

The University of Akron
IdeaExchange@UAkron

The 39th Congress Project

Center for Constitutional Law

2012

Robert Cumming Schenck: Ohio's Bitter, Fearless Fighter

Devin C. Capece

University of Akron Main Campus

Please take a moment to share how this work helps you [through this survey](#). Your feedback will be important as we plan further development of our repository.

Follow this and additional works at: <http://ideaexchange.uakron.edu/conlawakron39th>

 Part of the [Constitutional Law Commons](#)

Recommended Citation

Capece, Devin C., "Robert Cumming Schenck: Ohio's Bitter, Fearless Fighter" (2012). *The 39th Congress Project*. 6.
<http://ideaexchange.uakron.edu/conlawakron39th/6>

This Student Work is brought to you for free and open access by Center for Constitutional Law at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in The 39th Congress Project by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.

The University of Akron School of Law

“Robert Cumming Schenck:
Ohio’s Bitter, Fearless Fighter”

Devin C. Capece

“In that scholar’s craft, the captain’s skill, / In thee conjoined, work fitting triumphs still”¹

Lawyer, statesman, soldier, the Ohioan Robert Cumming Schenck is a relative historical obscurity.² In his early life, he garnered little praise as a lawyer.³ Later, although he rose to become major general of volunteers during the Civil War, Schenck’s greatest commendation was that he was slightly less inept than the other much-maligned “political generals.”⁴ Schenck’s greatest legacy could be, perhaps, his time in the United States Congress. But even that ended on a scandalous note, forever marring whatever historical fame he might have had. If Schenck is mentioned at all, it is for the quaint historical anecdote of having been the person who introduced the game of poker to the British.

The criticism of the “breezy poker player from Ohio,” as Schenck was embarrassingly referred to later in life, is not entirely just.⁵ The shadow of Schenck’s scandalous last years as Minister to England has obscured an otherwise respectable

¹ HOWARD GLYNDON, *IDYLS OF BATTLE* 36 (1864). The author, whose real name was Laura Redden, wrote in the preface to her book that she “owe[d] [her] most cordial and grateful acknowledgements for friendly encouragement and active participation” to Robert Schenck, amongst others. *Id.* at 1.

² Donald Day, *The Military Career of Robert Cumming Schenck, 1861-1863* 2 (1963) (unpublished M.A. thesis, Miami University) (on file with Miami University) (“[H]e has remained to a large extent in historical obscurity.”); James Therry, *The Life of General Robert Cumming Schenck* ii (1968) (unpublished Ph.D. dissertation, Georgetown University) (on file with Georgetown University) (“Schenck was often an enigma and had not been treated fairly or fully by historians.”).

³ Although Robert Schenck did try at least one case before the Ohio Supreme Court: *Thayer v. King*, 15 Ohio 242 (1846).

⁴ Day, *supra* note 2, at i (“The Ohioan’s military career commenced in a most disastrous fashion . . . [H]e never even remotely achieved the first rank among combat commanders in the Civil War.”).

⁵ Therry, *supra* note 2, at 507 (“Often referred to as the ‘breezy poker player from Ohio.’”).

career.⁶ Schenck served eight terms in Congress, served ably during the Civil War, and served in two important diplomatic posts.⁷

Schenck's Ancestry

“[G]o west and ‘make choice of the best lands the country affords.’”⁸

Schenck's name derives from the ancient office of “cup-bearer.”⁹ The cup-bearer had the unenviable task of drinking the king's wine before handing the wine to the king himself in order “to guard against the danger of [the king] being poisoned.”¹⁰ Schenck's ancestry traces directly to one Colve de Witte, Baron van Toutenburg of the ninth century.¹¹ His ancestry in America begins with Roelof Martense Schenck, born in Holland in 1619, who immigrated to New Amsterdam in 1650.¹² While this is interesting, Robert Schenck himself “never knew nor, it seems, . . . very much care[d]” about his ancestry.¹³

Robert's father, William Cortenus Schenck, was born on January 11, 1773 in New Jersey.¹⁴ William lived with his father for a time and then with his uncle, General John

⁶ *Id.* (“[H]istorians have used the Emma mine scandal to obviate and overshadow a long and dedicated career.”).

⁷ Day, *supra* note 2, at 3.

⁸ Therry, *supra* note 2, at 1.

⁹ ALEXANDER DU BOIS SCHENCK, THE REV. WILLIAM SCHENCK, HIS ANCESTRY AND HIS DESCENDANTS 13 (1883).

¹⁰ *Id.* at 14.

¹¹ *Id.* at 19-20 (“[A]nd in the very noonday of that history, during the middle ages, appears the mail-clad knight, whose good sword had won and maintained for him his estates, and from whom sprang the ancient and noble family of the Schencks, Barons van Toutenburg, in the person Colve de Witte, Baron van Toutenburg.”).

¹² *Id.* at 24 (“The probable cause of his coming to this country [America] was the misfortune which overtook his ancestors and family during the Netherlands wars of the sixteenth century and the action taken by the civil courts respecting ancestral estates.”).

¹³ Therry, *supra* note 2, at 1. The author fails to explain on what basis he asserts that Schenck did not “very much care.”

¹⁴ ALEXANDER DU BOIS SCHENCK, *supra* note 9, at 56.

Cumming.¹⁵ It was this uncle that urged the young William to “go west” at the age of nineteen, undoubtedly to further his uncle’s interests in the area.¹⁶ William found work as a surveyor for a group of land promoters from New Jersey.¹⁷ He later acquired his own interests, purchasing land around the Miami River and helping to establish Franklin, Ohio.¹⁸

Later in life, William was elected to the legislature of the Northwest Territory.¹⁹ He also was named as one of the trustees of Miami University.²⁰ William fought in the War in 1812, leading a brigade of Ohio militiamen.²¹ Unfortunately, William died abruptly in Columbus in 1821, while he was debating the construction of a canal from Lake Erie to the Ohio River.²²

Before Politics

¹⁵ *Id.* at 56.

¹⁶ *Id.* at 56-57 (“Mr. Schenck, no doubt, first went to the Ohio country in some way connected with the interests of his uncle, General Cumming.”); General Cumming was a “far-sighted man, recognizing that the West would go to the strong.” Fred Joyner, *William Cortenus Schenck, Pioneer and Statesman of Ohio*, 47 OHIO HISTORY 363, 364 (1938).

¹⁷ ALEXANDER DU BOIS SCHENCK, *supra* note 9, at 58. William Schenck became “one of the most competent surveyors in the West.” *Id.*

¹⁸ *Id.* at 58. William Schenck later made his permanent home in Franklin. Therry, *supra* note 2, at 3.

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ ALEXANDER DU BOIS SCHENCK, *supra* note 9, at 62. The author writes that “Owing to the confused and imperfect condition of the records . . . , it has thus far been impossible to determine just what services General Schenck performed with the army during this war, or what rank he held.” *Id.*

²² Therry, *supra* note 2, at 5. William Schenck was one of three commissioners that the State legislature appointed to investigate the construction of the canal between Lake Erie and the Ohio River. Joyner, *supra* note 16, at 371. Congress refused to appropriate money for the canal, but William Schenck was able to convince the State legislature to come up with the necessary funds. *Id.* This was his “last and most important service to the State of Ohio and the nation.” *Id.* William Schenck died from “swamp fever” before seeing the canal finished. *Id.*

Schenck was only twelve years old at the time of his father's death.²³ Schenck's family sent him to live with General James Findlay, a close friend of his father's.²⁴ Three years later, at the age of fifteen, Schenck began his studies at Miami College in Oxford, Ohio.²⁵ He graduated with a bachelor of arts in 1827, having pursued a classical curriculum.²⁶ Schenck continued his studies as a graduate student, "academic life apparently appeal[ing] to him," while tutoring in French and Latin.²⁷ Three years later, Schenck received his master's degree.²⁸ At twenty-one, he gave an address titled the "Prevalence of Intemperance" admonishing the "demon rum."²⁹ Schenck, however, apparently never heeded his own advice.³⁰

During the summer of 1830, Schenck began working at the law office of Thomas Corwin in Lebanon, Ohio.³¹ At this time, Corwin's political career was just beginning "in earnest."³² He was elected to Congress as a National Republican and would be a consistent supporter of "a national bank, protective tariffs, and federal aid for

²³ Robert Schenck was born on October 4, 1809. Fred Joyner, *Robert Cumming Schenck*, 58 OHIO HISTORY 286, 286 (1949). Robert also had a brother, James F. Schenck, who would go on to become a Rear Admiral in the United States Navy. FRANCIS DRAKE, DICTIONARY OF AMERICAN BIOGRAPHY 803 (1879).

²⁴ Therry, *supra* note 2, at 6. General James Findlay served in the Territorial legislature with William Cortenus Schenck. DICTIONARY OF AMERICAN BIOGRAPHY, *supra* note 23, at 323.

²⁵ Day, *supra* note 2, at 4. Robert's family's finances were "stable enough" such that they could afford to send him to university. *Id.*

²⁶ *Id.* at 4. Robert spent his time debating such fascinating questions as "Which is more useful to man, a study of history or the dead languages; and Would turnpikes be more beneficial than canals." Joyner, *supra* note 23, at 287. Robert graduated with "high honors." Day, *supra* note 2, at 4. There were nine graduates in Robert's class. Therry, *supra* note 2, at 7.

²⁷ *Id.* at 7-8.

²⁸ Day, *supra* note 2, at 4.

²⁹ Therry, *supra* note 2, at 8. At the venerable age of twenty, Robert "foresaw many of the evils of alcohol that later generations were to struggle with none too successfully." Joyner, *supra* note 23, at 288.

³⁰ Therry, *supra* note 2, at 8.

³¹ Day, *supra* note 2, at 4.

³² Frederick Blue, "Corwin, Thomas," AMERICAN NATIONAL BIOGRAPHY ONLINE (2000), <http://www.anb.org/articles/04/04-01211.html>. Thomas Corwin was a friend of the Schenck family. Therry, *supra* note 2, at 8.

improvements” during his four terms in the House.³³ Corwin would prove to be a constant source of encouragement and support for Schenck’s political career.³⁴

Schenck read law at Corwin’s office for the rest of 1830 and was admitted to the Ohio Bar in January of 1831.³⁵ Flush with Corwin’s influential support, Schenck sought work with Joseph Crane, a member of Congress, in Dayton.³⁶ Impressed by Corwin’s letter of introduction which “must have been extremely flattering to young Schenck,” Crane offered Schenck to join his law firm.³⁷

The practice of law, at this time, meant “traveling to different counties on horseback or by stage[coach], with attendant hardships and little financial reward.”³⁸ Schenck would make circuits of the ten Southern counties of Ohio, working on cases “most frequently . . . involving either assault or hog stealing.”³⁹ While these assault and hog stealing cases surely piqued the intellectual curiosity of Schenck, they served a more important purpose: they engendered Schenck with some degree of popularity within his circuit.⁴⁰ As one historian wrote, Schenck’s “quick wit and pungent humor must surely have enlivened for his rural ‘courtroom’ audiences many an otherwise dull affair.”⁴¹

³³ Blue, *supra* note 32.

³⁴ Day, *supra* note 2, at 4.

³⁵ Therry, *supra* note 2, at 8.

³⁶ *Id.*

³⁷ *Id.* at 9. Not only did Joseph Crane offer Robert a job, he also offered Robert a share in the business. Epiphanie Kokkinou, *The Political Career of Robert Cumming Schenck*, 3 (1955) (unpublished M.A. thesis, Miami University) (on file with Miami University).

³⁸ *Id.*

³⁹ Day, *supra* note 2, at 4-5. Unfortunately, the author does not indicate the source for his assertion that Robert worked on “assault” and “hog stealing” cases. Another source repeats the same phrase, stating that Schenck “deal[t] with assault, boundary disputes, and the theft of hogs and horses.” JOHN MILLETT, *MEN OF “OLD MIAMI”* 30 (1959). Given Joseph Crane’s obligations in Washington owing to his position as a Congressman, much of the firm’s work was left with Robert. Day, *supra* note 2, at 4.

⁴⁰ Kokkinou, *supra* note 37, at 3-4.

⁴¹ Day, *supra* note 2, at 5.

In 1833, Joseph Crane and Schenck decided to end their partnership for reasons unknown.⁴² Schenck quickly found another partner in the person of Peter Odlin.⁴³ “Schenck and Odlin” continued until 1844.⁴⁴ It was also at this time that Schenck decided to “get a wife.”⁴⁵ The pickings in Ohio were apparently slim as he decided to head East to Long Island, New York, writing that “Some 12 or 14 days hence I shall start to New York, (the object of my journey . . . being a wife).”⁴⁶ On August 21 of 1834, Schenck married Renelche Smith, the sister of his older brother James’s wife.⁴⁷ Schenck’s wife died fifteen years later in 1849, leaving him with their three daughters.⁴⁸ Schenck would never marry again, but his daughters were to become “his obsession, his joy in life, and his constant companions.”⁴⁹

By 1838, Schenck felt suitably confident in his reputation in the area to make a bid for public office.⁵⁰ He ran on the Whig ticket as a candidate for the Montgomery County representative in the state legislature.⁵¹ Schenck’s opponent unfortunately got the better of him, winning by a small margin.⁵² Nonetheless, the experience cemented Schenck’s political aspirations.⁵³

⁴² Day, *supra* note 2, at 5.

⁴³ Kokkinou, *supra* note 37, at 5.

⁴⁴ Day, *supra* note 2, at 5. The partners argued at least one case before the Supreme Court of Ohio: Thayer v. King, 15 Ohio 242 (1846).

⁴⁵ Kokkinou, *supra* note 37, at 5.

⁴⁶ *Id.*

⁴⁷ Day, *supra* note 2, at 5.

⁴⁸ Kokkinou, *supra* note 37, at 5.

⁴⁹ Therry, *supra* note 2, at 12.

⁵⁰ Day, *supra* note 2, at 5. By this time, Schenck was “well known in Dayton and the surrounding counties and was considered a leader in the community.” Therry, *supra* note 2, at 12.

⁵¹ *Id.*

⁵² Day, *supra* note 2, at 5.

⁵³ Therry, *supra* note 2, at 13. Schenck’s “interest and zeal for politics increased.” Kokkinou, *supra* note 37, at 6.

In anticipation of the 1840 presidential election, the Whigs selected William Henry Harrison, the “Hero of Tippecanoe,” as their nominee.⁵⁴ Schenck’s mentor, Thomas Corwin, was the Whig candidate for the Ohio governorship.⁵⁵ Corwin asked Schenck to campaign for him in the election.⁵⁶ Schenck agreed.⁵⁷ He toured Ohio speaking on Thomas Corwin’s behalf.⁵⁸ One contemporary described Schenck thus:

He was at that time but thirty-one years of age, slender in form, of an extremely nervous physical organization . . . weighing not over one hundred and forty pounds; quick in movement with a sort of explosive energy in delivery, and captivating speaking talent.⁵⁹

Thanks to “young, energetic men, such as Schenck,” Thomas Corwin won the governorship and the Whigs took control of the Ohio House.⁶⁰ William Henry Harrison won the presidency by a wide margin of 234 electoral votes to Martin Van Buren’s 60, thanks in large part to the financial panic of 1837.⁶¹

In the Ohio Legislature

⁵⁴ Kokkinou, *supra* note 37, at 6-7.

⁵⁵ Therry, *supra* note 2, at 13-14.

⁵⁶ *Id.* at 14. One historian states that William Henry Harrison’s son (who would be John Scott Harrison) had been a “close college friend” of Schenck’s. Day, *supra* note 2, at 5. However, it was William Henry Harrison’s grandson—and future president of the United States—who attended Miami University; but, he attended Miami between 1850 and 1852, some thirty years after Schenck. Allan Spetter, “*Harrison, Benjamin*,” AMERICAN NATIONAL BIOGRAPHY ONLINE (2000), <http://www.anb.org/articles/05/05-00320.html>. Schenck’s connection to William Henry Harrison likely came by way of Schenck’s close relationship with Thomas Corwin and his general affiliation with the Whigs. Joyner, *supra* note 23, at 289.

⁵⁷ Therry, *supra* note 2, at 14.

⁵⁸ *Id.* at 15.

⁵⁹ Kokkinou, *supra* note 37, at 8. Schenck’s detractor’s called him “Schenck the skunk.” MEN OF “OLD MIAMI,” *supra* note 39, at 31.

⁶⁰ Blue, *supra* note 32.

⁶¹ K. R. Constantine Gutzman, “*Harrison, William Henry*,” AMERICAN NATIONAL BIOGRAPHY ONLINE (2000), <http://www.anb.org/articles/03/03-00211.html>. William Henry Harrison also offered Schenck the position of district attorney for Ohio, but Schenck declined, “preferring his private practice.” Day, *supra* note 2, at 6.

Emboldened by the successes of 1840, Schenck agreed to be the Whig's candidate for the Ohio legislature from Montgomery County.⁶² This time, fortunately, good luck was on his side and he was elected for a one year term in the House.⁶³ Columbus, neither as beautiful nor as charming as Cincinnati and without "excitements of any kind to offer," would be Schenck's home for the next three months.⁶⁴

Due to the temperance movement sweeping the country, coffee houses had displaced taverns as the social centers of Columbus.⁶⁵ One such coffee house, the *Eagle*, was especially popular with Whig politicians.⁶⁶ It was at the *Eagle* where Schenck "learn[ed] about the latest political schemes, informed [himself] of the latest intellectual movements, and . . . amused [himself] over the development of the latest social scandals."⁶⁷ This change "made [Schenck] smile," a few years before drinking coffee "would have been a disgrace[;] . . . [n]ow, . . . every man tried to make it clear to others that he drank only coffee."⁶⁸

The Whigs, for reasons "one can only surmise," selected Schenck to be their leader in the legislature.⁶⁹ Perhaps the Whigs selected Schenck because of his "proven ability as a speaker," but a more likely reason is simply because of Schenck's "young

⁶² Day, *supra* note 2, at 6.

⁶³ Therry, *supra* note 2, at 16.

⁶⁴ Kokkinou, *supra* note 37, at 11.

⁶⁵ Kokkinou, *supra* note 37, at 14.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Therry, *supra* note 2, at 18.

age.”⁷⁰ The Democrats selected a young man and the Whigs did not wish to be out done.⁷¹

The principal issue discussed during Schenck’s two years in the Ohio legislature was the atrocious state of banking in Ohio.⁷² During 1841 and 1842, Ohio banks commonly failed.⁷³ Banks overly invested their deposits into real estate, meaning capital was not readily available in the case of emergency.⁷⁴ Banking became a polarizing issue in Ohio politics.⁷⁵ The political parties used the banking issue to gain the upper hand over their rivals, with little consideration of the needs of Ohio or the relative merits of the question.⁷⁶ In short, the Democrats favored taking legislative control of the banks while the Whigs opposed such reforms.⁷⁷

Schenck stood the party line, “oppos[ing] nearly every amendment and vot[ing] against every bill concerning bank reforms.”⁷⁸ Schenck stated in the House:

The gentleman of the majority seem to consider themselves the exclusive guardians and sole judges of the interests of the people, and the minority, as representing in the Hall, the interest of banks, in opposition to those of the people. This is not a question of the banks on one side, and the people and their representatives on the other. In striking a blow on the banks, we strike, also, at the people.⁷⁹

⁷⁰ Kokkinou, *supra* note 37, at 15. Schenck was thirty-two years old at the time. *Id.*

⁷¹ *Id.* In fact, it was rumored that the Democrat’s leader, Caleb McNulty, was younger than the twenty-five years required to be a representative. *Id.*

⁷² *Id.* at 20.

⁷³ C. C. Huntington, *A History of Banking and Currency in Ohio Before the Civil War*, 27 OHIO HISTORY 235, 403 (1915).

⁷⁴ *Id.* at 404.

⁷⁵ *Id.* at 405.

⁷⁶ *Id.*

⁷⁷ Kokkinou, *supra* note 37, at 24.

⁷⁸ *Id.* at 28.

⁷⁹ *Id.*

Much to the dismay of Schenck and the Whigs, the Ohio legislature passed a general banking law in 1842.⁸⁰ The law “defined the power of banks,” and, among other things, made the bank’s president, directors, and officers “liable for any loss of capital and mismanagement.”⁸¹

The Democrats beat the Whigs badly in the 1842 election.⁸² Thomas Corwin lost the governorship and the Whigs “lost in nearly every county that they hoped to carry.”⁸³ Schenck narrowly escape the devastation.⁸⁴ The Ohio State Journal wrote of Schenck’s victory:

The defeat of . . . Schenck . . . was an object which the [Democratic] party had sworn to accomplish. . . . They were willing to sacrifice all the rest of their ticket if they could but compass [Schenck’s] defeat. . . . But all their efforts—all their lies and villainy—all their slanders, . . . failed to prostrate [Schenck]—and he still stands erect, sustained and endorsed by the People of his county.⁸⁵

Notwithstanding the triumphal tribute, Schenck carried his county by a narrow margin of 44 votes.⁸⁶

Schenck’s last term in the Ohio legislature was a “rather anticlimactic” end to his time in Ohio state politics.⁸⁷ Money and banking proved once again to be the most pressing issues before the House.⁸⁸ Schenck and the Whigs continued to oppose the

⁸⁰ Huntington, *supra* note 73, at 405.

⁸¹ *Id.* at 405. The law was something of a failure, however, as no one “cared to organize a bank under the new law” because of the “clause providing for the individual liability of stock holders.” *Id.* at 406.

⁸² Kokkinou, *supra* note 37, at 44.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Therry, *supra* note 2, at 37.

⁸⁶ Kokkinou, *supra* note 37, at 44.

⁸⁷ Therry, *supra* note 2, at 37.

⁸⁸ *Id.* at 38.

Democratic attempts at banking reform.⁸⁹ During his time in the Ohio legislature, Schenck gained the “respect of his colleagues and the hatred of his opponents.”⁹⁰

“The Whig candidate for Congress”⁹¹

“It is with great pleasure that we bring the name of this gentleman before the people of the District as the Whig candidate for Congress,” so announced the *Dayton Journal and Advertiser* of Schenck’s candidacy.⁹² The Democrats, however, were none too pleased to hear that Schenck was making a go at Congress, calling him, among other names, “that coon” and Schenck the “skunk.”⁹³ Schenck’s platform was a standard Whig affair: support for a “National Bank, protective tariff, and internal improvements at Federal expense.”⁹⁴ The Democrats countered by analogizing Schenck with “[t]he aristocrats of England” who, like Schenck, favor a “great mammoth Bank ‘Regulator,’ . . . a protective tariff, [and] . . . tax[ing] the many to support the few.”⁹⁵ Schenck handily won his election and took his seat in the 28th Congress.⁹⁶

It is during this first session of Congress that Schenck’s character is made bare.⁹⁷ Daniel Webster, according to Schenck’s recollections later in life, told Schenck that his “trouble” was that he was “too modest” and had too little “self-assertion.”⁹⁸ The *Congressional Globe* for the 28th Congress tells a different story. As one historian notes,

⁸⁹ Kokkinou, *supra* note 37, at 57.

⁹⁰ *Id.*

⁹¹ *Id.* at 58.

⁹² *Id.*

⁹³ Therry, *supra* note 2, at 46.

⁹⁴ *Id.*

⁹⁵ *Id.* Published in the *Western Empire. Id.*

⁹⁶ Kokkinou, *supra* note 37, at 60.

⁹⁷ Therry, *supra* note 2, at 48. Schenck “began to hear the gavel rapping him out of order with regularity.” *Id.*

⁹⁸ *Id.*

the *Globe* has “many references to Schenck’s audacious conduct.”⁹⁹ It is obvious from the record that Schenck was in no way “modest” or lacking in “self-assertion” as Daniel Webster believed.¹⁰⁰

The 28th Congress immediately became mired in debates over the standing rules of the House of Representatives.¹⁰¹ The debate centered on the so-called “gag rule,” which prevented the House from hearing any anti-slavery petitions.¹⁰² Schenck voted in favor of repealing the rule and stood behind its primary opponent John Quincy Adams.¹⁰³ Schenck stated that the gag rule “was making abolitionists in his section of the country every day, and he was desirous to arrest its influence.”¹⁰⁴ The House ultimately repealed the gag rule.¹⁰⁵

Schenck tried to inject a bit of humor into the tedious debate concerning House procedural rules.¹⁰⁶ A Mr. Reding offered a resolution to amend a joint rule of Congress to provide that “no intoxicating liquors shall be exhibited or offered for sale in the Capitol or on the public grounds adjacent thereto.”¹⁰⁷ Schenck responded with a tongue-in-cheek question of whether “the term ‘exhibiting,’ as used in the rule, meant exhibiting the effects of the intoxicating liquors.”¹⁰⁸ The Speaker of the House responded in turn

⁹⁹ Therry, *supra* note 2, at 48 n.2.

¹⁰⁰ As one historian notes, “there were few who remained neutral in their relationship to the Ohio congressman.” Day, *supra* note 2, at 6.

¹⁰¹ Therry, *supra* note 2, at 49.

¹⁰² Kokkinou, *supra* note 37, at 61.

¹⁰³ *Id.*

¹⁰⁴ CONG. GLOBE, 28TH CONG., 1ST SESS. 317 (1844).

¹⁰⁵ Kokkinou, *supra* note 37, at 64.

¹⁰⁶ Therry, *supra* note 2, at 52.

¹⁰⁷ CONG. GLOBE, 28TH CONG., 1ST SESS. 323 (1844).

¹⁰⁸ *Id.* One historian notes that Schenck’s question elicited “loud laughter” from the chamber. Therry, *supra* note 2, at 52. Unfortunately, the record of the *Congressional Globe* fails to reflect the humor.

and told Schenck that he “must place his own interpretation upon it.”¹⁰⁹ Schenck voted against the resolution.¹¹⁰

Schenck’s speaking debut in the house was a speech against the refund of a fine levied against Andrew Jackson in 1815.¹¹¹ The United States District Court fined Jackson \$1,000 for contempt of court for having “wrest[ed] an original document from the court, disobeying the writ of *habeas corpus*, and imprisoning [Judge Hall].”¹¹² Schenck’s speech is significant not so much for the precise issue of Jackson’s fine, but for Schenck’s remarks concerning the role of the judiciary.¹¹³ Schenck proclaimed that:

If there is any thing that ought to be held sacred, it is the judiciary of the country. In that we have a grave, high, solemn power, to which, in the last resort . . . is [e]ntrusted the guardianship of life, and liberty, and reputation, and property—all that is dearest to men as members of civil society . . . [The Judiciary] is the great check, the wholesome power of restraint . . . It is the sheet-anchor, without which we should be soon all adrift.¹¹⁴

John Quincy Adams wrote in his diary that “Schenck of Ohio . . . made an hour speech of unrivalled eloquence . . . His manner cool, firm, unhesitating; . . . his voice clear and strong, his elocution neat and elegant, with a swelling vein of sarcastic humor.”¹¹⁵ As stirring as Schenck’s speech was, the bill passed with 158 yeas and 28

¹⁰⁹ CONG. GLOBE, 28TH CONG., 1ST SESS. 323 (1844).

¹¹⁰ *Id.*

¹¹¹ *Id.* at 230.

¹¹² WILLIAM SUMNER, ANDREW JACKSON AS A PUBLIC MAN 46-47 (1889).

¹¹³ While commander in New Orleans in 1815, Jackson arrested a Louis Louaillier under the suspicion that he was supporting the French and a Judge Hall for having issued a writ of habeas corpus to release Louaillier. Therry, *supra* note 2, at 52. The following day, Jackson received notice that the war had ended and released Louaillier. *Id.* Judge Hall then had Jackson arrested for disregarding his previous writ of habeas corpus. *Id.* At the hearing, Jackson refused to respond and Judge Hall fined him a thousand dollars. *Id.*

¹¹⁴ CONG. GLOBE, 28TH CONG., 1ST SESS. 230 (1844).

¹¹⁵ Kokkinou, *supra* note 37, at 67.

nays, failing to convince the majority of Schenck's colleagues.¹¹⁶ Schenck, of course, voted nay.¹¹⁷

Schenck's character is again revealed in his treatment of the "Oregon question," which concerned the disputed boundary between Great Britain and the United States in the Oregon territory.¹¹⁸ The settling of a permanent boundary was necessary to avoid a war with Great Britain.¹¹⁹ President Polk, in his inaugural address, had stated that the United States' title to the Oregon country was "clear and unquestionable."¹²⁰ Polk's statement caused a "sensation in the British Parliament."¹²¹ In his speech on the floor of the House, Schenck again exhibited his cool manner. He thought the situation best left to "negotiation for the present."¹²² He said that he would "put off the evil day as long as possible; and, if come it must, he would venture to say that they were not the purest patriots who made the most clamor."¹²³

Schenck won reelection in 1844 by a very slight majority of 90 votes.¹²⁴ The outbreak of war with Mexico would prove to be the central issue of the 29th Congress.¹²⁵ Schenck's proposed amendment to an appropriations bill of men and money provides a

¹¹⁶ CONG. GLOBE, 28TH CONG., 1ST SESS. 120 (1844).

¹¹⁷ *Id.*

¹¹⁸ Therry, *supra* note 2, at 56.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Kokkinou, *supra* note 37, at 72.

¹²² CONG. GLOBE, 28TH CONG., 1ST SESS. 493 (1844).

¹²³ *Id.* Schenck would later convince his colleagues of the wisdom of negotiation, offering and passing a resolution stating: "That the differences existing between the government of the United States and the government of Great Britain, in relation to the Oregon territory, are still the subject of honorable negotiation, and should by that means be adjusted." Kokkinou, *supra* note 37, at 74.

¹²⁴ *Id.* at 68.

¹²⁵ Therry, *supra* note 2, at 66.

further insight into Schenck’s paradoxical character.¹²⁶ He opposed the war with Mexico, believing that Polk had “usurped authority” by bringing the United States into war.¹²⁷

Nonetheless, Schenck’s proposed amendment stated that

while Congress will not sanction or approve the forcible occupation . . . of [Mexican] territory . . . nor of any hostilities which have been carried on . . . yet to enable the President . . . to relieve and extricate the army . . . from the position in which it has become involved, and to prevent any invasion . . . upon the territory of this Union, and to protect and defend . . . this Union . . . the President is hereby authorized . . . [the] appropriations.¹²⁸

Schenck’s proposed amendment did not pass.¹²⁹

It is during the 30th Congress that the issue of slavery surged into the spotlight.¹³⁰

It was also during the 30th Congress that Schenck outlined, as best he could during the five minutes he was given to speak, his views on the subject of slavery.¹³¹ Schenck first stated that he was “against the extension of slavery into any territory now free.”¹³² He then went on to explain why he held this opinion.¹³³ Schenck saw slavery as “mainly a question of political power.”¹³⁴ Schenck did not believe that those opposed to slavery

¹²⁶ *Id.* at 67 (“Here was Schenck at his paradoxical best.”).

¹²⁷ *Id.*

¹²⁸ CONG. GLOBE, 29TH CONG., 1ST SESS. 792-793 (1846).

¹²⁹ *Id.* “Perhaps he never felt it could, but it was an attempt to show the Congress what the true relationships should be.” Therry, *supra* note 2, at 67.

¹³⁰ Kokkinou, *supra* note 37, at 99.

¹³¹ CONG. GLOBE, 30TH CONG., 1ST SESS. 1022 (1848). As Schenck himself stated, “In the five years I have been here . . . I have never made a speech on the subject of slavery.” *Id.* A representative from Alabama had submitted an amendment to establish slavery in the Oregon territory. *Id.* Schenck took advantage of the moment to more fully explain his own views on slavery. *Id.* He also apparently believed his personal views were likewise those “of all the free out-speaking men of the North or free States.” *Id.*

¹³² *Id.*

¹³³ CONG. GLOBE, 30TH CONG., 1ST SESS. 1022 (1848).

¹³⁴ *Id.*

truly had any sympathy for slaves.¹³⁵ Schenck did say that he hoped that he had his “fair share of charity, of benevolence, of universal philanthropy.”¹³⁶ He trusted that he was “ready as any man to sympathize with those who are oppressed or injured, or deprived of their natural rights in any way, be they of what race or color they may.”¹³⁷ But Schenck did not believe Congress was there “to legislate upon questions of benevolence and charity, or to compare notes in order to see whose philanthropy is broadest or most genuine.”¹³⁸

Forget about sympathy and morals, Schenck said, he could not agree to slavery “in justice to the rights of the whites, in justice to ourselves.”¹³⁹ He did not deny that there is such a thing as “property in slaves and slave labor.”¹⁴⁰ Schenck did not say whether that was right, or whether it should have been.¹⁴¹ But it was a fact.¹⁴² A fact not established by the Constitution, however.¹⁴³ Slavery was a local institution, existing by municipal law.¹⁴⁴ If the South was happy with slavery, “let them be so.”¹⁴⁵ Schenck declared that slavery “paralyzes prosperity and retards the advancement of the land and the community.”¹⁴⁶ The South was part of the United States, and Schenck, as a representative of those United States, wanted the South “to prosper and grow.”¹⁴⁷

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ CONG. GLOBE, 30TH CONG., 1ST SESS. 1022 (1848).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² CONG. GLOBE, 30TH CONG., 1ST SESS. 1023 (1848).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

The fundamental problem with slavery was the “advantage in Federal representation which it gives.”¹⁴⁸ As Schenck stated: “a man at the South with his hundred slaves counts sixty-one in the weight of influence and power upon this floor, while the man at the North with his hundred farms counts but one.”¹⁴⁹ That was a “sufficient reason” to not want more slave territory in Schenck’s view.¹⁵⁰ Schenck wanted the prohibition of slavery “extended over all the territory owned or acquired by us.”¹⁵¹ Better yet, Schenck would have preferred that there never have been and that there never be “territorial conquest and extension.”¹⁵² If extension must be, Schenck was “determined that with my vote there never shall come with it anything but free and equal institutions.”¹⁵³

Schenck was not an abolitionist, as he freely admitted.¹⁵⁴ He would not interfere with slavery “where it exists by local law.”¹⁵⁵ He simply wanted no more of it.¹⁵⁶ He would “curse no more land” or “submit to any more inequality of rights.”¹⁵⁷ Schenck concluded that “For these reasons, then, and for more, if I could state them, I am utterly and forever opposed to your carrying slavery into any Territory where my vote can prevent it.”¹⁵⁸

¹⁴⁸ CONG. GLOBE, 30TH CONG., 1ST SESS. 1023 (1848).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ CONG. GLOBE, 30TH CONG., 1ST SESS. 1022 (1848).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

On November 5, 1849, Schenck's wife, Rennelche, died.¹⁵⁹ Due to his wife's death and his own declining health, Schenck decided to retire from politics.¹⁶⁰ His last statements in Congress were his most foreboding. Ostensibly, Schenck's comments came in reaction to a dispute that arose over the selection of a Speaker for the House.¹⁶¹

Schenck began his speech by stating that Congress had "been accustomed here for a long time past, and more especially of late, . . . to hear the North daily lectured; the North taunted with base subserviency."¹⁶² He continued:

There are gentlemen equally intolerant and fanatical at either end of this Union, who demand that all legislation upon particular subjects shall be of a sectional character, and would proscribe those who differ from them. . . . If we of the North will not vote for a southern man merely because he is a southern man, and men of the South will not vote for a northern man merely because he is a northern man, and if that principle is to be carried out from here into all our national politics and elections, what must be the result? Disunion. . . . Let me stand firmly in defence of the Union, come the assault from whatever direction it may.¹⁶³

With these words, Schenck's political career, for the moment, came to an end.¹⁶⁴

"The man" to "be appointed Minister to Brazil"¹⁶⁵

¹⁵⁹ Therry, *supra* note 2, at 102.

¹⁶⁰ *Id.* at 103.

¹⁶¹ *Id.* The Whigs nominated Robert Winthrop to be Speaker. *Id.* The freesoilers, however, thought Winthrop "wholly unreliable in facing and handling the issue of slavery." *Id.* The Democrats nominated Howell Cobb of Georgia. *Id.* The freesoilers "held the balance" and, "find[ing] very little difference between Winthrop and Cobb" decided to not vote for either of them. Therry, *supra* note 2, at 102. Ultimately, the Democrat Cobb was elected Speaker. *Id.* This angered the freesoilers who accused the Whigs of purposefully electing Cobb because they were "no longer Whigs." *Id.* It was at this moment that Schenck, "with some reluctance," stood up to make his point. *Id.*

¹⁶² CONG. GLOBE, 31ST CONG., 1ST SESS. 40 (1850).

¹⁶³ CONG. GLOBE, 31ST CONG., 1ST SESS. 42-43 (1850).

¹⁶⁴ Kokkinou, *supra* note 37, at 107.

¹⁶⁵ Abraham Lincoln, To Zachary Taylor, in 2 COLLECTED WORKS OF ABRAHAM LINCOLN, at 77-78 (1953), available at <http://quod.lib.umich.edu/l/lincoln/lincoln2/1:128?rgn=div1;view=fulltext>.

In 1851, Daniel Webster, the Secretary of State, persuaded Schenck to accept his appointment as “Envoy extraordinary and Minister plenipotentiary to Brazil.”¹⁶⁶ Brazil at this time was governed by the Emperor Don Pedro II.¹⁶⁷ It was also the only other nation in the Western hemisphere to continue to legally recognize the institution of slavery.¹⁶⁸

Webster provided Schenck with a very specific list of assignments.¹⁶⁹ Webster began by stating that “relations between the United States and Brazil are of the most friendly character.”¹⁷⁰ Presumably, Webster would prefer that they stay that way.¹⁷¹ Webster then listed what Schenck was to endeavor to do.¹⁷² First, he would hear the complaints of American citizens in Brazil and forward them to the Brazilian government if he thought it proper.¹⁷³ Second, Schenck was to make every attempt at negotiating a trade treaty with Brazil and to try to come to an arrangement allowing United States ships to freely navigate the Amazon River.¹⁷⁴ By treaty, Brazil was bound to “close all existing slave markets at once and forever.”¹⁷⁵ Webster informed Schenck that Brazil had already been making attempts at suppressing the African slave trade and that Schenck would likely not have to take any steps towards convincing Brazil to live up to its treaty obligations.¹⁷⁶

¹⁶⁶ Kokkinou, *supra* note 37, at 108.

¹⁶⁷ Therry, *supra* note 2, at 112.

¹⁶⁸ *Id.*

¹⁶⁹ Kokkinou, *supra* note 37, at 109.

¹⁷⁰ *Id.*

¹⁷¹ In fact, President Fillmore made strengthening relations with Latin America a focal point of his foreign affairs. *Id.*

¹⁷² *Id.* at 110.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Therry, *supra* note 2, at 114.

¹⁷⁶ Kokkinou, *supra* note 37, at 110.

Schenck was less than thrilled with his new assignment. Shortly after arriving, Schenck wrote to his children that he was a “voluntary exile from [his] country and home.”¹⁷⁷ He wrote that “No minister from any country can stay here for very long. After having ‘seen the elephant’ family, one does not care to stay a very great while longer in the menagerie.”¹⁷⁸

The state of slavery in Brazil also impacted Schenck. He wrote that “People at home, even living in our slave states, have but faint conception of what negro slavery is in a country like this, where the shadow spreads dark and black over all the land.”¹⁷⁹ And yet there was another side to Brazilian society that struck Schenck as being quite different from the United States.¹⁸⁰ He noted that “as between the free black and white there is no distinction made on account of color; at least all places and positions are open to them if they can attain them.”¹⁸¹

Much to Schenck’s joy, his term as Minister to Brazil came to a close in 1854.¹⁸²

An interlude to politics

Schenck was “nostalgic” for his home and for his daughters, but he did not have any certain plans for the future.¹⁸³ In 1851, Schenck had left a political climate in which the Whig party was still intact. Schenck faced a decidedly different nation upon his return

¹⁷⁷ Therry, *supra* note 2, at 119.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 121.

¹⁸⁰ Schenck was not all positive. He also wrote that “the slave part of the population generally are like mere animals, little above brutes.” Therry, *supra* note 2, at 121-122.

¹⁸¹ *Id.* at 122.

¹⁸² Joyner, *supra* note 23, at 291.

¹⁸³ Therry, *supra* note 2, at 139.

in 1854.¹⁸⁴ The Whig party was no more.¹⁸⁵ The sectionalism Schenck had warned of in 1849 had come to pass and tore the Whigs apart.¹⁸⁶ Some found refuge with the Democrats; others joined the new Republican Party.¹⁸⁷ Schenck personally felt there was no political future for an “old Whig” such as himself.¹⁸⁸

Schenck, therefore, turned to other pursuits. First, he formed a partnership with his old friend Thomas Corwin and with another individual named William Webb for the practice of law.¹⁸⁹ Schenck also served as President of the Fort Wayne Railroad Company, which was engaged in constructing a railroad stretching from Fort Wayne, Indiana, over the Mississippi River, and on into Iowa.¹⁹⁰

For six years Schenck spent his time hustling between Dayton, New York, Boston, and Chicago trying to raise money to build the line.¹⁹¹ Schenck’s endeavors were not terribly successful. He wrote to his daughters that “Money is but a low and poor object of desire in itself. . . I want you to know . . . that my present disappointment of some of my expectations in money matters here makes it necessary for us all to be more economical in the coming year.”¹⁹² Schenck’s daughters were not always ready to make the demanded adjustments.¹⁹³ Schenck wrote to his daughter Sally complaining that “It

¹⁸⁴ Kokkinou, *supra* note 37, at 116 (“The national political scene was altogether different from what it had been four years previously.”).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* (“[T]he southern wing disappear[ed] in a fanaticism greater and more fatal than that of the abolitionists, and the . . . northern wing were become abolitionists and free soilers, who had little regard for the Constitution.”).

¹⁸⁷ *Id.*

¹⁸⁸ Therry, *supra* note 2, at 140.

¹⁸⁹ Joyner, *supra* note 37, at 292.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Therry, *supra* note 2, at 143.

¹⁹³ *Id.* at 146

would please me very much ever to see a letter from you which did not demand something!” telling her that he had a one dollar bill which he would enclose to her to do with as she pleased.¹⁹⁴

Schenck, however, was not able to stay away from politics for very long. He spoke before a Republican rally in 1859 declaring that all “liberty-loving men of this country . . . cannot do better than nominate . . . Abraham Lincoln” for the presidency.¹⁹⁵ Schenck also formally announced his conversion from Whig to Republican.¹⁹⁶ Lincoln learned of Schenck’s endorsement, further strengthening the already friendly relationship between them.¹⁹⁷ Schenck would continue to campaign for Lincoln and help secure him the election.¹⁹⁸ On Tuesday, November 6, 1860, the American people elected Lincoln as the sixteenth president of the United States.¹⁹⁹ Schenck’s “political future now rested in the hands of the President-elect.”²⁰⁰

“Come, list the tale I tell, / How the cause of the Union triumphed, / And the crest of Treason fell.”²⁰¹

When Schenck heard of the Confederate attack on Fort Sumter, Schenck quickly drafted a letter to President Lincoln telling him that “If I can serve you in any capacity

¹⁹⁴ *Id.*

¹⁹⁵ Day, *supra* note 2, at 10.

¹⁹⁶ Therry, *supra* note 2, at 175 (“It was purely academic . . . whether the Republicans had come to him, or whether he had gone over to them.”).

¹⁹⁷ Day, *supra* note 2, at 10.

¹⁹⁸ Kokkinou, *supra* note 37, at 122.

¹⁹⁹ Therry, *supra* note 2, at 183.

²⁰⁰ *Id.*

²⁰¹ IDLYS OF BATTLE, *supra* note 1, at 27.

whatever in helping to sustain the Government, the Union, and our flag, I beg that you will call upon me.”²⁰² At first, Schenck received no reply.²⁰³

Undaunted, Schenck traveled to Washington and wrote to Lincoln informing him that he would be staying “in the Capital as long as it was likely that his services might be needed in the field.”²⁰⁴ Within a few days, Lincoln summoned Schenck to his office.²⁰⁵

Schenck recalled the conversation:

Lincoln sent for me and asked, “Schenck, what can you do to help me?”
I said, “Anything you want me to do. I am anxious to help you.”
He asked, “Can you fight?”
I answered, “I would try.”
Lincoln said, “Well, I want to make a general out of you.”
I replied, “I don’t know about that Mr. President, you could appoint me as general but I might not prove to be one.”
Then he did so and I went to war.²⁰⁶

Schenck, a lawyer, politician, and businessman, with no military experience whatsoever, thus became a brigadier general in the Union army. Making generals of politicians was a common occurrence during the Civil War.²⁰⁷ Nearly half of the active duty army officers had left with the Confederacy.²⁰⁸ There simply were not enough officers to conduct the war.²⁰⁹ As such, the President appointed political leaders, such as Schenck, as generals both to bolster the officer corp and in order to unite the various

²⁰² Day, *supra* note 2, at 15.

²⁰³ *Id.*

²⁰⁴ *Id.* at 16.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 17.

²⁰⁷ *Id.*

²⁰⁸ Day, *supra* note 2, at 17 (“Of the 600 commissioned army officers on active duty prior to the war 279 transferred their allegiance to the Confederacy.”).

²⁰⁹ *Id.*

political factions behind the war effort.²¹⁰ Many in the North did not support this practice.²¹¹ One newspaper wrote that Schenck “should be placed under an orderly sergeant and ‘drilled like the devil for a month.’”²¹²

Schenck’s military career got off to an unfortunate start.²¹³ On June 17, 1861, General Scott ordered Schenck to secure a railroad near Vienna, Virginia.²¹⁴ Schenck traveled along the line with the First Ohio Volunteers, a regiment of two hundred and seventy-one men.²¹⁵ While approaching Vienna, Confederate artillery fired on the train.²¹⁶ The engineer uncoupled the locomotive and fled the scene, leaving Schenck and his men to retreat on foot while harried by a larger force.²¹⁷ At the end of the encounter, nine men lay dead and three wounded.²¹⁸

In reality, Schenck’s conduct was commendable.²¹⁹ The Confederate forces outnumbered Schenck’s men by nearly three to one, and yet Schenck and his men fought with such ferocity that the Confederates believed they were facing a much larger force and decided to withdraw rather than press their early success.²²⁰ Unfortunately for Schenck, this battle was one of the first to result in the loss of life.²²¹ The press, eager for any news, “grossly exaggerated” Schenck’s conduct.²²² The newspapers accused him of

²¹⁰ *Id.* at 18.

²¹¹ *Id.*

²¹² *Id.* at 18-19

²¹³ WHITELAW REID, 1 OHIO IN THE WAR 727 (1895).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 728 (The engineer did so in a “cowardly and treacherous manner.”).

²¹⁸ *Id.*

²¹⁹ *Id.* (Schenck’s conduct was “gallant and every way commendable.”).

²²⁰ *Id.*

²²¹ Therry, *supra* note 2, at 197.

²²² *Id.*

“disgracefully retreat[ing] from the battlefield leaving many wounded and dying behind.”²²³ This account played well into the general dislike of the so-called political generals.

Schenck’s misfortunes would continue for rest of the summer of 1861. During the battle of Bull Run, Schenck commanded a brigade in General Tyler’s division.²²⁴ When the call came for the Union retreat, Schenck formed his brigade and was the “only portion of that great army that was ‘not resolved into its original elements of mob.’”²²⁵ Schenck made an “orderly retreat” from the field.²²⁶

Schenck’s time in the field came to an abrupt end at the second battle of Bull Run.²²⁷ Schenck’s division was actively engaged during the two days of fighting.²²⁸ On the second day of the battle, a Confederate soldier shot Schenck in his right arm.²²⁹ According to Schenck’s soldiers, Schenck refused to be taken from the field until the sword he had been holding could be found.²³⁰ The soldiers said that their General was full of “rage and fearful imprecations at the loss of his sword.”²³¹ Eventually the sword was brought to Schenck and Schenck allowed himself to be taken to the hospital.²³² Schenck spent the next forty-three days confined to his bed.²³³

²²³ *Id.*

²²⁴ 1 OHIO IN THE WAR, *supra* note 213, at 728.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 730.

²²⁸ *Id.*

²²⁹ *Id.* at 731.

²³⁰ 1 OHIO IN THE WAR, *supra* note 213, at 731.

²³¹ *Id.*

²³² *Id.*

²³³ Kokkinou, *supra* note 37, at 125. Schenck also received an appointment as Major General of volunteers at this time. *Id.*

Lincoln next assigned Schenck to the command of the Middle Department, which included Maryland and Delaware and had its headquarters in Baltimore.²³⁴ Maryland was generally against secession from the Union, but also was against war with South.²³⁵ Upon taking command, Schenck declared that there could be “‘no middle-ground’ for true patriots and . . . suggested that those pretending to strike a middle position would do better to join the rebellion openly rather than ‘sneak about and crawl upon the ground, leaving a slimy path wherever they go, and biting the heels of patriotic men.’”²³⁶

Schenck also began enlisting black slaves through the use of force and without the consent of master or slave.²³⁷ Initially, Schenck recruited four thousand black men to work on fortifications in Baltimore.²³⁸ Later, he secured permission to raise a black regiment.²³⁹ Schenck knew that the recruitment of blacks would lead to the end of slavery in Maryland.²⁴⁰ John Hay, Lincoln’s secretary, wrote that Lincoln said that “the fact is, Schenck is wider across the head in the region of the ears, and loves fight for its own sake, better than I do.”²⁴¹

²³⁴ *Id.* at 126.

²³⁵ *Id.*

²³⁶ BARBARA FIELDS, *SLAVERY AND FREEDOM ON THE MIDDLE GROUND* 122 (1985).

²³⁷ Kokkinou, *supra* note 37, at 129.

²³⁸ *SLAVERY AND FREEDOM ON THE MIDDLE GROUND*, *supra* note 236, at 123.

²³⁹ *Id.*

²⁴⁰ *Id.* at 123.

²⁴¹ Kokkinou, *supra* note 37, at 129. Much can be written about Schenck’s time in Maryland. Those that supported Schenck’s often draconian measures wrote that “The fact of his unpopularity with Traitors, Secessionists, Rebels and Copperheads would be evidence of his fidelity to the National Cause.” Therry, *supra* note 2, at 292. The comments of those that did not support Schenck were decidedly different: “I see you have suppressed several newspapers. Let me tell you that you are a damned old ass and I only hope Lee will take you to the Libby prison at Richmond. You merit the utter contempt of every gentleman, and if I had you by a gallows I would pull a rope damned quick on you.” Joyner, *supra* note 23, at 294.

According to one historian, the war changed Schenck's opinions on slavery.²⁴² Whereas before he was merely against slavery extending to the territories, he now thought that the entire institution had to be abolished.²⁴³ His time in Maryland allowed him to see the "peculiar institution" of slavery firsthand.²⁴⁴ And what he saw, he "found repugnant."²⁴⁵

Schenck's time in Maryland came to an end in December, 1863.²⁴⁶ The people of his old Third District in Ohio elected him as their representative to Congress.²⁴⁷

Schenck's "Metamorphosis" in Congress²⁴⁸

Schenck, now a wizened politician, would prove to be a leader in the House.²⁴⁹ A week after the opening of the first session of the 38th Congress, the Speaker announced that Schenck would be chairman of the Committee on Military Affairs.²⁵⁰

Schenck's first task was to appropriate 20 million dollars for funding the conscription of troops.²⁵¹ While guiding the bill through the House, Schenck once again emphasized his black and white view of the war, saying that:

I believe . . . that the people of this country may be classified into three great divisions: those who are for carrying on this war to crush out this rebellion and of affording all the means necessary to accomplish that end; those who are not for putting down the rebellion at all; and

²⁴² Therry, *supra* note 2, at 283.

²⁴³ *Id.*

²⁴⁴ *Id.* at 283-284.

²⁴⁵ *Id.* at 284.

²⁴⁶ *Id.* at 303.

²⁴⁷ *Id.*

²⁴⁸ Therry, *supra* note 2, at 313.

²⁴⁹ Kokkinou, *supra* note 37, at 142.

²⁵⁰ *Id.* at 142-143.

²⁵¹ *Id.* at 144.

a third class who are for putting down the rebellion, but are opposed to all means for accomplishing that object.²⁵²

Schenck placed himself in the first class of people.²⁵³ The bill passed and was signed by the President on December 23, 1863.²⁵⁴

Schenck's bitter decisiveness to those opposing the war effort would be a common theme throughout his terms in Congress.²⁵⁵ Schenck believed that those that seceded from the Union had forfeited "all their rights as citizens of this country."²⁵⁶ Therefore, they must be pressed back "with fire and sword in order to bring them back again into subjection of the law."²⁵⁷ "In other words," Schenck said, "we pursue them with a double barreled gun."²⁵⁸ They may be shot as "belligerents" or as "traitors."²⁵⁹

Another of Schenck's most important contributions during this time in Congress was his plan for a freedmen's bureau.²⁶⁰ Given the recently gained freedom of a great number of slaves, there was a need for an organization to provide for their welfare.²⁶¹ Schenck's plan was to create a bureau of refugees and freedmen that would have the power to "supervise, manage, and control all subjects relating to refugees and freedmen"

²⁵² CONG. GLOBE, 38TH CONG., 1ST SESS. 72 (1864).

²⁵³ *Id.*

²⁵⁴ Kokkinou, *supra* note 37, at 145.

²⁵⁵ Kokkinou, *supra* note 37, at 156. Another historian wrote that Schenck had a "vehement, fervid *hatred* of Rebels and the rebellion." 1 OHIO IN THE WAR, *supra* note 213, at 734.

²⁵⁶ CONG. GLOBE, 38TH CONG., 1ST SESS. 1539 (1864).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* An eyewitness described Schenck as

Standing there, square, compact, and muscular, his shattered right hand hanging idle at his side, or thrust nervously into the breast of his closely-buttoned coat . . . the sharply-cut sentences rattling like quick, well-delivered volleys, one cannot help thinking of him as one of those old knights . . . who were used . . . to enter the old councils, and bring something of the sharp clang of war to the stern debate.

1 OHIO IN THE WAR, *supra* note 213, at 736.

²⁶⁰

²⁶¹ Kokkinou, *supra* note 37, at 157.

and would allow the President to “assign to the bureau for their benefit the temporary use of abandoned lands.”²⁶² Schenck believed the issue of refugees and freedmen was a temporary one.²⁶³ His proposal was unique in that it made no technical distinction on account of color, thus treating white refugees and black former slaves on the same terms.²⁶⁴ Schenck said of his bill that it made “no discrimination on account of color—a favorite phrase, as is well understood, in these days among us all.”²⁶⁵ The House ultimately passed Schenck’s bill.²⁶⁶ Two years later, both houses of Congress passed a freedmen’s bureau bill substantially similar to Schenck’s.²⁶⁷

During the 38th Congress, Schenck also proposed a bill that would require railroads to furnish every passenger that paid their fare with a seat, regardless of color.²⁶⁸ Schenck thought his proposal would do away with this “unnecessary excitement about the distinction between blacks and whites.”²⁶⁹

Schenck retained his seat in the 39th Congress and remained chairman of the Committee on Military Affairs.²⁷⁰ During 1866, the subject of reconstruction was forefront in the House.²⁷¹ Schenck’s views on the matter were relatively succinct. He believed that the North:

Had the right to subdue [the South] and subject them to obedience precisely upon the same principle on which a father punishes his own child when he has misbehaved. . . .

²⁶² HERMAN BELZ, *A NEW BIRTH OF FREEDOM* 101 (1976).

²⁶³ *Id.*

²⁶⁴ *Id.* at 101-102.

²⁶⁵ CONG. GLOBE, 38TH CONG., 2ND SESS. 691 (1865).

²⁶⁶ *A NEW BIRTH OF FREEDOM*, *supra* note 262, at 103.

²⁶⁷ *Id.* at 106.

²⁶⁸ *A NEW BIRTH OF FREEDOM*, *supra* note 262, at 150.

²⁶⁹ CONG. GLOBE, 38TH CONG., 2ND SESS. 1027 (1866).

²⁷⁰ Kokkinou, *supra* note 37, at 168.

²⁷¹ *Id.*

I believe we have a like right to inflict punishment on these rebellious states.²⁷²

The debate concerning the Fourteenth Amendment also offers a window into Schenck's beliefs. As to section 2 of the Fourteenth Amendment, Schenck proposed basing representation on suffrage.²⁷³ His amendment would have "apportioned [representatives] among the several States . . . according to the number of male citizens of the United States over twenty-one years of age having the qualifications for the electors of the most numerous branch of the State Legislature."²⁷⁴ As for the voting rights of women, Schenck commented that while he had "as much gallantry . . . and sentiment of admiration for that sex, as any gentleman," he nonetheless believed that "by common consent of civilized countries, including our own, . . . it has been held that the Government should be in the hands of the male part of the population and not the female."²⁷⁵ Schenck did not believe that voting was "a natural right."²⁷⁶

Schenck's substitute amendment was rejected by 131 votes against it, 29 in favor, and 23 not voting.²⁷⁷

At the beginning of the 40th Congress, Schenck was elected as chairman of the Ways and Means Committee.²⁷⁸ Much of Schenck's work as chairman involved the complete revision of the internal tax laws.²⁷⁹ Schenck would retain his chairmanship

²⁷² CONG. GLOBE, 39TH CONG., 1ST SESS. 2469-2470 (1866).

²⁷³ The final version of the Fourteenth Amendment apportions representatives according to the "whole number of persons in each State, excluding Indians not taxed." U.S. CONST. amend. XIV, § 2.

²⁷⁴ CONG. GLOBE, 39TH CONG., 1ST SESS. 9 (1866).

²⁷⁵ *Id.* at 297.

²⁷⁶ *Id.*

²⁷⁷ Kokkinou, *supra* note 37, at 177.

²⁷⁸ *Id.* at 190.

²⁷⁹ *Id.* at 201.

during the 41st Congress, which would be the last he would serve in.²⁸⁰ On December 22, 1870, Schenck accepted the office of minister to Great Britain.²⁸¹

Minister to Great Britain

Schenck began his term as Minister to Great Britain in June, 1871.²⁸² Two events would shape this twilight phase of Schenck's career: the game of poker and the Emma Mine Affair.

Schenck recounts how his name came to be associated with the game of poker in his book *Draw*.²⁸³ As the story goes, he was at a royal party in Somersetshire when Queen Victoria asked him about this game of poker that he had introduced to English society.²⁸⁴ The Queen asked Schenck to write down the rules of the game.²⁸⁵ Schenck quickly obliged, retiring to another room and quickly jotting down some six pages of rules.²⁸⁶ One of the gentlemen attending the party acquired Schenck's handwritten rules and had them printed on his private printing press.²⁸⁷ This little booklet then fell into the hands of the press who exclaimed "Poker at court!" and referred to the author of the booklet as "Poker Schenk."²⁸⁸ The whole incident was terribly embarrassing for Schenck.²⁸⁹ *Draw* began with an "An apology" in which Schenck wrote that the publication of the booklet "brought down on me the wrath and reprehension of so many

²⁸⁰ *Id.* at 208.

²⁸¹ *Id.* at 219.

²⁸² *Id.* at 224.

²⁸³ ROBERT SCHENCK, *DRAW I* (1880).

²⁸⁴ Therry, *supra* note 2, at 498.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 499.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

good people in America.”²⁹⁰ However, it was not Schenck’s love of poker alone that worked to stain his name.

The Emma Mine Affair, as it came to be called, was to define Schenck’s entire career. The Emma was a silver mine in Utah owned by a New York company and sold to British investors.²⁹¹ Schenck was offered an interest-free loan with which to purchase shares in the mine in exchange for allowing his name to appear as a member of the board of directors on the prospectus issued to attract investors.²⁹² Newspapers opposed to President Grant’s administration wrote that Schenck’s “conduct was ‘disgraceful and unbecoming,’ but to be expected under the Grant regime.”²⁹³ Under harsh criticism, Schenck ultimately resigned from the board. Shortly thereafter, the company failed.²⁹⁴

On February 19, 1876, Schenck resigned as minister to Great Britain.²⁹⁵ Poker was taboo in Great Britain following Schenck’s departure from London.²⁹⁶

A sad ending

Schenck would return to Washington and to the practice of law.²⁹⁷ His career in politics, however, was at an end.²⁹⁸ On March 23, 1890, Schenck died at his home in Washington.²⁹⁹ A contemporary of Schenck’s would write shortly after his death that he was always the

²⁹⁰ DRAW, *supra* note 283, at II.

²⁹¹ Clark Spence, *Robert C Schenck and The Emma Mine Affair*, 68 OHIO HISTORY 141 (1959).

²⁹² *Id.* at 144.

²⁹³ *Id.* at 146.

²⁹⁴ Kokkinou, *supra* note 37, at 228.

²⁹⁵ *Id.* at 229.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Robert C. Schenck Dead*, N.Y. TIMES, March 24, 1890, available at

<http://query.nytimes.com/gst/abstract.html?res=F40C13FB3E5F10738DDDAD0A94DB405B8085F0D3>.

same bold, bitter fearless fighter. He practices no concealments, displays little strategy, never shrinks from a course because it will increase the number of his enemies, strikes with a broadsword rather than thrust with a rapier, hews his way through difficulties, rather than take the trouble to turn into an equally good path that may carry him around them. . . . When he has friends, they are warm friends; when he has enemies, they never forgive him.³⁰⁰

³⁰⁰ 1 OHIO IN THE WAR, *supra* note 213, at 737.