



1942

Lincoln and Reconstruction 1862 - 1865: A Synthetical Study of Lincoln's Plan of Reconstruction

Roman G. Weltin
Loyola University Chicago

Recommended Citation

Weltin, Roman G., "Lincoln and Reconstruction 1862 - 1865: A Synthetical Study of Lincoln's Plan of Reconstruction" (1942).
Master's Theses. Paper 477.
http://ecommons.luc.edu/luc_theses/477

This Thesis is brought to you for free and open access by the Theses and Dissertations at Loyola eCommons. It has been accepted for inclusion in Master's Theses by an authorized administrator of Loyola eCommons. For more information, please contact ecommons@luc.edu.



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License](https://creativecommons.org/licenses/by-nc-nd/3.0/).
Copyright © 1942 Roman G. Weltin

LINCOLN AND RECONSTRUCTION 1862-1865

A Synthetical Study of Lincoln's
Plan of Reconstruction

BY

ROMAN G. WELTIN, S. J.

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTER
OF ARTS IN LOYOLA UNIVERSITY

AUGUST

1942

VITA

Roman G. Weltin, S.J., was born at Fremont, Ohio, February 15, 1914.

He was graduated from St. Joseph High School, Fremont, Ohio, June, 1932. He attended St. John' University, Toledo, Ohio during the scholastic year, 1933-1934. In August, 1934, he entered the Society of Jesus at Milford Novitiate, Milford Ohio.

In the same year he enrolled at Xavier University, Cincinnati, Ohio, in the Department of Arts but transferred to Loyola University in 1938 when he was registered at the West Baden College of that University at West Baden Springs, Indiana.

The Bachelor of Arts degree with a major in History was conferred by Loyola University, June, 1940.

During the scholastic year, 1941-1942, the writer devoted his time to graduate work in the History Department of Loyola University.

TABLE OF CONTENTS

CHAPTER

PAGE

I.	LINCOLN'S PLAN OF RECONSTRUCTION.....1	1
	Epitome---Preliminary facts---Purpose---The slavery question---Compensated emancipation---Proclamation, 1862---Lincoln's hopes---Three aspects of his plan---Abolition and compensation---Provisions for Freed-Negroes---Colonization---Value of Compensated Emancipation---Amnesty Proclamation---Importance---Rebel citizens---The oath---Exceptions---Limitations---Proclamation about amnesty---Purpose---Conclusion.	
II.	CONSTITUTIONAL SIGNIFICANCE OF LINCOLN'S PLAN.....24	24
	The problem---Various approaches---The theories---Unconstitutionality of Lincoln's plan---Congress' position---The Press---A Historian's approach---Burgess' interpretations---Constitutionality of Lincoln's plan---McLaughlin's view---The Press---Congress---Supreme Court decisions--- <u>Prize Cases</u> --- <u>Texas v. White</u> --- <u>Iather v. Borden</u> ---Conclusion.	
III.	PUBLIC OPINION AND LINCOLN'S PLAN.....65	65
	Scope---General comments on first phase---Approval---An objection---Doubts---Sanction of Lincoln's motives---General comments on second phase---Unfavorable---Favorable---Particular comments---Value of plan---Feasibility of plan---Rebel Press comments---A cabinet secret---Conclusion.	
IV.	RELATION OF LINCOLN'S PLAN TO EARLY CONGRESSIONAL PLAN.....85	85
	Preliminary facts---Purpose---Scope---Early congressional plan---Select Committee---Congress' attitude---Wade-Davis Bill---Davis's Speech---Bill before the House---Bill in the Senate---Lincoln's pocket-veto---Wade-Davis Manifesto---Lincoln's proclamation---Comparison of the plans---The authors---The theories---The elements---The moral aspects---Conclusion.	

V.	LINCOLN'S PLAN IN EFFECT.....	112
	Purpose---Limitations---Preliminary problems---	
	Restoration before 1863---Antecedents---Status of	
	rebel states---Reconstruction in Louisiana---Hon.	
	John E. Bouliguy---Military cooperation---Convention,	
	1864,---Difficulties with the military---Congressional	
	obstacle---Lincoln's last words on reconstruction---	
	Application---Reconstruction in Tennessee---Andrew	
	Johnson---Conventions---Representatives for Congress---	
	An anomaly---Steps in Arkansas---Problems---Lincoln's	
	correspondence---Popular reconstruction---Congressional	
	opposition---Lincoln's comment---Reconstruction in other	
	rebel states---Conclusion.	
	CRITICAL ESSAY ON AUTHORITIES.....	134
	LIST OF APPENDICES.	
I.	List of Important Documents Pertaining to Lincoln's	
	Plan.....	138
II.	Summary of the Wade-Davis Bill.....	139
III.	Summary of the Speech of Henry Winter Davis Delivered	
	in the House of Representatives March 22, 1864 on	
	Reconstruction of the Rebel States.....	142
IV.	A Chronological Chart of Speeches in the House of	
	Representatives Pertaining to the "Bill to Guaranty	
	Certain States a Republican Form of Government,"	
	i.e., the Wade-Davis Bill.....	148
V.	A Chronological Chart of Speeches in the Senate Pertaining	
	to the "Bill to Guaranty Certain States a Republican	
	Form of Government.".....	151
VI.	Summary of the Wade-Davis Manifesto as it Appeared in	
	the <u>New York Tribune</u> , August 5, 1864.....	153

CHAPTER I.

LINCOLN'S PLAN OF RECONSTRUCTION

On February 5th, 1865, just sixty-seven days before one of the most dearly loved and most intensely hated Presidents of the United States met his death by an assassin's bullet, we find the same President facing his cabinet over the conference table. In a folder of papers before him is a document which he desires to be discussed before he presents it to Congress for adoption. Lincoln then picks up the important document and reads:

Fellow-Citizens of the Senate and House of Representatives:

I respectfully recommend that a joint resolution substantially as follows, be adopted as soon as practicable by your honorable bodies:

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, that the President of the United States is hereby empowered, in his discretion, to pay \$400,000,000 to the States of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Tennessee, Texas, Virginia, and West Virginia in the manner and on the conditions following to wit: The payment to be made in six per cent government bonds, and to be distributed among said States pro rata on their respective slave populations as shown by the census of 1860, and no part of said sum to be paid unless all resistance to the national authority shall be abandoned and cease, on or before the first day of April next; and upon such abandonment and ceasing of resistance one half of said sum to be paid in the manner aforesaid, and the remaining half to be paid only upon the amendment of the National Constitution recently proposed by Congress becoming valid law, on or before the first day of July next, by the action thereon of the requisite number of States.

The adoption of such resolution is sought with a view to embody it with other propositions in a proclamation looking to peace and reunion.

Whereas, a joint resolution has been adopted by Congress, in the words following to wit:

Now, therefore, I, Abraham Lincoln, do proclaim, declare, and make known, that on the conditions therein stated the power conferred on the executive in and by said joint resolution will be fully exercised; that war will cease and armies be reduced to a basis of peace; that all political offenses will be pardoned; that all property, except slaves, liable to confiscation or forfeiture, will be released therefrom except in cases of intervening interests of third parties; and that liberality will be recommended to Congress upon all points not lying within executive control.¹

No mild discussion followed. It, however, was terminated by Lincoln's words, "You are all opposed to me" sadly uttered."²

The quotation just given, though long, is important because it is an epitome of Lincoln's view on reconstruction. There is not to be found here the bare political demand of the later Congressional reconstruction, for Lincoln's plans are not so restricted as shall be seen. In general he has a politico-economic viewpoint which does not exclude the social relations. Lincoln even more than two years after the signing of his Emancipation Proclamation had still in mind the necessity of economic rehabilitation for the South, besides a plan for determining methods and means for state restoration. Therefore, it seems no more than reasonable to consider Lincoln's ideas on compensated emancipation as one phase and his "10%" plan as the other, of his plan of reconstruction.

A few preliminary facts and distinctions are necessary before Lincoln's plan of reconstruction can be adequately treated. The purpose of this thesis is not to exhaust the relations Lincoln's plan had or might have

¹ Complete Works of Abraham Lincoln, edited by John Nicolay and John Hay, new and enlarged edition, F.D. Tandy Co., New York, 1905, XI, 1-3. Italics not in original.

² Ibid., note 1, 1.

had with persons, groups, or events of the civil war period. Rather, its purpose is to show Lincoln's plan of reconstruction from his viewpoint. It is apparent from Lincoln's writings that he considered reconstruction to a great extent to be an executive function involving cooperation with a loyal minority of the state in question. The result of this cooperation on the part of any rebel state would be an initial provisional government. The final step would be a complete restoration to the Union. It is also worthy of note to recognize the fact that Lincoln's plan as here presented is not to be considered one of the Lincolniana documents that appeared at a certain date some time before the Ford Theatre incident. "Lincoln's 'plan' involved a rebuilding of the Union as the war progressed."³ In other words, some phase or other of reconstruction will be in the foreground of Lincoln's thought from the beginning of the war, and consequently will appear in his writings; such evidence of Lincoln's efforts to restore the seceded states to the Union is fitted into the present writer's scheme with as much consideration for chronological order as is warranted by the treatment of the subject as a whole.

One of Lincoln's greatest efforts to remove the cause of the then present strife and to restore the rebel states to the Union, as we have seen above, was to solve the slavery question. There seems to be little doubt in the mind of Lincoln concerning the real cause of the Civil War: "One

³ J. G. Randall, The Civil War and Reconstruction, D.C. Heath and Co., Chicago, 1937, 699.

section of our country believes slavery is right and ought to be extended, while the other believes it is wrong and ought not to be extended. This is the only substantial dispute.⁴ A little more than two months later when he is proposing his most important resolutions on compensated emancipation he again reiterates this same idea; "I beg indulgence," he further requests, "to discuss these proposed articles at some length. Without slavery the rebellion could never have existed; without slavery it could not

⁴ "First Inaugural Address, March 4, 1861," James D. Richardson's A Compilation of the Messages and Papers of the Presidents 1789-1897, Government Printing Office, Washington, 1896-1900, VI, 10; requoted VI, 134. Italics not in original. Concerning the slavery question this is worthy of note. August 22, 1862 Lincoln replied to Horace Greeley's open letter which had been published in the New York Tribune, August 20th. Lincoln's answer stresses the motive, "Save the Union." However, he prefers the middle course between saving the Union on the condition that slavery is retained and saving the Union on the condition that slavery is destroyed. He says, "If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it would help to save the Union." Nicolay and Hay, Works, VIII, 15-16.

continue."⁵ At this period it is clearly seen what road Lincoln will follow. He apparently reasons that if he can remove the cause of the trouble he will have accomplished the first step along the road to reconstruction. It is for this reason that the present writer has included Lincoln's ideas on compensated emancipation as part of the Lincoln plan of reconstruction. Lincoln considered it a part of his plan as we have seen in a document quoted above. This conclusion is a logical one if one may argue from analogy. Is not the removal of the cause of a disease as much a part of the process of restoration to health as the recuperative prescriptions? Therefore, Lincoln's efforts to remove the primary cause of the Civil War through his attempts at compensated emancipation will be considered as the

⁵ Richardson, VI, 136. The New-York Daily Tribune sanctions this position. "Essentially the President sees and proclaims that Slavery has become the implacable foe of the American Union, and that the Slave Power must die in order that the Republic may live. And this is so obviously, so glaringly true, that the historian will have difficulty in realizing that it was ever gravely doubted....It is precisely and only because the Slave Power is the chief, the fundamental obstacle to such restoration, that he is compelled to grapple with it in mortal encounter....It is Slavery and nothing else, that makes the Old Dominion a den of treason...." Editorial; "The President's Message," New-York Daily Tribune, December 2, 1862, 4. In general even those most opposed to Lincoln's administration and his efforts at reconstruction recognize this fact: "We do not pretend that no other consideration than that of preserving slavery have moved the Secessionists; but we say only what all the world knows, when we say that slavery is the primal cause, and without it there would have been no secession, no rebellion, no attempted revolution." Brownson's Quarterly Review, New York Series, IV, #4, 501. October, 1863.

first step to the rebuilding of the health of the nation at war.

What then precisely is the plan of compensated emancipation which Lincoln proposed? For a complete answer we must go back to an early period of the war. In a proclamation issued September 22, 1862 we have the gist of his proposal. He states that it is his desire to recommend to the next Congress "a practical measure tendering pecuniary aid" to all so-called slave states on the condition that they then or in the near future voluntarily adopt "immediate or gradual abolishment of slavery within their limits." Then to solve the further problem that must necessarily arise, namely, "what is to be done with the freed-negro?" Lincoln adds that it is also his desire that these persons of African descent be provided with colonies either in the United States or elsewhere, if the consent of these governments can be negotiated.⁶

In fulfillment of the promise contained in this proclamation Lincoln made use of his first opportunity to propose his ideas on compensated emancipation to Congress. Therefore, in his second annual message to Congress Lincoln proposed three articles amendatory to the Constitution. These articles after having been passed by both Houses were to be proposed to the legislatures or conventions of the states. If they in turn were ratified by three-fourths of the state legislatures they would become a part of the

⁶ Richardson, VI, 96.

Constitution.⁷ Here we see that Lincoln favored the principle that emancipation, of whatever kind, be dependent upon the acceptance or rejection by the states. This is further substantiated by this fact: In a "Memorandum of an Interview between the President and Some Border Slave State Representatives, by Hon. J. W. Crisfield," the representatives stated that Lincoln during the conference with them held "that emancipation was a subject exclusively under the control of the States, and must be adopted or rejected by

⁷ Ibid., VI, 136. Were these measures the first attempts at compensated emancipation? No. Lincoln would not make such a claim. James B. McKean of New York introduced the first proposition on compensated emancipation to the House, February 11, 1861. His proposal was a resolution for the appointment of a select committee to probe the feasibility of emancipating the slaves in the border states. No action was taken on this resolution. Lincoln in a special message to Congress, March 6, 1862 recommended the adoption of a resolution exactly like the joint resolution to be cited presently. Roscoe Conkling of New York introduced this resolution to the House, March 10, and March 11; it was passed. The Senate passed it April 2. April 7, the House adopted the resolution of Albert White of Indiana which requested the appointment of a select committee of nine to confer on compensated emancipation in the Border States. On March 10, and July 12, Lincoln held conferences with the representatives of the Border States. Later in his proclamation of May 19th, he made a plea for the acceptance of the joint resolution of April 10, 1862: "Joint Resolution declaring that the United States ought to cooperate with, affording pecuniary Aid to any State which may adopt the gradual Abolishment of Slavery. Be it resolved..., That the United States ought to cooperate with any State which may adopt gradual abolishment of slavery, giving to such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconvenience, public and private, produced by such change of system." William MacDonald, Documentary Source Book of American History, 1606-1926, The MacMillan Co., New York, 1926, 449-450.

each for itself; that he (Lincoln) did not claim nor had this government any right to coerce them for that purpose;...."⁸

Lincoln had high hopes for his plan as is evidenced throughout his writings on this matter;

This plan is recommended as a means, not in exclusion of, but additional to, all others for restoring and preserving the national authority throughout the Union. The subject is presented exclusively in its economical aspect. The plan would, I am confident, secure peace more speedily and maintain it more permanently than can be done by force alone, while all it would cost, considering amounts and manner of payment and times of payment would be easier paid than will be the additional cost of the war if we rely solely upon force. It is much, very much, that it would cost no blood at all.⁹

The plan itself will now be discussed.

It will be seen that Lincoln's plan to solve the slavery problem was composed of three aspects; first, the abolition of slavery and compensation for freed-slaves; secondly, provision for Negroes freed by chances of war; and thirdly, colonization for the Freed-Negroes. Each of these points is discussed article by article in Lincoln's proposed amendment to the Constitution submitted to Congress. In Lincoln's own words we have the main points of the first article: "As to the first article, the main points are first, the emancipation; secondly, the length of time for consummating it (thirty-seven years); and thirdly, the compensation." It is to be enacted that any slave state which abolishes slavery "at any time or times before

⁸ Nicolay and Hay, Works, VII, 122.

⁹ Richardson, VI, 141. Italics not in original.

the first day of January, A.D. 1900" would receive compensation from the Federal Government. The amount of compensation is not definitely stated but the President was to pledge himself to deliver to every state which cooperated with this plan interest bearing government bonds at "the rate of (?) percent per annum." The aggregate sum to be paid to the state was to equal the number of slaves in that state as shown on the Eighth Census Report multiplied by a certain (?) amount for each slave. The delivery of the bonds in a lump sum or in partial payments was to depend upon the immediate or gradual emancipation adopted by the state.¹⁰

In this same message Lincoln did not fail to point out the advantage of this plan to the southern states and the reasonableness of the same to the northern states. To the former he pointed out that

the plan leaves each State choosing to act under it to abolish slavery now or at the end of the century, or at any intermediate time, or by degrees extending over the whole or any part of the period, and it obliges no two States to proceed alike. It also provides for compensation and generally the mode of making it. This, it would seem, must further mitigate the dissatisfaction of those who favor perpetual slavery, and especially of those who are to receive compensation.¹¹

Not so persuasive could be his argument with the latter. What advantage could this plan of compensation be to those "who are to pay and not to receive?" For them he points out that the plan is just and economical. It is just because the emancipation of the slave is really a destruction of the

¹⁰ Ibid., VI, 136.

¹¹ Ibid., VI, 137.

property of the southern slaveholder. Furthermore, since the southerner is no more responsible for the introduction and perpetuation of slavery than the northerner, because the northerner has shared and shares in the profits of this economic institution, then if this institution is to be sacrificed, this property destroyed, "is it not just that it be done at a common charge?"¹² If this argument did not prove conclusive, Lincoln would propose another. He endeavored to point out that it is more economical to abolish slavery by compensation than to carry on the war.¹³ Lincoln concludes with the following:

The proposed emancipation would shorten the war, perpetuate peace, insure this increase of population, and proportionately the wealth of the country. With these we should pay all the emancipation would cost, together with our other debt, easier than we should pay our debt without it....Thus time alone relieves a debtor nation so long as its population increases faster than unpaid interest accumulates on its debt.

This fact would be no excuse for delaying payment of what is justly due, but it shows the great importance of time in this connection---the great advantage of a policy by which we shall not have to pay until we number 100,000,000 what by a different policy (by further war) we would have to pay now, when we number but 31,000,000. In a word, it shows that a dollar will be much harder to pay for the war than will be a dollar for emancipation on the proposed plan. And then the latter will cost no blood, no precious life. It will be a saving of both.¹⁴

The second article of Lincoln's proposed amendment pertains to negroes who have obtained their freedom by the chances of war. They shall be considered by the government "to be forever free; but all owners of such

¹² Ibid., VI, 137.

¹³ This argument will be treated in detail in a later section of this paper.

¹⁴ Richardson, VI, 139.

who shall not have been disloyal shall be compensated for them at the same rates as is provided for States adopting abolishment of slavery, but in such a way that no slave shall be twice accounted for."¹⁵ In commenting on this article Lincoln does not think it feasible to return to bondage the class of persons mentioned, but, since the loyal owners have a right to their property, they should be compensated in the way provided.¹⁶

The third aspect of this plan is thus stated;

"Art.---. Congress may appropriate money and otherwise provide for colonizing free colored persons with their own consent at any place or places without the United States."¹⁷ The purpose of this article according to Lincoln was to provide for the future of the freed people. Its measures were to be in no way obligatory upon Congress or the people concerned. It was not meant to be objectionable to anyone "in as much as it comes to nothing unless by the mutual consent of the people to be deported and the American voters, through their representatives in Congress."¹⁸ Did this article provide for the destination of the Freed-Negroes? The answer is in the affirmative, but with a qualification. The destination is some place outside of the United States, but no specific place is mentioned. The reason seems to be that the colonization of the Freed-Negroes was a difficult problem to solve. Earlier attempts to establish colonies in the Spanish American Republics met with protest from the respective governments.

15 Ibid., 136.

16 Ibid., 139-140.

17 Ibid., 136.

18 Ibid., 140.

For this reason Lincoln was unwilling to move any colony "to any state without first obtaining the consent of its government, with an agreement on its part to perceive and protect such emigrants in all the rights of freemen." His endeavors extended to the tropics but Liberia and Haiti were the only havens he could establish for the colonists. These alone agreed to respect the conditions he demanded.¹⁹

In brief then we have Lincoln's sentiments on colonization; "I can not make it better known than it already is that I strongly favor colonization; and yet I wish to say there is an objection urged against free colored persons remaining in the country which is largely imaginary, if not sometimes malicious." In reality there was not one objection against free colored persons remaining in the country but two as Lincoln himself pointed out. The first was that the Freed-Negroes would displace white labor. Lincoln's logic is quite devastating here. If they stay in their old places they jostle no white laborers; if they leave their old places they leave them open to white laborers. Logically there is neither more or less of it. Emancipation even without deportation, would probably enhance the wages of white labor, and very surely would not reduce them.²⁰ The second objection, namely, that the Negroes, if freed, would swarm forth and cover the whole land, was met with an equally devastating reply.

Are they not already in the land? Will liberation make

¹⁹ Ibid., VI, 127-128.

²⁰ Ibid., 140.

them more numerous? Equally distributed among the whites of the whole country, and there would be but one colored to seven whites. Could the one in any way greatly disturb the seven? There are many communities now having more than one free colored person to seven whites and this without any apparent consciousness of evil from it. The District of Columbia and the States of Maryland and Delaware are all in this condition.... But why should emancipation South send the free people North? People of any color seldom run unless there be something to run from. Heretofore, colored people to some extent have fled North from bondage, and now, perhaps, from bondage and destitution. But if gradual emancipation and deportation be adopted, they will have neither to flee from. Their old masters will give them wages at least until new laborers can be procured and the freedmen in turn will gladly give their labor for wages till new homes can be found for them in congenial climes and with people of their own blood and race. This proposition can be trusted on the mutual interests involved. And in any event, cannot the North decide for itself whether to receive them?²¹

Lincoln was thoroughly convinced of the value of his resolutions on compensated emancipation. They were to be measures of sufficient worth to appease the dissatisfaction of even the advocate of perpetual slavery. How so? The emancipation would come by such gradual degrees that "most of those whose habitual course of thought will be disturbed by the measure will have passed away before its consummation."²² Of still greater value it would be as an economic measure. Two extant letters give ample testimony of this fact by comparing compensated emancipation with the cost of the Civil War. In a private letter to Henry J. Raymond of the New-York Times Lincoln begs the editor to reconsider his indictment of the plan on the score of expense.

²¹ Ibid., VI, 140-141.

²² Ibid., 137.

Have you noticed the facts that less than one half day's cost of this war would pay for all the slaves in Delaware at \$400 per head---that eighty-seven days' cost of this war would pay for all in Delaware, Maryland, District of Columbia, Kentucky, and Missouri at the same price? Were those states to take the step, do you doubt that it would shorten the war more than eighty-seven days, and thus be an actual saving of expense?²³

Even more convincing are the statistics which Lincoln sent together with a table of the 1860 census to a certain doubting James McDougall. After giving the same argument almost verbatim which he had used on his "friend" of the New York Times' staff, Lincoln continues his array of statistics;

Thus, slaves in Delaware.....	1,798
" " Maryland.....	87,188
" " District of Columbia.....	3,181
" " in Kentucky.....	225,490
" " Missouri.....	114,965
	<u>432,622</u>
	400
Cost of slaves	<u>173,048,800</u>
Eighty-Seven Days' cost of war	174,000,000 ²⁴

This then in substance is one important phase of Lincoln's plan of reconstruction. Lincoln was tireless and persistent in his efforts to get legislation passed and money appropriated for his scheme. In his annual messages to Congress, in special recommendations, in proclamations, in conferences with his cabinet and others, Lincoln used his influence to win cooperation for these measures. No more representative speech than the following which so well presents Lincoln's sentiments on this subject is more fitting to conclude this phase of his plan. He has just proposed the

²³ Nicolay and Hay, Works, VII, 119.

²⁴ Ibid., VII, 132-133. McDougall was a United States Senator.

resolutions to the 37th Congress. He begged indulgence of his seniors and those more experienced than himself in such matters, but yet he took courage to express his own mind before them because of the weighty responsibility of his office and the necessity of the present situation:

Is it doubted, then, that the plan I propose, if adopted would shorten the war, and thus lessen its expenditure of money and blood? Is it doubted that it would restore the national authority and national prosperity and perpetuate both indefinitely? Is it doubted that we here---Congress and Executive---can secure its adoption? Will not the good people respond to a united and earnest appeal from us? Can we, can they, by any other means so certainly or so speedily assure these vital objects? We can succeed only by concert. It is not "Can any of us imagine better?" but "Can we all do better?" The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves, and then we shall save our country.....

We, even we here, hold the power and bear the responsibility. In giving freedom to the slave we assure freedom to the free---honorable alike in what we give and what we preserve. We shall nobly save or meanly lose the last best hope of earth. Other means may succeed; this could not fail. The way is plain, peaceful, generous, just---a way which if followed the world will forever applaud and God must forever bless.²⁵

Before an outline of the second phase of Lincoln's plan of reconstruction, as the writer has expressed it, is begun, it is necessary here to account for an apparant hiatus, namely, the period between the first phase outlined above and the actual plan to be discussed presently. Did not Lincoln follow a definite plan of procedure in bringing about restoration of

²⁵ Richardson, VI, 142. Italics not in original

some rebel states before the promulgation of the Amnesty Proclamation, December 8, 1863? This question the reader will be able to answer for himself after a perusal of chapter V, which outlines the various processes of restoration that actually were sanctioned by Lincoln in the period prior to December 8, 1863. This question might also be answered by the fact that Lincoln did not offer a definite plan by proclamation until December, 1863. This is the reason for the writer's omission here of any discussion of earlier quasi-plans which might be included in our present problem.

The second phase of Lincoln's plan of reconstruction deals primarily with the means for state restoration to the Union. This phase is undoubtedly of the greatest importance. It seems to have appeared so important that historians have concentrated on it and failed to consider Lincoln's other reconstruction factor, compensated emancipation. Of course, the reason for the importance attached to the "10% Plan" in the minds of the historians is that it alone can be subjected to the strict definition of reconstruction. Furthermore, it more closely resembles the policy of later reconstruction acts in form, and the word "reconstruction" has always been associated with the Amnesty Proclamation.

At this point an objection presents itself. Is it not true that Lincoln held that the Union was indestructible? If so, then according to his theory the states were never really out of the Union. Therefore, there would be no need for a plan of reconstruction. This objection is invalid.

The conclusion does not necessarily follow from the above premises. States of the Union could alter their relations with the Federal Government by some particular action, the result of which would demand reconstruction or the process by which the proper relations with the Union are restored.²⁶ What then is the meaning of this statement of Lincoln in the Amnesty Proclamation? "To avoid misunderstanding, it may be proper to say that this proclamation so far as it relates to State governments, has no reference to States wherein loyal State governments have all the while been maintained."²⁷ Lincoln here was merely referring to Kentucky, Maryland, and especially to the state government of West Virginia. This very likely is the reason why Virginia was not included in the list of states mentioned in the proclamation. This appears to be the only possible interpretation for the statement with the restricting clause underlined above.

Another important question now arises. How were the seceded states to be restored to the Union? The proclamation stripped of its precludes has two main points, namely, the requirements for reinstating the citizens of the South and the conditions to be fulfilled for the relinking of the seceded states to the Union.

Lincoln stated that he had power to grant full pardon "to all persons who have, directly or by implication, participated in the existing rebellion," except a designated group.²⁸ The eligible prodigals of the

²⁶ This point is clearly discussed in the chapter on the constitutionality of Lincoln's plan. The Supreme Court decided this in Texas v. White. Cf.

²⁷ Nicolay and Hay, Works, IX, 222. Chapter II

²⁸ Ibid., IX, 219.

Union could be restored to their father's house as soon as they pronounced the following oath:

I, ---, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder; and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God.²⁹

Who were the yet unforgiven prodigals or the "excepted class?" The litany is quite comprehensive and includes

all who are, or shall have been, civil or diplomatic officers or agents of the so-called Confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called Confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who resigned commissions in the army or navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.³⁰

The wonder is that any person in the South was worthy of taking the oath.

However, the supposition was that a sufficiently qualified group would remain to be the nucleus about which the restored state could be formed. Supposing

²⁹ Ibid., IX, 220.

³⁰ Ibid., IX, 220-221.

this group has come into existence by pronouncing the oath, how could they further bring about the rehabilitation of their state?

The conditions Lincoln proclaimed, declared and made known to the states of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina were these: " a number of persons not less than one tenth in number of the votes cast in such State at the presidential election of the year of our Lord one thousand eight hundred and sixty" was to be the nucleus for the reestablishment of the state government. Each member of this group was to take the above mentioned oath and to keep it. Each was to be a qualified voter by the election law of the state existing immediately before the so-called act of secession. All others were excluded. The state government must be republican. It must in no wise contravene the above oath. It should be recognized as the true government of the state. It should receive the benefits of the constitutional provision which guarantees protection from invasion and domestic violence. The function of this state government in relation to the freed people of the state to recognize and declare their permanent freedom and to provide for their education would be encouraged by the National Executive. The name of the state, the boundary, the subdivisions, the constitution, and the general code of laws, as before the rebellion, were to be maintained. Such modifications as were demanded by present conditions and circumstances were to be granted to the framers of the new state government.³¹

³¹ Ibid., IX, 221-222.

Two more important points remain. First, Lincoln acknowledged that he had not the power to determine whether or not the representatives of these restored states might be admitted to seats in Congress and he explicitly admitted that this power "constitutionally rests exclusively with the respective Houses." Secondly, he recognized that this present plan was not to be considered definitive and inflexible. He considered it to be the best he could suggest at that time. He was willing to acquiesce in and cooperate with any other plan that proved to be acceptable.³² As regards these two last mentioned points, the first might be considered as Lincoln's admission of the limitation of the executive power to bring about complete state restoration. This would undoubtedly make him hesitant in openly discountenancing any plan of reconstruction that might be proposed by another branch of the government. Difficulties concerning this point did arise when the Wade-Davis bill was presented to him for approval. He did hesitate to sign the bill, but the time element played into his hands. He was able to delay approval, by a pocket-veto. However, most probably to be consistent with the second point laid down in the proclamation now being discussed, he finally did give a hesitant approval to the plan in the Proclamation Concerning Reconstruction, July 8, 1864.³³

This then in particular is Lincoln's so-called "10% Plan", but it is not the entire plan. The events of the three following months brought out the necessity of certain additions. These were included in the

³² Ibid., IX, 223.

³³ Ibid., X, 152-153.

Proclamation About Amnesty, March 26, 1864.

The primary purpose of this document is "to define the cases in which insurgent enemies are entitled to the benefits of the proclamation."

The proclamation is not to apply

to the cases of persons who, at the time when they seek to obtain the benefits thereof by taking the oath thereby prescribed, are in military, naval, or civil confinement or custody, or under bonds, or on parole of the civil, military, or naval authorities, or agents of the United States, as prisoners of war, or persons detained for offences of any kind, either before or after conviction....

but these "Prisoners excluded from the amnesty offered in the said proclamation may apply to the President for clemency, like all other offenders, and their application will receive due consideration." The proclamation does apply "only to those prisoners who, being yet at large, and free from any arrest, confinement, or duress, shall voluntarily come forward and take the said oath, with the purpose of restoring peace and establishing the national authority."³⁴

The secondary purpose is to determine the procedure for the taking of the oath. The first problem to solve is "who may administer the oath?" The answer is any commissioned officer, civil, military or naval, in the service of the United States or any civil or military officer of a state or territory not in insurrection, providing, of course, that he has the necessary qualifications for administering oaths. Obligations incumbent upon one administering the oath were: (1) He is obliged to give a certificate to the persons who take the oath; (2) He is required to submit the

³⁴ Ibid., X, 58-59.

original records of the oaths as soon as possible to the Department of State.³⁵ It is evident that this proclamation merely amplified a few points of the earlier proclamation.³⁶

A few of Lincoln's comments on the plan are now worthy of note. In his third annual message to Congress which bears the same date as that of the first proclamation on reconstruction, he gives his reasons for issuing the article at this particular time.

This question is beset with conflicting views that the step might be delayed too long or be taken too soon. In some states the elements of resumption seem ready for action, but remain inactive apparently for want of a rallying point ---a plan of action.... By the proclamation a plan is presented which may be accepted by them as a rallying point, and which they are assured in advance will not be rejected here. This may bring them to act sooner than they otherwise would....³⁷

Some evidently had suggested to Lincoln that a premature presentation of a plan by the National Executive might not meet with effective results in the political arena. They feared that executive committals on various points possibly could not be accomplished later. Lincoln's answer was quite general. It might show the least bit of unwillingness to face the issue. "Care has been taken to so shape the document," he responds, "as to avoid embarrassments

³⁵ Ibid., X, 59-60.

³⁶ A close reading of this section as well as an objective reading of the Amnesty Proclamation would have saved H. Winter Davis and Benjamin Wade from making some of the absurd statements they made in their Manifesto of August 5, 1864, when comparing the Wade-Davis bill with Lincoln's plan. This problem is discussed in detail, Chapter IV,

³⁷ Richardson, VI, 190.

from this source (these dangerous committals). Saying that on certain terms certain classes will be pardoned with rights restored, it is not said that other classes on other terms will never be included."³⁸

It has been the aim of the writer to stress Lincoln's viewpoint and to build up Lincoln's plan of reconstruction from his utterances. The result might have given the impression that Lincoln did not seek the advice of his associates. Lincoln was not dictatorial. Undoubtedly, he was a man of conviction, but he sought advice. In his last public address, April 11, 1865, on referring to the plan, he says, "This plan was in advance submitted to the then Cabinet, and distinctly approved by every member of it."³⁹

An attempt has been made to show the various phases of Lincoln's plan of reconstruction and a few of the concomitant ramifications. A minimum of interpretation has been attempted. In fact, it is hoped that only that amount has filtered through into the text which is unavoidable when a pen other than Lincoln's deals with a purely Lincoln subject. Many questions undoubtedly have arisen during the perusal of this paper concerning relative data. Was Lincoln's plan successful? If so, why? If not, why not? Was Lincoln the sole author of the plan? Could Lincoln's plan be defended constitutionally? What relation does his plan have to the other plans of reconstruction? What did the public think of Lincoln's plan? Some of these questions will be partially or wholly answered later. Others will remain as unknown as the scholastic philosophers' "futurables!"

³⁸ Ibid., VI, 190-191.

³⁹ Nicolay and Hay, Works, XI, 86.

CHAPTER II

CONSTITUTIONAL SIGNIFICANCE OF LINCOLN'S PLAN

It seems that the best way to start a conflagration of words over a political question is to affirm that a point at issue is unconstitutional. Of course, the best place to set off such a conflagration is in Congress. In no time at all, sides will be formed and the constitutional constructionists of one color or other will be jumping to their feet; then the battle of words begins; common sense and nonsense each have a say. Meanwhile, the Press has picked up a word here, a phrase there, and a number of half-truths to stimulate the unaware PUBLIC. Before long the historian has one of the finest species of controversies on his hands. It seems to be his job to extract a neat, concise statement of the problem out of all the confusion and verbiage. This having been done, his next job is to find a choice niche in some history text for his interpretation. This all seems very simple, but it is not as simple as it appears. Why? Some controversies have not reached the latter stages mentioned above; that is, they never were sifted by the historians; while others have been sifted, but the historian, consciously or unconsciously had a penchant for blends; therefore, he took certain choice bits from the controversy and mixed them with a few products of his theories. The result is a fine blend of personal interpretation but hardly an objective historical statement. Thus another historian is necessitated to perform the entire process again in order to produce the objective reality. He will

present the evidence of the case and the arguments of the historians and leave the judgment to the reader. Again, this task is not an easy one, for the personal element cannot entirely be excluded. However, this final plan will be attempted by the writer in dealing with the difficult problem before him; namely, the problem of the constitutionality of Lincoln's plan of reconstruction. It is his purpose to give evidence, as objective as possible, of the constitutional significance of Lincoln's Plan.

Many difficulties arise even at the approach to the problem. Essential definitions are necessary, but some have not been clearly formed and others are still disputed. In other words, the basis for argument is not always clear. Distinctions are necessary, but they can not always be clear out, concise, and irrefutable. Regardless of these obstacles, the problem is worthy of discussion.

What do we mean when we talk about the "constitutionality" of a legislative act or of an executive act? In the case of the former, for example, "the constitutionality of the Missouri Compromise," which was decided in the Dred Scott case, meant merely this: Is Section 8 of the Missouri Compromise conformable or opposed to "the Supreme Law of the Land", the Constitution? In other words, did the legislators have a right according to the Constitution to pass the law contained in the Missouri Compromise? If constitutional, it became the law of the land, if unconstitutional, it was null and void. A pari, the question of the constitutionality of Lincoln's plan means merely this: Was Lincoln's plan conformable with or opposed to "the Supreme Law of the Land", the Constitution, or did Lincoln have a right

according to the Constitution to instigate and carry through his plan for the restoration of the rebel states? In the case of the constitutionality of the Missouri Compromise, the opinions were divided. The majority of the Supreme Court pronounced against the point at issue; a minority dissented. How could this occur? There can be no other reason than this; EACH SIDE BASED ITS ARGUMENTS UPON DIFFERENT PREMISES. In the problem before us, opinion also is divided. Congressmen, representatives of the Press, and historians vie with one another in pronouncing Lincoln's action constitutional or unconstitutional. Again we ask, how have they come to these contradictory conclusions. Without going into the question of motives, we answer that they base their conclusions on different premises which in turn are the result of personal or aggregate theories. These theories as the basis of the arguments will be discussed as the various positions are viewed by the writer.

Before we proceed to the discussion of the problem, a question arises: Will any conclusion based on a theory give us an answer, affirmative or negative, on the constitutionality of Lincoln's plan? Yes, the one correct theory of contradictory theories SHOULD give us the answer. Yet, which theory is the right one? Or is either one the RIGHT ONE? It is impossible to answer these questions definitely or infallibly. One step further, could a historian disregard the theories and try to argue from simple general statements? In other words, could he take Lincoln's plan as we know it now, subject it to analysis by self-evident constitutional principles? Would the historian arguing from these principles most probably

come to a more objective conclusion than anyone, who is shackled with a theory for premises? The answer to the second question is evident. As regards the first question, the writer believes this should be the procedure. First, therefore, must be stated the self-evident constitutional principles. The self-evident constitutional principles in our problem are; (1) The Executive to act constitutionally must be given certain powers by the Constitution to so act; (2) under ordinary circumstances, if the Executive acts contrary to these powers, he acts unconstitutionally; (3) if a certain power is explicitly applied to another branch of the government and the Executive takes this power to himself, under ordinary circumstances he would act unconstitutionally; if a power is assumed by the Executive which he deems a necessity for the common welfare, but upon which the Constitution is silent, he might or might not act unconstitutionally because it might be an executive implied power or a congressional implied power. Therefore, the question would be an open one until it was definitely decided by constitutional amendment or by the Supreme Court.

It is well to note that each single act must be subjected to these principles. If, however, a composite act is to be decided upon, it is possible that a part might be considered constitutional, another part unconstitutional. Furthermore, the element of time might make an act constitutional; for instance, the executive war powers could make an act constitutional, while the war is going on, but the same act, after the war is ended, that is, the same act passed in time of peace, would be unconstitutional. Circumstances must decide. Yet, if an act is begun under a constitutional

war power and has a carry over into peace time, this act, in the writer's opinion, could hardly be dubbed "unconstitutional." Be these things as they may, we must now turn to the concrete problem before us.

What exactly is the concrete problem before us? It is to determine, if possible, the constitutional significance of Lincoln's plan of reconstruction. Was it in whole or in part constitutional or unconstitutional? In other words, was Lincoln's plan constitutionally valid action or ought it be considered null and void because Lincoln had no power by the Constitution to perform the acts concerning the restoration of the rebel states which he did perform?

The concrete problem before us demands the statement of some preliminary facts, a view of the position of those who are of the opinion that Lincoln's plan was UNCONSTITUTIONAL, a discussion of the contradictory opinion, namely, that Lincoln's plan was CONSTITUTIONAL, a brief statement of the position of the Supreme Court on the question, and finally, the subjection of the plan to analysis by self-evident constitutional principles with the resulting conclusions. Each of these points will be taken up in the order outlined.

The few preliminary facts which are necessary for a better understanding of the points to be soon discussed are these: (A) It is evident from the historical documents quoted in the first chapter of this present work that Lincoln HAD A PLAN OF RECONSTRUCTION.¹ "By 'reconstruction' we

¹ John William Burgess says that some have denied that Lincoln had a theory of reconstruction. John W. Burgess, Reconstruction and the Constitution 1866-1876, Charles Scribner's Sons, New York, 1902, 8-9.

mean the restoration of the seceding states in their constitutional relation to the Union."² Using this definition as a basis, we may say that Lincoln's plan of reconstruction was a definite attempt to restore the seceded states to their constitutional relation in the Union. Lincoln had definite³ ideas on the procedure to be followed in bringing about this restoration. It is necessary to note this fact because unless his ideas were definite, one would not have a basis for deciding whether or not his plan were constitutional. These definite ideas are clearly apparent in the first chapter and will be pointed out as clearly as possible when they come up in the present discussion. (B) Various theories⁴ of reconstruction will be referred to presently. Therefore, it will be necessary to have a clear conception of these theories sustained by the people involved in this problem as a whole. One might say that there were two main types of theory, one the presidential or executive

² Samuel Knox Wilson, S.J., American History, Loyola University Press, Chicago, 1939 ed., 380.

³ By this we do not mean that Lincoln had a little code of rules outlined for himself to guide his reconstruction plan, but that he had definite ideas on reconstruction. They are apparent in his proclamations and proposals as outlined in the first chapter.

⁴ A clear though rather lengthy discussion of these theories can be found in Brownson's Quarterly Review, Third New York Series, #4, IV, 481-511. The theories are treated pp. 484-486. The #4 refers to "Art. IV--1. The Return of the Rebellious States to the Union. Letter from the Hon. William Whiting. New York Tribune, August 11th, 1863. 2. Union and Reconstruction. Their Mode and Conditions. A letter from Washington New York Times, August 25th, 1863". The article in this Quarterly is a commentary on these letters. It was published October, 1863. This date is worthy of note for even at that early date the theories were very clearly recognized and sides had already been formed in opposition to the executive action.

theory, the other, the congressional theory. (1) The executive theory was followed by Lincoln and Johnson. (a) Lincoln's theory was this: He held that the slavery problem must be solved,⁵ that "the states could not secede and that the war was an insurrection,"⁶ that the rebel states had never been out of the Union and, therefore, as soon as loyal groups could be formed in the rebel states these states should be given their former status in the Union,⁷ that his power to restore is limited,⁸ and that his plan was not the only plan that could be used nor was it inflexible.⁹ (b) On the death of Lincoln, President Johnson followed Lincoln's theory in detail. His theory has sometimes been called the presidential theory of reconstruction.¹⁰ Andrew C. McLaughlin prefers to describe it as "the theory of self-reconstruction". He says that Johnson "believed that, while the initiative and supervision were his own, the loyal citizens of the states had the right and should be allowed, under the federal protection as might be needed, to restore their governments and bring their states back into their constitutional relations."¹¹

⁵ cf. Chap. I, 3-4.

⁶ cf. Chap. I, 16-17.

⁷ cf. Chap. I, 17-18.

⁸ cf. Chap. I, 20.

⁹ cf. Chap. I, 20.

¹⁰ Lincoln's theory of reconstruction, as such, has not been given very much space in the history texts because of the fact that Lincoln was assassinated and his plans were superceded by the Congressional plan. Johnson's theory will not be treated in the present work, but it is included here in order that the reader will have a complete view of the theories and that he will be able to distinguish it from the congressional theory when occasion arises in his reading.

¹¹ Andrew C. McLaughlin, A Constitutional History of The United States, D. Appleton-Century Co., New York, 1935, 648.

(2) The second class of theory, the congressional theory, really embraced three theories, but all agreed on one point; namely, "that the business of Reconstruction was fundamentally a matter for the legislature and not for the President alone."¹²

(a) The first of these theories was the "conquered provinces theory" which was promulgated by Thaddeus Stevens. The basis of the theory according to Stevens rested upon the facts and not on constitutional technicalities. The facts according to him were these: The rebel states had left the Union. They had been conquered one after another. It was the duty of the conquerors to do what they considered fit. "The future condition of the conquered power depends," he said, "on the will of the conqueror. They must come in as new states or remain as conquered provinces."¹³

(b) The second was Charles Sumner's "state suicide theory."¹⁴ Sumner held that "a state attempting secession ceased to be a state, and the region and its people became subject to Congress. This theory differed from that of Stevens in not accepting secession as a fact, but as only destroying the states as bodies politic."¹⁵ In other words, an act of secession that is

¹² Ibid., 648-649.

¹³ W. L. Fleming, Documentary History of Reconstruction, I, 148, quoted in McLaughlin, 649.

¹⁴ Ibid., I, 144-145. He and Professor Burgess assert that the theory of Samuel Shellabarger, a Representative of Ohio, was 'sound political science and correct constitutional law.' J. W. Burgess, Reconstruction and the Constitution, 59-60. This theory was substantially the same as Sumner's. Having complete authority over the region which had lost its status as a state, Congress could erect a new state with the cooperation of loyal inhabitants and admit the state into the union. McLaughlin, 649, note 15.

¹⁵ McLaughlin, 649.

sustained by force results in the abdication of rights under the Constitution "so that from that time forward the territory falls under the exclusive jurisdiction of Congress as other territory, and the state being according to the language of the law, felo-de-se, ceases to exist."¹⁶ (c) The third was known as the "forfeited rights theory." However, McLaughlin prefers to call it the "theory of suspended animation." He says, "it did hold that the states had temporarily forfeited their rights; they were not, however, as a consequence totally dead, but in a condition of comma; they could be brought to life by the ministrations of a solicitous, if stern, physician whose prescriptions and mandates must be absolutely obeyed. Congress could issue such orders and lay down such conditions as appeared necessary. The state could not spring into full, active existence at the mere word of the President."¹⁷ These preliminary facts will help us to understand better the ideas discussed in the following sections of this chapter.

Having become more acquainted with a few fundamental terms we are now in a better position to proceed with the second part of our problem; namely, the exposition of the opinion of those who held that Lincoln's plan was UNCONSTITUTIONAL.

Congress, the Press, and historians have not been mild tempered nor have they been brief in denouncing Lincoln's plan. We shall endeavor to sketch the position of each now. Since the writer has deemed the

¹⁶ Ibid., 649 note 16; a quotation from Fleming, Documentary History of Reconstruction, I, 144.

¹⁷ McLaughlin, 649-650. Italics not in original.

congressional plan of reconstruction,¹⁸ as compared with Lincoln's plan, worthy of a separate chapter in this work, he will merely choose bits of matter from the speeches of congressmen which are representative of the opinion that Lincoln's plan was unconstitutional.

In general it took a while for Congress to decide on the stand it wished to take. At the time of promulgation of the Amnesty Proclamation, December 8, 1863, we know that a majority in Congress wholeheartedly favored Lincoln's plan.¹⁹ However, it did not take long for opposition to form and to present itself as a very strong obstacle in Lincoln's path. Early in 1864, opposition to Lincoln's endeavors were well under way in Congress. The result was to be the Wade-Davis bill which Lincoln checked by a pocket veto. The reader will understand more fully the significance of this action and the consequent increased opposition by the congressional faction in the fuller treatment of chapter IV.

We recall that Lincoln's Amnesty Proclamation, which contained Lincoln's plan of restoration, was made public December 8, 1863. Slightly

¹⁸ By this we do not mean the entire congressional reconstruction plan, which rightly includes the period 1863-1876, but only the early congressional plans as outlined in Congress during Lincoln's lifetime.

¹⁹ This is the historical fact. Cf. Chap. IV, 88-89. Cf. also, Frederic L. Paxon, The American Civil War, Henry Holt and Co., New York, 1911, 181-182; Charles Willis Thompson says, "At no time in the war did Lincoln have Congress with him." The Fiery Epoch, Bobbs Merrill Co., Indianapolis, 1931, 321; John B. McMasters says, "To his party in Congress this (the Proclamation of Amnesty) was a deliberate usurpation of powers that did not belong to him... "A History of People of the United States During Lincoln's Administration," D. Appleton and Co., New York, 1927, 511.

more than two months later a voice rang out in the House of Representatives: "Mr. Chairman, it seems to me none but the willfully blind can fail to see that this scheme (Lincoln's plan of restoration) in all its features, is in direct opposition to the Constitution."²⁰ This was a reiteration of the fundamental argument which the congressional opposition had adopted. Thaddeus Stevens not long before had declared "that the President's plan of reconstruction 'was wholly outside of and unknown to the Constitution.'²¹ Harding heartily agreed with this line of thought and added, "That is true and he might have added with equal truth that it is an open and flagrant violation of the Constitution."²²

Thus far, we have established the fact that the opposing faction in Congress had based its opposition on the unconstitutionality of Lincoln's plan, but they knew as well as we do that mere denial of the constitutional basis for action is not sufficient. They had to prove it was unconstitutional! By what means? They endeavored to show that Lincoln had recourse to a power that is not warranted by the Constitution. In this case, they averred that Lincoln claimed to be able to restore the rebel states by virtue of his "war powers". They denied this use of the war power:

²⁰ Speech of Aaron Harding, Representative of Kentucky, 1st Session, 38th Congress, "Restoration of the Union", Gong. Globe, February 27, 1864, 853.

²¹ Ibid., 853.

²² Ibid., 853. Why did the opposition base their argument on the unconstitutionality of Lincoln's plan? Undoubtedly, the reader knows the answer. If they could prove that Lincoln's plan was unconstitutional, Congress and the people had every reason to reject it, for an unconstitutional act is void.

Mr. Chairman, it is clear that the device resorted to heretofore to conceal from the public mind the enormity of other usurpations, and called 'the President's war power,' can give no support to this scheme. For, Sir, the very moment the rebellion in any one of these States is put down and ended, that moment the President's war power, whatever it may be, is also at an end. The war must cease with the rebellion, its cause and only justification. And if the President, for abolition purposes protracts the war after the rebellion ceases, he then wars on a people yielding obedience to the Constitution, changes places with the rebels, and becomes a revolutionist and rebel himself.²³

Representative Harding now offers another argument. The reader recalls that one point of Lincoln's theory was that the rebel states were not out of the Union. Keep this in mind. Harding proposes a question,

If Mr. Lincoln as Commander-in-Chief could, with the sword, strike down State Governments and destroy the Union, under what power can Mr. Lincoln as President set up new State Governments and build up a new Union?²⁴
The war power was a discovery.

He denied that Lincoln as Commander-in-Chief had any greater power than any other commander-in-chief. He continued;

But the argument was that the power of Mr. Lincoln as Commander-in-Chief was greatly enlarged by virtue of his union with Mr. Lincoln as President, so that he could overthrow State institutions and governments, and do many acts which no mere commander-in-chief could do. But to serve the present purpose the argument must be extended. It must now be urged that the civil power of Mr. Lincoln as President has been greatly enlarged by virtue of his union with Mr. Lincoln as Commander-in-Chief, so that he can now build up new State Governments and a new Union on the ruins of the old one, and do many acts which no mere

²³ Ibid., 853. Italics not in original.

²⁴ Ibid., 858.

President could otherwise do; and the last argument would be just as sound as the first; it does no violence to general principle, but only extends it. True, there would seem to be danger that by this mutual importation of powers, first, by the President to the Commander-in-Chief to DESTROY, and then by the Commander-in-Chief to the President to BUILD UP, the two officials in one, Mr. Lincoln might swallow up all power, executive, legislative, and judicial, and so put an end to the government of our fathers. Yes, sir, and that is really what is being rapidly consummated by the Jacobins in the North, under subterfuges, like these, of the most disgraceful and shameful character.

Sir, if these States, are still in the Union, the power claimed by the President over them is so monstrous and gross a violation of the plain provisions of the Constitution that leading abolitionists in this House and in the Senate are becoming ashamed to say a word in its defense.²⁵

This then was the answer of the opposing congressional faction to Lincoln's supposed resort to the "war power" as a basis for his reconstruction plan.

The opposition here has struck upon a very fundamental question. If Lincoln acted in virtue of his "war power" and if the right to reconstruct the rebel states is not under any circumstances or by any interpretation included, in the "war power" of the Executive, who can deny that Lincoln acted unconstitutionally. However, these conditions must be proven without the shadow of a doubt. The first might be, but the second? How easy it would be to prove the second if only the Constitution were not silent on the extent of the "war power". All must agree that the "war power" of the Executive in time of war has been open to interpretation, and is still, especially in our present day, open to further interpretation. Who is to judge the extent of the President's "war power"? Until this question is

²⁵ Ibid., 858. Italics not in original.

answered no definite answer or argument can be invoked to deny the above second condition.

It is well known that shortly after the promulgation of the Amnesty Proclamation, Henry Winter Davis, Representative from Maryland, began to take the lead of the Congressional opposition. On January 18, 1864, he proposed a bill on reconstruction; however, his motion was not carried and the bill was not read in Congress till February 15, 1864. The Select Committee on Rebellious States of which Davis was chairman had special power to propose bills for the restoration of the rebel states.²⁶ From these facts and the discussion of the bill outlined in the chapter IV, one realizes the importance of Representative Henry Winter Davis. He gave a speech in the House on the 22nd of March, 1864 which outlined his views on reconstruction, but we have a clearer statement of his view on the present problem from a letter which he wrote to the editor of The Nation magazine.²⁷ At the time Davis wrote this letter, Lincoln had been dead seven months, but President Johnson was endeavoring to carry out Lincoln's plan. The facts of the letter are most certainly pertinent to our problem for Davis was opposing executive action in particular. It is evident, too, that he meant to deny Lincoln's use of the executive power to reconstruct. The argument was aimed against the power of the Executive to decide when a state, in this case a rebel state, had attained the status of a "republican form of

²⁶ Cong. Globe, January 18, 1864, 259; February 15, 1864, 668.

²⁷ The letter appeared in The Nation, November 30, 1865 but it was written by Davis at Baltimore, October, 1865.

government." Davis affirmed;

Nothing is more true than that the question of suffrage belongs to the State, but it is equally true that Congress is the exclusive judge of the compatibility of their solution of it with republican principles. The States have the right to prescribe who shall vote but they have no right so to exercise it as to create an oligarchy or an aristocracy instead of a republican form of government; and it is the right and duty of Congress to judge this question; and its judgment is final and conclusive on all departments of government....This judgment it is the duty of the President to EXECUTE; over it he has no power. It is the duty of guaranteeing republican government in the States which gives Congress this high jurisdiction; and the right of determining who are the Representatives and Senators carries with it the EXCLUSIVE right of determining which is the constitutional, that is, the republican government of the State, for otherwise it might find itself compelled to admit Representatives and Senators of States whose governments are not republican in form or substance in its opinion.

It is, therefore, clear that the President is wholly beyond the sphere of his power in every step in re-organizing State governments; for each step is either legal and binding on Congress or illegal and a nullity; and as it cannot bind Congress, it is a nullity and an illegality. It is, therefore, frivolous to say the President could do anything but what he did. He could have done NOTHING. His intermeddling has gravely COMPLICATED the question of what is republican government with the claims of persons to seats and of parties to votes....Republican principles and national interests alike forbid the acceptance of the President's plan.²⁸

It is evident from these citations that Congress had marshalled arguments to show that the President, as Executive with the "war power", was not capable of bringing about the restoration of civil government in the rebel states. Furthermore, Congress endeavored to show that he had usurped congressional power in his attempts at restoration.

²⁸ Henry Winter Davis' letter to the editor, The Nation, I, 680. Italics not in the original.

The first thing that must be proven in this argument is that Lincoln considered himself the sole factor in determining when a republican form of government was reestablished in the rebel states. It would be very hard for those opposed to Lincoln to find proof for that statement; namely, that Lincoln said he was the sole person to determine this question. Furthermore, Lincoln expressly stated that he had no right to guarantee the restored governments that their representatives would be given seats in Congress.²⁹ He acknowledged that right to be the prerogative of Congress. Yet, it is best to leave this question open until arguments in favor of Lincoln's action are presented and until the decisions of the Supreme Court are viewed. Both of these discussions will follow shortly.

The Press meanwhile was not slow to voice an opinion in opposition to executive action. Shortly after Lincoln's second annual message to Congress, December 1, 1862, in which he outlined the proposals for compensated emancipation as a means to bring about the restoration of the rebel states, the Press began to voice fears that the Executive was surpassing his power. The cause of their fears was the fact that Lincoln treated the military governments set up in some of the conquered states as states in the Union. They believed this was a violation of the Constitution.

The violation of the Constitution we complain of, is in the manner in which the President is reorganizing State authority in the seceded States....The complaint we make of the administration is not that it establishes in several seceded States

²⁹ Proclamation of Amnesty, Nicolay and Hay, Works, IX, 223; cf. also, Chap. I, 20.

military governments, but that it treats these governments which it creates, and which depend on the Federal Government, as States in the Union. This is revolution and usurpation³⁰

A few months later the same editor was firm in denying any right of the executive branch of the government to restore the rebel states.

It is important, however, to bear in mind that the part of the action that belongs to the Federal Government belongs to Congress and not the Executive. Neither the initiation of the movement for the restoration of the Seceded States, nor its consummation belongs to the Executive. Nor does it belong to the Executive to determine the time or the conditions of the return. The whole matter belongs to Congress, and the Executive has nothing to do with it but to execute faithfully the laws of Congress. The President has, indeed, a veto of all Acts of Congress, but as included in the legislature, not as the Executive. Every Act of Congress constitutionally passed is mandatory on him, and he must execute it, if in his power, whether he likes it or dislikes it. Congress is not bound by the views or policy of the administration, and it fails in its duty to the public when it attempts to devolve on the Executive any responsibility which properly rests on itself. When it does so, it is unjust both to itself and to the Executive.....The administration, as the Executive branch of the Government, has nothing to say as to when, how, or on what conditions the seceded States, or any-one of them, may return and be admitted into the Union. They are all three questions within the province of Congress, and it is for Congress to settle them in accordance with its own sense of right, and of public duty under the Constitution.³¹

It is worthy of note to know the procedure that some of the advocates of the congressional plan advocated as early as 1863. They held that there was only one way by which the rebel states could be reinstated in the Union; namely, the same way in which new states are erected and

³⁰ Orestes Brownson, "Art. V. Annual Message of the President to both Houses of Congress. Washington, December 1, 1862", Brownson's Quarterly Review, Third New York Series, IV, #1, 114; For Brownson's general criticism of Lincoln's Plan, cf. Chap. III, 67.

³¹ Brownson's Quarterly Review, IV, #4, 493-494.

and admitted from the territorial status. They were of the opinion that Congress must first erect them into territories with territorial government. Congress must then pass an enabling act. Only then could the people organize. Under the authority of this act they might draw up a state constitution republican in form and free from any provision repugnant to the Constitution of the United States. Then they might elect officers and representatives and apply for admission. Yet, even at this stage their status would not entitle them to statehood. Furthermore, Congress would have to accept their application, recognize them as a state, and admit their representatives by a FORMAL ACT. All the acts are on the part of Congress, but Congress and the territory must concur. "Each of the seceded States must go substantially through the process here described before it is or can legally and constitutionally be restored to the Union."³²

This is a good example of the argument of those who held with Stevens the "conquered provinces theory". This argument is sound if the seceded states became territories by rebelling. It will be well to suspend judgment until the decisions of the Supreme Court are viewed.

In the newspapers of the day one can find echoes of the unconstitutional argument. The New York World is representative of the group. It believed that Lincoln was absurd in attempting to find authority for his plan in that part of the Constitution which guarantees to the States a republican

³² Ibid., IV, #4, 492-493.

form of government.³³ Lincoln must have recognized this absurdity for he at no time based his authority to construct on that part of the Constitution. In fact he fully realized that this article of the Constitution (Art. IV, Sec. 4) contained a congressional prerogative which he explicitly provided for in his Amnesty Proclamation. We will now turn to the historical comments of the plan. Very few of the older historians have attempted a detailed account or criticism of Lincoln's plan. John W. Burgess is a notable exception. He brings his knowledge as a professor of political science and constitutional law to bear on the issues involved in the plan. He is of the opinion that Lincoln held an erroneous theory of reconstruction.³⁴ The reason for this statement is to be found in Burgess's first chapter on "The Theory of Reconstruction." His reasoning almost defies summarization. He believes that any sound solution of the problem of the constitutionality of a plan of reconstruction will depend upon the knowledge of the "key to the solution of the question of reconstruction." The "key" he believes is to be found in the definition of a "state", not in the definition of a state "pure and simple", but in the definition of a state "in a system of federal government." A state in the federal system of the United States is "a local self-government, under the supremacy of the Constitution of the United States, and of the laws and treaties of the central Government made in accordance with that Constitution, republican as to form, and possessed of

³³ An excerpt from The New York World quoted in the New York Daily Tribune, "The Press on the Message," December 11, 1863, 4; cf. Also Chap. III, 73.

³⁴ John W. Burgess, Reconstruction and the Constitution, 9.

residuary powers---that is, of all powers not vested by the Constitution of the United States exclusively in the central Government, or not denied by that Constitution to the 'State'."35 However, besides this type of "local government", Burgess points out that there are two other types.

"In fact, there have been at times three kinds of local government in the political system of the United States, viz, (1) local government by the executive department of the central Government--that is, local government by executive discretion, martial law---

(2) local government as an agency of the legislative department of the central Government---that is, Territorial government---

(3) and 'State' government."36

Keeping in mind these three types of "local government," Burgess discusses the constitutional implications. What does the Constitution say about "local government?" The Constitution, in his opinion, provides for all these three species. It vests in Congress the power of advancing the lower species to the higher forms;

While the Constitution does not expressly impose upon Congress the duty of making or permitting the change from one kind of local government to another, it impliedly indicates that Congress shall determine the kind of local government which the population of any particular district shall enjoy in accordance with the conditions prevailing, at any given moment, among them. If the maintenance of law and order requires the immediate exercise of military power Congress may, and should, permit the continuance of the President's discretionary government.37

It seems clear to Burgess that Congress is the one to determine the status

35 Ibid., 2.

36 Ibid., 2.

37 Ibid., 3.

of any "local government." In particular, then, he would hold that Congress has implied power from the Constitution to decide whether or not a seceded state is to be readmitted to the Union.

Having settled this question to his satisfaction, he proceeds to discuss the theories of the status of the rebel states. Is a state indestructible? His answer is, "The dictum 'once a State always a State' in a system of federal government has no sound reason in it." Supposing the State's allegiance to the Federal Government is announced by those holding the reins of the state government, what happens to its status? Burgess distinguishes. "The result would be, if the principles of political science were applied, that it would become a state 'pure and simple', a sovereignty, if and when it permanently maintains, by its own power or by the assent of the United States, the attitude against the United States...." But if the principles of constitutional law were applied,

it simply destroys one of the fundamental conditions of local self-government, and gives thus, warrant to the central government to resume exclusive government in the district, and over the population which has become disorganized by refusing obedience to the supreme law of the land, as fixed by the Constitution of the United States. Whether the central Government has the physical power, at a given moment, to do this or not, is another question. It certainly has, at the outset, the legal right. The 'State' is no longer a 'State' of the Union, nor has it become a state out of the Union. It is simply nowhere. The land is there and the people are there, but the form of local government over it and them has been changed from local self-government to a Congressional or a Presidential agency, as the case may be.³⁸

What does Burgess say about the theory of the "perdurance of 'State'?" Supposing the same conditions are present, that is, suppose those holding the reins of a state government make the renunciations stated above, then can it be said that "the old 'State' organization perdures as an abstract something under the forms of Congressional or Presidential rule, and will emerge of itself when these are withdrawn?" His answer is in the negative. "If the 'State' form of local government should be established again over that same district and over the population inhabiting it, it would be an entirely new creation, even though it should recognize the forms and laws and obligations of the old 'State'."³⁹ Burgess recognized the fact that the Executive, the Supreme Court, and, for a time, Congress accepted this "perdurance of a 'State' theory." His answer is a denunciation of such a position:

It was this error which caused all of the confusion in the ideas and processes of Reconstruction, and we ought, therefore, to rid ourselves of it at the start, at the same time that we recognize its influence over the minds of those who engaged in the difficult work of the years between 1865 and 1876.⁴⁰

He believes that if the state as a whole seceded, it is the work of Congress to restore it to the status of a state by leading it through the necessary

³⁹ Ibid., 5.

⁴⁰ Ibid., 5.

processes.⁴¹ However, in these steps the Executive is denied any participation. "These things are matters in which the President, as the executive power, cannot interfere. As participant in legislation, however, he may, at his own discretion, use his powers of recommendation and veto."⁴² The circumstances just mentioned pertained to secession of a state by its legitimate government. What should be the action taken if secession is attempted by a new organization within a state which claims to be the legitimate state government but is NOT? If the old state government remains loyal, yet requires the aid of the Federal Government to maintain its authority,

then the withdrawal of that aid by the President after the accomplishment of its purpose would, of course, leave the old 'State' organization with restored authority, and Congress would have no function to perform in the re-establishment of civil government in such a district, or in the readmission of its population to participation in the central Government. This was the case followed in Missouri and Kentucky, and it was the course, which, at first, was attempted in the case of

41 What may Congress do?

"Congress may fashion the boundaries of the district at its own pleasure, and may establish therein such a territorial organization of civil local government as it may see fit, and is limited in what it may do in this respect only by the constitutional immunities of the individual subject or citizen under every form of civil government provided or allowed by the Constitution of the United States.

Congress may also enable the existing population of such a district, or such a part of that population as it may designate, to organize the 'State' form of local government,

and may grant it participation in the powers of the central government upon an equality with other 'States' in the federal system.

Burgess, 6. Columetric arrangement not in original.

42 Ibid., 6.

Virginia. In the first two cases it was entirely correct. In the last it had to be abandoned, for reasons, and on account of conditions which will be explained later.⁴³

With these interpretations from political science and constitutional law, as a background, Burgess endeavors to criticize Lincoln's views and acts in regard to reconstruction. He points out (1) that the basis of Lincoln's views was the theory of the indestructibility of the State; (2) that Lincoln's views contained the principle that the work of reconstruction was "an executive problem" to be solved by the "pardoning power" and that for this reason Lincoln inserted the oath of allegiance to create a loyal class in the rebel states; (3) that Lincoln recognized his limitations with regard to guaranteeing the representatives of the restored States' seats in Congress; (4) that Lincoln omitted Virginia from the list of the states to be restored; and (5) that Lincoln was willing to base 'State' government on a "10%" plan.⁴⁴ We know Burgess' sentiments with regard to the first point.⁴⁵ The only answer is; Should one follow his opinion or the opinion of the Supreme Court? The second point brings up a question of the historical facts. Did Lincoln consider his plan the only possible plan of reconstruction? We have seen the answer. Furthermore, Lincoln did not base his power to restore the states solely on the pardoning power. The third point is entirely true, but it seems that Burgess' comment on this point is entirely unwarranted. He says,

43 Ibid., 6-7.

44 Ibid., 9-13, *passim*.

45 *cf. supra.*, 44.

But it is plain that he (Lincoln) did not think the Houses could constitutionally use their power of judging of the qualifications and elections of their members to keep members from 'States' reconstructed upon his plan from taking their seats on the ground that these 'States' had not been properly reconstructed.⁴⁶

The fourth point needs no comment. As regards the fifth point, Burgess emphatically denied that Lincoln's "10%" minority could possess the sinews of power;

....where the conditions of the society are democratic, or anything like democratic, one-tenth of the population cannot really possess the sinews of power. The actual power to make their government valid, to enable their government to govern would have to come from the outside. It is simply not 'State' government when holding in this way the power to govern, as the principle of its life, no matter what name we may give it. Upon this point, then, Mr. Lincoln's reasoning was crude and erroneous, and when applied was destined to result in mischievous error.⁴⁷

Theoretically this argument sounds very good, but it seems to lack an appreciation of the conditions in the South. Is it possible to prove that this group did not possess the sinews of power? Why could not a remaining ten-percent of the much larger group, of whom most are now dead, possess the sinews of power? From whom did the Negroes, who formerly had no power, receive the power to help establish the congressional reconstruction? If it could lawfully be created for one group, why could it not be lawfully created or retained or restored to those remaining who had formerly held the power?

⁴⁶ Burgess, 11.

⁴⁷ Ibid., 13. Italics not in original.

We have just closed the discussion of the opinions and arguments of those who held that Lincoln's action toward the restoration of the rebel states was unconstitutional with the citations from an eminent historian, John W. Burgess. As we now open the discussion of the contradictory opinion, we would like to discuss the views of a more recent and equally eminent constitutional historian, Andrew C. McLaughlin. In treating the constitutional problems of the Civil War, McLaughlin endeavors to be very objective by keeping the problems in their proper perspective. He believes that

Lincoln moved slowly, cautiously, watching the course of things, deciding incidental questions as they arose, seeking, it would seem, to discover the public mind, anxious to act wisely, uncertain of all save the main route he should follow, but determined that not even the antislavery cause should endanger the success of northern armies.⁴⁸

This seems to be the fact. Throughout the Civil War Lincoln met the concomitant problems of the conflict as well as he could. McLaughlin phrases this very well. He says,

Lincoln, whose mind normally reacted against mere specious pretense and found open disregard of law obnoxious, had his misgivings; and yet, how could he have done otherwise than accept the facts and welcome the effect of the whole situation?⁴⁹

What about the constitutionality of Lincoln's acts in general?

McLaughlin is of the opinion that it is quite impossible to reconcile all the orders of the President or all the acts of Congress, for that matter,

⁴⁸ McLaughlin, 630.

⁴⁹ Ibid., 637.

during the war with the constitutional restrictions "normally operative in time of peace." In this connection it might be affirmed that war of itself suspends normal restrictions. In other words, inter arma leges silent --- whatever the Federal Government deems necessary to do is constitutionally justified. As regards Lincoln's action, he believes that "The outstanding fact, however, is not the occasional or frequent breach of particular clauses of the Constitution, but the effort not to disregard them altogether." In other words,

Despite Lincoln's failure now and again to follow the letter of the law, the sober judgment of history must be that his main purpose was to save democracy, not to ruin it. And the prominent feature of the whole dreadful struggle is not what was done illegally but what was not done at all.⁵⁰

McLaughlin points out Lincoln's efforts at reconstruction but does not express an opinion on the constitutionality of the plan. However, he has given what can be considered an excellent background for Lincoln's action, a setting which must be taken into consideration if one desires to come close to an objective judgment. He assuredly implies that the "war power" could be a basis for Lincoln's actions.

We have seen that the Press, shortly after the Proclamation of Amnesty was promulgated, voiced its opposition to Lincoln's supposed basis for his plan. Yet, a year earlier the Chicago Daily Tribune saw fit to favor

⁵⁰ Ibid., 639. Reference is made to an article by J. G. Randall, "Lincoln in the Role of Dictator", South Atlantic Quarterly, XXVIII, 236-252.

Lincoln's use of the "war power." It was of the opinion that the circumstances

all concurred to justify the apparent resolution of the President to fall back, for the suppression of the rebellion, upon his constitutional power as Commander-in-Chief, and to make the sphere of the exercise of that power commensurate with the national territory.

Undoubtedly, the President, in adopting this resolution, became answerable to the people for the honesty and intelligence with which his decision was taken, and for the purposes and dispositions with which the power assumed under it, should be exercised. He cannot, without liability to the highest criminal processes known to our law, pass from his limited authority as a civil magistrate, into his almost absolute authority as Commander-in-Chief, wantonly, nor exercise authority under the latter with an INTENTION to oppress. But if the terrible crises in which he found himself justified the terrible resolution which he took, he is entitled to a verdict in his favor.⁵¹

All the voices in Congress were not raised in opposition to Lincoln's actions. Many felt that it was the Executive's duty to carry out the restoration of the rebel states. Isaac Newton Arnold pointed out, among other things, that it was the Executive's duty to see that the constitutional guarantee of a republican form of government under the Federal Union should be carried out. Note that he does not infer that the Executive has the power to decide the question of the republican form of government, but that the President should see that it is, carried out. Arnold further stated that the Executive may do all that is necessary to carry out the purposes of restoration in the absence of the action of Congress.

⁵¹ Editorial; "The Military Power of the President", Chicago Daily Tribune, December 6, 1862. Cf. the comment of the New York Commercial Advertiser, Chap. III, 75-76.

In the absence of the action of Congress, he (the Executive) may appoint military governors. He may levy and collect taxes and assessments. He may preserve the peace, prevent anarchy, and see that justice is done to all. In a word, he may and must GOVERN THE COUNTRY in its transition state from a rebel to a loyal condition, or until Congress provides by law for its government, or until the people organize loyal State governments and are readmitted into the Union.⁵²

After outlining these powers, Arnold proceeded to point out the means which Congress should use to cooperate with Lincoln's plans.

Congress may and ought to pass all laws which may be necessary to carry into effect the power lodged in the Executive to administer for the time being the government of the territory in rebellion. Congress may regulate the mode of administration. It may control the method of governing the territory. Each House of Congress has the exclusive POWER TO DETERMINE and judge of of the election return and qualifications of its own members, and may, of course, determine when to admit or reject Representatives from the rebel states. I think it requires the concurrent action of both the Executive and Congress for a complete restoration of rebel and revolted States into the Union.⁵³

This last sentence seems the most sensible statement yet given on the whole question. It is the happy mean. Furthermore, I believe, no one would have favored such cooperative action more than Lincoln. The fact of the matter is that Congress was led by radicals. Radicals can not fathom the old principle---in medio stat virtus. Lincoln's attempts at restoration were made in the forms of proposals not as definitive, infallible laws. He

⁵² Speech of Isaac Newton Arnold before the House, Cong. Globe, 38th Cong. 1 Sess., 1197, March 19, 1864. Italics not in original.

⁵³ Ibid., 1197 Italics not in original.

was seeking cooperation. Did Congress cooperate with the Executive? The implications involved in a negative response seems to be the answer to the whole question. With these words we now turn to the very important discussion of the cases of the Supreme Court which have a bearing on the problem before us.

In our previous discussion, time and again we touched on the problem of the status of the rebel states. We will now turn to the decisions of the Supreme Court on the question. James Kendall Hosmer, in his Outcome of the Civil War, averred; "The judiciary eventually sustained fully the view of the executive regarding reconstruction, the Supreme Court unanimously showing in its opinions that, like the President, it never doubted the constitutional existence of the states."⁵⁴ In substantiation of this statement he refers the reader to the Prize Cases.⁵⁵ The issue in the Prize Cases was; "whether, at the time this blockade was instituted, a state of war existed which would justify a resort to these means of subduing the hostile force...."⁵⁶ The answer of the court was; "The proclamation of blockade is in itself, official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances peculiar to the case."⁵⁷ Why?

54 Hosmer, 138.

55 The Prize Cases resulted from problems that arose because of the blockade established by executive action in the early part of the Civil War.

56 Allen Johnson, Readings in American Constitutional History, 1776-1876, Houghton Mifflin, Co., New York, 1912, 472; 2 Black, 635-699.

57 2 Black, 670.

The answer is that the power to decide that an emergency exists is in the hands of the Executive.⁵⁸ In this particular case we have this statement;

Whether the President, in fulfilling his duties as Commander-in-Chief in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions, as will compel him to accord to them the character of belligerents is a question to be decided by him, and this Court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted. He must determine, what degree of force the crisis demands.⁵⁹

With these few facts as necessary background we now turn to the main question.

What was the status of the rebel states according to the decision in the

Prize Cases?

The parties belligerent in a public war are independent nations. But is it not necessary to constitute a war, that both parties should be acknowledged as independent nations or sovereign States? A war may exist where one of the belligerents claims sovereign rights as against the other....⁶⁰

⁵⁸ One might cite the case of Martin v. Mott 12 Wheat 19, 1827, in which Justice Storey, voicing the opinion of the majority of the Supreme Court, decided that the President has the power to declare an emergency and call out state militia because the President is the sole and complete judge to decide whether an emergency exists.

⁵⁹ 2 Black, 670.

⁶⁰ 2 Black, 666; Charles Warren hints at a very difficult question, one that would be most difficult to decide. Could the Court have decided otherwise than it did since the Government had been acting on the theory that the War was an insurrection? "The Government had heretofore acted upon the theory that the war was an insurrection, that there were not two belligerent parties and that the political integrity of the country had not been modified. The situation was greatly complicated by the facts that Seward as Secretary of State had inserted in his blockade proclamations, provisions unknown to international law; that he had taken the position that 'no war' existed, and that the Government itself was strenuously protesting against any recognition by foreign nations of the Confederacy as belligerent." Warren, The Supreme Court in United States History, Little Brown and Co., Boston, 1923, III, 103.

The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact.

It is not the less a civil war, with belligerent parties in hostile array, because it may be called an 'insurrection' by one side, and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted province or State be acknowledged in order to constitute it a party belligerent in a war according to the law of nations....

The law of nations is also called the law of nature; it is founded on the common consent as well as the common sense of the world. It contains no such anomalous doctrine as that which this Court are (sic) now for the first time desirous to pronounce to wit; That insurgents who have risen in rebellion against their sovereign, expelled her Courts, established a revolutionary government, organized armies, and commenced hostilities, are not enemies because they are traitors; and a war levied on the Government by traitors, in order to dismember and destroy it, is not a war because it is an 'insurrection.'⁶¹

It is clear from this statement that the Court was unwilling to grant the status of independent statehood to any of the seceded states. The meaning of the word "insurrection" implies that the rebel states were in revolt but yet were still states of the Union.

In the case Texas v. White⁶² we have still a clearer and more emphatic presentation of the arguments upholding the executive basis of the status of the states. We will now take up the pertinent points. Undoubtedly, this case is the most important case involved in the question of the status of the seceded states. Furthermore, the question of the validity of the

⁶¹ 2 Black, 669-670. All italics not in original.

⁶² The facts of this case can be found in 7 Wallace 703-717. The opinion of the Court is given in 717-736. Chief Justice Salmon P. Chase delivered the opinion of the Court. Justices Grier, Swayne and Miller dissented. 7 Wallace 737-741.

Reconstruction Laws was also involved, but even though this question was not actually decided, the tone of the decision is supposed to have given support even to those favoring the Reconstruction Laws.⁶³ This seems to give rise to a paradox, does it not? The Reconstruction Laws were enacted and upheld by those favoring the congressional plan or the "theory of state suicide", while the decision of this case favored the executive plan or the theory of the "indestructibility of the states". How could the decision favor such contradictory positions?⁶⁴ A discussion of the case will throw more light on our problem and clear up this seeming paradox.

The main issues of the case are very clear. "The first question presented to the Court was: 'Is Texas a State of the Union and as such capable of bringing suit?'" The defendants held that Texas was still out of the Union because she had seceded and was not yet represented in Congress.⁶⁵ The Court after examining the action of Texas in participating in the rebellion then proposes this question: "Did Texas, in consequence of these acts, cease to be a State? or, if not, did the State cease to be a member of the Union?"⁶⁶ The Court felt that it was needless to discuss the right of a state to withdraw from the Union and immediately proceeded to the

⁶³ Warren, III, 210.

⁶⁴ The answer is simple as we shall see in discussing the case. The decision has two very definite parts. It takes up the question of the status of the seceded States and also decides that it is the prerogative of Congress to reconstruct because it is to decide upon the "republican form of government" of the restored States.

⁶⁵ Warren, III, 210; This opinion was held by Thaddeus Stevens and the radicals in Congress.

⁶⁶ 7 Wallace, 724.

question of the indissolubility of Union;

The Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States.

When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration or revocation except through revolution, or through consent of the States.⁶⁷

The Court could hardly have used more emphatic language in pointing out that the Union is perpetual and that the states once a part of the Union are always a part of the Union with the exception of the proviso noted. The Court now goes on to point out the influence of the ordinance of secession.

Considered, therefore, as transactions under the Constitution, the ordinance of secession, adopted by the convention and ratified by the majority of the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely void. They were utterly without operation in law. The obligations of the State, as a member of the Union, and of every citizen of the State, as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the State did not cease to be a State, nor her citizens to be citizens of the Union. If this were otherwise, the State must have become foreign, and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation.

Our conclusion, therefore, is that Texas continued to be a State, and a State of the Union, notwithstanding the transactions to which we have referred.⁶⁸

⁶⁷ 7 Wallace, 725-726. Italics not in original.

⁶⁸ 7 Wallace, 726. Italics not in original.

This, therefore, upholds the basis of Lincoln's plan in so far as Lincoln held that the rebel states were still in the Union. However, this was only part of the decision. The Court continued to point out that by the insurrection Texas had altered her relations to the Union. While in rebellion Texas was no longer entitled to seats in Congress and her rights as a state, as well as the rights of her people as citizens of the Union, were suspended.⁶⁹

What then was the result of these new relations?

These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion. The next was that of re-establishing the broken relations of the State with the Union. The first of these duties having been performed, the next necessarily engaged the attention of the National Government.

The authority for the performance of the first had been found in the power to suppress insurrection and carry on war; for the performance of the second, authority was derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. (Constitution; Art. IV, Sec. 4.) The latter, indeed, in the case of a rebellion which involves the government of a State, and for a time excludes the National authority from its limits, seems to be a necessary complement to the former.⁷⁰

Thus, the Executive's power to suppress the rebellion is explicitly pointed out. But, further, the last statement seems to imply that in the case of rebellion the obligation to guarantee to every state in the Union a republican form of government might also be concomitant with the power to suppress the rebellion. If the decision of the Court ended here, Lincoln's right (if

⁶⁹ 7 Wallace, 727.

⁷⁰ 7 Wallace, 727-728.

he claimed such a right) to guarantee a republican form of government in the seceded states would be sustained. But, the decision does not stop here. The question of events after the cessation of the hostilities are taken into account.

There being no government in Texas in constitutional relation with the Union, it became the duty of the United States to provide for the restoration of such a government...

It is not important to review, at length, the measures which have been taken, under this power, by the executive and the legislative departments of the National Government. It is proper, however, to observe that almost immediately after the cessation of organized hostilities, and while the war yet smouldered in Texas, the President of the United States issued his proclamation appointing a provisional governor for the State, and providing for the assembling of a convention, with a view to the re-establishment of a republican government, under an amended constitution, and to the restoration of the State to her proper constitutional relations. A convention was accordingly assembled, the constitution amended, elections held, and a state government, acknowledging its obligations to the Union, established.

Whether the action thus taken was, in all respects, warranted by the Constitution, it is not now necessary to determine. The power exercised by the President was supposed, doubtless, to be derived from his constitutional functions as Commander-in-Chief; and, as long as the war continued, it cannot be denied that he might institute temporary government within insurgent districts, occupied by the National forces, or take measures, in any State, for the restoration of state governments faithful to the Union, employing, however, in such efforts, only such means and agents as were authorized by constitutional laws.

But, the power to carry into effect the clause of the guaranty is primarily a legislative power, and resides in Congress....⁷¹

Thus, it is clear that the power and actions of the President during the War are upheld by the Court. It is equally clear that the final authority on the

⁷¹ 7 Wallace, 729-730.

guaranty is the legislative power, CONGRESS! No wonder, then, both subjects of the above mentioned paradox were satisfied. One must marvel at the way the Court straddled the issue. Of course, we would not judge its motives. Two points remain in the conclusion of this case; namely, the provisional character of the actions of the President and the Courts side-stepping of the issue of the constitutionality of the Reconstruction Laws.⁷²

The action of the President must, therefore, be considered as provisional, and, in that light, it seems to have been regarded by Congress. It was taken after the term of the 38th Congress had expired. The 39th Congress, which assembled in December, 1865, followed by the 40th Congress which met in March, 1867 proceeded, after long deliberation, to adopt various measures, for reorganization and restoration. These measures were embodied in proposed amendments to the Constitution, and in the acts known as the Reconstruction Acts, which have been so far carried into effect, that a majority of the States which were engaged in the rebellion have been restored to their constitutional relations, under forms of government, adjudged to be republican by Congress, through the admission of their 'Senators, and Representatives into the councils of the Union.'

Nothing in the case before us requires the court to pronounce judgment upon the constitutionality of any particular provisions of these acts....⁷³

Chief Justice Chase wrote the opinion of this case. Justices Swayne and Miller agreed with the majority on the merits of the case but

⁷² Two other cases, Mississippi v. Johnson, 4 Wallace, 475, 1867 and Georgia v. Stanton, 6 Wallace 50, 1867 were brought up to test the validity of Congressional Reconstruction. "In both cases the Court refused to take jurisdiction. In the first case, the Court declared it had no jurisdiction to entertain a bill to enjoin the President in the performance of his official acts. In the second, the Court said a bill seeking to restrain the Secretary of War and generals acting under him called for the judgment of the Court upon political questions and did not, therefore, present a case within the proper cognizance of the court." McLaughlin, 661, cf. also n3 and n4 there, too.

⁷³ 7 Wallace, 730-731.

concurred with Grier on the dissenting proposition.⁷⁴

In the course of the discussion regarding the question of the republican form of government, the language of Chief Justice Taney in the case of Luther v. Borden was cited. This case is significant and the pertinent section is worthy of note before we conclude the present problem.⁷⁵ Having quoted the provision in the Constitution regarding the republican form of government the Court decided;

Under this article of the constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and

⁷⁴ 7 Wallace, 741.

⁷⁵ This case arose from the political differences agitated by the people of Rhode Island, 1841-1842. Martin Luther was the plaintiff and Luther Borden and others, the defendants. The defendant had entered the plaintiff's house in search of him. They said they had a right to enter the plaintiff's house because large numbers of men were assembled in different parts of the State for the purpose of overthrowing the government by military force and were actually levying war on the State. They further declared that the plaintiff was one of the insurrectionists and they, state militia, at the command of their superior officer broke in and searched the plaintiff's rooms in order to find and arrest him. The plaintiff called into question the existence and authority of the government under which the defendants acted. He held that the old government had been displaced and annulled by the people of Rhode Island and that he was engaged in supporting the lawful authority and that the defendants in fact were in arms against it.

7 Howard, 1-88.

could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts.⁷⁶

In the light of these decisions of the Supreme Court, it is evident that the President had power to perform his acts to restore the seceded states by authority of the "war power" as long as the war continued. It is equally evident that Congress is to decide the question of the republican form of government.

In conclusion then let us recur to the fundamental principles outlined in the introduction of this chapter. The first principle stated was that the Executive to act constitutionally must have certain powers, explicit or implied, by the Constitution of the United States. We have seen that Lincoln's action for the reconstruction of the rebel states was a composite act and not a simple act. Therefore, we must subject each part of the action to analysis by this principle. First, it seems to be conceded that Lincoln as commander-in-chief had power to perform the actions that would restore the rebel states, but this power ceased to have effect once the war was ended. The writer believes that the composite character of the acts to restore the rebel states called for the cooperative action of the EXECUTIVE and CONGRESS. Therefore, the difficulty of the unconstitutionality

⁷⁶ 7 Howard, 42.

of post-war executive action could have been averted if Congress had cooperated with the executive efforts on the basis of its right to decide the status of the state government in the restored states; namely, the right to determine when a republican form of government had been established. Secondly if we fail to recognize the distinctions just outlined, it is hard to see how the executive post-war action could be considered constitutional. This is our answer to the second principle outlined above. With regard to the third principle, again we must note that Congress had the power to decide upon the republican form of state government, and if Lincoln attempted to take this power upon himself he acted unconstitutionally. But, the facts, Lincoln's very words, deny the supposition. He recognized his limitations on this point, and left in the hands of Congress this power as stated in the Amnesty Proclamation. The fourth principle seems to have little application here. The Executive resorted to an explicit power stated in the Constitution, that is the "war power", for authority for his action. Congress also depended upon an explicit provision of the Constitution. The Executive further had in his favor the decisions of the Supreme Court to justify his theory of action; namely, that the rebel states were never out of the Union. Such pronouncement was denied any one of the three congressional theories or any combination of all upon which Congress theorized that it had the sole right to reconstruct the rebel states. However, since the Court stated that the power of the Executive to reconstruct ended with the cessation of the war, then the implication was that Congress or Congress and the Executive should carry on the work of restoration. Historical facts show us what happened;

it is beyond the scope of this chapter to take up the question of the constitutionality of the congressional Reconstruction Acts.

These above statements are the results of research on the problem of the constitutionality of Lincoln's plan of reconstruction. If the reader prefers other conclusions he is entitled to his own judgment of the facts presented. Human nature would not be what it is if man did not differ with man on problems that give rise to opinions, nor would our great nation have made the rapid strides in progress had not the American individual been willing to debate important questions that make up the great body of historical data concerning American History.

CHAPTER III

PUBLIC OPINION AND LINCOLN'S PLAN

No one would deny that one of the essential notes of the press is diversity of opinion. As we scan the index of history, finger its titles, and come to the word, "Press - 1862", we have not the least misgiving but that there, too, will be found many advocates voicing their different views on the main issues before the public. To consider in complete detail all the opinions of the Press would be impossible. Therefore, selected comments from some of the leading organs of public opinion of the period are presented in order to give a fair presentation of the attitude of the public toward Lincoln's plan of reconstruction as outlined in the first chapter of this work.

The first phase of Lincoln's plan was based on the President's message of December 1, 1862 which contained the announcement and exposition of the proposed amendments to the Constitution concerning compensated emancipation and colonization for Freed-Negroes. These proposals placed in the hands of the Press many points of interest which its editorial writers might debate. The northern and southern Press alike had their ideas on the proposed amendments and they expressed them.

Interesting it was to find the Chicago Tribune giving approbation to the policy of the presidential administration. Possibly circumstances occasioned the support, for a Republican was then established in the White

House. "We are in favor of it (the President's Plan of Compensated Emancipation) because it offers a broad, comprehensive, and we believe, an enduring basis of Union and cooperation between the now discordant and semi-hostile parties of the North...." This was the final note of approval given by the Chicago Tribune.¹

The New York Times also commends the President's recommendations to Congress, but qualifies its approbation. "The President, in endeavoring to accomplish this has done wisely. Whether his proposed way of accomplishing it is the wisest remains to be determined."² The New York Daily Tribune seemed a bit hesitant to give full approval. However, it gives partial approval, meanwhile taking a "dig" at the folly of the plan of colonization for Freed Negroes;

But so long as the great end is kept steadily in view, we can waive all incidentals. Gradualism, Compensation, Exportation --- if these tubs amuse the whale let him have them! When it shall have been settled that slavery is to die, it will have ceased to be a power able to corrupt priests and subsidize politicians, and (sic) all will choose to be done with it as soon as possible. And when we shall have ceased to enslave our fellow-men, we shall all be amazed at the thriftless folly which gravely proposed the exportation of laborers by the millions from a country where such rude labor as they are fitted for is urgently needed. Meantime let us be patient and work.³

However, all did not give whole or even half-hearted approval to the plan. Dissenting voices could be heard from many corners of the Union. One might

¹ Editorial; "Compensated Emancipation", Chicago Tribune, December 4, 1862, 2

² Editorial; "The President's Recommendations", The New York Times, December 3, 1862, 4.

³ Editorial; "The President's Message", New York Daily Tribune, December 2, 1862, 4.

expect to find a good round denunciation of anything with the Lincoln stamp on it in one widely circulated New York journal. The fiery editor, Brownson, summarizes all the opinions of the opposition in his comment;

What is strictly its (the Lincoln Administration's) war policy we heartily approve and earnestly support; but its political measures for regaining the people of the seceded States and reconciling them to the Union, are, in our judgment, to a great extent, illegal, unconstitutional, immoral, revolutionary, and unnecessary.⁴

Since we have seen some of the general comments on the first phase of Lincoln's plan, we may now turn to some of the doubts expressed as to the feasibility and ultimate success of the plan. Many of the critics agreed with Lincoln on the main point at issue, namely, that slavery had to be destroyed in order to preserve the Union.⁵ They considered this the conditio sine qua non for a northern success, but Lincoln's proposals aroused some doubts in the minds of other critics.

Compensated Emancipation, inasmuch as it will seem to give the sanction of the Constitution through proposed amendments, to the most monstrous heresy of the nineteenth century, that man can have merchantable property in man, will be eminently distasteful to tens of thousands of citizens in the North,

⁴ Orestes Brownson's "Art. V. Annual Message of the President to both Houses of Congress. Washington. December 1, 1862." Brownson's Quarterly Review, Third New York Series, IV, #1, 113. Italics not in original.

⁵ Editorial; "The President's Message", New York Daily Tribune, Dec. 2, 1862, 4; "Art. IV. 1. The Return of the Rebellious States to the Union. Letter from the Hon. William Whiting, New York Tribune, August 11th, 1863. 2. Union and Reconstruction. Their Mode and Conditions. A letter from Washington. New York Times, August 25th, 1863." Brownson's Quarterly Review, Third New York Series, IV, #4, 501.

each of whom is as sincere, as earnest and as patriotic as the President himself. And they will not be lacking in arguments founded upon undisputable maxims of religion and morality, nor in facts derived from careful scrutiny of the practical and pecuniary objections to the scheme, to prove that it ought to be abandoned.⁶

The New York Times doubted whether the plan ought to be adopted or not because the recommendations made by the President were "so wide in their range, and so complex in their consequences." They felt that only a "socialist (sic) or a dogmatist" would be able to decide upon the recommendations off-hand. Furthermore, they feared that the proposals would not gain universal assent and doubted whether Congress would pass the necessary laws to firmly establish the recommendations.⁸

Other doubts were fostered by the economic aspects of the proposals.⁹ It was felt that gradual emancipation with subsequent exportation of the Freed-Negroes to colonies would not be a good thing. It was thought that our country could not afford to export laborers. The planters of the South needed all the labor they could get and a certain type of laborer. They needed a laborer who was docile and could be easily paid, like the slaves of the then southern institution.¹⁰

More serious doubts were viewed in another quarter concerning the possibility of the measures, if adopted, to restore peace, harmony and union.

⁶ Editorial; "Compensated Emancipation", Chicago Tribune, December 4, 1862, 2.

⁷ Editorial; "The President's Recommendations", New York Times, Dec. 3, 1862, 4.

⁸ Editorial; "The President's Message", The New York Times, Dec. 2, 1862, 4.

⁹ Cf. also Lincoln's response to the indictment of Henry J. Raymond and James McDougall on the score of expense, Chapter I, 13-14.

¹⁰ Editorial; "The President's Message", New York Daily Tribune, Dec. 2, 1862, 4.

The President was accused of echoing the opinions of the border state politicians or of speaking from information not known by the public. The President was asked if the Emperor of France were the reason for such confidence; for example, "Is there an understanding between the two governments, that, if Congress will take the necessary steps to alter the Constitution so as to secure gradual emancipation, the Emperor will use his good offices with the Confederacy to induce them to lay down their arms?" The fiery editor then confesses his complete lack of understanding of the confidence which the President entertains in the efficacy of the proposals.¹¹

For some of the critics with sharper pens, it was but a short step from budding doubts to serious objections to the President's amendments. One critic prefaced his first thrust by stating, "To giving a reasonable compensation to loyal slaveholders for the loss of property which the law gives them in slaves WE HAVE NO OBJECTION."¹² A fine prelude to be followed by the real objection of the critic;

But, we hold that Congress can, without any amendment to the Constitution, do it as a war measure, if it judges proper; and with emancipation as a peace measure, we desire to have nothing to do till peace is restored. If, in its judgment, the emancipation of the slaves, with compensation to loyal owners, is necessary as a war measure, either for prosecuting or ending the war, Congress has ample power, under the rights of war, to adopt it, and bind the nation to it, and the proposed amendments of the Constitution are unnecessary.¹³

¹¹ "Art. V. Annual Message of the President to both Houses of Congress. Washington, December 1, 1862." Brownson's Quarterly Review, Third New York Series, IV, #1, 93.

¹² Ibid., 92-93.

¹³ Ibid., 92-93. Italics not in original.

More serious in the mind of the same critic was the difficulty that the President would have to secure ratification for his proposed amendments by the constitutional number of states. After citing article V of the Constitution which outlines the procedure for amending the Constitution, this critic proceeds to reason: If one favored the theory held by the administration that no states have seceded from the Union, it would follow that the whole thirty-four are still in the Union. For ratification, then twenty-five states would be required, but to secure twenty-five states, at least seven slave states must be obtained. The critic then concedes that the President could probably get the approval of Delaware, Maryland, Kentucky, Missouri, and Virginia, but even these would still leave a deficit of TWO. He queries, "Does the President expect his amendments to be approved by the rebellious legislature of a single Slave State, or by a convention called by a rebel legislature? If not, how is he to get for his amendments the ratification of three-fourths of all the States?" If the President endeavored to side-step the difficulty by recognizing one of the state military governments he himself had set up, then a very real objection could be raised. The critic was willing to deny that any military government is THE STATE or has power to bind THE STATE or can, directly or indirectly, give the assent of THE STATE to amendments of the Federal Constitution. He held that all the authority military government has is by virtue of military law and that it has no authority when the civil authority resumes its sway. Furthermore, the possibility of having the loyalists of the two slave states call a convention to ratify the amendments would not bring a solution. Such a convention,

according to him, would not be legal or binding upon the people of the state because such a convention must be called by the STATE AUTHORITY and cannot be called by the President or even by Congress.¹⁴

These few comments have given ample proof to the statement made by the Chicago Tribune; namely, that Lincoln's arguments in favor of compensated emancipation would "certainly arrest the attention" of all America's loyal citizens. Yet, the Tribune added that these arguments would also "challenge the admiration" of all; this sentiment was not so universal.¹⁵ Nevertheless, only the more biased critics impugned the motives of the President in offering the amendments. These were the comments in general:

Those even who do not give their adhesion to his plan must be impressed by the over-powering magnitude of the consideration by which he enforces his plea for its adoption; and all men everywhere will surely be convinced of the manliness, the thorough honesty and lofty patriotism of its author.¹⁶

The New York Times feels that the President made the proposals "from the most patriotic motives, and with a sincere desire to contribute all in his power to the permanent settlement of the most important question of the age."¹⁷ They commend his "largeness of view" by which he rises above the "little makeshifts of the day" which would so easily satisfy the "mousing politician;" his broad policy which considers the future as well as the

¹⁴ Ibid., 94-95.

¹⁵ Editorial; "Compensated Emancipation", Chicago Tribune, December 4, 1862, 2.

¹⁶ Ibid., 2.

¹⁷ Editorial; "The President's Message", The New York Times, December 2, 1862, 4.

present is also applauded.¹⁸ The New York Tribune likes the practical way in which the President has met the question;

The question is not between saving the Union in one way and another, but between saving it in the practical way pointed out by the President, or not saving it at all. He urges Emancipation that the Nation may be saved; he does not and never did seek to divert the War for the Union into (sic) a War for Emancipation. He simply proposes to save the country by the shortest, easiest, surest way, and let Slavery abide the consequences.¹⁹

In dealing with the second phase of Lincoln's plan of reconstruction again we find the attitude of the public divided on the merits of the provisions. Lincoln's Proclamation of Amnesty²⁰ was issued as an appendix to the President's third annual message to Congress, December 8, 1863. Within the next few days the editorial columns of the newspapers gave expression to "pros" and "cons" on this subject.

The editors who were willing to denounce the proclamation were vehement. The New York Daily News, which was considered by some as the personal organ of Jefferson Davis, "mildly characterizes the message as 'The Despot's Edict', pronounces it 'a wild, unjust, and impracticable plan for the consummation of Abolition,' and a 'treacherous and despicable plot.'" It denied that such a scheme had any resemblance to self government and bore

¹⁸ Editorial; "The President's Recommendations", The New York Times, December 3, 1862, 4.

¹⁹ Editorial; "The President's Message", New York Daily Tribune, December 2, 1862, 4.

²⁰ For a detailed treatment of this proclamation and other related proclamations cf. Chap. I,

rather the countenance of tyranny. It felt that compliance with such a plan would be a betrayal of the principles of the Fathers "by a mean and treacherous trick, which would eternalize discord, suspicion, and hatred between the sections." In conclusion, it hardly became less appreciative. "Mr. Lincoln's present Message reveals the radical policy in all its disloyal, disunion, and anti-republican aspects, and consigns its author to eternal infamy."²¹ The New York World expressed itself on the plan with the laconic "simply absurd"²² and also severely attacked the basis of the plan;

The World charges the president with political duplicity; avers that the Message 'trims with marvelous adroitness between the two factions of the Republican party' and says further; 'As a means of recovering the South and reconstructing the Union, his scheme is simply absurd It is clear, then, that Mr. Lincoln's scheme is not only preposterous in itself, but that it is the very height of absurdity to pretend to find authority for it in that part of the Constitution which guarantees to the States a republican form of Government. It is well adapted for immediate political effect in the North, and for obstruction and defeating the object of the war in the South.'²²

A German and a French paper evidently favorable to the Confederate cause attacked the plan from the political angle. The Staats Zeitung (New York Staats Zeitung) considered that the President had now given indication that he had become an extreme radical because the plan gave evidence of sanctioning Sumner's state suicide theory. The Courrier des Etats Unis believed that the primary object of the President's plan was to secure for himself the

²¹ An excerpt from an editorial of The Daily News of New York quoted in an editorial "The Press on the Message", New York Daily Tribune, Dec. 11, 1863, 4.

²² Quoted in an editorial of the New York Daily Tribune, Loc. Cit., December 11, 1863, 4. Italics not in original.

renomination. Furthermore, it felt that the only result of the plan would be increased irritation within the rebellious states because of the nature of the conditions stipulated.²³ These papers were not alone in their attacks on the plan from the political viewpoint. The Journal of Commerce of New York was of the opinion that the plan was "utterly abolitionist and its suggestions as impracticable." It did not believe that Lincoln's scheme was a plan of pacification, but rather a device to continue the effect of the measures of the abolitionists in the South.

The plan embodied in the proclamation which Mr. Lincoln proposes to issue sounds very much like a ukase from the chambers of an autocrat, instead of the voice of an ordinary man, temporarily representing the Constitutional Government of the United States.²⁴

Having viewed a few of the general adverse criticisms of the Proclamation of Amnesty, we endeavor now to attain equilibrium on the issue by presenting a few of the favorable comments. The National Intelligencer did not feel capable of giving an authoritative opinion on the plan. Its editorial staff had not had time to ponder the views of the President with care. They felt that the problem was too complex and important to warrant a hasty judgment. Yet, after the first perusal of the message, they felt favorable toward the tone of the message, even though they were "not at all sanguine as to the degree of success which is likely to attend the particular mode of the proceeding marked out by the President for the 'reconstruction of the Union'"²⁵ The New York Times is a bit more decisive in

²³ Ibid., 4.

²⁴ Ibid., 4

²⁵ Quoted from an editorial, "The National Intelligencer on the Message", Chicago Tribune, Dec. 15, 1863, 2.

its favorable comment. The editor thinks that the most striking feature of the message was the section pertaining to the revival of state government of the South as they are redeemed from the rebel power. He states that the President commits himself for the first time to a definite policy and method of reconstruction. He felt that the President went counter "to the project which had been so vehemently advocated, of reducing the redeemed States to a territorial condition that they may continue to be directly governable by the Federal authority...." He then proceeded to examine the plan point by point. In conclusion he says;

We believe that the closer it (the plan) is examined the more it will be discovered to be completely adapted to the great end desired. The public mind, after due reflection, we have not a doubt, will accept it as another signal illustration of the practical wisdom of the President.²⁶

After treating of the particular value of Lincoln's proclamation to this country and to Europe,²⁷ the New York Daily Tribune also offers a bit of applause to the President; "Thanks, then to our President, for the wise humanity and generous impulses which prompted the issue of his Proclamation of Amnesty; It must be that in this sign we shall conquer."²⁸

We might conclude these general favorable comments on the plan with the views of a conservative and radical paper respectively. The former, The Commercial (New York Commercial Advertiser) touches a point that the

²⁶ Editorial; "The President's Message", The New York Times, December 10, 1863, 6. Italics not in original.

²⁷ This will be discussed in a later section of this chapter.

²⁸ Editorial; "The President's Message", New York Daily Tribune, December 10, 1863, 6.

writer has dealt with in an earlier chapter on the constitutionality of Lincoln's plan. This point is the influence of the Supreme Court upon executive proposals.

'This strong and positive language will meet the approval of all loyal citizens, who will note at the same time that the President does not lose sight of his often-reiterated assurance that these laws and proclamations stand subject to the affirmation by the Supreme Judicial authority.... The Message and the Proclamation accompanying it are marked by all that tenderness of feeling toward his misguided fellow-citizens that has characterized Mr. Lincoln's former utterances. Here are no acerbity, no threats, no malice, no blind or fiery zeal; but we have an exhibition of charity and kindly regard---a sincere and pitying longing for the return of the wanderers to the fold from which they have strayed. The Message is wise and humane, and, as such an exemplification of the best qualities that compose the character of the President.'²⁹

The latter, The Evening Post, (New York Evening Post) comments in a like strain;

'Nothing, it must be admitted, could be more magnanimous or lenient toward the Rebels; they have put themselves beyond the pale of law by their insanity; their properties are already declared confiscated and their lives are in jeopardy; and, if they continue contumacious, the whole of the beautiful region they inhabit will be inevitably overrun by our armies, their fields laid waste, their cities and towns desolated, and their homes pillaged. But in this dire strait the President offers not only a peace which shall save them from the miseries of war, but an honorable pardon which shall endue them with all the attributes of the citizen. The very condition, moreover, on which they are asked to accept these boons, is a beneficent one---the renunciation of that monstrous idol of Slavery, which has been the source of all their sacrifices and sufferings and woes.'³⁰

²⁹ Quoted in an editorial of the New York Daily Tribune, Loc. Cit., December 11, 1863, 4.

³⁰ Quoted in an editorial of the New York Daily Tribune, Ibid., 4.

These few facts outlined above will give us at least a general idea, if not entirely adequate, of the criticism of the Press concerning the Proclamation of Amnesty. Many of the editors of the newspapers cited above did not stop, as we might expect, with a general criticism. In view of this fact we may now turn to a few of the particular points criticized.

In the beginning of our section on the more refined comments of the Press, we might ask this question: Did the Press feel that the proclamation had any particular value? The answer is in the affirmative. The New York Times offers a few reasons. It is of the opinion that two cardinal requirements are necessary for any plan of reconstruction. Any satisfactory plan, it feels, must secure a TRUE and a SAFE federal restoration. It considered that the basis of the plan was sufficient to preserve the integrity of the states and thus secure a TRUE federal restoration in name and in fact. It believed that a SAFE federal restoration could be attained through the Lincoln plan by the oath of loyalty, by pardon, and by a renewal of civil rights. With these conditions fulfilled it would necessarily follow that the unrepentant traitors would be deprived of the malign use of civil power. "The plan, in principle and application, is perfectly adapted to the exigency and will be approved by the loyal people."³¹

Even more specific and detailed in pointing out the value of the plan is the Chicago Tribune. The editor prefaced his remarks with the

³¹ Editorial; "The President's Plan of Reconstruction", The New York Times, December 11, 1863, 4.

conviction that the plan would be a "theme of intense and fruitful excitement." He believed that the plan would be productive of beneficial results in Europe because it would reassure the foreign nations that there was no "truculent, bloody-mindedness" prevalent in the Federal Government, a fiction that rebel emissaries had spread in Europe. He was of the opinion that the plan ought to quell the storming criticism of the Copperheads in the North and would calm the fearful and encourage the weak among the loyal northerners. Finally, he held that the great and important effect of the plan if it were to be of any great value, would have to be beneficial to the southerners. Time would tell, but there were high hopes of important results from that quarter. The reasons are evident;

Thousands are sick and tired of the whole thing. Thousands never had any stomach for it. We believe there are thousands who will hasten to avail themselves of this amnesty, as soon as they can be protected and feel safe in it. And the more that flee to it for refuge, the safer it will grow.³²

This last point concerning the value of the plan to the south is worthy of a more detailed discussion.

Almost all the editors were of the opinion that the plan to be of any practical value must be considered feasible and beneficial by the southerners. In addition to the points made by the Chicago Tribune stated above, we might add that some considered the plan's chief value to be a moral one. This is the opinion of The New York Times. The plan according to

³² Editorial; "The Message", Chicago Tribune, December 14, 1863, 2.

the Times was not calculated to stir up a counter-revolution, but rather to predispose the common people of the South to an early and cheerful submission, once the northern armies had advanced into their territory. The purpose of the plan according to this paper is

To wean the people from the desperation into which the rebel leaders had sought to plunge them by the representation that there is no such thing as yielding but at the cost of perpetual vassalage. We must, therefore, expect that the results of the Proclamation will only gradually reveal themselves, and must await them in patience. That they will come in due time, and in a very valuable shape, we have no doubt....The Amnesty Proclamation takes away all inducement to follow the Slave Power to 'the last ditch' and die with it there. By proffering reinstatement in every right and privilege valuable to an American citizen, it, in fact, makes all such desperation morally impossible.³³

All this conjecturing and opining on the part of the northern Press is all very interesting and enlightening, but the comments of the southern Press is still more interesting and enlightening! The Richmond, Virginia Daily Dispatch did not mince words when it gave an estimate of the value of the plan. Considering the proclamation to be "an insult and outrage to the common humanity and common sense of mankind," the clever editor proceeds to give an explanation of the plan as it had been suggested by an English correspondent of the North. In brief the interpretation was this; Lincoln's administration was accused of endeavoring to protract the war for the sole purpose of creating a continual military necessity in the South in order to satiate the appetite of the northerners for seizing and dividing the entire

³³ Editorial; "How the Amnesty Proclamation Works," The New York Times, December 30, 1863, 4.

land and property of the South. For these purposes the operations of the northern military were designedly postponed and peace offerings were made. Having scorned the terms of the proclamation point by point, the editor continued;

Is it not evident upon the mere statement of the case, that Lincoln's amnesty was never expected or designed by himself to have any other effect than irritation and insult to the Southern people? No one knows better than Abraham Lincoln that any terms he might offer the Southern people which contemplate their restoration to his bloody and brutal Government would be regretted (sic) with scorn and execration. If, instead of devoting to death our President and military and civil officers, he had proposed to make Jeff. Davis his successor, Lee Commander-in-Chief of the Yankee armies, and our domestic institutions not only recognized at home but readopted in the Free States, provided the South would once more enter the Yankee Union, there is not a man, woman, or child in the Confederacy who would not spit upon the proposition. We desire no companionship upon any terms with a nation of robbers and murderers. The miscreants, whose atrocities in this war have caused the whole civilized world to shudder, must keep henceforth their distance. They shall not be our masters, and we would not have them for our slaves.³⁴

The attitude of this southern paper seemed merely to be expressing the views of the rebel congress.³⁵ The New York Times said that the rebel congress treated the proclamation "with sovereign contempt." The reasons for such an

³⁴ News article; "Late Southern News; Amnesty of the President Spurned," New York Daily Tribune, March 26, 1864, 1; it is a reprint of "Lincoln's Amnesty" from the Richmond, Va., Daily Dispatch, March 19, 1864.

³⁵ Interesting is the comment made by the New York Daily Tribune on the attitude of the rebel leaders and non-slaveholders; "Of course, the master-spirits of revolt WILL NOT be conciliated. They have staked their all upon the cast, and must stand the hazard of the die. But what possible motive will non-slaveholders have for persisting in rebellion after receiving due notice of the issuing of the Proclamation?... Depend on it, this Proclamation, if seconded and sustained in the loyal States, will go far to break the back of the Rebellion." Editorial; "The President's Message," New York Daily Tribune, December 10, 1863, 6.

attitude appeared evident to the editor. The first was that every man of the Congress was expressly excluded by the provisions of the proclamation from its benefits because they were 'civil officers of the so-called Confederate Government.' The second was that as slaveholders they would be obliged to support the Emancipation Proclamation until it was declared null and void by the Supreme Court. Yet, this provision would be to them "like holy water to the Evil One."³⁶

We will now take up another point of particular comment. It is evident that during the Civil War the North was not a little fearful of the sympathy Europe showed toward the South. Therefore, it would seem that any measure that would endeavor to win over the European sympathy for the North would be favorably received and valued highly. Was Lincoln's proclamation of amnesty considered of value as an European appeaser? Yes. It seems that the European Press had refrained from publishing 'the fiendish malevolence betrayed by the Secession oracles.' Now, the plan of Lincoln properly represented cannot but show "the regretful tenderness and kindly charity wherewith the Rebel masses are contemplated by the President."³⁷ Such a clear manifestation must elicit from Liberal Europe ardent and active sympathy.³⁸ This is but another of the benefits to accrue from the proclamation.

³⁶ Editorial; "How the Amnesty Proclamation Works," The New York Times, December 30, 1863, 4.

³⁷ Editorial; "The President's Message", New York Daily Tribune, December 10, 1863, 6.

³⁸ Ibid., 6.

Someone might have wondered why no Press comments have been given on Lincoln's very last plan of compensated emancipation and reconstruction which he discussed with his Cabinet on the night of February 5, 1865.³⁹ Few questions could be answered more easily. Nicolay and Hay give us the answer:

Few Cabinet secrets were better kept than this proposal of the President and its discussion. Since the subject was indefinitely postponed, it was, of course, desirable that it should not come to the knowledge of the public. Silence was rendered easier by the fact that popular attention in the North busied itself with rumors concerning the Hampton Roads Conference.⁴⁰

No other contemporary evidence seems available except the notation of the fact of the conference in the Diary of Gideon Welles. Under the title, "Monday, February 6, 1865," the Secretary of Navy mentions that a Cabinet meeting had been held the evening before. The fact is mentioned that during the conference the President proposed a scheme that he hoped would be successful in promoting peace. After outlining briefly the details of the scheme, Welles added that the scheme did not meet with favor and was laid aside. He particularly noticed the sincere desire of the President to conciliate and effect peace. He was of the opinion that the President might be overdoing the peace issue and causing distrust and adverse feeling. He also believed that the proposed measure, even if it were a wise one, would not

³⁹ This proposal is given in full chapter 1, 1-2.

⁴⁰ John G. Nicolay and John Hay, Abraham Lincoln: A History, The Century Co., New York, 1890, X, 137.

meet the approval of Congress which was then in a bad temper over the Executive's earlier reconstruction attempts. No good results would accrue; the rebel would misconstrue it if such an offer were made; and if it were tried and were wanting, it would do harm. These were his last words on the matter.⁴¹

A perusal of the above gives ample indication of the variety of comments entertained by the Press on Lincoln's plan of reconstruction as outlined in our first chapter. A study of these comments also uncovers the impossibility of giving a precise evaluation of the Press comments. Many varieties of bias and prepossession have entered into the make-up of the men who endeavored to express themselves on the point at issue. For this reason it has been the policy of the writer not to attempt to criticize or evaluate the comments, but merely to present the facts as he found them in the contemporary Press.

Possibly this question has arisen in the mind of the reader. Would not the attitude and comments of the Congressmen give also an expression of public opinion? The writer agrees that it would, but since he will treat the relation between congressional and executive reconstruction in a later chapter, he prefers to save the comments of the Congressmen as a part of that problem. The writer has found the work on this chapter very interesting

⁴¹ Gideon Welles, Diary of Gideon Welles, Houghton Mifflin Co., New York, 1911, II, 237.

and enlightening. He hopes the facts presented will help the reader to appreciate a little more the great struggle that our country and our President were then experiencing.

CHAPTER IV

RELATION OF LINCOLN'S PLAN TO THE EARLY CONGRESSIONAL PLAN

Generally, the moment one sees the word "congressional" linked with the word "reconstruction" his mind immediately recalls the Reconstruction Acts, the names of Thaddeus Stevens and Charles Sumner, and the vindictiveness of the congressional plan of reconstruction in effect in the South after the Civil War. In the present chapter we will not discuss the Reconstruction Acts for we desire to deal with the first reconstruction legislation only; that is, the legislation attempted by Congress up to the death of Lincoln, April 1865; we are not at all interested in Stevens or Sumner, but we are interested in Henry Winter Davis, Representative from Maryland and in Benjamin Wade, Senator from Ohio. It is the bill introduced and fought for by these two gentlemen, known to us as the Wade-Davis Bill, that will demand our attention. Other points, among which will be included the attitude, policy, and temper of the congressionals will be discussed in order to show the relation of Lincoln's plan to the congressional plan of reconstruction. These few points outline the purpose and the limitations to which the writer will restrict this chapter.

One obvious reason for the limitations outlined is that with the death of Lincoln his influence came to an end. True, Johnson continued a plan of reconstruction very similar in essentials to Lincoln's plan, but Lincoln,

after his death, could not personally do more to further the plan, nor could the ideas expressed in Congress influence his personal plan regarding reconstruction. While he lived both could be done. Therefore, it is more important to point out the relations between the executive and congressional plans prior the death of Lincoln. Another reason for limiting the present study to the period outlined is that an adequate treatment of the congressional plan as a whole; that is, from the beginning of December, 1863 to the final withdrawal of the military from the South in 1876, even in summary fashion, would over-balance the present work, while no part would be treated sufficiently.

We have already outlined in detail Lincoln's plan of reconstruction. In order, then, to point out the relations between the Lincoln and congressional plans it will be necessary to have adequate knowledge of the congressional plan. Therefore, the writer will endeavor to detail the early congressional plan. This outline will include the origin of the congressional committee on the rebellious states, the bill proposed by this committee, a discussion of the main points of the bill, with the concomitant criticisms by congressmen, the course of the bill through the Senate, the fate of the bill at the hands of President Lincoln, and the radical group's retaliatory measure, the Wade-Davis Manifesto. With a discussion of these points as a background, the second part of this chapter will be devoted to the problem of the relations between the plans.

Since we have seen the purpose, extension, limitations, and a few of the preliminary facts necessary to an understanding of this present chapter, we will now turn to a discussion of the early congressional plan.

It is evident from a perusal of the Congressional Globe that the greater part of the discussion on the problem of the restoration of the rebel states took place in the House of Representatives. A "Select Committee on Rebellious States" in the House under the leadership of Henry Winter Davis¹ of Maryland originated what is now known as the Wade-Davis bill. At the time it was called a "bill to guarantee to certain States whose governments have been usurped or overthrown, a republican form of government."² This title was amended by the Senate on the suggestion of Senator B. G. Brown of Missouri to read, "A bill concerning States in insurrection against the United States."³ However, for the sake of brevity, we will refer to the bill in these pages as the Wade-Davis bill. It will be our aim in the first section of this chapter to follow the bill through the House and the Senate. Of course, the greater emphasis will be placed on the action in the House. It would be impossible to discuss in detail all the speeches or even the main points of the speeches in the House concerning the bill. A glance at

¹ One wonders how much of Davis' opposition to Lincoln was based on personal motives. Why did he oppose Lincoln? James Kendall Hosmer attempts to give us an answer; "Davis, able and of high personal character, a cousin of David Davis, of Illinois, Lincoln's intimate friend, had won the admiration of the President, who greatly desired his friendship and support; but Davis had taken a dislike to Lincoln, perhaps because the latter favored the Blairs (Nicolay and Hay, Abraham Lincoln: A History, IX, 113.), which developed into hostility extreme and vindictive. In spite of the bitterness, Lincoln's all abounding magnanimity wrapped Davis within his regard; the President could not win him, but he steadfastly endured, striking no return blow." Hosmer, Outcome of the Civil War, Harper and Bros., New York, 1907, 139.

² Cong. Globe, 1st Sess., 38th Cong., January 18, 1864, 259.

³ Cong. Globe, Ibid., July 1, 1864, 3461.

Appendix IV outlining in chronological order the list of speeches on the bill will give sufficient reason for this statement. Before we take up the discussion of the bill it will be helpful to have an understanding of the attitude of Congress prior to the adoption of the bill.

The attitude of Congress toward the Lincoln Administration during the Civil War might well be represented by a wave. To the end of 1863, congressional opposition was just a ripple on the sea of politics. The historical fact that Congress as a whole was decidedly with the administration during the early stages of the war is evident.⁴ "Congress passed an act approving and legalizing 'all the acts, proclamations, and orders of the President....respecting the Army and Navy....and calling out, or relating to the militia or volunteers from the States....'"⁵ The President signed this bill August 6, 1861. Congress continued to back the President through 1862-1863. At the time of the Amnesty Proclamation December 8, 1863, Congress was still with him. John Hay, one of Lincoln's secretaries, who was on the floor of Congress when the President's message and proclamation were read, recorded that the approval of Congress seemed unanimous. Chandler, Sumner, and Wilson spoke of the message with delight, and the strong conservatives, Dixon and

⁴ By this statement I do not mean to pass upon the judgment of Charles Willis Thompson, The Fiery Epoch, 1830-1877, The Bobbs-Merrill Co., Indianapolis, Ind., 1931. He is of the opinion that "At no time in the war did Lincoln have Congress with him; it endured him, but only so far as it had to with an enemy army just across the Potomac. Once, indeed, not even that had prevented the House from passing a resolution of censure upon him." 321. Thompson seems to have made too broad a statement here.

⁵ McLaughlin, 622.

Reverdy Johnson, also approved. In the House some of the radicals, Boutwell, Garfield, Blow, were full of enthusiasm. Even Horace Greeley, who was also in the House at the time, declared the message 'devilish good'.

In congratulating Lincoln conservatives vied with Radicals. The President was greatly cheered, and with good reason; to devise a settlement of this most difficult matter in a way almost universally acceptable among loyal men was an achievement indeed.⁶

Some of the most prejudiced Democrats said little about the message; they considered it "very ingenious and cunning, admirably calculated to deceive."⁷

Soon, however, the ripple of opposition gradually grew into a noticeable wave. Even at this early date The New York Times did not trust the attitude of Congress. It was fearful of opposition. "Of course, Faction will bark at it (Lincoln's plan). It is the very nature of Faction to fly at any public good. But this manifestation of instinct will only be corroborative of the intrinsic excellence of the plan"⁸ The Times certainly must have sensed a storm. Though Stevens' name is specifically mentioned among the enthusiastic supporters of the President's proposals, yet no one was impressed by H. Winter Davis' enthusiastic manifestations. On December 15, 1863, Mr. Stevens reported twenty-three resolutions to the House pertaining

⁶ James Kendall Hosmer, Outcome of the Civil War, Harper and Bros., New York, 1907, 138.

⁷ Frederic L. Paxson, The American Civil War, Henry Holt and Co., New York, 1911, 182.

⁸ Editorial; "The President's Plan of Reconstruction", The New York Times, December 11, 1863, 4.

to the President's message. Mr. Davis offered an amendment to the last resolution of the list pertaining to the duty of the United States to guarantee a republican form of government to the states in question. This point gives us the key to congressional reconstruction. In the amendment he offered the suggestion that a select committee of nine be named by the speaker. The duty of this committee would be to report bills necessary and proper for the execution of the guaranty. This amendment was offered as a substitute for Stevens' last resolution. The amendment was adopted by a vote of 91 to 80. Here, then, we have the origin of the "Select Committee on Rebellious States."⁹

We will now try to point out the main provisions of the bill which were the focal points of most of the discussion. If the summary given here is too brief the writer refers the reader to a more detailed summary of the bill in Appendix II,

The first two sections of the bill provide for the appointment of a provisional governor and the preliminary steps he is to take for the establishment of the machinery of the state government; namely, the enrollment of all "male white citizens," the administration of an oath to them, and the calling of a convention.¹⁰

The third, fourth, fifth, and sixth sections pertain to the delegates to the convention, the election of the delegates, commissioners'

⁹ Cong. Globe, December 15, 1863, 33-34, passim.

¹⁰ Ibid., July 1, 1864, 3448.

duties in holding the election, and the duties of the provisional governor, respectively.¹¹

The seventh section is the most important section of the bill. Here the requirements that must be fulfilled by the convention are outlined. The convention must adopt the following provisions "hereby prescribed by the United States in the execution of the constitutional duty to guarantee a republican form of government to every State, and incorporate these provisions in the State Constitution." The provisions are:

First. No person who has held or exercised any office, civil or military, except offices merely ministerial and military offices below the grade of colonel, State or confederate, under the usurping power, shall vote for or be a member of the Legislature, or Governor.

Second. Involuntary servitude is forever prohibited and the freedom of all persons is guaranteed (sic) in said State.

Third. No debt, State or confederate, created by or under the sanction of the usurping power, shall be recognized or paid by the State.¹²

The eighth section provides for steps to reestablish a republican form of government and to ordain and adopt a constitution.¹³

The ninth section provides the measures to be taken if the convention refuses to establish the state government along the lines indicated; the tenth, the duties of the provisional governor, until the state is recognized by the Federal Government.¹⁴

The last four sections outline regulatory measures; the eleventh

¹¹ Ibid., 3448.

¹² Ibid., 3448.

¹³ Ibid., 3448-3449.

¹⁴ Ibid., 3449.

provides for collection of taxes; the twelfth further emphasizes emancipation and states that a writ of habeas corpus is the remedy to be used if any person is retained in involuntary servitude; the thirteenth provides the penalty for violation of section twelve; the fourteenth denies citizenship to any civil officer or any military officer above the rank of colonel.¹⁵

Before we take up the main points of discussion in Congress concerning the bill, it is well to note the lack of any provision regarding the congressional theory. Nevertheless, H. Winter Davis had very definite ideas on the status of the rebel states;

In opposition to Lincoln's idea,...Davis maintained that the seceding States were out of the Union---a proposition so vehemently announced in the preamble (of the Wade-Davis bill) that the House rejected it, but the same idea pervaded the resolutions which followed.¹⁶

This fact is evident especially in the conclusion of the speech of Davis. He says, "Until Congress has assented, there is no State government in any rebel State, and none will be recognized except such as recognize the power of the United States."¹⁷ Undoubtedly, then, Davis was basing his position on the "state suicide theory" outlined by Stevens at an earlier date. It is interesting to note the criticism of this theory by a severe critic of the executive plan, Representative Aaron Harding.

The gentlemen from Pennsylvania (Mr. Stevens) has more than once declared in his place in this House that the seceded

¹⁵ Ibid., 3449.

¹⁶ James Kendall Hosmer, Outcome of the Civil War, Harper and Bros., New York, 1907, 140.

¹⁷ Cong. Globe., Loc. Cit., March 22, 1864, 85, Appendix.

States are out of the Union, and constitute a foreign country; that the Constitution and laws and all compacts between the North and South have been abrogated and set aside. We are thus told, after nearly three years of terrible war to save the Union, that we have no Union; it has been destroyed and has passed away. Nor have we a Constitution, for it, too, has been abrogated.¹⁸

Mr. Harding thought that it might calm the scruples of conscientious men to tell them that the Constitution has been abrogated, but how could the men who propose the bill forget that all their power is delegated by the Constitution.¹⁹ This presented an interesting dilemma to the advocates of state suicide, but in the same speech Harding could find no other praise for the executive plan than that it was worse than state suicide, that it was monstrous despotism, and that it was in direct opposition to the Constitution.²⁰

The bill came up for discussion in the House March 22, 1864. In a speech delivered that day by H. Winter Davis one can find the main points that were to be insisted upon by those favoring the congressional plan. This speech, which has been summarized and placed in Appendix III, is well worth a perusal by the reader. Nearly all the arguments favoring the bill and opposing Lincoln's plan are there. Various important arguments will now be

¹⁸ Cong. Globe, 1st Sess. 38th Congress, 853. Speech of Mr. Harding from Kentucky, February 27, 1864.

¹⁹ Ibid., 853.

²⁰ Ibid., 852-853, passim.

discussed.²¹

One very important point of the congressional plan, or of any plan, as we have noted in the discussion of the problem of the constitutionality of Lincoln's plan, was the basis of the authority for instituting and carrying out the plan. Davis points out the congressional authority very clearly. He has recourse to Art. IV, Sec. 4 of the Constitution. It is his opinion that

That clause rests in the Congress of the United States a plenary, supreme, unlimited political jurisdiction, paramount over courts, subject only to the judgment of the people of the United States, embracing within its scope every legislative measure necessary and proper to make it effectual; and what is necessary and proper the Constitution refers in the first place to our judgment, subject to no revision but that of the people.²²

In order to bolster up this appeal to the Constitution, Davis refers to the decisions of Chief Justice Taney in the Rhode Island cases.²³

Another point is Davis' criticism of Lincoln's proposed "10% Plan".

Davis believed that the military power was necessary to prevent further insurrection in any rebel state. "There is no rebel State held now by the

²¹ Some very excellent supplementary material on the Congressional viewpoint is to be found also in a letter of H. Winter Davis to the editor of The Nation, I, 680-682. This letter appeared in The Nation, Thursday, November 30, 1865. It was written by Davis and dated; "Baltimore, October, 18, 1865. This letter really falls into the period beyond the limits set by the writer for the present chapter, but since it contains much criticism of the executive plan as such, the writer feels justified in using it.

²² Cong. Globe, Appendix, March 22, 1864, 82; cf. Appendix III,

²³ The case of Luther v. Borden has been cited and discussed in Chapter II, 61-62, when we dealt with the problem of the constitutionality of Lincoln's plan, as the reader will recall.

United States enough of whose population adheres to the Union to be intrusted with the government of the State. One tenth cannot control nine tenths."²⁴

He was unwilling to trust the authority of state governments to the doubtful loyalty of the rebel States until armed rebellion ceased, and had been "trampled in the dust"; until every armed rebel had vanished from the State; until Southern independence and the possibility of Southern uprising were impossible; until normal functions of the State had been restored according to the provisions of the proposed bill. To attain these conditions, Davis recognizes three modes of procedure. The first, a constitutional amendment prohibiting slavery everywhere, which he rejects because it does not provide for the civil administration. The second, Lincoln's plan as outlined in the Amnesty Proclamation which he rejects because it prescribes

...no guardianship of the United States over the reorganization of the government, no law to prescribe who shall vote, no civil functionaries to see that the law is faithfully executed, no supervising authority to control and judge of the election...no guarantee of law to watch over the organization of the government.²⁵

Furthermore, he believes that the President's plan would not affect the fundamental measure; namely, the existence of slavery. The reason is that the President's plan ultimately leaves the decision on slavery in the state courts; in his mind the state courts would always decide in favor of the southern interpretation and, therefore, the slavery problem would not be solved.²⁶

²⁴ Cong. Globe, Appendix, March 22, 1864, 83. cf. Appendix III,

²⁵ Cong. Globe, Ibid., 84. Italics not in original.

²⁶ Ibid., 84. Italics not in original.

The third main point deals with the congressional solution. The congressional plan would solve the judicial problem by precluding it. The solution is to be attained by primarily considering the political question. The means used would be the recourse to

...the paramount power of Congress to reorganize governments in those States, to impose such conditions as it thinks necessary to secure the permanence of republican government, to refuse to recognize any governments there which do not prohibit slavery forever.²⁷

In other words, Davis advocated the necessity of satisfying the republican principles by rescuing the states from rebel domination; by securing Congress against the undivided and hostile vote; by protecting the rights of the negro population; and by creating a body of friends for the United States interested in fighting for its supremacy.²⁸ These things could only be accomplished if Congress demanded that the states be reorganized on the basis of universal suffrage. The result in his mind would be the security of a "permanent foundation of American republicanism against the mutations of political life and local hostilities in the Southern States...."²⁹

One grave difficulty remained. The advocates of the congressional plan knew that some state governments in the rebel states had already been set up according to the provisions of the executive plan. What then should be done with the state governments operating under the President's plan? The

²⁷ Cong. Globe, Ibid., 85. Italics not in original.

²⁸ What he really meant was the creation of a body of friends for the Republican party.

²⁹ The Nation, Loc. Cit., I, 681.

congressionalists believed that the Negroes were ostracized from these state governments. Therefore, they considered it impossible for republicans to recognize the President's governments. They did not believe they should hesitate in rejecting them, for the reason, in their opinion, that "the President's intermeddling is wholly illegal..." Congress alone could give such governments legal force by its recognition of them. Congress considered itself to have a free hand in rejecting them, in fact, to be bound "to treat them as mere nullities, to brush them away as so many cobwebs..." Finally, they openly stated their objectives:

The objects to be kept in view are to break the force and unity of the rebel vote in Congress; to rescue the States from its domination; and to place in the hands of the colored population political power, for their protection and our safety.³⁰

As has been noted above, these statements from The Nation were made public by H. Winter Davis in the latter part of 1865 and, therefore, postdate our period; nevertheless, it seems that this position was a part of the congressional platform from the beginning. The congressionalists were opposed to Lincoln's plan and their one means of rejecting his plan was to deny recognition to the governments erected according to the executive plan. It is the opinion of the writer that Lincoln sensed this ruse, and for this reason, more than for any other decided to oppose the Wade-Davis bill. With this point, then, we bring to a close the discussion of the main provisions of the

³⁰ Ibid., I, 681.

bill and of the concomitant criticisms.

The points just discussed are but a very meager presentation of the opinions expressed on the bill. A chronological list of the speeches on the bill are presented in Appendix IV. This appendix should give sufficient proof for the above statement. Besides, it presents interesting points on the course of the bill through the House. The bill passed the House May 4, 1864 by a vote of seventy-three to fifty-nine. The recording of the votes of absent members the next day brought the vote to seventy-four to sixty-four. On May 5, 1864 the House sent a message to the Senate informing them of the passage of the bill and requesting the Senate to concur. The bill was referred to Mr. Wade from the Committee on Territories. He, however, did not report the bill to the Senate until May 27, 1864.³¹ Most of the discussion of the bill in the Senate was heard on July 1, 1864. The bill finally passed the Senate by a vote of 26 to 3.

With the passage of the bill in the Senate we might say that another act in the drama of reconstruction had been completed. Feeling had run high during the last few trying days before its passage; Congress was on edge, fearful of the fate of the bill at the President's hand; the climax of the drama was to be staged in the White House. A very vivid presentation of the climactic scene is left for us in the diary of John Hay, one of Lincoln's secretaries. The writer begs to insert here a rather long quotation, but he believes the dramatic effect would be lost if he attempted a summary.

³¹ Further details on the course of the bill through the Senate will be found in Appendix V.

July 4, 1864. Today Congress adjourned at noon....

In the President's room we were pretty busy signing and reporting bills. Sumner was in a state of intense anxiety about the Reconstruction Bill of Winter Davis. Boutwell also expressed his fear that it would be pocketed. Chandler came in and asked if it was signed. "No." He said it would make a terrible record for us to fight if it were vetoed. The President talked to him a moment. He said, "Mr. Chandler, this bill was placed before me a few minutes before Congress adjourns. It is a matter of too much importance to be swallowed in that way." "If it is vetoed it will damage us fearfully in the Northwest. It may not in Illinois; it will in Michigan and Ohio. The important point is that one prohibiting slavery in the reconstructed States."

President. "That is the point on which I doubt the authority of Congress to Act."

Chandler. "It is no more than you have done yourself."

President. "I conceive that I may in an emergency do things on military grounds which cannot be done constitutionally by Congress."

Chandler. "Mr. President I cannot controvert your position by argument, I can only say I deeply regret it."

Exit Chandler.

The President continued, "I do not see how any of us now can deny and contradict all we have always said, that Congress has no constitutional power over slavery in the States."

Mr. Fessenden, who had just come into the room, said, "I agree with you there, Sir. I even had my doubts as to the constitutional efficacy of your own decree of emancipation, in such cases where it has not been carried into effect by the actual advance of the Army."

President. "This bill and this position of these gentlemen seems to me to make the fatal admission (in asserting that the insurrectionary States are no longer in the Union) that States whenever they please may of their own motion dissolve their connection with the Union. Now we cannot survive that admission, I am convinced. If that be true, I am not President, these gentlemen are not Congress. I have laboriously endeavored to avoid that question ever since it first began to be mooted and thus to avoid confusion and disturbance in our counsels. It was to obviate this question that I earnestly favored the movement for an amendment to the Constitution abolishing slavery, which passed the Senate and failed in the House. I thought it much better, if it were possible, to restore the Union without the necessity of a violent quarrel among its friends, as to whether certain States have been in or out of the Union during the war; a merely metaphysical question and one unnecessary to

be forced into discussion."

Seward, Usher, and Fessenden seemed entirely in accord with this.

After we left the Capitol I said I did not think Chandler, man of the people and personally popular as he was, had any definite comprehension of popular currents and influence---that I did not think people would bolt their ticket on a question of metaphysics.

The President answered, "If they choose to make a point upon this I do not doubt that they can do harm. They have never been friendly to me and I don't know that this will make any special difference as to that. At all events, I must keep some consciousness of being somewhere near right; I must keep some standard of principle fixed within myself."³²

This little scene has presented to us the fate of the bill. Here, too, we find in express terms the reasons for Lincoln's pocket-veto. If we keep these few facts in mind it is very hard to doubt the utter sincerity of Lincoln in performing this action. If, however, Chandler was perturbed, that fact is nothing in comparison with the state of mind of Senator Wade and Representative H. Winter Davis. Congress had been adjourned, but they would strike back in defense of their position by another means. The Press was a haven of retreat from which they might counterattack. They would not wait till the next session of Congress; they would let the world know by a statement in the Press. This takes us, then, to a brief discussion of the Wade-Davis Manifesto.

On July 8, 1864, President Lincoln issued a proclamation containing the reasons for his rejection of the Wade-Davis bill; yet, he was unwilling to condemn the bill outright. He also stated that he had not definitely decided on any one plan and that if some of the rebel states wished to

³² Lincoln and the Civil War in the Diaries and Letters of John Hay, selected by Tyler Dennett, Dodd, Mead & Co., New York, 1939, 204-206.

follow the congressional plan they could do so. A little less than a month after the appearance of this proclamation, August 5, 1864, Benjamin Wade and H. Winter Davis had published in the New York Tribune and other leading papers throughout the country their answer to this proclamation, an able and caustic protest against Lincoln's pocket-veto.

Again we are confronted with a long document which defies adequate summarization here. Therefore, the writer will point out the main points and refer the reader to Appendix VI for a summary. The Manifesto is certainly a very able controversial document. The purpose of the Manifesto is very clearly stated; namely, to inform the supporters of the Government and Congress to do their duty by checking the "usurpations" of the Executive. Three main points follow; (1) an attack on Lincoln's reasons for not signing the bill; (2) an attack on the President's purpose to execute the bill as if it were law, even though it was not enacted, by his plenary dictatorial power; (3) the contrast between the President's plan and the congressional plan. In conclusion they urge the supporters of the administration and Congress to do their duty.³³ Before we conclude this section of this chapter, the writer urges the reader to peruse the summary of the Manifesto in the appendix. Our final word will be a comment by the editor of the New York Tribune on the Manifesto.

The editor of the Tribune urges the reader of his pages to read the Manifesto carefully. He then adds;

³³ Editorial article on page following editorials; "To the Supporters of the Government," New York Tribune, August 5, 1864, 5; cf. Appendix VI.

We are moved, however, to add that, while we concur in much of this protest, we cannot regret the defeat of the bill in question---and this for the reasons assigned by the President, viz: That, while the plan of reorganization and readmission prescribed by Congress is very good and efficient, we would not have the country precluded from adopting another, should such a course at any time seem expedient. We want no better plan of 'reconstruction' than that of Congress, provided it can be carried into effect; but Civil War creates exigencies which cannot be foreseen; and we are unwilling to say that the Union shall be reconstituted in any one way or not at all. For that reason, we, while giving a hearty assent to many considerations urged by Messrs. Wade and Davis, are glad of the non-approval of their bill.³⁴

Having outlined the early congressional plan and a few of its ramifications we are now in a better position to understand the relations between the congressional plan and Lincoln's plan which will be discussed immediately.

On approaching the problem of the relations between the executive and the congressional plans it is well to point out explicitly what is meant by this problem. The writer will attempt to compare the main elements of the plans. This discussion will include a few rather obvious comparisons concerning the authors, the elements, and moral aspects of each plan.

The two plans are very good subjects for comparison. They are identical in their general purpose; namely, to restore the rebel states to their proper relation with the Federal Government; they are similar with regard to a general basis; that is, each is based on a particular theory;

³⁴ Editorial; (No title) New York Tribune, August 5, 1864, 4.

they are also similar because each recurs to the Constitution for its authority. The first very obvious dissimilarity is to be found in the fact that the authors of each plan belong to different branches of the Federal Government. The Executive bases his plan on the "theory of the indestructibility of the Union", while the "theory of state suicide" is cited as the foundation for the congressional group. The Executive has recourse to Art. II, Sec. 2 of the Constitution which implicitly contains his "war powers" for the authority to reconstruct, while Congress refers to Art. IV, Sec. 4 for its authority. These points suffice to point out the general relations between the plans.

What, then, are some of the particular relationships? In comparing the elements of each plan it may be well to point out the time element. Lincoln's plan for restoration began early in the war. It has been outlined in the first chapter that Lincoln indirectly attempted to restore the rebel states by offering them compensated emancipation. This he thought would be an effective measure to meet the main problem of the war, the slavery question, and bring the rebel states back into the Union. Even though this measure failed it is worthy of note. When the events of the war brought the necessity of restoring the conquered states into their proper relation with the Union, he proposed his Amnesty Proclamation, December 8, 1863. Congress did not begin any definite action for the rebel states until over a month after the promulgation of the President's proclamation. Congress, furthermore, had no plan ready for the states to adopt until almost six months later. The time element is a significant fact. What were the rebel states

which were in a position to accept reconstruction to do during that six months period? Civil war was unique in our history. The Executive had very extensive power. Could these states be expected to wait until the Congress of the United States decided to act with the Executive or until Congress itself proposed a plan of restoration? What is the logical conclusion? An answer to these questions will be attempted in the final chapter of this work on the progress of Lincoln's plan in the rebel states.

We will now focus our attention upon a comparison of the constitutive elements of the two plans. H. Winter Davis and Benjamin Wade have outlined in their famous Manifesto the major points of contrast:

Mark the Contrast!

The bill requires a majority, the proclamation is satisfied with one-tenth;
 the bill requires one oath, the proclamation another;
 the bill ascertains voters by registering the proclamation by guesses;
 the bill exacts adherence to existing territorial limits, the proclamation admits of others;
 the bill governs the Rebel States by law, equalizing all before it, the proclamation commits them to the lawless discretion of military Governors and Provost-Marshal;

the bill forbids electors for President, the proclamation and defeat of the bill threaten us with civil war for the admission or exclusion of such votes;

the bill exacts exclusion of dangerous enemies from power and the relief of the nation from the Rebel debt, the prohibition of slavery forever, so that the suppression of the Rebellion will double our resources to bear or pay the national debt, free the masses from the old domination of the Rebel leaders, and eradicate the cause of the war, the proclamation secures neither of these guaranties. It is silent respecting the Rebel debt and the political exclusion of Rebel leaders; leaving Slavery exactly where it was by law at the outbreak of the Rebellion, and adds no guaranty even of the freedom of the slaves he undertook to manumit.

It is summed up in an illegal oath, without a sanction, and, therefore, void.³⁵

As one might expect, the contrasts are very striking and not a little bit biased in favor of the congressional plan. A stricter analysis of some of the points mentioned here, by recourse to chapter I and the first part of this chapter, will result in a more objective comparison.

The disparity between a majority vote demanded in the bill and the "10%" minority of Lincoln's proclamation is not as great as it seems to be. If one admits the exceptions explicitly stated in each bill; if one realizes that Lincoln's "10%" means "a number of persons not less than one-tenth in number of the votes cast in such State at the presidential election of the year of our Lord one thousand eight hundred and sixty,...;"³⁶ if one realizes that a large number of the voters of 1860 were killed during the period 1861-1863, he will understand that the contrast on this point is not overwhelming; yet, there is a difference.

The oath demanded by Lincoln is quite mild in comparison with the one required by the congressionals. No wonder the latter insisted upon the so-called 'iron-clad' oath of July 2, 1862. Lincoln was satisfied if the returned prodigal swore to support, protect, and defend faithfully the Constitution and the Union. The congressionals demanded an oath obliging the prodigal son to swear that he had never wilfully borne arms against the United States, that he had never voluntarily given aid, countenance or

³⁵ Editorial article: "To the Supporters of the Government," New York Daily Tribune, August 5, 1864, 5. Colummetric arrangement not in original.

³⁶ Nicolay and Hay, Works, IX, 221, cf. Chap. I, 19.

counsel to the rebels, and that he had held no office under the confederate government. Only after these conditions were sworn to, could he then affirm his allegiance to the Constitution without any mental reservation or purpose of evasion. Finally, he must swear to discharge faithfully the duties of the office he is about to enter upon. There is, of course, no mention in the latter oath concerning the support of the congressional acts. There is yet one point more of major importance. A perusal of the oath seems to impose such severe restrictions upon the returning rebel that the oath seems to contradict some of the qualifications outlined in the bill itself. The oath seems to exclude all persons that participated in any degree in the rebellion. The bill (Sec. 7) excepts those who had held merely ministerial and military offices below the grade of colonel.³⁷

It is true that the bill outlines in detail the duties of the provisional governor with regard to the registration of the voters. Lincoln's Amnesty Proclamation had no specific provisions regarding registration. However, the Proclamation about Amnesty, March 26, 1864, which most certainly must have been known to the authors of the Manifesto, designates the procedure to be followed by those administering the oath. As part of this procedure the one who administers the oath is to submit the original records of the oaths as soon as possible to the Department of State.³⁸

³⁷ For Lincoln's oath cf. Nicolay and Hay, Works, IX, 220 or Chap. I, 13; for the required Congressional oath cf. Select Statutes Illustrative of the History of the United States, 1861-1898, edited by William MacDonald, The MacMillan Co., New York, 1909, 45-47.

³⁸ Nicolay and Hay, Works, X, 59-60.

The difference between the existing territorial limits outlined in the bill and the "boundary, the subdivisions,....as before the rebellion," which Lincoln wished to obtain, is a point of contrast in words only, with exception of Virginia.

Undoubtedly the passage of the bill would have established the government in the rebel states under federal law, while Lincoln's restored states would be governed by martial law up to the time when the loyal group might be able to enforce the former civil law. Here is a marked contrast.

On the question of recognizing the electors, the civil war threat feared by the congressionals seems to be a gratuitous assumption. The results to be achieved by the bill as outlined in this same point provides for definite guaranties. Lincoln's plan very decidedly excluded classes of the rebel leaders.³⁹ The slavery question was not definitely settled by Lincoln because he felt that a constitutional amendment was necessary.⁴⁰ As regards the Confederate debt, it is highly probable that Lincoln was silent about it because he felt he could not in justice lay down a condition like the one contained in the congressional plan, or possibly he never gave this condition a thought.

The writer believes the main points of contrast just discussed are sufficient to show the major differences between the constitutive elements of

³⁹ Ibid., IX, 220-221; X, 58-59; Ch. I, 18.

⁴⁰ "A Joint Resolution proposing an amendment to the Constitution to abolish slavery having passed the Senate, failed of the necessary two-thirds majority in the House, May 31, 1864." Lincoln and the Civil War in the Diaries and Letters of John Hay, footnote 2, 205.

the two plans in question. We will now endeavor to show a few relations that might be called moral relations. The writer has gathered these comments from various sources and will offer them merely as comments. The reader may form his own opinions.

The general criticism of Lincoln's plan from the moral aspect has been very favorable. Isaac Newton Arnold, Representative of Illinois, in a speech before the House March 19, 1864 said that "...his (Lincoln's treatment of the rebels in his Amnesty Proclamation) treatment is today, as it has been from the beginning, generous, humane, and magnanimous, such as is becoming the head of a great and Christian nation."⁴¹ At an earlier date, Henry Champion Deming brought out a few aspects that are very necessary for the attainment of a proper perspective of Lincoln's plan. In his conclusion he notes one essential, undeniable quality of Lincoln's plan:

But when we consider that by a stern implication of law, according to its authoritative expounders, all distinction between guilt and innocence in the insurgent State is also confounded, and that the loyal within the limits of the civil war are subjected to the same pains, penalties, and forfeitures with the disloyal, a case so pitiable is stated that it should appeal to heaven and earth for relief.

It is to this precise anomaly that the President's plan addresses itself....

The task essayed is one of infinite difficulties and embarrassments, and no plan of restoration devised by finite wisdom would approximate toward completeness at the outset, because the facts upon which it should be based are to a great extent prospective, and because it must constantly modify and change itself according to new developments as it advances into the future....

If you demand just now and here a thorough and perfect

⁴¹ Cong. Globe, Loc. Cit., 1197.

code and science of reconstruction, you must go to those who enjoy special revelations and inspired prevision of the future....

While, therefore, in my judgment, the President's plan is not beyond cavil, it is as complete and comprehensive as the intricacies of the subject and its present development will permit, and it possesses also the rare merit of being just to the Government, just to the insurgent State, and just to the slave;....⁴²

These few words then give us some little idea of the moral tone of Lincoln's plan. In the opinion of the writer, the note of SOCIAL JUSTICE in the strict sense, predominates the whole of Lincoln's efforts in his attempts at restoration.

As we turn to the comments on the congressional plan the tone changes. James Kendall Hosmer holds the opinion of Edward McPherson regarding the congressional plan. He says that Congress, assuming the incompetency of the Executive to act, "laid down as a 'Congressional plan' a scheme much more severe and difficult than the one rejected;..."⁴³ The congressional plan is evidently dominated by political motives. There was little humane feeling or consideration of the feelings and difficulties of the southerners. It was strict and harsh, a fine example of vindictive justice, not so much ex amore recti ordinis as ex amore rerum politicarum. In all there seems to be a self-justifying or conscience salving attitude underlying the actions of even this early congressional plan.

In conclusion, then, we might glance at a scene which took place

⁴² Ibid., 854, February 27, 1864.

⁴³ Hosmer, 140.

very shortly after the death of Lincoln. Instead of a day of mourning which courtesy, if not respect, for a great man would demand, one finds that "April 15, 1865, was a day of cheer and hope to the Republican leaders in Congress." President Lincoln had died at 7:22 that morning. A brutal murder had removed an obstacle from the path of their progress; this was shocking but providential, according to them. "'The feeling was nearly universal' that the change in the Presidency 'would prove a godsend to the country.'" The reason for the elation was Lincoln's "'known policy of tenderness to the rebels.'" At the very moment of Lincoln's death the Republican leaders were preparing for a desperate struggle which would have meant surrender by Lincoln or a wrecked second administration. A caucus was held by this group a few hours after Lincoln's death "'for the purpose of considering the necessity for a new Cabinet.'" This all happened on Saturday.

On Sunday Senator Ben Wade of Ohio, speaking as the head of a committee of Congress leaders who visited Lincoln's successor, said exultantly: 'Johnson, by the gods, we have faith in you! There will be no further trouble with rebels now.' That same Sunday evening, (April 16, 1865) Senator Charles Sumner and his friends held a meeting at the office of Secretary of War Stanton at which plans were discussed for substituting their scheme for reconstruction for that of the dead Lincoln---dead about forty hours.⁴⁴

Thus the stage was being set for the tragedy which has come down to us in the pages of history, as the Reconstruction Era. New characters, however, were to take the lead in Congress. One author in commenting upon

⁴⁴ Charles Willis Thompson, The Fiery Epoch, 1830-1877, The Bobbs-Merrill Co., Indianapolis, 1931, 323-324.

the work of H. Winter Davis says, "Davis, a man of great ability, would have done irreparable harm to this country had he not died in 1865."⁴⁵ Nevertheless, Davis' position was filled by a man, as worthy as his successor, Thaddeus Stevens. This is a sad note on which to end our chapter. We are glad that the limits set in our introduction included only the early congressional plan and its relations to Lincoln's plan. One wonders what would have happened IF LINCOLN HAD LIVED.

⁴⁵ Ibid., 321.

CHAPTER V.

LINCOLN'S PLAN IN EFFECT

The problem to be considered at present is to determine the significance of Lincoln's plan in operation. It is the purpose of this chapter to show the actual progress of Lincoln's reconstruction plan in the rebel states. The oblivion which has enshrouded Lincoln's plan has left the impression that the plan never materialized, never had any effect. The fact that the congressional Reconstruction Acts actually restored the rebel states to their proper relation with the Union favored this position. However, though it seems obvious, this is not true. Lincoln's plan had a very definite effect on some of the rebel states. At the outset, we must concede that these effects of Lincoln's plan were not lasting, but that is another question. How could Lincoln protect the governments restored according to his plan from the fatal blow by Congress? Lincoln was endeavoring to hold the ground he had gained when the assassin's bullet struck him down.

It is evident then that this chapter will have to be limited. The reconstruction of all the rebel states will not be discussed in these pages. Only those states that were affected by the Lincoln plan will be treated. Even of those concerned, all the actual steps taken toward restoration will not be completely outlined. The reason for this limitation is to be found in the fact that many of the efforts of the states concerned are very similar and would result in needless repetition of procedure. However, the essential

differences will be adequately pointed out.

A study of Lincoln's plan in effect results not merely in a chronological statement of the various steps taken in the rebel states but also in a discussion of certain problems that were concomitant with the reconstruction procedure itself. Furthermore, there are very distinct periods in the actual reconstruction process; namely, the early reconstruction efforts sanctioned by Lincoln before the Amnesty Proclamation and similar efforts after the promulgation of the proclamation. Finally, the obstacles laid in the way of the states by Congress must be given a prominent place in the problem as a whole.

Before we endeavor to discuss the actual steps toward state restoration, it is necessary to understand some of the fundamental problems or difficulties that had to be solved. Even though the preceding discussions have not stressed the fact, nevertheless one might have gathered from Lincoln's position that he favored the idea of viewing reconstruction from the practical rather than from the theoretical viewpoint. In the beginning the determination to follow such a procedure presented difficulties. We have seen that theories concerning the status of the rebel states were taking very definite form. Lincoln himself had a very definite theory of his own. Yet, he preferred to look upon reconstruction as a practical problem. The remarkable feature of the whole problem is that Lincoln's theory worked hand in glove with his position regarding reconstruction as a practical problem. This fact will become evident as we trace the reconstruction processes in the various states. However, Lincoln very emphatically stated this position in

his last public address. Lincoln favored meeting the situation as he found it. "We simply must begin with and mold from disorganized and discordant elements."¹ He was sorry to admit that useless discussion over theories of reconstruction had reaped no more fruit than discord among those who should have been united. For this very reason he affirmed that he had purposely forborne any public expression upon the question of the status of the rebel states. He then adds,

As appears to me that question (the status of the rebel states) has not been nor yet is, a practical material one, and that any discussion of it, while it thus remains practically immaterial, could have no effect other than the mischievous one of dividing our friends. As yet, whatever it may hereafter become, that question is bad as the basis of a controversy, and good for nothing at all---a merely pernicious abstraction....

Let us all join in doing the acts necessary to restoring the proper practical relations between these States and the Union, and each forever after innocently indulge his own opinion whether in doing the acts he brought the States from without into the Union, or only gave them proper assistance, they never having been out of it."

Furthermore, the absence of any very definite plan to be followed by those states willing and capable of coming back into the Union before the promulgation of the Amnesty Proclamation is very apparent. Lincoln's orders to his Major-Generals were broad. He informed them to meet the situation as they found it. That this was the procedure in those states is evident, for that very practical process evoked this statement from the Press:

¹ Nicolay and Hay, Works, XI, 85.

² Ibid., XI, 88; Even though Lincoln says here that he refrained from publicly expressing his opinion on the status of the states, yet this does not deny the fact that he had a very definite theory. The statements quoted earlier concerning Lincoln's theory were private utterances.

Those who are so busy with their fantastical, divergent and contradictory theories and speculations as to how the Union is to be, or may be rebuilt, seem entirely to overlook these practical processes and facts which exist and are going on before our eyes. Even while they are wrangling and quarreling about plans, the work is progressing upon a plan its own.³

These few facts give some definite evidence that Lincoln favored the practical viewpoint.

Another problem was this: What principle should be followed regarding the number of loyal citizens? Should any loyal group in any state be capable of bringing about reconstruction? Is the "10%" minority advocated by Lincoln capable of giving a sufficient guarantee of a republican form of government? Should a majority of voters in a rebel state be required for restoration? Lincoln, as we shall see shortly, thought that as many loyal citizens as could be gathered together would be sufficient to restore the state during the period prior to his Amnesty Proclamation. After the Proclamation he favored the "10%" plan. Congress as we have seen in Chapter IV demanded a majority.⁴

A third problem was a military one. In all of the states restoration followed military occupation. The Union armies occupied the state with or without battle and paved the way for restoration. A loyal group submitted

³ Editorial; "Union and Reconstruction; Their Mode and Conditions," The New York Times, August 25, 1863, 5.

⁴ This problem has been discussed at sufficient length in Chapter IV. Therefore, the writer will not belabor the discussion any further. A very able and lengthy objection to the "loyal minority plan" can be found in Brownson's Quarterly Review, IV, #4, 488-490, October, 1863.

and promised cooperation with any plan to restore the state to the Union. The President generally permitted this loyal group to take the necessary steps, and he obliged the military to cooperate with this group and see to it that the necessary protection was provided. This problem will be discussed in more detail in the second and third sections of this chapter.

As a result of this military occupation, a political problem arose. Of course, all would not submit to the Union forces and many used every means at their disposal to oppose any measures favoring restoration. Furthermore, there sometimes were two opposing factions of UNIONISTS. In Louisiana, for example, a radical faction demanded reconstruction only on the basis of abolition. Another faction, called the "planting faction", drew up a plan of its own and sent delegates to Washington to present its interests and desires.⁵

The concluding problem we wish to note here is this: Could the precise social and political conditions which existed before the war be restored in the rebel states? A few idealists might believe this to be possible, but in general this could not be done. It seems quite evident that the whole economic, social, and political organism which existed before the war in the rebel states had been radically changed. "There is in them no recognized civil authority, no established domestic order, no enforced law." Most

⁵ Editorial; "Union and Reconstruction: Their Mode and Conditions," The New York Times, August 25, 1863, 5.

of the able-bodied whites---the bulwark of the community---had fled, been killed, or been driven into the rebel ranks by the Confederate conscription.

Furthermore,

Houses and towns have been ruined, property has been destroyed, trade has been annihilated, production has been stopped, by the ravages of the successive armies that have fought in these States and devastated them. Slavery, the great social, economical, and political mainstay of the South, the backbone of the Rebellion, and the cornerstone of the Southern Confederacy, has been broken down, torn up, shattered and rent into a myriad fragments...⁶

This summary though not detailed gives ample evidence of the tremendous difficulties that must be encountered to even approach a remedy by the reconstruction processes. With these few problems as a background we will now take up the actual processes of restoration.

The November elections of 1860 offered conclusive evidence to the legislature of South Carolina, at least, that the Union was doomed. On the 7th of December, therefore, an act was passed by the legislature calling a state convention to meet at Columbia on the 17th of December for the purpose of withdrawing from the Union. On assembling at Columbia the delegates discovered that an epidemic of smallpox was infesting the city, so they adjourned to Charleston. On the 20th the ordinance of secession by unanimous consent of the one hundred and sixty-nine delegates was adopted. South Carolina was

⁶ Ibid., 4.

the first to withdraw from the Union.⁷ Mississippi followed South Carolina by adopting the ordinance January 9. By June 8, 1861, all the rebel states had withdrawn.⁸ We have just seen when the rebel states withdrew, now let us turn to the problem of reconstruction.

In dealing with the early mode of reconstruction; that is, the period of reconstruction prior to December, 1863, we will consider the status of Missouri, Kentucky and Maryland. In reality they were never considered out of the Union, even though in the case of Missouri the rebels gained control for a time, set up a rebel government and passed an ordinance of secession. A state of war had existed in Missouri for a year and a half. Once the Confederates were driven out by the Union armies, steps were taken to restore Missouri to her former status. There were attempts at restoration in other rebel states in this period, but, since confusion might result if the process is broken up into two periods, the early procedure in these states will be included in the third section dealing with reconstruction after the amnesty.

In general, no restoration took place in any of the rebel states

⁷ Documentary Source Book of American History, edited by William MacDonald, The Macmillan Co., New York, 1926, 423.

⁸ It is not necessary for our purpose to give a detailed account of procedure in all the states, but it is interesting to note the date of the ordinance of secession of the other states: "Florida, January 10; Alabama, January 11; Georgia, January 19; Louisiana, January 24; Texas, February 1; ratified by the people, February 23; Virginia, April 17, ratified May 23; Arkansas, May 6; North Carolina, May 20; Tennessee, May 7, by the legislature, ratified June 8." McLaughlin, note 22, 603. It is also worthy of note that Missouri, Kentucky, West Virginia and Maryland are not included in this list.

without first being preceded by triumph of the Union Armies. However, this fact would not eliminate the possibility of finding a group of loyal citizens in these states before the success of the military, just as it is equally true that Confederate sympathizers remained after Union occupation. By August, 1863, Missouri was indisputably in possession of the Federal Government and her state government had been restored. By this time she had a governor as loyal as any; she had a legislature as staunchly Union as any that assembled under the shadow of the flag; she had by this time made provision for the gradual emancipation of all the slaves within her borders; she had 25,000 volunteers in the service of the Union and 60,000 enrolled militia who had all taken and subscribed to the vital oath of allegiance to the Constitution of the United States; finally, she had her civil government restored.⁹ How was this restoration brought about? The loyal element acting in primary capacity and through the convention deposed the rebel governor and appointed a loyal one. The delegates in convention dissolved the rebel legislature and ordered the election of a new one. They annulled the ordinance of secession and registered statutes of fealty. The whole state in all its departments and offices, with all its officers was reorganized. This work went on slowly and steadily, regardless of factional differences, month after month until the complete restoration was accomplished.¹⁰

In Maryland and Kentucky no such process was necessary. It seems

⁹ Editorial; "Union and Reconstruction; Their Mode and Conditions," The New York Times, August 25, 1863, 5.

¹⁰ Ibid., 5.

that the rebel element was for a time all but dominant. Maryland was saved from revolution by the ingenuity of Governor Hicks. Kentucky was saved from participation in the rebel cause by the forced resignation of the secessionist governor, Magoffin, and of members of the legislature who favored secession.

During this same period, the status of West Virginia was in question. Western and Eastern Virginia were equally affected by the ordinance of secession ratified at the Richmond Convention. In the course of time the rebel army was driven out of West Virginia. The people of this section, then, gathered together and proceeded to restore the state government following a procedure very similar to that outlined above concerning Missouri.¹¹ The question soon arose whether or not this government was the state government of Virginia. Lincoln, we know, considered the Pierpoint government as the legitimate state government.

What was the position of some of the other States by August 1863? There were at that time three other states which were ready to be rebuilt. Hope was also being entertained to increase that number to six.

There are at this moment three Southern States lying at our feet, which have been thrown into disintegration and chaos by the rebellion, but which are ready to be rebuilt, by the hand of the master-builder and statesman, upon Union foundations. I refer to Tennessee, Mississippi, and Louisiana. Before Winter comes, or, at all events, before it is over, their number will be increased by the addition of Alabama, Arkansas, and Texas....

But at all events, at this moment our military lines

¹¹ Ibid., 5.

include all the State of Tennessee, excepting its eastern or mountainous quarter, which is loyal already, and which our troops will occupy at convenience. We have also expelled the rebel armies from Mississippi and command that State; and the same may be said of Louisiana, where only a few bandit hordes oppose the authority of the government.¹²

The early attempts at reconstruction regardless of problems and difficulties of no small moment were encouraging to the President. However, Lincoln hoped for larger and more successful movements after the promulgation of the Amnesty Proclamation. We will now attempt to follow the restoration plans in Louisiana.

Over a year before the "10%" plan was announced, Union victories on the Gulf coast brought the possibility of early reconstruction to Louisiana. Military commissions were set up in the conquered state with a military governor. At this time Lincoln favored the procedure in which the loyal citizens would take the first steps toward restoration. Therefore, when Hon. John E. Bouligny, a citizen of Louisiana, applied to him for permission to attempt restoration, Lincoln obliged Bouligny with a letter to be shown to Major-General Butler, Governor Shepley, and all having military and naval authority in the state of Louisiana. The letter stated the purpose of Bouligny's mission; namely, to solicit loyal citizens to carry on the restoration. Once such a group was formed they were to elect members to the Congress of the United States, establish a state legislature, and elect state officers.

¹² Ibid., 4.

Lincoln's instructions to the military was: "I shall be glad for you and each of you, to aid him and all others acting for this object, as much as possible." In other words, he wanted the military to use all available means of giving the people of Louisiana a chance to express their wishes at the elections; the military was to follow the forms of law "as far as convenient," but they were to get the expression of the largest number of people possible; all should "see how such action will connect with and affect the proclamation of September 22, (Emancipation Proclamation); they were also to see to it that the men elected were "gentlemen of character, willing to swear support to the Constitution as of old, and known to be above reasonable suspicion of duplicity."¹³ On November 21, 1862 Lincoln sent a letter to Governor Shepley informing the governor of his wishes: "I wish elections for congressmen to take place in Louisiana; but I wish it to be a movement of the people of the districts, and not a movement of our military or quasi-military authorities there."¹⁴

These instructions were followed out and on December 3, 1862 the congressional elections were held. In accordance with Lincoln's wishes no federal officer was a candidate and a half-vote was polled. The canvassing

¹³ "Letter of Lincoln to Gen. B. F. Butler, Governor Shepley, and all Having Military and Naval Authority under the United States Within the State of Louisiana, October 14, 1862," Nicolay and Hay, Works, VIII, 61-62. An indorsement to this letter noted that similar letters were sent to General Grant, Governor Johnson and others in Tennessee, dated October 21, 1862 and to General Steele, Governor Phelps, and others in Arkansas, November 18, 1862. Ibid., 62.

¹⁴ Ibid., VIII, 80-81.

committee affirmed that the election had been legal. Congress admitted the representatives.¹⁵ However, the necessary steps to restore the state government moved much more slowly. Meanwhile, Lincoln published his Amnesty Proclamation. About a month later he sent a letter to Major-General Banks encouraging him to "proceed with all possible dispatch, using your own absolute discretion in all matters" in order to restore Louisiana as speedily as possible.¹⁶

On March 13, 1864, Lincoln sent a letter of welcome to Michael Hahn as the first governor of reconstructed Louisiana. Since a convention was soon to be held in Louisiana, Lincoln offered some advice:

'Now you are about to have a convention, which, among other things will probably define the elective franchise. I barely suggest for your private consideration, whether some of the colored people may not be let in---as for instance, the very intelligent, and especially those who have fought gallantly in our ranks. They would probably help in some trying time to come, to keep the jewel of liberty within the family of freedom. But this is only a suggestion, not to be public, but for you alone.' He afterwards gave to Hahn the powers previously held by the military governor.¹⁷

In April, 1864, a convention in Louisiana created a constitution which among other things provided for the abolition of slavery. "The popular vote in favor of this constitution was 6836 as compared to 1566 for rejection."¹⁸ Since the affirmative vote was more than ten percent of the voters of 1860, Lincoln gave his full support to this new state government.¹⁸ In the latter

¹⁵ Ibid., VIII, Note 1, 80.

¹⁶ Ibid., IX, 282.

¹⁷ Don C. Seitz, Lincoln the Politician, Coward-McCann, Inc., New York, 1931,

¹⁸ J. G. Randall, Civil War and Reconstruction, 702.

part of this same year the elections to the state and federal offices were held. These elections gave rise to factional difficulties, probably at the instigation of congressional sympathizers, and the validity of the elections under state law was challenged. Faction also expressed itself in a bitter military opposition to the new government of Louisiana. Lincoln was very much displeased and sent a rather sharp criticism of the military activities to Major-General Hurlbut. After pointing out that the military had overstepped its authority, Lincoln concluded:

To make assurance against misunderstanding, I repeat that in the existing condition of things in Louisiana, the military must not be thwarted by the civil authority; and I add that on points of difference the commanding general must be judge and master. But I also add that in the exercise of this judgment and control, a purpose, obvious, and scarcely unavowed, to transcend all military necessity, in order to crush out the civil government, will not be overlooked.¹⁹

This letter solved the military difficulty but the political problem remained. Congress was to settle that.

As a prelude to the congressional action it is well to note what Benjamin Wade and H. Winter Davis thought of the governments set up by Lincoln in Louisiana and Arkansas:

They are mere creatures of his (Lincoln's) will. They cannot live a day without his support. They are mere oligarchies, imposed on the people by military orders under the forms of election, at which generals, provost-m Marshals, soldiers and camp-followers were the chief actors, assisted by a handful of resident citizens, and urged on to premature action by private letters from the President.²⁰

¹⁹ Nicolay and Hay, Works, X, 268-269.

²⁰ Editorial article: "To the Supporters of the Government," New York Daily Tribune, August 5, 1864, 5.

These sentiments hint at the way the wind was blowing. Lincoln's efforts would be held at naught, as soon as Congress was given an opportunity to act.

In the Senate, February 18, 1865, a motion was made by Senator Trumbull for the recognition of the government of Louisiana. It was hinted that recognition should also be given to Arkansas. Mr. Trumbull said:

The principle upon which the committee have reported this joint resolution, if adopted by the Senate, would be made applicable of course to any other State. This had been referred separately to the committee, and it was thought best to act upon one case first.²¹

The majority of the Senate was unquestionably in favor of the resolution, but five Republican senators very ingeniously prevented its passage. Charles Sumner was sustained by Wade and Chandler, purely from objective reasons, of course, when the former asked for a postponement of the discussion. The discussion was postponed from day to day. The resolution never did come to a vote in the Thirty-eighth Congress. In concluding the congressional position we have but to note:

Uncertainty concerning the Louisiana question continued till Lincoln's death; ultimately the state found it necessary to go the wretched road of reconstruction which Congress was later to prescribe.²²

²¹ Cong. Globe, 2nd Sess., 38th Congress 1011. The Joint Resolution concerned is this: "Resolved, That the United States do hereby recognize the government of the State of Louisiana, inaugurated under and by the convention which assembled on the 6th day of April, A.D., 1864, at the city of New Orleans, as the legitimate government of said State, entitled to the guarantee and all other rights of a State government under the Constitution of the United States." Cong. Globe, Ibid., 1011.

²² Randall, 702.

Before we conclude this problem of reconstruction in Louisiana, it will be well to note Lincoln's last words on the subject. In his last public address, April 11, 1865, he defended his position and clearly expressed his views on the restored Louisiana government. As regards the censure Lincoln incurred from some for a "supposed agency" of his in setting up and favoring the new state government of Louisiana, he answers, "In this I have done just so much, and no more than the public knows."²³ He further adds that his Cabinet gave wholehearted approval to his plans. He admits that he sent several letters to General Banks but "Such has been my only agency in getting up the Louisiana government."²⁴ As to sustaining this government, he further adds;

As to sustaining it, my promise is out, as before stated. But as bad promises are better broken than kept, I shall treat this as a bad promise, and break it whenever I shall be convinced that keeping it is adverse to the public interest; but I have not yet been so convinced.²⁵

Lincoln here referred to the promise of protection to the restored state governments which he made in the annual message, December 8, 1863. It is evident that he meant to do all in his power to see to it that this promise was kept. He admitted that the number of loyal citizens upon which the government rested was only 12,000 and that it would be much better if the number were 20,000, 30,000 or even 50,000. It would be better, too, if the intelligent negroes and those negroes that bore arms for the Union were given the

²³ Nicolay and Hay, Works, XI, 85.

²⁴ Ibid., 87.

²⁵ Ibid., 87.

franchise. Nevertheless, he believed;

Still, the question is not whether the Louisiana government, as it stands, is quite all that is desirable. The question is, will it be wiser to take it as it is and help to improve it, or to reject and disperse it? Can Louisiana be brought into proper practical relation with the Union sooner by sustaining or by discarding her new State government?²⁶

Lincoln then met the issue squarely. He believed that if the state government were rejected and spurned, the Federal government would have done its utmost to disorganize and disperse the loyal citizens. In effect the Federal government would have said to the white man, "You are worthless or worse; we will neither help you or be helped by you;" and to the blacks, "This cup of liberty which these, your old masters, hold to your lips we will dash from you, and leave you to the chances of gathering the spilled and scattered contents in some vague and undefined when, where, and how."²⁷ On the other hand, if the Federal government recognized and sustained the government of Louisiana, the converse of all this would become true. The 12,000 would be encouraged "to adhere to their work, and argue for it, and proselyte for it, and feed it, and grow it, and ripen it to a complete success."²⁸ In concluding this speech, Lincoln made a general application that is very important. This statement should be kept in mind while reading the following pages.

What has been said of Louisiana will apply generally to the other States. And yet so great peculiarities pertain to each State, and such important and sudden changes occur in the same State, and withal so new and unprecedented is the whole case

26. Ibid., 89.

27 Ibid., 90.

28 Ibid., 90.

that no exclusive and inflexible plan can safely be prescribed as to details and collaterals. Such exclusive and inflexible plan would surely become a new entanglement. Important principles may and must be inflexible. In the present situation, as the phrase goes, it may be my duty to make some new announcement to the people of the South. I am considering, and shall not fail to act when satisfied that action will be proper.²⁹

What did Lincoln mean by those last two sentences? What action was he considering? All these questions are unanswerable. Four days after these words were spoken, Lincoln's lips were rigid, never to utter another command.

A very similar picture of reconstruction in Tennessee could be outlined in detail. However, it seems unnecessary to recount the entire procedure again. The more striking points will be pointed out. The early steps toward restoration were taken under the guidance of Andrew Johnson. Lincoln had appointed him military governor of Tennessee shortly after the occupation of that state by the military in 1862. Johnson had gathered together loyal citizens who by convention and delegation initiated the restoration program.³⁰ Factional difficulties also arose in Tennessee. One faction favored Lincoln's plan, the other considered the measures as irregular. In September 1864, a convention was held in Nashville, which was followed by another in January, 1865. These conventions were given little consideration for many looked upon

²⁹ Ibid., 91-92.

³⁰ A fine treatment of these early steps will be found in an Editorial, "Union and Reconstruction; Their Mode and Conditions", The New York Times, August 25, 1863, 5; cf. also Michlay and Hay, Works, IX, 116-117, a letter from Lincoln to Johnson.

them as mere bodies of private citizens without valid authority. The work of these conventions included the abolition of slavery and the repudiation of the secession ordinance. An election was finally held February 22, 1865, the above mentioned amendments were ratified, and on March 4, W. G. Brownlow was chosen governor. Just before Andrew Johnson assumed the Vice-Presidency, he issued a proclamation recognizing that Tennessee had met Lincoln's conditions regarding reconstruction. The presidential electors, chosen irregularly, were neither recognized nor were their votes counted in the electoral vote of 1865. As regards the Congressmen from Tennessee, their position was identical with that of the representatives from Louisiana. At the Thirty-seventh Congress the state's representatives were recognized by the House, but neither Senators nor Representatives were admitted to the Thirty-eighth (1863-1865). Injury was added to insult in the case of the Tennessee Congressmen in December, 1865, for at the opening of the Thirty-ninth Congress they were denied seats even though a citizen of their state was then President of the United States.³¹

Very similar steps toward restoration were taken in Arkansas under Lincoln's guidance. It seems that Arkansas went into the rebellion reluctantly. If Union military support could have been given to Arkansas as it had been given to Missouri, Kentucky, and West Virginia, it is highly probable that this state would have remained loyal, but lack of assistance meant that she must succumb to rebel domination. Any Union expedition into Arkansas was almost sure of success, but no steps were taken until August, 1863. By

³¹ Randall, 702-703 passim.

September, 1863 General Steele with his Union army had occupied Little Rock. From here he set about to gain control of a large part of the state. Almost immediately a vigorous Union movement toward reconstruction was launched. Meetings were held to restore the state according to the conditions outlined in the President's Amnesty Proclamation.³² By December 29, 1863 some 7,000 citizens had voluntarily come to Little Rock to take the oath of allegiance and 5,000 joined the Union army.³³ January 5, 1864 Lincoln sent a letter to Major-General Steele outlining the procedure to be followed. He wished that Steele concentrate his attention on those districts that were most likely to accept the oath and other conditions. For the former he provided blanks to be filled out and kept as permanent records.³⁴ In another letter, January 20, 1864, Lincoln outlined the procedure to be followed in the elections which were to take place on the 28th of March.³⁵

Meanwhile, a popular reconstruction movement had so far progressed that a formal convention of delegates met at Little Rock January 8, 1864. In reality the convention consisted of representative delegates from only twenty-two of the fifty-four counties of the state. This convention adopted an amended Constitution;

It declared the act of secession null and void; it abolished slavery immediately and unconditionally; and it wholly repudiated the Confederate debt. The Convention ordained a provisional State government and appointed and inaugurated Isaac Murphy provisional governor and adopted a schedule providing for an election to be held on March 14, 1864, to adopt

³² Nicolay and Hay, History, VIII, 409-411, passim.

³³ Editorial; "Progress in Arkansas," The New York Times, Dec. 29, 1863, 4.

³⁴ Nicolay and Hay, Works, IX, 277-278.

³⁵ Ibid., IX, 289-291.

or reject the constitution and to elect a full list of State and county officers, a State legislature, and Members of Congress.³⁶

It seems that not all the details of the progress in Arkansas were sent to Lincoln before he had written his letter of January 20th; however, as soon as he had been informed, he acquiesced in the plans of the convention.³⁷

The practical difficulties were solved by a proclamation issued by General Steele, February 29, 1864. "The election will be held and the returns made in accordance with the schedule adopted by the Convention, and no interference from any quarter will be allowed to prevent the free expression of the loyal men of the State on that day."³⁸ The elections were held on March 14, 1864. The results of the election were the adoption of the Constitution by a total vote of 12,179 to 226; Isaac Murphy was elected governor. The votes cast were representative of forty counties.

Within a month the civil administration was functioning; the legislature was organized; and representatives were elected to Congress. The Senators and Representatives went to Washington and presented their credentials, but Congress refused to admit them to seats.³⁹ Lincoln's only comment on the stand Congress had taken was this;

I understand that Congress declines to admit to seats the persons sent as senators and representatives from Arkansas. These persons apprehend that, in consequence, you (Gen. Steele) may not support the new State government there as you otherwise would. My wish is that you give that government and the

³⁶ Nicolay and Hay, History, VIII, 415.

³⁷ Nicolay and Hay, Works, IX, 304. A telegram to Governor Murphy.

³⁸ Nicolay and Hay, History, VIII, 416.

³⁹ Nicolay and Hay, Works, X, 139-140. A letter to General Steele.

people there the same support and protection that you would if the members had been admitted, because in no event, nor in any view of the case, can this do any harm, while it will be the best you can do toward suppressing the rebellion.⁴⁰

Further sentiments of Lincoln on the position of Congress have already been outlined in our previous discussion on reconstruction in Louisiana.

In concluding this topic of reconstruction in effect according to Lincoln's plan we might say a word about the other rebel states. Some few and uncertain steps were taken in other rebel states. For example, Lincoln sent his secretary, John Hay, with a commission as Major to Major-General Quincy A. Gillmore, the commanding officer in Florida. Hay was to indicate the steps to be taken.⁴¹ After the fall of Richmond, Virginia, April 3, 1865, Lincoln discussed reconstruction procedure with ex-Justice Campbell of the Supreme Court, but this plan was broken up by Secretary Stanton. In the brief span of a few days between these conferences and Lincoln's death, nothing of note developed.⁴²

The other States are hardly worthy of note, primarily, because of unsuccessful attempts at restoration even after the rebels were conquered, as happened, for instance, in Mississippi. All the states that actually were seriously affected by Lincoln's plan have been discussed.

⁴⁰ Nicolay and Hay, Works, X, 139-140. A letter to General Steele.

⁴¹ Don C. Seitz, 401.

⁴² A fine article on these conferences according to supposedly-eye witnesses is very interesting. cf. Robert Stiles "Lincoln's Restoration Policy for Virginia," Magazine of American History, XXII, 209-223, and another article by same title adding more data, 487-488.

Lincoln's purpose was to anticipate the need of drastic reconstruction. He desired to put his practical plan progressively into operation as military victories brought the rebel states one by one under Union control. At least he wanted some of the states to be sufficiently advanced toward restoration that complete restoration would be easy and natural. Because of his practical viewpoint, he was willing to countenance imperfections for the sake of speedy and generous reconstruction. These were his primary aims; they were not to be accomplished. "As often happens in the American system of government, President and Congress had worked at cross purposes, and nothing substantial had been accomplished."⁴³ The sad note of Lincoln's plan according to some is the lack of a provision to bring about the condicio sine qua non; namely, the all important element of COOPERATION between the executive and legislative branches. Yet, who could blame him for not attempting the IMPOSSIBLE?

⁴³ Randall, 706.

CRITICAL ESSAY ON AUTHORITIES

I---SOURCE MATERIAL.

Lincolnia:

Complete Works of Abraham Lincoln, ed. by John G. Nicolay and John Hay, new and enlarged twelve volume edition, F. D. Tandy Co., c. 1905, Lincolnia documents compiled by Lincoln's secretaries.

A Compilation of the Messages and Papers of the Presidents, 1789-1897, compiled by James D. Richardson; Volume VI contains the messages and papers of Lincoln and Johnson, 1861-1869; documentary material, Government Printing Office, Washington, 1896-1900. John G. Nicolay and John Hay, Abraham Lincoln: A History, 10 Vols., The Century Co., New York, 1890; VIII, IX, X, were very useful for our problem; as secretaries to Lincoln the authors were very well equipped for the task undertaken, the references in the margin were helpful but not always direct enough to make source verification easy.

Governmental Sources:

Congressional Globe, The Congressional Globe Office, City of Washington, 1861-1865; the material to be found in the Globe is invaluable for the comments by Congressmen in Chapter II on the constitutionality of Lincoln's plan; in Chapter IV on the congressional plan, and in Chapter V on the effect in the rebel states; various appendices for Chapter IV will amply bear out this statement. Documentary Source Book of American History, 1606-1926, ed. by William MacDonald, the Macmillan Co., New York, 1926. Select Statutes and Other Documents Illustrative of the History of the United States, 1861-1898, ed. by William MacDonald, the Macmillan Co., New York, 1909; these source books were very valuable throughout the research; the second mentioned contains sixty-two more documents on the period 1861-1898 than the former work. Readings in American Constitutional History, 1776-1876, ed. by Allen Johnson, Houghton Mifflin Co., New York, 1912 and Documents of American History, ed. by Henry S. Commager, S.S. Crofts and Co., New York, 1934. This work, though in general good for the case references, yet omitted a full line in quoting from 7 Wallace 726, the case being Texas v. White without indication of the omission. Commager, 61. Two other works should be included here because of the contemporary data they contain with reference to actions of Lincoln; Lincoln and the Civil War in the Diaries and Letters of John Hay, selected by Tyler Dennett, Dodd, Mead and Co., New York, 1939; this an intensely interesting work as well as very valuable for the sidelights and incidents mentioned; Hay scatters names, nick-names, and "other" names about like the wind does snowflakes, but his comments throw a floodlight on the period. Gideon Welles, Diary of Gideon Welles, Houghton Mifflin Co., New York, 1911. 3 Vols. Very little can be found here concerning Lincoln's plan.

List of Cases:

Prize Cases, 2 Black 635-699. (1862)

Texas v. White, 7 Wallace 703-741. (1869)

Mississippi v. Johnson, 4 Wallace 475 (1867)
Georgia v. Stanton, 6 Wallace 50 (1867)
Martin v. Mott, 12 Wheaton 19, (1827)
Luther v. Borden, 7 Howard 1-88 (1849)

Newspapers referred to:

Directly,

The New York Times
New York Daily Tribune
Chicago Tribune

Indirectly,

New York Daily News
National Intelligencer
Richmond Daily Dispatch
New York World
New York Staats Zeitung
New York Courrier des Etats Unis
New York Journal of Commerce
New York Commercial Advertiser
New York The Evening Post

II---SECONDARY SOURCE MATERIAL.

James G. Randall, The Civil War and Reconstruction, D. C. Heath and Co., New York, 1937; undoubtedly one of the best recent works on the subject; very well documented and excellently written; contains an ample bibliography, 885-924, which is selected according to subject matter. James G. Randall, Constitutional Problems Under Lincoln, D. Appleton and Co., New York, 1926. A scholarly and important study of such topics as treason, habeas corpus, martial law, etc. John William Burgess, The Civil War and the Constitution, 1866-1876, C. Scribner's Sons, New York, 1902; one of the few historians who deals with the constitutional aspect of Lincoln's plan in any detail; Doctor Burgess (Ph.D., LL.D.) was professor of Political Science and Constitutional Law 1876-1912 and dean of the faculty of Political Science at Columbia University 1890-1912; his viewpoint on the Lincoln problem is decidedly that of a "State-Suicide" theorist; his interpretations are the result of much reasoning and close argument. James Kendall Hosmer, Outcome of the Civil War, Harper and Bros., New York, 1907; A very fine general treatment of the problem, amply footnoted and fine critical essay on sources. William A. Dunning Essays on Civil War and Reconstruction and Related Topics, Macmillan Co., New York, 1898; Fine treatment of Reconstruction but very little on Lincoln's plan, in fact it is not mentioned as such; has a clear and concise treatment of the theories of reconstruction. William A. Dunning, Reconstruction, Political and Economic, 1865-1877, Harper and Bros., New York, 1907; critical essay on authorities is very good, 324-357; Lincoln's reconstruction policy, 13-16, is just a general treatment. Andrew C. McLaughlin, A Constitutional History of the United States, D. Appleton-Century Co., New York,

Mississippi v. Johnson, 4 Wallace 475 (1867)

Georgia v. Stanton, 6 Wallace 50 (1867)

Martin v. Mott, 12 Wheaton 19, (1827)

Luther v. Borden, 7 Howard 1-88 (1849)

Newspapers referred to:

Directly;

The New York Times

New York Daily Tribune

Chicago Tribune

Indirectly;

New York Daily News

National Intelligencer

Richmond Daily Dispatch

New York World

New York Staats Zeitung

New York Courrier des Etats Unis

New York Journal of Commerce

New York Commercial Advertiser

New York The Evening Post

II---SECONDARY SOURCE MATERIAL.

James G. Randall, The Civil War and Reconstruction, D. C. Heath and Co., New York, 1937; undoubtedly one of the best recent works on the subject; very well documented and excellently written; contains an ample bibliography, 885-924, which is selected according to subject matter. James G. Randall, Constitutional Problems Under Lincoln, D. Appleton and Co., New York, 1926. A scholarly and important study of such topics as treason, habeas corpus, martial law, etc. John William Burgess, The Civil War and the Constitution, 1866-1876, C. Scribner's Sons, New York, 1902; one of the few historians who deals with the constitutional aspect of Lincoln's plan in any detail; Doctor Burgess (Ph.D., LL.D.) was professor of Political Science and Constitutional Law 1876-1912 and dean of the faculty of Political Science at Columbia University 1890-1912; his viewpoint on the Lincoln problem is decidedly that of a "State-Suicide" theorist; his interpretations are the result of much reasoning and close argument. James Kendall Hosmer, Outcome of the Civil War, Harper and Bros., New York, 1907; A very fine general treatment of the problem, amply footnoted and fine critical essay on sources. William A. Dunning Essays on Civil War and Reconstruction and Related Topics, Macmillan Co., New York, 1898; Fine treatment of Reconstruction but very little on Lincoln's plan, in fact it is not mentioned as such; has a clear and concise treatment of the theories of reconstruction. William A. Dunning, Reconstruction, Political and Economic, 1865-1877, Harper and Bros., New York, 1907; critical essay on authorities is very good, 324-357; Lincoln's reconstruction policy, 13-16, is just a general treatment. Andrew C. McLaughlin, A Constitutional History of the United States, D. Appleton-Century Co., New York,

1935; exceptionally good for some constitutional aspects, but the author does not pass judgment on the constitutionality of Lincoln's plan. Charles Warren, The Supreme Court in United States History, Little Brown and Co., Boston, 1923, 3 Vols.; a recognized authority on problems involving the Supreme Court; his comments on the Prize Cases were very interesting. W. L. Fleming, Documentary History of Reconstruction, 1865 to Present, A. H. Clark Co., Cleveland, 1906-1907, (2 Vols.) discusses the theories of reconstruction very clearly. John Bach McMaster, A History of the People of the United States During Lincoln's Administration, D. Appleton and Co., New York, 1927; A general history of the period; ample footnote references; clearly written. Charles Hallan McCarthy, Lincoln's Plan of Reconstruction, McClure Phillips and Co., New York, 1901. The author's purpose seems to be to treat the political events of Tennessee, Louisiana, Arkansas and Virginia from the time of their secession to their restoration with some relation to Lincoln's ideas and efforts toward restoration. He discusses Lincoln and the Anti-Slavery question, the rise of the Congressional Plan and the controversy between the Legislative and Executive branches of the government in Johnson's administration. A concise statement of Lincoln's plan is noticeably lacking. The author's viewpoint is very much different from that taken by the present writer. Charles Willis Thompson, The Fiery Epoch, 1830-1877, The Bobbs-Merrill Co., Indianapolis, 1931; No footnotes, but in general has good historical data; helpful for various comments; he states in his preface that he has written a great deal on the subject during the last thirty years. Don C. Seitz, Lincoln, the Politician, Coward-McCann, Inc., New York, 1931, a book with a popular appeal, no footnotes. Frederic L. Paxson, The American Civil War, Henry Holt Co., New York, 1911, a small general work on the subject. Samuel Knox Wilson, S.J., American History, Loyola University Press, Chicago, 1939; one of the finest and best organized texts on general American history; the definition of reconstruction as well as others in the work are clear and concise. Albert J. Beveridge, Abraham Lincoln, 1809-1858, Houghton Mifflin Co., New York, 1928, (2 Vols.) Undoubtedly the best biography of Lincoln for the period it covers; one's only regret is that Beveridge did not live to finish this work; his scholarly pen would certainly have given us very valuable information on our problem. Claude G. Bowers, The Tragic Era, Houghton Mifflin Co., Cambridge, 1929; as the sub-title informs us the book deals with the revolution after Lincoln; was not helpful for the problem.

Magazine Articles;

Orestes Brownson, "Art. IV---1. The Return of the Rebellious States to the Union. Letter from the Hon. William Whiting. New York Tribune, August 11th, 1863. 2. Union and Reconstruction. Their Mode and Conditions. A letter from Washington New York Times, August 25th, 1863." Brownson's Quarterly Review, Third New York Series, Vol. 4, #4, 481-511. a lengthy discussion of a fiery editor on Lincoln's reconstruction activity. It would be too mild a comment to say that Brownson was opposed to the executive action and merely voices his sentiments; however, the article is very interesting. Orestes

Brownson, "Art. V. Annual Message of the President to Both Houses of Congress. Washington, December 1, 1862." Brownson's Quarterly Review, Third New York Series, Vol. 4, #1, 88-116. This article is a commentary on the main points of Lincoln's speech to Congress. The tone of the article is adversely critical. Henry Winter Davis, "Winter Davis on Reconstruction," Nation, I, 680. A letter to the editor of Nation. It appeared in the magazine Thursday, November 30, 1865 but was written by Davis at Baltimore, October, 1865. It is a lengthy criticism of the Executive plan of reconstruction. T.G. Shearman, "Power of Congress over Reconstruction," Nation, II, 390. This article is particularly aimed at Johnson's endeavors toward restoration, but treats primarily of "Executive Reconstruction," and therefore is pertinent to the problem. One of the clearest articles of the opposition.

Appendix I List of Important Documents Pertaining to Lincoln's Plan

1861

March 4 First Inaugural Address. Lincoln's ideas on slavery as the only substantial cause of the Civil War.
Richardson, Messages and Papers, VI, 134.

1862

December 1 Second Annual Message
Richardson, Ibid., 136.

1863

December 8 Third Annual Message
Richardson, Ibid., 190.
Proclamation of Amnesty
Nicolay and Hay, Works, IX, 218-223.

1864

March 26 Proclamation About Amnesty. Supplementary proclamation to first Amnesty Proclamation.
Nicolay and Hay, Ibid., X, 58-60.

July 8 Proclamation Concerning Reconstruction.
Nicolay and Hay, Ibid., X, 152-154.

1865

February 5 Lincoln's proposed resolution for Congress.
A subject for conference with his Cabinet.
Nicolay and Hay, Ibid., XI, 1-3.

April 11 Lincoln's Last Public Address
Nicolay and Hay, Ibid., XI, 84-92.

Appendix II A Summary of the Wade-Davis Bill

The first section of the bill provided that in the rebellious states, the President shall appoint a provisional governor. The duty of this official is to take charge of the civil administration until the state government shall be recognized according to the conditions laid down in the bill.

The second section declares that upon the cessation of military resistance in any such state and after the people have sufficiently returned to obedience to the Constitution and laws of the United States, the governor shall direct his subordinates to enroll all white male citizens resident in that state and to request each to take the oath to support the Constitution. During this enrollment those who take the oath and those who refuse are to be listed. These lists are to be returned to the provisional governor. If those who take the oath are a majority, the governor by proclamation is to invite the loyal people to elect delegates to a convention where they will declare the will of the people to reestablish a state government subject to and in conformity with the Constitution.

The third section pertains to the delegates for the convention. The governor is to determine the number and the place for voting, meanwhile, he is also to provide sufficient military protection to keep peace.

The fourth section provides for the election of the delegates by loyal white male citizens and announces the qualifications which bar one from being a delegate; namely, any participation, civil or military, in the rebellion.

The fifth section outlines the commissioners' duties in holding the election. All voters are to be subscribed in poll-books. These books are to be returned to the governor.

The sixth section explains the duties of the provisional governor after the elections. He is to designate the place for the convention, preside over the deliberations of the same, and administer the oath of allegiance to each delegate before the latter takes his seat in the convention.

The seventh section stipulates what the convention must accomplish. In general, recognition of the Constitution and laws of the United States must be declared. Then, the convention must adopt the following provisions, "hereby prescribed by the United States in the execution of the constitutional duty to guarantee a republican form of government

to every state, and incorporate these provisions in the state constitution:

First. No person who has held or exercised any office, civil or military, except offices merely ministerial and military offices below the grade of colonel, state or confederate, under the usurping power, shall vote for or be a member of the legislature or governor.

Second. Involuntary servitude is forever prohibited and the freedom of all persons is guaranteed in said state.

Third. No debt, state or confederate, created by or under the sanction of the usurping power, shall be recognized or paid by the state.

The eighth section provides for the steps to reestablish a republican form of government, to ordain and to adopt the Constitution containing the above provisions. This Constitution will be submitted to the people of the state for adoption; if the majority of the people adopt it, the governor shall certify the same to the President, who after obtaining the assent of Congress, shall, by proclamation recognize this and no other as the established government of that state. Furthermore, from this date of recognition, the Senators, Representatives, and electors may be elected in the said state.

The ninth section outlines the measures to be taken if the convention refuses to establish the state government on the conditions outlined in Sec. 7. It will then be the duty of the President to hold another convention when he sees fit.

The tenth section notes the duties of the provisional governor until the state is recognized by the Federal Government. He must see to it that the federal and state laws [the laws of the state in force when the government was overthrown] and the provisions of this act are enforced. Furthermore, the President is to appoint such officers as are necessary for civil administration.

The eleventh section provides for the collection of taxes, the requisite number of officers, and the use of the taxes.

The twelfth section stipulates that "all persons held to involuntary servitude or labor in the states referred to are emancipated and discharged therefrom, and they and their posterity are declared to be forever free." If any such persons are retained in slavery, the courts by writ of habeas corpus shall discharge them.

The thirteenth section provides a penalty for violation of Sec. 12; that is, a fine of not less than \$1500 and imprisonment of from 5 to 20 years.

The fourteenth section denies citizenship in the United States to any rebel civil or military officer above the rank of colonel.

Cong. Globe, 38th Cong., 1st Sess., 3448-3449.

Appendix III Summary of the Speech of Henry Winter Davis Delivered
in the House of Representatives March 22, 1864
on Reconstruction in the Rebel States

The Bill: "Mr. Speaker the bill which I am directed by the committee on the rebellious States to report is one which provides for the restoration of civil government in States whose governments have been overthrown.

Purpose: "It prescribes such conditions as will secure not merely civil government to the people of the rebellious States but will also secure the people of the United States permanent peace after the suppression of the rebellion....

Who should support it? "It is entitled to the support of all gentlemen upon this side of the House, whatever their views may be on the nature of the rebellion, and the relation in which it has placed the people and States in rebellion toward the United States;... It is also entitled to the favorable consideration of gentlemen upon the other side of the House who honestly and deliberately express their judgment that slavery is dead.... It does not address itself to that class of gentlemen upon the other side of the House...who look for political allegiance to the men who head the rebellion in the South, and say to them, let us

'Once more

Erect the standard there of ancient night

Yours be the advantage all, mine the revenge.'

It purports, sir, not to exercise a revolutionary authority, but to be an execution of the Constitution of the United States, of the fourth section of the fourth article of that Constitution, which not merely confers the power upon Congress, but imposes the duty of guarantying to every State in this Union a republican form of government. That clause rests in the Congress of the United States a plenary, supreme, unlimited political jurisdiction, paramount over courts, subject only to the judgment of the people of the United States, embracing within its scope every legislative measure necessary and proper to make it effectual; and what is necessary and proper the Constitution refers in the first place to our judgment, subject to no revision but that of the people.

The extent of the legislative power: It recognizes no other tribunal. It recognizes the judgment of no court. It refers to no authority except the judgment and will of the majority of Congress, and of the people on that judgment, if any appeal from it. It is one of that class of plenary powers of a political

character conferred on Congress by the Constitution, such as the authority to admit new States into the Union, the authority to make rules and regulations for the government of Territories of the United States....

The nature of the case which Congress must deal with:

"In other words what is that monster of political wrong which is called secession? It is not, Mr. Speaker, domestic violence.... It is not invasion.... It is, therefore, the act of the people of the States, carrying with it all consequences of such an act. And therefore it must be either a legal revolution... or it is a usurpation against the authority of the United States, the erection of governments which do not recognize the Constitution of the United States, which the Constitution does not recognize, and, therefore, not republican governments of the States in rebellion....

Appeal to Taney's decision in the R. I. Cases to support this prerogative of Congress:

"The Supreme Court in declining jurisdiction of political questions such as these, in the Famous Rhode Island cases, declared, by the mouth of Chief Justice Taney, in the Presidency of John Tyler, during the southern domination in support of the acts of John Tyler that a military government, established as the permanent government of a State, is not a republican government in the meaning of the Constitution, and that it is the duty of Congress to suppress it. That duty Congress is now executing by

its armies. He further said in that case that it is the exclusive prerogative of Congress---of Congress, and not of the President---to determine what is and what is not the established government of the State; and to come to that conclusion it must judge what is and what is not a republican government, and its judgment is conclusive on the Supreme Court, which cannot judge of the fact for itself, but accepts the fact declared by the political department of the government....

Discussion of these questions:

- (1) "What jurisdiction does the duty of guarantying a republican form of government confer, under such circumstances, upon Congress?"
- (2) "What right does it give?"
- (3) "What laws may it pass?"
- (4) "What objects may it accomplish?"
- (5) "What conditions may it insist upon, and what judgment may it exercise in determining what it will do?...."

Condition of Rebel States and 10% plan:

"There is no State some portion of whose territory is not pressed by rebels in arms whom we have not expelled or whom we cannot expel. There is no portion of the rebel States where peace has been so far restored that our military power can be withdrawn for a moment without instant insurrection. There is no rebel State held now by the United States

enough of whose population adheres to the Union to be intrusted with the government of the State. One tenth cannot control nine tenths. Five tenths are nowhere willing to undertake the control of the other five tenths.... You can get a handful of men in the several States who would be glad to take the offices if protected by the troops of the United States, but you have nowhere a body of independent, loyal partisans of the United States, ready to meet the rebels in arms, ready to die for the Republic, who claim the Constitution as their birthright, count all other privileges light in comparison, and resolved at every hazard to maintain it....

Conclusion
on this
point:

"In my judgment it is not safe to confide the vast authority of the State governments to the doubtful loyalty of the rebel States until armed rebellion shall have been trampled into the dust, until every armed rebel shall have vanished from the State, until there shall be in the South no hope of independence and no fear of subjection, until the United States is bearded by no military power and the laws can be executed by the courts and sheriffs without the ever-present menace of military authority. Until we have reached that point this bill proposes that the President shall appoint a civil governor to administer the government under the laws of the United States and the laws in force in the States respectively at the outbreak of the rebellion, subject, of course, to the necessities of military occupation.

It is the policy of an ancient soldier that I adopt:

'Trust none;

For oaths are straws, mens faiths are wafer-cakes,

And hold-fast is the only dog, my duck;

Therefore caveto be thy counsellor.'

When military opposition shall have been suppressed, not merely paralyzed, driven into a corner, pushed back, but gone, the horrid vision of civil war vanished from the South, then call upon the people to reorganize in their own way, subject to the conditions that we think essential to our permanent peace and to prevent the revival hereafter of the rebellion, a republican government in the form that the people of the United States can agree to.

Three modes
to attain
this purpose:

"Now for that purpose there are three modes indicated. (1) One is to remove the cause of the war by an alteration of the Constitution of the United States -prohibiting slavery everywhere within its limits. That, sir, goes to the root of the matter, and should consecrate the nation's triumph. But there are thirty-four States---three fourths of them would be twenty-six. I believe there are twenty-five represented in Congress; so that we on that basis cannot change the Constitution.... If adopted

it (a proposed amendment) still leaves the whole field of civil administration of the States prior to the recognition of State government, all laws necessary to the ascertainment of the will of the people, and all restrictions on the return to power of the leaders of the rebellion, wholly unprovided for.

The amendment of the Constitution meets my hearty approval; but it is not a remedy for the evils we deal with.

(2) The next plan is that inaugurated by the President of the United States in the proclamation of the 8th of December, called the amnesty proclamation. That proposes no guardianship of the United States over the reorganization of the government, no law to prescribe who shall vote, no civil functionaries to see that the law is faithfully executed, no supervising authority to control and judge of the election....

Now you will observe that there is no guarantee of law to watch over the organization of that government. It may combine all the population of a State; it may combine one tenth only; or ten governments may come competing for recognition at the door of the Executive mansion. The Executive authority is pledged; Congress is not pledged. It may be recognized by the military power and may not be recognized by the civil power, so that it would have a doubtful existence, half civil and half military, neither a temporary government by law of Congress, nor a State government, something as unknown to the Constitution as the rebel government that refuses to recognize it....

(How would the President's plan affect the existence of slavery? The answer to this rests on the validity of the emancipation proclamation.) "Sir, if that proclamation be valid, then we are relieved from all trouble on that score. But, if that proclamation be not valid, then the oath to support it is without legal sanction, for the President can ask no man to bind himself by an oath to support an unfounded proclamation or an unconstitutional law, even for a moment, still less fall it shall have been declared void by the Supreme Court of the United States....

(But what is the proclamation which the new government must not contravene?) The proclamation recognizes "That certain negroes shall be free, and that certain other negroes shall remain slaves." Therefore, the proclamation recognizes the existence of slavery. Therefore, it does not solve the fundamental problem of the war.

"I do not desire to argue the legality of the proclamation of freedom. I think it safer to MAKE IT LAW...."

"If the proclamation free a slave it diverts a right sanctioned by a law which he cannot repeal; and if it be not repealed, it would seem to protect the right it confers. Under the act of 1862 the President is authorized to use the negro population for the suppression of the rebellion; while the rebellion lasts his proclamation in law exempts the slave from the duty of obeying his master, but after the rebellion is extinguished the master's rights are in his own hands, subject only to the opinion of the courts on the legal effect of the proclamation, without a single precedent to sanction it, and opposed by the solemn assertions of our Government against the principle worked to authorize it.

Gentlemen are less prudent or less in earnest than I am, if they will risk the great issues involved in this question on such authorities before courts of justice.

(3) "By the bill we propose to preclude the judicial question by the solution of a political question. How so? By the paramount power of Congress to reorganize governments in those States, to impose such conditions as it thinks necessary to secure the permanence of republican government, to refuse to recognize any governments there which do not prohibit slavery forever.

What Davis wants Congress to do:

"Ay, gentlemen, take the responsibility to say, in the face of those who clamor for speedy recognition of governments tolerating slavery, that the safety of the people of the United States is the supreme law; that their will is the

supreme rule of law, and that we are authorized to pronounce their will on this subject. Take the responsibility to say that we will revise the judgments of our ancestors; that we have experience written in blood that they have not; that we find now, what they darkly doubted, that slavery is really, radically inconsistent with the permanence of republican governments; and that being charged by the supreme law of the land on our conscience and judgment to guaranty, that is to continue, maintain, and enforce, if it exist, to institute and restore when overthrown, republican governments throughout the broad limits of the republic, we will weed out every element of their policy which we think incompatible with its permanence and endurance. The purpose of the bill is to preclude the JUDICIAL question of the validity and effect of the President's proclamation by the decision of the political authority in reorganizing the State governments....

Until gentlemen find such a limit to the discretion of Congress under the paramount duty imposed, not conferred, upon Congress to guaranty republican governments, until gentlemen draw their line of demarkation and show that Congress has not the jurisdiction to remove what it thinks incompatible with the permanence of republican governments, I shall rest the argument where it is now....

Conclusion:

"Until Congress has assented, there is no State government in any rebel State, and none will be recognized except such as recognize the power of the United States. So that we come down to this:...whether we will exert the power which the Constitution confers upon us, and...whether in our judgment it is not time to assert that authority. (Davis refers to the doctrine of Daniel Webster to fortify this point.) He (Webster) maintained it to be the great fundamental of the American Government that legislation shall guide every political change, and that it assumes that somewhere within the United States there is always a permanent, organized legal authority which shall guide the tottering footsteps of those who seek to restore governments which are disorganized and broken down.

This bill is an effort to inaugurate in this great emergency, and to apply to the benefit of ourselves and our posterity this great principle of American political law which was expounded by the first greatest expounder of the Constitution."

Cong. Globe, 1st Sess., 38th Cong.,
Appendix, 82-85.

Appendix IV A Chronological Chart of Speeches in the House of
Representatives Pertaining to the "Bill to
Guarantee Certain States a Republican Form of
Government."

1863

December 15 Origin of Select Committee on Rebellious States
Cong. Globe, 1st Sess., 38th Cong., 33-34.

1864

January 18 Mr. Davis of Maryland asks unanimous consent to report
from the select committee on the rebellious states
a bill to guarantee certain states a republican form of
government, and to have it ordered to be printed and
made the special order for first Tuesday of February,
after the morning hour, and from day to day until
disposed of.

Davis' motion was denied.

Ibid., 259.

February 15 Mr. Davis made same motion. The bill was reported
and read the first and second time. An order was given
to have the bill printed and recommitted to the
Committee.

Ibid., 669.

March 22 The bill came up for discussion for the first time.
Mr. Davis addressed the House on the bill.
Ibid., Appendix, 82. cf. a summary of this
speech in appendix III of this work.

Speech of Mr. Beaman.

Ibid., 1243-1247.

April 19 Speech of Mr. J. C. Allen.
Ibid., 1737.

Speech of Mr. Smithers.

Ibid., 1739-1743.

April 20 Speech of Mr. Stevens. He offers a substitute for the
bill proposed by Mr. Davis. The motion of Stevens was
not in order.

Ibid., 1764.

- April 29 Speech of Mr. Scofield.
 Ibid., 1970-1972 passim.
 Mr. Stevens offers an amendment to the bill, i.e., a
 substitute for the bill under consideration.
 Ibid., 1970 passim.
 Speech of Mr. Dawson.
 Ibid., 1970-1974 passim.
 Speech of Mr. Williams.
 Ibid., 1974-1981.
 Speech of Mr. Baldwin.
 Ibid., 1981-1985.
- April 30 Speech of Mr. Thayer.
 Ibid., 2002-2006.
 Speech of Mr. Yeaman.
 Ibid., 2006-2011.
 Speech of Mr. Longyear.
 Ibid., 2011-2014.
- May 2 Speech of Mr. Donnelly.
 Ibid., 2036-2039.
 Speech of Mr. Denison.
 Ibid., 2039-2041.
 Speech of Mr. Stevens.
 Ibid., 2041-2043.
 Speech of Mr. Strouse.
 Ibid., 2043-2049.
- May 3 Speech of Mr. Perham.
 Ibid., 2063-2067.
 Speech of Mr. Kernan.
 Ibid., 2067-2069.
 Speech of Mr. Gooch.
 Ibid., 2069-2071.
 Speech of Mr. Perry.
 Ibid., 2071-2074.
 Speech of Mr. Wood.
 Ibid., 2074-2078.
 Speech of Mr. Kelly.
 Ibid., 2078-2081.
- May 4 Speech of Mr. Cox.
 Ibid., 2095-2102.
 Speech of Mr. Boutwell.
 Ibid., 2102-2105.

Speech of Mr. Pendleton.

Ibid., 2105-2107.

The question of amendment and preamble voted down.

Vote on bill 73 yeas; 59 nays.

Bill passed.

Ibid., 2107-2108.

May 5

Recording of votes of six Representatives on bill.

1 yea; 5 nays. Total count is: 74 yeas; 64 nays.

Ibid., 2132.

Appendix V

A Chronological Chart of Speeches in the Senate
 Pertaining to the "Bill to Guarantee Certain
 States a Republican Form of Government."

1864

- May 5 "A Message from the House of Representatives, by Mr. McPherson, its clerk, announced that the House of Representatives had passed a bill (No. 244) to guaranty to certain States whose governments have been usurped or overthrown a republican form of government, in which it requested the concurrence of the Senate."
Cong. Globe, 1st Sess., 38th Cong., 2117.
- May 27 "Mr. Wade from the Committee on Territories, to whom was referred the bill (H. R. No. 244) to guaranty to certain States, whose governments have been usurped or overthrown, a republican form of government, reported it with amendments."
Ibid., 2510.
- June 30 Senator Wade of Ohio made a motion that all prior orders be postponed and that the bill be taken up by the Senate. His motion was not carried. The discussion was postponed.
Ibid., 3407.
- July 1 The bill was brought up for discussion by Wade before the Senate as a Committee of the Whole.
- Three amendments had been made by the Senate Committee, one pertaining to the salary of the provisional governor, and two pertaining to a change of a phrase in Sec. 2--- "all white male citizens" to "all male citizens" and the same phrase in Sec. 3, respectively. All three amendments were rejected because Wade desired the bill to be disposed of as soon as possible. After the vote rejecting the amendments was taken, Wade continued to outline reasons for hurrying the bill through the Senate unaltered.
- Senator Brown offered another amendment pertaining to the status of the rebel states. Wade announced this disapproval and continued with his speech.
- Mr. Carlile then obtained the floor and favored Brown's amendment. Discussion continued into the evening session on the point of Congress' power to guarantee to the rebel states a republican form of

government. Wade defended the power, Carlile opposed it on the basis that "every department of the Government is equally bound" to insure a republican form of government. Therefore, Congress could not demand this power as its sole prerogative as the bill proposed. He kept insisting upon the restoration of the old government and not the imposition of a new government as the bill proposed.

Ibid., 3448-3453, passim.

Speech of Mr. Carlile.

Ibid., 3451-3454; 3457; 3459; 3460.

Speech of Mr. Wade.

Ibid., 3448-3454 passim; 3457; 3459; 3460.

Vote taken on Brown's amendment. It was adopted.

Ibid., 3460.

Mr. Sumner proposes an amendment. Debate; vote; rejection.

Ibid., 3460.

Mr. Trumbull asked for vote on bill. Vote was taken; bill passed by vote; 26 yeas; 3 nays.

Mr. Brown moved to amend the title of the bill to read: "A bill concerning States in insurrection against the United States." The title was changed.

Ibid., 3461.

July 2

Message from the House: House disagreed to amendment of Senate and asked a conference on the bill. Davis, Ashley, and Dawson were appointed managers for the conference.

Ibid., 3482.

Senate took up the bill again. Wade asked the Senate to recede from its amendment and pass the bill. The Senate receded.

July 4

Message from the House stating that the Speaker of the House had signed the bill; and bill was then signed by the president of the Senate pro tempore.

Appendix VI A Summary of the Wade-Davis Manifesto as it
 Appeared in the New York Daily Tribune, August 5, 1864

Definition: The Wade-Davis Manifesto is a document written by Benjamin Wade and H. Winter Davis containing the answer of the congressional group to Lincoln's proclamation of July 8, 1864. It is an able and caustic protest against the President's action of the pocket veto of their bill.

Purpose: "The supporters of the administration are responsible to the country for its conduct; and it is their right and duty to check the encroachments fo the Executive on the authority of Congress, and to require it to confine itself to its proper sphere. It is impossible to pass in silence the Proclamation without neglecting that duty.... The Proclamation is neither an approval nor a veto of the bill; it is therefore a document unknown to the laws and the Constitution of the United States.

So far as it contains an apology for not signing the bill, it is a political manifesto against the friends of the government.

So far as it proposes to execute the bill which is no law, it is a grave Executive usurpation."

It is fitting that the facts necessary to enable the friends of the administration to appreciate the apology and usurpation be spread b before them.

Criticism:

- A. The attack on Lincoln's reasons for not signing the bill.
 1. Was the time element a reason worthy of the name?
 - a. The President signed other bills which were presented at the same time.
 - b. If the President wanted more time, he could have had it. "Within that hour, the time for the sine die adjournment was three times postponed by votes of both houses; and the least intimation of a desire for more time by the President to consider the bill would have secured further postponement." The President had resolved not to sign the bill before it was presented. "The time of presentation, therefore, had nothing to do with his failure to approve it."
 2. Ignorance of the bill?
 - a. This is not a good reason either. "Ignorance of its contents is out of the question." Why? The bill was before the House for more than a month and passed the Senate without material amendment.

Furthermore, a bill substantially the same in material points and identical in the points objected to by the Proclamation had been laid before the President, at his request, for consideration in the winter of 1862-1863. "There is, therefore, no reason to suppose the provisions of the bill took the President by surprise." In fact, the very opposite was true. The President knew the provisions so well that he had decided upon preventing the bill long before the bill passed the Senate. Proof: Senator Doolittle's correspondence with General Banks' department stating that Lincoln would retain the bill and thereby defeat it. "Had the Proclamation stopped there it would have been only one other defeat of the will of the people by the Executive perversion of the Constitution."

3. Was the President's desire that the State Governments of Arkansas and Louisiana be recognized a valid reason?
 - a. The President's governments in these states should be overthrown.
 - (1) Because these governments are "shadows of governments," "mere creatures of his will," "mere oligarchies."
 - (2) "The President, by preventing this bill from becoming law, holds the electoral votes of the Rebel States at the dictation of his personal ambitions."
 - (3) The executive action presents to us a danger of rebel supremacy in those States. "Seriously impressed with these dangers, Congress 'the proper constitutional authority,' formally declared that there are no State Governments in the Rebel States, and provided for their erection at a proper time; and both the Senate and the House of Representatives under the authority of what the President calls the Free Constitution and Government of Arkansas, rejected their Senators and Representatives. The President's Proclamation 'holds for naught' this judgment, and discards the authority of the Supreme Court, and strides headlong toward the anarchy his Proclamation of the 8th of December inaugurated."
 - (4) The Executive defies the Constitutional authority of Congress which he granted in the Amnesty Proclamation.
4. Is the President's denial of the power of Congress a good reason?
 - a. "But the bill no where proposes to abolish Slavery in the States.

The bill did provide that all slaves in the Rebel States should be manumitted." Furthermore, Congress gave the President the military power to suppress the rebellion and, therefore, the authority he used to emancipate the slaves.

- B. The attack upon the President's purpose to execute the bill as if it were law by his plenary dictatorial power.
1. "A more studied outrage on the legislative authority of the people has never been perpetrated.
Congress passes a bill; the President refused to approve it, and then by proclamation puts as much of it in force as he sees fit, and proposes to execute those parts by officers unknown to the laws of the United States and not subject to the confirmation of the Senate.
The President's purpose to instruct his military governors 'to proceed according to the bill'---a makeshift to calm the disappointment its defeat has occasioned---is not merely a grave usurpation but a transparent delusion.
He cannot 'proceed according to the bill' after preventing it from becoming law."
 2. They believe the President held for naught the necessary provisions of Sec. 7 of the bill.
 - a. The President holds for naught' that resolve of Congress, because he is unwilling 'to be inflexibly committed to any one plan of restoration,' and the people of the United States are not to protect themselves unless their enemies agree to it.
- C. The contrast between the President's plan and the congressional plan.
(This section is quoted in full in the text of the thesis.)

Conclusion: "Such are the fruits of this rash and fatal act of the President---a blow at the friends of his Administration, at the rights of humanity, and at the principles of republican government.

The President has greatly presumed on the forbearance which the supporters of his Administration have so long practiced, in view of the arduous conflict in which we are engaged, and the reckless ferocity of our political opponents.

But he must understand that our support is of a cause and not of a man; that the authority of Congress is paramount and must be respected; that the whole body of the Union men of Congress will not submit to be impeached by him of rash and unconstitutional legislation; and if he wishes our support, he must confine himself to his executive duties--to obey and execute, not make laws--to suppress by arms armed Rebellion, and leave political reorganization to Congress.

If the supporters of the Government fail to insist on this, they become responsible for the usurpation which they fail to rebuke, and are justly liable to the indignation of the people whose rights and security, committed to their keeping, they sacrifice.

Let them consider the remedy for these usurpations, and, having found it, fearlessly execute it."

Editorial: "To the Supporters of the Government,"
New York Daily Tribune, August 5, 1864, 5.