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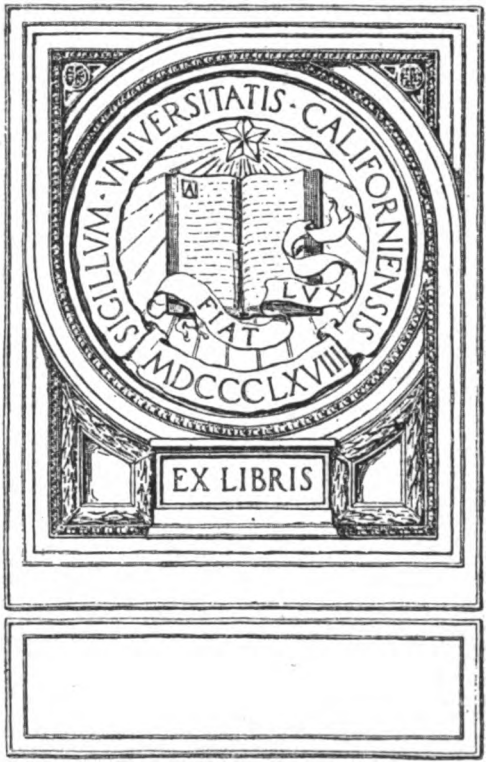
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THE JOURNAL OF THE JOINT COMMITTEE OF FIFTEEN ON RECONSTRUCTION

39TH CONGRESS, 1865–1867

BY

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SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN THE FACULTY OF POLITICAL SCIENCE IN COLUMBIA UNIVERSITY

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To

My Father and Mother

WM. T. AND LAVICIE M. KENDRICK

to whose influence is due my first

interest in the history of the

Reconstruction Period

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PREFATORY NOTE

THE primary object of this volume is to make available to students of American history and constitutional law an important document, hitherto not easily accessible. This document is the journal of the joint committee of fifteen on reconstruction (39th Congress, 1865-67). Though it relates principally to the genesis of the fourteenth amendment, it throws some light on the five or six less significant matters with which the committee was concerned. Since there is only one printed copy of the journal known to be extant, its value as an historical source would seem to justify its being reprinted. Therefore, with the exception of a brief introductory chapter, it occupies all of Part I of this book.

In this introductory chapter, there will be found (1) a short account of how the journal came into existence; (2) the story of how the manuscript copy of the journal was discovered; (3) a discussion of the influence which it had on the Supreme Court in determining that tribunal's interpretation of the civil rights clause of the fourteenth amendment. Though no one of these matters bears a very intimate relation to the rest of this volume, yet it seems that each is of sufficient interest to merit the space given it.

In Part II, the first two chapters deal with the origin and personnel of the committee, while in the remaining six I have endeavored to give a history of the measures that were evolved by the committee, together with an interpretation of these measures and an analysis of the motives of the men who championed or opposed them.

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In the preparation of my manuscript, I have been greatly assisted by my kinsman, Mr. Thomas Shields, to whom I wish to acknowledge my appreciation. My colleagues, Professors C. A. Beard and R. L. Schuyler, have kindly given me the benefit of their criticism in regard to the introductory chapter. To Professor Wm. A. Dunning, at whose instance this work was begun, and who has read all the manuscript and made many helpful suggestions, I desire to express my indebtedness and gratitude.

BENJ. B. KENDRICK.

COLUMBIA UNIVERSITY, NEW YORK, JULY, 1914.

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PART I

INTRODUCTION
JOURNAL OF THE JOINT COMMITTEE

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INTRODUCTION

(1) When the Southern Confederacy collapsed in April, 1865, those state governments which were regarded as having been in allegiance to it were not recognized by any Federal official as legal. They were forbidden to continue in existence, and for at least a few weeks seven of the late Confederate states were entirely without civil governments and were subject to the Federal military authority alone. In four states, however, Virginia, Tennessee, Louisiana, and Arkansas, loyal civil governments had been instituted during Lincoln's administration and these President Johnson, in harmony with the reconstruction policy of his predecessor, recognized as regular and legal. Moreover, in pursuance of that policy, he caused loyal civil governments to be established during the summer of 1865 in the other seven states. By December most of these Lincoln and Johnson governments were performing nearly all the regular functions of state governments, and so far as the Federal executive department was concerned, they were recognized as having resumed their normal position as states in the Union.

Though they had formally accepted the abolition of slavery and the invalidity of secession as the accomplished objects of the war—and certainly few people were saying at that time that the war had been waged for any other purpose—yet when the 39th Congress met in December of 1865, it at once became evident that the majority of its members were in no mood to accept unconditionally the reconstruction policy that had been developed by the execu-

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tive department of the Government. There was no consensus, however, as to a substitute for the executive policy. Hence all were determined not to act precipitately on the reconstruction question, but to delay—some with the hope of coming to an understanding with the President, others with the idea ultimately of carrying out a thorough overhauling of southern political, economic, and social conditions. These latter persons, therefore, determined upon the expedient of appointing a joint committee to which all matters pertaining to reconstruction should be referred. Since the object of the radical group in desiring the appointment of this committee was delay, and since delay was also the object of the more conservative group, the latter readily acquiesced in the scheme. It was the members of this committee who, from December, 1865, to March, 1867, determined the principles of reconstruction that finally were carried into effect in the South.

The chief measure that was evolved within this committee was the fourteenth amendment to the Constitution, and the journal kept by the committee's clerk is by far the most important source of information concerning the process by which the framers of that amendment arrived at the conclusions which they submitted to Congress. Since the manuscript copy of this journal has come recently into my possession, my experience in finding it calls for a few words of explanation.

(2) In the spring of 1910, I was engaged in preparing an essay on the report of the reconstruction committee. In examining some of the secondary material, I found that both Dr. Rhodes in Volume V of his History of the United States, and Dr. Horace Flack in his work on the fourteenth amendment, referred to a printed copy of the journal; but upon making inquiry I discovered that both of them had used a copy that was then, and still is, in the Government

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Printing Office at Washington. None of the larger city or university libraries of the country possessed a copy. This I considered strange, and so decided to look up the order for printing. After some search I found that it was not until February of 1884 that the Senate of the United States had ordered six thousand copies to be printed. From the fact that the journal was published by the order of a body of men who could have had but little interest in its contents, together with the fact that no copies were to be found even in the library of Congress or in the House and Senate libraries, I concluded that the six thousand copies were never distributed. This conclusion I later ascertained from the gentleman who in 1884 was director of the printing office, was correct.

When Senator Morrill of Vermont, who had been a member of the reconstruction committee, introduced, on February 5, 1884, the resolution for printing the journal, he exhibited the manuscript copy, and said: "At the decease of Senator Fessenden, this book, containing a very well-kept, clear journal for a year, was transferred to Portland, Maine, and not until recently has it been ascertained that it was in existence. It must be a document of too much importance to remain out of print."

This gave me a clue and I determined if possible to find that manuscript copy which Morrill then exhibited. I already knew that a grandson of Senator Fessenden, Mr. James D. Fessenden, of the New York bar, had been the literary executor of the illustrious Maine statesman. To him I accordingly wrote, and ascertained that the manuscript journal had been in his possession, but at an auction sale of his grandfather's autograph letters in 1908, it had been disposed of; to whom he did not know. I then had recourse to the books of the auction company which had charge of the sale, and after considerable difficulty located

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the purchaser. This proved to be a well-known collector of autograph letters and original documents, but upon reaching his house, I was dismayed to find that he had recently sold out his entire collection and departed for Europe. His sale had been conducted by a different auction company from that which had conducted the Fessenden sale. From an examination of their books, I discovered that they had disposed of the journal to an autograph dealer. Fortunately, he had not sold it before I reached him, and I succeeded in obtaining it for the Columbia University library which had commissioned me to purchase it.

It should be stated, however, that the journal is one made up from the notes kept by the clerk of the committee at its various sessions. It is in the handwriting of the second clerk of that committee, George A. Mark, who was a native of Portland, Maine, and was appointed to his position on the motion of Senator Fessenden. While in Washington in the summer of 1910, I had Mr. Mark's handwriting verified both by his son, who is now living in that city, and by a clerk in the library of Congress, where Mr. Mark was subsequently employed. The genuineness of the journal is also testified to by the fact that in it were several loose sheets containing the various propositions that were offered by several members of the committee for amending the Constitution in regard to the apportionment of representatives. Each of these resolutions is in the handwriting of the individual member who offered it. Moreover, one of these sheets contains Robert Dale Owen's suggestion for a fourteenth amendment, which is discussed in Chapter VI. This is in the hand of Owen himself, with annotations in the hand of Thaddeus Stevens.

How the journal which had been in Portland, Maine, came to be in Washington in 1884, I have not been able to determine with entire satisfaction to myself. I

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have found, however, that Roscoe Conkling, who represented the defendant in the case of San Mateo County *versus* the Southern Pacific Railroad,[1] which was pending before the Supreme Court from the fall of 1882 to the spring of 1885, referred to the journal of the committee. In his oral argument Conkling not only quoted from the journal, but definitely stated that he had it in his possession. Unfortunately, he did not tell how he came by it. He said that he had consulted some of those whose opinions it preserved. This certainly meant Morrill, who was then the only ex-member of the committee in Congress, though two other ex-members—Boutwell and Williams—were probably then in Washington. Conkling also said: "It seems odd that this journal has never been printed by order of either house. It has never been printed, however, or publicly referred to before, I believe."

From the two facts that Conkling consulted Morrill and thought the journal ought to be printed, it almost certainly follows that it was from Conkling that Morrill obtained it when he secured the passage of the order to have it printed. Conkling, in turn, had doubtless borrowed it from the son and biographer of Senator Fessenden, General Francis Fessenden, who, I learned from Mr. James Fessenden, was then in possession of all the Senator's public and private papers. After the case was decided in 1885, Conkling evidently returned the manuscript journal to General Fessenden. When it was ordered to be printed, not the original, but a copy was sent to the printer, for the manuscript now in the Columbia University library shows no signs of ever having been in a printer's hands. The printed copy in the Government Printing Office, however, is identical in contents with the manuscript journal. It is not likely that Conkling

[1] See *infra*, p. 28.

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would have been willing to let the original copy, which he was under obligation to return in good shape, go out of his hands for the purpose of having it printed, and so a copy was doubtless made for that purpose.

(3) As said before, this document whose history has been sketched briefly above was the very one which Roscoe Conkling used with such telling effect in one of the crucial cases in the process by which what has been termed a "revolution in our constitutional law," was accomplished.[1] By "revolution" is meant that change whereby the states, which since the death of Marshall had been substantially independent of Federal judicial control, were again, and even more completely than ever, subjected to the Federal judiciary by the interpretation that the Supreme Court finally gave to section 1 of the fourteenth amendment. This revolution was not made by the adoption of the fourteenth amendment itself nor indeed by the earlier interpretations of that amendment, but was brought about partly by the change in the personnel of the Court and partly by a change in the minds of the judges under the stimulus of powerful counsel—a change which a layman might reasonably regard as a flat reversal, but which the trained lawyer, by pointing out differences and discriminations, may exhibit as orderly progressions of judicial reasoning.

The first time the Court was called upon to interpret section 1 of the fourteenth amendment was in 1872 in the famous Slaughter-House cases.[2]

Mr. Justice Miller stated in the following words the opinion of the majority of the Court as to the purpose and scope of all the war amendments and particularly of section 1 of the fourteenth amendment:

[1] Beard, *Contemporary American History*, ch. III.

[2] 16 Wallace, 36

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On the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the fifteenth amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth.

Speaking specifically in regard to the first section of the fourteenth amendment, Justice Miller continued:

We doubt very much whether any action of a state not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other. . . . .

We do not see in those amendments any purpose to destroy the main features of the general system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the states with powers for domestic and local government, including the regulation of civil rights—the rights of person and of property—was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the states, and to confer additional power on that of the Nation.

From the tone of this opinion it is clear that in 1872 the majority of the Court believed that section 1 of the fourteenth amendment was to be invoked primarily for the pro-

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tection of the freedmen in their civil rights. The judges were unwilling to give that section an interpretation which would render corporations wholly or partly immune from state regulation by narrowly restricting the state's police power. Again in 1876, the Court refused to interpret the fourteenth amendment in such a way as to hold invalid a state statute regulating corporations. In the case of Munn *v.* Illinois,[1] it was called upon to determine whether the legislature of Illinois could fix by law the maximum charge for the storage of grain in warehouses. Chief Justice Waite, in delivering the opinion of the court, said:

It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question.

As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps, more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. . . . .

We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, *not* to the courts.

At a later period, however, this position in large measure was abandoned. In a series of cases extending from 1889 to 1898, the Court, by virtue of that section of the fourteenth amendment which denies to a state the right to "deprive any person of life, liberty, or property, without due process of law," has undertaken to declare null and of no effect state laws which seemed to fix the fares and freights

[1] 94 U. S. 113.

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of railroads and the charges of other public corporations unreasonably low. As Professor Beard says, "The Court has moved from the doctrine of non-interference with state legislatures to the doctrine that it is charged with the high duty of reviewing all and every kind of economic legislation by the states." [1]

In the case of Chicago, Milwaukee and St. Paul Railroad Company *v.* Minnesota, the Court said:

> The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public is eminently a question for judicial investigation requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus in substance and effect, of the property itself without due process of law and in violation of the Constitution of the United States.

In the foregoing case, it happened that the rates which the Court declared unreasonably low, were not fixed directly by the state legislature, but by a railroad commission. The climax of "judicial supremacy" was reached in 1898 in the case of Smyth *v.* Ames,[2] in which the Court held a Nebraska statute unconstitutional, because it fixed the maximum rates to be charged by railroad companies so low as to be practically confiscatory. The Court held that the following principles were settled law:

1. A railroad corporation is a person within the meaning of the fourteenth amendment declaring that no state shall de-

[1] *Contemporary American History*, p. 73.

[2] 169 U. S. 466.

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prive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. A state enactment, or regulations made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States.

3. While rates for the transportation of persons and property within the limits of a state are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and therefore without due process of law, cannot be so conclusively determined by the legislature of the state or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.

It is clear that the Supreme Court in the decade from 1889 to 1898 did depart from its earlier position as announced in 1872 and 1876 in the Slaughter-House cases and in Munn *v.* Illinois respectively. This change in the attitude of the Court toward the fourteenth amendment has given rise to the opinion that "although it was a humanitarian measure in origin and purpose, and was designed as a charter of liberty for human rights, it has become the Magna Charta of accumulated wealth and organized capital." [1]

In making the change to the broad doctrine that the Court should exercise judicial control over all kinds of legisla-

[1] Collins, *The Fourteenth Amendment and the States*, p. 138.

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tion, two fundamental doctrines were necessary. One was that the power to regulate corporations could not be exercised in such a manner as to deprive them of the right to earn a fair return on the capital invested. With that we are not concerned here. The second doctrine, just as fundamental, is that which was laid down as settled law in Smyth *v.* Ames, "that a corporation is a person within the meaning of the fourteenth amendment." In 1886, twelve years before this case was decided, this principle was first stated by Chief Justice Waite. The Court was ready to receive arguments in the case of Santa Clara County *v.* The Southern Pacific Railroad,[1] when the Chief Justice said: "The Court does not wish to hear arguments on the question whether the provision in the fourteenth amendment to the Constitution, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws, applies to corporations. We are all of the opinion that it does."

This announcement, which may be regarded as a *dictum,* was affirmed in 1888 as a part of the decision in the case of Pembina Mining Company *v.* Pennsylvania,[2] in which the court said:

> The inhibition of the fourteenth amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. Under the designation of "person" there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name, and have a succession of members without dissolution.

[1] 118 U. S. 394.

[2] 125 U. S. 181.

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In 1889, in the case of Minneapolis and St. Louis Railroad Company *v.* Beckwith,[1] the Court decided that a corporation was a person within the meaning of both the "due process of law" and the "equal protection of the laws" clauses of the fourteenth amendment. "These cases, considered together as one opinion," says a recent writer,[2] "mark one of the most important developments in our constitutional history. In an address before the University of Berlin in 1908, President Hadley, of Yale University, declared them to rank with the Dartmouth College case in their restraining effects upon the states in relation to the corporations. They opened the door for organized capital to contest whatever laws of the states it considered disadvantageous."

How the Court was induced to abandon the attitude of non-interference and assume judicial control in the widest sense has never been made the subject of historical inquiry. When that study is made, first rank will be given to a dramatic episode which occurred in the argument of the San Mateo case, when Roscoe Conkling, a member of the committee which drafted the fourteenth amendment, produced in the court room a copy of the journal of his committee and revealed for the first time what purported to be the real intention of those who framed the fourteenth amendment. It is to point out the part played by the journal of the committee in the beginning of this legal revolution that the foregoing digression into the realm of constitutional law has been made.

In the case of San Mateo County *v.* The Southern Pacific Railroad Company,[3] the defendant maintained that the state

[1] 129 U. S. 26.

[2] Collins, *op. cit.*, pp. 128, 129.

[3] 116 U. S. 138.

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of California in assessing the value of its property had violated that section of the fourteenth amendment which forbids a state to deny to any person within its jurisdiction the equal protection of the laws. The San Mateo case was argued on December 19, 1882, by which date railroad companies, especially in the West, were coming to be the objects of what they considered invidious state legislation, and subjected to an unequal and exorbitant rate of taxation. Under these circumstances the companies determined to appeal to the Supreme Court for protection. Collis P. Huntington, a well-known railroad magnate of the old school, was at that time president of the Southern Pacific. His principal attorney as well as personal friend was Roscoe Conkling, a recently resigned senator from New York, who was then devoting his entire time to his legal profession. Huntington selected Conkling as his chief counsel, and upon the latter devolved the onerous task of convincing a majority of the members of the Supreme Court that the opinion of Justice Miller in the Slaughter-House cases was based upon a misconception of the intent of the framers of section 1 of the fourteenth amendment. Conkling undertook to show that the reconstruction committee, of which he had been a member, had designed that section as much for the protection of white people as negroes against discriminating state legislation. Having accomplished this, his next purpose was to prove that though the word *person* was placed in juxtaposition with *citizen*, the two were not synonymous; that the former in this section had its ordinary juristic meaning, and hence included artificial persons (i. e., corporations) as well as natural persons. There is no doubt that Conkling's argument at this time marks the beginning of that important revolution in our law which has been briefly sketched above.

In the earlier decisions which involved the fourteenth

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amendment, the Court seems to have been unusually prone to take into consideration the intention of the framers of that amendment. Since Conkling had been a member of the committee which drafted the fourteenth amendment, he may have been presumed to have been in an excellent position to interpret the intentions of himself and his colleagues. But that was not all. He occupied a still stronger strategic position in that he was armed with the very journal of the committee, and with it proceeded to show that the committee did not expect that the operation of the amendment would be confined merely to the protection of the freedmen. Because of the importance of Conkling's speech in the history of our jurisprudence, I will venture to give rather copious extracts from it.

I come now to say that the Southern Pacific Railroad Company is among the "persons" protected by the fourteenth amendment. . . . .

The idea prevails—it is found in the opinion of the Court in the Slaughter-House cases; it has found broad lodgment in the public understanding; that the fourteenth amendment—nay I might say all three of the latter amendments were conceived in a single common purpose—that they came out of one and the same crucible, and were struck by the same die; that they gave expression to only one single inspiration. The impression seems to be that the fourteenth amendment especially was brought forth in the form in which it was at last ratified by the states, as one entire whole, beginning and ending as to the first section at least, with the protection to the freedmen of the South.

Conkling then criticized Justice Miller's opinion in the Slaughter-House cases as to the "pervading spirit" of all the war amendments.

It may shed some modifying light on this supposition, to

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trace the different proposals, independent of each other, originating in different minds, and at different times, not in the order in which they now stand, which finally, by what might be called the attrition of parliamentary processes in the committee and in Congress, came to be collected in one formulated proposal of amendment.

These originally separate, independent propositions, came from a joint committee of the two Houses. The committee sat with closed doors. A journal of its proceedings was kept by an experienced recorder from day to day.

It seems odd that such a journal has never been printed by order of the two Houses. It has never been printed, however, or publicly referred to before, I believe.

Having consulted some of those whose opinions it preserves, and having the record in my possession, I venture to produce some extracts from it, omitting names in connection with votes.[1]

From these skeleton entries—a journal is only a skeleton—your Honors will perceive that different parts of what now stands as a whole—even parts of the clauses supposed to relate exclusively or especially to freedmen and their rights—were separately and independently conceived, separately acted on, perfected, and reported, not in the order in which they are now collated, and not with a single inspiration or design. You will perceive also that before what now constitutes part of the first section was perfected, or even considered, the committee had reported, and lost all jurisdiction and power over, the portion of the amendment which did in truth chiefly relate to the freedmen of the South. The subject of suffrage, the ballot, and representation in Congress, was disposed of before the committee reached the language on which to-day's argument proceeds.

Conkling then quoted at length from the journal in order

[1] Conkling had good reason to omit the names; he indeed might have been embarrassed by them, for he himself voted consistently against the civil rights amendment. See *infra*, ch. iii.

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to show that the civil rights section of the fourteenth amendment as originally considered in committee constituted by itself a whole, separate amendment to the Constitution. Moreover, he asked why, if the end to which the mind of the author, Bingham, was reaching out was simply to bespeak protection for the black man of the South, he should choose such general and sweeping words, when he could so easily and briefly have expressed exactly the idea on which his thoughts were bent. These words were taken almost bodily from the Constitution as follows:

> 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).[1]

Conkling then continued:

> Now, may it please your Honors, obviously the object of the draughtsman of this last referred to amendment in making reference on the face of his resolution to article 4, section 2, and to the fifth amendment, was to remind the committee of the established meaning and universally accepted import and force of the words which there stood.
>
> At the time the fourteenth amendment was ratified, individuals and joint stock companies were appealing for congressional and administrative protection against the invidious and discriminating state and local taxes. One instance was that of an express company, whose stock was owned largely by citizens of the state of New York, who came with petitions and bills seeking acts of Congress to aid them in resisting what they deemed oppressive taxation in two states, and oppressive and ruinous rules of damages applied under state laws. That

[1] See *infra*, p. 61.

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complaints of oppression in respect of property and other rights, made by citizens of northern states who took up residence in the South, were rife, in and out of Congress, none of us can forget; that complaints of oppression, in various forms, of white men in the South,—of "Union men," were heard on every side, I need not remind the Court.

Conkling, after arguing further that the fourteenth amendment was intended as much for the protection of white men as negroes against discriminating state legislation, then undertook to prove to the Court that the amendment was designed to operate upon associations of individuals (i. e., corporations) as well as upon individuals singly.

The defendant here, in respect of its property is in law and in fact but the business style of individual owners united and co-operating in a common undertaking, and who, as mere method and convenience, conduct business through corporate agency. Be it a church, a hospital, a library, a hotel, a mill, a factory, a mine, or a railroad, the property and assets of a corporation belong to no one save the creditors and the shareholders.

Suppose, in South Carolina, a society of colored men should incorporate themselves and acquire a church or a college, and this property should, by statute be confiscated, either by discriminating taxation or otherwise, can it be supposed that the fact of their having formed a corporation, rather than a joint-stock company or a partnership, would exclude them from the protection of the fourteenth amendment? Could such a cramped construction be given to the amendment, even if the rule of its construction restricted its operation to only the cases known or foreseen by those who chose the language?

I have put the case of colored men. Let me transpose the illustration. In several states, colored men outnumber white men. Suppose in one of these states laws should be contrived by the colored majority, or a constitution set up, under

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which the property of white men should be confiscated, surely the Court would not say the Constitution is dumb, but would speak, if only the parties to the record were reversed.

I have sought to convince your Honors that the men who framed, the Congress which proposed, and the people who through their legislatures ratified the fourteenth amendment, must have known the meaning and force of the term "persons."

. . . . .

Those who devised the fourteenth amendment wrought in grave sincerity. They may have builded better than they knew.

They vitalized and energized a principle as old and as everlasting as human rights. To some of them, the sunset of life may have given mystical lore.

They builded, not for a day, but for all time; not for a few, or for a race, but for man. They planted in the Constitution a monumental truth, to stand foursquare whatever wind might blow. That truth is but the golden rule, so entrenched as to curb the many who would do to the few as they would not have the few do to them.

Though the points argued by Conkling were not decided by the Court in the San Mateo case, yet his speech in that case marks distinctly the point at which the Supreme Court ceased to interpret section 1 of the fourteenth amendment as having reference almost wholly to negroes, and began to regard it as having a much broader application. In order to show that Conkling's argument had a most profound effect upon the minds of the judges, the three following incidents are related.

Justice Miller, who had delivered the opinion of the Court in the Slaughter-House cases, was still on the bench when the San Mateo case was argued. He listened to Conkling's refutation of his own opinion, and when another of the defendant's counsel began to argue the same points which Conkling had made, Miller interrupted him and said: "I

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have never heard it said in this Court or by any judge of it that these articles [i. e., the fourteenth amendment] were supposed to be limited to the negro race. The purport of the general discussion in the Slaughter-House cases on this subject was nothing more than the common declaration that when you come to construe any act of Congress, you must consider the evil which was to be remedied in order to understand fairly what the purpose of the remedial act was." To this statement, Conkling's associate replied, "I understand, then, that so far as your Honor is concerned, the color line has disappeared from American jurisprudence." To this, Miller did not dissent, from which we may fairly conclude that he was ready to abandon what had been generally regarded as a very narrow interpretation of the civil rights clause of the fourteenth amendment.

In the spring of 1883, Justice Field was sitting in the circuit court in California, when he was called upon to decide the Santa Clara case, which involved the same general principles as the San Mateo case. His decision is remarkable in that he adopted the same attitude toward the purport of the civil rights section of the fourteenth amendment which Conkling had enunciated in his San Mateo speech. In fact the justice quoted several passages from that speech, a notable one being the concluding paragraph of it in which Conkling laid down what he considered the true method of interpretation.

But an appeal from Justice Field's decision of the Santa Clara case in the California circuit, was taken to the Supreme Court. As has been seen, the case was argued before that tribunal in 1886. Again the Court refused to decide the question raised under the fourteenth amendment, but in his dictum quoted above, the Chief Justice committed himself and the Court to the doctrine that the "equal protection of the laws" clause should be interpreted as extend-

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ing to persons other than members of the colored race, and that "persons" in this sense included corporations. The dictum as to both these matters followed Conkling's view, and the door was opened for organized capital to contest, often-times successfully, before the highest Court in the land, whatever laws of the states it considered disadvantageous to its own interests. And what gave greatest force to Conkling's argument was his ingenious use of the journal of the joint committee on reconstruction.

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THE JOURNAL OF THE JOINT COMMITTEE OF FIFTEEN ON RECONSTRUCTION.

39TH CONGRESS.

1865–1867.

IN THE HOUSE OF REPRESENTATIVES,

December 4, 1865.

On motion of *Mr. Stevens:*

Be it resolved, by the Senate and House of Representatives in Congress assembled: That a joint committee of fifteen members shall be appointed, nine of whom shall be members of the House, and six members of the Senate, who shall inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they, or any of them, are entitled to be represented in either House of Congress, with leave to report at any time, by bill or otherwise; and until such report shall have been made, and finally acted on by Congress, no member shall be received into either House from any of the so-called Confederate States; and all papers relating to the representation of said States shall be referred to the said Committee without debate.

Attest,

EDW'D MCPHERSON, *Clerk.*

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December 12, 1865.

Amended in the Senate, on motion of Mr. Anthony, so as to read,

Resolved by the House of Representatives, (the Senate concurring) That a joint committee of fifteen members shall be appointed, nine of whom shall be members of the House, and six members of the Senate, who shall inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they, or any of them, are entitled to be represented in either House of Congress, with leave to report at any time, by bill or otherwise.

Attest,

J. W. FORNEY, *Secretary*.

Dec. 13, 1865.

In the House of Representatives, on motion of *Mr. Stevens*, the amendments of the Senate were concurred in.

Attest,

EDW'D MCPHERSON, *Clerk*.

Members on the part of the Senate.

Mr.	William P. Fessenden	of Maine.
"	James W. Grimes,	" Iowa.
"	Ira Harris,	" New York.
"	Jacob M. Howard,	" Michigan.
"	Reverdy Johnson,	" Maryland.
and "	George H. Williams,	" Oregon.

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Members on the part of the House of Rep's.

Mr.	Thaddeus Stevens,	of Penn'a.
"	Elihu B. Washburne,	" Illinois.
"	Justin S. Morrill,	" Vermont.
"	Henry Grider,	" Kentucky.
"	John A. Bingham,	" Ohio.
"	Roscoe Conkling,	" New York.
"	George S. Boutwell,	" Massachusetts.
"	Henry T. Blow	" Missouri.
and "	Andrew J. Rogers,	" New Jersey.

Saturday, January 6th, 1866.

The Joint Committee on Reconstruction met (in the room of the Senate Committee on the Pacific Railroad) pursuant to the call of Mr. Fessenden, its chairman.

Present—The Chairman, Messrs. Grimes, Harris, Howard, Johnson and Williams, of the Senate, and Messrs. Stevens, Washburne, Morrill, Conkling, Boutwell and Blow, of the House.

On motion,

Ordered, That Mr. Wm. Blair Lord (of New York City) be appointed clerk and stenographer of this Committee; and that the Chairman be instructed to obtain from the Senate the necessary authority for his employment.

On motion of *Mr. Stevens:*

Ordered, That a sub-committee, to consist of three members, be appointed to wait on the President and request him to defer all further executive action in regard to reconstruciton until this Committee shall have taken action on that subject.

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On motion,

Ordered, That the Chairman, and Messrs. Johnson and Washburne constitute said sub-committee.

Adjourned to ten A. M. on Tuesday next.

Tuesday, January 9, 1866.

The Committee met pursuant to adjournment: all the members present.

The Chairman submitted the following resolution, which was unanimously agreed to:

Resolved, That all the resolutions submitted to or adopted by this Committee, the views expressed in Committee by its different members, all votes taken and all other proceedings in Committee of whatever nature, be regarded by the members of the Committee and the clerk as of a strictly confidential character, until otherwise ordered.

The Chairman, from the sub-committee appointed at the last meeting of the Committee, to wait on the President, reported orally,

That the Committee had waited on the President and expressed to him the views of the Committee as set forth in the resolution appointing the sub-committee; that the Committee desired to avoid all possible collision or misconstruction between the Executive and Congress in regard to the relative positions of Congress and the President, and that they thought it exceedingly desirable that, while this subject was under consideration by the Joint Committee, no further action in regard to reconstruction should be taken by the President, unless it should become imperatively necessary, and that they thought mutual respect would seem

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to require mutual forbearance on the part of the Executive and of Congress. To which the President replied substantially that while he considered it desirable that this matter of reconstruction should be advanced as rapidly as might be consistent with the public interest, still he desired to secure harmony of action between Congress and the Executive, and it was not his intention to do more than had been done for the present.

Mr. Stevens submitted a joint resolution, upon which he asked immediate action by the Committee, proposing to submit for ratification to the several States the following amendment to the Constitution of the United States:

Representatives shall be apportioned among the several States, which may be included within this Union, according to the number of their respective legal voters; and for this purpose none shall be considered as legal voters who are not either natural born or naturalized citizens of the United States, of the age of twenty-one years.

Congress shall provide for ascertaining the number of said voters. A true census of the legal voters shall be taken at the same time with the regular census.

After discussion.

Mr. Conkling moved to amend by inserting the word "male" between the word "naturalized" and the word "citizens."

The amendment was adopted.

Mr. Morrill moved to further amend by inserting after the words "of the age of twenty-one years" the words "and who can read and write."

The amendment was not agreed to.

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The further consideration of the subject was postponed till this evening.

The Chairman submitted the following:

Resolved, That, in the opinion of this Committee, the insurgent States cannot, with safety to the rights of all the people of the United States, be allowed to participate in the Government until the basis of representation shall have been modified, and the rights of all persons amply secured, either by new provisions, or the necessary changes of existing provisions, in the Constitution of the United States, or otherwise.

On motion of *Mr. Stevens,* the further consideration of the resolution was postponed for the present.

On motion of *Mr. Stevens,* the Committee took a recess till 7½ o'clock this evening.

The Committee reassembled at 7½ o'clock P. M.—absent Mr. Blow.

The consideration of the joint resolution submitted by *Mr. Stevens* was resumed.

Mr. Williams moved to further amend the same by striking out the words, "and for this purpose none shall be considered as legal voters who are not either natural-born or naturalized male citizens of the United States, of the age of twenty-one years."

After discussion.

Mr. Johnson moved to postpone the further consideration of the joint resolution until the next meeting of the Committee.

The motion was agreed to.

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Mr. Stevens and *Mr. Howard* submitted propositions for the future consideration of the Committee.

Ordered, That the same be placed on file for future consideration.

On motion of *Mr. Harris,* the Committee adjourned till Friday next at 10½ o'clock A. M.

Friday, January 12, 1866.

The Committee met pursuant to adjournment; absent Mr. Rogers.

The consideration of the joint resolution submitted by *Mr. Stevens* was resumed.

The pending question was upon the amendment proposed by *Mr. Williams.*

Mr. Williams withdrew his amendment.

Mr. Morrill moved the following as a substitute for the original proposition:

Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers of persons, deducting therefrom all of any race or color, whose members or any of them are denied any of the civil or political rights or privileges.

Mr. Williams gave notice that at the proper time he should move the following substitute:

Representatives and direct taxes shall be apportioned among the several States of the Union according to their respective numbers, excluding negroes, Indians, Chinese, and all persons, not white, who are not allowed the elective

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franchise by the Constitutions of the States in which they respectively reside.

Mr. Conkling gave a similar notice in regard to the following substitute:

Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, counting the whole number of citizens of the United States; provided that whenever in any State civil or political rights or privileges shall be denied or abridged on account of race or color, all persons of such race or color shall be excluded from the basis of representation or taxation.

Mr. Boutwell gave a similar notice in regard to the following substitute:

Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to the respective number of citizens of the United States in each State; and no State shall make any distinction in the exercise of the elective franchise on account of race or color.

After discussion.

Mr. Bingham, in order to test the sense of the Committee, submitted the following resolution:

Resolved, That, in the opinion of this Committee, the amendment to the Constitution of the United States submitted by Mr. Stevens, ought to be amended or modified.

Mr. Johnson moved as a substitute for the resolution of Mr. Bingham, the following:

Resolved, That, in the opinion of this Committee, the ap-

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portionment of representation in Congress, as now provided by the Constitution, ought to be changed.

Mr. Bingham accepted the substitute.

The question was then taken, by yeas and nays, on the resolution as modified, and it was decided in the affirmative, yeas 13, nay 1, not voting 1, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—13.

Nay—Mr. Grider—1.

Not voting—Mr. Rogers—1.

The resolution as modified was accordingly adopted.

Mr. Johnson submitted the following resolution:

Resolved, That, in the opinion of this Committee, representatives should be apportioned among the several States according to their respective numbers of legal voters.

The question was taken, by yeas and nays, and it was decided in the negative, yeas 6, nays 8, absent and not voting 1, as follows:

Yeas—Messrs. Grimes, Johnson, Stevens, Washburne, Bingham and Blow—6.

Nays—The Chairman, Messrs. Harris, Howard, Williams, Morrill, Grider, Conkling and Boutwell—8.

Absent and not voting, Mr. Rogers—1.

So the resolution was not agreed to.

Mr. Morrill submitted the following:

Ordered, That a sub-committee, to consist of five members, including the Chairman of the Committee on the part of the Senate, and the Chairman of the Committee on the

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part of the House, (Messrs. Fessenden and Stevens) be appointed, to which shall be referred the various propositions submitted by members of this Committee in relation to apportionment of representatives in Congress, with instructions to prepare and report to this Committee a proposition upon that subject.

The motion was agreed to.

Mr. Bingham submitted the following proposed amendment of the Constitution of the United States, and moved that the same be referred to the sub-committee just authorized:

The Congress shall have power to make all laws necessary and proper to secure to all persons in every state within this Union equal protection in their rights of life, liberty and property.

The motion was agreed to.

Mr. Stevens submitted the following proposed amendment of the Constitution, and moved that the same be referred to the sub-committee just authorized:

All laws, state or national, shall operate impartially and equally on all persons without regard to race or color.

The motion was agreed to.

On motion of *Mr. Stevens.*

Ordered, That the remaining members of the sub-committee, authorized at this meeting, be appointed by the Chairman of the Joint Committee.

The motion was agreed to.

The Chairman announced the following as members of the sub-committee:

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Messrs. Fessenden and Stevens (named in the order of the Joint Committee) and Messrs. Howard, Conkling and Bingham.

On motion of *Mr. Stevens:*

Ordered, That the Chairman be instructed to introduce into the Senate a concurrent resolution authorizing the Joint Committee to send for persons and papers.

On motion of *Mr. Bingham:*

Ordered, That sub-committees, each composed of two members, be appointed to examine and report upon the present condition of the States composing the late so-called Confederate States of America, and not now represented in Congress; what has been their action in relation to any amendments of the Federal or State Constitutions; what may be the present legal position of the freedmen in the respective States; in what manner the so-called ordinances of secession have been treated; whether the validity of debts contracted for the support of the rebellion is acknowledged; and generally as to all evidence, documentary or otherwise, of the present loyalty or disloyalty upon the part of the people or governments of said states. That is to say, committees embracing

1st. Tennessee.

2nd. Virginia, North Carolina and South Carolina.

3rd. Georgia, Alabama, Mississippi, and Arkansas, and

4th. Louisiana, Florida and Texas.

On motion of *Mr. Howard:*

Ordered, That the sub-committees above authorized be appointed by the Chairman of the Joint Committee.

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On motion of *Mr. Harris:*

The Committee adjourned to 11 A. M. on Monday next.

Monday, January 15, 1866.

The Committee met pursuant to adjournment; absent, Messrs. Johnson and Blow.

On motion of *Mr. Morrill:*

Ordered, That the various sub-committees authorized on motion of Mr. Bingham, at the last meeting of the Committee, shall consist of three members each instead of two members.

The *Chairman* announced the following as the members of the sub-committees ordered at the last meeting:

No. 1. Messrs. Grimes, Bingham and Grider.

No. 2. Howard, Conkling and Blow.

No. 3. Harris, Boutwell and Morrill.

No. 4. Williams, Washburne and Rogers.

Mr. Stevens submitted the following resolution of the House of Representatives:

Ordered, That the same be spread upon the Journal.

"On motion of Mr. *James F. Wilson:*

Resolved, That all papers which may be offered relative to the representation of the late so-called Confederate States of America, or either of them, shall be referred to the Joint Committee of fifteen without debate; and no members shall be admitted from either of said so-called States until Congress shall believe such States, or either of them, entitled to representation."

Adjourned to meet on call of the Chairman.

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Saturday, January 20, 1866.

The Committee met pursuant to call of its Chairman; absent, Mr. Johnson.

The Chairman laid before the Committee the following papers, which were ordered to be entered upon the Journal of the Committee:

IN THE SENATE OF THE UNITED STATES,
January 8, 1866.

On motion of *Mr. Fessenden:*

Ordered, That the Joint Committee to inquire into the condition of the States which formed the so-called Confederate States of America, be authorized to employ a stenographic clerk.

IN THE SENATE OF THE UNITED STATES,
January 12, 1866.

On motion of *Mr. Fessenden:*

Resolved, by the Senate, the House of Representatives concurring, that the Joint Committee appointed to enquire into the condition of the States which formed the so-called Confederate States be authorized to send for persons and papers.

Attest,
J. W. FORNEY, *Secretary.*

IN THE HOUSE OF REPRESENTATIVES,
January 16, 1866.

On motion of *Mr. Stevens:*

Resolved, That the House concur in the foregoing resolution of the Senate.

Attest,
EDW'D MCPHERSON, *Clerk.*

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The Chairman, from the sub-committee on the basis of representation, reported that the sub-committee had directed him to report the following for the action of the Joint Committee; the first two as alternative propositions, one of which, with the third proposition, to be recommended to Congress for adoption:

"*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 Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, which, when they, or either of them, shall be ratified by three-fourths of the said Legislatures, shall be valid as part of said Constitution; viz:

Article A.

Representatives and direct taxes shall be apportioned among the several States within this Union, according to the respective numbers of citizens of the United States in each State; and all provisions in the Constitution or laws of any State, whereby any distinction is made in political or civil rights or privileges, on account of race, creed or color, shall be inoperative and void.

Or the following:

Article B.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of citizens of the United States in each State; provided that, whenever the elective franchise shall be de-

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nied or abridged in any State on account of race, creed or color, all persons of such race, creed or color, shall be excluded from the basis of representation.

Article C.

Congress shall have power to make all laws necessary and proper to secure to all citizens of the United States, in every State, the same political rights and privileges; and to all persons in every State equal protection in the enjoyment of life, liberty and property."

The Joint Committee proceeded to consider the report of the sub-committee.

Mr. Stevens moved that the last article be separated from whichever of the other two should be adopted by the Committee, and be considered by itself.

The question was taken by yeas and nays, and decided in the affirmative, yeas 10, nays 4; absent and not voting 1, as follows:

Yeas—Messrs. Grimes, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell, Blow and Rogers.—10.

Nays—The Chairman, Messrs. Harris, Howard and Grider—4.

Absent and not voting—Mr. Johnson—1.

So the motion was agreed to.

Mr. Stevens moved that the Committee take the second named of the alternative proposed articles as the basis of their action.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 11, nays 3, absent and not voting 1, as follows:

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Yeas—Messrs. Grimes, Harris, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell, Blow and Rogers—11.

Nays—The Chairman, Messrs. Howard and Grider—3.

Absent and not voting—Mr. Johnson—1.

So the motion was agreed to.

Mr. Stevens moved to amend the proposed article by adding the following:

"And whenever the words 'citizen of the United States' are used in the Constitution of the United States, they shall be construed to mean all persons born in the United States, or naturalized, excepting Indians."

Pending the consideration of which

Mr. Conkling moved to amend the proposed article by striking out the words "citizens of the United States in each State," and inserting in lieu thereof the words, "persons in each State, excluding Indians not taxed."

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 11, nays 3, absent and not voting 1, as follows:

Yeas—Messrs. Grimes, Harris, Howard, Williams, Washburne, Morrill, Grider, Conkling, Boutwell, Blow and Rogers—11.

Nays—The Chairman and Messrs. Stevens and Bingham—3.

Absent and not voting—Mr. Johnson—1.

So the amendment was adopted.

Mr. Morrill moved to further amend by striking out the word "creed" wherever it occurred in the proposed article.

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The amendment was adopted.

Mr. Stevens withdrew his amendment.

The question was upon agreeing to the proposed article as amended, which was as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed; provided that whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons of such race or color shall be excluded from the basis of representation."

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 13, nay 1, absent and not voting 1, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Grider, Bingham, Conkling, Boutwell and Blow—13.

Nay—Mr. Rogers—1.

Absent and not voting—Mr. Johnson—1.

So the proposed article as amended was agreed to.

Pending the call of the yeas and nays

Messrs. *Howard* and *Grider* each said, that although they voted in the affirmative, they desired to be understood as retaining their right to support, in their respective Houses, some proposition more in accordance with their views, should they deem it advisable to do so.

On motion of *Mr. Bingham* it was

Ordered, That the Chairman of the Senate portion of the

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Joint Committee (Mr. Fessenden), and the Chairman of the House portion of the Joint Committee (Mr. Stevens), be instructed to report as early as practicable to their respective Houses, the proposed amendment to the Constitution of the United States, this day agreed upon by the Joint Committee, and recommend its adoption by the same.

Mr. Rogers asked and obtained leave to submit to the House of Representatives a report setting forth the views of the minority of the Joint Committee upon the proposed amendment.

Adjourned to meet on call of the Chairman.

Wednesday, January 24, 1866.

The Committee met pursuant to call of its Chairman; absent Messrs. Harris and Johnson.

The Chairman laid before the Committee the following resolution of the Senate which was ordered to be entered upon the Journal:

"*January 22, 1866.*

Resolved, That until otherwise ordered, all papers presented to the Senate relating to the condition and title to representation of the so-called Confederate States shall be referred to the Joint Committee upon that subject."

The Committee proceeded to the consideration of the following amendment to the Constitution proposed by the sub-committee on the basis of representation:

"Congress shall have power to make all laws necessary and proper to secure to all citizens of the United States in each State the same political rights and privileges; and to

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all persons in every State equal protection in the enjoyment of life, liberty and property."

Mr. Howard moved to amend by inserting the words "and elective" after the word "political."

The question was taken by yeas and nays, and decided in the negative, yeas 2, nays 10, absent and not voting 3, as follows:

Yeas—Messrs. Howard and Rogers—2.

Nays—The Chairman, Messrs. Williams, Stevens, Washburne, Morrill, Grider, Bingham, Conkling, Boutwell and Blow—10.

Absent and not voting—Messrs. Grimes, Harris and Johnson.

So the amendment was not agreed to.

Mr. Boutwell moved to amend by striking out to and including the words "political rights and privileges," and inserting in lieu thereof the following:

"Congress shall have power to abolish any distinction in the exercise of the elective franchise in any State, which by law, regulation or usage may exist therein."

The amendment was not agreed to.

Mr. Blow moved to refer the proposed amendment to a select committee of three to be appointed by the chairman, with instruction to carefully review the same.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 7, nays 5, absent and not voting 3, as follows:

Yeas—The Chairman, Messrs. Morrill, Grider, Conkling, Boutwell, Blow and Rogers—7.

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Nays—Messrs. Howard, Williams, Stevens, Washburne and Bingham—5.

Absent and not voting—Messrs. Grimes, Harris and Johnson—3.

The motion to refer was accordingly agreed to.

The Chairman appointed as the sub-committee Messrs. Bingham, Boutwell and Rogers.

On motion of *Mr. Stevens* it was

Ordered, That the injunction of secrecy be removed so far as to allow any member of the Committee to announce in his place in Congress the substance and nature of the proposed amendment to the Constitution of the United States, under consideration by the Committee this morning.

Adjourned to meet on call of the Chairman.

Saturday, January 27, 1866.

The Committee met pursuant to the call of its Chairman; absent Messrs. Blow and Rogers.

Mr. Bingham from the sub-committee on the powers of Congress, reported back the proposed amendment of the Constitution, referred to them, in the following form:

"Congress shall have power to make all laws which shall be necessary and proper to secure all persons in every state full protection in the enjoyment of life, liberty and property; and to all citizens of the United States in any State the same immunities and also equal political rights and privileges."

The Chairman moved to strike out the word "also" in the last clause.

The motion was agreed to.

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Mr. Johnson moved to amend the last clause by striking out the word "any" and inserting the word "every" before the word "state."

The motion was agreed to.

Mr. Johnson moved to strike out the word "all" before the word "laws."

The motion was agreed to.

Mr. Johnson moved to strike out the last clause of the proposed amendment.

The question was taken by yeas and nays, and it was decided in the negative, yeas 4, nays 6, absent and not voting 5, as follows:

Yeas—Messrs. Harris, Johnson, Grider and Conkling—4.

Nays—The Chairman, Messrs. Williams, Stevens, Morrill, Bingham and Boutwell—6.

Absent and not voting—Messrs. Grimes, Howard, Washburne, Blow and Rogers—5.

So the amendment was not agreed to.

Mr. Stevens moved that the Chairman be instructed to report the joint resolution as amended to the Senate, and recommend its adoption by Congress.

The question was taken by yeas and nays, and it was decided in the negative, yeas 5, nays 5, absent and not voting 5, as follows:

Yeas—The Chairman, Messrs. Williams, Stevens, Morrill and Bingham—5.

Nays—Messrs. Harris, Johnson, Grider, Conkling and Boutwell—5.

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Absent and not voting—Messrs. Grimes, Howard, Washburne, Blow and Rogers—5.

So the motion was not agreed to.

On motion of *Mr. Stevens*, the further consideration of the joint resolution was postponed until the next meeting of the Committee.

Adjourned to meet on call of the Chairman.

Washington, January 31, 1866.

The Committee met pursuant to the call of its Chairman; absent Mr. Washburne.

Mr. Stevens laid before the Committee the joint resolution heretofore reported by the Committee proposing an amendment to the Constitution of the United States in relation to the basis of representation, which together with all propositions upon the same subject offered by members of the House were by order of the House again referred to this Committee without instructions.

The Committee proceeded to consider the joint resolution.

After discussion,

Mr. Stevens moved to amend the same by striking out the words "and direct taxes."

The motion was agreed to by yeas and nays, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Johnson, Williams, Stevens, Morrill, Bingham, Conkling, Boutwell and Blow—12.

Nays—Messrs. Grider and Rogers—2.

Absent and not voting—Mr. Washburne—1.

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Mr. Johnson moved to amend the proviso so that it should read:

"Provided that whenever the elective franchise shall be denied or abridged in any state, on account of race or color, in the election of the members of the most numerous branch of the State legislature, or in the election of the electors for President or Vice-President of the United States, or members of Congress, all persons therein of such race or color shall be excluded from the basis of representation."

The motion was not agreed to.

Mr. Johnson submitted the following in order to obtain the sense of the Committee:

Resolved, That the proposed amendment to the Constitution of the United States, in relation to the basis of representation, should be so modified as to include among the grounds of disqualification therein referred to in relation to the elective franchise, one in regard to former condition of slavery.

The question was taken by yeas and nays and it was decided in the negative, yeas 6, nays 7, absent and not voting 2, as follows:

Ayes—The Chairman, Messrs. Howard, Johnson, Williams, Grider and Blow—6.

Nays—Messrs. Grimes, Harris, Stevens, Morrill, Bingham, Conkling and Boutwell—7.

Absent and not voting—Messrs. Washburne and Rogers—2.

So the motion was not agreed to.

Mr. Stevens moved that the joint resolution as modified

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be reported back to the House of Representatives, with a recommendation that the same do pass.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 10, nays 4, absent and not voting 1, as follows:

Yeas—Messrs. Grimes, Harris, Howard, Williams, Stevens, Morrill, Bingham, Conkling, Boutwell and Blow—10.

Nays—The Chairman, Messrs. Johnson, Grider and Rogers—4.

Absent and not voting—Mr. Washburne—1.

The motion was accordingly agreed to.

Adjourned to meet on call of the Chairman.

Saturday, February 3, 1866.

The Committee met pursuant to call of its Chairman; absent Messrs. Johnson and Blow.

The Committee resumed the consideration of the proposed amendment of the Constitution of the United States, reported from the sub-committee on powers of Congress; the same having been amended, when last under consideration by the Committee (January 27, 1866) to read as follows:

"Congress shall have power to make laws which shall be necessary and proper to secure to all persons in every State full protection in the enjoyment of life, liberty and property; and to citizens of the United States in every State the same immunities, and equal political rights and privileges."

Mr. Bingham moved the following as a substitute by way of amendment:

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"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)."

After discussion,

The question was taken by yeas and nays, and it was determined in the affirmative, yeas 7, nays 6, absent and not voting 2, as follows:

Yeas—Messrs. Howard, Williams, Washburne, Morrill, Bingham, Boutwell and Rogers—7.

Nays—The Chairman, Messrs. Grimes, Harris, Stevens, Grider and Conkling—6.

Absent and not voting—Messrs. Johnson and Blow—2.

So the amendment was agreed to.

The question was upon agreeing to the proposed amendment of the Constitution as amended.

The question was taken by yeas and nays, and it was determined in the affirmative, yeas 9, nays 4, absent and not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Howard, Williams, Stevens, Washburne, Morrill, Bingham and Boutwell—9.

Nays—Messrs. Harris, Grider, Conkling, and Rogers—4.

Absent and not voting—Messrs. Johnson and Blow—2.

So the proposition as amended was adopted.

The question was upon ordering the same to be reported to Congress for adoption.

On motion of *Mr. Boutwell,* the further consideration of the same was postponed for the present.

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Mr. Howard submitted the following proposed amendment to the Constitution of the United States, for future consideration by the Committee:

"That the payment of every kind of indebtedness arising or growing out of the late rebellion, contracted or accruing in aid of it or in order to promote it, is forever prohibited to the United States and to each of the states; such indebtedness and all evidences thereof are hereby declared and in all courts and places shall be held and treated as in violation of this Constitution, and utterly void and of no effect."

Adjourned to meet on call of the Chairman.

Saturday, February 10, 1866.

The Committee met pursuant to the call of its Chairman; absent Mr. Washburne.

The Committee resumed the consideration of the joint resolution proposing an amendment to the Constitution of the United States, as amended on motion of *Mr. Bingham* at the last meeting.

Mr. Stevens moved that the same be reported to the two Houses of Congress.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 9, nays 5, absent and not voting 1, as follows:

Yeas—The Chairman, Messrs. Grimes, Howard, Williams, Stevens, Morrill, Bingham, Boutwell and Blow—9.

Nays—Messrs. Harris, Johnson, Grider, Conkling and Rogers—5.

Absent and not voting—Mr. Washburne—1.

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So the motion was agreed to.

Mr. Grider submitted the following resolution, the consideration of which was postponed till the next meeting of the Committee:

Resolved, That the sub-committee on the condition of Tennessee, as to loyalty, be requested to report to this Committee, with the proof taken touching that question, and that this Committee at its next meeting report to the House and Senate their conclusions and the evidence in the case.

Adjourned to meet on call of the Chairman.

Thursday, February 15, 1866.

The Committee met pursuant to call of its Chairman; absent Mr. Johnson.

Mr. Bingham, from the sub-committee on Tennessee, submitted a report in writing with accompanying papers; also the following bill:

Whereas, The people of Tennessee have presented a Constitution and asked admission into the Union, and which on due examination is found to be republican in its form of Government;

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, that the State of Tennessee shall be one, and is hereby declared to be one of the United States of America, on an equal footing with the other states in all respects whatever.

Sec. 2. And be it further enacted that until the Representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States,

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the State of Tennessee shall be entitled to eight representatives in Congress.

After discussion, the further consideration of the same was postponed until the next meeting.

Adjourned to 11 A. M. on Saturday next.

Washington, February 17, 1866.

The Committee met pursuant to adjournment; absent Mr. Johnson.

The Committee resumed the consideration of the bill in relation to Tennessee, as set forth in the journal of the last meeting of the Committee.

Mr. Grimes moved to amend the preamble by inserting the word "Constitution" after the word "which."

The amendment was agreed to.

Mr. Stevens moved to amend the second section so that it would read as follows:

"Sec. 2. And be it further enacted that until the next congressional election the State of Tennessee shall be entitled to eight representatives."

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 9, nays 4, absent and not voting 2, as follows:

Ayes—The Chairman, Messrs. Grimes, Howard, Stevens, Washburne, Morrill, Bingham, Conkling and Boutwell—9.

Nays—Messrs. Williams, Grider, Blow and Rogers—4.

Absent and not voting—Messrs. Harris and Johnson—2.

So the amendment was agreed to.

Mr. Williams moved to strike out the second section as amended.

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The motion was agreed to.

Mr. Harris moved the following as a substitute for the bill as amended:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled; That the United States do hereby recognize the government of the State of Tennessee, inaugurated under a constitution adopted by a convention of the people of that State, on the 8th day of January, 1865, and ratified by a vote of the people at an election held on the 22d day of February, 1865, as the legitimate government of said state, under which said state is entitled to the guarantee and all other rights of a state government under the Constitution of the United States.

Mr. Stevens moved to amend the preamble of the bill reported from the sub-committee by striking out the words "and asked admission into the Union."

Mr. Johnson here appeared in the committee room.

Mr. Bingham offered the following as a substitute for the bill of the sub-committee:

Whereas, The people of Tennessee did, on the 22d day of February, in the year of our Lord, 1865, adopt by a large popular vote an amended constitution of government, republican in form, and not inconsistent with the Costitution and laws of the United States; therefore,

Be it resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, That the constitutional relations between Tennessee and the Government of the United States are hereby restored.

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After discussion, *Mr. Bingham* submitted the following modification of his substitute:

Whereas, The people of Tennessee did, on the 22nd day of February, in the year of our Lord, 1865, adopt by a large popular vote an amended constitution of government, republican in form, and not inconsistent with the Constitution and laws of the United States,

And whereas, The people of Tennessee are in a condition for restoration to the Union as a state, and have presented said constitutional government to Congress, and asked to be restored to their constitutional relations to the Government of the United States, therefore,

Be it resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the constitutional relations between Tennessee and the Government of the United States are hereby restored, and the said state of Tennessee is declared to be a state in the Union on the same footing with the other states of the Union.

Mr. Harris withdrew his substitute.

The question was then taken by yeas and nays, upon adopting the substitute of *Mr. Bingham* for the joint resolution reported from the sub-committee on Tennessee, as the basis of action for the joint committee, and it was decided in the affirmative, yeas 9, nays 4, absent or not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Johnson, Williams, Washburne, Morrill, Bingham and Blow—9.

Nays—Messrs. Howard, Stevens, Grider and Rogers—4.

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Absent or not voting—Messrs. Conkling and Boutwell —2.

So the substitute was adopted as the basis of action of the Committee.

Mr. Rogers moved the following:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Tennessee is one of the states of and in this Union, with all the rights and privileges of the other states, and is entitled to her full representation in the Congress of the United States.

The same was rejected.

Mr. Williams moved that the whole subject of Tennessee be referred to a select committee of three members, to be appointed by the Chairman, and with instructions to report thereon to the joint committee at the next meeting.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 8, nays 7, as follows:

Yeas—The Chairman, Messrs. Howard, Williams, Stevens, Washburne, Morrill, Conkling and Boutwell—8.

Nays—Messrs. Grimes, Harris, Johnson, Grider, Bingham, Blow and Rogers—7.

So the motion was agreed to.

The Chairman appointed the following members as the select committee just ordered:

Messrs. Williams, Conkling and Boutwell.

Adjourned till 10½ o'clock A. M. on Monday next.

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Monday, February 19, 1866.

The Committee met pursuant to adjournment; absent *Mr. Johnson.*

Mr. Conkling, from the select committee on Tennessee, appointed at the last meeting of the Committee, made a verbal report, and submitted the following as a substitute for the proposition of Mr. Bingham which was referred to the select committee:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, that the functions and relations of Tennessee as a member of the Union, are hereby declared to be established, and that Senators and Representatives therefrom, their several elections, qualifications and returns being regular and sufficient, shall be entitled to admission.

And be it further resolved that the foregoing declaration is made upon the following fundamental conditions and guarantees:

First. The state of Tennessee shall never assume or pay any debt or obligation contracted or incurred in aid of the late rebellion, nor shall said state ever repudiate any debt or obligation contracted or incurred in aid of the Federal government against said rebellion; and said state shall be forever bound in like manner as the other states within this Union for the debt of the United States.

Second. The said state shall forever maintain in its constitution the provision therein contained disavowing the doctrine of secession.

Third. The said state shall, for not less than five years

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from the ratification of this resolution as hereinafter provided, exclude from the elective franchise, and from offices of honor, trust or profit, all those who adhered to and voluntarily gave aid or comfort to the late rebellion.

And be it further resolved, that the ratification of the foregoing conditions by a majority of the qualified electors of said state, in such manner as the legislature thereof may prescribe, shall be deemed an acceptance of this resolution; and upon a proclamation of such ratification by the President of the United States, the same shall become operative.

Mr. Bingham moved to strike out the third condition.

Mr. Boutwell moved to amend the second resolution by adding to it the following:

Fourth. The said state shall make no distinction in the exercise of the elective franchise on account of race or color.

Pending the consideration of which,

The Chairman moved to amend the first condition of the second resolution by striking out all after the words "in aid of the late rebellion."

After discussion,

The Committee adjourned till 10½ o'clock A. M. tomorrow.

Tuesday, February 20, 1866.

The Committee met pursuant to adjournment; absent *Mr. Johnson.*

The Committee resumed the consideration of the joint resolution in relation to Tennessee.

The pending question was upon the motion of the *Chair-*

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man to amend the first condition of the second resolution, so that the same should read as follows:

"The State of Tennessee shall never assume or pay any debt or obligation contracted or incurred in aid of the late rebellion."

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 8, nays 4, absent or not voting 3, as follows:

Yeas—The Chairman, Messrs. Harris, Howard, Washburne, Morrill, Grider, Bingham and Rogers—8.

Nays—Messrs. Williams, Stevens, Conkling and Boutwell—4.

Absent or not voting—Messrs. Grimes, Johnson and Blow—3.

So the amendment was agreed to.

The question then recurred upon the motion of *Mr. Boutwell* to still farther amend the first resolution by adding the following condition:

"Fourth. Said state shall make no distinction in the exercise of the elective franchise on account of race or color."

The question was taken by yeas and nays, and it was decided in the negative, yeas 5, nays 6, absent or not voting 4, as follows:

Yeas—Messrs. Howard, Stevens, Washburne, Morrill and Boutwell—5.

Nays—Messrs. Harris, Williams, Grider, Bingham, Conkling and Rogers—6.

Absent or not voting—The Chairman, Messrs. Grimes, Johnson and Blow—4.

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So the amendment was not agreed to.

Mr. Bingham moved the following as a substitute:

"*Whereas*, The people of Tennessee have presented a constitution to Congress, which constitution on due examination is found to be republican in its form of government, and the people are found to be in a condition to exercise the functions of a state, and can only exercise the same by the consent of the law-making power of the United States; Therefore,

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of Tennessee is hereby declared to be one of the United States of America, on an equal footing with the other states in all respects whatever."

Pending the consideration of which,

Mr. Stevens said his opinion as to the expediency and propriety of this action on the part of the joint committee had been materially changed since yesterday.

The first duty of the committee was to declare the power of Congress over this subject of reconstruction. He therefore moved to postpone all other business for the purpose of enabling him to offer the following concurrent resolution, which he should ask immediate action upon:

"Concurrent resolution concerning the insurrectionary states,

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

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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."

After discussion, the question was taken by yeas and nays upon the motion to postpone, and it was decided in the affirmative, yeas 10, nays 4, absent 1, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Conkling and Boutwell—10.

Nays—Messrs. Grider, Bingham, Blow and Rogers—4.

Absent—Mr. Johnson—1.

So the motion was agreed to.

Mr. Stevens submitted the foregoing concurrent resolution, and moved it be adopted and reported forthwith to the House of Representatives.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 12, nays 2, absent 1, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—12.

Nays—Messrs. Grider and Rogers—2.

Absent—Mr. Johnson—1.

So the resolution was adopted.

Adjourned to meet on call of the Chairman.

Saturday, March 3, 1866.

The Committee met pursuant to call of the Chairman: Absent, Messrs. Grimes, Howard and Blow.

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The following resolution of the Senate was received and recorded:

"*February* 20th, 1866.

"On motion by *Mr. Wilson:*

"*Resolved,* That the Joint Committee on Reconstruction be directed to inquire into and report how far the states lately in rebellion, or any of them, have complied with the terms proposed by the President as conditions precedent to their resumption of practical relations with the United States; which terms and conditions were as follows, viz.:

"1st. That the several state constitutions should be amended by the insertion of a provision abolishing slavery.

"2nd. That the several state conventions should declare null and void the ordinances of secession and the laws and decrees of the Confederacy.

"3rd. That the several state legislatures should ratify the amendment to the Federal Constitution abolishing slavery.

"4th. That the rebel debt, state and confederate, should be repudiated.

"5th. That civil rights should be secured by laws applicable alike to whites and blacks."

The Committee resumed the consideration of the joint resolution concerning Tennessee.

The pending question was upon the motion of *Mr. Bingham* to substitute for the basis of the action of the Committee that which was offered by him at the last meeting of the Committee.

Mr. Bingham modified the preamble of his substitute by inserting after the words "the functions of a state," the

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words "within this Union;" so that the same would read "and the people are found to be in a condition to exercise the functions of a state within this Union," etc.

After discussion,

The question was taken upon the motion to substitute, and it was decided in the affirmative, yeas 7, nays 5, absent or not voting 3, as follows:

Yeas—Messrs. Harris, Johnson, Stevens, Washburne, Grider, Bingham and Rogers—7.

Nays—The Chairman, Messrs. Williams, Morrill, Conkling and Boutwell—5.

Absent or not voting—Messrs. Grimes, Howard and Blow—3.

So the motion to substitute was agreed to.

Mr. Johnson moved to amend the substitute by striking out of the preamble the last clause as follows:

"And can only exercise the same by the consent of the law-making power of the United States."

After discussion,

The question was taken by yeas and nays, and it was decided in the negative, yeas 4, nays 7, absent or not voting 4, as follows:

Yeas—Messrs. Harris, Johnson, Grider and Rogers—4.

Nays—The Chairman, Messrs. Williams, Stevens, Washburne, Morrill, Bingham and Boutwell—7.

Absent or not voting—Messrs. Grimes, Howard, Conkling and Blow—4.

So the motion to strike out was not agreed to.

Mr. Blow entered the committee room about this time.

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The Chairman stated that he had just received a note from Mr. Grimes, stating that he was absent on account of indisposition, and requesting the Chairman to cast his vote for him on all questions before the Committee.

The question was upon adopting the preamble and bill substituted for the joint resolution of the select committee, on motion of *Mr. Bingham.*

During the discussion thereon,

The Chairman read a preamble and resolution in relation to Tennessee, which he had drawn up, but stated that he would not offer it for the action of the Committee.

Mr. Bingham said he would, with the consent of the Committee, modify his preamble, in accordance with what the *Chairman* had read, and also change the form of the bill so as to make it a joint resolution.

Leave was granted and the preamble and bill of *Mr. Bingham* were modified as follows:

"*Whereas,* The people of Tennessee have made known to the Congress of the United States their desire that the constitutional relations heretofore existing between them and the United States may be fully established, and did, on the 22d day of February, 1865, by a large popular vote, adopt and ratify a constitution of government, republican in form and not inconsistent with the Constitution and laws of the United States, and a state government has been organized under the provisions thereof, which said provisions and the laws passed in pursuance thereof proclaim and denote loyalty to the Union;

And whereas, The people of Tennessee are found to be

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in a condition to exercise the functions of a state within this Union; and can only exercise the same by the consent of the law-making power of the United States; therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Tennessee is hereby declared to be one of the United States of America, on an equal footing with the other states in all respects whatever."

The question was upon adopting the preamble and joint resolution as modified.

Mr. Harris and *Mr. Conkling* called for a division of the question.

The question was first taken by yeas and nays, upon agreeing to the joint resolution, and it was decided in the affirmative, yeas 8, nays 4, absent or not voting 3, as follows:

Yeas—Messrs. Harris, Johnson, Williams, Stevens, Grider, Bingham, Blow and Rogers—8.

Nays—The Chairman, Messrs. Washburne, Morrill and Boutwell—4.

Absent or not voting—Messrs. Grimes, Howard and Conkling—3.

So the joint resolution was agreed to.

The question was then taken by yeas and nays,upon agreeing to the preamble, and it was decided in the affirmative, yeas 7, nays 5, absent or not voting 3, as follows:

Yeas—The Chairman, Messrs. Johnson, Williams, Washburne, Grider, Bingham and Blow—7.

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Nays—Messrs. Harris, Stevens, Morrill, Boutwell and Rogers—5.

Absent or not voting—Messrs. Grimes, Howard and Conkling—3.

So the preamble was agreed to.

Pending the calls of the yeas and nays upon agreeing to the preamble and resolution,

The Chairman asked to have the votes of *Mr. Grimes* recorded, in accordance with his request in a note to the Chairman.

Mr. Rogers objected, and the votes were recorded and the results announced as above.

Mr. Bingham moved that the preamble and joint resolution together with the memorial, accompanying papers and testimony relating to Tennessee, be reported to the House of Representatives.

Mr. Conkling moved to amend the motion of *Mr. Bingham* by adding that all the testimony taken by sub-committees in relation to the states which have been declared to be in insurrection, which may be ready for publication, be also reported to Congress and its printing recommended.

After discussion,

The question was taken upon the amendment of *Mr. Conkling,* and upon a division there were ayes 4, noes 6.

So the amendment was not agreed to.

The motion of *Mr. Bingham* was then agreed to.

Mr. Conkling and *Mr. Rogers* severally asked and obtained leave to submit minority reports.

Mr. Washburne moved that the several sub-committees

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be instructed to prepare and arrange for publication the testimony taken by them, and that the same be reported to Congress and its printing recommended.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 9, nays 3, absent or not voting 3, as follows:

Yeas—The Chairman, Messrs. Harris, Williams, Stevens, Washburne, Bingham, Conkling, Boutwell and Blow—9.

Nays—Messrs. Johnson, Grider and Rogers—3.

Absent or not voting—Messrs. Grimes, Howard and Morrill—3.

So the motion was agreed to.

Adjourned to meet on call of the Chairman.

Washington, March 5, 1866.

The Committee met pursuant to the call of its Chairman; absent Messrs. Howard and Blow.

Mr. Bingham moved to reconsider the vote by which the Committee agreed to the joint resolution in relation to Tennessee, and directed the same to be reported to the House of Representatives.

The motion to reconsider was agreed to.

Mr. Bingham moved to amend the joint resolution by striking out at the close the words "in all respects whatever," and adding to the resolution the following: "upon the express condition that the people of Tennessee will maintain and enforce in good faith their existing constitution and laws excluding those who have been engaged in

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rebellion against the United States from the exercise of the elective franchise for the respective periods of time therein provided for, and shall also exclude for like period of time the same persons from eligibility to office."

Mr. Stevens moved to amend the amendment by addition as follows: "which condition shall be ratified by the legislature of Tennessee, or the people thereof as the legislature may direct before this act shall take effect."

The question was taken by yeas and nays, upon the amendment to the amendment, and it was decided in the affirmative, yeas 8, nays 5, absent or not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Williams, Stevens, Washburne, Morrill, Conkling and Boutwell—8.

Nays—Messrs. Harris, Johnson, Grider, Bingham and Rogers—5.

Absent or not voting—Messrs. Howard and Blow—2.

So the amendment to the amendment was agreed to.

The question was then taken, by yeas and nays, upon the amendment as amended, and it was decided in the affirmative, yeas 10, nays 3, absent or not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Williams, Stevens, Washburne, Morrill, Bingham, Conkling and Boutwell—10.

Nays—Messrs. Johnson, Grider and Rogers—3.

Absent and not voting—Messrs. Howard and Blow—2.

So the amendment as amended was agreed to.

Mr. Conkling moved to further amend the joint resolution by inserting before the part adopted on motion of *Mr. Stevens* the following:

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"and the state of Tennessee shall never assume or pay any debt or obligation contracted or incurred in aid of the late rebellion; nor shall said state ever in any manner claim from the United States or make any allowance of compensation for slaves emancipated or liberated in any way whatever."

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 10, nays 3, absent or not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Williams, Stevens, Washburne, Morrill, Bingham, Conkling and Boutwell—10.

Nays—Messrs. Johnson, Grider and Rogers—3.

Absent and not voting—Messrs. Howard and Blow—2.

So the amendment was agreed to.

Mr. Stevens moved to further amend the preamble and joint resolution by transferring the enacting clause from just before the joint resolution to the beginning of the preamble.

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 10, nays 3, absent 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Williams, Stevens, Washburne, Morrill, Bingham, Conkling and Boutwell—10.

Nays—Messrs. Johnson, Grider and Rogers—3.

Absent or not voting—Messrs. Howard and Blow—2.

So the motion of Mr. Stevens was agreed to.

Mr. Harris moved to strike out the following words:

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"and can only exercise the same by the consent of the law-making power of the United States."

The question was taken by yeas and nays, and it was decided in the negative, yeas 5, nays 8, absent and not voting 2, as follows:

Yeas—The Chairman, Messrs. Harris, Johnson, Grider and Rogers—5.

Nays—Messrs. Grimes, Williams, Stevens, Washburne, Morrill, Bingham, Conkling and Boutwell—8.

Absent and not voting—Messrs. Howard and Blow—2.

The question was then taken by yeas and nays, upon agreeing to the joint resolution as amended, and directing the same to be reported to the House of Representatives, and it was decided in the affirmative, yeas 8, nays 5, absent and not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Williams, Stevens, Morrill, Bingham and Conkling—8.

Nays—Messrs. Johnson, Washburne, Grider, Boutwell and Rogers—5.

Absent or not voting—Messrs. Howard and Blow—2.

So the joint resolution was adopted and ordered to be reported to the House of Representatives.

Adjourned to meet on call of the Chairman.

Washington, April 16, 1866.

The Committee met pursuant to the call of the Chairman; absent, Messrs. Fessenden, Harris, Grider, Conkling, Boutwell and Blow.

Mr. Morrill stated that he called on Mr. Fessenden yes-

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terday, and found him confined to his bed by illness, and under the care of a physician.

Mr. Stevens (Chairman of the House portion of the Committee) took the chair and called the Committee to order.

The object of the meeting was stated to be to hear *Mr. Stewart,* Senator from the State of Nevada, explain the purpose and effect of the joint resolution, introduced by him in the Senate of the United States, on the 12th inst., being entitled "Joint Resolution (S. R. 62) proposing an amendment to the Constitution of the United States; also setting forth certain conditions upon which the states, the people of which have been lately in insurrection against the United States, shall be restored to their representation in Congress."

Mr. Stewart proceeded to address the Committee at length in support and advocacy of his resolution.

After he had concluded,

On motion of *Mr. Grimes,*

The Committee adjourned to 11 A. M. on Saturday next.

Washington, April 21, 1866.

The Committee met pursuant to adjournment; absent, The Chairman, and Messrs. Harris and Conkling.

Mr. Stevens moved that Mr. Johnson take the chair in absence of the Chairman.

The motion was agreed to.

Mr. Grimes stated that Mr. Fessenden was recovering and would probably be out next week.

On motion of *Mr. Stevens* it was

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Resolved, That in the opinion of this Committee it is expedient that the taking of testimony by the several subcommittees be concluded next week.

Mr. Stevens said he had a plan of reconstruction, one not of his own framing, but which he should support, and which he submitted to the Committee for consideration.

It was read as 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.

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

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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.

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Mr. Stevens said he had submitted the proposed amendment to the Constitution with the proposed legislation by Congress, to the Committee for action together; but it would be necessary to submit the two propositions separately to Congress for its action.

The Committee then proceeded to consider the same.

The question was upon agreeing to the proposed first section of the amendment.

Mr. Bingham moved to amend the same by adding the following: "nor shall any state deny to any person within its jurisdiction the equal protection of the laws, nor take private property for public use without just compensation."

After discussion thereon

The question was taken, and it was decided in the negative, yeas 5, nays 7, absent 3, as follows:

Yeas—Messrs. Johnson, Stevens, Bingham, Blow and Rogers—5.

Nays—Messrs. Grimes, Howard, Williams, Washburne, Morrill, Grider and Boutwell—7.

Absent—Messrs. Fessenden, Harris and Conkling—3.

So the amendment was not agreed to.

The question was taken upon adopting the first section, and it was decided in the affirmative, yeas 10, nays 2, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Boutwell and Blow—10.

Nays—Messrs. Grider and Rogers—2.

Absent—Messrs. Fessenden, Harris and Conkling—3.

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The first section was accordingly adopted.

The question was upon adopting the second section.

After discussion thereon

The question was taken, and it was decided in the affirmative, yeas 8, nays 4, absent 3, as follows:

Yeas—Messrs. Grimes, Harris, Williams, Stevens, Washburne, Morrill, Bingham and Blow—8.

Nays—Messrs. Johnson, Grider, Boutwell and Rogers—4.

Absent—Messrs. Fessenden, Harris and Conkling—3.

So the second section was adopted.

The question was then taken upon adopting the third section, and it was decided in the affirmative, yeas 9, nays 3, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Boutwell and Blow—9.

Nays—Messrs. Johnson, Grider and Rogers—3.

Absent—Messrs. Fessenden, Harris and Conkling—3.

So the third section was adopted.

The question was upon adopting the fourth section.

Mr. Rogers moved to amend by striking out the words, "by any state nor," so that the clause would read—"shall not be paid by the United States."

The question was taken, and it was decided in the negative, yeas 3, nays 9, absent 3, as follows:

Yeas—Messrs. Johnson, Grider and Rogers—3.

Nays—Messrs. Grimes, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Boutwell and Blow—9.

Absent—Messrs. Fessenden, Harris and Conkling—3.

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So the amendment was not agreed to.

Mr. Stevens moved to amend the section by inserting after the word "debts" the words "or obligations already incurred, or which may hereafter be," so that it would read —"Debts or obligations already incurred, or which may hereafter be incurred in aid of insurrection," etc.

The amendment was agreed to.

The question was taken upon the section as amended, and it was decided in the affirmative, yeas 10, nays 2, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Boutwell and Blow —10.

Nays—Messrs. Grider and Rogers—2.

Absent—Messrs. Fessenden, Harris and Conkling—3.

So the fourth section as amended was adopted.

Mr. Bingham moved to insert as section five the following:

"Sec. 5. 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."

After discussion thereon

The question was taken, and it was decided in the affirmative, yeas 10, nays 2, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Boutwell and Blow —10.

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Nays—Messrs. Grider and Rogers—2.

Absent—Messrs. Fessenden, Harris and Conkling—3.

So the section proposed by *Mr. Bingham* was adopted.

The sixth section was read, giving Congress power to enforce the provisions of the article.

The question was taken upon adopting the section, and it was decided in the affirmative, yeas 10, nays 2, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Boutwell and Blow —10.

Nays—Messrs. Grider and Rogers—2.

Absent—Messrs. Fessenden, Harris and Conkling—3.

So the sixth section was adopted.

The Committee proceeded to consider the accompanying joint resolution.

Mr. Morrill submitted the following additional resolution:

"*And be it further resolved,* That when any state lately in insurrection shall have adopted Article — of amendment to the Constitution as proposed —, any part of the direct tax under the act of August 5, 1861, which may remain due and unpaid in such state, may be assumed and paid by such state; and the payment thereof, upon proper assurances from such state to be given to the Secretary of the Treasury of the United States, may be postponed for a period not exceeding ten years."

Pending which

Mr. Bingham moved to amend the resolution submitted

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by *Mr. Stevens* by striking out after the enacting clause the following words:

"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"—

And inserting in lieu thereof the following:

"That whenever, after the first day of February, 1867, any state lately in insurrection shall have adopted this article of amendment, and shall have conformed its constitution thereto and to the constitution and laws of the United States, such state shall be entitled to representation in the Congress of the United States, and"

Mr. Conkling at this period of the session entered the Committee room, and stated that he had been unable to come earlier.

After some discussion upon the amendment proposed by *Mr. Bingham*,

On motion of *Mr. Grimes* it was

Ordered, That when the Committee adjourn to-day it be to meet at 10 A. M. on Monday next.

After further discussion,

On motion of *Mr. Conkling*,

The Committee adjourned.

Washington, April 23, 1866.

The Committee met pursuant to adjournment (Mr. Johnson in the chair). Absent, Messrs. Fessenden, Harris and Grider.

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The Committee resumed the consideration of the joint resolution pending at the adjournment on Saturday.

Mr. Stevens said he desired to withdraw the joint resolution submitted by him on Saturday, so far as the same related to the admission of the states lately in insurrection, for the purpose of submitting a bill in its place—leaving the proposed amendment to the Constitution to stand by itself, as it had been adopted by the Committee.

Mr. Howard moved that *Mr. Stevens* have the leave asked.

The motion was agreed to, and the joint resolution was accordingly withdrawn.

Mr. Stevens submitted the following bill for the consideration of the Committee.

A Bill 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;

And, whereas, the Congress did, by joint resolution, propose for ratification to the legislatures of the several states, as an amendment to the Constitution of the United States, an article in the following words, to wit:

" 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.

" Sec. 2. From and after the fourth day of July in the

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year 1876 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, 1876, 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 or obligations already incurred or which may hereafter be incurred in aid of insurrection or of war against the Union, and claims for compensation for loss of involuntary service or labor, shall not be paid by any state nor by the United States.

"Sec. 5. 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. 6. The Congress shall have power to enforce by appropriate legislation the provisions of this article."

Now, therefore,

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, 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

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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 into Congress as such; *Provided,* That until after the fourth day of July, 1876, no person shall be eligible to either branch of the National Legislature who is included in any of the following classes, namely:

First. Persons who, having been officers of the army or navy of the United States, or having been members of the 36th Congress, or having held in the year 1860 seats in the Cabinet, or judicial offices under the United States, did afterwards take part in the late insurrection.

Second. Persons who have been civil or diplomatic officers of the so-called confederate government, or officers of the army or navy of said government above the rank of colonel in the army and of lieutenant in the navy.

Third. Persons in regard to whom it shall appear that they have treated officers or soldiers or sailors of the army or navy of the United States, of whatever race, or color, captured during the late civil war, otherwise than lawfully as prisoners of war.

Fourth. Persons in regard to whom it shall appear that they are disloyal.

Mr. Bingham moved to amend by striking out all after the enacting clause down to and including the word "Provided," and inserting the following:

"That whenever the above recited amendment shall have been ratified in good faith by the legislature of Tennessee, and said state shall have conformed her laws thereto, said

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state shall be entitled to representation in Congress, and upon the ratification in good faith by the other states lately in insurrection of the foregoing article of amendment said states shall after the first day of February, 1867, be entitled to representation in Congress, subject to the following condition, that said states so ratifying said amendment shall conform their constitutions and laws thereto; Provided, however."

The question was taken upon the amendment, and it was decided in the negative, yeas 4, nays 8, absent 3, as follows:

Yeas—Messrs. Johnson, Bingham, Blow and Rogers—4.

Nays—Messrs. Grimes, Howard, Williams, Stevens, Washburne, Morrill, Conkling and Boutwell—8.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the amendment was rejected.

Mr. Stevens moved to amend the second clause of exceptions by striking out the words "civil or."

The amendment was agreed to.

Mr. Stevens moved to further amend the same clause by striking out the word "lieutenant" and inserting the word "master."

The amendment was agreed to.

Mr. Williams moved to strike out the fourth clause as follows:

"Fourth. Persons in regard to whom it shall appear that they are disloyal."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 12, nays 0, absent 3, as follows:

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Yeas—Messrs. Grimes, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell, Blow and Rogers—12.

Nays—0.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the motion to strike out was agreed to.

Mr. Boutwell moved to strike out all after the words "in any of the following classes, namely," and to insert in lieu thereof the following:

First. The President and Vice-President of the Confederate States of America so-called,—the heads of departments and the members of both houses of the Congress thereof.

Second. Those who in other countries have acted as agents of the Confederate States of America, so-called.

Third. Heads of departments in the government of the United States, Judges of the Courts of the United States, officers of the army and navy of the United States, and members of either house of the Congress of the United States, who aided the late rebellion.

Fourth. Those who acted as officers of the Confederate States of America so-called, above the grade of colonel in the army or master in the navy, and any one who as governor of either of said so-called Confederate States gave aid or comfort to the rebellion.

Fifth. Those who have treated officers or soldiers or sailors of the army or navy of the United States, captured during the late war, otherwise than lawfully as prisoners of war."

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After discussion,

The question was taken, and it was decided in the affirmative, yeas 8, nays 4, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Williams, Stevens, Washburne, Morrill, Conkling and Boutwell—8.

Nays—Messrs. Johnson, Bingham, Blow and Rogers—4.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the amendment was agreed to.

Mr. Boutwell moved to further amend by striking out after the words "Provided, That," the words "until after the fourth day of July, 1876."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 7, nays 5, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Stevens, Washburne, Conkling, Boutwell and Rogers—7.

Nays—Messrs. Johnson, Williams, Morrill, Bingham and Blow—5.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the amendment was agreed to.

Mr. Morrill moved the following as an additional section:

"Sec. 2. And be it further enacted, That when any state lately in insurrection shall have ratified the foregoing proposed amendment to the Constitution, any part of the direct tax under the act of August 5, 1861, which may remain due and unpaid in such state, may be assumed and paid by such state; and the payment thereof, upon proper assurances from such state, to be given to the Secretary of the Treasury of the United States, may be postponed for a period

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not exceeding ten years from and after the passage of this act."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 11, nays 1, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—11.

Nay—Mr. Rogers—1.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the additional section was adopted.

Mr. Washburne moved that the chairmen of the Senate and House portions of the joint committee (Messrs. Fessenden and Stevens) be instructed to report the joint resolution and bill agreed upon by the Committee to their respective houses; and that they ask permission to submit reports upon the same at some future time.

Mr. Grimes moved to amend the motion of *Mr. Washburne,* by striking out the last clause and inserting in lieu thereof the following:

"And that they be instructed to prepare reports to accompany the same."

Mr. Rogers asked leave for the minority of the Committee to prepare and submit their views in the shape of reports.

Pending which,

Mr. Conkling moved that when the Committee adjourn to-day, it be to meet on Wednesday next at 10½ o'clock A. M.

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The question was taken, and it was decided in the affirmative, yeas 8, nays 4, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Morrill, Conkling, Boutwell and Blow—8.

Nays—Messrs. Stevens, Washburne, Bingham and Rogers—4.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the motion was agreed to.

Mr. Conkling moved that the Committee now adjourn.

The question was taken, and it was decided in the affirmative, yeas 8, nays 4, absent 3, as follows:

Yeas—Messrs. Grimes, Howard, Johnson, Williams, Morril, Conkling, Boutwell and Blow—8.

Nays—Messrs. Stevens, Washburne, Bingham and Rogers—4.

Absent—Messrs. Fessenden, Harris and Grider—3.

So the motion was agreed to, and the Committee accordingly adjourned.

Washington, April 25, 1866.

The Committee met pursuant to adjournment (Mr. Johnson in the chair); absent, Messrs. Fessenden and Washburne.

The question pending at the adjournment of the last meeting was the motion of *Mr. Washburne* instructing the chairmen of the Senate and House portions of the joint committee to report to their respective houses the joint resolution and bill agreed upon by the committee at its last meeting, and to ask leave to submit written reports at some future time to accompany the same.

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To this motion *Mr. Grimes* had moved an amendment, viz.: to strike out the last clause and to insert an instruction to prepare reports to accompany the joint resolution and bill when reported.

Mr. Grimes withdrew his amendment.

The question recurred upon the motion of *Mr. Washburne.*

Pending which,

Mr. Conkling moved to amend the bill by striking out the word "usual" before the words "oath of office," and inserting in lieu thereof the word "required."

The amendment was agreed to.

Mr. Bingham moved further to amend the bill by striking out the word "oath" and inserting the word "oaths."

The amendment was agreed to.

Mr. Williams moved to amend the joint resolution by striking out the fifth section of the proposed amendment to the Constitution, as follows:

"Section 5. 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."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 7, nays 5, absent or not voting 3, as follows:

Yeas—Messrs. Harris, Howard, Johnson, Williams, Grider, Conkling and Boutwell—7.

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Nays—Messrs. Stevens, Morrill, Bingham, Rogers and Blow—5.

Absent or not voting—Messrs. Fessenden, Grimes and Washburne—3.

So the amendment was agreed to.

The question recurred upon the motion of *Mr. Washburne* to report the joint resolution and bill agreed upon to the two houses, etc.

After discussion,

The question was taken, and it was decided in the affirmative, yeas 7, nays 6, absent 2, as follows:

Yeas—Messrs. Grimes, Harris, Howard, Williams, Stevens, Morrill and Bingham—7.

Nays—Messrs. Johnson, Grider, Conkling, Boutwell, Blow and Rogers—6.

Absent—Messrs. Fessenden and Washburne—2.

So the motion was agreed to.

Mr. Bingham submitted for adoption by the Committee as a separate article of amendment to the Constitution, the section which had been stricken out of the one adopted by the Committee.

After discussion,

The question was taken, and it was decided in the negative, yeas 4, nays 8, absent or not voting 3, as follows:

Yeas—Messrs. Johnson, Bingham, Grider and Rogers—4.

Nays—Messrs. Grimes, Howard, Williams, Stevens, Morrill, Conkling, Boutwell and Blow—8.

Absent or not voting—Messrs. Fessenden, Harris and Washburne—3.

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So the proposition of *Mr. Bingham* was not agreed to.

Mr. Grider gave notice that at the proper time he should submit for the consideration and action of the Committee the following resolution:

Resolved, That, in the opinion of this Committee, the people of Tennessee having elected according to law loyal men as Senators and Representatives, they should be admitted to seats in the present Congress, upon taking the usual oath of office.

Mr. Williams moved to reconsider the vote by which the Committee directed the joint resolution and bill adopted by the Committee to be reported to the two houses of Congress.

After discussion,

The question was taken, and it was decided in the affirmative, yeas 10, nays 2, absent 3, as follows:

Yeas—Messrs. Grimes, Harris, Johnson, Williams, Grider, Bingham, Conkling, Boutwell, Blow and Rogers—10.

Nays—Messrs. Howard and Stevens—2.

Absent—Messrs. Fessenden, Washburne and Morrill—3.

So the motion to reconsider was agreed to.

And then, on motion of *Mr. Grimes,*

The Committee adjourned till Saturday next, at 10½ o'clock A. M.

Washington, April 28, 1866.

The Committee met pursuant to adjournment; all the members present.

The Chairman said that the vote of the Committee order-

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ing the joint resolution and bill agreed upon to be reported to the two houses having been reconsidered at the last meeting, the Committee would resume the consideration of the same, and they would be regarded as still open to amendment.

Mr. Stevens moved to strike out all of Section two of the proposed amendment to the Constitution of the United States as follows:

"Sec. 2. From and after the fourth day of July, in the year 1876, 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."

And the following at the beginning of section three:

"Until the fourth day of July, 1876."

So that the third section would then read,

"No class of persons, as to the right 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."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 12, nays 2, not voting 1, as follows:

Yeas—Messrs. Grimes, Harris, Johnson, Williams, Stevens, Morrill, Grider, Bingham, Conkling, Boutwell, Blow and Rogers—12.

Nays—Messrs. Howard and Washburne—2.

Not voting—The Chairman—1.

So the motion to strike out was agreed to.

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Mr. Williams moved to strike out what had been section three, and to insert in lieu thereof the following:

"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 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 such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 12, nays 3, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Johnson, Williams, Morrill, Grider, Bingham, Conkling, Boutwell, Blow and Rogers—12.

Nays—Messrs. Howard, Stevens and Washburne—3.

So the motion of *Mr. Williams* was agreed to.

The Committee proceeded to consider the following section:

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

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Mr. Rogers moved to amend by striking out the words "by any State, nor."

The question was taken, and it was decided in the negative, yeas 3, nays 12, as follows:

Yeas—Messrs. Johnson, Grider and Rogers—3.

Nays—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—12.

So the amendment was rejected.

Mr. Bingham moved to change the phraseology of the section, so that it should read,

"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."

The motion was agreed to.

Mr. Boutwell moved to insert the following as an additional section:

"Sec. —. The President and Vice-President of the late Confederate States of America so-called; the heads of departments thereof; those who in other countries acted as agents of the Confederate States of America so-called; those who, having been heads of departments of the United States, or officers of the army or navy of the United States, or members of either house of the 36th Congress of the United States, afterwards aided in the late rebellion; and any one who as governor of either of the so-called Confederate States gave aid or comfort to the late rebellion,

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are declared to be forever ineligible to any office under the United States."

Mr. Stevens moved to amend the section proposed by *Mr. Boutwell* by inserting after the clause relating to confederate agents in foreign countries the following:

"officers of the army or navy of the Confederate States of America so-called, above the rank of colonel in the army or master in the navy."

After discussion,

The question was taken, and it was decided in the negative, yeas 3, nays 12, as follows:

Yeas—Messrs. Stevens, Washburne and Conkling—3.

Nays—The Chairman, Messrs. Grimes, Harris, Howard, Johnson, Williams, Morrill, Grider, Bingham, Boutwell, Blow and Rogers—12.

So the amendment of *Mr. Stevens* was not agreed to.

The question was then taken upon the section proposed by *Mr. Boutwell,* and it was decided in the negative, yeas 6, nays 8, not voting 1, as follows:

Yeas—Messrs. Harris, Stevens, Washburne, Morrill, Conkling and Boutwell—6.

Nays—The Chairman, Messrs. Howard, Johnson, Williams, Grider, Bingham, Blow and Rogers—8.

Not voting—Mr. Grimes—1.

So the section was not agreed to.

Mr. Harris moved to insert the following as an additional section to follow the section in relation to representation:

"Sec. —. Until the fourth day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection,

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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."

After discussion,

The question was taken, and it was decided in the negative, yeas 7, nays 8, as follows:

Yeas—Messrs. Harris, Howard, Stevens, Washburne, Morrill, Conkling and Boutwell—7.

Nays—The Chairman, Messrs. Grimes, Johnson, Williams, Grider, Bingham, Blow and Rogers—8.

So the section proposed by *Mr. Harris* was not agreed to. Subsequently, after discussion,

Mr. Grimes moved to reconsider the vote by which the section proposed by *Mr. Harris* was rejected.

The question was taken, and it was decided in the affirmative, yeas 8, nays 5, not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Stevens, Morrill, Conkling and Boutwell—8.

Nays—Messrs. Johnson, Grider, Bingham, Blow and Rogers—5.

Not voting—Messrs. Williams and Washburne—2.

So the motion to reconsider was agreed to.

Mr. Williams said that upon this section he was paired with *Mr. Washburne* who had temporarily left the committee room.

The question recurred upon agreeing to the section proposed by *Mr. Harris*.

The question was taken, and it was decided in the affirmative, yeas 7, nays 6, not voting 2, as follows:

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Yeas—Messrs. Grimes, Harris, Howard, Stevens, Morrill, Conkling and Boutwell—7.

Nays—The Chairman, Messrs. Johnson, Grider, Bingham, Blow and Rogers—6.

Not voting—Messrs. Williams and Washburne—2.

So the section was adopted.

The section granting power to Congress to enforce the provisions of the article was adopted.

Mr. Bingham moved to strike out the first section of the proposed amendment to the Constitution, which was as follows:

"Section 1. No discrimination shall be made by any State, or by the United States, as to the civil rights of persons, because of race, color or previous condition of servitude."

and to insert in lieu thereof the following:

"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."

After discussion,

The question was taken, and it was decided in the affirmative, yeas 10, nays 3, not voting 2, as follows:

Yeas—Messrs. Johnson, Williams, Stevens, Washburne, Grider, Bingham, Conkling, Boutwell, Blow and Rogers—10.

Nays—Messrs. Grimes, Howard and Morrill—3.

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Not voting—The Chairman and Mr. Harris—2.

So the motion of *Mr. Bingham* was agreed to.

The Committee then proceeded to the consideration of the bill to provide for restoring to the states lately in insurrection their full political rights.

Mr. Boutwell moved that that portion relating to certain persons to be excluded from office be considered as a separate bill.

The motion was agreed to.

The preamble was modified, in so far as it recites the proposed amendment to the Constitution, to correspond with the action of the Committee this morning.

The Committee proceeded to consider the following section:

"*Be it enacted, etc.*, That whenever the above recited amendment shall have become part of the Constitution of the United States, 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 required oaths of office, be admitted into Congress as such."

After discussion,

The Chairman moved to strike out the word "shall" and insert the word "may" before the words "after having taken," etc.

The motion was agreed to.

Mr. Boutwell moved to amend the section by striking out all after the word "that" and inserting the following:

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"whenever the above recited amendment shall have become a part of the Constitution of the United States and whenever either Tennessee or Arkansas shall have ratified the same, and shall have so modified its constitution and laws as to make them conform thereto, and shall have provided a system of equal suffrage for all loyal male citizens within its jurisdiction who are not less than twenty-one years of age, the Senators and Representatives from such state, if found duly elected and qualified, shall, after having taken the required oaths of office, be admitted into Congress as such; provided, that nothing contained in this act shall be so construed as to disfranchise any loyal person now entitled to vote."

Mr. Bingham moved to amend the amendment by striking out all the first part to and including the words "the same," and inserting "whenever either Tennessee or Arkansas shall have ratified the above recited amendment."

After discussion,

The question was taken upon the amendment to the amendment, and it was decided in the negative, yeas 4, nays 7, not voting 4, as follows:

Yeas—Messrs. Johnson, Williams, Bingham and Blow—4.

Nays—The Chairman, Messrs. Grimes, Howard, Stevens, Morrill, Grider and Rogers—7.

Not voting—Messrs. Harris, Washburne, Conkling and Boutwell—4.

So the amendment to the amendment was not agreed to.

The question was then taken upon the amendment of *Mr.*

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Boutwell, and it was decided in the negative, yeas 2, nays 9, not voting 4, as follows:

Yeas—Messrs. Johnson and Boutwell—2.

Nays—The Chairman, Messrs. Grimes, Howard, Williams, Stevens, Grider, Bingham, Blow and Rogers—9.

Not voting—Messrs. Harris, Washburne, Morrill and Conkling—4.

So the amendment was not agreed to.

Mr. Conkling moved to amend the first section of the bill under consideration by striking out the words "with the first section thereof," and inserting the word "therewith" in lieu thereof.

The amendment was agreed to.

Mr. Williams moved to amend by striking out all after the words "That whenever," and inserting the following:

"any one of the states lately in rebellion shall ratify the above recited amendment as required by the Constitution of the United States, the Senators and Representatives of such state shall, after the 4th day of March, 1867, if found duly elected and qualified and after taking the required oaths of office, be admitted into Congress as such; Provided that Senators and Representatives from Tennessee and Arkansas, elected and qualified as aforesaid, shall be admitted into Congress as soon as said states respectively shall ratify said amendment as aforesaid."

After discussion,

The question was taken, and it was decided in the negative, yeas 4, nays 9, not voting 2, as follows:

Yeas—Messrs. Johnson, Williams, Bingham and Blow—4.

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Nays—The Chairman, Messrs. Grimes, Howard, Stevens, Morrill, Grider, Conkling, Boutwell and Rogers—9.

Not voting—Messrs. Harris and Washburne—2.

So the amendment was not agreed to.

The first section as amended was then agreed to.

The second section in relation to the direct tax was agreed to.

The Committee then proceeded to consider the bill declaring certain persons ineligible to office.

The first part was as follows:

"*Be it enacted, etc.*, That no person shall be eligible to either branch of the National Legislature who is included in any of the following classes, namely,"

Mr. Conkling moved to amend by striking out the words "either branch of the National Legislature," and inserting the words "any office under the government of the United States."

The amendment was agreed to.

The next clause was as follows:

"First. The President and Vice-President of the Confederate States of America so-called, the heads of departments and members of both houses of Congress thereof."

The Chairman moved to amend by striking out the words "and members of both houses of Congress."

The question was taken, and it was decided in the affirmative, yeas 10, nays 5, as follows:

Yeas—The Chairman, Messrs. Grimes, Johnson, Williams, Morrill, Grider, Bingham, Boutwell, Blow and Rogers—10.

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Nays—Messrs. Harris, Howard, Stevens, Washburne and Conkling—5.

So the amendment was agreed to.

The next clause was as follows:

"Second. Those who in other countries acted as agents of the Confederate States of America so-called."

Mr. Howard moved to strike it out.

The question was taken, and it was decided in the negative, yeas 3, nays 12, as follows:

Yeas—Messrs. Howard, Grider and Rogers—3.

Nays—The Chairman, Messrs. Grimes, Harris, Johnson, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—12.

So the motion to strike out was not agreed to.

The next clause was as follows:

"Third. Heads of departments in the Government of the United States, officers of the army and navy of the United States, Judges of the Courts of the United States, and members of either house of the 36th Congress of the United States who aided the late rebellion."

Mr. Grimes moved to amend by inserting before the word "Judges," the words "and all persons educated at the naval or military academy of the United States."

The amendment was agreed to.

The next clause was as follows:

"Fourth. Those who acted as officers of the Confederate States of America so-called, above the grade of colonel in the army or master in the navy; and any one who as governor of either of the so-called Confederate States gave aid or comfort to the rebellion."

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Mr. Grimes moved to amend by striking out the words "Those who acted as officers of the Confederate States of America so-called, above the grade of colonel in the army or master in the navy, and."

After discussion,

The question was taken, and it was decided in the negative, yeas 4, nays 11, as follows:

Yeas—Messrs. Grimes, Johnson, Grider and Rogers—4.

Nays—The Chairman, Messrs. Harris, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—11.

So the amendment was not agreed to.

The next clause was agreed to as follows:

"Fifth. Those who treated officers or soldiers or sailors of the army or navy of the United States, captured during the late war, otherwise than lawfully as prisoners of war."

Mr. Grider submitted the following resolutions:

Resolved, That, in the opinion of this Committee, the people of Tennessee having elected according to law loyal men as Senators and Representatives, they should be admitted to seats in the present Congress upon taking the usual oath of office.

Resolved, further, That each of the states not now represented should be allowed representation upon the same terms.

Mr. Grimes moved to amend the first resolution by adding thereto the following:

"Provided they comply with the terms agreed upon by the Committee this session."

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The question was taken, and it was decided in the affirmative, yeas 9, nays 4, not voting 2, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Morrill, Bingham and Conkling—9.

Nays—Messrs. Johnson, Grider, Blow and Rogers—4.

Not voting—Messrs. Washburne and Boutwell—2.

So the amendment was agreed to.

Mr. Stevens moved to lay the resolutions on the table.

The question was taken, and it was decided in the negative, yeas 5, nays 7, not voting 3, as follows:

Yeas—Messrs. Howard, Williams, Stevens, Morrill and Bingham—5.

Nays—Messrs. Grimes, Harris, Johnson, Grider, Conkling, Blow and Rogers—7.

Not voting—The Chairman, Messrs. Washburne and Boutwell—3.

So the motion to lay on the table was not agreed to.

The question recurred upon agreeing to the resolution as amended.

The question was taken, and it was decided in the negative, yeas 2, nays 10, not voting 3, as follows:

Yeas—Messrs. Grimes and Johnson—2.

Nays—Messrs. Harris, Howard, Williams, Stevens, Morrill, Grider, Bingham, Conkling, Blow and Rogers—10.

Not voting—The Chairman, Messrs. Washburne and Boutwell—3.

So the resolutions were not adopted.

Mr. Stevens moved that the joint resolution and bills adopted by the Committee to-day be reported on Monday

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next to the two houses of Congress, and that leave be asked to submit at some future time reports to accompany the same.

Mr. Boutwell asked that a separate vote be taken upon the joint resolution and bills; which was ordered.

The first question was upon reporting the joint resolution proposing an amendment to the Constitution of the United States.

The question was taken, and it was decided in the affirmative, yeas 12, nays 3, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—12.

Nays—Messrs. Johnson, Grider and Rogers—3.

So the motion to report the joint resolution was agreed to.

The next question was upon reporting the bill to provide for restoring to the States lately in insurrection their full political rights.

The question was taken, and it was decided in the affirmative, yeas 12, nays 3, as follows:

Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—12.

Nays—Messrs. Johnson, Grider and Rogers—3.

So the motion was agreed to.

The next question was upon reporting the bill declaring certain persons ineligible to office under the government of the United States.

The question was taken, and it was decided in the affirmative, yeas 12, nays 3, as follows:

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Yeas—The Chairman, Messrs. Grimes, Harris, Howard, Williams, Stevens, Washburne, Morrill, Bingham, Conkling, Boutwell and Blow—12.

Nays—Messrs. Johnson, Grider and Rogers—3.

So the motion was agreed to.

On motion of *Mr. Rogers,* it was

Ordered, That the minority of the Committee have leave to submit minority reports.

On motion of *Mr. Grimes,* it was

Ordered, That the injunction of secrecy be removed, so far as relates to the results of the action of the Committee at this session.

On motion of *Mr. Boutwell,* it was

Ordered, That the stenographer of this Committee be authorized to furnish to the agent of the associated press, and the correspondents of such newspapers as may apply to him, copies of the joint resolution and bills adopted by the Committee to-day, after the same shall have been submitted to and approved by the Chairman.

The joint resolution and bills adopted are 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

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Legislatures, shall be valid as part of the Constitution, namely:

Article —

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 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

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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.

A bill to provide for restoring to the States lately in insurrection 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; and whereas the Congress did, by joint resolution, propose for ratification to the Legislatures of the several States, as an amendment to the Constitution of the United States, an article in the following words, to wit:

"Article—

"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 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 ex-

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cept for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of 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."

Now, therefore,

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the above recited amendment shall have become part of the Constitution of the United States, and any State lately in insurrection shall have ratified the same, and shall have modified its constitution and laws in conformity therewith, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such.

Sec. 2. And be it further enacted, That when any State

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lately in insurrection shall have ratified the foregoing amendment to the Constitution, any part of the direct tax under the act of August 5, 1861, which may remain due and unpaid in such State may be assumed and paid by such State; and the payment thereof, upon proper assurances from such State to be given to the Secretary of the Treasury of the United States, may be postponed for a period not exceeding ten years from and after the passage of this act.

A Bill declaring certain persons ineligible to office under the Government of the United States.

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be eligible to any office under the Government of the United States who is included in any of the following classes, namely:

1. The President and Vice-President of the Confederate States of America, so-called, and the heads of departments thereof.

2. Those who in other countries acted as agents of the Confederate States of America, so-called.

3. Heads of Departments of the United States, officers of the Army and Navy of the United States, and all persons educated at the Military or Naval Academy of the United States, judges of the courts of the United States, and members of either House of the Thirty-Sixth Congress of the United States who gave aid or comfort to the late rebellion.

4. Those who acted as officers of the Confederate States

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of America, so-called, above the grade of colonel in the army or master in the navy, and any one who, as Governor of either of the so-called Confederate States, gave aid or comfort to the rebellion.

5. Those who have treated officers or soldiers or sailors of the Army or Navy of the United States, captured during the late war, otherwise than lawfully as prisoners of war.

And then on motion of *Mr. Grimes*,

The Committee adjourned to meet upon the call of its Chairman.

Washington, June 6, 1866.

The Committee met pursuant to the call of its Chairman; absent, Messrs. Washburne, Blow, Rogers, Johnson, Grider and Conkling.

The Chairman stated that he had called the Committee together for the purpose of laying before them a report he had prepared to accompany the measures which at the last meeting the Committee directed to be reported to the two houses of Congress.

The report was read and adopted.

On motion of *Mr. Howard*,

The Chairmen of the Senate and House portions of the Joint Committee were instructed to submit the report just adopted to their respective houses.

Adjourned to meet on call of the Chairman.

Attest

(Sgd.) WM. BLAIR LORD, *Clerk*.

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SECOND SESSION.

IN THE HOUSE OF REPRESENTATIVES,

December 4th, 1866.

Resolved (the Senate concurring), That the Joint Committee of Fifteen on Reconstruction, appointed during the last session of Congress, shall be reappointed under the same rules and regulations as then existed, and that all the documents and resolutions which were referred then be now considered as referred to them anew.

Attest

EDWD. MCPHERSON, *Clerk.*

IN THE SENATE OF THE UNITED STATES,

December 5, 1866.

Resolved, That the Senate concur in the foregoing resolution of the House of Representatives, relative to the reappointment of the Joint Committee of Fifteen on Reconstruction.

Attest

J. W. FORNEY, *Secretary.*

by W. J. MCDONALD, *Chief Clerk.*

OFFICE HOUSE OF REPRESENTATIVES U. S.,

February 15th, 1867.

I certify that the foregoing is a true copy of the original now on file in this office.

Attest

EDWD. MCPHERSON, *Clerk.*

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Members on the part of the Senate.

Mr. William P. Fessenden of Maine.
" James W. Grimes, " Iowa.
" Ira Harris, " New York.
" Jacob M. Howard, " Michigan.
" Reverdy Johnson, " Maryland.
and " George H. Williams, " Oregon.

Members on the part of the House of Rep's.

Mr. Thaddeus Stevens, of Penn'a.
" John F. Farnsworth, " Illinois, vice Mr. Washburne excused.
" Justin S. Morrill, " Vermont.
" Elijah Hise, " Kentucky, vice Mr. Grider deceased.
" John A. Bingham, " Ohio.
" Roscoe Conkling, " New York.
" George S. Boutwell, " Mass.
" Henry T. Blow, " Missouri.
and " Andrew J. Rogers, " New Jersey.

Washington, Feb. 2, 1867.

The Committee met on call of the Ghairman at Senate Committee Room on the Pacific Railroad. Present, Mr. Fessenden (Chairman) and the entire Committee.

On motion of *Mr. Stevens*, House Bill (Substitute for House Bill No. 543) was read, when,

On motion of *Mr. Bingham*, the original Bill was also read. After reference had been made to both bills, *Mr. Stevens* submitted the following resolution:

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"That the States lately in Rebellion shall be reconstructed upon the principle of granting them enabling Acts to form their State Constitutions," which, after some discussion, was modified by him on leave as follows:

"That the States lately in Rebellion shall be reconstructed upon the principle, "*providing by Act of Congress that they may form State Constitutions and Governments.*"

The discussion upon this motion was continued by Messrs. Stevens, Howard, Bingham, Conkling, Johnson, Williams, Farnsworth and Boutwell, during which time, *Mr. Bingham* asked leave to amend the original House Bill No. 543 as follows, add after word "therewith" the following, "And shall have secured impartial suffrage to the male citizens of the U. S. of full age resident therein," the section amended reading as follows:

"*Be it enacted,* by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the above recited amendment shall have become part of the Constitution of the United States, and any State lately in insurrection shall have ratified the same, and shall have modified its constitution and laws in conformity therewith, and shall have secured impartial suffrage to the male citizens of the United States, of full age resident therein, the senators and representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such.

Pending discussion of *Mr. Stevens'* Resolution, it being near 12 o'clock,

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On motion of *Mr. Howard,* the Committee adjourned to meet on Wednesday morning next at 10 o'clock.

Wednesday, Feb. 6, 1867.

The Committee met pursuant to adjournment. Present, The Chairman, Messrs. Grimes, Harris, Howard, Johnson, Williams, Stevens, Farnsworth, Morrill, Bingham, Conkling, Boutwell and Blow.

Absent, Messrs. Hise and Rogers.

On motion of the *Chairman,* Geo. A. Mark was appointed as clerk to the Committee.

On motion of the *Chairman,* it was agreed that the proceedings of the Committee should be considered as secret and confidential.

Mr. Conkling moved that the further consideration of pending resolution be postponed, and Senate Bill 564 be taken up.

The motion was agreed to.

After reading of S. B. 564 [1] by the Chairman, Mr. Conkling presented the same with amendments.

The Committee then proceeded to the consideration of the preamble, and the several sections of the bill.

Mr. Conkling moved to amend the preamble, by inserting after the word "Congress," in the fourth line, "and without the sanction of the people."

The amendment was agreed to.

[1 This was the number of a bill which became the Reconstruction Act of March 2, 1867. For the language of the bill as introduced, see *infra,* ch. viii.—B. B. Kendrick.]

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It was also agreed to strike out in the fifth line the words "and therefore are of no constitutional validity."

Mr. Farnsworth moved to insert after the word "whereas" the words "said pretended governments," striking out down to the word, "afford," in the seventh line, so that it would read, "and whereas said pretended governments afford, etc."

The question was taken by yeas and nays, and it was decided in the affirmative, yeas 8, nays 5, absent 2.

Yeas—The Chairman, Messrs. Grimes, Harris, Johnson, Farnsworth, Morrill, Bingham and Blow—8.

Nays—Messrs. Howard, Williams, Stevens, Conkling and Boutwell—5.

Absent—Messrs. Rogers and Hise—2.

So the amendment was agreed to.

Mr. Johnson moved to further amend, by striking out in the eigth line the words, "but countenance and encourage lawlessness and crime."

The amendment was not agreed to.

In the eleventh line it was agreed to amend by striking out the word "formed," and inserting the word "established."

Mr. Bingham offered the following as a substitute for the preamble, viz.:

"*Whereas,* It is necessary that peace and good order should be enforced in the several states of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas and Arkansas, lately in rebellion, until said states shall be fully restored to their constitutional relations to the Government of the United States."

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The question was taken by yeas and nays, and it was decided in the negative, yeas 4, nays 9, absent 2.

Yeas—Messrs. Grimes, Johnson, Bingham and Blow—4.

Nays—The Chairman, Messrs. Harris, Howard, Williams, Stevens, Farnsworth, Morrill, Conkling and Boutwell—9.

Absent—Messrs. Rogers and Hise—2.

So the substitute of *Mr. Bingham* was not agreed to.

The Committee next proceeded to the consideration of the first section, amended by *Mr. Conkling,* so that after the enacting clause, it should read as follows:

"That said so-called states shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama and Florida the third district; Mississippi and Arkansas the fourth district; Texas and Louisiana the fifth district."

Mr. Bingham moved to amend the section as amended by substituting after the enacting clause the following:

"That said states be divided into five military districts as follows," etc.

The question was taken by yeas and nays, and it was decided in the negative, yeas 2, nays 9, absent or not voting 4.

Yeas—Messrs. Johnson and Bingham—2.

Nays—The Chairman, Messrs. Harris, Howard, Stevens, Farnsworth, Morrill, Conkling, Boutwell and Blow—9.

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Absent or not voting—Messrs. Grimes, Williams, Rogers and Hise—4.

So the amendment of *Mr. Bingham* was not agreed to.

Mr. Bingham moved to amend by striking out in the third line the word, "so-called."

The amendment was not agreed to.

The question then recurred upon the adoption of the section as amended by *Mr. Conkling,*

And the section was adopted.

The amendments to the second section submitted by *Mr. Conkling,* were agreed to and the section read as follows:

"Sec. 2. And be it further enacted, That it shall be the duty of the General of the army, under the authority of the President, to assign to the command of each of said districts an officer of the regular army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned."

The third section was then taken up, and after discussion,

Mr. Harris moved to amend by striking out in the sixth line the word "local" and insert the word "civil."

The amendment was agreed to.

Mr. Bingham moved to amend by striking out in the second and third lines the words, "peaceable and law-abiding."

The amendment was agreed to.

Mr. Bingham moved further to amend by inserting in line nine, after the word "tribunals," the words "in the mode prescribed by existing laws for courts-martial."

The amendment was not agreed to.

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Mr. Bingham moved to amend by inserting after the word "all," in the eleventh line, the word "local."

The amendment was not agreed to.

And the section as amended was then adopted.

The amendments to section four submitted by *Mr. Conkling* were agreed to, and the section read as follows:

"Sec. 4. And be it further enacted, That courts and judicial officers of the United States shall not issue writs of habeas corpus in behalf of persons in military custody, unless some commissioned officer on duty in the district wherein the person is detained shall indorse upon said petition a statement certifying, upon honor, that he has knowledge, or information, as to the cause and circumstance of the alleged detention, and that he believes the same to be wrongful; and further that he believes that the indorsed petition is preferred in good faith, and in furtherance of justice, and not to hinder or delay the punishment of crime. 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."

And the section as amended was adopted.

The amendments to Section five, as proposed by *Mr. Conkling* were agreed to, and it then read as follows:

"Sec. 5. And be it further enacted, That no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions."

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And the section was adopted as amended.

Mr. Howard moved to further amend the second section, by striking out in the second and third lines, the words, "under the authority of the President."

After discussion, the amendment of *Mr. Howard* was agreed to.

Mr. Harris moved that the Chairmen of the Senate and House portions of the Committee report the bill to their respective bodies.

The motion was not agreed to.

It was then moved that *Mr. Stevens* report the bill as amended to the House.

The motion was agreed to.

Mr. Bingham moved to report back to the House the bill previously reported.

The motion was not agreed to.

After discussion, the Committee adjourned to meet on Saturday next at 10 o'clock.

Saturday, February 9, 1867.

The Committee met pursuant to adjournment.

Present, The Chairman, Messrs. Williams, Bingham, Boutwell and Blow.

A quorum not being present, the Committee adjourned to meet on call of the Chairman.

GEORGE A. MARK, *Clerk.*

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PART II

THE HISTORY OF THE JOINT COMMITTEE ON RECONSTRUCTION

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CHAPTER I

ORIGIN OF THE COMMITTEE

So long as the Civil War continued, the interest of people and politicians in the North was directed almost entirely toward the movements of the Union armies in their contests with those of the Confederacy. But it was realized by the thoughtful that the question of restoring the seceded states to their places in the Union must be met so soon as the authority of the United States should again be recognized throughout their territory. Certain members of Congress, under the leadership of Representative Henry Winter Davis, of Maryland, and Senator Benjamin Wade, of Ohio, succeeded in 1864 in passing a bill, in which the conditions whereby the rebellious states might be readmitted, were defined. Lincoln, however, refused to commit himself to any general plan of reconstruction, but thought it best to act separately on each state according to the conditions existing in it. In the case of Louisiana [1] he had caused to be established a government based on the suffrage of the loyal voters, who constituted but little more than ten per cent of the voting population of 1860. Though he recognized this government as legal and in proper relation to the executive department of the United States Government, it was not so recognized by the legislative department, and some of the more radical Congressmen referred to it derisively as the President's "ten per cent" government.

[1] Likewise Arkansas. The military government in Tennessee and the Peirpoint government in Virginia were of a different character.

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Just what the attitude of the country toward President Lincoln's attempts at reconstruction in Louisiana and elsewhere was, it is difficult to say. Certainly the protest of Wade and Davis against Lincoln's pocket veto of their bill met with no marked public response, but the fact must not be lost sight of that neither Wade nor Davis had any great amount of popular following, while Lincoln was becoming already something of a popular idol. Therefore, the indorsement of his policy and his unanimous renomination by the Union party in 1864 does not imply that his reconstruction policy was approved, or that the Wade-Davis bill was opposed either by the politicians or by the rank and file of the Republican electorate. Hence, during the war, no theory of reconstruction was enacted into law, and of so little consequence was Lincoln's actual reconstruction in a few of the states, that the whole discussion of the question remained, until the death of Lincoln, of little importance.[1]

As the end of Lincoln's administration marked the close of the war, so the beginning of Johnson's ushered in reconstruction. The ideas of the two men regarding the status of the seceded states were identical. Hence, within a few weeks after becoming President, Johnson began to carry forward the work of reconstruction along the lines laid down by his predecessor. He recognized as regular those state organizations that had been established during the war, and appointed provisional governors in the states where no such organizations existed. At the direction of the President, each of these provisional governors called a convention for the purpose of creating a permanent government in harmony with that of the United States. To the

[1] Rhodes, *History of the United States*, vol. iv, pp. 484-486; Dunning, *Essays on Civil War and Reconstruction*, pp. 67-70, 76-78.

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conventions which assembled, Johnson cannot be said to have given definite instructions, but he did let it be understood that the executive department of the Federal Government, while leaving the franchise in the hands of the whites, desired that at least three conditions be complied with, viz., the ratification of the thirteenth amendment abolishing slavery, the repudiation of the war debts, and a declaration that the ordinances of secession were null and void from the beginning.

During the summer and fall of 1865, most of these conventions succeeded in creating new state governments, state officers were elected, and in some cases senators and representatives to Congress were chosen. Thus, by the time Congress met on December 4, 1865, the process of restoration was from the standpoint of the executive well-nigh complete.[1] There is little doubt that the majority of the people in the North were in sympathy with the President's plan of restoration. Party conventions, Democratic and Union, in nearly every state endorsed it.[2] Few if any newspapers opposed it, though a certain element of the press, like the New York *Tribune*, *Harper's Weekly* and the *Nation*, advocated making negro suffrage a fourth condition precedent to readmission of the seceded states.[3]

[1] For discussion of Johnson's policy of reconstruction and the process of its accomplishment, see Dunning, *Reconstruction, Political and Economic*, chap. iii; also *Essays*, pp. 78-84, 103, 104; Rhodes, vol. v, chap. xxx.

[2] Rhodes, vol. v, pp. 533, 534.

[3] The early success of the President's policy proved to be one element at least in its later weakness. Its hearty approval by the Democrats was sufficient to cause many Republicans to view it with suspicion. Henry J. Raymond, editor of the Republican New York *Times*, declared that the majority of Union Congressmen would have supported the President had the Democrats opposed him. See Blaine, *Twenty Years of Congress*, vol. ii.

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But there was opposition to the President's policy, and it came from a source where it was most likely to cause trouble —the radical members of Congress. Several reasons, explanatory of this opposition, may be stated. Of prime importance among these were party considerations. Every Republican politician believed that the Democrats in the South, upon the restoration of their states, would renew their ancient party affiliations with their friends in the North. He also believed that since negroes in the South were not allowed to vote, all the southern Congressmen would belong to the Democratic party. He therefore demanded that either the negroes be given the franchise, thereby dividing the southern delegation and securing the election of a fair number of Republicans; or failing that, that the negroes be excluded from the basis of representation.[1] A second reason for Congressional opposition is to be found in the prevalence of the feeling that the legislative branch of the government should resume that superiority which during the war it had lost to the executive.[2] Third, among most Congressmen there was a sincere or pretended affection for the negroes in the South, and it was believed that unless something else be done for their security, they would be reduced to a condition bordering on slavery. Fourth, there was a determination on the part of some of the more statesmanlike members of Congress, that the Federal Government should now be strengthened by

[1] See speech by Thaddeus Stevens, December 18, 1865, *Globe*, 1st session, 39th Congress, pp. 72-75.

[2] See *Globe*, 1st session, 39th Congress, p. 27, for Senator Fessenden's speech on this question. Among other things he said: "In all countries, in a time of extreme peril, extreme and somewhat questionable measures are inevitable, but in time of peace, when we live under a written constitution it is our duty to come back as fast as possible; to forget if necessary any precedent which might, if made in times like these, have occasioned very serious difficulty and trouble."

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putting in its keeping the power to enforce throughout the Union the bill of rights.[1] Fifth, it cannot be denied that some of the opposition to the President's liberal policy was due to hatred of the South. There was a class of public men who were captious, exacting, and implacable, not so much from devotion to any principle as from original bent. There was no end to the requirements they would have imposed. They dealt with the whole business in the mood of a Shylock and seem to have desired principally to "feed fat the ancient grudge."[2]

For these reasons, as the time for the meeting of Congress approached, it became more and more evident that the radicals[3] would not adopt the policy of the President; but there was considerable doubt as to whether they would be able to carry with them, in their opposition to Johnson, a majority of the members of Congress. At this time, December 4, 1865, the President was still popular, and the ordinary politicians, who, then as always, were interested principally in holding their positions and retaining the confidence of their constituents, hardly would have dared to oppose a policy which most of them had previously endorsed, had it not been for the astute leadership of Thaddeus Stevens. To bring into line against the policy of the President those Republican Congressmen who, tacitly at least, had promised to support it, was the task of no ordinary politician. The story of how Stevens forced the majority party in the lower House to commit themselves against the policy of the President, is the story of the origin of the joint committee on reconstruction.

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

[2] *New York Times*, December 11, 1865.

[3] The term *radical* as here employed, signifies a person who desired the reconstruction of the southern states in such a manner, and by such methods, as would perpetuate the Republican party in control of the national government.

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For at least two years he had strenuously advocated treating the southern states as conquered provinces, and favored a sweeping and universal confiscation of rebel lands, with which he would have paid the national debt, established a pension fund, and given a small farm to each adult freedman.[1] He advocated this in and out of Congress, and at the same time held that whenever the states in rebellion were admitted again to the Union, they must come in under organic acts of Congress after a period of probation, during which time they were to be kept under military or territorial government. Readmission as states must be by special permission of Congress under whatever restrictions that body might provide. He went to Washington several days in advance of the opening of Congress, determined either to force acceptance of his views upon the President, or failing in that, as he doubtless anticipated, to secure their adoption by Congress in spite of the President. On the Wednesday previous to the opening of the session, Stevens had a long interview with Johnson, and there took bold ground in opposition to the views of the latter.[2] He

[1] The fullest explanation by Stevens of his plan of confiscation was made in a speech at Lancaster, Pennsylvania, September 6, 1865. See New York *Herald*, December 13, 1865. For Stevens' speech outlining his "conquered province" theory of reconstruction, see *Globe*, 1st sess., 39th cong., pp. 72-75. See also Woodburn, *Life of Thaddeus Stevens*, pp. 343-346, 521-535. A brief analysis of Stevens' ideas on reconstruction is given *infra*, ch. ii, p. 155.

[2] For my account of Stevens' maneuvers just previous to the opening of Congress, I have relied on the Washington correspondence of the New York papers, December 1 to December 4, 1865; and especially on a carefully prepared letter from the Washington correspondent, Hiram Caulkins, for the New York *Herald* of December 11, 1865. Caulkins was able to follow more accurately than any other newspaper man the course of events in Washington; and the *Herald*, unlike most other newspapers of the day, was not a party organ, and was thus able to give the facts in a more straightforward and unbiased manner than most of the other papers, which had party interests to serve and colored the news accordingly.

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opposed the idea of pardoning the late rebels, and told the President that the rank and file of the Union party in Pennsylvania was not in sympathy with his (Johnson's) policy of reconstruction. Stevens then frankly stated that unless the executive policy were materially altered, the President need not expect any support from the majority of the Union members of Congress. Johnson gave no indications of yielding but appealed for harmony, which appeal Stevens did not heed.

On Friday, December 1st, Stevens and some twenty-five or thirty of the most extreme radicals in Congress held a caucus for the purpose of coming to some mutual understanding and thereby concentrating their strength. Stevens related the substance of his conversation with Johnson, and said that he was fully convinced that the latter was wedded to his own plan of reconstruction, and that if they expected to accomplish any of their own purposes, they must do so in spite of the President and not hesitate, if need be, to break entirely with him. During this meeting the Senate was thoroughly canvassed, and Stevens and his friends came to the conclusion that a majority of the members of that body were inclined to be conservative. Fears were manifested that the Senate would admit properly qualified members from the southern states. Such action on the part of the upper house, of course, would defeat Stevens' program; and to prevent it, he and the others concluded that a joint committee must be secured, to whom everything relating to the southern delegations and the treatment of the rebel states, should be referred. Therefore the resolution appointing this committee ought to have some provision that would prevent one house from admitting southern representatives until the other had come to the same decision. In this way it was thought that the Senate could be restrained from admitting southern sena-

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tors until a majority of that body could be converted to radicalism. Some doubt was expressed as to whether such a resolution could be railroaded through the Senate, to which Stevens replied that it was the only mode whereby they could accomplish their great object—delay. In order to assure the passage of their resolution through the upper house, it would be necessary for the Union party in the lower house to present an undivided front. In this case their party associates in the Senate would be inclined to support it. Accordingly, this plan was adopted, and Stevens was requested to present the resolution to the party caucus which was to be held the next evening. This group of radicals planned to manipulate matters in such a way that the conservatives would not suspect their design, but be led into committing themselves to it.[1]

It is perfectly clear from what has been said, that this coterie of radicals at the meeting on December 1st, was determined to commit their party against Johnson's policy. They realized that the great majority in their party, especially in the Senate, did not desire at that time a break with the President. They therefore planned a resolution that on its face would look innocent enough, and that even the conservatives would unsuspectingly support; but which was really the first step on the road toward committing the Union party against the Presidential theory of reconstruction. They trusted that time and circumstances might reveal what the next step should be.

At the regular meeting of the Republican caucus on Saturday evening, December 2, 1865, all the radicals were present. J. S. Morrill, an extreme radical from Vermont, was elected chairman of the caucus. On motion, a com-

[1] New York *World*, December 2 and 4; New York *Herald*, December 2 and 11, 1865.

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mittee of seven was appointed to consider what should be done with regard to the southern representatives. Stevens was made chairman of the committee, but some of the other members were conservatives, notably, Henry J. Raymond, of New York. Stevens, of course, offered his resolution,[1] and Raymond, though an astute politician, failed entirely to grasp its real significance, and allowed it to be reported unanimously, and adopted without a dissenting vote.[2] He therefore lost the only real opportunity he ever had of administering a severe blow, if not a defeat, to the Stevens coterie. After a week or so, Raymond saw his great mistake, and bitterly denounced the whole scheme of delay,[3] but it was too late; the Union party in the House of Representatives had unanimously committed itself in caucus to the program of the radicals. When party politicians once commit themselves in caucus, they seldom abandon their position. Thus Stevens not only carried his point, but the radical program was put through with the supporters of the President advocating it.

In the history of our national legislature, next in importance to the First Congress, whose task was the organization of the government under the Constitution, stands the Thirty-ninth, which met on December 4, 1865. Its problem was to reorganize the government after a destructive Civil War that had altered fundamentally our institutions. Public interest in its assembling was keen, owing to the uncertainty as to what disposition would be made of the question of southern representation. Although it was generally understood that southern members would not be allowed to take their seats at once, still there was sufficient doubt to

[1] For the text of the resolution, see *supra*, p. 37.

[2] New York *World*, December 3, 4, 1865; New York *Times*, December 4, 1865.

[3] *Globe*, 1st sess., 39th cong.

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cause the galleries to be filled with people who eagerly awaited the action of the House.[1]

At the opening of each new Congress it is the duty of the clerk of the House to preside over that body until a speaker is elected. Before the House proceeds to the election of that official the clerk, who at this time was Edward McPherson, calls the roll. McPherson was a native of Pennsylvania, and owed his position to the favor of Thaddeus Stevens. Under ordinary circumstances the clerk puts on the roll the names of all persons whose credentials are in regular form, leaving to the House the decision as to whether they had, in all cases, been legally obtained. Stevens, however, had seen to it that McPherson had omitted the names of all the members-elect from the "conquered provinces."[2] Though James Brooks, a Democratic member from New York, protested against this action of Clerk McPherson, his protest was of no avail.[3] It was also in vain that Horace Maynard, a member elect from Tennessee, and a man whose loyalty was unquestioned, asked for recognition.[4] After Schuyler Colfax had been elected speaker and the organization of the House perfected, Thaddeus Stevens asked unanimous consent to introduce the following resolution:[5]

Be it resolved, by the Senate and House of Representatives in Congress assembled: That a joint committee of fifteen members shall be appointed, nine of whom shall be members of the House, and six members of the Senate, who shall inquire into the condition of the states which formed the so-called Confederate States of America, and report whether they, or any

[1] New York *World*, December 8, 1865.

[2] Rhodes, vol. v, p. 544.

[3] *Globe*, 1st sess., 39th cong., pp. 4-6.

[4] *Ibid.*

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

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of them, are entitled to be represented in either House of Congress, with leave to report at any time, by bill or otherwise; and until such report shall have been made, and finally acted on by Congress, no member shall be received into either House from any of the so-called Confederate States: and all papers relating to the representation of said states shall be referred to the said committee without debate.

Not securing unanimous consent, Stevens moved a suspension of the rules, which was carried, and under the operation of the previous question debate was shut off and the resolution passed. In all of these test votes, Stevens was sustained by the entire Union party, every member of which, thus knowingly or unknowingly, committed himself against the policy of the President.[1]

Before proceeding to a consideration of the Senate's action on this resolution, it should be noted that in form the resolution was a joint, rather than a concurrent one. This distinction is important, for in order that a resolution of the former kind become effective, the President's signature is necessary; whereas one of the latter sort does not require executive approval. Stevens, of course, was fully conscious of this and seems purposely to have presented his resolution in such a form as to require the President's signature. Stevens was willing to force the issue with Johnson immediately. Had the resolution passed the Senate in the same form as in the House, Johnson must either have signed it, and thereby abandoned his own policy and consented to work with Congress; or, what was more likely, he must have vetoed the resolution, and at once brought on the breach between the executive and legislative departments of the government.[2] It was probably a fortunate

[1] *Globe*, 1st sess., 39th cong., pp. 5 *et seq.*

[2] *Cf.* editorial in New York *World*, December 7, 1865.

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thing for Stevens and his scheme of reconstruction that his plans miscarried, and that the issue with the President was postponed to be forced later on a different question.[1] It was the more conservative Senate that saved him and his fellow radicals in the House from committing this political blunder.

In the Senate were four groups of political opinion. First, there were the extreme radicals, led by such men as Sumner of Massachusetts, Wade of Ohio, and Howe of Wisconsin, who gladly would have joined the radicals in the House in at once forcing the issue with the President.[2] Second, conservative Republicans, under the leadership of such men as Fessenden of Maine, Grimes of Iowa, and Trumbull of Illinois, who, while not believing that the President had gone far enough in his policy of restoration, yet were unwilling that any break should be made with him, and hoped, by making mutual concessions, and maintaining an attitude of mutual respect, to work in harmony with him, and thus keep the Union party intact. Third, there were what may be called the administration Republicans, consisting of such men as Doolittle of Wisconsin, Cowan of Pennsylvania, and Dixon of Connecticut, who, believing in the justice and sufficiency of the President's policy, and having pledged themselves to its support, were willing to do all that lay within their power to champion his cause in Congress. Fourth, there were the Democrats, the most prominent being Johnson of Maryland, Guthrie of Kentucky, and Hendricks of Indiana, who tended gradually to support more and more cordially the policy of the President and thus coalesce with the preceding group.

[1] See *infra*, ch. iv.

[2] *Cf.* conversations between Sumner and Welles in *Diary of Gideon Welles*, vol. ii, pp. 397, 405, 415, 416.

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When the resolution came before the upper house on December 5, unanimous consent was not given for its consideration. In the Senate the previous question has no existence, so under the rules of that body the resolution was postponed.[1] The next day it came up in regular order, but as the three factions of the Republican party had come to no agreement as to its disposition, Senator Fessenden suggested that it be again postponed. Though Senator Sumner contended that the matter required immediate attention, Fessenden's suggestion prevailed.[2]

On December 11, the Republican members of the Senate held a caucus,[3] and by a vote of 16 to 14 changed the resolution to the same form in which it next day passed the Senate, namely:[4]

> Resolved by the House of Representatives, (the Senate concurring) that a joint committee of fifteen members shall be appointed, nine of whom shall be members of the House, and six members of the Senate, who shall inquire into the condition of the states which formed the so-called Confederate States of America, and report whether they, or any of them, are entitled to be represented in either House of Congress, with leave to report at any time, by bill or otherwise.

It will be noted that the resolution as passed by the Senate differed from the original House resolution in three particulars. First, the House resolution was joint, while the Senate's was concurrent in form, and hence did not need the President's approval. Second, by the terms of the former resolution, the House pledged itself to receive no members from the southern states until the committee had

[1] *Globe*, 1st sess., 39th cong., p. 7.

[2] *Ibid.*, p. 12.

[3] New York *World*, December 12, 1865.

[4] *Globe*, 1st sess., 39th cong., pp. 29, 30. See *supra*, p. 38.

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reported. The Senate would not so bind itself. Third, the House agreed to surrender to this joint committee those prerogatives given it by the Constitution of judging of the election, returns and qualifications of its own members. The Senate was unwilling so to curtail its own powers. Before discussing further the significance of these differences, it will be well to obtain some idea of existing political opinion as expressed in the Senate debate on the resolution, and in the comments on it by the press.

Senator Howard,[1] of Michigan, voicing the opinion of the fourteen radical members who favored the resolution as it came from the House, declared that the country expected that Congress would pledge itself not to admit any of the rebel states until after the committee had reported. He continued:

> Sir, what is the present position and status of the rebel states? In my judgment they are simply conquered communities, subjugated by the arms of the United States—communities in which the right of self-government does not now exist. We hold them, as we know well, as the world knows today, not by their own free will and consent, as members of the Union, but solely by virtue of our superior military power. I object to the amendment [i. e. the change from the House form to the Senate form of the resolution] for the reason that it leaves the implication—and the implication will be drawn and clearly understood by the public—that one or the other house of Congress may, whenever it sees fit, readmit senators or representatives from a rebel state without the concurrence of the other house; and I hold it to be utterly incompetent for the Senate or the House to admit members from the rebel states without the mutual consent of each other.[2]

[1] For brief sketch of Senator Howard, who later became a member of the joint committee, see *infra*, ch. ii.

[2] *Globe*, 1st sess., 39th cong., p. 24.

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The attitude of the administration Republicans was shown in a speech by Senator Doolittle, of Wisconsin, in which the whole idea of a joint committee was opposed. He declared that the judiciary committee could properly attend to the matter so far as the Senate was concerned. As a choice between two evils, however, he preferred the Senate form of the resolution. The most interesting point in Doolittle's speech is, that it shows that the President's friends, and no doubt the President himself, recognized that Thaddeus Stevens' resolution and the method used in passing it, meant an attack upon the administration. He further declared:

> Stevens is bitterly and uncompromisingly hostile to the policy of the present administration on the subject of reconstruction. He goes with him who goes the farthest, holding that even the state of Tennessee is an alien state at war with the United States; and in the convention at Baltimore he objected to the nomination of Andrew Johnson because he was an alien enemy.[1]

Doolittle therefore felt that since every one understood the source of this resolution and its animus, the Senate should not lend itself to the furthering of Stevens' schemes.[2]

As representative of the conservative Republicans, the opinions of Senator Fessenden[3] are worth noting. He said:

> I trust that there are not in the Senate any persons who desire to consider themselves the exclusive friends of the President. That I am ready and disposed to support the executive to the best of my ability is evidenced by the fact that I have long

[1] *Globe*, 1st sess., 39th cong., p. 26.

[2] *Ibid.*

[3] For a short biographical account of Fessenden, who was made chairman of the committee, see *infra*, ch. ii.

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acted with him; but though I have supported him in time of war in measures for which I could find no strict constitutional warrant, I consider that the time has now come when Congress must revert to it original position.[1]

The passage of the resolution creating the joint committee of fifteen on reconstruction, was watched with eager interest by the public. What the process of reconstruction would be in Congress and the attitude to be taken by that body toward the policy of the President, was a matter of hardly less interest than the progress of the war had been. The creation of this committee, if the press may be regarded as a true reflection of public opinion, was viewed as a good or an evil act according as one did or did not regard the conditions placed upon the seceded states by the President as sufficient guarantees of their future loyalty. For, the passage of the concurrent resolution by Congress was judged to be an indication that it intended demanding further conditions precedent to the admission of representatives and senators from the late Confederate States.

Democratic feelings, as expressed in the *New York World*, were bitter against what was called the radical attempt to thwart President Johnson's plan of restoration. The *World* declared:

They [the radicals] did not wait till the opening of Congress today, to give that plan the honor of a decent burial under the clerk's table, but put the party bow-string around it, and pitched it at midnight out of the window of a partisan caucus. The resolution adopted unanimously by 124 Republican members in their caucus, shows with what promptitude Thaddeus Stevens strangled the infant "Restoration," stamped upon it with his brutal heel, and proclaimed his plan for keeping the Union disunited.[2]

[1] *Globe*, 1st sess., 39th cong., p. 27. *Cf.* also *supra*, p. 36, note 2.

[2] New York *World*, December 4, 1865.

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Continuing next day the same line of comment, the *World* maintained that the action taken by the Republican majority in the House was a declaration that the Civil War had not been brought to an end by the cessation of armed resistance to the Federal authority.

A Congressional majority had renounced the object of the war, avowed at its beginning—the restoration of the Union under the Constitution—and now maintained that the states which went out, now came back as an American Poland or Ireland, to be ruled by the capricious will of accidental majorities, to be held by the strong arm, to be coerced and moulded, both socially and politically, into such a form as the theories of Republican politicians and the passions of a radical multitude should suggest.

It is not maintained by the Republicans that the South will again take up arms, for every one knows that its power for war is broken. But there is a state of peace, of which it has been truly said that it is more disastrous than war itself, and such is the peace which the radical majority in Congress have now proclaimed. Let no man deceive himself. The peace we have believed in, hoped for, struggled for, the peace we have so fondly dreamed was won, recedes from us afresh into a darkening vista of sectional passions, tenfold embittered, into a tenfold heated furnace of sectional wrong, triumphantly inflicted, and sectional tyranny to be remorselessly enforced. The reunited nation is to enter upon its new career with all its wounds torn open afresh. And this beneath the banner of a so-called philanthropy—this at the behest of a party of great moral ideas.[1]

The *New York Tribune* had supported President Johnson in his policy of reconstruction, but at the same time had felt that the conditions which he had imposed on the southern

[1] New York *World*, December 5, 1865.

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states might very well be supplemented by Congress. It was especially desirous that the southern states should be required to grant at least some qualified form of negro suffrage, and while it admitted that the President was perhaps not legally authorized to impose negro suffrage upon those states, it believed that Congress was thoroughly competent to make such an imposition. It therefore favored the appointment of the committee and thought that there was nothing about it hostile to the President. It would simply formulate some measures of reconstruction, supplementary, and not in opposition, to those conditions which the executive had insisted upon—measures which the President and all loyal members of the Union party could support.[1]

The *New York Times,* which since the organization of the Republican party had been a consistent supporter of it, now found itself in a peculiar situation. Its editor, Henry J. Raymond, was a member of Congress and belonged to the political firm of Weed, Seward, and Raymond. He therefore was under obligation to support an administration in which his partner, Seward, was reputed to be the controlling factor. Moreover, Raymond was chairman of the national executive committee of the Union party, and as such, naturally dreaded a split in his organization. Therefore, when Congress met the *Times* professed to see nothing in the appointment of the joint committee that might cause a breach between Congress and the President. That Stevens succeeded in hoodwinking Raymond by causing him to believe that the appointment of a joint committee was not intended as a thrust at the administration, seems to be proved by the following editorial in the *Times* of December 5th:

[1] New York *Tribune,* December 5, 1865, *et ante.*

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Since the great question before Congress is whether the rebel states are entitled to representation or not, a committee to investigate that question is necessary in order that the matter come before Congress in an orderly manner. When their report comes in, the subject will be properly before both houses; and the main question involved can then be discussed and decided upon its intrinsic merits, without being complicated or embarrassed by questions of regularity of the elections or returns in the case of individual members. Without any such provisions as this, the question would be debated upon the presentation of each new certificate, and we should have a perpetually recurring wrangle instead of a decorous and formal discussion.

By the time the resolution passed the Senate, Raymond was undeceived. But it was too late; the radicals in the House had succeeded in committing practically all the Republicans against the President's policy. In spite of his position and his ability, Raymond was unable to build up in the House any considerable following among the members of the Union party, who would co-operate with him in supporting the administration.

The more or less independent New York dailies—the *Post*, the *Herald*, the *Sun*, and the *Commercial-Advertiser*—were anxious that the question of reconstruction should be settled at as early a date as possible. They were perhaps representative of New York commercial interests, and believed that business would not resume its normal channels until the uncertainty as to the political future of the South should be removed. They therefore opposed the appointment of a joint committee, fearing that it would act altogether in a spirit of partisanship and cause unnecessary delay in settling the question of reconstruction.[1] The

[1] New York *Evening Post*, December 13, 1865.

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Herald was especially fearful lest the appointment of the committee would create a lack of confidence in business both in the South and in the commercial parts of the North. Such a lack of confidence, of course, would hinder the economic development in the South and to that extent limit New York's commercial prosperity. It was especially alarmed that Thaddeus Stevens should use the committee as an engine for carrying out his scheme of confiscation of southern lands.[1] Such wholesale confiscation would neither increase the substantial wealth of the country, nor accomplish its main purpose of paying off the national debt. Both ends could be much easier reached by following President Johnson's policy which, by establishing local harmony, law, and order, looked to the development of the vast industrial resources of the South. The increase in wealth which would follow such a course would rapidly strengthen the national treasury.

It is now possible to make a few general statements in regard to the political situation of the country during December, 1865. As has been seen, the President proposed to allow the rebel states to resume their relations with the Government of the United States with the sole proviso that they recognize and abide by the results of the war. In his opinion the war had only two results, *viz.*, a guarantee of the perpetuity of the Union, and the destruction of the institution of slavery. These were the only objects for which the war had ever at any time been professedly waged, and Johnson believed that a war could have no political results different from the objects for which it had been waged.

The radical members of Congress, under the leadership of Thaddeus Stevens, realized that this was Johnson's opinion. Their own opinion was different. They believed that

[1] New York *Herald*, December 5 and 14.

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additional conditions should be imposed upon the South. As to what these conditions should be, they were by no means agreed; but they *were* agreed that the wager of battle should be thrown down to the President at once, for him to accept or surrender his position. As has been seen, the radicals by shrewd maneuvring were able to commit practically all the members of the Union party in the House to their cause. In the Senate only about one-half the members of that party were willing to commit themselves unreservedly against the policy of the President. By explaining the significance of the differences between the House and Senate form of the resolution for raising a joint committee on reconstruction, the attitude of the conservative Republicans will become clear. Had the conservatives been unreservedly in favor of the President's policy, they would have completely destroyed the resolution by refusing to pass it in any form. Had they been willing to join the radicals in opposition to that policy, they would have passed the resolution without amendment. Their amendment of the House resolution simply meant that they, holding the balance of power between the Democrats and administration Republicans on the one hand and the radical Republicans on the other, would retain for the Senate its right to admit at any time it might see fit the senators from the rebel states and thus thwart any schemes of the radicals with which they might not agree. It meant, moreover, that at any time their relations with the President should reach the breaking point by his refusing to concede anything to their wishes, they could go over to the radicals in opposition to the executive.

The stake, therefore, in the political game between Andrew Johnson and Thaddeus Stevens was possession of the ten or a dozen conservative Republicans in the Senate. The President, by discerning the nature of the contest, and by

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making a few slight concessions to those whom he would win, might have returned victor; Stevens was destined to be victorious because he understood the game better than Johnson, and was more ready than he to make temporary concessions in order to obtain his principal objects.

This characteristic of Stevens is shown by the fact that he was willing to accept the Senate substitute for his original resolution. He stated, however, that when it should be in order, he would move a resolution applicable to the House alone, which in substance would embody that part of his original resolution stricken out by the Senate.[1] This he did on December 14,[2] and the House, as usual, accepted his will.

[1] *Globe*, p. 46.

[2] *Ibid.*, p. 60.

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CHAPTER II

Personnel of the Committee [1]

The nine members on the part of the House were appointed on December 14,[2] but it was not until December 21, that the president *pro tempore* announced the six Senate members. Much light on the work of the committee may be derived from the personal and political history of these fifteen men.

THADDEUS STEVENS

Thaddeus Stevens was born in Danville, Vermont, April 4, 1792. His parents were of Massachusetts origin and had come to Vermont when that state was very thinly populated.[3] Society in Vermont during the youth of Stevens was naturally democratic, and he grew up under conditions that fostered hatred of aristocracy. Stevens' early education was obtained in the town of Peacham, to which his mother moved in order to take advantage of the superior school facilities that existed there. In 1811, young Stevens entered Dartmouth College, from which he graduated in 1814. After teaching school in Peacham for a year Stevens moved to York, Pa., to take a position as instructor in an academy there. While teaching in York, Stevens studied law, and at the end of a year was admitted to the bar. He began his law career at Gettysburg, where he gradually built up a lucrative practice.

[1] For part of the journal relating to this chapter, see *supra*, p. 38.

[2] *Globe*, p. 57.

[3] Woodburn, *Life of Thaddeus Stevens*, pp. 1-9.

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It was not until 1833, when Stevens was over forty years of age, that he entered actively into political life. He was by nature one of those politicians who seizes upon some one idea and exploits it so consistently as to win for himself a reputation. That idea is generally based on dissatisfaction with some existing institution, and if public opinion happens to become so thoroughly wrought up as to cause the destruction of that institution, the one-idea man or reformer is likely to come into great popular favor. In all his career Stevens seldom appeared in any other rôle than that of an advocate for the destruction of some established order which was tending to meet with general disapproval. When he first entered the Pennsylvania legislature, it was as a member of that party which had for its purpose the extermination of the Masonic Fraternity. Of Stevens' attempt to ride into political fame on the anti-Masonic hobby horse, it is not necessary to give a detailed account. His power to denounce something which he did not like, however, is fairly well illustrated in the following excerpt from a speech that he delivered on the subject of Freemasonry in 1835:

Wherever the Genius of Liberty has set a people free, the first object of their solicitude should be the destruction of Freemasonry and all other secret societies. Where tyrants rule they are fit engines of despotism, but under free republican government secret societies are dangerous, and are not to be tolerated. The oaths of Freemasons are inconsistent with pure morals, true religion, and the permanent existence of liberty. Two things are indispensable to the continuance of national liberty—the independence of the public press and the impartial administration of justice. The tyranny of Masonry destroys both. This prostituted harlot has entered the courts of justice and seduced the venerable judges into her foul embrace. They, too, seek to extricate their brothers, whether

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right or wrong. . . . Has this institution outgrown the law, become stronger than the civil power or the will of a sovereign people? Has this baseborn issue of a foreign sire become so powerful, that even the Young Lion of American Liberty cannot crush him? Is this bloody god too strong for us to overcome? Then let us tremble at his power, fall down, bow ourselves in the dust before him and supplicate his favor. For my single self I would rather be the victim of his fury that the slave of his favor.[1]

After the death of the anti-Masonic party, for a long time Stevens was unable to find any issue in politics radical enough to support a man of his decided opinions. He did useful service in defending and strengthening his state's newly created and feeble public school system; and played an important part in the so-called "Buckshot War," a political contest between the Whigs and Democrats over the state election of 1838, resulting, so far as Stevens was concerned, in his retirement from active political life for a number of years.

After his first retirement from politics, Stevens resumed his law practice at Gettysburg, but in 1842 moved to Lancaster, which was his home for the rest of his life. He had fallen heavily into debt during the time he had been a member of the Pennsylvania legislature, so he now gave the major portion of his time to his law practice, and succeeded in paying off his debts.[2]

Stevens had always been an anti-slavery man, but he had not taken up the slavery question as a political issue during his early career in public life. He was always a consistent friend of the negro race, and gave free much of his time

[1] "Free Masonry Unmasked," 1835. *Pamphlet of the Historical Society of Pennsylvania*, cited in Woodburn, p. 21.

[2] Woodburn, chap. iii and iv.

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and legal talents to prevent runaways being carried back into slavery. In 1838, while he was a member of the convention that drew up a new constitution for Pennsylvania, he refused to sign the document because it limited the elective franchise to the white race.[1]

In 1848, Stevens was elected from the Lancaster district to the 31st Congress as a Whig, but because of that party's failure to come out boldly in support of the Wilmot Proviso, Stevens generally acted with the Free-Soilers, though he continued for the present his party relations with the Whigs. He was one of the few northern men who at this time was not afraid to stand up boldly and declare his convictions about slavery and its extension. From this time on until slavery was destroyed, it was the one question upon which Stevens relied for his political ammunition. As one of his opponents from the South expressed it, "Since anti-Masonry will no longer serve for a hobby-horse, the gentleman must preach against the horrors and despotism of slavery."[1]

During this Congress Stevens made several speeches on the slavery question and denounced that institution in no uncertain terms, of which the following excerpt is typical:

> In this government the free white citizens are the rulers,—the sovereigns, as we delight to call them. All others are subjects. In this government the subject has no rights, social, political or personal. He has no voice in the laws which govern him. He can hold no property. His very wife and children are not his. His labor is another's. He and all that pertains to him are the absolute property of his rulers. He is governed, bought, sold, punished, executed, by laws to which he never gave his assent, and by rulers whom he never chose.

[1] Statement made by Representative Kelly, of Pennsylvania, in 39th Cong. *Globe*, p. 283.

[2] Quoted in Woodburn, p. 101.

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He is not a serf merely, with half the rights of men, like the subjects of despotic Russia; but a naked slave, stripped of every right which God and nature gave him, and which the high spirit of our revolution declared inalienable—which he himself could not surrender, and which man could not take from him. Is he not then the subject of despotic sway?

But we are told that it is none of our business; that southern slavery is a matter between the slave-holder and his own conscience. I trust it may be so decided by impartial history and the unerring Judge; that we may not be branded with that great stigma and that grievous burden may not weigh upon our souls. But could we hope for that justification, if now, when we have the power to prevent it, we should permit this evil to spread over thousands of square leagues now free and settle upon unborn millions? Sir, for myself, I should look upon any northern man, enlightened by a northern education, who would, directly or indirectly, by omission or commission, by basely voting or cowardly skulking, permit it to spread over one rood of God's free earth, as a traitor to liberty and a recreant to God!

Stevens denounced the two pro-slavery measures of the Compromise of 1850—organizing the territories without the Wilmot Proviso, and the new fugitive slave law—and voted consistently against them. He was reëlected to Congress in 1850, but since the Compromise of 1850 had settled temporarily the slavery question, he had but little occasion to speak upon his favorite theme. He actively advocated the policy of protection, as a true son of Pennsylvania always did in those and later days, but as his real power lay in a zealous attack upon slavery, he found public life tiresome in that period of calm which succeeded the turmoil of 1850. At the expiration of the 32d Congress he again retired to private life at the age of 61—an age when with most men retirement would have been permanent. With Stevens it was merely a recess, for his fame as a political leader was yet to be won.

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As with Lincoln, it was the repeal of the Missouri Compromise in 1854 that brought Stevens again into active political life. In 1855, he was one of the organizers in Pennsylvania of the new Republican party, which had for its purpose resistance to the further extension of slavery in the territories. He was a delegate to the first Republican national convention in 1856, and for the nomination for President supported Justice McLean—the anti-slavery member of the Supreme Court who rendered a dissenting opinion in the famous Dred Scott case. In 1858, Stevens was again elected to Congress from the Lancaster district, and served continuously in the House from the meeting of the 36th Congress in December of 1859 to his death in 1868.

In the 36th Congress Stevens took a prominent part in the debates, and by the time of its expiration in 1861 he was regarded as one of the leading members of the lower house. In the first session of that Congress, he used his great powers of satire and irony in prodding on the "fire-eaters" from the South, into making extreme statements and expressing sentiments of disunion. It seems clear that at this time he understood the temper of the southerners, knew they were in earnest, and really desired that they carry out their numerous threats of secession, though he professed to believe that all their threats were mere gasconade. He said he did not blame the southerners for their language of intimidation, for using "this threat of rending God's creation from turret to foundation. All this is right in them, for they have tried it fifty times, and fifty times they have found weak and recreant tremblers in the North who have been affected by it and who have acted from those intimidations. They are right, and I give them credit for repeating with grave countenances that which they have so often found to be effective when operating

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upon timid men."[1] In his ability to cause opponents to make reckless assertions which would redound to the discredit of their cause, Stevens was a past grand master. He later used the same tactics in his fight with Andrew Johnson over the question of reconstruction. In the long contest over organizing the House, Stevens used all his talent to keep northern representatives from being frightened by southern menaces, which he dubbed "idle rantings and barren thunders."

During the second session of the 36th Congress, after Lincoln had been elected and while the cotton states were seceding, Stevens employed all his powers against any of the proposed compromises. He spoke of the House committee of thirty-three—one from each state—as a "committee on incubation," and believed the time for compromise and conciliation had passed. He, like a great many other Republicans of his time, had used the platform of that party in 1856 and 1860 which declared only against the further extension of slavery, merely as a stepping-stone toward working up sentiment for its complete abolition. Had the South tamely submitted in 1861 and allowed the Republicans to carry out their policy of prohibiting slavery in the territories, in the District of Columbia, and the other public places belonging to the United States, there is no doubt that in a short time, perhaps by 1864 or 1868, they would have begun an attack upon slavery in the states themselves. In this case, however, it would doubtless have taken two or three generations to have accomplished its total abolition. Stevens was one of the few men who, at the beginning of the war, believed it would result in the abolition of slavery.[2] He hated the South, and while he believed that section would put up a good fight, and thought the war

[1] Woodburn, p. 135.

[2] *Ibid.*, pp. 171, 172.

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would last for at least two years, he never had any serious doubts as to the final results. Therefore, he favored the government's taking a decisive attitude at once, and really courted war. He declared that the whole blame for the war rested with the southerners, that the challenge was theirs, and for his part, he was unwilling to make any humiliating concessions to appease them. Soon after the war commenced, Stevens began to demand the immediate emancipation of the slaves as a war measure. He never admitted that it was not the purpose of the North in waging the war, to interfere with the "domestic institutions" of the southern states. He was one of the four representatives, who, in July of 1861, voted against the Crittenden resolutions which defined the object of the war as being solely the preservation of the Union.[1] On August 2, 1861, a week after the passage of the Crittenden resolutions, he said: "God forbid that I should ever agree that the slaves should be returned again to their masters and that you should rivet again the chains which you have once broken."[2] Stevens was a strong critic of Lincoln's "border state policy" and bitterly denounced the President for overruling military emancipation by Generals Fremont and Hunter in 1861 and 1862. He regretted the influence of border-state men on the President, and did all he could to have Blair ousted from the Cabinet.

Stevens not only believed that the negroes should be freed, but thought they should be armed and employed in the United States army. Just before Lincoln announced his preliminary emancipation proclamation, Stevens said: "I no longer agree that this administration is pursuing a wise policy. Its policy should be to free the slaves, enlist and drill them, and set them to shooting their mas-

[1] Woodburn, pp. 171, 172.

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

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ters if they do not submit." After Lincoln issued the emancipation proclamation, Stevens began to support the administration much more heartily and voted for the renomination of Lincoln in 1864.

It is Stevens' attitude on reconstruction that principally interests us here. As early as August in 1861, he had taken the ground that the people of the Confederate states were public belligerent enemies, and that the nation in its efforts to overcome them was bound only by the laws of war and the law of nations. The Constitution was abrogated with respect to the hostile Confederate States that had rejected and repudiated it. Stevens adhered strictly to this principle throughout the war.[1] He elaborated this principle from time to time during the progress of the struggle as different questions came up affecting the constitutional relations of the seceded states to the United States. When the war was over, he was not disposed to regard them as states in the Union, but as "conquered provinces." In a speech[2] delivered in Congress on December 18, 1865, he summarized his opinions on reconstruction and therein laid down the essential reasons why Congress, under his leadership, refused to adopt the reconstruction policy of President Johnson. The Confederate States for four years were belligerents, acknowledged so by Europe and the United States. Mr. Justice Grier, following Vattel, in the decision in the *Prize Cases*,[3] held that the rebel states were belligerents and the contest they waged was a war, it not being necessary that both the parties be foreign nations. "A war may exist where one of the belligerents claims sovereign rights as

[1] Woodburn, pp. 212 *et seq.*

[2] *Globe*, 1st sess., 39th cong., pp. 72-75.

[3] 2 Black, 666.

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against the other." [1] The idea that the states could not and did not make war, and that the war was one of individuals, was ridiculous. Individuals cannot make war, and to say that the states did not make war because the Constitution forbids it, was as foolish as to say that A did not kill B because he could not have done so as the law forbids it. Moreover, all the rebel states themselves maintained they were out of the Union; their laws, the Confederate government, the speeches of their members of Congress, and the answers of their government to propositions of peace, went upon the ground that no terms would be considered, except upon the prior acknowledgment of the entire and permanent independence of the Confederacy. After this, to say that the United States has no right to treat them as a conquered belligerent, severed from the Union in fact, was not argument but mockery. The only question to be considered was, whether it was to the interest of the North so to treat them.

But suppose, as some contend, they are not out of the Union, but in it, in a state of "suspended animation." In either case, Congress has control of the matter. If they are conquered provinces, Congress has power over them under the clause of the Constitution which declares, "New states may be admitted into the Union." If they are states in the Union out of their proper relation with it, Congress,—i. e. the Senate, the House, and the President in his legislative capacity,—has control under the clause of the Constitution that requires the National Government "to guarantee to every state a republican form of government." A joint committee of both houses is justified, for Congress as a whole must create states and declare when they are entitled to be represented. The clause in the Constitution enforcing upon each house the duty of judging the elections, returns, and qualifications of its own

[1] 2 Black, 666.

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members, has no bearing on the question until Congress as a whole has acted on their right to be represented. Then each house must judge whether the members presenting themselves from a recognized state, possess the requisite qualifications, and whether the elections and returns are according to law. The houses separately can judge of nothing else.

The first duty of Congress then was to declare the condition of these states and fix a government for them. This government should not be military but territorial;[1] for in territories Congress may fix the qualifications for voters. Voters should include all males over twenty-one years of age without regard to race or color, who had not given aid or comfort to the rebellion. Under certain conditions and within certain restrictions the rebels might be allowed to participate in the government. In the territorial legislatures, they would mingle with those to whom Congress would extend the franchise (*i. e.,* the negroes), and there learn the principles of freedom and democracy, and eat the fruit of foul rebellion. Let them remain in the position of territories until the loyal states had amended the Constitution as they might see fit. Among other amendments, Congress should propose to the states one for apportioning representatives according to voters and not population,[2] and

[1] Stevens consistently favored a territorial form of government for the rebel states; this in spite of the fact that he supported the Reconstruction act of March 2, 1867, which established military governments. He had previously introduced two bills providing for territorial governments which he was unable to have passed. See *infra,* ch. vii and viii.

[2] If the negroes should be allowed to vote as Stevens proposed, it is difficult to see the reason for any change in apportioning representation. He did not explain it himself, but he perhaps feared, what has come to pass, that as soon as the southern states were in full fellowship again, they would set about disfranchising the negroes in one way or another. He did not propose an amendment forbidding the states the right to deny the franchise on account of race or color, as he did not believe it would be ratified by the northern states. See *infra,* ch. vi.

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another giving the national government the right to levy export duties, so that cotton might be properly taxed. These amendments should not be submitted to the present so-called governments in the southern states, as they were merely governments under duress. Finally, Congress should at once declare its power over the whole subject of reconstruction.[1]

Stevens also maintained that the negroes should be given equal civil rights, and that something in a material way should be done for them. He had explained previously what these material benefits should be, and did not at this time give a detailed account of his plan for confiscating southern lands. Such confiscation, however, was an important part of his plan for reconstructing the South, and though it was the one thing that he did not succeed in accomplishing, so long as he lived he cherished it and never gave up hope that it might be carried out.

Stevens' fullest exposition of his plan of confiscation was made in a speech at Lancaster, Pa., in September, 1865.[2] He figured that there were in the rebel states four hundred sixty-five million acres of land. Of this three hundred ninety-four million acres were owned by 70,000 persons, each of whom possessed more than two hundred acres. He argued that these three hundred ninety-four million acres ought to be confiscated by the government. To each adult freedman should be given forty acres, which approximately would dispose of about forty million acres. The remaining three hundred fifty-four million acres he would divide into suitable farms, and sell to the highest bidder. Including the

[1] The above is a brief analysis of Stevens' speech of December 18, 1865, *Globe*, pp. 72-75.

[2] This speech was printed in full in the New York *Herald* on December 13, 1865. A fuller discussion and a partial defense of Stevens' policy of confiscation will be found in Woodburn, ch. xx.

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city property it should bring an average price of ten dollars an acre, making a total of three billion five hundred forty million dollars. Of this money he would invest three hundred millions in six per cent bonds, the income of which should go towards the payment of pensions to deserving veterans and the widows and orphans of soldiers and sailors who had been killed in the war. Two hundred million dollars should be appropriated to reimburse loyal men in both North and South whose property had been destroyed or damaged during the war. With the remaining three billion forty million dollars he would pay the national debt. Stevens argued that since all this property which was to be confiscated was owned by 70,000 persons, the vast majority of the people in the South would not be affected by this policy. These 70,000 were the arch-traitors, and since they had caused an unjust war they should be made to suffer its consequences.

Such was the reconstruction policy of the man who, at the opening of the 39th Congress, undertook the task of overthrowing the policy of the President and having his own substituted therefor. What of the man himself? At this time Stevens was seventy-three years old, but as a correspondent for the *Independent* [1] described him, in spite of his age and feebleness, "his spirit is not bated, his sarcasm cuts as keenly as ever, his wit flashes as brightly, and his great intellect seems in no wise dimmed. His face in outline approaches the Indian type. The square perceptive brow, the deeply set eyes, the high cheek bones, the broad jaw and saturnine mouth are most marked. The face in repose is stern, but not savage. Thaddeus Stevens' inevitable sarcasm and wit seem purely intellectual gifts."

[1] *The Independent*, June 14, 1866; *Letters from a Woman in Washington.*

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John Sherman, while discussing Johnson's speech of February 22,[1] and trying to palliate it, said of Thaddeus Stevens: "We must not forget that he [Stevens] has shown violent and bitter feeling at various times, and that he wields great influence and in such a way as to exasperate even a patient man. I know him well—a man of great intellect, with a controlling will, and possessing the dangerous power of great sarcasm, which he wields against friend and foe, cutting like a Damascus blade."[2] Another observer said of him: "Thaddeus Stevens has the courage of his opinions. He sees plainly that the end we must seek is sure rather than swift reconstruction, and he states clearly the steps which he thinks essential to that end."[3] To the Washington correspondent of the *Nation*, he was the "inexorable Thaddeus Stevens who holds the business of the House in the hollow of his hand." As his biographer, Mr. McCall, says: "Before that day (December 4, 1865), Stevens had been the leader of the House of Representatives. Henceforth he was to be its dictator, and the leader of his party throughout the country."[4]

Radical was the man, and radical his policy, that the Republican members of the House of Representatives faithfully followed from the beginning of the struggle over reconstruction until the President was completely vanquished. The principal source, no doubt, of Stevens' great influence was his ability as a debater and his effective use of the party whip. But to understand why he became the "dictator" of his party in the lower house, it should be remembered that this was an era essentially revolutionary, when radical

[1] See *infra*, ch. iv.

[2] *Globe*, 1st sess., 39th cong., appendix, p. 129.

[3] *Harper's Weekly*, January 6, 1866.

[4] *Thaddeus Stevens* (American Statesman), p. 259.

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principles enunciated to-day, existing yesterday only in the minds of extreme men, would be adopted to-morrow.

Nearly every new measure which the government had adopted during the course of the war had been advocated in advance by Stevens. For instance, at the beginning of secession he had opposed making any further compromise with the slave power. In January of 1861, this was considered radical, while in January of 1866, there was no member of the Republican party who did not glory in the fact that no compromise had been made. When, in the fall of 1861, Stevens demanded that the slaves be emancipated as a war measure, most of the members of his party held back, and yet a year later this was done. When Stevens first advocated arming the slaves there were few who agreed with him, but long before the close of the war, thousands of negroes were to be found in the army of the United States.

Is it any wonder, then, that when so many radical measures had been adopted, and their adoption proved popular, that he who was the great *Radical* of them all, should be looked upon as the natural leader of the Republican party? So it was that for better or for worse, for weal or for woe, the politicians of that party, at the opening of 1866, were willing to follow Thaddeus Stevens almost anywhere he might lead, and this, in spite of executive disapproval and loss of patronage.

WILLIAM PITT FESSENDEN

The chairman of the committee on the part of the Senate was William Pitt Fessenden, who thus, in accordance with precedent, became chairman of the whole committee. At the time of his appointment to this important position he was already well known as a statesman, having served continuously as a senator from Maine since 1854,

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except for the short time that he acted as Secretary of the Treasury in the closing months of Lincoln's first administration.

Fessenden was born October 16, 1806, at Fryeburg, Maine. Truly may it be said that he was dedicated to politics from the beginning, for at his christening no less a person than Daniel Webster attended as godfather. At the age of twelve he entered Bowdoin College, from which he was graduated in 1823. He then took up the study of law, and in 1827 was admitted to the bar. Two years later he moved to Portland, which continued to be his home for the rest of his life. In 1831 he was elected to the Maine legislature as an anti-Jackson representative, and on the formation of the Whig party he became identified with it. Fessenden remained in the legislature for only one year, but during that time acquired a reputation as a clear and logical thinker as well as an eloquent speaker. In 1837, when Daniel Webster was making plans to capture the Whig nomination for President in 1840, he invited his godson to accompany him on a political tour through the western states. This invitation Fessenden accepted, and the experience doubtless proved valuable for him in his subsequent political career. In 1840, Fessenden was nominated by the Whigs to represent the Portland district in Congress, and although Portland was usually Democratic, Fessenden's own popularity and the Whig tidal wave that carried in Harrison and Tyler, combined to bring about his election. He served only one term in Congress, and long before the close of the first session he found congressional life so utterly "detestable" that he determined not to become a candidate for re-election. Because of the defection of Tyler and the consequent shattering of the Whig program, he wrote: "As a member of the Whig party I feel absolutely degraded. I am ashamed of our leaders, and could not have deemed it possible that

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men honored with the confidence of the people, and who have talked patriotism so loudly, would be governed by motives so contemptible. I am cured, I hope, forever of all fondness for public life, and could I do so without forfeiting obligations to others, would gladly resign." [1]

It was during the time that Fessenden was a member of the House of Representatives, that John Quincy Adams was attempting to break down the "gag" rule in regard to petitions against slavery. Though Fessenden considered that Adams sometimes talked too violently and unwisely, he determined to support the old man on principle, for he said:

> The insolence of these southern boys is intolerable, and the subserviency of their northern hirelings should cast them back into their native insignificance. I am every day growing more of the opinion that we must abandon all differences at home, except that between the northern and southern parties. I fear that a few years more will see the North and South entirely at issue, and for one, if the North is to be eternally sacrificed for the benefit of slave labor, I am willing to see that day come, terrible as it will be.[2]

Though Fessenden was not an abolitionist, this short experience in Congress enabled him to perceive that slavery was the pernicious institution over which all important political contests were to be waged. At the adjournment of Congress on March 4, 1843, he retired from political life, firmly convinced that slavery should be confined within its existing limits.

From this retirement he was not called forth until 1854.

[1] Fessenden, *Life of William Pitt Fessenden*, vol. i, pp. 22, 23. Unless otherwise stated, this work is my source of information for all strictly biographical material relating to Fessenden.

[2] *Ibid.*

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At the very time that the Nebraska bill was reported by Stephen A. Douglas, the Maine legislature was balloting to fill a vacancy in the United States Senate. The Whigs, who nominated Fessenden, were in a minority in the legislature, but among the Democrats there were many anti-slavery men who would not support the regular Democratic nominee, and after several futile ballots the anti-slavery Democrats combined with the Whigs and elected Fessenden. He arrived in Washington just in time to take part in the debate on the Kansas-Nebraska bill. His maiden speech announced the arrival of a "new champion," as Sumner expressed it, in the fight against the extension of slavery.[1]

With the dissolution of the Whig party, Fessenden, as a matter of course, became identified with the Republicans, and took an active part in the campaigns of 1856 and 1860. When the southern states began to secede, Fessenden, like Thaddeus Stevens, was opposed to making any concessions to the slave power in order to prevent disunion. Unlike Stevens, however, he does not seem to have appreciated the seriousness of the situation, as he continued to believe until the secession of South Carolina that the whole thing was a "kind of flourish."[2] Even as late as December 22, 1860, he wrote: "Any man with half an eye can see what all this means. It [secession] was begun for the purpose of frightening us into an abandonment of our position, thus strengthening the South and disgracing the Republicans."

Moreover, it is doubtful whether Fessenden expected the government to use force in preserving its integrity, for in the same letter he wrote: "If the Union can only be saved by acknowledging the power of a minority to coerce the majority through fear of disruption, I am ready to part companywith the slave states."[3] A few weeks later, how-

[1] Fessenden, *op. cit.*, vol. i, p. 33.

[2] *Ibid.*, p. 118.

[3] *Ibid.*, p. 119.

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ever, after the Gulf states had seceded, he began to realize that the South was in earnest, and also came to believe that war was probable.[1]

When the war was begun, Fessenden was made chairman of the Senate finance committee, and served in that capacity until July, 1864, when, upon the resignation of S. P. Chase as Secretary of the Treasury, Lincoln appointed him to fill the vacancy. Like almost everybody else in his own time, as well as before and since, Fessenden knew very little about the question of finance, but differed from most of the financial quidnuncs of all ages in that he was honest enough to confess his own ignorance.[2] Upon the expiration of Lincoln's first term, Fessenden resigned his place in the Cabinet and again took his seat in the Senate, where he served until his death in 1869.

During the war Fessenden had considered the discussion concerning reconstruction premature. He was not favorably disposed toward the Wade-Davis scheme, and as for the President's attempt in Louisiana and Arkansas, he was of the opinion that it would have been better to have waited until the majority of the people in those states had returned to their allegiance. He therefore voted against the admission of the senators from Arkansas in the spring of 1864, and at the same time expressed the opinion that the question of what constitutes a state to be represented in Congress, should properly be settled by Congress and could not be settled by any other authority.[3]

Fessenden believed that Johnson had made a great mistake in attempting to restore the rebel states without con-

[1] Fessenden, *op. cit.*, p. 125.

[2] *Globe*, February 12, 1862, p. 756; cited in Woodburn, *Life of Thaddeus Stevens*, p. 248.

[3] Fessenden, *Life of Fessenden*, vol. ii, pp. 10 and 11.

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sulting Congress, but when that body met in December of 1865, he was not among those who desired a breach with the President, for he thought that a quarrel might be fatal to the party and disastrous to the country.[1] He was firmly convinced that additional guarantees should be demanded from the rebel states, and he was unwilling to accept what the President had done as a finality, but was almost equally unwilling to allow the process of reconstruction to be controlled by the radicals, as he thought it would be in case the breach were made. He therefore desired, and at first hoped, that the President would work in harmony with the conservative Republicans, to the end that moderate though sound measures of reconstruction might be enacted. The following extracts from personal letters that he wrote, soon after being made chairman of the committee, will give some idea of the dilemma in which Fessenden felt himself to be; and some of his hopes and fears for the future may be seen.

The committee on reconstruction has a severe and onerous duty to perform, which must for some weeks occupy a great share of my time and attention. It is a difficult subject to deal with for it has become much complicated by the steps already taken. Yet I think I see the way through it if Congress stands firm, as I think it will. We are embarrassed by men of extreme opinions who think all ways but their own are necessarily bad ways, and by others who cannot wait till the proper time, through fear lest their own names may not be sufficiently known in connection with the work to be done. The committee has a large majority of thorough men who are resolved that ample security shall attend any restoration of the insurgent states, come what will, while they desire, if possible, to avoid a division between Congress and the executive, which could only result in unmixed evil. My belief is still that the President is as anxious as we are on that point; and if meddle-

[1] Fessenden, *op. cit.*, p. 13.

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some people will leave him in peace, I think he would try hard to establish matters on a firm and safe basis. He manifests no desire to interfere with the proper prerogatives of Congress, and appears willing to yield much to its opinions.[1]

Writing on the same day—December 24, 1865—he said:

I am placed at the head of the committee on reconstruction, and this, besides its delicacy will be a position involving very great labor and requiring great care and circumspection. I could not decline it any more than I could decline the Treasury. Mr. Sumner was very anxious for the place, but, standing as he does before the country, and committed to the most ultra views, even his friends declined to support him, and almost to a man fixed upon me. Luckily, I had marked out my line, and everybody understands where I am. I think I can see my way through, and if Sumner and Stevens and a few other such men do not embroil us with the President, matters can be satisfactorily arranged—satisfactorily, I mean, to the great bulk of Union men throughout the states.[2]

Then again on January 14, 1866, he writes in the same strain:

It is very unlucky for me that I have been forced to take hold of this reconstruction business. As I anticipated, the work of the finance committee will give me no trouble. This, however, engrosses me, and with all other matters makes the burden heavy. In addition to all other difficulties, the work of keeping the peace between the President and those who wish to quarrel with him, aided as they are by those who wish him to quarrel with us, is a most difficult undertaking. The fools are not all dead, you know. I hope we shall be able to put things upon a sound basis. That *must* be done, quarrel or no quarrel, but I hope to avoid the necessity.[3]

[1] Fessenden, *op. cit.*, p. 18.

[2] *Ibid.*, p. 20.

[3] *Ibid.*, p. 21.

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Thus the position of Fessenden, who was typical of the conservative Republican senators, is clear. He was anxious to avoid a breach with the President, and had Johnson been the least bit compromising or tactful, there is no doubt that the process of reconstruction would not have fallen, as it eventually did, into the hands of the extreme radicals. As it was, when Johnson placed himself in opposition to proposals designed to protect the civil rights of the negroes, and showed himself out of sympathy with measures which tended to strengthen the authority of the National Government, and especially when he began to resent any suggestion that there was anything more to be done in the matter of reconstruction, and that a Congress in which the southern states were not represented, could not with propriety legislate for those states,[1] Fessenden lost all patience with him and no longer had any hope for coöperation between the President and the conservatives.

It has been said that Fessenden, during the first session of the 39th Congress, was able to hold the Republican members of the committee to a comparatively moderate policy of reconstruction; and that to him was chiefly due the credit for perfecting the fourteenth amendment.[2] As a matter of fact, the record does not bear out this assertion, for the radicals were deterred from proposing anything more extreme than the fourteenth amendment, not by Fessenden and the moderates, but by the fear that they would not be sustained by the people. Fessenden's own attitude toward reconstruction, and his part in it, will be discussed somewhat in succeeding chapters, but it may be well to point out here what he preferred. Fessenden always believed that

[1] Johnson made this point in his veto of the Freedmen's Bureau bill, February 20. See *infra*, ch. iv.

[2] Rhodes, vol. v, p. 599.

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the people of wealth and intelligence in the southern states would eventually rule them, and he had none of that faith which so obsessed his "furious radical friends" as to cause them to believe that they could secure the votes of all those states through the aid of the negroes.[1] It will be seen in the succeeding chapter[2] that he supported a resolution providing that any distinction made in civil or political privileges on account of race or color should be inoperative and void. He would then, after offering them this simple proposition, have continued the southern states under military control, and let them remain outside the Union until they chose to accept it.[3] After making such a clear avowal of a principle which meant the giving of the suffrage to the negroes on an equal basis with the whites, one would be inclined to think that Fessenden should be classed among the radicals. Such, however, is not the case, for negro suffrage in itself was not wrong, as some writers have seemed to think, and the calamity which accompanied it was due to the fact that the Reconstruction acts of 1867 took the machinery of government out of the hands of the men who had formerly controlled it, and put it into the hands of unscrupulous persons who depended upon the credulity and ignorance of the negroes for political support.[4] This was a vastly different thing from what Fessenden proposed. He

[1] See letter of Fessenden to F. H. Morse; Fessenden, *Life of Fessenden*, vol. ii, p. 306. In August, 1869, just a few weeks before his death, Fessenden wrote to his friend Senator Grimes: "The election in Tennessee, the result of which you will know before this reaches you, is, in my judgment, but an indication of what we must expect in most of the rebel states at the next Presidential elections [that is, 1872]. The result there, as in Virginia, is no more than any man of ordinary sagacity must have foreseen. I both foresaw and foretold it."

[2] See *infra*, ch. iii.

[3] Fessenden, *Life of Fessenden*, vol. ii, pp. 23, 24.

[4] *Cf.* Rhodes, vol. vi, ch. i.

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would have said to the governing classes in the South: "You must extend to the negroes civil and political rights on an equality with yourselves; you may make any property or educational qualifications for voting so long as these qualifications operate equally on whites and blacks alike; and until you ratify an amendment to the Federal Constitution providing for equal civil and political rights and change your state constitutions and laws in conformity therewith, you must remain unrepresented in Congress, and subject to the military jurisdiction of the United States Government." [1] There was no party politics in this, for Fessenden did not expect that any considerable number of Republican representatives would be returned to Congress from the South under his proposed amendment. But he did not think that the southern states would accept his proposal before the election of 1868, which would therefore result in a Republican victory. That they would accept it, sooner or later, however, he was firmly convinced.[2] Of course this amendment proposed by Fessenden was not accepted by his associates, not, however, because of its radicalism, but because it was not a good party measure. Fessenden was a statesman; his associates were mere politicians.

Fessenden supported the fourteenth amendment and was very much disappointed when, in the second session of the 39th Congress, the radicals would not let it stand as a permanent basis of reconstruction, and were unwilling to wait until the southern states ratified it, as Fessenden thought eventually they would do. Writing of this matter in the fall of 1868, Fessenden said: "I got my name of conservative by advising against the Reconstruction act. It seemed to me, that when we had proposed the fourteenth amend-

[1] Fessenden, *Life of Fessenden*, vol. ii, pp. 23, 24, 306.

[2] *Ibid.*

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ment, the rebel states had rejected it, and we had provided military protection for our friends, enough was done by Congress towards reconstruction, and we had better leave the matter where it was until the people of those states asked for admission in proper form."[1] Fessenden, though he advised against the Reconstruction acts, did not vote against them, as to have done so would have caused the radicals to read him out of the party. In fact they tried to do so as it was,[2] because from this time on he opposed most of their plans in their war on Andrew Johnson. For instance, he thought a continuous session of Congress unnecessary;[3] he refused to vote against confirming every non-Republican nominated by the President for public office; he defended Secretary of the Treasury McCulloch at a time when to speak kindly of any Cabinet member except Stanton was considered treachery to the "cause;" he did not vote for the Tenure of Office bill or for the resolution declaring the act of the President in removing Stanton, illegal.[4] This was a trying year for Fessenden, and though outwardly he maintained cordial relations with his radical colleagues, yet privately he denounced them and their schemes in no uncertain terms. So weary was he of it all, that he would have resigned his position in the Senate, could he have done so with honor.[5] "I am becoming disgusted with public life," he wrote to one of his friends. "Treachery on the one hand and folly on the other have almost disheartened me.

[1] Fessenden, *op. cit.*, p. 306. See *ibid.*, p. 65.

[2] See *ibid.*, pp. 135 *et seq.*, for attacks by Chandler and Sumner upon Fessenden because of his "conservatism." These and other men attempted to destroy Fessenden as they had destroyed Cowan, Doolittle and Dixon, by forcing him into the party of the President.

[3] *Ibid.*, p. 127.

[4] *Ibid.*, pp. 154, 155.

[5] *Ibid.*

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We are doing some very foolish things in Congress, and others still more foolish are attempted. The truth is, we are disgusting all sensible people very fast. The effort to impeach the President will fail as the whole thing is mere madness." [1]

In the eyes of his radical colleagues, Fessenden was guilty of the sum of all infamy when he, acting with six conservative associates, voted for the acquittal of Andrew Johnson, and thus prevented his removal from office.[2] For this he was roundly denounced.[2] Fessenden, however, voted in accordance with what he considered the strict discharge of his duty. Soon after the impeachment trial was over, he wrote to his son: "The satisfaction of knowing that I have acted from the purest motives, and a devotion to the honor and best good of my country, regardless of my own personal interest and comfort, cannot be taken away from me. The whole thing, however, has made me sick at heart. I have seen in the Senate so much of meanness, such utter want of conscientiousness, such base cowardice, even among men calling themselves Christians, that I almost despair of the future, and when I look around me and see what the people are, how easily misled, how willing to be both unjust and ungenerous, I am surprised that anybody should be willing to render them an honest service." [3]

There was much talk to the effect that the National Republican convention, which met in the interval between the first and second vote in the Senate, would read Fessenden and the other six Republicans who voted for the acquittal of Johnson, out of the party. It did nothing of the sort, however, but for a while Fessenden was in doubt as to whether

[1] Fessenden, *op. cit.*, p. 129.

[2] *Ibid.*, p. 207, *et seq.*

[3] *Ibid.*, p. 222.

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he desired to stay in a party which had treated him so ill. The reaction in public opinion which followed the impeachment trial, led many Republicans to believe that the "seven" had saved the party from utter ruin. A large number of Republicans, some of whom had formerly advocated the conviction of the President, wrote Fessenden and congratulated him upon the stand he had taken.[1] This, together with the more satisfactory stand taken by the Republicans on the money question in the presidential campaign of 1868, caused Fessenden to conclude actively to support the candidate of that party.[2] He considered that the Democratic doctrine of paying the bonds of the United States in greenbacks was dishonest, and was the essence of repudiation.[3] Moreover, while he was not in sympathy with reconstruction as carried on by the radicals, he did not believe that what had been done should be undone as the Democrats proposed. He therefore entered the campaign, and rendered such valuable service to the Republicans, that by the time Congress met in December, he had succeeded in reinstating himself in the good graces of the party. It was even suggested that Fessenden might be appointed Secretary of the Treasury by Grant, but however excellent such an appointment might have been, it was not made on account of his poor health. Fessenden was never again active in politics, and his career was ended by death in September, 1869.

Before closing the account of Fessenden something should be said of the personality of the man who, though comparatively neglected by the historians of the Civil War and Reconstruction period, was nevertheless, one of the three or four ablest and most farsighted statesmen of his

[1] Fessenden, *op. cit.*, pp. 227 *et seq.*

[2] *Ibid.*, ch. xi.

[3] *Ibid.*, pp. 300, 308.

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time. For instance, Charles Sumner, whose service in the Senate was contemporaneous with Fessenden, is very much better known, though a comparison of the two men shows Fessenden to be very much the superior in practical common sense, and quite the equal of Sumner in point of intellect. Both men were idealists, but Sumner was never willing to yield one iota of his ideal for the sake of accomplishing a practical piece of legislation, even though it should tend in the general direction of the end which he desired to accomplish. When thoroughly exasperated with Sumner's obstinacy, Fessenden exclaimed: "My constituents did not send me here to philosophize. They sent me here to act, to find out, if I could, what is best, and to do it, and they are not so short-sighted as to resolve that if they cannot do what they would, therefore they will do nothing."[1] Theodore Tilton, an extreme radical, and somewhat unfriendly towards Fessenden, said of him: "I believe that on the whole Fessenden has more continuous influence in the Senate than belongs to any other senator. He is the best debater in the body—a complete parliamentarian—a recognized authority on many and various subjects of legislation and an incorruptible man. If he were less conservative and more bold, he would approach my ideal of an American legislator."[2] Everybody who knew Fessenden, testified to his ability as a debater, to his intellectual acumen, and to his far-seeing statesmanship, as well as to his honesty, straightforwardness, and high character. Himself of absolute sincerity and integrity, he was almost petulant in opposition to sentimentality and rhetoric, and had no sympathy with those politicians who attempted to win popularity by vituperating unpopular opponents. The delicate task of reorganization

[1] *Globe*, 1st sess., 39th cong., p. 707.

[2] Editorial in the *Independent*, April 12, 1866.

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should have been left to men who possessed the qualities of firmness and forbearance, of prudence and conciliation, of faith and patience. Such qualities Fessenden possessed in a high degree, while to Stevens, his eminent colleague on the committee they were foreign, and as so often happens, the task was given to the man least fitted for it.

Of the remaining thirteen members of the committee only three or four exercised any perceptible influence on the course of reconstruction, and even they were of but little importance in comparison with Stevens and Fessenden. Accordingly on account of this fact, and because of lack of space, only a brief account of each can be given here.[1]

JOHN A. BINGHAM

The chief contribution of John A. Bingham to congressional reconstruction is that part of the fourteenth amendment which provides for equality of civil rights to all citizens of the United States.[2] He was born in Mercer, Pennsylvania in 1815, but early in his life his parents removed to Ohio. After spending a couple of years at Franklin College, he took up the study of law and was admitted to the bar in 1840. This was the year of the famous "log cabin, hard cider" Presidential campaign, and young Bingham took part in it as an active supporter of the Whig ticket. In 1848, he was made a delegate to the national Whig convention at Philadelphia, where he made a fruitless effort to have his party take a bold and unequivocal stand against the further extension of slavery into the territories. In 1854,

[1] My biographical notices of the members of the committee are here given in the order of what seems to have been the relative importance of their contributions to the reconstruction measures of the 39th Congress, and not according to the whole life work of each.

[2] See *infra*, ch. iii and ch. vi.

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he was elected to Congress as a Republican, and, with the exception of one term, served continuously until 1873. Having temporarily lost his seat in Congress because of the Democratic reaction of 1862, he was appointed in 1863 by Lincoln as judge advocate in the army and later as solicitor of the court of claims. He came conspicuously before the public in 1865, when he acted as special judge advocate in the trial of the assassins of President Lincoln. From his re-entrance into the House of Representatives in 1865 to the termination of his career in that body, he was regarded as among the five or six leading Republican members. He failed of re-election in 1872, but was solaced by an appointment the next year as minister to Japan. This position he held until 1885, when he was recalled by President Cleveland. He died in 1900 at his home in Cadiz, Ohio.[1]

In his attitude on reconstruction, Bingham is to be classed with Fessenden rather than with Stevens. Like Fessenden, he wished to avoid a breach with the President, but he was unwilling to sacrifice his principles for the sake of harmony. As has been said, he particularly desired to have the civil rights of the individual put into the special keeping of the National Government, and it is not too much to say that had it not been for his untiring efforts the provision for nationalizing civil rights would not have found a place in the fourteenth amendment. In the second session of the 39th Congress, Bingham bitterly opposed and denounced the radical members of his party because of their abandonment of the fourteenth amendment as the rock of the congressional reconstruction policy. Party ties were too strong, however, for him to oppose the party decrees, so he finally

[1] Memorial address of Senator J. B. Foraker, Cadiz, Ohio, 1901; *Ohio Archeological and Historical Society Publications*, vol. x, pp. 331-351. Also, Appleton's *Cyclopedia of American Biography*.

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voted for the Reconstruction bill. At first, he was opposed to the impeachment of Andrew Johnson, which brought down upon him the wrath of Benjamin F. Butler, and feud existed between the two for the remainder of Bingham's career in Congress. When the Senate passed the resolution declaring illegal Johnson's removal of Stanton, Bingham was no longer able to hold out against what he had formerly termed the impeachment folly, and like every other member of his party voted for impeachment. It was in special recognition of his great legal ability that in spite of his conservative tendency, he was elected as one of the board of managers for the prosecution of the President, and made one of the best legal arguments on his side of the case. Bingham was a man of intense nervous force, great intellect, powerful in argument and masterful in speech, but his personality prevented him from ever becoming a popular idol.

ROSCOE CONKLING

With the possible exception of Thaddeus Stevens, Roscoe Conkling is the best known at the present day of the members of the committee. Though he took quite an important part in reconstruction, his principal title to fame is derived from the part played by him in politics, from the inauguration of Grant as President until his resignation from the Senate in 1881, occasioned by his difference with President Garfield over New York patronage. Conkling was born at Albany, New York, in 1829, but when he was only nine years old, his father, a United States district judge, moved to Auburn. His education extended only through high school, as "his impatience to begin the battle of life was such that he declined to enter upon a collegiate course of study."[1] In 1846, he removed to Utica, studied law in

[1] Conkling, *Life and Letters of Roscoe Conkling*, p. 14. Unless otherwise stated, this biography is my authority for all the facts concerning Conkling's life.

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the office of two of the best-known attorneys in that city, and in 1850, when only twenty-one years old, was admitted to the bar. At the same time he entered politics, and after serving as district attorney and mayor of Utica, he was elected in 1858 to Congress. In politics he had been a free-soil Whig and naturally by this time had become identified with the Republican party. He served in the House from 1859 to 1863, and from 1865 to 1867. In the latter year he was elected to the Senate, where he served until 1881. He was offered the position of Chief Justice by President Grant in November, 1873, in succession to Salmon P. Chase, but declined it. "I could not take the place, for I would be forever gnawing my chains," he said in explanation of his declinature. During the whole of Grant's administration, it is no exaggeration to say that Roscoe Conkling was the power behind the throne.

During the last seven years of his life (1881-88), he engaged in the practice of law in New York City, usually acting as counsel for large commercial and transportation companies.

It was during his first four years of service in the House that Conkling won a reputation as an orator, and, barring Thaddeus Stevens, who in prominence was head and shoulders above every other member, Conkling was recognized, along with Garfield, Blaine, and Bingham, as one of the ablest four men in that body. Though Conkling differed from Thaddeus Stevens in matters of finance, and voted against the legal tender bill in 1862, he was a protégé and favorite of Stevens, and during this early period of his public career, generally took his cue in matters concerning the South from that ancient radical. Thus when Conkling entered the 39th Congress in 1865, Stevens secured for him a place on the joint committee on reconstruction. Here his chief service was rendered in drawing up, defending,

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and expounding the political theory of that part of the fourteenth amendment which concerns the basis of representation.[1] He was also of service in perfecting the language of other bills and resolutions for amending the Constitution which emanated from his colleagues on the committee.[2] Conkling did not favor Bingham's pet proposition (section 1 of the fourteenth amendment), though in later days, when arguing great corporation cases before the Supreme Court, he was instrumental in having that tribunal take the ground that the provision of the fourteenth amendment which forbids a state to deny to any person within its jurisdiction the equal protection of the laws, can be applied to the protection of corporations in the matter of excessive taxation.[3]

When one reviews Roscoe Conkling's life as a whole, it is impossible to feel that the claim made by himself and echoed by his biographer, that he was ever the friend of the common man, the poor and the oppressed, especially the negro, was well-founded.

GEORGE S. BOUTWELL

Perhaps the coldest, most calculating and yet unreasoning fanatic on the committee was George S. Boutwell, of Massachusetts. The reason for placing him fifth in importance is not because of any great ability which he possessed, nor because he contributed anything worthy of note to the measures of reconstruction proposed by the committee, but because he was constantly urging his colleagues on to more radical actions.

Boutwell was born in Brookline, Mass., in 1818. He was almost entirely self-educated, and like men who attain success largely through their own efforts, his ten-

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

[2] See *infra*, ch. vi and viii.

[3] See *supra*, p. 29.

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dency seems to have been to over-estimate his own importance. When seventeen years old, he moved to Groton, Mass., and there as clerk in the village grocery store, he learned his first lessons in practical politics.[1] Ever a practical politician, and always desirous above all things of being on the winning side, he became a Democrat because the Democratic party was predominant in his village. In 1842, he was elected to the lower house of the Massachusetts legislature and between that time and 1851, he served for seven sessions. During 1851 and 1852 he was Governor of Massachusetts. From 1852 to 1863, he held several political positions in the state or Federal governments. He assisted in the organization of the Republican party in Massachusetts, and in 1862 was elected a member of Congress, where he served until 1869. In that year he was appointed Secretary of the Treasury by President Grant and held that office for four years. His last public service of importance was rendered as a United States senator, he having been elected in 1873 to finish the four remaining years of the term of Henry Wilson, who had been elected Vice-President. From 1877 until a few years before his death in 1905 he remained in Washington as a superannuated politician, picking up such crumbs as fell from the table of his more prosperous Republican allies.

Boutwell was a professional politician, and depended upon his political offices for his livelihood, therefore, as has been said, his chief interest was to keep his party in power and himself in office. A contemporary says of him: "Boutwell is an ardent, narrow-minded partisan, without much judgment, not devoid of talents, with more industry than capacity, ambitious of notoriety, with a mind without com-

[1] Unless otherwise stated, the source of my information concerning Boutwell's life is his autobiography, *Reminiscences of Sixty Years in Public Affairs.*

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prehension nor well trained; an extreme radical, destitute of fairness where party is involved."[1] Because he believed the surest way to continue the supremacy of the Republican party was to commit it to radicalism, Boutwell advocated the most extreme measures in dealing with the South. He desired a wholesale disfranchisement of the rebels, and an equally sweeping enfranchisement of the negroes. To Boutwell is due the credit of the authorship of the fifteenth amendment. He professed to believe that unless negro suffrage were granted, the United States Government would fall. His theory of suffrage and his idea of the necessity for negro suffrage may be seen in the following excerpt from one of his speeches on the subject:

> The right to vote exists independently of all human agency in the sense of law; and the doctrine that the right of voting is a conventional right, is not sustained by reason or history. . . . I believe that negro suffrage ought to be made a condition precedent to the readmission of the southern states, and unless it is made so, a way is open leading to the destruction of this government, from which there is no escape. . . . It will fail and fall from the fact that by restoration without this all essential guarantee, we put into the hands of our enemies in the South two weapons, the blows of which we shall be powerless to parry. These weapons are: (1) The re-admitted rebels, in conjunction with their copperhead friends, will assume the Confederate debt, and force the national government to pay for the slaves. This will cause government paper and bonds to fall so low that our credit abroad will be ruined. As a result, England and France, taking advantage of our situation, will go to war with us, during which the southerners will again march out of the Union and bid the North defiance. (2) If you fail to secure the black man in his rights, he will become in a degree alien and hostile to the national government. In

[1] *Diary of Gideon Welles*, vol. iii, p. 239.

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this condition he will be ready to accept the right of suffrage from the southern leaders, and transfer his allegiance from you to them. Then when the next struggle comes, and the southern leaders undertake the destruction of the government, he will be on their side, and not on ours as he was before.[1]

J. W. GRIMES

Grimes was born in Deering, New Hampshire, in 1816. In 1836 he was graduated from Dartmouth College, and in the same year moved to Burlington, Iowa. Here he practised law, served as territorial librarian, as delegate in the territorial legislature, and as a member of the state assembly after the admission of Iowa into the Union. In 1854, he was elected governor of the state by a combination of the Whigs and Freesoilers, and during his four years of office he did much towards building up the Republican party, and developing anti-slavery sentiment in his state. As a reward for his services, and as a recognition of his ability, the Republicans elected him to the United States Senate in 1859, which position he held for ten years, retiring because of ill health. He died in 1871.[2]

Grimes' chief service in the Senate during the war was rendered as chairman of the committee on naval affairs. Theodore Tilton said of him: "Senator Grimes, of Iowa, who speaks little and accomplishes much, is one of the pillars against whom weaker men lean and are propped into strength. It is hard to find anywhere a better worker in public business than Senator Grimes, though he is not a man of popular reputation."[3] At this time Grimes was acting

[1] *Globe*, 1st. sess., 39th cong., p. 309.

[2] Salter, *Life of Grimes;* Appleton's *Cyclopedia of American Biography.*

[3] *Independent*, April 12, 1866. Tilton was editor of this paper. He was a talented fanatic who kept constant watch on political affairs, and was intimate with some of the Republican members of Congress.

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with the radicals, and in the opinion of Gideon Welles, he was directing their course.[1] Though he was no doubt instrumental in preventing some weak members of the party from surrendering to the President during the early stages of the quarrel with the executive, Grimes, like Fessenden, with whom he generally acted in concert, opposed the most extreme measures of his associates, and was one of the seven Republican "traitors" who voted for the acquittal of Andrew Johnson. Grimes was not the author of any of the reconstruction measures proposed by the committee, but there seems little doubt that during the first session of the 39th Congress, at least, his influence was potent. Welles[2] even thought that he really controlled Fessenden, and that the leadership of the latter in the Senate was only nominal, Grimes being the real leader. This, however, is doubtful, as the unanimity of the two men on public questions was more likely due to their friendship and the similarity of their ideas.

GEORGE H. WILLIAMS[3]

Williams of Oregon, whom the acrimonious Welles characterizes as "a third-rate lawyer, weak and corrupt,"[4] owes his importance to the fact of his being the author of the first Reconstruction act of 1867.[5] He was a native of Columbia county, New York, having been born in 1823. His first important political position came in 1853 when he was appointed by Franklin Pierce to the chief justiceship of the territory of Oregon. In 1865, after that territory had

[1] *Diary*, vol. iii, p. 14. For the reason of Grimes' opposition to the President, see *infra*, ch. iv, p. 229.

[2] *Diary*, vol. ii, p. 635.

[3] *National Cyclopedia of Biography*.

[4] *Diary*, vol. iii, pp. 358, 359.

[5] See *infra*, ch. viii.

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become a state, he was elected to the United States Senate as a Republican. He was in all respects of the same type as Boutwell, being a mere time-server and office-seeker. His other contribution to legislation during his senatorial term was the Tenure of Office act, and he worked indefatigably for the conviction of Andrew Johnson. When the radicals made Grant their President, Williams became one of his chief flatterers and hangers-on, and was rewarded with a place in the Cabinet as Attorney-General, which he held from 1872 to 1875. In 1873 Grant nominated him for Chief Justice of the Supreme Court, but even the radical Senate retained sufficient respect for that high office, and his confirmation was refused.

HOWARD, MORRILL, WASHBURNE, BLOW AND HARRIS [1]

None of the other five Republican members of the committee were of any particular importance in shaping the course of reconstruction.

Jacob M. Howard, senator from Michigan, was a worthy protégé of his colleague Zachary Chandler—one of the most vulgar and reckless of the radicals—and served consistently in the vanguard of the extreme negrophiles. His chief claim to fame rests upon the important part played by him in organizing the Republican party. He drew up the platform of the first convention ever held by the Republicans, and is said to have given his party its name. Howard served in the Senate from 1862 to 1871, and never held any other very important position. He was born in 1805 and died in 1871.

Justin S. Morrill, of Vermont, born in 1810, engaged in

[1] The sources of my information for the lives of these men are Appleton's *Cyclopedia* and the *National Cyclopedia of Biography*. My opinions of them are derived from their speeches and votes in Congress and in the committee; also contemporary estimates of them.

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mercantile and agricultural pursuits until 1854, when he was elected to Congress. It is quite possible that he holds the record for length of continuous service in the legislative department of the United States Government. He was a member of the lower house for twelve years, and of the upper for thirty-one years, making a continuous service in Congress of forty-three years. He was an honest and hard-working legislator, but his chief labors were directed towards maintaining a protective tariff and a sound financial system. The only part taken by him in reconstruction was to attend the meetings of the committee and cast his vote, which was regularly on the side of radicalism.

Elihu B. Washburne was, like Morrill, an honest man and though he was long in politics he does not deserve to rank as a statesman of conspicuous ability. He was born in Maine in 1816, and in 1840 he removed to Illinois, taking up his residence at Galena. Here he began the practice of law, engaged actively in politics as a Whig and in 1852 was elected to Congress, where he served continuously until 1869. He was appointed by President Grant Secretary of State as a compliment for the assistance which Washburne had rendered him personally toward gaining recognition of, and promotion for, his ability as a commander during the first two years of the war. Washburne almost immediately resigned the premiership and accepted the mission to France in its stead. He was in Paris during the terrible days of the Prussian siege and the still more horrible period succeeding, and discharged the delicate duties devolving upon him in such a manner as to win the appreciation and approval of President Grant and Secretary Fish. After serving the United States in Paris for nearly nine years, he returned to America and retired to private life in Chicago, where he died in 1887.

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Washburne was deeply interested in reconstruction and was classed among the most extreme radicals but was not prominent in originating or in advocating any of the measures proposed by the committee. Upon the death of Thaddeus Stevens, he was made chairman of the committee on appropriations, and from the jealousy with which he guarded the financial interests of the government against the efforts of the "lobby" and the "log-rollers," he was the first to win the sobriquet, "Watchdog of the Treasury."

Henry T. Blow, of Missouri, and Ira Harris, of New York, were practcally nonentities. They were not by nature radicals, but neither had force of character sufficient to act independently of party. The former was a Virginian by birth, but removed to Missouri in 1830, when only thirteen years old. For a few years preceding the war he served in the state senate, and though a southerner and a Democrat, he was opposed to secession and rendered valuable service to the Union cause in Missouri by assisting in preventing that state from joining the Confederacy. For this he was rewarded by Lincoln with the appointment to the Venezuela mission. After holding this position for less than a year, he resigned, and in 1862 was elected to Congress, where he served two terms. In the committee he at first acted with the radicals, but in the second session of Congress he was a follower of Bingham, who, as has been seen, opposed Stevens in his attempt to reduce the rebel states to the position of territories. In 1869 he was appointed by Grant minister to Brazil, where he remained for two years. He died in 1875.

Harris was born in Montgomery county, New York, in 1802, graduated from Union College in 1824, and was admitted to the bar in 1828. During the thirties and forties he figured in state politics as a Whig, and served several

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terms as a legislator. From 1848 to 1861, he was a judge of the state supreme court, and in the latter year was elected to succeed William H. Seward in the United States Senate. He did not distinguish himself as senator, and though he acted with the radicals in all matters pertaining to reconstruction, the Republicans in the New York legislature did not re-elect him in 1867, but instead chose Roscoe Conkling, who, it was believed, would make the influence of the Empire State felt, and who could speak on behalf of its interests as Harris and his colleague Morgan had not done. After his defeat for re-election, Harris retired to private life and died in 1875.

THE DEMOCRATS [1]

The Democratic minority in the 39th Congress was very small, being hardly more than one-fourth of the membership in either house. In mental calibre and political acumen the Democrats were even more woefully weak than they were in numbers. To this general statement there were a few exceptions, the most notable being Reverdy Johnson. He was born in Annapolis, Maryland, in 1796, received his education at St. John's College, and studied law in the office of his father, who was chancellor of the state. In 1817, he moved to Baltimore and practiced law with great success. Like most lawyers of his time, he engaged in politics and became well-known in the public life of the state and nation. During the thirties he served several years in the Maryland senate, and was in the United States Senate from 1845 till 1849, but resigned in the latter year to accept the position of Attorney-General in President Taylor's Cabinet. Until 1856 he was a Whig but in that year, when his party practically ceased to exist, he entered the Democratic party and

[1] *Op. cit.*

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supported the candidacy of Buchanan. In 1860, he voted for Douglas and in the following year re-entered the Senate. Like Crittenden, of Kentucky, and other Border State men, he did all in his power to avert hostilities, but when attempts at compromise proved unavailing he gave cordial support to the administration in its measures for prosecuting the war. When peace was restored, he urged the immediate restoration of the southern states to their former place in the Union. Though acting generally with the Democrats, Johnson was not primarily a party man, and in the committee preferred to use his influence and vote in mollifying the measures of his adversaries, rather than in hopeless opposition to everything proposed by them. For instance, when in March, 1867, he saw that the radicals were becoming more and more extreme in their demands for a "thorough" reconstruction, he voted for the Reconstruction bill, because he feared their next move would be to reduce the southern states to the position of territories. In 1868, upon the retirement of Charles Francis Adams as minister to the court of St. James, Johnson was appointed in his place and negotiated the Johnson-Clarendon treaty concerning the damage done to American commerce by the English-built Confederate cruisers. The treaty was not acceptable, however, to the Republican party, so it was rejected by the Senate and Johnson was recalled by President Grant in 1869. He retired to private life and died in 1876.

Henry Grider, of Kentucky, and Andrew Jackson Rogers, of New Jersey, were the two remaining Democratic members of the committee, and as such exercised no influence on its deliberations. The former, born in the same year as Reverdy Johnson, was of Whig antecedents and served in the House as a member of that party for two terms in the middle forties. Re-entering the House as a war Democrat

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in 1861, he served through the first session of the 39th Congress, but died before the meeting of the second session.

Rogers, born in 1828, entered Congress for the first time in 1863. He belonged to that brand of Democrats designated contemptuously as "copperheads." He opposed every measure of the Republicans that had for its purpose the alleviation of the condition of the colored race. He was violent in his hatred of that race, and because of his capacity for speaking in denunciatory terms of it, he was one of the few minority members whom the majority allowed to speak at will. They correctly estimated the value of his remarks as political capital for themselves, as convenient texts to cite, showing what might be expected to be the fate of the "wards of the nation" should a combination of copperheads and rebels again get control of the government.

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CHAPTER III

Representation and Civil Rights [1]

The particular phase of the negro question which most concerned Republican politicians in 1865-6 was the problem of representation of the colored population in Congress. It will be remembered that, according to the Constitution, the slave states had been entitled to representation for three-fifths of their slaves. Under this provision the fifteen slave states had, in 1860, eighteen more representatives than they would have had if representation had been based on the white population alone.[2] Now that the slaves were free, the three-fifths rule would no longer operate, and should there be no amendment to the Constitution on the subject, all the negroes would be counted in apportioning representation. This would entitle the former slave states to about a dozen representatives in addition to what they had in 1860. That is to say, should no change be made in the Constitution, the southern states [3] would be entitled to about thirty representatives for their colored population, though not a single

[1] For the part of the journal relating to this chapter, see *supra*, pp. 41 to 63.

[2] These and the succeeding figures are based on a table of statistics carefully prepared by Roscoe Conkling and used by him in a debate on this question on January 22, 1866. *Globe*, 1st sess., 39th cong., pp. 356-359.

[3] This included the four states which did not secede, but since their negro population was comparatively small, they would not have been much affected. According to Conkling's figures, the fifteen former slave states would have been entitled to ninety-four representatives based on their

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negro could vote in any of them. This state of affairs the Republicans determined to remedy before they would consent to admit the representatives from the rebel states. It is not surprising then to find that the first task undertaken by the committee after its organization was the readjustment of the basis of representation. It was with this subject that the committee busied itself during the first weeks of January, 1866.

Propositions to amend the Constitution so that representatives should be apportioned among the states according to their respective numbers of voters had been submitted to the House by Thaddeus Stevens and others as early as December 5, 1865.[1] Opposition to such method of apportionment was raised by the New England members; and James G. Blaine, speaking for his section,[2] declared that New England had fewer voters in proportion to her population than the states further west. This was due to two causes: first, more of her males than females emigrated to the West, and thus left her with a disproportionately large number of women; second, her suffrage was not on so broad a basis as most of the other states, as educational qualifications for voting were generally required.

On the other hand, Blaine's rival, Roscoe Conkling, defended the proposition and declared[3] that there were only two sensible methods of apportioning representation; one, according to the entire population, and the other, according to the voting population of the states. Any method not embodying one

total population, whereas they would have been entitled to only about sixty-five if based on their white population alone. According to the apportionment under the census of 1860 (when the three-fifths rule was still in operation) they were entitled to eighty-five.

[1] *Globe*, 1st sess., 39th cong., pp. 9, 10.

[2] January 8, 1866, *ibid.*, pp. 141, 142.

[3] *Globe*, 1st sess., 39th cong., p. 233.

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or the other of these principles, would prove indefensible from the standpoint of political science, and could not be easily applied in practice. Moreover, he maintained that New England would not lose any representatives by an apportionment according to voters, and referred to his table of statistics in proof thereof. His argument, however, did not convince the New England men, and so persistent was their opposition to an apportionment according to voters, that both Conkling and Stevens abandoned their proposition, and after considering several suggestions, the committee finally, on January 20th, fixed upon the following resolution: [1]

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed; provided that whenever the elective franchise shall be denied or abridged in any state on account of race or color, all persons of such race or color shall be excluded from the basis of representation.

This was virtually the resolution that had been introduced in the House by Blaine on January 8th, when he objected to an apportionment according to voters. Consequently it was satisfactory to the New England members.

The resolution was reported to the House by Thaddeus Stevens on January 22nd.[2] He consumed a few minutes in explaining its meaning, and its effect on the basis of representation. He considered it very important that it be sent immediately to the state legislatures then in session, so that they would have time to act upon it before they adjourned. He therefore hoped that it would pass the House before

[1] See *supra*, p. 53.

[2] *Globe*, p. 351.

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sunset, and proposed that only two hours, divided equally between the two sides of the House, be allowed for its debate. Even his own followers, however, were unwilling to sustain him in such precipitancy, and the debate continued for a week on the resolution, after which it was recommitted for amendment.[1] The only change made by the committee was to strike out the words, "and direct taxes," and on January 31st, it was reported back to the House. On the same day it passed the House by the requisite two-thirds majority.[2] After a long drawn out and desultory debate, frequently interrupted by other business, it was brought to a vote in the Senate on March 9th. Charles Sumner considered it a compromise of human rights and he was able to carry enough radical senators with him in opposition to it to compass its defeat.[3]

In truth the measure deserved no better fate, for it was entirely partisan. It was intended to deprive the South of as many representatives as possible without decreasing the number to which any northern state was then entitled. It will be noted that it provided that if any negro should be disfranchised on account of his color the entire negro race was to be deducted from the basis of representation. It was thus even more of a party measure than the later section 2 of the fourteenth amendment, and much more so than the proposition which apportioned representatives according to the number of voters. In spite of its partisan character, it was ably defended as being consistent with the sound political philosophy that had been evolved concerning the right of representation.[4] Conkling's speech, which is epitomized in the succeeding paragraphs, was the best de-

[1] *Globe*, p. 493. See *supra*, p. 58.

[2] *Ibid.*, pp. 535 *et seq.*

[3] *Globe*, p. 1289.

[4] Conkling, *Globe*, pp. 356-359.

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fense made of the proposition from the standpoint of political theory.

It changes, he held, no principle laid down in the Constitution, as the original provision (article 1, section 2) clearly indicates that political representation does not belong to those who have no political existence. The government of a free political society belongs to its members, and does not belong to others. If others are allowed to share in its control, they do so by express concessions, not by right. It was this principle that brought the so-called "three-fifths compromise" into the national charter.

The slaves of the South were not part of that political society which formed the Constitution of the United States. Hence it followed that political power was not to be apportioned by treating them as political persons. Natural persons they were, producers they were, and the product of their labor was the proper subject of taxation. But direct taxes and representation ought to be distributed uniformly among the members of a free government. All alike should bear the burdens, all alike should share the benefits.

Here was a clear principle, palpably right, easy and certain in its application. It applied itself universally and covered the whole case with one exception. The slave alone was the anomaly and the nondescript—a man and not a man; in flesh and blood, alive; politically dead; a native, an inhabitant, a producer, but without recognized political attribute or prerogative; the representative in the system of nothing but value.

What could be done with him? The free states could not maintain that he was a person to be taxed. The slave states could not maintain that he was a person to be represented without some special provision. Both taxation and representation, however, were desirable from the respective standpoints of the two sections. Therefore they made the

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"three-fifths compromise," which was purely an arbitrary agreement.

This operated so long as there was anything for it to operate on. Now a new anomaly exists. The four million people who have suddenly been released from slavery, while falling within the category of "free persons," are not yet political persons. This emancipated multitude has no political status. Emancipation vitalizes only natural rights, not political rights. Enfranchisement alone carries with it political rights, and these emancipated millions are no more enfranchised now than when they were slaves. They never had political power. Their masters had a fraction of power, but since the relationship of master and slave is destroyed, this fraction of power cannot longer survive in the masters. There is only one place where it could logically go, and that is to the negroes; but since it is said they are unfit to have it, it is a power without a rightful owner, and should be resumed by the whole nation at once. If a black man counts at all now, he counts not as three-fifths of a man but as five-fifths. Four millions, therefore, and not three-fifths of four millions, are to be reckoned with now, and all these four millions are presumed to be unfit for political existence. Since the framers of the Constitution did not foresee such a contingency, and expected that emancipation would come gradually and be accompanied by education and enfranchisement, they provided for no situation whereby eleven states might claim twenty-eight representatives besides their just proportion.

Twenty-eight votes to be cast here and in the Electoral College for those held not fit to sit as jurors, not fit to testify in court, not fit to be plaintiff in a suit, not fit to approach the ballot box! Twenty-eight votes, to be controlled by those who once betrayed the government, and for those so destitute, we are assured, of intelligent instinct as not to be fit for free agency!

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Shall this be? Shall four million beings count four millions, in managing the affairs of the nation, who are pronounced by their fellow beings unfit to participate in administering government in the states where they live, who are pronounced unworthy of the least and most paltry part in political affairs? Shall one hundred twenty-seven thousand white people in New York count but one vote in this House while the same number of white people in Mississippi have three votes? Shall the death of slavery add two-fifths to the entire power which slavery had when slavery was living? Shall one white man have as much share in the government as three other white men merely because he lives where blacks outnumber whites two to one?[1] Shall this inequality exist, and exist only in favor of those who without cause drenched the land with blood and covered it with mourning? Shall such be the reward of those who did the foulest and guiltiest act which crimsons the annals of recorded time? No, sir; not if I can help it.

This proposition rests upon a principle already imbedded in the Constitution, and as old as free government itself—a principle that representation does not belong to those who have not political existence, but to those that have. The object of the amendment is to enforce this truth. Every state will be left free to extend or withhold the elective franchise on such terms as it pleases, and this without losing anything in representation, if the terms are impartial as to all. If, however, there is found a race so worthless that to belong to it is alone cause of exclusion from political action, the race is not to be counted here in Congress.

In spite of Conkling's able defense of the amendment, even he acknowledged that it was primarily for party and sectional advantage, as the concluding part of his speech will show: "Though the amendment is common to all

[1] This was the stock argument of the Republicans in favor of the amendment. *Cf.* speeches by Blaine, Fessenden and Stevens. *Globe*, pp. 376, 702, 536.

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states, and equal for all; its operation will of course be practically only in the South. No northern state will lose by it; even New York, in her great population, has so few blacks that she could exclude them all from enumeration and it would make no difference in her representation."

Some of those radicals who believed that the Declaration of Independence was to all intents and purposes a part of the Constitution, thought Congress already had the power to enfranchise the negroes. Moreover, they maintained that at the present time the state had no right to disfranchise persons on account of race or color, and therefore opposed the amendment because it acknowledged the existence of such a right.[1] Sumner, for instance, argued that since Congress had derived its authority for granting equal civil rights from the second section of the thirteenth amendment, the same provision empowered it to pass a simple resolution declaring there should be no inequality in political privileges.[2] He believed that the section referred to, together with the "guarantee clause" of the Constitution, would justify Congress in declaring by joint resolution that there shall be "no Oligarchy, Aristocracy, Caste, or Monopoly," invested with peculiar powers; but all persons shall be equal before the law, whether in the court room or at the ballot box. "And this statute, made in pursuance of the Constitution, shall be the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding." This resolution Sumner designated the "Great Guarantee," and declared that without it, any constitutional amendment would be utterly worthless.

To this argument Fessenden replied that the amendment neither granted nor took away a privilege from any state in the control of the suffrage.[3]

[1] Kelley, Shellabarger and Sumner, *Globe*, pp. 377, 405, 673 *et seq.*
[2] *Ibid.*
[3] *Globe*, pp. 702 *et seq.*

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It merely punishes the abuse of a privilege which the states certainly possess and always have possessed and exercised.[1] Suffrage is not such a natural right that it must be conferred upon every free man, but is rather in the nature of a privilege. A voter is an officer as much in substance as the man who enters the jury box or as any man who holds an office. Voting is a trust imposed by law, and although suffrage should be extended as far as the public good will allow, no man can complain that he is injured when a just and reasonable law provides that something more is necessary to him than a bare existence as a free man in a community in order to exercise it. Any disability imposed, however, should be one that by thrift, education, and right-living can be overcome. Certainly color or race is not a just disability. The amendment, however, should serve as an inducement to the southern states to build school houses and churches and educate their colored people until they are fit to vote, as these states will desire the full quota of representation to which their population would ordinarily entitle them.

Before leaving the arguments of the Republicans on the amendment and taking up those of the Democrats, it should be remarked that a great number of the former, while not following the vagaries of Sumner, professed themselves to be in favor of a proposition like the later fifteenth amendment, whereby the right to vote could not be denied on account of race or color.[2] There were two reasons, however, why they could not be induced to vote for such an amendment at this time. In the first place, as they themselves pointed out, most of the northern states did not then permit negroes to vote, some having repeatedly pronounced against it; therefore, it would have been futile to ask three-fourths of the states to ratify such an amendment when only one-

[1] In only six states were negroes allowed to vote at that time.

[2] See, for instance, speech of Henderson, *Globe*, appendix, pp 105-124.

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