the North.[1] Fifty witnesses out of sixty-four believed that these leaders, and under their influence, the public generally, continued to hold to their old secession principles and states' rights doctrines; that they had submitted to Federal authority only under a feeling of compulsion, and that in case of a war between the United States and some foreign power, these leaders would be willing to fight against the United States, especially if they should see any chance by so doing of rehabilitating the Confederacy and securing their independence.[2] Twenty men, who were asked if the southern politicians did not hope to regain the balance of power in the Union by means of a split in the Union party, and by co-operation with the northern Democrats, replied unanimously in the affirmative.[3] Several other witnesses declared that much of the hostility, so prevalent in the South toward the Union and Union men, was studiously engendered by the violent language used by politicians and newspaper editors.[4]

[1] *Testimony*, part iv, pp. 175, 176.

[2] *Ibid.*, pp. 176, 177.

[3] *Ibid.*, p 180.

[4] *Testimony*, part ii, pp. 120, 121, 123.

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The following extracts from the testimony will serve as concrete illustration of what was said by witnesses in reply to questions bearing on these general matters.

The indefatigable John Minor Botts,[1] of Virginia, after entertaining the committee with an account of Lincoln's negotiations with the Virginia secession convention just prior to the fall of Fort Sumter, was interrogated as to the present feeling of the ex-rebels in Virginia towards the United States Government.

Answer. At the time of the surrender of General Lee's army and the restoration of peace I think there was, not only a general, but an almost universal acquiescence and congratulation among the people that the war had terminated, and a large majority of them were at least contented, if not gratified, that it had terminated by a restoration of the state to the Union. At that time the leaders, too, seemed to have been entirely subdued. They had become satisfied that Mr. Lincoln was a noble, kind-hearted, generous man, from whom they had little to fear; but when he was assassinated, and Mr. Johnson took his place, they remembered Mr. Johnson's declarations in the Senate of the United States before the war, his own treatment during the war by the secession party, and his declarations after he came to Washington as the Vice-President of the United States, in one or more speeches, but especially in a speech in which he declared that treason was a crime which must be punished. They felt exceedingly apprehensive for the security of their property, as well as for the security of their lives; and a more humble, unpretending set of gentlemen I never saw than they were at that time. But from the time that Mr. Johnson commenced his indiscriminate system of pardoning all who made application, and from impositions which, I have no doubt, were practiced upon Mr. Johnson in pardoning the worst class of secessionists among the first, they be-

[1] *Testimony*, part ii, pp 120, 121, 123.

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came bold, insolent, and defiant; and this was increased to a very large extent by the permission which was, immediately after the evacuation of Richmond, given by General Patrick, the Democratic copperhead provost marshal of the army of the Potomac, to the original conductors of the public press before the rebellion to re-establish their papers, I believe, without restriction or limitation, upon any of the proprietors; since which time, I think, the spirit of disloyalty and disaffection has gone on increasing day by day, and hour by hour, until among the leaders generally there is as much disaffection and disloyalty as there was at any time during the war, and a hundred-fold more than there was immediately after the evacuation and the surrender of the army. This is the conclusion to which my mind had been brought by the licentiousness of the press, and by communications which are made to me from all parts of the state, either verbally or by letter, from the most prominent and reliable Union sources. If I were to judge from anything I have ever heard personally from these gentlemen, I should not think there was any very great difference between their loyalty and yours or mine; but I hear of it elsewhere, and I see evidence of it daily, not only in the public press, but in the proceedings of the so-called legislature of the state. It is no more a legislative body than we compose one here now. I believe if the leaders and the public press could be restrained in their expressions and inculcations of disloyalty with the masses of the people we should have no trouble whatever.

Lieutenant W. L. Chase, an officer of the Freedmen's Bureau, stationed in Culpeper county, Virginia, testified:[1]

Question. In case of war between the United States and a foreign power, what side would these men espouse, do you think?

Answer. I think that a great many of those who entertain

[1] *Testimony*, part ii, p. 96.

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these bitter sentiments would go with the foreign country in preference to the United States. My views were in accordance with those of Mr. Johnson when I went there, believing that his policy in reference to reconstruction of the states was just; but from my experience, I am inclined to be very radical.

Question. What do you think has really been the effect of that liberal policy on the minds and hearts of secessionists there?

Answer. I think it has been the cause of their demanding what they had no right to demand, and of making them more bitter towards the Government generally, especially to the people of the north.

Question. Does it make them more outspoken and insolent in their language towards the Government of the United States?

Answer. I believe it does, from what I can learn. After the fall of Richmond and the surrender of Lee's army, people were in a state of terror. They expected almost total annihilation. They found out that nothing of that kind was going to happen; and turned right around.

Question. Do they not respect the laws of the United States down there?

Answer. They do not like to if they can avoid it.

J. W. Alvord, an agent of the Freedmen's Bureau, testified in regard to his experience in Virginia and other southern states.[1]

Question. Now state what, among the rebel people, is the general feeling towards the Government of the United States?

Answer. It is hostile, as it seems to me, in the great majority of the southern people; I mean that part of them who were engaged in the rebellion. There is evidently no regret for the rebellion, but rather a defence of it, and only a submission to the circumstances of the case as a conquered people. They

[1] *Testimony*, part ii, p. 243.

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everywhere defend the principles on which the rebellion was commenced.

Question. They still insist that those principles were right?

Answer. Yes, sir; they seem to feel that peace was brought about by an arrangement which allowed them the equal condition of belligerents, and in possession of all that they previously had had of government privileges. They everywhere insist upon the immediate restoration of such privileges, and that they shall be readmitted as states into the Union. They complain bitterly of the treatment they are receiving in being kept out.

Sufficient evidence has now been quoted to show that the motive actuating the members of the committee was as stated above, to fortify their preconceived opinions in regard to the following matters: First, that an amendment to the Constitution was necessary to give the negroes equal civil rights, it being shown that without such an amendment the lives, liberty, and property of the freedmen would not be protected or respected. Second, another amendment that would guarantee the validity of the National debt, repudiate the rebel debt and claims for slaves emancipated and property destroyed. Third, an amendment that would either disfranchise for a time the whole rebel population, or at least disqualify the leaders of the rebellion from holding any office of trust or emolument under the national or state governments. In addition to these it followed that, since almost the entire white population of the South was disloyal, still another amendment was necessary to readjust the basis of representation in such a way as to give to that section as little power as possible in the National Congress and in the electoral college. Some members of the committee, especially Boutwell, Stevens, and Washburne, were anxious to substitute for this last proposition one that would give the suffrage to all the negroes, which together

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with a wholesale disfranchisement of the rebels, would insure the election of loyal members of Congress from the southern states. The testimony certainly proved that the negroes were almost the only loyal element in the South, and could be depended upon, under proper tutelage and influence, to vote "right," but the more timorous members of the committee were afraid at that time to take so bold a step, especially as in most of the northern states the colored people did not enjoy the right of suffrage; and propositions to admit them to the franchise were not popular.

Thus fortified in their opinions by the evidence as to what measures they should recommend to Congress in order to secure "the fruits of the war," the committee was now ready to put them into proper language as resolutions of amendment to the Constitution. How these various propositions were combined into one resolution and became a part of the Constitution as the fourteenth amendment will form the subject-matter of the next chapter.

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CHAPTER VI

THE FOURTEENTH AMENDMENT

CONGRESS having refused to adopt the President's reconstruction policy and having failed to compromise with him, was now under the necessity of formulating a policy of its own. It had long been criticized for rejecting the policy of the President, and at the same time proposing no plan of its own. This criticism at first was made only by the opponents of Congress, but when it became evident to all that harmony of action between the executive and legislative branches of the Government was impossible, supporters of the latter began to grow impatient because it did not offer some alternative method of its own for restoring the rebel states. Radicals, both inside and outside of Congress, began to fear that unless the various differences among the Republican members were harmonized and some common policy agreed upon, that of the President would inevitably become permanent for sheer want of a substitute. Radical newspapers and journals were especially urgent that a plan counter to the President's be evolved and immediately announced by Congress.

The *Nation* in an editorial on April 20th, gave expression to this demand. It declared:

The people are willing to keep the southern states out of the Union until certain conditions are complied with, but they want to know what those conditions are going to be. Congress has agreed upon none. The only thing Congress has agreed on is keeping the southern states out for the present, but this

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is simply the excavation for the foundation for the new building. The public is anxiously waiting to see the structure rise and is tired of hearing the builders wrangle over the style of architecture. More serious work than we have yet had must now begin. If it does not—if a greater willingness is not displayed by individuals to serve in the more obscure positions and to unite on some comprehensive plan—we greatly fear that the coming fall will find the public thoroughly out of patience with Congress and quite ready to let the President and his friends have their own way.

The New York *Tribune,* after the veto of the Civil Rights bill, became daily more and more insistent that Congress adopt a policy of its own, and towards the middle of April made one of its characteristically frantic appeals to Congress for immediate and comprehensive action. It suggested that the Stewart resolutions might be a good basis to begin on.[1]

These resolutions had been somewhat modified since they were first introduced on March 16th.[2] On April 4th, Stewart had again brought them forward, with only a few slight verbal changes.[3] He urged that now since Congress had definitely rejected the policy of the President it must enunciate one of its own. The outside world was saying that Congress did not intend to adopt any policy whatever; that there was no sincerity on its part; that the only object it had in pretending to favor restoration was to use senators and representatives for other purposes. Isolated propo-

[1] *N. Y. Tribune*, April 21, 1866.

[2] See *supra*, ch. iv, p. 253.

[3] *Globe*, pp. 1753, 1754. Though Stewart voted to sustain the veto of the Freedmen's Bureau bill, he says he did so only because the President agreed to sign the Civil Rights bill. When Johnson failed to keep his agreement Stewart became one of his most bitter enemies. *Reminiscences*, pp. 197-201.

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sitions for amending the Constitution would no longer answer the demands of the situation. Whatever plan might be adopted must cover the whole subject and operate as a permanent settlement of the reconstruction question. He respectfully submitted his resolutions, no longer as a compromise, but as such a distinct and comprehensive congressional plan as he thought the occasion demanded. He hoped for their immediate consideration and adoption, and moved to take them out of the hands of the joint committee and make them the special order for the next day, but the Senate did not accept his suggestion.

On April 12th, Stewart introduced a resolution for amending the Constitution.[1] It consisted of two sections; the first provided for impartial suffrage, and equality in civil rights, and the second declared invalid claims for slaves emancipated. This was accompanied by a simple legislative resolution which declared, that "whenever any one of the eleven states shall have ratified the foregoing amendment, then such state shall be recognized as having resumed its former relations with this Government, and a general amnesty shall exist in regard to all persons in such state who were in any way connected with the late insurrection."

On April 16th, when the committee for the first time met with the definite purpose of evolving a distinct congressional plan of reconstruction, Stewart was invited to meet with them and discuss his proposition.[2] At this meeting, he no doubt urged the same considerations which he had previously brought to the support of his proposition in the Senate.[3] While he and some others continued to insist that it be made the basis of congressional action, it is not surprising that he failed to have it adopted. For in the end

[1] *Globe*, p. 1906.

[2] See *supra*, p. 82.

[3] See *supra*, p. 254.

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the determination of the congressional plan of reconstruction was not left to the most able and statesmanlike congressmen, but to mere politicians who acted almost entirely from motives of party advantage. It is true Stewart's plan contemplated giving the negroes the vote, but it also gave to the whites amnesty. The radicals correctly reckoned that the dominant race, by imposing educational and property qualifications for voting, would disfranchise a sufficient number of negroes to retain control of the southern state governments and obtain a greater proportion of power in the National Government than it had ever before possessed. To the minds of the radicals, good party men as they were, nothing could be more offensive. According to their ideas, if the rebels were to control in the South, southern influence in the National Government should be reduced to a minimum; if negro suffrage were granted and representation allowed to remain according to population, reconstruction should be so ordered that the "party of the Union" might at least divide with the Democrats the delegations from the southern states in Congress and the electoral college. In other words, the proposition for negro suffrage reduced itself to this: though admirable in theory, its practical application would be baneful if the political benefits from it were to accrue to the hated rebels and despised copperheads; on the other hand, it would be not only admirable in theory but excellent in practice should it result in placing loyal Unionists in control of the ex-rebel states. But at that time the radicals dared not enact so "thorough" a reconstruction measure as would accomplish this desirable result. Therefore, since the Stewart plan would neither diminish the number of southern representatives nor give any considerable portion of them to the radicals, it was worthless as a partisan measure and hence was rejected.

The next proposition considered by the committee also

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came from an outsider, Robert Dale Owen. Owen was the son of Robert Owen, one of the great English radicals of the second quarter of the 19th century. Robert Dale Owen was hardly less known than his father as a reformer and humanitarian. He had come to America only a few years before the outbreak of the Civil War, and quite naturally had interested himself in the slavery question, and after the war, in the general welfare and future development of the negro race. Fortunately, he has left an account of how he came to propose a plan of reconstruction, how it was endorsed by Thaddeus Stevens, how it was first adopted by the committee, and why it was finally rejected.[1]

The proposition follows:

A joint resolution proposing an amendment to the Constitution, and to provide for the restoration to the states lately in insurrection of their full political rights.

Whereas it is expedient that the states lately in insurrection should, at the earliest day consistent with the future peace and safety of the Union be restored to full participation in all political rights.

Therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring), that the following article be proposed to the legislatures of the several states as an amendment to the Constitution of the United States, which, when ratified, by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

Article—

Section 1. No discrimination shall be made by any state, nor by the United States, as to the civil rights of persons because of race, color, or previous condition of servitude.

[1] Owen's account may be found in the *Atlantic Monthly* for June, 1875, under the caption, "Political Results from the Varioloid." For the action of the committee on Owen's plan, see *supra*, pp. 83 *et seq.*

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Sec. 2. From and after the fourth day of July, in the year one thousand eight hundred and seventy-six, no discrimination shall be made by any state nor by the United States, as to the enjoyment by classes of persons of the right of suffrage, because of race, color or previous condition of servitude.

Sec. 3. Until the fourth day of July, one thousand eight hundred and seventy-six, no class of persons, as to the right of any of whom to suffrage discrimination shall be made by any state, because of race, color, or previous condition of servitude, shall be included in the basis of representation.

Sec. 4. Debts incurred in aid of insurrection or of war against the Union, and claims of compensation for loss of involuntary service or labor, shall not be paid by any state nor by the United States.

Sec. 5. Congress shall have power to enforce by appropriate legislation, the provisions of this article.

And be it further resolved, that whenever the above recited amendment shall have become part of the Constitution, and any state lately in insurrection shall have ratified the same, and shall have modified its constitution and laws in conformity with the first section thereof, the senators and representatives from such state, if found duly elected and qualified, shall, after having taken the usual oath of office, be admitted as such:

Provided, That no person who, having been an officer in the army or navy of the United States, or having been a member of the Thirty-sixth Congress, or of the Cabinet in the year one thousand eight hundred and sixty, took part in the late insurrection, shall be eligible to either branch of the National legislature until after the fourth day of July, one thousand eight hundred and seventy-six.

It seems fitting that Owen should tell his own story of his relations with the committee and the fate of his proposition.[1]

[1] *Atlantic Monthly,* June, 1875: "Political Results from the Varioloid."

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Throughout the winter of 1865-66 I had watched, with anxious interest and with some misgivings, the doings of Congress and of her reconstruction committee. . . .

Toward the close of March—the committee still inactive—I became, to borrow the Quaker term, greatly "exercised" in regard to this matter; and I visited Washington, resolved to do what in me lay toward the judicious settlement of so vital a question; not concealing from myself, however, that an outsider, intermeddling in congressional action, must make up his mind to encounter, from members, a certain amount of impatient opposition.

After sounding several of my personal acquaintances in the House and Senate, also Governor Morton (not yet senator), I called, early one morning, on my friend Thad. Stevens (as we were wont to call him), then chairman, on the part of the House, of the reconstruction committee and read to him the following: [Then follows Owen's proposed amendment: see *supra*, p. 83.]

"Read that to me again," said Stevens, when I had concluded.

I did so, and inquired if he had an hour to spare.

"I have nothing half so important to do as to attend to this. Take your own time."

Then I set before him, succinctly, the chief reasons for the policy embodied in my amendment. "The freedmen," I said, "ought to be regarded as the wards of the Federal Government."

Stevens—Our very first duty is to them. Let the cursed rebels lie on the bed they have made.

Myself—But we cannot separate the interests and the fate of the negro from those of the planter. If we chafe and sour the whites of the South, the blacks must necessarily suffer thereby.

Stevens—Is that your reason for proposing prospective suffrage?

Myself—Not the chief reason. The fact that the negro is, for the present, unprepared wisely to use the right of suffrage,

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and, still more, incapable of legislating with prudence, is not less a fact because it has occurred through no fault of his. We must think and act for him as he is, and not as, but for life-long servitude, he would have been. We seclude minors from political rights, not because they are unworthy, but because, for the time, they are incapable. So of foreigners; we grant them the privileges of citizenship only after five years' probation.

Stevens—I hate to delay full justice so long.

Myself—Consider if it be not for the freedman's welfare and good name that he should be kept away from the duties and responsibilities of political life until he shall have been, in a measure, prepared to fulfill these with credit to himself and advantage to the public service. He thirsts after education, and will have it if we but give him a chance, and if we don't call him away from the schoolroom to take a seat which he is unfitted to fill in a legislative chamber. If he occupies such a seat prematurely—perhaps before he can read a word of the Constitution—and becomes a nuisance or a laughing-stock, we, in case we mismanage our African wards, ought to bear the blame.

Stevens—You seem to take it for granted that as soon as the negro is admitted to political rights, he will set up as legislator.

Myself—In South Carolina and Mississippi the blacks outnumber the whites; and in Louisiana, Alabama, Georgia, and Florida, the numbers approach equality. The negro can count, if only on his fingers; and knows well enough when he has the power. Are we reasonable if we expect from uncultured freedmen self-restraint and abnegation of political aspirings which we never find among ourselves?

Stevens—If the negroes don't rule, impenitent traitors will. Isn't that as bad?

Myself—I think not; and if either are to make a mess of it and lose character, I'd rather it should be the planter.

Stevens—But if they dictate the laws, what security have the freedmen against outrage and virtual return to slavery.

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Myself—This. We shall have invested them, beyond repeal by law, with political rights, if it be prospectively only; and their former masters will feel that they have now to deal with men who, in a few years, will be able to control elections, make governors and congressmen, and confer office on whom they please.

Stevens picked up my manuscript, looked it carefully over, and then, in his impulsive way, said: "I'll be plain with you, Owen. We've had nothing before us that comes anywhere near being as good as this, or as complete. It would be likely to pass, too; that's the best of it. We haven't a majority, either in our committee or in Congress, for immediate suffrage; and I don't believe the states have yet advanced so far that they would be willing to ratify it. I'll lay that amendment of yours before our committee to-morrow, if you say so; and I'll do my best to put it through."

I thanked him cordially, but suggested that, before he did so, it would perhaps be well that I should see Senator Fessenden and other prominent members of the reconstruction committee on the subject; to which he assented.

Then I laid before him, as supplement to my article xiv, a draft of a joint resolution to amend the Constitution, and to provide for the restoration to the states lately in insurrection of their full political rights. [Here follows Owen's resolution for restoring the southern states. See *supra*, p. 84.]

Stevens flared up at this. "That will never do! Far too lenient. It would be dangerous to let these fellows off on such terms."

I reminded him that if the ex-rebel states (as they surely would) postponed negro suffrage till 1876, then, according to the third section of my article, instead of sixty-six representatives in Congress (as under the apportionment then in force), they would be entitled under a purely white basis of representation, to forty-two representatives only. "Surely," said I, "you can manage that number, even if they should happen to be ultra secessionists."

"Perhaps we could," replied Stevens. "But you forget

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the Senate. The eleven insurrectionary states would be entitled to their twenty-two senators, suffrage or no suffrage."

I admitted the force of this; and I failed to bring him over to my views of a clement policy. He had been terribly stirred up, like so many others, by the assassination of Lincoln, and he was ruled by an embittered feeling toward the South.

I found Senator Fessenden, who was chairman of the reconstruction committee on the part of the Senate, the very reverse of Stevens. Cold, deliberate, dispassionate, cautious, he heard me patiently, but with scarcely a remark. At the close, while assenting to the importance of the subject, he withheld any opinion as to my amendment; asked me to leave the manuscript with him, said he would give it careful attention and would be glad to see me again. When, two days later, I called upon him, he told me, in guarded and general terms, that he thought well of my proposal, as the best that had yet been presented to their committee. Washburne (E. B.) agreed to my amendment, with some enthusiasm. Conkling approved it. So, strongly, did Senator Howard. So, in a general way, did Boutwell. So, qualifiedly, did Bingham, observing, however, that he thought the first section ought to specify, in detail, the civil rights which we proposed to assure; he had a favorite section of his own on that subject. All the Republican members of the committee received the proposal more or less favorably. The Democrats held back.

Owen then goes on to tell how his plan was adopted by the committee and ordered to be reported to Congress.[1] Out of courtesy for Fessenden, however, who was sick of the varioloid, the report was held back for a couple of days in order that he, the chairman, should have a part in making the most important report of the session.[2]

Stevens' recital to Owen of the reasons why the com-

[1] *Cf. supra*, p. 99.

[2] See *supra*, p. 100. This was the reason for Williams' motion.

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mittee abandoned his plan shows the extent to which political expediency had weight in the formulation of the congressional plan of reconstruction.

"Our action on your amendment" [said Stevens] "had, it seems, got noised abroad. In the course of last week the members from New York, from Illinois, and from your state too, Owen—from Indiana—held, each separately, a caucus to consider whether equality of suffrage, present or prospective, ought to form a part of the Republican programme for the coming canvas. They were afraid, so some of them told me, that if there was "a nigger in the wood-pile" at all, (that was the phrase), it would be used against them as an electioneering handle, and some of them—hang their cowardice!—might lose their elections. By inconsiderable majorities each of these caucuses decided that negro suffrage, in any shape, ought to be excluded from the platform; and they communicated these decisions to us. Our committee hadn't backbone enough to maintain its ground. Yesterday, the vote on your plan was reconsidered, your amendment was laid on the table, and in the course of the next three hours we contrived to patch together —well, what you've read this morning."

I was silent, thinking to myself how often in this riddle of a world, results of the most momentous import turn on what seem to us the veriest trifles. But, mortified as I was, I could not help smiling when Stevens, after his characteristic fashion, burst forth, "*Damn the varioloid! It changed the whole policy of the country.*"

One should be on his guard against taking too seriously Owen's feeling that Stevens committed himself almost wholly to his plan of reconstruction. As a matter of fact, he accepted only the Owen amendment and advocated a much more stringent bill than Owen's for disfranchising the rebels and for restoring the southern states.[1] Stevens cer-

[1] See *supra*, pp. 116, 119.

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tainly cared but little for the fourteenth amendment as actually adopted and never intended that it should serve as a permanent settlement of the reconstruction question. No doubt the Owen plan was much more pleasing to him as a final adjustment than what the committee actually reported. To Stevens, however, this final report was to serve merely as a party platform, and as such, he gave it his cordial support.

Owen's proposition is the forbear of the present fourteenth amendment, but after the members of the committee decided to dodge the issue of negro suffrage, they changed it in many particulars at their meeting on April 28th,[1] and it is hardly recognizable in the proposition which they finally adopted, and reported to the House and Senate on April 30th.[2] This proposition read as follows:

A joint resolution proposing an amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring) that the following article be proposed to the legislatures of the several states as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

Sec. 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several states which may be included within this Union according to their respective numbers, counting the whole number of

[1] See *supra*, pp. 100 *et seq.*

[2] *Globe*, pp. 2286-7, 2265.

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persons in each state, excluding Indians not taxed. But whenever in any state the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such state shall be reduced in the proportion which the number of male citizens shall bear to the whole number of such male citizens not less than twenty-one years of age.

Sec. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for representatives in Congress and for electors for President and Vice-President of the United States.

Sec. 4. Neither the United States nor any state shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

At the same time the committee adopted and reported two bills: one to provide for restoring to the states lately in rebellion their full political rights, the other declaring the leading rebels ineligible to office under the Government of the United States.[1]

On May 8th, Stevens opened the debate on the resolution for amending the Constitution.[2] In epitome his speech was as follows: The proposition was not all the committee desired and it fell far short of his individual wishes. However, nearly everybody on the committee believed it was all that could be obtained at the present time. To him it was a matter of great regret that the first amendment on the

[1] For the disposition made of these bills see *infra*, ch. vii.

[2] *Globe*, pp. 2459-60.

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basis of representation had been slaughtered in the "house of its friends by a puerile, pedantic criticism and by a perversion of philological definition."[1] The section of this amendment on that question was not so good as that, but was at least a step in the right direction.

Section 1 simply meant that whatever law punishes or protects a white man should operate in the same way upon the black man. This would abolish the existing discriminations in all those states where there were black codes. It was true that this end was already accomplished by the Civil Rights act, but he feared that so soon as the Democrats should again obtain control of Congress, they would repeal that law; hence the necessity for this civil rights section of the amendment.

Section 3, the penal section, was the most important of all, its only drawback being its extreme leniency. It should prove the most popular among the people as it prohibited the rebels from voting until after 1870. This was the mildest of all punishments ever inflicted upon traitors. "I might not consent to the extreme severity denounced upon them by a provisional governor of Tennessee—I mean the late lamented Andrew Johnson of blessed memory—but I would have increased the severity of this section." Of the fourth section, Stevens said, "None dare object to it, who is not himself a rebel."

In a brief peroration he requested every friend of justice, every friend of the Union, and every friend of the final triumph of the rights of man and their extension to every human being, to sacrifice his peculiar views; and instead of vainly insisting upon the immediate operation of

[1] Referring to Sumner's "scholarly" speech in opposition. See *supra*, ch. iii, p. 205.

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all that is right, to accept what is possible, and "all these things shall be added unto you."

The third section was attacked in the House by both conservative Republicans and the Democrats. Blaine thought it would lay the National Government open to the charge of bad faith, and suspected that since Congress had previously given the President the power to pardon certain rebels, their subsequent disfranchisement would seem to be inconsistent if not unjust.[1] A Democrat suggested that it looked a little foolish to proceed on the theory that a rebel, after being branded as an outlaw and disfranchised for four years, would at the end of that time be converted into a true and loyal citizen, perfectly qualified to be entrusted with the franchise.[2] Continuing in language the truth of which may now be seen, he said:

> The committee have had the opportunity, in the most important period of our history, to have inscribed their names among the first statesmen of the age, by a liberal and enlightened policy, which would have bound all sections of the country together in the strong bond of mutual friendship and restored Union. That opportunity they have allowed to pass. Stripped of all its disguise, the measure is a mere scheme to deny representation to eleven states; to prevent indefinitely a complete restoration of the Union and perpetuate the power of a sectional party.

Garfield profoundly regretted that the public virtue had not been found such that the party could come out on the plain, unanswerable proposition that every adult citizen of the United States should enjoy the right of suffrage.[3] However, he would accept what he could get, but he hoped

[1] *Globe*, p. 2460.

[2] Finck, *Globe*, p. 2462.

[3] *Globe*, pp. 2462-2464.

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the House would see fit to eliminate section 3, as it would be difficult and impracticable of enforcement. It must either remain a dead letter or an army must be maintained in the South in order to see that it be not evaded.

Most of the debate in the House on the merits of the amendment dealt with the first and second sections on civil rights and the basis of representation, respectively. The arguments for and against these two propositions having been analyzed when they were considered as separate amendments, and as no new points were brought forward, it is not now necessary to dwell further upon them. The principal interest that attaches to the passage of the amendment through the House turns upon the third section. Practically every Republican who spoke upon the question expressed himself either against the principle of that section or against the practicability of its enforcement. It looked as though it would be stricken out, when, just before the vote was to be taken, Stevens again came to its defense.[1] The third section was the vital proposition of them all, and without it he did not care the snap of his finger whether the amendment were passed or not. If it should be eliminated there would be no friends of the Union on his side to carry into operation the other provisions. The other side of the House would be filled with yelling secessionists and hissing copperheads.

Give us the third section or give us nothing. Do not balk us with the pretense of an amendment which throws the Union into the hands of the enemy before it becomes consolidated. Gentlemen say I speak of party. When party is necessary to sustain the Union, I say rally to your party and save the Union. I do not hesitate to say at once, that section is there

[1] *Globe*, pp. 2533, 2545. For a suggested interpretation of Stevens' anxiety for the retention of this section, see next chapter.

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to save or destroy the Union by the salvation or destruction of the Union party. Gentlemen tell us it is too strong—too strong for what? Too strong for their stomachs but not for the people. It is too lenient for my hard heart. Not only to 1870, but to 18,070 every rebel who shed the blood of loyal men should be prevented from exercising any power in this Government. Gentlemen here have said you must not humble these people. Why not? Do not they deserve humiliation? If they do not, who does? What criminal, what felon deserves it more, sir? They have not yet confessed their sins; and He who administers mercy and justice never forgives until the sinner confesses his sins and humbles himself at his footstool. Why should we forgive any more than He.

This speech is one of the best examples of Stevens' invective powers, and was confessedly for the purpose of arousing the partisan spirit. Nevertheless, there were enough Republicans opposed to the third section, who, together with the Democrats, could have stricken it out, had not about a dozen of the latter believed it good party tactics to make the whole amendment as obnoxious as possible, and so voted with the radicals rather than with the conservatives. As it was, the section was retained by the narrow margin of 84 to 79.[1] Among the Republicans who favored its elimination were Blaine, Garfield, Raymond, Hayes, and Bingham and Blow of the committee. All other Republican members of the committee voted for its retention as did also those two Democratic tacticians Rogers and Grider. Had this section been stricken out by the House, it is almost certain that there would have been no penal section in the fourteenth amendment, as the Senate certainly would not have reinserted it. In such case, Congress might have drafted a real plan of reconstruction.[2]

[1] *Globe*, p. 2545.

[2] Just what I mean by this statement will be explained in ch. vii.

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By a vote of 128 to 37, the House on May 10th, passed the amendment as it had been reported by the committee.[1]

As has been said, Fessenden reported the amendment and accompanying bills to the Senate on the same day (April 30th) that Stevens had introduced them into the house. Although no formal action was taken by the upper House until several days after the amendment had passed the lower, two preliminary attempts to substitute some other proposition for that of the committee were made. On May 2d, Dixon, who still classed himself as a Republican, gave notice of his intention to offer as a substitute for the whole plan of the committee the following:

Resolved, That the interests of peace and of the Union require the admission of every state to its share in public legislation whenever it presents itself in an attitude of loyalty and harmony, but in the persons of representatives whose loyalty cannot be questioned under any constitutional or legal test.

Dixon explained that his resolution was couched in words employed by the President in the veto message of the Freedmen's Bureau bill. What the country needed and expected from Congress was a practical scheme for hastening the re-establishment of all the states in their full constitutional relations. The plan of the committee must inevitably delay indefinitely this result, for it was impossible to believe that any person in his right mind could expect that the southern states would accept the amendment. No self-respecting people would voluntarily disfranchise themselves even though it be for only a short term of years. But granting that they would do so, how could men who talk so much about a republican form of government be encouraged to look for the fruits of peace from such a policy? Certainly

[1] *Globe*, p. 2545.

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the extremes to which partisan passions had been inflamed in Tennessee by the disfranchisement of the greater part of the population there, did not encourage practical men to desire a similar wholesale disfranchisement in the other southern states. The section in regard to the rebel debt was unnecessary, as the southern people certainly would not assume it in their poor condition, and it was absurd to think of any political party going before the people on a platform demanding that it be paid by the National Government. Likewise, section 1 was unnecessary, as the civil rights act gave to each citizen who might be denied justice by state courts the power to appeal to the United States courts. These latter were commanded with all their machinery to interfere in his behalf, and in the case of an emergency to employ the military power to secure him justice.

To Dixon, Sumner replied that he would favor his proposition had Dixon not forgotten that four million slaves had been declared freemen by the power of the National Government, and the same power should secure to them that freedom. Dixon very properly retorted that the amendment secured them nothing which they did not already possess.

It was not until May 14th, that the amendment was again considered in the Senate. On that day Stewart moved that the punitive section be stricken out, and offered an additional proposition for defining citizenship.[1] No action was taken on his motion, however, and it was not until May 23rd, nearly two weeks after the amendment had passed the House, that the Senate seriously undertook its consideration. Even then some of the radicals thought it should be further postponed, for as Sumner confessed, the longer final reconstruction was deferred the more radical it would

[1] *Globe*, p. 2560.

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be.[1] Fessenden had not fully recovered from his attack of varioloid, and hence was unable to open the debate as his position of chairman of the committee reporting the amendment entitled him to do. This duty devolved upon Howard.

The objects of the first section, he again pointed out, were (1) to make the prohibitions of the so-called bill of rights binding on the states and compel them to respect these great fundamental guarantees, and (2) to abolish all class legislation in the states and do away with the injustice of subjecting one caste of persons to a code not applicable to another.[2] He regretted the second section, and himself very much preferred that Congress should be given direct authority to bestow equal suffrage on all male citizens in every state. Nevertheless, he defended it as being expedient and considered it an improvement on the previous proposition on the basis of representation, as it would operate uniformly throughout the Union.[3] The third section he had opposed in committee.[4] His principal objection to it was that it would accomplish nothing, for the rebels under it would still be allowed to vote for members of the state legislature, who in turn could select the presidential electors. Personally he preferred a section prohibiting all persons who had participated in the rebellion and were then (1866) over thirty years of age from holding either a state or Federal

[1] *Globe*, pp. 2763, 2764.

[2] *Globe*, pp. 2764-2768. Though the objects of the civil rights amendment were stated in ch. iii, p. 217, I again restate them in the words of Howard in order to show that in the minds of the members of the committee the meanings of the first and second forms of this amendment were identical. They considered the change merely a verbal one and intended in both cases to confer upon Congress power to enforce by positive legislation equal civil rights.

[3] Contrariwise, *cf.* Stevens, *supra*, p. 304.

[4] This was Howard's statement in the Senate, but the record does not bear him out in it. See *supra*, pp. 105, 106.

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office. At this point Clark, of New Hampshire, arose and read a substitute for section 3 and gave notice that at the proper time he would offer it. This substitute embodied the principles of the bill declaring certain persons ineligible for office, which had been framed and reported by the committee.[1] Howard said he would support this substitute, and it did in fact later become section 3. He realized there was not much danger that the rebel debt would ever be paid by anybody. Nevertheless, so long as it remained in quasi-existence it might be a subject of political squabbling and party wrangling.

Wade suggested that the amendment be changed by replacing section 2 with the old resolution on the basis of representation, which had previously been defeated.[2] He also thought the amendment would be strengthened by omitting the punitive section and by adding to section 4 a clause declaring valid the National debt, including debts incurred for payment of pensions and bounties. In section one he desired to substitute for the word *citizens,* the words *persons born in the United States or naturalized by the laws thereof.* He explained that the word *citizen* had no exact meaning in the United States, and feared that if the Democrats obtained control of the Government they would in all probability put a different construction upon it from that given it by the Republicans.

On May 24th, Stewart, keenly disappointed that his own proposition had not been accepted by the committee, delivered what is by far the most interesting and statesmanlike speech that was made on the general subject of reconstruction at any time during the session.[3] The amendment, said

[1] See *supra*, p. 119.

[2] *Globe*, pp. 2768-2771.

[3] *Ibid.*, pp. 2798-2804.

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he, had been urged because of its expediency; but as a matter of fact no man really knew what was expedient, because every one was liable to estimate the sentiments of the whole country by the views of a few friends or a small portion of his constituents, modified by his own peculiar ideas and wishes. Apparently there was very little difference between Union men as to what ought to be done if they had the power to do it. He was of the opinion that it was expedient to do right and that it was easier to agree as to what was right than as to what would be likely to return A or B or C to Congress. "The Union party agree that all men are entitled to life, liberty, and the pursuit of happiness, and they will endorse any necessary means to secure those inalienable rights to every American citizen." The more direct and positive the plan, the better. All digressions from principle would involve the Union party in new difficulties and increase its embarrassments. The President's plan of restoration was unsatisfactory, because it ignored the civil rights of four million loyal citizens guilty of no offense but fidelity to the Government and excluded them from constitutional liberty. Nevertheless, he had hesitated at the beginning of the session to condemn that plan because no better one seemed likely of adoption. Since then, however, two noble sentiments had become manifest upon which the people of the North might unite—protection for friends of the Union, and mercy to a fallen foe. Mercy pleaded generous amnesty; justice demanded impartial suffrage. Both principles were buried beneath an ocean of prejudice, but he firmly believed that the only solution of the problem was one based upon these two humane and just principles, having as they did the support of an enlightened press and public opinion. To those who criticized him for advocating negro suffrage when formerly he had opposed it, he replied, in the language of Lincoln, that he adopted "new views

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whenever they appear to be true views." If all those who had changed their opinions during the preceding six years should vote for his proposition, the others could vote as they pleased.

The world moves, and those who do not perceive it are dead to the living issues of the day. I have always advocated the necessity of taking the world as we find it, and following the logic of events. The development of new facts is constantly exploding old theories. The trouble is that some men do not seem to comprehend the new facts. . . . In advocating this plan I am profoundly impressed with the conviction that if this Union is ever restored, it must be done with impartial suffrage and general amnesty.

Stewart declared, however, that he realized that there were two obstacles in the way of adopting his proposition, both based upon passion and prejudice, and each nearly insurmountable. One was hatred of rebels, and a demand that they be disfranchised; the other was hatred of the negroes and a demand that they be disfranchised.

The great mass of the people of the South are either rebels or negroes, and if we yield to either demand the struggle is not ended. The party left in power, whether it be black men or white men, will soon display all the meaner qualities of despotism, intolerance, arrogance and above all a fierce hatred for the democratic protective principle of the equality of man. If we yield to both these demands, and disfranchise both blacks and whites, what will become of our free government, for which we were willing to sacrifice the last dollar and the last man?

Let justice be done, and then it becomes the duty of every loyal man to invoke mercy even for those who have attempted the destruction of our free institutions. We will then reflect that the South is not alone responsible for slavery and all its woes; that the North and civilized Europe have all played a

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part in planting this vile institution upon the most favored section of our common country, and the whole nation has been clothed in sackcloth and ashes because of the great crime. When the evil is removed and the rights of man acknowledged we will cease to enquire who is most to blame, or who is most guilty, but we will labor to forget the past in view of the bright prospect of peace and justice.

Immediate and universal suffrage may not be wise, but what danger can there be in allowing all the negroes to vote with like educational and moral qualifications with the whites hereafter to become voters? The white men who have been in this rebellion must also have the ballot and full enfranchisement, or they must be driven out of the country, for if you retain them here disfranchised enemies, the extraordinary powers necessarily devolving upon the few whom you trust with political rights must make them tyrants. Every attempt to govern a state by a minority, however loyal that minority may be, is a mockery on republican institutions and will inevitably produce anarchy and discord. There will be no peace in Maryland, Missouri, or Tennessee until the people are enfranchised.

In conclusion, he declared the world would brand the Republicans as factionists and their efforts as a struggle for partisan power if they relied on expediency rather than on justice.[1]

Sherman moved to replace sections 2 and 3 with clauses providing respectively for apportioning representation according to male voters and direct taxes according to property values in each state.[2]

Five days elapsed before the Senate again, on May 29th,

[1] My purpose in quoting thus at length from Stewart's speech, and *infra* from that of Hendricks, I shall try to make clear in the succeeding chapter.

[2] *Globe*, p. 2804.

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resumed consideration of the amendment. On each of those five days the Republican senators spent several hours in caucus, in which they finally adjusted their differences in regard to the terms of the amendment.[1] The net result of these caucuses was the fourteenth amendment in its present form. It will be noted that the principal changes made were in the first, third, and fourth sections. To the first section was added the clause defining who are citizens of the United States, which was for the purpose, as Howard said, of removing all doubt on that question.[2] The original third section was stricken out, and in its place was incorporated a section embodying the principles of the bill declaring certain persons ineligible to office.[3] In the fourth section Wade's suggestion as to declaring the validity of the National debt was inserted.[4] In addition two or three verbal changes were made. On May 30th, Reverdy Johnson, who perhaps understood southern sentiment better than any other man in the Senate, declared emphatically that the new third section would be just as objectionable to the southern people as the old one, and he was absolutely sure that the southern states would reject the amendment and principally on account of this section.[5] "Do you want to act upon the public opinion of the masses of the South? Do you not want to win them back to loyalty? And if you do, why strike at the men who, of all others, are most influential and can bring about the end which we all have at heart?"

The death of Gen. Winfield Scott caused two or three

[1] See *infra*, p. 317. See also newspapers for May 25 to 29. So far as I know the secret proceedings of this caucus have never come to light. Though nearly fifty years have passed, neither in memoirs, nor in letters published or unpublished, has any senator then present made a statement of what went on in this caucus.

[2] *Globe*, p. 2890.

[3] See *supra*, p. 119.

[4] See *supra*, p. 312.

[5] *Globe*, p. 2902.

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more days delay in the consideration of the amendment and it was not until June 4th that the discussion on it was resumed. On that day Thomas A. Hendricks, who was then a Democratic senator from Indiana, delivered his well-known philippic against the policy of deciding in a party caucus upon so grave a matter as a constitutional amendment, designed to alter the fundamental principles of our Government.[1] He pointed out that the first report of the joint committee had been defeated, and this second one when first presented to the Senate seemed doomed to the same fate.

A second defeat of a party program could not be borne; its effects upon the fall elections would be disastrous. A caucus was called and we witnessed the astounding spectacle of the withdrawal for the time, of a great legislative measure, touching the Constitution itself, from the Senate, that it might be decided in the secret councils of a party. For three days the Senate chamber was silent but the discussions were transferred to another room of the capitol, with closed doors and darkened windows, where party leaders might safely contend for a political and party policy.

He then showed how an actual minority of the Senate, by such proceedings, could pass a constitutional amendment. There were forty-nine members, thirty-nine Republicans and ten Democrats. In caucus twenty Republicans voting for the amendment could bind the other nineteen. Hence the amendment may pass the Senate though there be only twenty men out of forty-nine who really favor it.

So carefully has the obligation of secrecy been observed that no outside persons, not even the sharp-eyed men of the press, have been able to learn one word that was spoken, or one vote given.

[1] *Globe*, pp. 2938-2942.

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If section 2 fixes the principle that those who do not vote should not be voted for, why are foreigners in northern states represented though they must remain without a vote for at least five years? If in Maryland, West Virginia, Tennessee, and Missouri the majority are treated as unfit to vote, why shall the minority vote for them? Come now let candor and truth have full sway, and answer me; is it not because you believe that the few in these states now allowed to vote will send radicals to Congress, and therefore you allow them to send full delegations that it may add to your party's political power? Why, if the principle be right that none but voters ought to be represented, do you not say so. If, as you will say, the negroes ought to have the right of voting, why do you not in plain words confer it upon them, instead of trying to coerce the states by this indirect measure to give it to them?

To the argument that by the result of the war the representation of the South would be increased, he gave two answers: (1) the slaves were not made free by the voice of the South, but by the constitutional amendment that was demanded by the North, and the North could not well complain of the consequences of her own act; (2) he was willing to continue the old three-fifths arrangement in regard to the representation of negroes so long as they were not enfranchised.

Against the third section common sense alone was sufficient argument. Such a harsh and sweeping measure would include many excellent men whose services in the work of reconstruction would be of the greatest value to the country. Some of these men had displayed heroic courage in standing out against the secession movement, and though afterwards they were forced by the logic of events to yield obedience to, and to serve, the established government *de facto*, they had always at heart been Union men and therefore should not be proscribed. As a penalty for crime the meas-

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ure was *ex post facto,* and if passed as an ordinary law it would therefore be unconstitutional. "Mr. President," said he, "do you think there will enough good come of this to justify us in departing from the principle which is found in the Constitution of the United States and of every state in the Union, that a man shall be punished only according to the law in force at the time the act is done?"

Though the amendment was debated for three more days during which a number of Republicans expressed their dissatisfaction with it as a settlement of the reconstruction question, any effort to make any further changes in its provisions met with the opposition of a party governed absolutely by King Caucus. In vain did Doolittle, whom the Republicans called the apostate, plead with his former associates that they allow the various sections to be sent separately to the states for ratification.[1] It was of no avail that Cowan, another apostate, vehemently assailed his old friends and charged them with surrendering their individual principles and acting from motives of party alone.[2] On June 8th the vote was taken and the amendment passed thirty-three to eleven, four Democrats and one Republican being absent.[3] Five days later, Thaddeus Stevens in the House arose and announced in a sad voice that the members of the majority party had decided to concur in the Senate's amendments.[4] That was the end. What has been called the congressional plan of reconstruction was completed.

[1] *Globe*, pp. 2991, 3040.

[2] *Ibid.*, pp. 2989-2991.

[3] *Ibid.*, pp. 3040-3042.

[4] *Ibid.*, pp. 3144-3149.

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CHAPTER VII

Did Congress have a Plan of Reconstruction?

It is impossible to give a categorical answer to this question. Most writers have regarded the fourteenth amendment as the plan of Congress for restoring the southern states to their places in the Union. Rhodes for instance, calls it a "magnanimous offer" to the South. As a matter of fact, there are grave doubts as to whether it *was* an "offer," and each individual who takes the trouble to read the records, is at liberty to form his own opinion as to its magnanimity. The same author is also of the opinion that, with the possible exception of the third section, the amendment was marked by statesmanship of a high order; and when he considers that there were no executions or confiscations, even the third section does not lack in generosity. Finally, he implies that the southern states were blameworthy for not taking advantage of the offer "eagerly and at once."[1]

The purpose of this chapter is not controversial, and it is not my intention to attempt to refute Mr. Rhodes or any other writer who has held opinions similar to his. Since, however, this is a history of the reconstruction committee, and if there were a congressional plan, it must have been the creation of that committee, an inquiry into the extent to which the fourteenth amendment

[1] *Rhodes*, vol. v, pp. 602–610.

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may be regarded as such a plan of reconstruction would seem to be necessary and proper. In order to make this inquiry, I shall examine four matters which tend to throw light upon the question. These matters are: (1) The formal report of the chairman of the committee; (2) The action by Congress on the bill for restoring the southern states, which was reported by the committee,[1] and the attempted modifications of that bill; (3) The action taken by Congress in finally passing the committee's resolution for the restoration of Tennessee;[2] (4) The opinions expressed in regard to the question, by members of Congress, their outside supporters and opponents.

It will be remembered that the committee instructed Fessenden to prepare a formal report which was to be in the nature of a defense of the measures which the committee presented to Congress on April 30.[3] This Fessenden did, and after he had submitted it to his colleagues on the committee,[4] he presented it to the Senate on June 8, and on the same day Stevens presented it to the House.[5]

The report maintains that the people of the rebel states had risen in insurrection against the United States, severed their political relations as states with the Union, renounced their allegiance and established *de facto* governments for themselves. In support of their enterprise they had levied war on the United States for four years

[1] See *supra*, p. 117.

[2] See *supra*, pp. 63 *et seq.*

[3] See *supra*, p. 114.

[4] See *supra*, p. 120.

[5] *Globe*, pp. 3038, 3051. The report in full may be found in vol. ii, *Reports of Committees*, 1st sess., 39th Cong.; also in McPherson, p. 88 *et seq.*; and in Fessenden's *Life of Fessenden*, vol. ii, p. 67 *et seq.* In my analysis of the report no further page references will be given. The language of the report will be closely followed.

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and had finally laid down their arms, not because they were convinced that their action had been a crime of which they repented, but because they were physically unable to prolong the struggle. The committee agrees with the President, that at the close of the war the rebel states were utterly devoid of civil governments, but as to whose duty it is to rehabilitate them, it does not agree with him. Moreover, it is urged that the conflict had taken on the proportions of a civil war of the greatest magnitude, which, by the law of nations, gave the conqueror the right to exact security from the vanquished against the renewal of the conflict.

The foregoing argument is nothing more nor less than the "conquered province" theory of Thaddeus Stevens, but the committee does not definitely commit itself to that theory. It argues that is not necessary to discuss the question as to whether the rebel states are in or out of the Union, but is willing to grant the "profitless abstraction" that they are still within the Union, thus committing itself to the "forfeited rights" theory.[1] Following this theory, it holds that even though the rebel states are still in the Union, they have placed themselves by the act of rebellion in a condition which abrogates the powers and privileges incident to states and denies them all pretense of right to enjoy such powers and privileges.

The argument then closely follows Sumner's "suicide" theory, maintaining that a state has certain duties to perform as a member of the Union, and if it faithfully discharges those duties, certain privileges and rights belong to it. If, however, the state attempts to evade discharge of its obligations, then Congress has the

[1] For an explanation of these theories, see Dunning, *Essays*, p. 99 *et seq.*

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power to force it to the performance of its duty; but the state's privileges and rights are forfeited and cannot be restored to it until every condition which Congress sees fit to impose has been complied with, and the state shown proofs of an earnest desire to return to its former allegiance. This theory is applied by the committee as the basis of the refutation of those people—principally the President—who are urging that Congress is violating the great principle of taxation only with the consent of the taxed by imposing laws and taxes upon the southern states without allowing them representation in the law-making body.

It is not within the province of this analysis to discuss at length the committee's justification of sections 1 and 2 of the fourteenth amendment, as such justification has been considered above.[1] Suffice it to say that the committee felt that it was only justice to the colored loyalists in the South, and to the northern people themselves, that the rebel states be required to ratify such amendments before they be re-admitted to representation in Congress. The committee then prescribes the method of proceeding which a rebel state should follow. First, a convention should be assembled under competent authority. Such authority ordinarily emanates from Congress, but the committee is not disposed to criticise the President for his action in this regard. Second, the convention should proceed to form a constitution which should contain a refutation of the deadly heresy of secession, a recognition of the validity of all laws passed by Congress since the rebellion began, and finally, should incorporate all the principles embodied in the thirteenth and fourteenth amendments to the United States Consti-

[1] Chapters iii, v and vi.

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tution. The constitution thus formed should be submitted to the people for ratification. Fourth, in case the people adopt the constitution, a legislature should be called, which may proceed with the election of senators and make provision for the election of representatives in accordance with the laws of Congress regulating representation. Fifth, proof that such action had been taken should be submitted to Congress for approval. It is interesting to note that with the exception of the prescription of negro suffrage and military rule, the foregoing is essentially the method of procedure laid down by Congress in the Reconstruction acts of 1867.

The committee then declares that in no case have the afore-mentioned plan of procedure and conditions been complied with, therefore one of two alternatives must be adopted by Congress. In the first place, it could waive all formalities and admit the states lately in rebellion at once, trusting that time and experience would set all things right. However, in the face of the evidence already reviewed relating to the prevalence of southern disloyalty, the committee does not feel that it would be justified in recommending such a course to Congress. In fact, it is declared that to allow such unrepentant rebels as for the most part have been elected by constituencies who believe in the right of secession as much as ever, to take their place in Congress without any guarantee of their own or their constituents' loyalty, would be a simple method of transferring the scene of war from the field of battle to the halls of Congress, where the conquered rebels, through their representatives, would seize upon the very government they had fought to destroy. Such a course would be a disaster of greater magnitude than the surrender of Grant to Lee, and Sherman to Johnston, would have been; for in the

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latter event, new armies could have been raised, but to allow the rebels in coalition with their friends at the North to take control of the government, would be even more infamous than that anti-coercive policy which permitted the rebellion in the beginning to take form and gather force.

Therefore the committee is forced to adopt the second alternative and summarizes the answer to the inquiry as to whether "the so-called Confederate states or any of them are entitled to be represented in either house of Congress," in the following paragraph:

> The conclusion of your committee therefore is that the so-called Confederate states are not, at present, entitled to representation in the Congress of the United States; that before allowing such representation, adequate security for future peace and safety should be required; that this can be found only in such changes of the organic law as shall determine the civil rights and privileges of all citizens in all parts of the republic, shall place representation on an equitable basis, shall fix a stigma upon treason and protect the loyal people against future claims for the expenses incurred in the support of rebellion and for manumitted slaves, together with an express grant of power to Congress to enforce those provisions. To this end they offer a joint resolution for amending the Constitution of the United States, and the two several bills designed to carry the same into effect.

The report was highly satisfactory to the radical politicians, who realized that upon its reasoning they must defend their position before the country. In fact, it seems to have been written principally for the purpose of a campaign document, and it had the peculiar quality of suiting all the varying degrees of Republican sentiment. To the conservative it implied that the Johnson state governments in the South were competent to ratify

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a constitutional amendment, and if they should do so the southern delegations would be admitted to Congress. But in no place did the report definitely say those states were to ratify the amendment, nor does it expressly recommend that their representatives and senators be admitted in case they should do so. On the other hand, it seemed to prove, and doubtless to the complete satisfaction of the extreme radicals, that those state governments were not legally constituted, and it allows the inference to be drawn that Congress alone can provide the machinery for creating such legal governments, and nowhere is it said that Congress might not yet exercise its authority in that regard. Moreover, from an examination of the evidence, Fessenden, the author of the report, finds that nearly every white person in the South is disloyal, and for that reason, Congress found it unwise "to waive all formalities" and admit the southern representatives at once. Constituencies composed of such persons, said he, are unfit to be represented. Nowhere does he express the opinion that the adoption of the fourteenth amendment would make them any more loyal, and hence fit for representation.

The most, then, that can be said for the report is that it implies a congressional plan of reconstruction, but does not absolutely affirm that the committee's chief measure, the fourteenth amendment, was to serve as the only additional condition to be imposed upon the southern states, precedent to the admission of their delegations into Congress. It is quite true that Fessenden personally hoped and perhaps expected that such would be the case, but as already pointed out, he was writing primarily not his own opinions but such ideas as would be serviceable to all sorts of Republican congressmen in their appeal to the people for re-election.

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But the report did recommend to Congress the adoption of the bill for restoring the southern states.[1] Let us see whether that recommendation was adopted.

The history of this bill in the House and in the Senate, its various postponements, and proposed amendments to and substitutes for it, will, even at the risk of tediousness, be given in detail in order to show that the majority of the Republican party were at no time willing to promise unreservedly to restore the southern states upon their ratifying the fourteenth amendment.

It will be remembered that Stevens and Fessenden introduced this bill into their respective houses at the same time they reported the fourteenth amendment. In the house, a motion was made and carried that the consideration of the bill be postponed till May 9.[2] This was on April 30, and the next day Boutwell offered to amend the bill so that only Arkansas and Tennessee were promised admission after duly ratifying the amendment and even they only after "they shall have established an equal and just system of suffrage for all male citizens within their jurisdictions not less than twenty-one years old."[3]

On May 2, Williams, in the Senate, proposed that the bill be so amended as to admit Tennessee and Arkansas immediately upon their ratification of the amendment, even though it had not become a part of the Constitution.[4] He further proposed that in case the amendment had not received the ratifications of three-fourths of all the states by March 4, 1867, but had been ratified by any of the remaining nine rebel states, such state

[1] See *supra*, p. 117. This bill provided that whenever a rebel state ratified the fourteenth amendment, and it had become part of the Constitution, said state should be entitled to representation in Congress.

[2] *Globe*, p. 2287.

[3] *Ibid.*, 2313.

[4] *Ibid.*, p. 2332 *et seq.*

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should be admitted on that date, provided its constitution had been changed so as to conform to the principles of the amendment.

In explanation Williams said that should the rebel states ratify the amendment there was little doubt that enough of the loyal states would do likewise to make it a part of the Constitution. But in case the loyal states should not do so before March 4, 1867, he saw no reason to postpone longer than that date the admission of the insurgent states in case they had ratified the amendment by that time. Tennessee and Arkansas, because of the character of their constitutions and laws, were entitled to be excepted, and to have a preference over the other rebel states.

Though the House had postponed the bill for restoring the southern states until May 9, it was not until the 15th that it was reached in the regular order of business. Stevens moved to postpone it for two weeks more in order, as he said, to give the Senate time to act on the amendment.[1] Bingham was immediately on his feet with a vehement protest against further delay. He hoped action would be taken on it at once and declared the country expected Congress to present its whole plan of reconstruction as soon as possible. Moreover, he had the same idea as to Tennessee as Williams, and desired that the bill be acted on immediately in order that her representatives might be seated before the end of the session, as he had no doubt that her legislature would ratify the amendment as soon as given an opportunity to do so. Price, another representative from Ohio, and a friend of Bingham, was even more strenuous in objecting to the postponement of the bill, and radical Republican

[1] *Globe*, pp. 2598–2600.

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as he was, more than intimated that Congress was trying to go before the country without committing itself to a plan of reconstruction, though leaving the implication that it had such a plan. He hoped his party would act with sincerity and not leave itself open to the charge of duplicity. Conkling, who was under the influence of Stevens, disavowed on the part of those who desired postponement any intention of acting in bad faith, and agreed that Congress ought to have a definite plan. However, he concurred in Stevens' opinion that the bill ought not to be acted on until the Senate should pass the amendment, as some changes might be necessary should the Senate, as seemed likely, modify any of the amendment's provisions. Though Stevens' motion received hardly half of the Republican vote, it was carried with the assistance of the Democrats, who thought it was good party politics to prevent their adversaries agreeing upon a definite plan of reconstruction.

Before proceeding further with the consideration of the bill it may be profitable to speculate for a minute upon Stevens' motives in having it postponed at this time. It is probable that he would have had no particular objection to passing the bill for restoring the southern states had he felt sure the Senate would adopt the amendment without striking out or materially modifying his beloved third section.

For Stevens no doubt knew, as every body must have known, that the southern people, though humiliated, would not voluntarily disfranchise themselves even for the sake of obtaining representation in Congress. Therefore he was not afraid to promise admission to the southern states on condition of their doing something which he knew they would not do. But he must have been pretty thoroughly convinced even as early as the fifteenth

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of May that his punitive section would not be allowed to stand, as it had very few, if any, friends in the Senate. Consequently, he was doubtless sincere in desiring to have the consideration of the bill postponed until after the Senate should have taken final action on the amendment.

Stevens as a shrewd, practical politician doubtless believed that in order successfully to contest the coming elections, his party must not be left open to the charge of being simply obstructionists and having no plan of reconstruction of their own. But when the Republican senators in caucus changed the third section from the old form to the new, he was no longer willing to risk passing the restoration bill, for he could have been by no means sure that the southerners, in their great desire again to take part in the National Government, would not be willing to debar a relatively few persons from holding a comparatively small number of offices in order to obtain their ends. It happened that at just that time he was being urged on by such journals as the *Nation* and the *Independent*,[1] to believe that radical sentiment was developing with sufficient rapidity in the North so that his party might safely go before the country in November in the advocacy of a "thorough" reconstruction for the South.

Therefore, on May 28, Stevens introduced into the House what was the first bill for the real *reconstruction* in contradistinction to *restoration* of the southern states.[2]

[1] See issues during all of May and June of these two papers in which the opinion was consistently expressed that the people were ready and anxious to support Congress in a plan of reconstruction based upon equal and exact justice. They therefore urged that Congress adopt such a plan.

[2] This was House bill 623. *House Journal*, p. 657. Nowhere is the bill printed in full, but an abstract of it may be found in the *Nation*, June

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In fact, it was in the nature of a substitute for the restoration bill which we have been considering. Briefly stated, it recognized the Johnson governments as *de facto* and valid for municipal purposes only. They were compelled in their respective states to call conventions, the members of which were to be elected by all male citizens of whatever race or color. Citizens, however, in this instance would include only the negroes and a very small percentage of the whites, for by one of the sections of the bill, all persons who had held office under the government of the so-called Confederate States or who had taken an oath of allegiance thereto were declared to have forfeited their citizenship. In order again to become citizens and be qualified to vote, they must be naturalized just as other foreigners. Furthermore, it was required that the constitutions and laws to be framed must place all citizens upon an equality in respect to civil and political rights, and should such equality ever in the future be denied by the repeal of the laws establishing it, the guilty state would forthwith lose its right to representation. Finally, when any state should have complied with the provisions of this bill, its representatives and senators would be admitted into congress. Stevens' bill was ordered to be printed, but no further action was taken upon it at the time.

On the next day, May 29, the two weeks for which the committee's restoration bill had been postponed having elapsed, it again came up for consideration.[1] Ashley of Ohio, who later became notorious as an advo-

5, 1866. In terms and principles it was very similar to a bill introduced by Stevens early in the second session of the 39th Congress, and which was an immediate forerunner of the Reconstruction act. See *infra*, chap. viii, p. 358.

[1] *Globe*, p. 2878 *et seq.*

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cate of impeachment, offered an amendment which provided that before the southern states could be readmitted a new election for all state and national officers must be held.[1] The amendment further provided that before a state's claim for admission could be considered all these offices must be filled with men other than those disqualified by the new third section of the fourteenth amendment as adopted by the Republican senators in caucus. He stated that personally he very much preferred some sort of bill that would secure the franchise to the negroes, but he was not himself prepared to offer such a bill, as he did not know how best to proceed in order to accomplish that end. Nevertheless he was fervent in his desire that Congress, before adjourning, should work out some plan whereby every loyal man in the South, whether white or black, should be given the right to vote. In spite of his own preferences, however, he would support the committee's bill if nothing better could be had, but he hoped that at least his amendment would be adopted.

Latham, of West Virginia, thought that Congress ought to say at once whether it expected to accept the Johnson governments as legitimate or not.[2] For himself, he firmly believed that they were illegal as then existing, and proposed that the reconstruction committee be charged with the duty of making an investigation with a view of ascertaining in what way they should be modified so as to qualify them to pass upon the fourteenth amendment.[3] His speech concluded the consideration of the bill for that day, and the next morning some one moved that it be postponed until June 4, the assigned reason being that Stevens was ill and not able to take charge of the debate. The motion was adopted without a division.

[1] *Globe*, p. 2881 *et seq.*

[2] *Ibid.*, pp. 2904–2906.

[3] *Ibid.*, p. 2886.

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It may be said with almost entire certainty that after May 29 the bill had no chance whatever of becoming law. For it was on this day that the Republican senators, after several conferences in caucus, announced the material modification already noted in the third section of the fourteenth amendment.[1] The second section of that amendment was a bitter pill for Sumner and the four or five other extreme radical senators who had so persistently denounced the original amendment on the basis of representation and had been instrumental in defeating it.[2] It must have been with extreme reluctance that Sumner agreed to vote for a provision which, only four months before, he had declared was a "compromise of sacred human rights." He never pretended that he would consider the fourteenth amendment as a final plan of reconstruction,[3] and on this very day (May 29) he offered to amend the restoration bill so as to compel the southern states not only to ratify the fourteenth amendment but also to provide in their constitutions for universal suffrage.[4] There can be little doubt that in order to have him and his immediate followers withdraw their opposition to section 2, the Republican caucus virtually promised him either to incorporate his amendment in the restoration bill or allow that bill to be consigned to a permanent place on the table. As a matter of fact the latter disposition was made of it, for we hear no more of it in the Senate.

But in the House, it was a different matter. In that body was a considerable minority of Republicans, who either from motives of natural conservatism or through fear of having their places successfully contested, were

[1] See *supra*, chap. vi, p. 316.
[2] See *supra*, chap. iii, p. 205.
[3] Rhodes, vol. v, pp. 609, 610.
[4] *Globe*, p. 2869.

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anxious to have Congress definitely commit itself to this bill. This was especially true of the Ohio members and the representatives of other doubtful states like Connecticut, Indiana and parts of New York. But even here the efforts to have it disposed of were not so persistent after May 29th, as they previously had been. It was debated in a more or less desultory way from time to time throughout the remainder of the session. On June 4, Wilson of Iowa, chairman of the House judiciary committee, and a man of some ability and following, declared that Congress would not do its duty either to the loyal whites or the blacks in the South unless it empowered the latter to assist the former in obtaining control of the rebel states and holding them for the party of the Union.[1] After Wilson's speech, the bill was again postponed for ten days.

In the meantime, on June 11, Kelley of Pennsylvania introduced a substitute for the restoration bill.[2] Like Stevens' bill, it provided that the existing southern state governments should be recognized as valid for municipal purposes, but they were not to be allowed to pass upon the fourteenth amendment. In order to have their states restored to full fellowship in the Union, they must call conventions whose members were to be elected by all men twenty-one years old or over, who could read the Constitution. These conventions should frame constitutions, which must provide for equal civil rights and impartial suffrage. The first legislatures elected under the new governments might properly ratify the fourteenth amendment, and whenever they should do so, universal amnesty for all citizens therein would forthwith be declared, and their representatives and senators would

[1] *Globe*, pp. 2947–2949.

[2] *Ibid.*, p. 3090.

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immediately be admitted into Congress. This was the first and last of Kelley's bill, and it is only mentioned here to show the diverse opinions that were held as to what sort of legislation should be enacted by Congress on the subject.

The restoration bill was debated from June fourteenth to twentieth. One Republican regretted to find that there was a disposition among his colleagues to postpone action on the bill.[1] Personally he thought it was a just measure, and he hoped that Congress would not adjourn and go before the country without a complete plan of reconstruction. George W. Julian made a long and impassioned speech, and as an original abolitionist, pleaded that the southern states be not readmitted until universal suffrage had been secured in them.[2] He pointed out that the House, earlier in the session, had by a vote of more than two to one passed a bill giving the negroes the right to vote in the District of Columbia. He believed that Congress had just as much power in the rebel states as in the District and he hoped that his colleagues would not recede from the advanced position they had previously assumed. In uttering these words, he was enunciating the same opinion as was expressed by three-fourths of the Republicans who spoke on the question. On June 20, Stevens suggested that the bill be disposed of by taking a vote immediately.[3] To this Banks objected, and moved that it be laid on the table.

His motion was carried, 75 to 20. There it lay till July 20, when Stevens with a certain mock earnestness called it up,[4] asked that it be put on its passage, and attempted to shut off debate by moving the previous ques-

[1] Windom, *Globe*, p. 3166 *et seq.*

[2] *Globe*, p. 3208 *et seq.*

[3] *Ibid.*, p. 3303 *et seq.*

[4] *Ibid.*, p. 3981.

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tion. His followers, however, knew their master too well not to understand when he was serious and when he was trifling, so they obligingly failed to second the previous question. Some one objected that the bill had not been printed.

The fact that this measure, which was indeed the capstone of the great and much-heralded congressional plan, had been allowed to languish for nearly three months without any of its friends taking the trouble to have it printed, speaks eloquently for the lack of interest in it. After some discussion a motion was made that it again be laid on the table. Bingham and a few of his faithful followers called for a division. The yeas and nays were taken. The result showed 101 yeas, 35 nays, and 46 not voting. Thus sank into eternal sleep the luckless restoration bill. Of those who had framed it and jauntily announced it as an earnest of Congress' sincerity in offering the fourteenth amendment to the rebel states as terms for their readmission, Bingham alone[1] was willing to keep the faith.

Thaddeus Stevens, however, was as honest as Bingham. The latter desired to go before the country on the unequivocal platform of the fourteenth amendment. Neither did Stevens wish to equivocate, however, for he was quite willing to appeal to the country on his reconstruction bill as the main issue. He, therefore, on July 25, called up that bill and asked for a direct vote on it.[2] The vast majority of the 39th Congress were as unwilling to commit their political fortunes to Stevens' radical plan as they were frankly to embrace Bingham's conservative one. Consequently, they overwhelmingly voted

[1] Blow, who doubtless would have voted with Bingham's thirty-five, was absent.

[2] *Globe*, p. 4157.

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to lay it also on the table. On July 28, the last day of the session, Stevens was allowed to bring up his bill for the purpose of amending it and making some remarks on it. His amendment put upon the President the duty of calling the conventions in the rebel states, and hence the existing governments were not recognized even for municipal purposes. The old man's speech was one of the ablest and most pathetic of his whole career. After reading it, it is impossible to doubt the sincerity and honesty of the man as he pleaded so eloquently with his colleagues that they go with him all the way in his plan for re-creating the very social and industrial, as well as political, institutions of the South. With tears in his eyes he begged them, should death overtake his racked and diseased frame ere the time should again come for their reassembling, to go forward and perfect and carry out the general principles of reconstruction which he had so frequently expounded to them.

From the foregoing account of the disposition made of both Bingham's and Stevens' bills we may draw the conclusion that the great majority of Republican congressmen were, on the one hand, unwilling to promise in good faith that they would require nothing further of the southern states than the ratification of the fourteenth amendment, and on the other, afraid to enter the approaching campaign on so radical an issue as that involved in Stevens' bill. But unless they should do something, they would still leave themselves open to the charge that they had no plan of reconstruction; for, passing the fourteenth amendment alone and saying nothing as to what the result would be if the southern states should ratify it, certainly could not have been regarded as a plan of reconstruction, even by the most gullible and simpleminded people. In this situation, it was for-

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tunate for Congress that the state of Tennessee ratified the fourteenth amendment on July 19.[1] This event gave the politicians the exact opportunity they desired; for, by admitting Tennessee, they could leave the implication to be drawn, that should the other rebel states do what Tennessee had done, they too would be admitted. The radicals were well aware, however, in their own minds, that this was exactly what the other states would never do; for though they might conceivably ratify the fourteenth amendment, no one thought for a moment that they would ever evidence the same loyalty which Tennessee had shown.[2]

Within a few minutes after a telegram was received in Washington by certain members of Congress that Tennessee had ratified the amendment, Bingham moved[3] to reconsider the vote by which the joint resolution for admitting Tennessee had been recommitted on March 5.[4] The motion was agreed to, whereupon Stevens moved to lay the Tennessee resolution on the table, but other radicals, who apparently desired to save themselves the embarrassment of having their votes recorded on that proposition, moved an adjournment in order to accomplish the same result. Though the motion to adjourn was defeated, it received a majority of the Republican vote, but the conservative minority, together with the Democrats, were sufficient to defeat it. Stevens then attempted

[1] Dunning, *Reconstruction, Political and Economic*, pp. 69, 70.

[2] See *supra*, chap. iv, p. 223. I do not wish to be understood as implying that every Republican who voted for the admission of Tennessee did so purely from such sordid motive as is here intimated. I do believe, however, it was such a motive that influenced those that voted for Tennessee's admission, but did not vote for Bingham's restoration bill.

[3] *Globe*, pp. 3948–3950.

[4] See *supra*, chap. iv, p. 256.

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dilatory tactics, in which he was supported by Boutwell, Morrill, and sometimes Conkling and about thirty or forty other extreme radicals. Bingham moved to substitute for the original committee resolution a new one, which simply stated that whereas Tennessee had ratified in good faith the articles of amendment proposed by Congress, and had in other ways shown to the satisfaction of Congress her return to allegiance to the Government, laws and authority of the United States, therefore, resolved, that the state of Tennessee be declared restored to her former practical relation to the Union, and again was entitled to be represented. Having done this, Bingham allowed an adjournment.

On the next day, the resolution was again brought forward for consideration, and Bingham moved the previous question.[1] Boutwell asked that he be allowed to amend the resolution so that Tennessee could only be admitted after having granted impartial suffrage, but Bingham refused to yield for that purpose, but was willing to allow Boutwell a few minutes in which to make some remarks on the proposition.

Of this opportunity Boutwell availed himself. He said he was not ignorant of the fact that the votes of the House already taken foreshadowed its purpose to pass the pending joint resolution for the admission of Tennessee. Moreover, he recognized the reason for this action as being the approach of a great political struggle in which his party associates seemed to feel that the passage of this resolution would give them strength. This he did not consider to be the case, for he thought the country would be more likely to sustain them if they pursued a policy looking towards equal and exact justice

[1] *Globe*, p. 3975 *et seq.*

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to all men, than if they should make a compromise of sacred human rights. He admitted that he was not troubled as some seemed to be by the news that the proceedings of the Tennessee legislature upon the question of ratifying the constitutional amendment seemed to be irregular.[1]

His objections then were not technical, but vital and fundamental. In the first place the Tennessee government was not republican in form. He did not assert that it was necessary for every man to vote in order to have a republican form of government, but where terms and conditions are imposed, they should be of such a reasonable nature that it would be possible for the great majority of men to meet the requirements of the law. The House by passing this resolution was recognizing as republican in form the government of a state in which over 80,000 male citizens were for themselves and their posterity forever deprived of taking part. Such an act would be not only unjust, but in direct violation of that constitutional injunction which imposes upon Congress the duty of guaranteeing to each state a republican form of government.

Though he believed Congress had positive power to grant the franchise to the negroes in the rebellious states, he was then merely appealing to the negative power of Congress, by which he meant that Tennessee and the other southern states should be excluded from representation until they should perform this act of justice to the negroes. He admitted that the negroes were disfranchised in a majority of the northern states, and though

[1] The "irregular proceedings," alluded to by Boutwell, were the arrest and forcible detention in their seats of two members of the Tennessee assembly whose presence was required in order to constitute a quorum. See Fertig, *Reconstruction in Tennessee*, pp. 77-79.

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he regretted the fact, he was inclined to excuse it on the ground that the injustice was not of such magnitude as to endanger the peace and safety of the country. In the case of the rebellious states, however, there seemed only the alternative of the National Government imposing equal suffrage on the one hand, and civil and social war on the other.[1] He then went on to show that though Tennessee had an adult male population of something like 200,000, only about 60,000 could vote, 80,000 of the remainder being blacks and 60,000 rebels. He did not complain of the disfranchisement of the latter group, but he did protest against that of the former, and principally for the following amazing reason: "That the continuation of this state of affairs invited and rendered necessary a combination between the 80,000 negroes and the 60,000 rebels. The latter forgetting their past prejudices, and the loyal blacks forgetting the disloyalty of the rebels, will join hands and overturn the government of the state."

Boutwell's concluding argument was either the raving of a diseased imagination or the subtle appeal of a wily politician to the laboring classes in the North to support negro suffrage for the South, while maintaining their natural predilections in regard to that question in their own states.

And what you are doing today for Tennessee you are invited hereafter to do for the other ten states of the South. There is only one alternative. It is this; that the 4,000,000 colored people shall escape from the tyranny which you authorize the southern oligarchs to exercise over them. And I bid the peo-

[1] This and the succeeding statements by Boutwell seem almost puerile, but they are only typical of the direful prophecies of what would happen in case "equal and exact justice" were not meted out to the negroes.

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ple, the working people of the North, the men who are struggling for subsistence, to beware of the day when the southern freedmen shall swarm over the borders in quest of those rights which should be secured to them in their native states. A just policy on our part leaves the black man in the South where he will soon become prosperous and happy. An unjust policy forces him from home and into those states where his rights will be protected, to the injury of the black man and the white man both of the North and the South. Justice and expediency are united in indissoluble bonds, and the men of the North cannot be unjust to the former slaves without themselves suffering the bitter penalty of transgression.

He then acknowledged that his opposition to the admission of Tennessee was very much greater because he feared that it would serve as a precedent for the admission of the other ten states on the same terms, and in his opinion it would be ruinous to admit those states without exacting negro suffrage as a condition precedent.

As has been stated before, Bingham and his immediate follower, Blow, were the only members of the committee who were really desirous that their party should present a sincere plan of reconstruction to the country, and to that end had insisted that all the measures reported by the committee be considered and passed in their entirety. In debating the fourteenth amendment, Bingham had said the purpose for which the committee was organized would not be attained if only the amendment were sent to the people.[1] "For myself," said he, "I cannot approach the discussion of this great question which concerns the safety of all in the spirit of a partisan. . . . The want of the Republic today is not a Democratic party, is not a Republican party, is not any party save a

[1] *Globe*, p. 2541 *et seq.*

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party for the Union, for the Constitution, for the supremacy of the laws, for the restoration of all the states to their political rights and powers under such irrevocable guarantees as will forevermore secure the safety of the Republic, the equality of the states, and the equal rights of all the people under the sanction of inviolable law."

But, as we have seen, he failed in having the House adopt his restoration bill. He hoped, however, by having a majority of his party vote for the admission of Tennessee, thereby to commit them, if not to the letter, at least to the spirit of that bill. That he himself would regard the admission of Tennessee in the nature of a precedent for admitting the other southern states under similar conditions, is evident from the general tone of his speech on the Tennessee resolution.[1] In closing the debate on that resolution, he said it was true that Tennessee excluded the negroes from the exercise of the elective franchise, and though he regretted it, he was bound to say that since the majority of the loyal states did the same thing he was at a loss to understand how gentlemen could advance that as a reason for denying Tennessee representation in the House.

We are all for equal and exact justice, but justice for all is not to be secured in a day. That statesman is wisest and most faithful to duty who will seize this opportunity to restore a state to its proper place in the Union, and thereby add one additional vote in aid of the final ratification of that amendment which provides for the protection of each citizen by the combined power of all. Would gentlemen esteem it nothing if the majority of the people of the other ten states lately in rebellion should imitate the example of Tennessee, and sol-

[1] *Globe*, p. 3978 *et seq.*

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emnly ratify the amendment declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, and giving Congress power to enforce this righteous decree? . . . I tell you gentlemen that the American people will no more tolerate vassal states hereafter in this Republic than vassal men. If the majority of the people of Ohio have the right to control the political power of the state, the majority of the people of Tennessee have the same right. I ask gentlemen to weigh well the question when they come to vote, whether Tennessee shall be rejected only because the majority exercise the same power as to colored suffrage claimed for and exercised by all the other states? . . . One great issue has been finally, and I trust forever, settled in the Republic: the equality of all men before the law. Another issue of equal moment is now pending: the equality of the states. That is the issue between the gentleman [Boutwell] and myself. . . . I say these states must be equal before the law. They must have equal representation in the Senate, and they must each be represented according to their whole representative population in the House. It matters not whether the states have been in rebellion or may have been struggling to maintain the Constitution and the Union, the rule is the same, and I trust ever will remain, that the states like the people, are to be equal before the law.

The vote was then taken on the resolution and resulted in an overwhelming temporary victory for Bingham. Only twelve of the radicals had the hardihood to vote against the measure, the others, including Stevens, voted for it as a matter of political necessity. As a rule the Democrats also voted in the affirmative, though the language of the preamble was distasteful to them.[1]

[1] *Globe*, pp. 3980, 3981. One Democrat said: "I spit on the preamble, and vote *aye* on the resolution." Another facetiously remarked that he was paired with himself on the question, since he opposed the preamble but favored the resolution, therefore he would not vote at all.

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On the next day (July 20) the resolution came up in the Senate but was immediately referred to the judiciary committee.[1] On July 21 it was reported back to the Senate, but with a complete change in the preamble. This now recited everything that had been done in Tennessee in the way of disfranchising rebels, etc., in addition to the ratification of the fourteenth amendment, and then the resolution declared that the state was entitled to representation because of *all* the foregoing conditions.

From this the implication may be clearly drawn that the judiciary committee desired it to be understood that Tennessee was to be admitted not merely because she had ratified the fourteenth amendment but also because of a great many other acts of loyalty which she had performed. Therefore, in case the other ten rebel states should ratify the fourteenth amendment, it would not necessarily follow that they would be forthwith admitted to representation, for it could be quite truly said that they had not shown the same evidence of loyalty in other ways that Tennessee had.

Moreover, the judiciary committee's preamble reasserted the positive power of Congress over the whole subject of reconstruction. Sherman objected to this on the ground that Congress had several times before asserted its power over the subject, and thought that it was unwise to do so again in this case, as it would only provoke a veto from the President and thereby cause additional delay. Trumbull, on the other hand, believed that for Congress not to assert its power on every occasion would be to surrender its position because of executive opposition. To B. Gratz Brown of Missouri, who like Boutwell in the House maintained that, since Ten-

[1] *Globe*, pp. 3987-4008.

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nessee denied the negroes the right to vote, her government was not republican in form, Trumbull replied that if that were the case he (B. Gratz Brown) had no business in the Senate, since according to the same test Missouri's government was no more republican than that of Tennessee. Fessenden, while protesting that he was perfectly willing that Tennessee should be admitted before the fourteenth amendment had become a part of the Constitution, was not willing to have the other ten states admitted until it had been ratified by three-fourths of all the states. Therefore he desired that either the preamble recite the reasons for making an exception in the case of Tennessee, or that it be stricken out altogether, so that the Tennessee resolution would serve as a precedent for nothing whatever.

Sumner offered an additional resolution which was to the effect that Tennessee should not be admitted until she had enfranchised the negroes, but he could muster only four votes in favor of his proposition. Cowan declared that the restoration of Tennessee was an abandonment by the majority of their ground that they would not admit members of Congress from the lately rebellious states without guarantees. He thought that the whole debate on the resolution was a mere piece of political manoeuvring. "I ask in all seriousness whether there is a sane man in this body who believes that an amendment to the Constitution ratified against the will of the members of the Tennessee legislature, is worth in that state the paper it is written on? The ultimate power is with the people, and all these barriers that you attempt to build up between the people and their servants are as mere straw and chaff. Some day they must give way, and certainly no wise man wants the Constitution amended by any trickery or any contrivance or any unfair means of that kind."

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The Senate then passed the Tennessee resolution, in essentially the same form in which it was reported by the judiciary committee. On July 23, the House concurred in the amendments made by the Senate, and on the same day the resolution was sent to the President for his signature.[1]

The President was in the position of that Democratic congressman who when called upon to vote on the question declared he was paired with himself. The President, like the congressman, favored the resolution and therefore signed it; likewise, he opposed the preamble, and against it sent to Congress a protest, in which he said:[2]

Among other reasons recited in the preamble for the declarations contained in the resolution, is the ratification, by the state government of Tennessee, of "the amendment to the Constitution of the United States abolishing slavery, and also the amendment (the 14th) proposed by the 39th Congress." If, as is also declared in the preamble, "said state government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States," it would really seem to follow that the joint resolution which at this late day has received the sanction of Congress, should have been passed, approved, and placed on the statute books before any amendment to the Constitution was submitted to the legislature of Tennessee for ratification. Otherwise the inference is plainly deducible that while, in the opinion of Congress, the people of a state may be too strongly disloyal to be entitled to representation, they may nevertheless, during the suspension of their "former, proper, practical relations to the Union," have an equally potent voice with other and loyal states in propositions to amend the Constitution, upon which so essentially depend the stability, prosperity, and very existence of the nation.[3]

[1] *Globe*, p. 4056. [2] *Ibid.*, pp. 4102, 4103.

[3] All the Tennessee representatives and senators were admitted to their seats during the last few days of the first session of the 39th Congress.

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In this passage President Johnson alluded to what has been called the "vital flaw in the consistency of the congressional plan." [1]

Three of the four matters which at the outset of this chapter it was proposed to examine, have now been discussed. No separate analysis of the fourth—the opinions of the politicians—seems to be necessary, as those opinions have been sufficiently indicated in giving an account of congressional action on the fourteenth amendment, the restoration bill, and the resolution for admitting Tennessee to her place in the Union. A brief summary by way of answering the questions suggested in the first paragraph of this chapter may now be given.

First, was the fourteenth amendment an offer to the South? The action of Congress on the restoration bill plainly suggests a negative answer, while a majority of the Republican politicians, if inclined at all to regard the admission of Tennessee as a precedent, did so only on condition that the remaining states would show the other evidences of loyalty which Tennessee had displayed. On the other hand there certainly were some Republicans who really did mean to promise to admit the southern representatives whenever their state legislatures should ratify the amendment. Granting that these conservatives with the addition of the Democrats were sufficiently numerous to carry out the promise, the second question remains, was the offer *magnanimous?*

In the opinion of most northern people the southern leaders certainly deserved the punishment accorded them in the third section of the fourteenth amendment, and it is doubtful if those men themselves or the southern people would have complained, had the provisions of that section

[1] Dunning, *Essays*, p. 117.

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been enacted into law by Congress. Such a course would have been just. But to ask men who were conscious of no wrongdoing to place a stigma upon themselves, was not even just; it was the reverse of magnanimous. Moreover, when southern political philosophy taught that representation should be according to population, it seems hardly *generous* to have asked the southern people to act the lie by ratifying the fourteenth amendment, and virtually saying that they believed in the principles of section 2, when, as a matter of fact, they could not have done so, since that section was meant to reduce their power in the National Government by thirty or forty per cent. It must be remembered that the fourteenth amendment was not in the nature of a treaty, nor of terms dictated by a conqueror to the conquered. The later Reconstruction act of March 2, 1867, if the supplementary act of March 23 had never been passed, would have been in the nature of "terms" of peace, and as such, the southern communities, no longer recognized as *states*, might conceivably have acted upon it if they had been left to themselves to decide the matter. On the other hand, the fact that the fourteenth amendment was submitted, for instance, to Georgia as well as New York, and in the same way, could only mean that Georgia, theoretically at least, was recognized as a state in the Union, and the equal of New York. Both states were to ratify the amendment on its merits. The matter of political expediency was not supposed to be concerned in the question at all.

This was the view which southerners held of it, and hence they believed that if they should ratify it, they would be stultifying themselves. Therefore all ten of the rebel state legislatures almost unanimously rejected the amendment during the winter of 1866-67.

Third, was there any constructive statesmanship in the

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fourteenth amendment? Though the nationalizing of civil rights had already been accomplished by the Civil Rights act, it may be granted that under the circumstances it was wise to incorporate the principles of that act into the Constitution.

Section 2, however, has proved so impracticable that its enforcement, though frequently discussed, has never been attempted. Section 3 was originally intended to be passed as an ordinary act of Congress, and it was certainly a mistake to raise a temporary punitive bill to the dignity of a constitutional amendment. As for section 4, it was entirely unnecessary, and since it was designed to catch votes, especially those of the soldiers, it deserved to be classified as mere political buncombe. No!

It seems clear, however, that in the opinion of the majority of Congress and of the northern people, it was necessary to require additional guarantees from the southern states as to their future loyalty. Since that was so, the Stewart proposition of universal amnesty and impartial suffrage ought by all means to have been adopted. It appeared then to the nonpartisan thinking people, and certainly appears now, to have been the most statesmanlike solution of the problem that was suggested. It embraced real generosity and magnanimity to the southern people, and at the same time made provision against the disfranchisement of American citizens simply because of their color. Such a provision was just, for of all the restrictions that have ever been placed upon the right to vote, that of color is the least defensible. This Stewart scheme of reconstruction bore the earmarks of real statesmanship, but the majority of the Republicans in Congress were unfortunately not statesmen, but partisans, and therefore the proposition was not adopted.

In the fourth place, were the southern legislatures blame-

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worthy for not adopting the amendment? As already said, they could not have ratified sections 2 and 3 without stultifying themselves. But, it has been said, they should have done so as a matter of political expediency. To this argument the members of the legislatures responded that even if they should so humiliate themselves, they had no assurance that their senators and representatives would be admitted to their places in Congress. Moreover, the southern people were, till within a few days of the passage of the first Reconstruction act, incredulous that they would be reduced to a position in their own states inferior to their former slaves. After the 1866 elections, they regarded the fourteenth amendment as inevitable, and negro suffrage as a possibility, but it does not appear that they ever seriously considered that they would again be placed under military rule, their state governments overthrown, and new governments established in which apostates to their cause, northern adventurers and negroes would have the controlling influence. And even if they could have foreseen such a result of their refusal to accept the amendment, it is doubtful if fear would have caused them to have acted differently. The only time the southern people were ever really frightened was immediately after the collapse of the Confederacy. After that, they were successively dismayed, disgusted, and angered, or all three at the same time, but they never again were afraid. It might have been expedient for the southern states to have ratified the fourteenth amendment, but it is hardly fair to consider them culpable for not doing so. Those writers who attempt to shift upon the South a part of the blame for the evils of reconstruction are hardly justified.[1] The southern people in the decade of 1860-1870 have a big load of blame to bear, without being

[1] Nearly all the older writers did so, and Professor Woodburn, in his *Life of Thaddeus Stevens*, leaves an impression of the same purpose.

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burdened with any part of the responsibility for the Reconstruction acts.

What then was the fourteenth amendment if it was not a plan of reconstruction? An editorial in the *New York Herald* of June 12, 1866, gives an excellent answer to the question.

> This congressional proposition for the amendment of the Constitution, as modified by the Senate, is an ingeniously contrived party platform for the coming fall elections. . . . . There is nothing here obnoxious to public opinion in the way of negro suffrage, while the alternative suggested will be satisfactory to the North. There are no vindictive penalties here against rebels and traitors, but conditional exclusions, which cannot be resisted successfully before the people who put down the rebellion. The same may be said of the propositions touching the national debt, the debts of the rebellion, and the four millions of liberated southern slaves. Upon this platform the Republican party adhering to Congress can carry our approaching northern state elections as they did last year if there be no other sharply defined issues.

The *Herald* was right. Johnson had no chance against Congress before the people on the issue of the fourteenth amendment.

The *Herald* recognized that the radicals did not regard the fourteenth amendment as a finality. It therefore suggested to the President that the only way to defeat their schemes of confiscation, negro suffrage, and possibly impeachment, was to unite with those conservatives, like Bingham and Fessenden, who did consider that amendment a finality, advise the southern states to ratify it, reorganize his cabinet with able men from the conservative faction in the most important places, and withdraw the attention of the country from domestic politics by adopting a strong

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foreign policy, especially toward France and England. Such a course would have been excellent politics, and had Johnson been a Disraeli or a Bismarck he might have accepted the suggestion. But since he was only Andrew Johnson—a first-rate stump speaker, a second-rate statesman, and a third-rate politician, he did nothing of the kind, and the *Herald* owners went over to the opposition, as did all Republicans who were not in some way connected with the administration, and who had not already done so.

In the political campaign that ensued, the fourteenth amendment was spoken of by Republican politicians, as a finality in reconstruction, or a mere step toward "complete justice," partly according to the temperament of the speaker, but principally according to the nature of the constituency which he represented. Even radicals in doubtful states like New York, Indiana, and Ohio, referred to that amendment as the "magnanimous offer" of a generous people to the South, and assured their constituents that if it were ratified by the rebel states, they would surely be restored. On the other hand, their brothers in Massachusetts and New England generally, and in radical western states like Michigan, Wisconsin, and Iowa, paid scant respect to it, and denied that Congress intended it to be a finality.[1] Though there were a great many causes contributory to the triumph of the radicals in the fall elections of 1866, perhaps none was more potent than this automatic, adjustable, congressional "plan." It was indeed an excellent "plan" for winning a political campaign, but as a "plan" for reconstructing rebel states, it was destined soon to go askew.

[1] My authority for this generalization is derived from a careful reading of numerous speeches made during the campaign, and reported in the New York newspapers.

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CHAPTER VIII.

THE RECONSTRUCTION ACT

ON November 15, 1866, *The Independent*, which more than any other journal expressed the views of the extreme radicals, said: "This journal, if it should call for a list, could get more names of Republicans than our fifty-six columns could print, all subscribed to the solemn declaration that the Republican party stands unpledged to make the pending amendment the basis of reconstruction, but, on the contrary, is bound in honor to a reconstruction on the one and only basis of equal rights."

In the preceding chapter the attempt has been made to show that so far as the party as an organization was concerned, the foregoing statement was correct. Individuals, and even party conventions in some of the states, had certainly made the assertion that the rebel states would be readmitted should they ratify the fourteenth amendment. It is possible that they would have been admitted, but had the Republican party or even a respectable minority of it, been sincerely desirous of effecting restoration on the basis of the fourteenth amendment they certainly could have done so, even in the face of the fact that by the time the second session of the 39th Congress met, it was evident that that amendment would be rejected by all the rebel states.[1] The fact that only an

[1] When Congress met on December 3, three of the rebel states had already rejected the fourteenth amendment, and the other seven did so during the next two months. Flack, pp. 191–204.

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exceedingly small number of Republicans were sincerely attached to their so-called plan of reconstruction made it easy for Stevens and Sumner to take the lead, and as Mr. Horace White has said, "cross the Rubicon with the whole army."[1] As Caesar was doubtless glad to have an excuse for crossing the real Rubicon, the radicals in the second session of the 39th Congress were just as happy to have an excuse for crossing the figurative Rubicon. Their excuse, of course, was the failure of the rebel states to ratify the fourteenth amendment, but some of their members did not need this provocation in order to come to a decision in regard to crossing the proverbial stream.

One of these latter was Charles Sumner. On December 4, he gave notice to the Senate that at an early date he would introduce resolutions defining the true principles of reconstruction, by which the illegality of the existing governments in the rebel states, and the exclusion of such states from representation in Congress and from voting on constitutional amendments, would be declared.[2]

On the same day, Broomall, a satellite of Thaddeus Stevens, introduced in the House a resolution instructing the committee on territories "to enquire into the expediency of reporting a bill providing territorial governments for the several districts of country within the jurisdiction of the United States, formerly occupied by the once existing states of Virginia, North Carolina, etc. and giving to all adult male inhabitants, born within the limits of the United States, or duly naturalized, and not participants in the late rebellion, full and equal political

[1] *Life of Lyman Trumbull*, p. 291.

[2] *Globe*, 2nd sess. 39th cong., p. 7.

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rights in such territorial governments."[1] The resolution was adopted by a strict party vote. Many additional resolutions and bills looking towards the enfranchisement of the negroes and the dismantling of the Johnson governments were introduced during the first week of the session.

Since the Memphis and New Orleans riots,[2] the argument that the negroes and the loyal whites in the South were being terribly persecuted had grown in popularity, and it was urged daily on the floor of Congress that the governments in the southern states should be placed in their control, so that they could protect themselves from the unrepentant rebels. Hardly a Republican dared lift his voice against the rising enthusiasm for universal negro suffrage and the reconstruction of the existing governments in the South. When, after a committee of the legislature of North Carolina, for instance, on December 6, gave as one of the reasons for rejecting the fourteenth amendment, that its ratification would not facilitate the restoration of the state,[3] Spalding of Ohio, a friend and follower of Bingham, in order to assure the southern states that Congress was sincere in offering the fourteenth amendment as a plan of reconstruction, on December 10 proposed a resolution declaring the intention of Congress to admit their senators and representatives upon ratification of that amendment.[4] But the house was unwilling to give any such assurance, and Spalding's resolution was unceremoniously referred to the joint committee on reconstruction without debate, and was never

[1] *Globe*, p. 11.

[2] See Rhodes, vol. v, p. 611 *et seq.* Also see *infra*, p. 398.

[3] Flack, p. 200. See also Hamilton, *Reconstruction in North Carolina.*

[4] *Globe*, p. 48.

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heard of again. Even Blaine, who at that time was considered among the conservatives, and who later declared that the southern states would have been restored to their places in the Union had they adopted the fourteenth amendment,[1] on December 10 declared that the people had pronounced with unmistakable emphasis in favor of the amendment with the *superadded and indispensable* prerequisite of manhood suffrage.[2] Continuing, he said:

> The objection in the popular mind of the loyal states to the constitutional amendment as a basis of final adjustment is not directed to what that amendment will effect, but to what it will *not effect*. And among the objects of prime importance which it will not effect is the absolute protection of the two classes in the South to whom the Government owes the most, viz. the loyal white men and the loyal black men . . .The obligation on the Federal Government to protect the loyalists of the South is supreme, and it must take all needful means to assure that protection. Among the most needful is the gift of free suffrage, and *that must be guaranteed.*

When Blaine wrote his book some fifteen years after this speech was made, he was evidently not very proud of his party's reconstruction record and was anxious to shift responsiblity for its blunders. It is clear from his own speech that his statement in his book, if not entirely untrue, is at least questionable.

During the whole of the second session of the 39th Congress there were in Washington a large number of southern loyalists who were telling all sorts of stories about the indignities and dangers to which they and the colored people were subjected by their rebel neighbors.

[1] Blaine, *Twenty Years of Congress*, vol. ii, pp. 243-245.

[2] *Globe*, p. 53.

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They demanded of Congress protection, which meant that they, and not the rebels, should be placed in control of the southern governments. In order to accomplish the result which these loyalists desired, Thaddeus Stevens, after consulting freely with some of them, introduced on December 19 a bill designed for that purpose.[1] It was not debated, however, until January 1867, by which time it had been amended to read as follows:[2]

Whereas the eleven states which lately formed the government called the "Confederate States of America," have forfeited all their rights under the Constitution, and can be reinstated in the same only through the action of Congress:

Sec. I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the eleven states lately in rebellion, except Tennessee, may form valid state governments in the following manner:

Sec. II. And be it further enacted, that the state governments now existing *de facto* though illegally formed in the midst of martial law, and in many instances the constitutions were adopted under duress, and not submitted to the ratification of the people, and therefore not to be treated as free representatives, yet they are hereby acknowledged as valid governments for municipal purposes until the same shall be duly altered and their legislative and executive officers shall be recognized as such.

Sec. III, And be it further enacted, that each of the ten states which were lately in rebellion, and have not been admitted to representation in Congress, shall hold elections on the first Tuesday of May, 1867, to choose delegates to a convention to form a state government. The convention shall consist of the same number of members as the most numerous branch of the legislature of said state before the rebellion. It shall meet at the former capital of said state on the first Monday

[1] *House Journal*, 2nd sess. 39th cong., p. 102.

[2] *Globe*, p. 250 *et seq.*

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in June of said year, at twelve noon, with power to adjourn from time to time, and shall proceed to form a state constitution, which shall be submitted to the people at such a time as the convention shall direct, and if ratified by a majority of the legal voters shall be declared the constitution of the state. Congress shall elect a commission for each of said states, to consist of three persons, who shall elect, or direct the mode of selecting, the election officers for the several election districts, which districts shall be the same as before the rebellion, unless altered by said convention. The officers shall consist of one judge and two inspectors of elections, and two clerks; the said officers, together with all the expenses of the election, shall be paid by the United States, and said expense shall be repaid by said state or territory. Each of said officers shall receive five dollars per day for the time actually employed, Each of the members of said commission shall receive three thousand dollars per annum, and their clerks two thousand dollars. The commissioners shall procure all the necessary books, stationery, and boxes, and make all regulations to effect the objects of the act. The President of the United States and the military commander of the district, shall furnish so much military aid as the said commissioners shall deem necessary to protect the polls and keep the peace at each of said election districts. If by any means no election should be held in any of the said late states on the day herein fixed, the election shall be held on the third Monday of May, 1867, in the manner herein prescribed. Returns of all such elections shall be made to the said commissioners, whose certificates of election shall be *prima facie* evidence of the fact.

Sec. IV. And be it further enacted that the persons who shall be entitled to vote at both of said elections shall be as follows: all male citizens above the age of twenty-one years who have resided one year in said state and ten days within the election district.

Sec. V. And be it further enacted that the word citizen as used in this act, shall be construed to mean all persons (except Indians not taxed) born in the United States or duly natura-

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lized. Any male citizen above the age of twenty-one years shall be competent to be elected to act as delegate to said convention.

Sec. VI. And be it further enacted that all persons who on the 4th day of March, 1861, were of full age, who held office, either civil or military, under the government called the "Confederate States of America" or who swore allegiance to said government are hereby declared to have forfeited their citizenship and to have renounced allegiance to the United States, and shall not be entitled to exercise the elective franchise or hold office until five years after they shall have filed their intention or desire to be reinvested with the right of citizenship, and shall swear allegiance to the United States and renounce allegiance to all other governments or pretended governments; the said application to be filed and oath taken in the same courts that by law are authorized to naturalize foreigners: Provided, however, that on taking the following oath, the party being otherwise qualified, shall be allowed to vote and hold office:

"I, A. B., do solemnly swear that on the 4th of March, 1864, and at all times thereafter, I would willingly have complied with the requirements of the proclamation of the President of the United States issued on the 8th of December, 1863, had a safe opportunity of so doing been allowed me; that on the said 4th of March, 1864, and at all times thereafter, I was opposed to the continuance of the rebellion, and to the establishment of the so-called Confederate government; and voluntarily gave no aid or encouragement thereto, but earnestly desired the success of the Union, and the suppression of all armed resistance to the Government of the United States; and that I will henceforth faithfully support the Constitution of the United States, and the Union of the states thereunder."

Sec. VII. And be it further enacted that no constitution shall be presented to or acted on by Congress which denies to any citizen any right, privileges, or immunities which are granted to any other citizen in the state. All laws shall be impartial, without regard to language, race or former condi-

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tion. If the provisions of this section should ever be altered, repealed, expurged, or in any way abrogated, this act shall become void, and said state lose its right to be represented in Congress.

Sec. VIII. And be it further enacted, that whenever the foregoing conditions shall be complied with, the citizens of said state may present said constitution to Congress, and if the same shall be approved by Congress said state shall be declared entitled to the rights, privileges, immunities, and be subject to all the obligations and liabilities of a state within the Union. No senator or representative shall be admitted into either House of Congress until Congress shall have declared the state entitled thereto.

The foregoing was a substitute for the old restoration bill that had been presented by the joint committee at the same time the fourteenth amendment was reported,[1] but its terms resembled much more closely Stevens' reconstruction bill which he had introduced on May 28. His reason for offering it as a substitute for the original restoration bill was to keep it from being referred to the joint committee without debate. Under the rule of the House everything relating to reconstruction was so referred, and Bingham made the point of order that this bill should go the same route. The Speaker, with whom Stevens had no doubt conferred, overruled Bingham on the ground that it was a substitute for a bill that the committee itself had offered, and could be recommitted only by special vote of the House.[2] A few days later Bingham moved that it be so disposed of,[3] but such disposition of it was exactly what Stevens did not wish as he thought recommitting it would be the same as killing it outright. Consequently, the House engaged in a gen-

[1] See *supra*, p. 117.

[2] *Globe*, p. 250 *et seq.*

[3] *Ibid.*, p. 500.

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eral debate nominally on the question of recommittal, but actually the principal points made in the speeches were on the merits of the bill.

Before Stevens' bill was finally recommitted he accepted three amendments to it which should be noted before proceeding with an analysis of the debate. Sections 2 and 7 were stricken out,[1] and a new section was added which suspended the writ of habeas corpus in the ten rebel states and placed them under martial law.[2] Section 2 was withdrawn because some radicals believed it would weaken their position if they should recognize the Johnson governments even for municipal purposes. The martial law clause was added so that the loyalists would be protected until the new governments should be established. Section 7 was omitted because it was generally agreed on all sides that its principles were untenable.

Before proceeding with the discussion of the speeches it would seem necessary to explain why a bill which never became law should be treated at such length. In the first place, this bill heretofore has not been given the position justified by its proportionate importance in the development of congressional reconstruction; and inasmuch as this is a more or less detailed history of congressional reconstruction, it would seem proper to give the measure the emphasis it deserves. Secondly, though it differs somewhat in its machinery from that instituted in the supplementary Reconstruction act of March 23, the practical operation of the former would doubtless have been about the same as that of the latter. Though the consideration of the March 23d act does not fall within the province of this essay, nevertheless, it logically belongs in the category of the joint committee's accomplishments, and a discussion of what were practically

[1] *Globe*, pp. 536, 816.

[2] *Ibid.*, p. 594.

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its principles seems properly to come within the scope of a history of that committee.

When on January 3, Stevens' bill came up for discussion he made an energetic speech in behalf of its adoption.[1] He desired that the House at an early date should come to some conclusion as to the rebel states. This, he argued, was becoming more and more necessary every day; and the late decision of the Supreme Court of the United States had rendered urgent immediate action by Congress upon the question of the establishment of governments. The late decision to which Stevens referred was in the case of *ex parte* Milligan, wherein the court held "that military commissions and the other incidents of martial law were unconstitutional save where flagrant war made the action of the ordinary courts impossible."[2] This decision Stevens characterized as more infamous than the Dred Scott decision, and far more dangerous to the lives and liberties of the loyal men of the country. It unsheathed the dagger of the assassin and placed the knife of the rebel at the throat of every man who dared proclaim himself loyal to the Union. He declared that the rebels were murdering the loyal whites daily, and daily putting in secret graves not only hundreds but thousands of the colored people and that unless Congress proceeded at once to adopt some means for their protection, he and his colleagues would be liable to the just censure of the world for their negligence and cowardice.

Congress must not allow the revolution through which the country had been passing to subside until the nation

[1] *Globe*, p. 250 *et seq.*

[2] Dunning, *Reconstruction*, p. 89. For a complete discussion of the case, see *Essays*, p. 45 *et seq.*

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had been erected into a perfect republic. But little had been done toward establishing the government on the true principles of liberty and justice. Though the material shackles of four million slaves had been broken, they had not been given the privilege of participating in the formation of the laws of the government. They needed civil weapons to enable them to defend themselves against oppression and injustice.

He restated his theory of conquered provinces, denied that there was any understanding that if the amendment were adopted the southern states would be admitted, and said in regard to negro suffrage: "If it be just it should not be denied; if it be necessary, it should be adopted; if it be a punishment to traitors, they deserve it."

On January 16 Bingham made a speech denouncing the contention of Stevens and a great many other radicals that Congress was not bound by the terms of the fourteenth amendment in making a final settlement of the reconstruction question.[1] Furthermore he asserted that a large number of Union members, especially those from New York and Ohio, owed their re-election to the 40th Congress to the fact that their state conventions had placed the acceptance by the rebel states of the amendment as the final condition of restoration.

He denounced Stevens' conquered province theory, and while he admitted that Congress could legislate for the rebel states before they were represented, he was certain they were still in the Union. He thought their position was somewhat analogous to that of Rhode Island and North Carolina in 1789; these two states were not represented in Congress, but nobody denied their power to ratify the Constitution because of that fact.

[1] *Globe*, pp. 500-505.

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So it was with the rebel states; they had the power to ratify the fourteenth amendment, and by doing so ought to become automatically entitled to representation. He then attacked the bill in detail, and so completely demolished section 7, that, as we have seen, Stevens was forced to withdraw it, even though he said it was dear to his heart. Bingham sharply criticized the clause which had for its purpose the decitizenizing of the rebels, and so conclusively did he prove that Congress had no power to expatriate American citizens that, though Stevens did not withdraw the clause, it found no place in the later Reconstruction acts.

In conclusion he said: "Stand by the great amendment for equal right and equal protection. There is strength in it; the strength that abides in an inviolable justice. There is peace in it; that peace that comes of laws which are just to all and oppressive of none."

Some one reminded Bingham that all the southern states which had taken action on the amendment, had rejected it. To this he replied: "It does not follow that they will not yet accept it." But it was hardly to be expected that Bingham's plea for mercy would have much weight, when the majority of those to whom it was addressed habitually spoke of the rebels in terms of which the following is typical:

> I would not advocate banishment for them, for I would not even poison the air of Australian convicts with their presence . . . . It rests upon us to decide at an early day whether we are to allow rebels to come and take their seats here unwashed, unrepentant, unpunished, unpardoned, unhung, (laughter) or whether we will heed the voice of our friends, fleeing from the South for their lives; whether we will listen to the supplication of four million black people, all true to the great prin-

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ciples which we here seek to establish. For one I urge the earliest action.[1]

Eldridge, a Democrat of Wisconsin, said it was idle to attempt any resistance to a caucus measure of the majority.[2] It was appalling to those who from early childhood had been accustomed to revere and love the Constitution, to feel that it was in the keeping of a party having the power and determination to destroy it. Never in the history of the country had there been a measure or movement fraught with such fatal and fearful consequences to the Republic as the one under consideration. Referring to that part of Stevens' speech in which he had expressed the hope that the revolution begun without the consent of Congress would not end until all the incongruities and despotic provisions of the Constitution should be corrected, Eldridge said there could be no mistaking Stevens' object; it was to avoid or get rid of some of the provisions of the Constitution.

Eldridge saw in the movement that was then going on in Congress, of which the pending bill was only a part, three purposes. In the first place, there was a determination either to abolish the Supreme Court, or at least circumvent it in such a way that it would be powerless to perform its functions. This he had gathered from the speeches of the gentlemen of the majority, wherein they denounced the Supreme Court as an institution as well as its recent decisions.[3] In the second

[1] Grinnel, *Globe*, p. 537. [2] *Globe*, pp. 561–564.

[3] Eldridge was referring to the Milligan, Cummings and Garland decisions, especially the first. See *supra*, p. 363. In the two last-named cases the Court held that a state and a Federal test oath, designed to exclude rebel clergymen and attorneys from exercising their functions, were unconstitutional as *ex post facto* laws. See Dunning, *Essays*, p. 121.

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place, he saw a well organized effort on foot which seemed to be gaining force every day, either to depose the President entirely or at least to make of his office a mere sinecure. The third and final purpose of the majority, and to which the others were largely contributory, was to turn ten sovereign states into territories or hold them as conquered provinces.

He declared that the states and their governments were not destroyed by attempted secession. All the attempts to take them out of their relations to the other states of the Union were failures and every step in that direction was an illegal and void act. The moment the rebellion was put down, the people of each state had the right to their government as before the war. On the part of the Confederates the struggle was to separate and divide; on the North's part to prevent separation and division, and preserve the states in the Union. The southern people sought to avoid the laws of the Federal Government; the northern people to enforce them.

They claimed the right to secede when they felt disposed; we avowed secession a monstrous heresy, and that the Union was formed in perpetuity. They seized their arms and appealed to the God of battles for the justice of their cause; we accepted the wager of battle and pressed them so closely that in desperation they cried, for the purpose of rallying their dispirited forces, that we meant to subjugate them. As victory wavered in the balance we solemly declared: "That, banishing all feelings of mere passion or resentment, we will recollect only our duty to the whole country; that this war is not waged upon our part in any spirit of oppression, nor for the purpose of conquest or subjugation; but to defend and maintain the supremacy of the Constitution and to preserve the Union, with all the dignity, equality, and rights of the several states unimpaired; that as soon as these objects are accomplished the war ought to cease."

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Eldridge then declared that the only other object of the war which later developed after the above declaration was made was the abolition of slavery. Therefore, according to the laws of nations about which Stevens so persistently talked, when the war was concluded the only right which the conquerors had over the conquered was to enforce those declared objects of the war. As seen above these objects had been two fold: (1) the maintenance of the Union; (2) the abolition of slavery. Any scheme of reconstruction that proposed to include other than these two objects was contrary both to the law of nations, and to the Constitution of the United States. It was unconstitutional because the sovereign powers of Congress are named in the Constitution, and that document itself was created by a certain political people, and therefore Congress had no right to create in the individual states a new political people. That is to say, that Congress itself was created by the old political people of all the states, and to attempt to change that people in the states was to invade their liberty, because the political people in each state had always had the right to add to or detract from their own number.

The disorders in the South, the frequent riots and numerous murders during the last half of 1866, together with the ill-tempered and not infrequently lying speeches by vindictive and malignant politicians both in and out of Congress, had caused many thinking men to fear the country was hurrying toward a renewal of civil strife. Eldridge was one of these and the following remarks seem to show that he sincerely deprecated the extremely partisan and revengeful course that was being pursued by the Republicans:

I hope, I devoutly pray these troublous times may have an end

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without further sacrifice of fraternal blood; that our constitutional rights and liberties may not be lost in this fanatical revolution. Let sectional hatred and all revenge be buried in oblivion. Reconciliation is the only restoration. Malignant passion has counseled long enough; let it slumber. Is it not enough to enslave ten million people, and hold them in a state of conquest for two years? Congress has an opportunity such as no other body of men ever had before, such as I fear it will never have again, by a word to speak peace, reconciliation, and amity to a suffering and unhappy country. A brave and unarmed people lie conquered at your feet, bound in spirit and oppressed with many sorrows. They have surrendered all for which they contended on the battle field and more than you demanded before they gave to you their arms. Let not the pride of victory, passion, revenge make you unjust and change your victory into defeat.

In concluding, he reminded his opponents that generosity had never lost the conqueror anything, but that cruel and unwise exactions had often renerved many an arm and renewed many a struggle. "Better than that subjugation and oppression should continue, follow the example of the monster Duke of Alva: take twenty thousand to the block and be satisfied. Two hundred thousand may not satisfy the people for wrong and injustice long continued."

Whatever else may be said against reconstruction as actually carried out by Congress, most writers have concurred in the opinion that it was a grand result in history that our great civil war was not followed by any confiscations or executions or any considerable number of imprisonments. In connection with Eldridge's intimation that it would have been better to execute a few of the leading rebels than to initiate measures of subjugation and oppression of the whole mass of the southern people, the question may properly be asked, was he not

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right? Of course it is impossible to give a satisfactory answer to the question, but it may well be doubted if either the confiscation of the large estates in the South and the division of them among the negroes, or the execution of a few of the leading traitors, or both, would have left such bitterness in the breasts of the southerners as was actually left by the Reconstruction acts and their aftermath. It was certainly true that at the close of the war these leading traitors did not hope much better for themselves than a halter, and their countrymen at that time would not have been greatly disposed to regret such a fate to these authors of all their woes. As for the negro he would have been benefited a great deal more by forty acres and a mule than he was by the ballot, and the former would have been conceded to him by his white neighbors with a great deal more grace than was the latter. Moreover, if he had forty acres and a mule, sooner or later he would have obtained the ballot, and under such circumstances as would have been of value both to himself and his country. It is notorious that the negro's disfranchisement in the South at the present time is not due nearly so much to his color as to his economic dependence. Wherever he is the possessor of so much as forty acres of land he can have the ballot if he wants it. As Thaddeus Stevens at one time expressed it: "Seek ye first for the negro a little land, and all other things will be added unto him."

In general the Democrats and those Republicans who opposed Stevens' bill based their arguments principally on legal and constitutional technicalities, whereas its advocates placed theirs almost entirely on practical considerations. Had the opponents of the bill met their adversaries on their own ground, it is apparent that they could have made out a much stronger case against the

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bill than they did. The Constitution had been so stretched during the preceding five or six years that men were not inclined to pay much attention to pleas that that sacred document was being violated. As for state integrity and equality the great majority of people in the North in 1867 regarded South Carolina and Virginia as quite different in relation to the Union from Massachusetts and New York, and no amount of constitutional theorizing could make them change their opinion.

There were in Congress, however, about a half dozen representatives, mostly from Kentucky, who though of pro-slavery antecedents and southern sympathies, had remained steadfast in their loyalty to the Union. They and their fellow citizens had been kept in line by Lincoln's wise "border state policy," and as one of them said, had the National Government dared announce at the beginning that the war was waged for any purpose other than to save the Union, it could not have recruited a dozen regiments in all the border states.[1] Though these border state people had reluctantly accepted the abolition of slavery as an accomplished fact, they regarded the negro in much the same light as did the white people in the ex-confederate states, and neither had nor pretended to have any illusions concerning the political capacity of the black race. They looked upon this attempt to put the southern state governments in the hands of people who held their positions by reason of negro suffrage as an unmixed evil and an attack upon civilization itself. They met Stevens and his extreme radical henchmen on their own ground of practical considerations and foretold with remarkable accuracy what the result of the radical experiment would be. Replying to the stock

[1] Ward, *Globe*, appendix, p. 61.

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argument of the radicals that the people of ten rebel states could not be safely trusted with a voice in the Government because of their "disloyalty," one of these Kentuckians said that the radicals in employing that argument overlooked one very important truth—the people of the South did not make war upon our republican form of government nor seek to destroy it; they only sought to make two republics out of one. They were then and always had been as much attached to the American system of free representative government as those persons who were abusing them for disloyalty [1]

Another Kentuckian, Hise, discussed the meaning attached to the word *loyalty* by the majority party.[2] It meant loyalty to them, loyalty to their dominion, submission to their will, undisputed recognition of their power and authority, and a promise for its perpetual continuance. Freedom meant to make slaves of the southern people by placing and maintaining their state governments in the control of the negroes, and through their agency hold the southern whites in submission. "The negroes are your friends, and they and the felons and jailbirds are to be admitted to the right of suffrage and allowed to hold office in those states by your bill, should it be passed and carried into execution."[3] In addition to the classes mentioned the membership of the proposed conventions would be composed of camp followers, sutlers and army contractors, all reckless and

[1] Ward, *Globe*, appendix, p. 61. [2] *Globe*, appendix, pp. 66–69.

[3] Hise had good reason to speak of "jailbirds and felons," for on January 7, Stevens had moved to amend his bill so as to disqualify from voting in the new governments only those criminals convicted of treason. *Globe*, p. 324. In defence of this extraordinary amendment he said that otherwise the negroes would be deprived of the ballot for every little insignificant offense, and even new offenses would be created for the purpose of disfranchising them.

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unprincipled adventurers from the North who had overrun the South to plunder both the white man and the negro. The governments of the southern states would be committed to them, and by them would be sent "loyal" representatives to Congress. "My God, what a representation it will be!"

Such then would be the practical effect of the radical idea of loyalty, should Stevens' bill embodying that idea become law. As a matter of fact, the term loyalty was inapplicable to this country. It signified submission to a feudal superior, whereas here where all were equal, no such thing as legal or obligatory loyalty to any man or party could be required of an American citizen. All were bound to obey the Constitution and to submit to the laws, but the rights of free discussion had always existed. The whole superstructure of both the state and Federal governments were built upon the declared right of the people to alter, abolish, overturn, and reconstruct their political institutions at pleasure.

In concluding his argument Hise said the bill as a whole was a miserable scheme of public policy to destroy the political force and influence of the southern states as members of the Union. And yet it was devised by a party whose adherents were loudest in their professions of devotion to free government, and of love of liberty.

These men claim to be the special advocates of human liberty and equal rights. They say they must put their friends, *their loyal friends*, in possession of the state governments, and then they will send loyal delegations to Congress. Oh, yes, they will send loyal delegations! So this bill, if executed, will establish corrupt and despotic local governments for all those states. It will place in office the most ignorant and degraded portion of the population, who would rule and ruin without honesty or skill the actual property holders and

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native inhabitants, making insecure life, liberty, and property Those states would still be held in their Federal relations subject to the most rapacious, fierce, and unrelenting despotism that ever existed—that of a vindictive and hostile party majority of a Congress in which they have no voice or representation, and for that very reason they will be oppressed by that irresponsible majority.

The last important speech made on the bill was that of Henry J. Raymond, who, though he had formerly supported President Johnson and participated in the Philadelphia convention, had not severed his connection entirely with the Republican party.[1] His speech is of interest in that he gave what, at this distance, seems to be the best interpretation of the meaning of the 1866 elections tha. was given by any speaker in the House. He said he had concurred in the policy of the President, and was still of the opinion that had it been carried out fully and promptly by the Republican party, it would have restored peace and healed to a great extent all the troubles of the body politic. Nevertheless, he did not maintain that the President's was the best policy now (January 24, 1867). He defended his change of position by saying that his case was analogous to that of a physican who may prescribe a gargle for a sore throat, but if the prescription should be disregarded until the sore throat has become an inflammation or raging fever, such physician would be wanting in sound judgment should he, for the sake of consistency, continue to prescribe only the original simple gargle. He therefore would dismiss as impracticable that method of settling the controversy which a year earlier he had so earnestly urged. The point then as to whether or not the people were willing that the

[1] *Globe*, pp. 715–720.

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rebel states should resume their former position of political power as states in the Union without some security for the future, had been decided in the negative. Moreover, he believed that the people decided that whatever settlement of the reconstruction question should be fixed upon, should be made by the legislative and not by the executive branch of the Government. Further than these two points the people had not pronounced decisively on any specific plan of reconstruction, but to the extent that any decision had been made, it was in favor of the constitutional amendment as a basis of adjustment. Certainly they had not committed themselves in advance to anything and everything which Congress might see fit to do.

Raymond was positive, from a careful and impartial scrutiny of the lines along which the campaign had been waged in most of the states, that the people had not in their verdict indorsed the cardinal principles of the Stevens bill. By cardinal principles he meant those provisions of the bill by which the state governments in the South were to be deprived of all legal authority, the extension of martial law over all that territory, the suspension of the privilege of the writ of habeas corpus, the universal enfranchisement of the blacks, and the partial disfranchisement of the whites. Two reasons, said he, had been given for abolishing the existing state governments: (1) their origin; (2) their failure to protect the rights, liberties, and property of their citizens. He believed they had originated as legally as any such governments could under the circumstances, and that anyhow it was usual all over the world to recognize *de facto* governments, and respect their authority, without enquiring too closely and rigidly into the legality of their origin. He admitted that the existing governments were not pro-

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tecting the lives and liberties of the loyal people and the negroes as fully as they might. This he regretted, but pointed out that because of the confusion in politics, the great change and disorder in social arrangements, the almost complete failure of the crops, and the consequent stringency in finance and business, such a condition was to be expected, and it was really a wonder that lawlessness was not more prevalent than was actually the case.[1] He doubted if the substitution of military governments for those in existence would work a very beneficial change, because if the Freedmen's Bureau which was already in the South under the authority of the President was not keeping order, it was hardly to be expected that the army under the same authority would do so.

In conclusion he suggested two alternatives as a solution of the reconstruction problem. One was to change the fourteenth amendment by replacing the punitive section three with a section denying the right of secession, and in that form re-submit the amendment for their adoption. He believed that since the punitive section had been the stumbling-block in the way of southern legislatures' adopting the whole amendment, its removal would lead them to reconsider their action. If, however, the majority were unwilling to pursue this course he had no objection to a resolution proclaiming the rebel states out of the Union, and another declaring the amendment officially adopted upon its ratification by the legislatures of three-fourths of the loyal states. The southern states could then be re-admitted after the amendment had become a part of the Constitution, and they would be bound by its provisions.

When Raymond concluded his argument, Stevens rose

[1] *Cf.* also speech by Dodge, *Globe*, pp. 627–629.

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to say that he saw such diversity of opinion on his side of the House that, if he did not change his mind, he would on the morrow (Jan. 26) relieve the House from any question on the merits of the bill by moving to lay it on the table.[1] Evidently he did change his mind, for he made no such motion. On the 26th, however, he proposed that if Bingham would withdraw his motion to recommit,[2] he would throw the bill into committee of the whole so as to allow five-minute speeches and amendments until the House should be satisfied one way or the other as to the expediency of passing the bill.[3] Ashley, a colleague of Bingham's, urged him to accept Stevens' proposition.[4] He declared all members of his party were pledged to overthrow the existing state governments in the South,[5] and therefore he thought action looking toward that end should be taken at once. To recommit the bill would mean its burial, for he was certain the committee could not agree as to its terms before March 4, when the 39th Congress would expire. Bingham, however, refused to withdraw his motion. The radicals feared that with the assistance of the Democrats, Bingham would have strength enough to carry his motion, so they began to consider what ought to be done when the inevitable should become an accomplished

[1] *Globe*, p. 721.

[2] According to parliamentary rules, the only motion relating to a bill that takes precedence of a motion to recommit is one to lay on the table; so unless Stevens could get Bingham to withdraw his motion, the vote on that question had to be taken before any other disposition could be made of the bill.

[3] *Globe*, p. 781.

[4] *Ibid.*, pp. 781–785.

[5] He referred to the unanimous Republican vote by which Broomall's resolution had been passed. See *supra*, p. 355. Bingham and the conservatives, however, did not interpret that vote to mean what Ashley thought it meant.

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fact. George W. Julian, an old-time abolitionist and extreme radical, in a speech on January 28, pointed out the way.[1] He thought that Stevens had been premature in urging the adoption of a reconstruction bill, and believed that the first thing to be done was to provide protection for the loyalists and negroes in the South by establishing there military governments. After this should be done Congress would then be at leisure to provide for the erection of permanent civil governments founded on the general principles enunciated in Stevens' bill. This was an excellent tactical move on the part of the radicals, for while a great many Republicans were not ready for an out-and-out reconstruction bill, the argument that something must be done for the protection of "our friends in the South" was sufficient to cause them to vote for a bill securing that protection by establishing military law there. Paradoxically enough they were willing to declare the Johnson governments unconstitutionally created and failures in that they did not protect the lives and liberty of negroes and southern loyalists, but they were not prepared, to provide, in terms, for their abolition. In fact it does not appear that the conservatives gave up the expectation that these "illegal governments would serve as the nucleus for the erection of governments really legal" until a disfranchising clause was incorporated into the first Reconstruction act.[2]

Stevens, however, was not willing to accept Julian's suggestion until he had tested his strength both in the House and in the reconstruction committee. This he had an opportunity to do in the House on January 28,

[1] *Globe*, appendix, pp. 77–80.

[2] See *infra*, p. 408.

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for on that day the vote was taken on Bingham's motion to recommit. Stevens was sustained by a small majority of the Republicans, but as Bingham had the support of all the Democrats his motion was carried, *yeas* 88, *nays* 65, *not voting* 38.[1] So the first victory lay with the Bingham faction, thanks to the assistance of the Democratic party. Had the members of that party continued to support Bingham as they should have done, most of Stevens' schemes, at least during the 39th Congress, would have come to nought.

The reconstruction committee to which the Stevens bill was recommitted had been reappointed at the beginning of the second session of the 39th Congress. During this session only two meetings of the committee were held, one on February 4th, the other on the 6th. At the first meeting, Stevens' bill was discussed, but no conclusion was reached.[2] Just before this first meeting adjourned, Stevens offered a resolution to the effect that the rebel states be reconstructed on the principles laid down in his bill.

The committee took no vote on this resolution, and Stevens probably saw that he could not bring a majority of the members to adopt the principles of his bill as a basis of future action. Therefore, he reluctantly accepted the idea suggested earlier by Julian of having a bill enacted to establish military governments in the rebel states, and letting reconstruction wait until the more radical 40th Congress should assemble. Having accepted the idea, he became a most energetic champion of the bill that had for its purpose the carrying into effect of Julian's suggestion. Such a bill was introduced into the Senate on February 4th, by Williams,[3] who though

[1] *Globe*, p. 817.

[2] See *supra*, pp. 122–124.

[3] *Globe*, p. 975.

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formerly of conservative tendencies, had by this time completely identified himself with the radicals. The bill was entitled, "A bill to provide for the more efficient government of the insurrectionary states," and since it became the basis of the committee's action and embodied the military part of the Reconstruction act of March 2, it is here printed as introduced by Williams.[1]

Whereas, the pretended state governments of the late so-called Confederate states of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas and Arkansas were set up without the authority of Congress, and without sanction of the people and therefore are of no constitutional validity; and whereas they are in the hands and under the control of the unrepentant leaders of the rebellion, and afford no adequate protection for life or property, but countenance and encourage lawlessness and crime; and whereas it is necessary that peace and good order should be enforced in said so-called states until loyal and republican state governments can be legally formed.

Sec. I. Therefore, be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that each of the so-called states shall constitute a military district, to be subject to the military authorities of the United States as herein enacted and prescribed:—

Sec. II. And be it further enacted that it shall be the duty of the General of the army, under the authority of the Presi-

[1] The action of the committee on the bill is meaningless without the original text. It is not preserved in any public document, but fortunately it was printed in the newspapers on February 5. Since it was unusual for newspapers to print a bill that had simply been introduced, it is probable that the radicals who were its champions had it published as a feeler of public sentiment. Most of the radical journals that expressed an opinion thought the bill was justified by existing conditions in the South. For the action of the committee on this bill, see *supra*, pp. 124–129.

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dent of the United States, to assign to the command of said districts an officer of the regular army, not below the rank of brigadier-general, and to furnish such officer with a military force sufficient to enable him to perform his duties and enforce his authority within the district to which he is assigned.

Sec. 3. And be it further enacted, that it shall be the duty of each officer assigned as aforesaid to protect all peaceable and law-abiding persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow the local tribunals to take jurisdiction and to try offenders; or when in his judgment it may be necessary for the trial of offenders he shall have power to organize military commissions or tribunals for that purpose, anything in the constitutions or laws of the so-called states to the contrary notwithstanding. And all legislative or judicial proceedings or processes to prevent or control the proceedings of said military tribunals, and all interference by said pretended state governments with the exercise of military authority under this act shall be void and of no effect.

Sec. 4. And be it further enacted that courts and judicial officers of the United States may issue writs of habeas corpus in behalf of prisoners in military custody only when some commissioned officer on duty in the district where the petition originates shall endorse upon said petition a statement certifying upon honor that he has knowledge or information as to the cause and circumstances of the alleged detention, and that he believes the same to be wrongfully detained, and that he believes the endorsed petition is made in good faith, and that justice may be done, and not to hinder, or delay the punishment of crime; and all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted.

Sec. 5. And be it further enacted, that no sentence of any military tribunal affecting the liberty or life of any person shall be executed until it is approved by the officer in command of the proper district; and the laws and regulations for

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the government of the army shall not be affected by this act, except in so far as they conflict with its provisions.[1]

This bill was discussed in the joint committee on February 6th,[2] and after receiving some verbal amendments, was adopted by the committee and reported to the House by Stevens on the same day.[3] He intimated that he would put it on its passage at once, but waited until next day before opening the debate.[4] The Democrats asked for its postponement until February 11, in order to give them some time in which to examine its provisions. Stevens regretted that, due to the lateness of the session, he could not comply with their request, but said that he would allow the minority a reasonable amount of time for its discussion. By "reasonable amount of time," he evidently meant one day, for the concluding words of his speech were: "Tomorrow, God willing, I will demand the vote."

Several reasons may be given for Stevens' anxiety that the bill be passed before the expiration of the 39th Congress. In the first place he felt that it was necessary to commit the members of his party to something more radical than the fourteenth amendment as a final basis of reconstruction. In the second place, just at the time the bill was introduced in the House a conference between the President and the most noted Union generals was being held in Washington, which was supposed both by the radicals and the public press to presage the withdrawal of all the remaining soldiers from the southern states. Stevens hoped the bill would become law before any order looking toward this result could be executed, for he believed it would be easier to put it into opera-

[1] *New York Herald*, Feb. 5, 1867.

[2] See *supra*, p. 124.

[3] *Globe*, p. 1036.

[4] *Ibid.*, p. 1073 *et seq.*

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tion, if there were already in the South a nucleus of military force. Finally, Washington was besieged with southern "loyalists," embryonic "scalawags and carpet-baggers," who were telling all sorts of frightful tales about the maltreatment of themselves and the loyal colored people at the hands of the dominant rebels.

It was these stories of cruelty and oppression, augmented by partisan despatches of numerous newspaper correspondents, that truly may be said to have been the *raison d'être par excellence* of this military bill. The radicals never tired of recounting these stories and generally they had plenty of testimony at hand with which to prove the correctness of their assertions. For instance, Henry Wilson, senator from Massachusetts, carried with him at all times a handy little vest-pocket notebook in which he had catalogued a list of all the rebel murders and outrages that had been committed since the passage of the Civil Rights act in April of the preceding year.[1] One of the opponents of the bill gave the following ludicrous but accurate description of this note book, and the use made of it by the ingenious "Natick cobbler:" "The senator from Massachusetts has in his possession a little book for you to look upon, in which there are catalogued all the enormities done and committed upon them [i. e. the freedmen and loyal whites] with an exactitude worthy of the most correct statistician. He can give you the most exact dimensions of crime in the southern states; can tell you how high it soars, how deep it dives, its superficial measure, or its cubic quantity to a hair's breadth."[2]

Some examples of the existing conditions in the South, presented in the lurid language of the radicals, should be

[1] *Globe*, pp. 1375–1376. [2] Cowan, *Globe*, appendix, p. 155.

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given in order to understand the outward reason for foisting military government upon ten states of the Union. Stevens, for instance, declared:

> Persecution, exile and murder have been the order of the day within all these territories so far as loyal men were concerned, whether white or black, more especially if they happened to be black. We have seen these loyal men flitting about everywhere through your cities, around your doors, melancholy, depressed, haggard, like the ghosts of unburied dead on this side of the river Styx, and yet we have borne it with exemplary patience. We have been deaf to the groans, the agony, which have been borne to us by every southern breeze from dying victims. I am for making one more effort to protect these loyal men from the cruelties of anarchy, from persecutions by the malignant, from vengeance visited upon them on our account. If we fail to do it, we should be responsible to the civilized world for the grossest neglect of duty that ever a great nation was guilty of before to humanity.[1]

Boutwell was a past grand master at playing up the rebel outrage argument. "You might as well expect," said he, "to build a fire in the depths of the ocean as expect to reconstruct loyal civil governments in the South until you have broken down the rebel despotisms which everywhere hold sway in that vast region of the country. To-day there are eight millions and more of people, occupying 630,000 square miles of territory, who are writhing under cruelties nameless in their character, injustice such as has not been permitted to exist in any other country in modern times."[2]

"What," asked another radical, "carried our election in the last campaign? It was the story of the southern refugees told to the people of the North and West.

[1] *Globe*, p. 1076.

[2] *Globe*, p. 1122.

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They told us they demanded protection. They enlisted the sympathy of northern soldiers by telling that the very guerrillas who hung upon the skirts of our army during the war were now murdering southern soldiers who fought on the Union side, and murdering peaceful citizens, murdering black men who were our allies. We promised the people if we were indorsed we would come back here and protect these our allies. Let us enact this bill as an effectual means of furnishing the necessary protection and thus fulfil our promises to our constituents."[1]

Farnsworth, who had succeeded Washburne on the committee, adduced further testimony to show that "unless the military is clothed with some additional authority in the South, the United States garrisons and troops will have to be withdrawn. Because if a soldier is brutally murdered, and the military arrest the offender, he is taken from their hands by writ of habeas corpus issued by the state courts, and is almost invariably discharged without punishment." Farnsworth further stated that the bill was concurred in by Generals Schofield, Thomas, Sickles, Sheridan and other military men, who declared there was no other method of protecting loyal men, black and white, in the South.

Such were the reasons given by the radicals for the necessity of this bill. The extremists like Stevens did not attempt to justify it on constitutional grounds, and those moderates who supported the bill and who desired to salve their stricken consciences by proving its constitutionality, generally made a mess of it. As one of the Democrats said: "Certainly no man will insult the intelligence of the American people by defending this bill on any principle other than that of the right of the con-

[1] Hotchkiss, *Globe*, p. 1100.

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querors to take possession of and control conquered territory. It is at war with the Constitution and with every principle of free government." Incidentally, he remarked—and he certainly had history on his side—that it could not be defended even on the conquered province theory, for, "when one country conquers another it does not undertake to dictate to the conquered country what government it shall establish."[1]

Hence it is not necessary to concern ourselves with a consideration of the constitutional arguments against the bill, and it certainly is not worth while to devote any attention to those pseudo-constitutional arguments that were made in its favor. Only two other matters in regard to the enactment of this military measure need detain us. One is an answer to the grossly exaggerated and distorted accounts which, as has already been illustrated, the radicals gave of conditions in the South. Secondly, it is of interest to understand why a few honorable and conservative Republicans in both houses of Congress made such heroic efforts so to amend the bill as to mollify some of its severest provisions. Their motives can be understood only by a close scrutiny of their words uttered in debate, and a detailed analysis of the day-to-day action taken on the bill from its introduction on February 6, to its final passage over the President's veto on March 2.

The first task assigned may be disposed of briefly. There is no doubt that there was considerable disorder in the southern states during the winter of 1866–67, but to say that all the crimes or even a majority of them were in the nature of political persecutions on the part of Confederates against Unionists, black or white, is

[1] Finck, *Globe*, p. 1078.

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the rankest absurdity; and the men who made such assertions at the time must have been conscious that they were distorting the facts. In reply to these charges Cowan of Pennsylvania gave an excellent *exposé de motit* of the radicals. He said the southern states had constitutions and laws hardly different from those of the North, and that the vast mass of the people, white and black, were satisfied with them. There were only two reasons assigned by the radicals for the abolition of these constitutions and laws, and the substitution of military despotisms for them. One of these reasons was real, the other pretended; but the latter was paraded in front with great ostentation in order to conceal the former, which nevertheless irresistibly intruded itself and showed to all that if it were out of the way as a cause, the pending measure would never have disgraced the halls of Congress even as a bare proposition.

I will first examine this show reason with which Senators are endeavoring to frighten the country, and upon which all the falsehood and ingenuity of radicalism has been busily engaged for the last nine months. It is, that loyal Union men in those states are not secure in their lives and property, but are butchered by wholesale in great numbers with as little concern as though they were dogs. And who, pray, are those loyal Union men who suffer? Listen, and be instructed. They are negroes, whom it is alleged the southern people murder for pastime, just as a naughty boy would kill flies.

After making the reference to Wilson's note-book mentioned above, Cowan said that ingenious senator could do anything in the world with the facts contained therein except to satisfy one that all of them were not cooked up and exaggerated expressly for the occasion. These facts were testified to by nobody

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except agents of the Freedmen's Bureau, cotton thieves, and other individuals of an equally interested stripe, who, like the hair worms, only wriggle in muddy water. These fellows, male and female, have found the woes of the negro such an easy and profitable way to fame and consideration that, like the dogs of Lazarus, they live by licking his sores; and to hear and see them we would think the world was exceedingly wicked, wholly on account of the negro and for no other reason.

Now, I aver that all this is sheer fabrication, and not a single negro has been killed in the South because he was a Union man. If killed at all he has been killed for some sufficient reason, other than a political one. I suppose that no one will pretend that any respectable man, however much opposed to the Union cause, would care to commit murder upon a negro because the latter favored it. Emperors, kings, and presidents have been assassinated at times to get rid of them in politics, but why any one would go to such trouble to so little purpose in the case of a negro is beyond my comprehension. I am inclined therefore, to think that in the first place these killings, if done at all, are not done by any but common offenders, and that the causes are to be found anywhere else than in the political sentiments of the parties. Everybody knows the tribal antipathy existing between the lower sort of white men and negroes, and no one expects that it will not be the source of frequent brawls and quarrels, especially since the blacks have now no masters either to advise or protect them. In these conflicts the weaker will go to the wall, not because he is loyal or disloyal, but because he is inferior in every way to his antagonists. And the false and foolish notion of equality which you have lately put into the head of the negro amounts only to a standing invitation to every white man to break that head as soon as it insults him.

This measure is intended for a very different purpose than that of providing for a better administration of the civil and criminal laws in the South. It is not intended to make life and property more secure; but it is designed to overturn the state

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governments there, to substitute in their stead an irresponsible military despotism, and in the trouble and confusion which will follow the authors hope and expect that new governments may be formed upon the basis of political equality between the two different races which inhabit there, and that there may be a chance when all is finished that the political power of the South may be either paralyzed or transferred to the radicals, and that in the meantime no representatives from there are to be allowed to enter either House of Congress.[1]

In order to offer something to the country to give color to this monstrous project, you affect great concern for the negro in another direction, viz. his political status for the future. You first assert his utter and entire helplessness in the presence of the whites; that he cannot defend himself against wholesale murder, even with the Freedmen's Bureau and its military force at his elbow; that he has not sense enough to contract for himself without the guardianship of the Government officials; that in short he is unfit to cope in the battle of life as a freeman, that he must be coddled and nursed, educated and instructed for a year or so, until he bursts his savage cocoon, when it is supposed he will be able to soar away on painted pinion, a full-grown radical bombyx. Only a year or so at farthest is allowed to convert these semi-barbarian slaves into honest and capable patriots, whose wisdom and virtue are to underlie the revised and improved governments of ten states of this Union. Only a year or so is all you allow for this wonderful transformation. Then will the day of Pentecost be fully come, and three or four million negroes are to be changed, not by the apostolic teaching of divinely-inspired men, but by virtue of amended constitutions and the pedagogic efforts of strong-minded school-marms.

The foregoing were not the words of a copperhead or southern sympathizer, but of a man who had been elec-

[1] If Cowan could have foreseen the supplementary Reconstruction act of March 23, he could have made this point much stronger.

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ted as a Republican. He had been a consistent supporter of the war and of Lincoln's policies, including his reconstruction policy, and simply adhered to it after Johnson became President. Hence the words of Cowan are entitled to a great deal of respect and credence, and when taken in connection with the known fanaticism and extreme partisanship of the radicals, seem to prove a complete refutation of the radical contention that the ex-confederates were butchering the negroes simply because of their loyalty to the Union. As Elijah Hise pointed out in a speech made on this military bill, the radicals did not appear to understand that in the southern states all the property holders, all the traders and merchants who had capital, including all the best and most reputable citizens, were engaged in the movement for secession.[1] Since the ex-rebels were the substantial men of the community, they were the people who were naturally interested in maintaining good government, upholding law and order, and securing the enjoyment of regulated liberty. It was absurd to say that these men who had a deep stake in the well-being and prosperity of their country and who controlled the state governments, were endangering the life, liberty, or property of the people by unlawful misrule. On the other hand, they were the natural persons to whom Congress should have looked for the preservation of law and order, and the prevention of crime and anarchy. Hise, like Cowan, saw that the scheme of the radicals was to spread broadcast in the North false reports of southern crime and cruelty, in order to have the people of that section sustain them in their plot to destroy the existing governments, and erect in their places "loyal" governments in the control of ex-

[1] *Globe*, appendix, p. 96 *et seq.*

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slaves, southern vagabonds, and northern adventurers. "And when this is done," said Hise, "I suppose the southern states will be placed in their constitutional relations and allowed representation in the two houses of Congress, provided they send true adherents of the radical leaders and supporters of their measures."

Not all the Republicans in Congress, however, were in the category of those who would turn the ex-rebel state governments over to the negroes, the scalawags and the carpet-baggers. Had the southern legislatures ratified the fourteenth amendment, it is possible the conservatives might have succeeded in thwarting the schemes of the radicals by admitting the southern representatives and thus have brought reconstruction to an end. The failure of the southern states to ratify that amendment, however, took the ground from under their feet. When they pleaded for the Republican party to stand by the fourteenth amendment as a final adjustment, the radicals cried that their plea was childish, for as Garfield expressed it, had not "the last one of the sinful ten [rebel states] with scorn and contempt, flung back into our teeth, the magnanimous offer of a generous nation?"[1] Such was the fact, and it placed Garfield's colleague, Bingham, and the other honest conservatives in a most difficult position. Though at first, when the southern states, one after another, began to reject the fourteenth amendment, these conservatives were inclined to say, "Wait, those states will yet accept it," they soon became fully conscious they were in the midst of a revolution, and as revolutions neither go backward nor stand still, they soon saw it was ineffectual to cry, "Wait!" Neither could they maintain that the fourteenth amendment was already adopted, having been

[1] *Globe*, p. 1103.

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ratified by three-fourths of the loyal states; for according to their theory the ten rebel states were still states in the Union, and must be counted in order to make valid the adoption of a constitutional amendment. In combating a bill that practically had for its purpose the dismantling of those states, they were inevitably carried toward the position of Andrew Johnson and the Democrats, that since those ten states were in the Union, they should be represented in Congress, for the Constitution plainly says that no state shall be deprived of equal representation in the Senate without its own consent. The direction in which Bingham and the moderate Republicans were tending, Stevens was not slow to see and point out. "If this Congress so decides," said he, "it will give me great pleasure to join the *io triumphe* of the gentleman from Ohio in leading this House, possibly by forbidden paths, into the sheepfold or goatfold of the President."[1] To be accused of "Andy-Johnsonism" was enough to make the moderate Republicans wince; for so unpopular had Johnson become, and so completely had he been repudiated by the people in the fall elections, that no Republican, who did not wish to become a political martyr, would willingly allow himself to be classed as a Johnson supporter.

Hence the moderates could not do what a year earlier they might have done with impunity—*i. e.*, accept the President's policy and allow the southern representatives to take their seats—for then the majority of Republican voters would not have objected to that course, while now they would have considered it little short of treason. Indeed, even had no direful political consequences threatened to attend such a course, the conservatives certainly had no intention of abandoning the ground of

[1] *Globe*, p. 1214.

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the fourteenth amendment and going back to the position of the President. In assisting the radicals to rally the people against Johnson, however, the conservatives had helped to raise a storm which they expected to stop with the bulwark of the fourteenth amendment. But that bulwark had fallen when the southern states failed to support it by ratifying the amendment, and now the storm was rapidly passing beyond their control. The story of the enactment of the first Reconstruction bill is the story of how moderate Republicans lost the last remnant of their former power in directing the course of reconstruction.

As we have seen, Stevens introduced the bill into the House on February 6, 1867. The debate continued until late in the afternoon of the next day, when Bingham rose to make his contribution to the discussion.[1] The tenor of his opening remarks showed that he was bursting to express his resentment because of a violent and uncalled-for attack made on him by Stevens on January 28. On that day Stevens had said among other things that no one could believe anything that Bingham might say.[2] Bingham was a man of delicate sense of honor and was deeply offended that his veracity should thus be publicly questioned. So when he began to speak on February 7, it was evident that he intended to take the opportunity to reply in kind to Stevens' derogatory remarks of the week before. The relations of the two factions of the party in the House were becoming exceedingly strained, and representatives who desired above all things that party harmony should be preserved feared that if Bingham should make a speech in his existing state of irritation the breach would be widened. Therefore, a Repub-

[1] *Globe*, p. 1079 *et seq.*

[2] *Globe*, p. 816.

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lican member asked that he yield so that a motion might be made for a recess until after dinner. Bingham angrily replied that he would not yield; he knew all about the gag and would not submit to it. The Republicans became frightened, and knowing of no other way to prevent Bingham's expressing himself, made a stampede for the door in such numbers that within two minutes the House was almost deserted. The Speaker, who doubtless was a party to the plot, immediately declared that since there was no quorum a motion to adjourn was in order. Such a motion was immediately made and carried, and Bingham's remarks were postponed until after his associates had had an opportunity to assuage his temper.

Before the recess it was evident that Bingham intended to attack the bill *in toto*. So well, however, had the radical disseminators of southern outrages done their work, that it is not at all likely that even with the assistance of the Democrats, Bingham could have rallied enough Republicans to his side to accomplish the defeat of the bill. Evidently this had been made clear to him during the two hours recess by those Republicans who had formerly supported him in his contest with Stevens on the question of recommitting the latter's original reconstruction bill. Therefore, when Bingham renewed his speech, it is clear that he had decided to change his tactics. He did not say whether he would vote for or against the bill, but declared that if it was to become law, he wanted to make it subject to as little objection as possible. He therefore moved to strike out the preamble and insert in its place the one he had offered in committee.[1] Moreover, he wanted to strike

[1] See *supra*, p. 125.

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out the term *so-called* everywhere it occurred before the word *states*, as he had so persistently tried to have done in committee. In the fourth section he proposed to give to the United States courts the power without any exception of issuing writs of habeas corpus for persons indictable and punishable according to Federal law. This amendment he offered in order to remove any cause for conflict between the military and civil authorities of the United States.

Speaking of the reason why he desired to amend the preamble, Bingham said he wished thereby to notify in the most solemn form the men who constituted the majority of the people in the ten lately insurgent states, and who themselves were in open, armed rebellion, that all they had to do, in order to get rid of military government, was to present to the Congress of the United States a republican 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 amendment. When men in those states had fulfilled their obligations by assenting to these conditions, he wished them clearly to understand that then their states would be restored at once to their constitutional relations.

The amendments offered by Bingham, together with his speech, show that instead of having the preamble announce that new "governments, republican in form," were to be established in the South, he wanted to have it announce that the military rule which even he had at last been brought to accept as a temporary expedient, would continue only until the existing state governments should accept the fourteenth amendment. Though such a course would have been in keeping with the party platforms of 1866 and doubtless would have met the expec-

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tations of a large majority of the northern people, the incessant ding-donging that had been going on for a year or more in Congress to the effect that the Johnson governments were illegal, and which had become more persistent as the resentment against the President increased, had so permeated the brains of the Republican members of the House, that Bingham soon saw that he could not obtain a very large number of followers to pursue with him the course outlined in this speech of February 7. Consequently in a few days he found himself under the necessity of again changing his tactics.

In the meantime, Stevens was making a desperate effort to get the bill passed without amendment. He regarded it merely as a temporary police measure designed to protect the negroes and loyal whites until a definite plan of reconstruction could be worked out in detail. This task he desired to leave to the more radical 40th Congress which by special act of the 39th had been called to meet immediately upon the expiration of the term of the latter on March 4, 1867. "Stevens then hoped," says his biographer, Professor Woodburn,[1] "to secure the disfranchisement of the rebels, the enfranchisement of the negroes, and a moderate plan of confiscation, and then to delay the restoration of the southern states to their privileges within the Union until they were well ready to participate in governing the country."

In accordance with this plan, and true to his promise to allow only one day's debate on the bill, Stevens on February 8 moved the previous question.[2] His motion was not sustained, however, as Bingham, leading the moderate Republicans, was able, with the assistance of the Demo-

[1] *Life of Thaddeus Stevens*, p. 477.

[2] *Globe*, p. 1104.

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crats, to inflict a decisive defeat upon his rival, the vote on the motion being 62 to 81. For a week following this vote, the bill was debated in the House, and numerous amendments were proposed, only one of which need concern us here. This was an additional section offered by James G. Blaine on Feb. 12.[1] It read as follows:

Sec—And be it further enacted that when the constitutional amendment proposed as article 14 by the 39th Congress shall have become a part of the Constitution of the United States by the ratification of three-fourths of the states now represented in Congress, and when any one of the late so-called Confederate states shall have given its assent to the same and conformed its constitution and laws thereto in all respects; and when it shall have provided by its constitution that the elective franchise shall be enjoyed equally and impartially by all male citizens of the United States, twenty-one years old and upward, without regard to race, color, or previous condition of servitude, except such as may be disfranchised for participating in the late rebellion; and when said constitution shall have been submitted to the voters of said state, as thus defined, for ratification or rejection; and when the constitution, if ratified by the popular vote, shall have been submitted to Congress for examination and approval, said state shall, if its constitution be approved by Congress, be declared entitled to representation in Congress and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this bill shall be inoperative in said state.

Of course Blaine's purpose in offering this amendment was to forestall Stevens' scheme of allowing reconstruction to go over to the 40th Congress, when, as everybody thought, a much more radical plan could be carried through. Blaine therefore desired, before the House

[1] *Globe*, pp. 1182, 1183.

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should become madly rampant in its radicalism, to have incorporated in this military bill this section enunciating the principles upon which the southern states might expect to be finally reconstructed, and thereby commit his party associates to this comparatively conservative plan. In this purpose Blaine had the support of about fifty or sixty conservative Republicans, including Bingham, who by this time had evidently given up the idea that the southern states upon ratifying the fourteenth amendment might be readmitted without having new governments created within their boundaries.

On the same day (Feb. 12) that Blaine offered this amendment, a bill was passed through the House providing a territorial form of government for the state of Louisiana.[1] It had been drawn up by a special committee that had been appointed to investigate the New Orleans riot of July 30, 1866.[2] It provided for a governor and nine councilors in whom all executive and legislative power was vested. These officers were to be appointed by the President, by and with the advice of the Senate, and all were required to be men of unquestioned loyalty. Moreover, the bill was a regular enabling act and created the machinery with which the governor and his councilors were required to erect a new state government in which the right of suffrage was to be exercised by all *loyal* men without regard to color. By virtue of the fact that this special committee was privileged to report at any time, this radical bill had been slipped in for con-

[1] *Globe*, p. 1175.

[2] This was a riot between ex-Confederates on the one hand and negroes and loyal whites on the other. It resulted in more than one hundred and fifty persons, mostly negroes, being killed or seriously wounded, and proved conclusively to the minds of the radicals that the existing government was either incompetent or unwilling to protect the lives of loyal citizens. See Rhodes, vol. v, p. 611 *et seq.*

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sideration by the House on February 11, and took precedence of the military bill. Strangely enough, it had been supported by radical and conservative Republicans alike, though Stevens appeared chagrined that it should take precedence of his military bill. The radicals supported it because it embodied about all that they desired should be contained in a general reconstruction bill for the other nine states, and did not object to its being considered a precedent for that purpose. Two reasons may be suggested to explain the support given to it by the conservatives. In the first place, nearly everybody felt that Louisiana, the state where disorder had been most prevalent, should be marked for some special punishment. In the second place, the conservatives seemed to believe, that by holding Louisiana up as an example they might force the other states to agree to the fourteenth amendment and comply with the other conditions laid down in the Blaine amendment.[1] These things the conservatives had reason to hope the rebel states would do, especially as they would be under duress of military law from which they could expect to be rid only by yielding. In case they should yield, the conservatives believed they could thwart the scheme of the radicals of passing a supplementary reconstruction act along the lines of the Louisiana bill. Had the conservative plan been carried through, even though it did contemplate negro suffrage, it would have given the native whites, at least in most of the states, more than an even chance with the carpet-baggers, scalawags, and negroes, of maintaining the control of the machinery of the government. And after all it was not negro suffrage *per se* that proved such a curse to the South, but the turning-over of the state governments to

[1] The New York *Herald*, speaking editorially on February 12 and 13, 1867, corroborates this view of the conservatives' motives.

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political adventurers. These adventurers could not have obtained control of these governments through negro suffrage alone, but needed the assistance of at least partial white disfranchisement as well as northern bayonets. By the conservative plan it was not proposed to render them these two additional aids.

The speech of Bingham on February 13 proves the foregoing hypothesis.[1] He favored the formation of governments in the southern states by the voluntary action of the people themselves. He did not oppose the military bill provided the Blaine amendment was added and provided further that the whole were passed in spirit if not in fact as a mere addendum to the old Restoration bill of the joint committee. That is to say, he wanted it thoroughly understood that the military government would be terminated just so soon as the existing state governments should ratify the fourteenth amendment and establish impartial suffrage. "Has it," asked he, "indeed come to this, that gentlemen are not content to secure to the emancipated citizens of the Republic the elective franchise and all the rights of citizens and men? Do you insist that by act of Congress they be secured, even where they are in a minority, in the whole political power of the state? Will you by further legislation compel the majority of white citizens to be their subjects for life?"

Though it is true that none of the other conservative Republicans gave quite so frank an exposé of their motives as did Bingham, they certainly understood what he desired, and by their votes indicated that they subscribed to his policy. Moreover, from the bitterness with which the radicals assailed the Blaine amendment, it is clear

[1] *Globe*, p. 1210 *et seq.*

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that they too understood the motives of its sponsors. Stevens attacked the proposition and said that its authors were unmistakably leading the House toward "universal amnesty and universal Andy-Johnsonism."[1] That the conservatives were thwarted in their plans, however, was due not so much to the radicals as to the Democrats. The shortsightedness of those gentlemen and the pettiness of the little game of politics which they attempted to play are pitiable. In apportioning the blame for the mistakes of reconstruction, the thirty-five or forty persons who called themselves Democrats should not be overlooked. Nowhere does their imbecility appear in a worse light than in their votes on this Reconstruction bill.

On February 13, Stevens, by means of the previous question, made a second attempt to force his bill through the House in substantially the same form in which a week earlier he had reported it from the committee. However, the previous question was not seconded, and the Democrats were in great glee, for they had learned nothing by experience. It had been so long since they themselves had tasted the sweets of office that they seem to have forgotten that the cohesive power of public plunder is nearly always sufficient, sooner or later, to bind together the factions of a majority party. Hence they thought that if they could prevent any amendments being made to the bill, its entire defeat would be accomplished. Therefore, instead of rendering whatever assistance they could to the conservatives in their effort to mollify the provisions of the bill, they devoted themselves successfully to accomplishing exactly the opposite result.

After the House had refused to second the previous

[1] *Globe*, p. 1213 *et seq.*

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question on Stevens' motion that the bill be passed unamended, it looked as though the Blaine amendment certainly would be adopted. It was then that Bingham made his plea that with the military bill, the House send a proclamation to the southern people that they would be kept under the protection of the Federal army not a day after they should adopt the fourteenth amendment and provide for impartial suffrage.[1] When Bingham completed his speech, Blaine moved that the bill be sent to the judiciary committee with instructions that it be reported back to the House immediately with his amendment added.[2] On this motion he called the previous question and was sustained by a bare majority of 7. An analysis of the vote on the previous question shows that 85 Republicans voted *yea*, and 78 extreme radicals and Democrats voted *nay*. It is not correct to conclude that all of these 85 Republicans who voted in the affirmative on seconding the previous question were so moderate in their views as Bingham. Some of them and even Blaine himself supported the amendment for the sole reason that they thought it bad politics to pass a military bill, which carried with it no provision for terminating its operation.[3] But whatever their motives, it is seen that when this first vote was taken there were enough Republicans supporting the amendment to defeat the coalition between extreme radicals and Democrats. Their margin was exceedingly narrow, however, and be-

[1] *Globe*, p. 1210 *et seq.*

[2] *Globe*, p. 1213.

[3] *Globe*, pp. 1182, 1183. This inference is easily drawn from the general tenor of Blaine's speech when he offered the amendment. Blaine definitely stated that there was nothing in the amendment to prevent Congress passing enabling acts for the other nine rebel states similar to the one just passed for Louisiana. However, he said that if these nine states would immediately comply with the conditions named in his amendment, such enabling acts would not be necessary.

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fore the vote on the main question could be taken, Stevens obtained recognition from the chair and, contrary to the rules of the House, made a thirty-minute speech against the Blaine amendment.[1] In his frantic appeal to his party associates, whom he saw in a majority of nearly two to one against him, he made use of every weapon known to the art of the party manager.

With a voice choking with tears, and in a spirit of inexpressible sadness and grief, he reproached Congress for sitting idle for months and, though the South had been bleeding at every pore, doing nothing to protect the loyal people there in their persons, liberty or property.

Those of us who have health and spirits, have been sitting here enjoying ourselves, while the South is covered all over with anarchy, murder, and rapine. Though we have declared that the President has usurped authority, and that what he has done is void in the face of law, that Congress alone has power to erect governments and protect the people; yet we sit by and move no hand and raise no voice to effect what we declare to be the duty of Congress.

He then turned his great powers of sarcasm and ridicule against Bingham and reproached him with having caused the defeat of his previous bill. He said he had labored upon that bill in conjunction with loyal men from the South, had altered and rewritten it several times. He had warned the House that if that bill should go back to the committee it must die.

Our vigorous friend from Ohio assured us that it would come back from the committee fresh and blooming, but it has not come and I have been forced to accept a position that I could not help. This bill that now comes in lieu of it en-

[1] *Globe*, p. 1213.

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counters the same obstacles in precisely the same spirit. There are in it some words difficult to spell; adverbs are improperly placed, gentleman object to its particles and its articles, and my friend from Ohio declared this morning with proper exaltation that he had succeeded in passing through the House a bill which uses the word *states* precisely as the President uses it in his theory as to the right of admission of those claiming to represent the rebel states.

It was in this speech that Stevens denounced the Blaine amendment as a step toward "universal amnesty and universal Andy-Johnsonism," as it let in a vast number of rebels and shut out nobody.

Having appealed to duty, to prejudice, and incidentally to party interest, he made a final appeal to the vanity of his party associates.

If sir, I ought 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 bickering, without small criticisms, lend our aid to promote the great cause of humanity and universal liberty.

To those of his associates who seemed to fear that the bill was quite as likely to promote oppression as liberty, and to those members who pleaded for forgiveness and mercy toward a conquered foe, Stevens said:

The forgiveness of the gospel refers to private offences, where men can forgive their enemies and smother their feeling of revenge without injury to anybody. But that has nothing to do with municipal punishment, with political sanction of political crimes. When nations pass sentence and decree con-

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fiscation for crimes unrepented there is no question of malignity. When the judge sentences the convict he has no animosity. When the hangman executes the culprit he rather pities than hates him. Cruelty does not belong to their vocabulary. Gentlemen mistake, therefore, when they make these appeals to us in the name of humanity. They, sir, who while preaching this doctrine are hugging and caressing those whose hands are red with the blood of our and their murdered kinsmen, are covering themselves with indelible stains which all the waters of the Nile cannot wash out.

This speech may be placed as one of the few ever delivered in Congress that have resulted in the changing of votes. As a direct result of it, sixteen Republicans, who had voted with Blaine and Bingham on seconding the previous question, now voted with Stevens against the motion to commit, so that motion was lost by a vote of 69 to 94.[1] Nearly all the Democrats again voted with Stevens. Had only thirteen of them been able to see that their real interest lay on the Bingham side, the Blaine amendment would have been adopted in spite of Stevens' speech. As has already been said, the Democrats had hoped that by preventing the adoption of that amendment, a sufficient number of moderate Republicans would vote with them against the pure military bill to insure its defeat. In this expectation they were sadly mistaken, for only twenty Republicans had sufficient independence to break away from their party and vote against the passage of the bill, though all of them knew it was unconstitutional, and at least a majority of them did not consider it called for by the necessity of the case.

Both the Louisiana and the Reconstruction bills came up for consideration in the Senate on February 14.[2] The

[1] *Globe*, p. 1215.

[2] *Globe*, pp. 1302–1304.

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Republican members of that body were not agreed among themselves as to which bill should be taken up first, and a running debate lasting over an hour was engaged in before the question was decided. Some of the radicals wanted to amend the Louisiana bill so that its provisions would be applicable to all the rebel states, combine it with the military bill, and in that form pass both bills at the same time. This was objected to by the conservatives, and Fessenden said that if the Blaine amendment were added to the military bill no additional legislation concerning reconstruction would seem to be necessary, at least for the present. After Fessenden had spoken, Williams, who, as we have seen, was the author of the bill in the first place, and who now took charge of it in the Senate, offered to amend it by adding the Blaine proposition. With this understanding, it was decided by a close vote to proceed with the consideration of the military bill. However, since the usual time for the adjournment of the Senate had already arrived, the debate on the bill did not begin until the next day.

Over night between February 14 and 15 Williams evidently saw a great light, for when the bill came up he immediately withdrew the Blaine amendment.[1]

In explanation of this action, he said that he had offered the amendment in good faith and that he himself had no objection to it, but that upon conferring with *certain persons* he had found that if the bill were passed with the amendment the concurrence of the House could not be secured. This action drew protests both from the conservative Republicans and from the Democrats. Some of the former said they would not vote for the bill at all, unless the amendment were incorporated in it.[2]

[1] *Globe*, p. 1360 *et seq.* [2] For instance, Stewart, *Globe*, p. 1364.

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After two days of debate, it became clear that there were so many differences of opinion among the members of the majority party, that unless they were harmonized at once, no reconstruction bill of any character would be passed during the lifetime of the 39th Congress. Therefore, with a view of securing harmonious action those gentlemen held a party caucus on Saturday morning, February 16.[1] A committee of seven, of which John Sherman was chairman, was appointed to amend the bill in such a way that it would secure the support of a majority of the Republican senators. The result of this committee's deliberations was first reported to the caucus, where it was slightly modified, and then to the Senate a little before midnight of that evening.[2] From now on the bill was known as the Sherman substitute but as a matter of fact it was simply the Williams military bill plus the Blaine amendment, with one slight change in each. In the military part, the President instead of the General of the army was designated as the proper person to appoint the military commanders in each of the five districts into which the ten rebel states were divided. In the caucus, due to the influence of Sumner, the Blaine amendment was modified so as to require the several state conventions to insert universal negro suffrage in their constitutions.[3] Though the Democrats offered several amendments and made many motions to adjourn, saying that it was against their religious scruples to work on the Sabbath, the bill was passed after an all-night session early Sunday morning, February 17, 1867. No analysis of the Senate debate will here be attempted. If it were necessary, a suffi-

[1] *New York Herald*, Feb. 18, 1867.

[2] *Globe*, pp. 1458, 1459.

[3] Rhodes, vol. vi, p. 19.

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cient number of extracts from the speeches of moderate Republicans could be cited to show that when this bill was passed the general opinion prevailed that no supplementary reconstruction legislation would be enacted until after the southern states had been given a fair chance to initiate movements looking towards the establishment of governments in harmony with the principles enunciated in the bill. Reverdy Johnson voted for the bill, not because he believed it was either just or necessary, but because as a practical man he saw that in this bill the southern whites were given their last opportunity to retain control of the machinery of their governments. Therefore, he thought that it was the part of wisdom for moderate men to unite in support of the bill before another more harsh in its terms should be brought forward.[1] The best proof, however, that the prevailing opinion in the Senate when the Sherman substitute was passed, regarded it as a finality in reconstruction legislation at least until the southern people had been given a fair chance to act, is furnished by the attitude of Sumner in the Senate and Stevens in the House. Gideon Welles states on the authority of Senator Grimes that when the Sherman substitute was adopted, Sumner was violent, swore savagely, and left the Senate in a rage.[2] Concerning this substitute, Sumner said:

It is reconstruction without any machinery or motive power. There is no provision for the initiation of the new governments. There is no helping hand extended to the loyal people who may seek to lay anew the foundations of civil order . . . . I cannot forget, also, that there is no provision by which each freedman can be secured a piece of land, which has always seemed to me important in the work of reconstruction. But

[1] *Globe*, p. 1969.

[2] *Diary*, vol. iii, p. 47.

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all this, though of the gravest character, is dwarfed by that other objection which springs from the toleration of rebels in the copartnership of government . . . . while requiring suffrage for all without distinction of race or color, it leaves the machinery and motive power in the hands of the existing governments, which are conducted by the rebels. . . . . It is true that the suffrage is given to the colored race; but their masters are left in power to domineer and even to organize. With their experience, craft, and determined purpose, there is too much reason to fear that all your safeguards would be overthrown, and the Unionists would continue the victims of rebel power. It is not enough to say that rebels *may be* disfranchised. You must say *they must* be disfranchised. Without this, you surrender everything to them.

And yet it has been said that Sumner was a man without guile and had no vindictive feeling toward the South.[1] Thaddeus Stevens agreed with Sumner, and on Monday, February 18, moved that the Senate amendment be not concurred in by the House, and that a committee of conference be asked for.[2] The Washington correspondent of the New York *Independent*, who was one of the shrewdest observers and interpreters of political sentiment then in Washington, wrote the following to his paper concerning Stevens' motives in opposing the Senate amendments:

A prominent point of difference between a class of Republican senators and another class of radical representatives was this: Stevens and his friends insisted upon the disfranchisement of leading rebels in the preliminary elections, and desired that the election of delegates to constitutional conventions should be held under the guidance and control of loyal men. The Senate was willing to allow the southern people to arrange the pre-

[1] Rhodes, vol. v, p. 554.

[2] *Globe*, p. 1315.

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liminary elections as they chose, so long as equal rights were established, and felt no particular anxiety on this point, as the state constitutions must be accepted by Congress before representation would be granted.[1]

Additional light is thrown on the radical motives by a speech of Boutwell, who, in supporting Stevens' motion, said he objected to the substitute offered by the Senate primarily because it proposed to grant universal amnesty.[2] Since there were more rebels than loyal men in most of the southern states, by the bill as amended the reorganization of governments in those states would be transferred to the rebels.

"Though every black man will be secured in the right to vote," said he, "the rebels will have the control of the militia and the polls. Under such circumstances do you expect that the negroes, unaccustomed to political struggles, timid, broken down in spirit by the institution of slavery, can deprive the rebels of the places of power which they now possess?" The answer to his question was obvious, and he concluded by declaring that Congress must extend a helping hand to the loyalists so that they could obtain control of the southern state governments.

One of the radical members from Tennessee[3] said he had understood that the giving of this control to the loyalists was to be the purpose of additional legislation by Congress, but that he found in the bill which had come from the Senate universal amnesty and universal suffrage. "Pass this bill and it is the final stroke, the death-blow to the Union men and the men of color in the South. They will have no protection, their rights will not be recognized."

[1] *Independent*, Feb. 28, 1867.

[2] *Globe*, p. 1316.

[3] Stokes, *Globe*, p. 1317.

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The debate went on all day, the conservatives favoring and the radicals opposing the Senate amendment. On the morning of February 19 a vote was taken on a motion to concur in the amendment of the Senate. Though a large majority of the Republicans voted in favor of this motion, it was lost because the Democrats voted solidly with Stevens and his minority of extreme radicals against it.[1] Stevens' motion for a conference committee was then passed, and he, Blaine, and Shellabarger were appointed to represent the House on such a committee.[2] The Senate, however, after some debate refused to consent to a committee of conference, and sent a message to the House that it insisted upon its amendments.[3]

On February 19 the House held a special evening session in order further to consider what should be done about the Senate amendments. It is probable that if the vote on a new motion which was made to concur in the Senate amendments had been taken at this meeting it would have been carried. Dilatory tactics, however, were employed by the Democrats, and with the partial assistance of the radicals they were able to prevent a vote being taken.[4] On the next day Wilson made a motion that the amendments of the Senate be concurred in provided that body accept the following additional amendment:

> No person excluded from the privilege of holding office by the proposed amendment to the Constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of the rebel states, nor shall any such person vote for members of such convention.[5]

[1] *Globe*, p. 1340.
[2] *Ibid.*, p. 1570 *et ante*.
[3] *Ibid.*, p. 1554.
[4] *Ibid.*, p. 1356 *et seq.*
[5] *Ibid.*, p. 1399.

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Shellabarger, who had been acting with the radicals, then offered the following as an additional section:

Until the people of said rebel states shall be by law admitted to representation in the Congress of the United States, any civil governments which shall exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time, to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments, all persons shall be entitled to vote, and none others, who are entitled to vote under the provision of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments, who would be disqualified from holding office under the provisions of the said article of said constitutional amendment.[1]

Both the Wilson and the Shellabarger amendments were agreed to, and in its amended form the bill once more passed the House by a vote of 126 to 46.

Though the radicals had not won completely, the conservatives were thoroughly defeated; for as everybody recognized, the adoption of these two penal clauses made it impossible for the existing governments in the South to take the initiative in establishing new governments in harmony with the other provisions of the bill. That they otherwise would have done so is not susceptible of proof, but nevertheless it is highly probable that they would. Thoughtful conservative men, both North and South, were becoming alarmed at the radicalism rampant in Congress, and at the evident intention of at least half the Republicans to put the southern states in the hands of the negroes and the loyal whites.

Therefore, Democrats like Reverdy Johnson, Thomas

[1] *Globe*, p. 1400.

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A. Hendricks,[1] and Manton Marble[2] of the New York *World*, administration Republicans like Raymond,[3] and conservative Republicans like Stewart[4] and Sherman,[4] advised the southerners to act quickly in compliance with the terms of the bill. Though this advice was given both before and after the adoption of the penal clauses, the disfranchisement of nearly all those southerners who were then and for years past had been at the head of political affairs in the South made it impossible for them to accept this advice and take the lead in forming such governments. Moreover, the Blaine amendment, pure and simple, might have been self-operating, but the addition of the Wilson proviso made it necessary to enact supplemental legislation. In order to carry into effect this disfranchisement of the leading rebels, it would of course be necessary to place the machinery for setting up the new governments in the hands of Federal officials. Under such circumstances it is natural that the resulting governments were controlled by the carpet-baggers, scalawags and negroes. Representative Wilson, who was the author of the disfranchising clause, stated later when he was advocating the supplementary Reconstruction bill, that such a bill would not have been necessary had the Democrats not forced the conservatives to yield the disfranchising clause to the radicals in order that the entire bill be not lost.[5] As the New York *Nation*[6] pointed out, the debt which the radicals owed the Democratic party was almost incalculable.

The Senate concurred in the House amendments on February 20.[7] Though the President might have de-

[1] *Globe*, p. 1969 *et seq.*
[2] *N. Y. World*, Feb. 23, 1867.
[3] *N. Y. Times*, Feb. 18 and 20, 1867.
[4] *Globe*, p. 1625 *et seq.*
[5] *Globe*, 1st sess. 40th cong., p. 64.
[6] *Ibid.*, Feb. 21, 1867.
[7] *Globe*, p. 1645.

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feated this particular bill with a "pocket" veto, he preferred not to evade the question, and on March 2 sent a message to the House announcing his dissent.[1] The message was received with scant respect, and though the Democrats attempted to sustain the veto by dilatory tactics, their scheme was squelched by Blaine's moving to suspend the rules. This motion was agreed to and the bill was again passed by the necessary two-thirds majority.[2] On the same day the Senate took similar action.[3]

As this was the last piece of legislation with which the joint committee on reconstruction was connected, its enactment into law marks the close of that committee's history.

When the 40th Congress assembled, there was an attempt to resurrect the committee, but it ended in failure. There was no longer any need for a joint committee, as the fear that the two houses would not act in concert, which had brought about its appointment in the first place, had long since ceased to exist. Hence, from this time on the House had its own special committee on reconstruction, while in the Senate matters pertaining to that subject were generally looked after by the judiciary committee.

[1] *Globe*, p. 1729.
[2] *Ibid.*, p. 1733.
[3] *Ibid.*, p. 1976.

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VITA.

THE author of this monograph was born in Talbot county, Georgia, October 16, 1884. His academic, college, and university preparation has been as follows: Columbus, Ga., High School, 1899–1902; undergraduate study at Mercer University, 1902–1905; graduate study at Harvard University, 1907 (summer), and at Columbia University, 1909–1912. At Columbia University he studied under Professors Dunning, Robinson, Giddings, Seligman, J. B. Moore, Shotwell, Shepherd, Osgood, Goodnow, Beard, and Hayes; and attended seminars under Professors Dunning and Osgood. For the year 1910–1911 he was Schiff Fellow in American History. He holds the following degrees: B. S., Mercer University, 1905, and A. M., Columbia University, 1911. He has filled the following academic positions: Teacher in public school, Norman Park, Ga., 1905–1906; teacher of English and history, Industrial High School, Columbus, Ga., 1906–1909; instructor in history, Columbia University, 1912–.

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