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# The Political Effects of the War

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1. Readjustment of Political Theories.
   a. Elimination of the Doctrine of Secession.
   b. Overthrow of the Institution of Slavery.

A great deal of cant and not a little nonsense have been indulged in by historians and publicists in discussing the subject of secession. Whether as a mere political dogma or as a concrete expression of a theoretical right, it has been sought to inject into the discussion a moral question which is wholly irrelevant. Whether the right of secession really existed, as the ultimate expression of the reserved rights of a state, or whether such right did not so exist, are two sides of a political controversy which might be discussed to the end of time without result. There is no court of last resort in which an historically mooted question of abstract political theory may be determined. And the arbitrament of war can decide only the question of power to make good the assertion of a right. It is wholly without bearing on the political or historical merits of the controversy which it terminates by force of arms. No more absurd proposition cah be advanced than that so frequently stated, that the result of the Civil War decided the fallacy of the Southern position on the question of secession. It would be as reasonable to say that the result of a duel in which the determining factor was superiority of marksmanship had determined the merits of the controversy between the parties.

In one of his few historically quotable statements, Henry Cabot Lodge says: "When the Constitution was adopted by the votes of States at Philadelphia, and accepted by the votes of States in popular convention, it is safe to say that there was not a man in the country, from Washington and Hamilton on the one side, to George Clinton and George Mason on the other, who regarded the new system as anything but an experiment entered upon by the States and from which each and every State had the right peaceably to withdraw, a right which was very likely to be exercised." ( Daniel Webster, 1899, p. 172.) The mere fact that in the controversy which subsequently arose more people came to hold a contrary view as to such right of withdrawal than held to the original view, argues nothing as to the right itself. It either did or did not exist, and over the proposition an indefinite argument may be carried on. If it existed in 1789, it existed in 1804, and in 1812, and in 1830 and in 1861. If it did not exist when the compact was entered into, no change of time or circumstance could call it into existence thereafter. It is idle to say that the way people "had come to look at the Constitution" in 1861 was conclusive of the final rights of a state under that instrument at that time.

But while the Civil War could not be conclusive of the question of right, it not only could but did determine the matter of the practical exercise of the right. Whatever differences of opinion existed in the South in 1861, either as to the right of secession or as to the wisdom of asserting the right, were buried in the practical unanimity of support given the action when once it was taken. So with the failure of the attempt to give practical

expression to the theoretical dogma. When the supreme effort of arms had ended in defeat, there were few men who did not at once accept the verdict as a removal for all time of the question of secession from both the field of polemics and that of action. Fortunately for the country, there was nothing inconsistent between a conviction of their right to make the effort to withdraw from the Union, and their full acceptance of the fact that by the fortunes of war it had been determined that the exercise of the right was no longer a practical possibility. There could have been nothing more unhealthy or dangerous to the future of the country than to have had in the Southern states a mass of people servilely willing to regard the outcome of the Civil War as a demonstration of the inherent unrighteousness of their conduct, glad to fawn upon their successful opponents, and willing to accept and wear without a protest the degrading brand of treason. Men of such calibre could not have fought the Civil War as it was fought on the Southern side, nor could they have lived through and triumphed over the events of the succeeding decade. Yet ~~that was~~ the one test of "patriotism" acceptable to the victors for a long time after the struggle was a confession of moral and political sin in trying to "dismember the Union."

It was natural, feeling as the Southern people did, that the post bellum elimination of the doctrine of secession from the Southern political creed should be accompanied by no stultifying declarations as to the morality of the doctrine itself. Not one of the lately seceding states refused to admit that secession as a state remedy for interstate grievances was dead; but not one confessed to any political wrongdoing in having attempted to

resort to it. This statement of course is meant to apply only to the action of the people who constituted the states as they existed when the seceding step was taken. For the declarations of the adventitious and irresponsible bodies which assembled in Arkansas, Louisiana, and Virginia during the war, and in all the Southern states after its close, the Southern people are not called upon to answer.

The specific terms which recorded the death of secession as a political doctrine did not vary greatly in the several states. The purpose in each was to declare invalid the ordinance of secession, and it was usually expressed in a simple statement that such ordinance was "null and void." The conventions of Georgia and South Carolina "repealed" the ordinances of those states. Arkansas was one of the states which Mr. Lincoln hoped to "reconstruct" during the progress of the war. The so called Constitutional Convention held in that state in 1864 declared that the entire action of the secession convention of 1861, "was, and is, null and void, and is not now, and never has been, binding and obligatory upon the people." The first section of the reconstruction Constitution of 1868 consisted of a lengthy statement as to the paramount allegiance of the citizen to the Federal Government, and the non existence in any state of the "power" to dissolve connection therewith. The Louisiana Constitution of 1864, framed under the auspices of General Banks, as the representative of Mr. Lincoln, seems to have ignored the question of secession, while that of 1868 was content to declare that the allegiance of citizens of Louisiana to the

United States was paramount to that due the state.

Tennessee was readmitted to the Union by an act of Congress which recognized certain constitutional amendments which were framed by a convention at Nashville in January, 1865. One of these amendments declared the ordinance of secession to have been "an act of treason and usurpation, unconstitutional, null, and void". This somewhat superlatively positive characterization was ratified at a farcical election by the handsome majority of 21,104 to 40. It was this which Congress described in the Tennessee readmitting act as "a large popular vote". The several conventions which were held in Virginia, from that at Wheeling, in 1861, to the one at Alexandria, in 1864, did not disturb themselves with the question of secession. The reconstruction constitution which was framed at a convention held in Richmond in 1867, and ratified, with certain amendments, in 1869, contained this provision in its bill of rights: "That this State shall ever remain a member of the United States of America, and that the people thereof are part of the American nation, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union or to sever said nation, are unauthorized and ought to be resisted with the whole power of the State". This looked to the future, instead of the past, but it was sufficient for its purpose.

The passing of the institution of slavery from the field of living issues did not differ essentially in its process from the disappearance of secession. A great deal of nonsense has been written about the emancipation proclamation. That document was wholly without efficacy as a means of destroying slavery.

It was so much worthless paper, without the successful issue of war to give it substance and effect. The best and most concise summing up of the destruction of slavery was that by Judge Sharkey, of Mississippi, Andrew Johnson's provisional governor of that state. He declared that slavery was dead "by the fortunes of war", and that was the beginning and the end of the whole matter. If the war had ended in a Southern victory, Lincoln's proclamation would not have freed a single slave in the Southern states. On the other hand, slavery had come to be universally regarded as the real issue of the war, and with the victory of the Northern armies slavery was inevitably dead, regardless of a proclamation to that effect. No people realized and accepted this more clearly than the owners of the slaves themselves.

A great deal has been made of the alleged opposition of some Southern states to the formal recognition of the death of slavery as provided in the thirteenth amendment. This is superficial. Each one of these states embodied in its first constitution, before the advent of the carpetbagger, a provision declaring that slavery had been destroyed. There was no opposition to the ratification of the thirteenth amendment, as far as it affected slavery. Such objection as was manifested was addressed solely to the enforcing section of the amendment. It was felt, and in some cases argued, notably so in the report of the Mississippi legislative committee, that under that section Congress would have power to legislate on the political rights of the former slaves. On this ground alone, Mississippi refused ratification. Alabama and Florida coupled with their ratification

a proviso which attempted to guard against such congressional action, while South Carolina added a resolution to the effect that any attempt by Congress to legislate upon the civil or political status of former slaves would be in conflict with the declared policy of the President and with the restoration of sectional harmony.

From the date of the promulgation of the amendment there was entire and matter of fact acquiescence in its abolition provision. It was recoginzed throughout the Southern states that the amendment did no more than the people of those states had themselves already done in their own constitutions. Slavery and secession were both "dead by the fortunes of war", and there was neither desire nor purpose in the South to resurrect either.

2. Readjustment of Political Rights.

a. The War Amendments.

b. Civil Rights in the South as affected by the War.

An analysis of the bills and resolutions introduced in Congress from its thirty-seventh organization to the final compromise on the fifteenth amendment resolution in 1869, is an interesting study of the genesis of the War amendments and of reconstruction legislation. There is not a provision of the ultimately formulated and expressed policy of the Government toward the inhabitants, white and black, of the seceded states, which is not either foreshadowed or clearly avowed in the proposed legislation of the earliest period of the war. Much of this was not enacted. Some of it did not pass the stage of reference to committee. But part of it passed, either in the shape of declaratory resolutions or in that of actual legislation. Taken in its entirety it discloses the whole program of post bellum action.

From the first outbreak of hostilities there were men in Congress perfectly willing to go to the extreme limit of confiscatory or punitive legislation. Only the progress of war and the gradual shifting of public opinion were necessary to build up the congressional majority which finally found itself prepared to take steps which had in fact been urged almost from the beginning. The war amendments were no more the result of the deliberations of respective committees at the time each was

reported than was the original constitution the mere product of novel ideas and theories suggested for the first time in the convention of 1787. Each of the three amendments was a growth, and represented the embodied accumulation of changes which had been so often proposed that they came at last to be accepted. The emancipation of slaves by forfeiture as a penalty for use against the Government, in the Trumbull act of 1861, was a foundation stone of the thirteenth amendment. The ice had to be broken and the first step taken. Having carried that suggestion to a successful issue, nothing was more natural than that its author should follow it a few months later with a bill to emancipate, not all slaves used by "rebels," as in the first act, and not all slaves, as in the last chapter, but all slaves who were the property of "rebels." Congress was not quite ready for this step, and it was not taken. The emancipation proclamation itself was preceded eight months by a proposal in Congress to authorize the very thing which Mr. Lincoln finally obtained his own consent to do. The original suggestion attracted little attention, although an examination shows a marked similarity of thought, and even of language, between the two. Just four months after Lincoln's inauguration, with its accompanying anti-interference declarations, Pomeroy, of Kansas, introduced in the Senate a bill which proposed absolute emancipation, provided for an emancipation proclamation and authorized the use of negroes in the army. It furthermore contained as its keynote the "republican form of government" shibboleth which subsequently became the cornerstone of the whole reconstruction superstructure.

What was true of the origin and gradual growth of the ideas, sentiments and opinions which were finally wrought into concrete form in the thirteenth amendment is true also of the development of the fourteenth. It is not possible to draw a line, and declare that here was initiated a political theory or movement, but it is sometimes not difficult to trace the origin of a specific concrete action. We know, for example, that the third section of the fourteenth amendment was punitive in purpose and operation. It was a very simple provision for excluding from office certain designated classes of individuals. The resolution which became the fourteenth amendment was not passed until June, 1866, but its punitive section had been proposed in the Senate five years before, by Chandler, of Michigan, - probably as well qualified by natural bent for suggesting such measures as any man who ever sat in Congress, and it came up repeatedly thereafter, being proposed in various forms by Sumner, Sherman, Harris, Clark, and others. Long before the joint committee on reconstruction made its report, the adoption of such action in some form had become a familiar and an accepted idea.

Also with the much more important first section of the fourteenth amendment. The Government lived for three quarters of a century without a definition of national citizenship. The framers of the constitution contented themselves with providing, in Article IV, that citizens of each state should be entitled to the privileges and immunities of citizens in the several states- but citizenship was of the state rather than of the nation.

Freedom from the status of the slave did not mean elevation to the status of the citizen, and nothing was more unlikely than that the former slaveholding states would by voluntary action confer state citizenship upon their former slaves. In no state in the Union were negroes upon a footing of entire civil equality with the white population. It was a revolutionary change from such a condition at the outbreak of the war to that of full and equal citizenship as a result of the conflict. Nothing short of war would have made it possible. But radical as the change was, when viewed as an accomplished fact, it was only another illustration of the gradual but steady operation of a policy of diminishing by congressional action the negro's civil disabilities and adding to his civil rights.

For example: The negro could not testify on an equal footing with white witnesses even in the District of Columbia. One of the first of the numerous congressional actions which stand out as stepping stones toward the goal of complete "equality before the law" for the American negro was in an amendment to the act abolishing slavery at the seat of government. In providing for the execution of this act of emancipation, approved by Mr. Lincoln in a special message in 1862, it was necessary to incorporate a provision to prevent the exclusion of the testimony of negroes "on account of color". Sumner was the author of this amendment, and it was he who led the struggle for the removal of all civil discriminations against the negroe. Bill after bill was introduced by himself and others, all hammering constantly at the same object. The application of the

same criminal laws to both races, and the abolition of the slave code; the right to take out patents without restriction of color; the removal of the same color restriction on the right to carry the mails; equality of footing as to pay and rations for military service; the right to ride in the street cars of the District of Columbia, - one by one these things were fought for, and in the main accomplished, until there was little left of discriminating laws applicable to any territory under the jurisdiction of Congress.

The civil rights bill of April 9, 1866, framed as an enforcing act for the thirteenth amendment, contained practically all that was incorporated in the first section of the fourteenth. It was passed more than two years before the adoption of the fourteenth amendment, yet it was radical enough to serve as an enforcing act for that amendment also. It verified every expression of fear of the power which could be exercised under the enforcing section of the thirteenth amendment which caused the rejection of that article by the legislature of Mississippi, for reasons exhaustively and convincingly stated.

The fifth article of amendment to the Constitution had already provided that no person should be deprived of life, liberty or property without due process of law. But this was operative against the general government only. There was little fear that Congress would take any backward step in the matter of restoring racial disqualifications which it had abrogated, much less take action violative of the spirit of the fifth amendment. The

object sought by the advocates of enlarged civil privileges for the negro was that of placing those privileges forever beyond the danger of state restriction. To so define American citizenship as to confer it beyond question upon the negro, and to so limit the powers of the states as to make it impossible for them to interfere with national citizenship, was in practical effect to extend to the negro in the states all the privileges and immunities which four years of legislation had sought to confer in the narrower territory under congressional control. This was the whole work of the first section of the fourteenth amendment, in so far as the American negro was concerned. That section embodies the cumulative privileges which Sumner fought for. It is the charter of the negro's civil rights. Its first declaration is that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside". Thus is fixed the status of the negro as a citizen of his state and of the nation. The second declaration of the section is that "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". Armed with this, coupled with the enforcing section of the amendment, it was believed that the power of Congress was absolute in the matter of legislating for the protection of the

"privileges and immunities" of the class of American citizens thus brought into being. And so it would have been, but for the intervention of the Supreme Court.

The last of the war amendments, important as it is, does not demand extended discussion. Like the thirteenth, it is brief, simple in its terms, and explicit in its meaning. It does not say that a negro must be allowed to vote because he is a negro. It simply says that he cannot be prevented from voting on that account. The history of its genesis and development, from an incipient suggestion to an accomplished fact, does not differ materially from that of the other two amendments. The idea of endowing the negro with the suffrage, by either direct or indirect action, followed naturally in the minds and efforts of those whose slogan was "equality before the law". As with emancipation, Washington was the scene of the experiment. There was some suggestion of it early in 1864, and the first bill on the calendar of each house in the 39th Congress, December 4, 1865, provided for negro suffrage in the District of Columbia. In January, 1867, a bill was finally passed over Johnson's veto, - after a fight in which the opponents of the measure, including Johnson, held steadily to the opinion that negro suffrage in the District of Columbia was simply an entering wedge for its extension to the entire country, - that one must inevitably follow the other. Within two months after the overriding of Johnson's veto, the first military reconstruction bill was passed over a similar protest, and its cardinal feature was negro suffrage.

The fifteenth amendment resolution, - forced through Congress by a narrow margin in February, 1869, merely sought to give permanent effect in a wider field to a policy inaugurated four years before as a local measure.

The war amendments and reconstruction legislation affected permanently the civil rights of only one class of people in the South, - the negro. Even among the most radical of reconstruction leaders there were few who thought of punishing "rebellion" with the infliction of more than temporary civil disabilities. The fourteenth amendment resolution reported by Stevens' committee provided for the exclusion from voting for representatives, or electors, of all persons who had "voluntarily adhered to the late insurrection." But the exclusion was to end on July 4, 1870. We have seen that this punitive idea of the deprivation of political or civil rights was inherent in the genesis of the fourteenth amendment. The only question was as to the degree and duration of the punishment to be inflicted. Instead of accepting the reconstruction committee's recommendation of a basis of proscription broad enough to include every man in any way identified with the Confederate government or army, but so narrowed as to affect only participation in the choice of presidential electors and congressional representatives, and even then with a definite termination, a wholly different scheme was decided on. Instead of proscribing all classes of insurrectionists on a suffrage basis, the measure finally adopted applied only to such persons as had before the war held some

official position, federal or state, and the proscription was against office holding rather than against voting for others for office. This disability did not expire of itself at a fixed time, but was removable in the discretion of Congress by a two-thirds vote of each house. Under the plan proposed by the committee the right to vote would have been confined until 1870 practically to the negro population of the South. In the light of what finally happened, even under the measures adopted, it is interesting to speculate upon what might have been the result of thus turning the South over wholly and absolutely to its recent slaves.

But if the punitive provision adopted was less drastic than that proposed, the difference amounted to no more than accomplishing the same end by congressional legislation rather than by a constitutional enactment. Reorganization on a basis of negro suffrage was what Stevens aimed at through a constitutional amendment, and reorganization on a basis of negro suffrage was what was actually accomplished. The military reconstruction act of March 2, 1867, interests us here only as it affected the political status of the two races ~~of~~ in the South. With the iniquities whose perpetration it invited, as with the chaos it assured, we are not now concerned. It provided for the reorganization of the Southern states by the votes of male citizens "of whatever race, color or previous condition" - excepting only such white men as were excluded from office by the proposed fourteenth amendment. But the disabilities imposed by Congress

upon former Confederates were nothing like as severe as those imposed by the gang of political free-booters and ex-slaves who secured control of the South under the reconstruction acts. The framers of these acts doubtless felt reasonably safe in turning the Southern people over to the class who by this legislation were placed in control. The radicals inserted in the new constitutions of Alabama, Arkansas, Louisiana, Mississippi and Virginia, disfranchising and proscription clauses which greatly enlarged the number affected by the acts under which these constitutions were provided for. This was done either by requiring test oaths for suffrage, in which the applicant must swear to his belief in "the civil and political equality of all men", or by a combination of test oaths and direct disfranchisement. The constitution of Louisiana enjoyed the unique distinction of disfranchising persons who had "preached sermons in advocacy of treason". It, however, graciously offered to condone this and other suffrage denying offenses if the repentant sinner would sign a certificate "setting forth that he acknowledges the late rebellion to have been morally and politically wrong, and that he regrets any aid and comfort he may have given it". Exceptions also were made in two or three of these constitutions in favor of persons who had purged themselves by strenuously supporting the congressional reconstruction policy or by advocating racial, civil and political equality. The legislatures were empowered to remove these disabilities. Virginia and Mississippi refused to ratify the constitutions containing these obnoxious provisions, and

defeated their adoption when separately submitted at the election provided for after Grant's succession to the presidency. It was inevitable that after the states were readmitted the men who represented the character and intelligence of the state, as well as paid its taxes, would either compel the elimination of such discriminations outright or would in some way practically evade them. The mere letter of the law never has been and never will be sufficient to keep from political power people who are inherently entitled to it, or to bestow it in practice upon people inherently unfit to exercise it.

Missouri and West Virginia went to extremes not even attempted by the states further south. The latter adopted a constitutional amendment in 1866 which not only disfranchised all persons who had aided the Confederate cause, but which even denied them citizenship in the state. It is probable that no people ever underwent greater hardships in civilized warfare than the Southern sympathizers in the State of Missouri. It is certain beyond the possibility of denial that this country has nowhere else witnessed such a proscription of the commonest civil privileges and immunities as was embraced in the long catalogue which constituted the infamous third section of article two of the Missouri Constitution of 1865. It was said of it and of the test oath which accompanied it, by Mr. Justice Field, of the Supreme Court of the United States, that it created crimes hitherto unknown and was without a precedent in its severity. The case in which these proscriptions were held unconstitutional was that

involving the conviction of a Catholic priest for the crime of preaching and teaching without having first taken the test oath. This was the case of Cummings vs. State of Missouri, decided in 1867. In West Virginia the objectionable clause was omitted from the constitution adopted in 1872.

Another civil disability imposed upon Southern men affected the right of lawyers to practice in Federal courts. The so-called "ironclad oath" of 1862 was sufficient of itself, without additional legislation, to disqualify every Confederate sympathizer from any office under the Federal government. In 1865 the act of 1862 was supplemented by one which required attorneys and counselors to take the "iron clad" test oath before being allowed to practice in any United States court. This simply meant that practically every lawyer in the Southern states was disbarred from Federal practice, and could not even ~~pre-sent~~ prosecute an appeal to a Federal court. It was against the peculiarly odious discriminations of the act of 1865 that A. H. Garland, of Arkansas, later Attorney General under Mr. Cleveland, protested in a petition to the Supreme Court of the United States, which led that tribunal in 1867 to declare the act in question unconstitutional.

The removal of the civil and political disabilities imposed by national and state action was effected in various ways and through a considerable period of time. It may be said to have begun with Lincoln's first amnesty proclamation, December 8, 1863. In this proclamation Mr. Lincoln offered relief from

the operation of the confiscation acts of Congress, as to all property except slaves. This restoration of property rights was conditioned upon the taking of a prescribed oath, and was open to all except certain designated classes of former officials, and persons who had treated coloredsoldiers other than as prisoners of war. Johnson continued this "amnesty" policy in several proclamations, beginning May 29, 1865. He increased the number of excepted classes in this proclamation to fourteen, and followed Lincoln in requiring an amnesty oath and in offering to consider special applications for pardon. The scope of subsequent proclamations was broadened until that of December 25, 1868, included, without the condition of an oath, all persons in any way associated with "the late insurrection". But these proclamations were not recognized by Congress, and at first were effective only in so far as the President could enforce them, - as in the case of ordering the restoration of confiscated or "abandoned" lands, in the hands of the Freedmen's Bureau or officers of the army. They were upheld in a sweeping way by the Supreme Court, in 1867, in the Garland case, and were declared to work a relief "from all penalties and disabilities attached to the offense of treason".

But Congress was the sole judge of the qualifications of its members, and a pardon from the President did not guarantee Congressional recognition of a certificate of election to a seat in that body. Nor did the opinion of the court affect the operation of the reconstruction acts, in enforcing the disabling

section of the proposed fourteenth amendment. A two-thirds vote of each house of Congress was required to restore to full political privileges the classes which that amendment proscribed. Congressional amnesty was at first limited to such as were endorsed by radical leaders in the South as "safe" and "loyal" - the class which has passed into history under the malodorous name of "scalawags". It was gradually extended to others, however, and in 1871 the iron clad oath of 1862 was repealed as to ex-Confederates. This was the first step toward a restoration of civil and political rights by Congressional legislation general in application. In 1872 the disabilities of the fourteenth amendment were removed from all except persons who had been members of the thirty-sixth and thirty-seventh Congresses, or officers in the judicial, military or naval service of the United States, or heads of departments or foreign ministers. These classes, as such, were not relieved until thirty-three years after the Civil War - and then only under the sentimental excitement of the approaching war with Spain. The act of 1898 removed all disabilities imposed by the third section of the fourteenth amendment, but was devoid of practical effect except in very few cases.

We have suggested the line of policy followed by the radical advocates of "equal rights" during the progress of the Civil War, in legislating for negroes within the jurisdiction of Congress. The first civil rights act was passed over Johnson's veto, April 9, 1866. It anticipated the fourteenth amendment by making negroes citizens and bestowing upon them the same personal and property

rights and the same standing in civil and criminal courts as enjoyed by white citizens. For all real purposes to which such laws could be legitimately applied, the civil rights of the negro were secure under this act, coupled with that of May 31, 1870, giving Federal courts jurisdiction over its enforcement. But it did not go far enough to suit Sumner. He seemed to be a monomaniac on the subject of "equality", and was satisfied with nothing less than the absolute obliteration of the last vestige of demarcking line between the races. But he did not live to see the enactment of his pet measure on the subject, - the Civil Rights Act of March 1, 1875. This act sought to secure to negroes the right of access to all hotels, cars, schools, theaters, etc. Any man but an impractical and visionary dreamer would have realized the impossibility of thus compelling such an association as this law sought to secure. Nothing could be more certain than that it would be ignored throughout the South, without regard to its penalties.

We have suggested that when the fourteenth amendment resolution was passed its advocates felt that its incorporation into the constitution would place the rights and privileges of negroes wholly within the care and control of Congressional legislation. In the famous Civil Rights Cases in 1883, the Supreme Court of the United States held that the Civil Rights Act of 1875 was unconstitutional in so far as it attempted to do the very thing which its framers claimed the right to do under the fourteenth

amendment. This was held to be "direct and primary, as distinguished from corrective legislation". As such, it constituted a congressional encroachment upon the domain of state control of domestic affairs. It was hard for the radical advocates of "civil rights" to reconcile themselves to the idea that, after all, no new "privileges and immunities" had been created by the war amendments, and that the newly created class of citizens must simply stand on the same footing as the white class, as regards the enforcement of their rights. Yet this was not only good law, but was common sense as well. Coupled with another important interpretation of the fourteenth amendment, namely that "equal" does not necessarily mean "identical", as applied to certain civil rights, there was furnished the states all the liberty of legislative action necessary to devise means for avoiding the racial clashes which under the congressional statutes seemed inevitable. It was rendered possible to establish separate schools and to require separate cars, without running counter to an act of Congress.

While Sumner was working to secure the passage of his Civil Rights Act in Congress, practically every idea which he sought to incorporate in it was embodied in the reconstruction constitutions or legislation of the Southern states. Ante bellum laws against intermarriage were repealed, as were such separate car laws as had been enacted during the brief life of Johnson's provisional state governments. In Louisiana the right of attending the same schools with white children was guaranteed the

negro in the state constitution, while in nearly every state the effort was made to legislate out of existence the common discriminations in hotels, barber shops and theaters. In short, the privileges and immunities and ~~civil~~ rights of citizenship for the negro were to mean, under both the congressional and state programs, the wiping out of racial lines, the breaking down of racial distinctions and the destruction of every artificial barrier to social association between the races. That this program was not carried out is common knowledge. For its final abandonment, as impossible of congressional enforcement, the Southern people are indebted to the Supreme Court of the United States. Its downfall in the states was one of the inevitable incidents of the overthrow of the reconstruction governments and the resumption of local white control of local affairs.

~~Still~~ Thus we are warranted in saying that the Civil War permanently affected the civil rights of only one class of Southern people - namely the negroes. ~~But~~ and the rights secured to the negro are only those, and no more, which the Southern people themselves would have voluntarily granted if let alone. These are the rights of equal standing in courts, and those of property and person. Even before the overthrow of the first provisional governments some of these rights were already given the negro, while the wisdom and justice of granting them all was recognized and urged by many Southern leaders, and in a ~~little while~~ short time (?) would have been generally conceded by all. In other words, in the field of civil rights the

negro secured nothing from the turmoil and strife of reconstruction folly which would not have followed in due time the mere fact of his emancipation, as inevitably incident to his new status as a free member of the community.

As for the white men of the South, they were protected from the confiscation of their real estate for a longer period than their own lives by the Constitution of the United States. A title for life only was hardly worth while, and their rights of property were not interfered with, further than was involved in making constitutionally impossible a prosecution of claims for the loss of slaves. It would have been impossible for even Stevens to reconstruct the Southern states on a basis of the total and permanent deprivation of the civil and political rights of the white population. The radical element went as far as it was possible to go in a civilized state in the last third of the nineteenth century. And "rebellion" was too nearly universal in the South to make the punishment harsher or more lingering than it was, without the adoption of a program for maintaining troops in those states which would have been too expensive seriously to consider. The final restoration of all civil and political rights to the Southern people was a necessity inherent in the conditions which existed throughout the Southern states, if civil government was to be carried on.

## 3. Readjustment of Party Affiliations.

The readjustment of party affiliations after the Civil War makes an insignificant chapter in Southern political history. Despite the long agitation over the slavery question which terminated in 1861, the South was never an isolated section politically. The term "solid South" has occasionally been used in discussing the election of 1812, with Madison, of Virginia, and Clinton, of New York, as candidates. All the electoral votes of Virginia, North Carolina, South Carolina, Georgia, Tennessee and Louisiana, the states which were afterwards embraced in the Southern Confederacy, were cast for Madison. But it should be remembered that they also went to Elbridge Gerry, of Massachusetts, who was the candidate for vice-president on the same ticket. Under the then existing system of choosing electors we have no means of ascertaining the popular vote, or what would have been the popular vote, but in no sense could a vote on such a ticket be called a sectional vote, as we now use the term. The electoral vote of all these states was also cast for Jackson, in 1828, but Adams received part of the popular vote of each one of them,—nor was Jackson the candidate of a section. When the Whigs defeated the Democrats, in 1840, the popular vote of the South was fairly well divided between Harrison and Van Buren. This was the first election at which a candidate of avowed abolition sentiments was

to be voted on, and of the 7,000 votes cast for Birney not one was from the South. The same may be said of the 62,000 votes which he received in 1844, when the contest was between Polk and Clay, both Southern men. In the election of 1848 the Southern vote was well divided between Taylor and Cass, - Alabama, Arkansas, Mississippi, Texas and Virginia each giving the Northern candidate a popular majority over the Southern. It is worth noting, however, that of the 291,000 votes which Van Buren received on a "Free Soil" platform, only 9 were contributed in states subsequently part of the Confederacy, - these having been cast in Virginia.

The anti-slavery party, still calling themselves "Free Soil Democrats", with a ticket drawn from New England and the Middle West, - Hale, of New Hampshire, and Julian, of Indiana, polled 156,667 votes in 1852. This was a falling off from the preceding vote, but it was sufficient to show that the slavery issue was one henceforth to be reckoned with, not as a mere academic question only but as one of national and practical politics. The anti-slavery ticket received 59 votes in North Carolina and 291 in Virginia. While the South was for Pierce by a good majority, it cast a considerable vote for Scott. The election of 1856 witnessed the advent of the Republican party as a national anti-slavery organization, with Fremont as its nominee. The Democrats nominated Buchanan, while Fillmore represented the forlorn hope of the last remnants of the Whigs, with such recruits as they gathered from anti-slavery Democrats

and the short-lived "Know Nothings". Here was presented for the first time a clear cut slavery issue at a national election. Yet the South was so far from being "solid" that it cast more than 300,000 votes for Fillmore, as against 430,000 for Buchanan. This was in the subsequent Confederate states alone, excluding Missouri, for obvious reasons, and omitting South Carolina, whose electors were still chosen by the legislature. Here again the candidate who stood for sectional opposition to slavery - and his candidacy was distinctly the embodiment of sectionalism - secured no Southern votes, save 291 in Virginia - a suspicious duplication of the anti-slavery vote of that state four years before. In the final political struggle of 1860 these same states were as distinctly divided in their allegiance at the polls as they had always been. They cast 72,000 votes for Douglas, 436,000 for Breckinridge, and 345,000 for Bell. Yet of their total popular vote of more than 850,000, Lincoln received but 1,929,- all in Virginia.

From the foundation of the Government to the outbreak of the Civil War the Southern people represented normal divisions of sentiment on every political question which from time to time confronted the country,- save one. This of course was slavery. As long as other questions were paramount, and even in 1860, no one candidate or party could command their united support. And it is the error of ignorance to suppose, as is often done, that there were no internal differences of opinion among Southern people even upon the institution of slavery. There

were in the South thousands of people, directly or indirectly interested in slave-holding, who did not "believe in" slavery in any sense of the term. But they were confronted with the practical questions inextricably involved in changing an organized labor system of vast extent and in altering the status of the slave. There were likewise many shades of opinion on slavery at the North. Certainly Abraham Lincoln was no abolitionist. But when the question of slavery, - whether of extension or restriction or maintaining the status quo - became the distinct issue of a powerful political party, it was inevitable that that issue and that party ~~would~~ must be sectional. This was inherent in the very elements of the situation - a mere matter of course incident to the fact that slavery itself had become economically confined to one section of the country. And regardless of normal differences of opinion, North and South alike, when the issue came there was but one front presented by each section. It is idle to moralize about such questions, or to seek to explain the common impulses of human nature by fine-spun theories of political action. The people of this country separated politically when a sectional economic institution became a paramount political issue, and they separated because it was the entirely natural thing to do. The greater solidity of the South, and its greater readiness to assume its position, were simply because the bone of contention happened to be in the South. It was for that section a very real and very tangible matter. For the North it was a mere abstraction.

Of the readjustment of political affiliations then, no more need be said than that the Civil War simply changed the issue from the sectional one of slavery to the sectional one of the status of the former slave and of his relations to his former master. The political allegiance of Southern white men went naturally to the party which represented the minimum amount of interference in the problem of readjusting social and economic conditions in the Southern States, and which was willing to grant to the people who faced the problem the greatest measure of freedom in handling it. What that party was called, and what else it stood for, was the very least possible concern of the Southern people after the war. And it has not mattered much since, and will not, until the other great party develops a sufficiently broad and non-sectional spirit to cease to use the slavery question, the negro and the Civil War as party assets,- quadrennially paraded in its national platform.

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