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## **Reconstruction's conflicting Ideologies**

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The struggle after the American Civil War over the legitimate jurisdiction of reconstruction's implementation continues to occupy historiographical interpretation. Revisionist historians have reassessed the Reconstruction era at great length, rewriting its history, issuing new interpretations of events, and assigning new motives to the various belligerents. The traditional assessment that Presidents Abraham Lincoln and Andrew Johnson were correct in their desire for a quick restoration of the Southern states to the Union after the war has been reexamined. Revisionists have asserted that Lincoln was changing his position at the time of his death and was considering a more egalitarian plan for readmitting the Confederate States to the Union. Moreover, revisionists have attempted to discredit the idea that Andrew Johnson's plan for reconstruction and his career were sabotaged by ruthless congressional opponents for purely partisan political gain. Johnson, rather, has been more recently characterized as an inept racist who was himself overly concerned with partisan politics and deserved to be impeached. Revisionists have championed congressional reconstruction by describing it as an altruistic experiment for gaining equal rights. In the revisionist view, carpetbag governments should be praised for their progressivism instead of being condemned for their excesses.<sup>1</sup>

Agreement among historians has remained as elusive for the interpreters of the era as the participants in the events themselves. With few exceptions, traditionalists have supported presidential reconstruction, particularly Lincoln's "Ten-Per-Cent-Plan," and have invoked both his and Johnson's constitutional authority to administer reconstruction policies generally. The Reconstruction era has, as a result, remained among the most controversial periods in the brief history of the United States. Then and now, reconstruction theorists have divided into separate camps, unyielding in their conviction that their advocacy of the respective restoration plans, presidential versus congressional, occupies the ideological and moral and high-ground.

The primary source of these antithetical positions can be found in the dichotomous theories of reconstruction that developed between Presidents Lincoln and Johnson on the one hand, and radical Republicans in Congress, led by Thaddeus Stevens in the House of Representatives, and Massachusetts Senator Charles Sumner, on the other. The ideological foundations that the participants relied upon at the time to construct their various reconstruction policies were so conflicting that a battle over jurisdictional supremacy was inevitable. Without an ideological middle ground on which to propose alternative political solutions, moderates in Congress were forced to choose between the two opposing camps. As the reconstruction of the Southern states progressed, these conflicting positions hardened further still, making compromise even more elusive. Johnson and Congress's inability to find middle ground plunged the nation into years of unnecessary strife, culminating in the spectacle of Johnson's impeachment, a transparent political effort designed to force the president to quit sabotaging congressional reconstruction.

Advocates on both sides of the debate saw great value in Johnson's impeachment, and much was at stake -- the sovereignty of Executive authority versus a reconstruction plan based on racial equality. Had Johnson been successfully removed from office over a policy dispute and in the absence of any criminality, a decisive transformation in American government would have been the logical result, with Congress assuming primacy, thereby radically altering the Constitutional separation of powers. The Executive branch of government's authority would have been accordingly diminished, with the routine threat of impeachment serving to keep presidents subservient to Congress. A quasi-parliamentary government would have been the likely result. <sup>2</sup>

Johnson, for his part, re-awoke Southern resistance, losing the chance to impose on the nation a society whose laws were based on racial equality and equal opportunity. After Appamatox, the Southern Confederacy found itself economically and politically devastated, expected nothing in defeat, and was preparing for the worst. As unconditional victors, the Union could have imposed nearly any terms on the South, who would have been left with little choice but to acquiesce. The Civil War Amendments and other civil rights legislation could have taken effect immediately following the war's conclusion. These measures would have gone far in assisting the freedman in their transition from ex-slaves to citizens. Johnson's policy of restoring the rebellious states to the Union almost at once without regard to the freedman's civil rights, brought the president into immediate conflict with Congress, particularly its leaders Sumner and Stevens. More importantly, a powerful ally in the Executive gave the beaten South hope that all was not lost. Within a few months of the war's conclusion, in fact, Southerners, bolstered by Johnson's reconstruction policies, became increasingly defiant, openly agitating for the protection of their rights, *ante bellum*. As Congress and Johnson's battle for supremacy escalated, the chance for compromise was lost as Southerners become correspondingly more resistant to federal interference in their affairs. As a result, the imposition of authority over the fate of the ex-slaves would have to be fought over again and re-won.

Political survival was a powerful motivator in the struggle over which branch of government would control reconstruction's implementation. The main protagonists - Lincoln, Johnson, Sumner, and Stevens - all were concerned about the political future of their respective parties. Johnson even seemed to welcome his impeachment for political reasons. Aware that the procedure was unpopular and that he might gain some political advantage from the process, Johnson had reached the conclusion by 1868 that he must act. A showdown with Congress over the Tenure of Office Act, he decided, would vindicate him in the eyes of the public and might ensure his nomination for president in the upcoming primary. <sup>3</sup> Johnson's political motives were an important factor in his unilateral policy decisions over reconstruction, which ultimately alienated Congress, created misunderstandings and resentments, and guaranteed congressional leaders would retaliate.

For their part, radicals in Congress thought a Republican triumph vital to the country's future. Republicans justifiably feared that the national government would be dominated by copperheads and former rebels, in control of the country they had so recently fought to destroy. Republicans had come into power as a result of a schism and were the minority party at this time, openly worried the Democrats would reunite. To add to their consternation, only three-fifths of the slaves were counted for representation in the House and Electoral College prior to the war. As a result of emancipation, however, the Southern states would possess a considerably larger representation in Congress if they returned to their pre-war status. Commanding the black vote thus became an important political objective for the first time in the nation's history. <sup>4</sup>

Lincoln's theory of reconstruction was relatively simple: A State, he thought, could not legally secede from the Union. Because the States had preceded the Union in their formation, they had forfeited part of their sovereignty when they had agreed to join the Union, and they had

no constitutional or legal right to leave it. The Confederate States had gotten out of their proper relation with the federal government through the efforts of certain disloyal citizens, rather than through any official State action. As impersonal entities, States were incapable of committing treason or breaking any other law. While individuals may have committed crimes by subverting the loyal government, the States themselves were intact and remained within the Union .<sup>5</sup> The States, moreover, were sovereign in all matters except for the few powers specifically granted to the federal government by the Constitution, and on the sole basis of having attempted to secede, were not entirely outside its legal boundaries. Lincoln emphatically reasoned that no nation would ever make legal provisions for its own destruction.<sup>6</sup> The president considered Southern participants in the war insurrectionists engaged in an unlawful rebellion, and he maintained this position throughout the war. Consequently, the federal government never recognized members of the Southern Confederacy or its government as a legitimate political entity, but rather considered rebel participants to be traitors subject to criminal penalties. Lincoln 's Secretary of State, Gideon Welles, succinctly expressed the government's position in his diary, writing:

People-individuals have rebelled, but the states are sovereignties, not corporations, and they still belong to and are part of the nation. We can imprison, punish, hang the rebels by law and constitutional warrant, but where is the power or authority to chastise a State, or change its political status, deprive it of political rights and sovereignty which other States possess?...The States have not seceded: they cannot secede, nor can they be expelled...The rights of the States are unimpaired; the rights of those who participated in the rebellion might have been forfeited.<sup>7</sup>

Federal intervention in the South's affairs was justified on the basis of lawyer and writer Richard Henry Dana's "Grasp of War Theory," which maintained that because the Constitution made no provision in the event of a State seceding, and "wrongfully forming a *de facto* nation," the North could hold the rebels in the "grasp of war" until the federal government had obtained what the "public safety required."<sup>8</sup> In reality, Dana's theory allowed the federal government to exercise extraordinary power by basing its authority on military necessity. Lincoln resorted to this theory as early as 1862 when he attempted to set up legitimate alternative governments by instructing military governors to hold congressional elections in Tennessee , North Carolina , Louisiana , and Arkansas . In addition, Lincoln invoked the Constitution's guaranty clause, Article IV, section 4, mandating the United States provide each State with a republican form of government and protect its citizens against invasion and domestic violence. Lincoln believed that the loyal citizens of the South were entitled to representation, and that this guarantee extended to the States in rebellion. Reconstruction should consist of placing the loyal citizens of each seceded State in charge of their local governments in order to reestablish the relationship that existed between the Confederacy and the Union prior to the war, and it should proceed as quickly as possible with as little federal intervention as necessary. Simply put, the overthrow of the rebels must be followed by the resumption of each respective State's rights, unimpaired by Congress, as guaranteed by the Constitution.<sup>9</sup>

Furthermore, Lincoln maintained that overseeing reconstruction was an Executive function. Through the president's constitutionally authorized power to pardon, to dictate the terms of amnesty, and to declare martial law, it was Lincoln 's mandate to create a loyal core of people in the rebellious States who would take control of local governing bodies. As Commander in Chief of the armed forces, it was also the president's responsibility to call out the militia and to support and maintain local governments through the use of military force, if required. Lincoln thought that a quick, simple, and lenient restoration would do the greatest good and would be best accomplished if the program were directed by the president. Lincoln 's only apparent

concession in terms of congressional participation in the reconstruction process was his admission that the Constitution authorized Congress to seat representatives.<sup>10</sup>

Lincoln was committed to his reconstruction plan as evidenced by his pocket-veto of the Wade-Davis Bill and his defense of the Louisiana Plan three days prior to his death, but he considered his program experimental, and he likely would have been much more conciliatory towards his congressional opponents than Johnson turned out to be. In his last speech immediately prior to his death, for example, Lincoln was hinting that he was open to compromise, stating he would abandon his plan if it were adverse to the public interest. While the president was not anxious to grant the South increased legislative representation (which would have jeopardized his own political future and rewarded the secessionists for their part in the war) in all likelihood, he still would have favored the Fourteenth Amendment. At his last cabinet meeting, Lincoln seemed to be resigned to the fact that his reconstruction plan would need modification, and he intimated that he was intending to make "some new announcement to the people of the South."<sup>11</sup>

Unfortunately, Lincoln's assassination intervened, catapulting Andrew Johnson to the presidency. Considerably more obstinate and substantially less tactful than his predecessor, Johnson nonetheless seemed to understand that compromise with the radicals was in order, and in the early days of his term, at least, approached Congress conciliatory, seemingly agreeing to adopt Sumner's Confiscation policy. Sumner came away from his first meeting with the new president confident that he had received positive assurances of a commitment toward black suffrage. Considering reconstruction, Johnson declared, "I hold this: Robbery is a crime; rape is a crime; treason is a crime; and crime must be punished. The law provides for it; the courts are open..."<sup>12</sup> Johnson's appeasement of congressional radicals, however, turned out to be a delaying tactic, motivated by his desire to avoid committing to any particular reconstruction program but his own. At the same time he was giving assurances to Sumner, the president was designing his own plan.

Congress, for its part, had no intention of standing by and letting Johnson dictate the terms of reconstruction. The leaders of both factions were so ideologically committed to their respective positions that agreement was nearly impossible. From the beginning, the conflict centered around the proper division of authority in a federal system and who would control power. The dispute began in earnest in October, 1863 when Sumner published his ideas concerning the reconstruction of the Southern states in an Atlantic Monthly article entitled, *Our Domestic Relations-How to Treat the Rebel States*. Both lifelong abolitionists, Sumner and Stevens approached the debate with a moral agenda, indifferent to the arguments of strict constitutional constructionists; if the document prevented the equality of the newly freed slaves, then they had no compunction in discarding those provisions. Stating his position on the matter frankly, Sumner declared, "Anything for human rights is constitutional. There can be no state's rights against human rights."<sup>13</sup>

Johnson, by contrast, was throughout his life an unconditional Unionist, a Jeffersonian-Jacksonian Democrat, and an ardent defender of the doctrine of state's rights. While he was sincerely opposed to the institution of slavery, he was also genuinely unconcerned about the welfare of the freedmen. In any conflict where a choice must be made between the newly freed slaves and common whites, Johnson was always going to side with his own race. Johnson's primary concern, rather, was the preservation of the Union. To meet his responsibility, Johnson believed that his fundamental mandate was to reaffirm the Constitution. To Johnson, this meant the preservation of the former Confederacy's state's rights and their quick restoration to the Union. Johnson's ideology was no mere rhetoric; he vetoed twenty bills in only three years, nearly twice as many as the other vetoing president, Andrew Jackson, had in eight years, forcing

congressional moderates to side with the radicals and provoking his impeachment.<sup>14</sup> Many of Johnson's actions as president concerning reconstruction were plainly motivated by his earnest belief that he possessed the legal authority and a moral obligation to protect and defend his constitutional principles. Like his opponents, Johnson's philosophy was created from a combination of practical and ethical considerations designed to achieve his political objectives.

Despite the radicals initial confidence in him, Johnson, who was largely influenced by the ideas of Secretary Welles, adopted essentially Lincoln 's reconstruction policies *en masse*, with only a few minor variations. As a strict constructionist, ardent Unionist, and a firm believer that a State could never secede, Johnson wanted a quick and lenient restoration of the Southern states to the Union . The new president made his views clear in a speech before a committee from the Virginia legislature:

My efforts have been to preserve the Union of these States. I never, for a single moment, entertained the opinion that state could withdraw from the union of its own free will...Dissolution has been attempted; it has failed; and now I cannot take the position that a State which attempted to secede is out of the Union, when I contended all the time that it cannot go out, and that it has never been out. I cannot be forced into that position. Hence, when the States and their people shall have complied with the requirements of the Government, I shall be in favor of their resuming their former relations to the Government in all respects.<sup>15</sup>

Johnson accepted the Crittenden Resolutions as the legitimate basis for conducting the war effort: Its purpose was to maintain the Constitution and preserve the Union with all the "dignity, equality, and rights of the States." Emancipation or the war's result did not change his opinion, and despite Northern sentiment, he continued to defend the concept of state's rights.<sup>16</sup> Johnson, moreover, shared Lincoln 's belief that executing the policies relating to reconstructing the Southern states was an Executive function. While he agreed that Congress had a role in the process, he decided to restore the former Confederacy to the Union as quickly as possible, under his own authority, and without consulting the leaders in Congress. Johnson proposed his program for restoring the Southern states by issuing an amnesty proclamation and an Executive Order pertaining to North Carolina six weeks after his inauguration, which was theoretically similar to Lincoln 's Louisiana Plan: The rebellion had destroyed civil government in North Carolina . Therefore, it was the federal government's responsibility to restore to the people of the State a republican form of government. Acting unilaterally, and basing his authority on the guaranty clause of the Constitution, the president declared reconstruction complete and the Union restored even before the Thirty-Ninth Congress assembled.<sup>17</sup>

Congress was outraged that the president had not called a special legislative session, reconstruction being such an important issue that it required congressional participation. Radicals argued, in any case, that Johnson's program was far too lenient, easy to circumvent, did not punish secessionists for their part in the rebellion, and was an encroachment on their authority. Having won the war, leaders in Congress were afraid that the North would lose the peace by throwing away their hard-fought victory. Much to the chagrin of congressional radicals, reconstructed governments were passing the Black Codes -- laws that placed severe restrictions on freed slaves such as prohibiting their right to vote, forbidding them to sit on juries, limiting their right to testify against white men, carrying weapons in public places, and working in certain occupations -- while electing former Confederate leaders to Congress. In response, Congress repudiated governments the South established in good faith, and they refused to seat Southern Senators and Representatives.<sup>18</sup>

Sumner and Stevens argued before Congress that the Southern Confederacy had voluntarily abdicated their constitutional rights by successfully seceding from the Union, establishing a separate nation, and maintaining their action through the use of military force, leaving it to Congress to dictate the terms of reconstruction; the president should confine himself to enforcing constitutionally enacted laws and approving or vetoing legislative bills sent to him.

<sup>19</sup> Sumner had addressed the issue of the constitutional status of the seceded States as early as 1862 in a series of Senate resolutions in which he outlined his view of Congress's responsibility for reconstructing the Southern states. While conceding that secession was unconstitutional, Sumner maintained that the rebels had seceded anyway, thereby committing "State Suicide," writing:

State rebellion was State suicide. And when sustained by force it becomes practical abdication by the State of all rights under the Constitution, while the treason which it involves still further works the instant forfeiture of all those functions and powers essential to the continued existence of the state as a body politic so that from that time [the date of secession] forward the territory falls under the exclusive jurisdiction of Congress as any other territory does, and the state being, according to the language of the law, *felo de se*, [destroyed by its own action], ceases to exist. <sup>20</sup>

Sumner maintained that the Southern states, having lost their statehood by reason of insurrection, reverted to territories, and like all national territories, were subject to the exclusive jurisdiction of the federal government. Because Congress was constitutionally authorized to administer territories, not the Executive, it was the legislature's responsibility to oversee reconstruction. <sup>21</sup> Congress, therefore, must assume complete jurisdiction over those territories where illegal and unconstitutional actions had been attempted, to ensure that republican forms of governments were established there, and to determine how the former States might regain their pre-war status. <sup>22</sup> In addition, since slavery had derived its existence exclusively from the authority of the State, the institution ceased to exist lawfully upon termination of statehood. Citing the guaranty clause himself, Sumner maintained that this provision obliged the federal government to protect all of its citizens, regardless of class or color. Local governments, therefore, should be reestablished on the basis of equality with protection accorded the freedmen until they were able to become full-fledged citizens. "Congress would have to provide carefully for the protection of all inhabitants...in every way discharge the duties of a just, merciful and paternal government." <sup>23</sup> Sumner, argued in Congress that the only reasonable way to accomplish equal rights for the freedmen was to confiscate Southern plantations and divide the land among the former slaves. He advocated, in addition, an ambitious program of economic aid and free education, and he vehemently attacked Johnson when he vetoed the extension of the Freedman's Bureau, the Civil Rights Bill, and the Reconstruction Acts.

To the lifelong abolitionist, Thaddeus Stevens, reconstruction offered a unique opportunity to create a perfect republic, devoid of racial disparity, and fundamentally based on manhood suffrage and equality before the law. Stevens was opposed to the restoration of the seceded States until sufficient basic political and social changes had occurred in the South, declaring: "The whole fabric of Southern society must be changed and never can it be done if this opportunity is lost." <sup>24</sup> Stevens particularly wanted to punish the landed aristocracy because he believed that they had opportunistically maneuvered the South into the war and would misrule again unless permanently removed from power. This could only be accomplished by confiscating Southern property, Stevens basing the government's authority to do so on the theory that the war had abrogated the Constitution in all matters concerning the rebellion.

Stevens asserted that because secession had been temporarily successful, the Confederacy had established and maintained an independent government *de facto*, thus relinquishing their Constitutional rights. Having lost the war, the South should be considered a defeated foreign nation by the federal government, with their fate resting solely with the "will of the conqueror." Stevens asserted: "Unless the law of nations is a dead letter, the late war between the two acknowledged belligerents severed their original contracts and broke all ties that brought them together."<sup>25</sup> Lincoln and Johnson's contention that the South had never left the Union was impossible to justify:

The Confederate States have been acknowledged as a belligerent...They have a Congress, in which eleven States are represented; they have at least 300,000 soldiers in the field; their pickets are in sight of Washington; they have ships of war on the ocean destroying hundreds of our ships, and our government and the governments of Europe treat them as privateers and not pirates. From where do privateers get their commissions except from a power independent either *de jure* or *de facto*?<sup>26</sup>

Since the Constitution mandated the responsibility of admitting new States to Congress, it was up to the legislature to determine how the South, as conquered territory, would be readmitted to the Union .

Ultimately, the dispute led to the Judiciary Committee voting to impeach Johnson for high crimes and misdemeanors -- a political maneuver intended to keep him from sabotaging congressional reconstruction. The majority report contained a series of charges including pardoning traitors, profiting from the illegal disposal of railroads in Tennessee , defying Congress, denying the right to reconstruct the South, and attempts to prevent the ratification of the Fourteenth Amendment. The ideological battle for jurisdiction over reconstruction was tragic. The ultimate domination of congressional reconstruction ensured the passage of the Fourteenth and Fifteenth Amendments, and by doing so, kept emancipation from becoming an empty gesture.<sup>27</sup> Johnson, however, missed the opportunity to guarantee at least the minimum rights of the ex-slaves. His rise to the presidency would have fateful consequences for the freedmen and the South, and would, in the end, plunge the country into years of unnecessary strife. Without a bipartisan effort to determine reconstruction's implementation, the fight became substantially more significant than a political struggle for party domination. The conflict nearly destroyed the institution of the presidency, gave new life to the racist elements in the South, encouraged Southern resistance to reconstruction governments, and destroyed any immediate chance for the United States to achieve racial equality or equal opportunity before the law. Significantly, the dispute served to delay civil rights legislation, allowed elements in the South to abrogate laws it did not approve of, gave rise to racist legislation in certain areas, and ensured that the freedmen's place in American society would be the center of controversy for years to come. As a nation established on the principles enumerated in the Declaration of Independence, the United States lost its best opportunity to enforce these ideals in law, forcing African-Americans to fight for their civil and political rights for 100 more years.

NOTES

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4. Page Smith, *Trial by Fire: A People's History of the Civil War and Reconstruction* (New York: Penguin Books, 1982), 699-689.
5. John W. Burgess, *Reconstruction and the Constitution: 1866-1876* (New York: DeCapo Press, 1970), 9-10.
6. Kenneth M. Stamp, *The Era of Reconstruction, 1865-1877* (New York: Vintage Books, 1965), 24-30.
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