

**Congress and Civil Rights:
The Civil War Years, 1861-1865**

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January 9, 2017

The Civil War fought between 1861-1865 upended the country's social, economic, and political status quo. During these years, congressional Republicans enacted civil rights reforms that had a dramatic impact on the future. Lincoln's Emancipation Proclamation and the 13th Amendment, in particular, rightly stand as monumental achievements. Yet the intra-party division between committed abolitionists and more moderate free-soilers undermined the hopes of those seeking wholesale revolution. We explore the political contestation and policy outcomes of these pivotal years as the Republicans in Congress battled internally to formulate policies that could unite the party, preserve the country, and eradicate slavery.

Prepared for presentation at the 2017 Annual Meeting of the Southern Political Science Association, New Orleans, LA.

Introduction

The societal standing of African Americans – especially those in the slave states – would undergo a seismic change in the four years that spanned the American Civil War. When President Abraham Lincoln took office in early March 1861, a last ditch effort was underway to keep the Union together by enticing the seven slave states of the Deep South that had seceded in the previous months to reconsider their decision. A proposed Thirteenth Amendment to the Constitution amendment had been passed in the waning days of the prior (36th) Congress that would have protected slavery where it existed, and this amendment had the shared support of Republicans in Congress and the incoming president. By early 1865, a different Thirteenth Amendment was passed (and would be ratified later that year); this one was Republican-led and would abolish slavery for all time.

The political path from guaranteeing slavery to providing freedom for African Americans is the subject of this essay. The process of change was not linear, and was influenced by political and military events that occurred during the war. Freedom was pushed first by Republicans in Congress, to the dismay (and often opposition) of President Lincoln, who preferred a more guarded approach. Lincoln's caution was a consequence of his desire to keep the remaining Border slave states in the Union.¹ Eventually, Lincoln's thinking on the war evolved, and pragmatic preservation of the antebellum status quo gave way to higher moral purpose: the eradication of slavery. And while Lincoln responded accordingly, through his Emancipation Proclamation, there was only so much that he could do as president; congressional action – through a constitutional amendment – was ultimately needed to put an end to slavery once and for all.

¹ For Lincoln's position on the Border states, and their role in the sectional conflict, see William C. Harris, *Lincoln and the Border States: Preserving the Union* (Lawrence: University Press of Kansas, 2011).

The Civil War years also saw the first discussions of how the Confederate states would be reintegrated into the Union at war's end. President Lincoln and Republicans in Congress had very different views on how "Reconstruction" should be handled. Lincoln preferred a setup that would allow a quick and relatively painless reconciliation, while congressional Republicans sought a more methodical and punitive process. These different paths would mean very different things for the way Southern whites and blacks would be treated in the reconciliation process, and issues involving the return to power of the white governing authority, the abolition of slavery, and the civil (and potential voting) rights of African Americans were intricately involved. Ultimately, these disagreements between Lincoln and the GOP Congress would foreshadow similar battles that would occur later, during the Andrew Johnson administration.

What becomes clear from the narrative of these years is that the congressional GOP increasingly found its voice and institutional footing. When the war began, the Republican Party was barely one half-dozen years old. It had risen to power as an anti-slavery party, specifically one built around an opposition to *slavery extension* in the Western territories. While some Republicans were abolitionists, most were not. Many were simply free-soilers who were opposed to the unfair economic and political advantages enjoyed by Southern slaveholders (who they often referred to as the "Slave Power" or "Slaveocracy"). Over the course of the Civil War, the Republicans in Congress divided over slavery (as it existed), the course and manner of abolition, and how Southern society should be re-envisioned (or not) after the war. Different perspectives would emerge – both moderate and radical – with each holding sway at different times. This would be the case going forward as well, during the Reconstruction years.

Our focus will be on the politics of the 37th (1861-63) and 38th (1863-65) Congresses, specifically those that related to slavery and the plight of African Americans. In detailing the

political initiatives during this time, we examine the congressional proceedings, individual roll-call votes, and eventual legislative outcomes. To guide the analysis, we break the remainder of the paper into 6 sections, each of which focuses on a particular issue, bill, or constitutional amendment: (1) Republican policy on slavery in 1861, the first year of the war; (2) the move to abolish slavery in the District of Columbia and passage of the two Confiscation Acts; (3) the initial battle between President Lincoln and the GOP Congress on Southern reconciliation; (4) the passage of the Thirteenth Amendment; (5) the enactment of the Freedman's Bureau; and (6) the back-and-forth between Lincoln and Congress over the Wade-Davis bill

I. Republicans and Slavery: Positions Prior to and Early in the War

On November 6, 1860, Republican Abraham Lincoln was elected President of the United States. Lincoln's election followed a divisive presidential campaign, wherein the Democratic Party was split by region, old-line Whigs were active in the Border States, and Republicans made inroads exclusively in the free (non-slave) states. Lincoln's victory in a four-man race – against Democrats Stephen Douglas (IL) and John C. Breckenridge (KY) and Constitutional Unionist John Bell (TN) – was seemingly the last straw in a decades-long battle between advocates of slavery and abolitionists. Specifically, the Republican Party had emerged as an organized response to the continued extension of slavery into the Western territories (and the politics and political decisions that made such extension possible). Those who defended slavery had, over the course of the preceding decade, won a series of important battles on with the Missouri Compromise, the War with Mexico, the Compromise of 1850, and the Kansas-Nebraska Act of 1854. But in the years directly preceding the outbreak of war, anti-slavery advocates began pushing back successfully. For example, they defeated of slavery extension into Kansas. As a

consequence, slaveholding leaders from various Southern states had threatened separating from the Union.

Lincoln's election spurred those threats into action. Lincoln was on record only for opposing slavery extension, and not the abolition of slavery "where it existed." Southern "fire eaters," however, viewed a Republican president as a natural enemy for their Peculiar Institution – and one that would inevitably seek slavery's demise in total. As a result, secession movements (and conventions) emerged quickly. South Carolina was the first state to secede (on December 20, 1860), with Mississippi (January 9, 1861), Florida (January 10, 1861), Alabama (January 11, 1861), Georgia (January 19, 1861), Louisiana (January 26, 1861), and Texas (February 1, 1861) following soon thereafter. On February 4, 1861, these seven states convened in Montgomery, Alabama, to form a new government – the Confederate States of America.

The response in Congress in the waning days of the lame-duck session of the 36th Congress was to try to turn back the clock by establishing some compromise that might put the Union (as it was) back together.² In the Senate, John J. Crittenden (A-KY) proposed an elaborate compromise built around six constitutional amendments and four congressional resolutions that would (among other things) prohibit Congress from legislating on slavery, including the District of Columbia; strengthen fugitive slave laws; and extend the Missouri Compromise 36° 30' line all the way to the Pacific Ocean (thereby allowing slavery extension in any future territories south of the line). Crittenden's proposal also stipulated that once adopted,

² These various compromise efforts are described in detail in David M. Potter, *Lincoln and His Party in the Secession Crisis* (New Haven: Yale University Press, 1942); Roy Franklin Nichols, *The Disruption of American Democracy* (New York: Macmillan, 1948); Kenneth M. Stampp, *And the War Came: The North and the Secession Crisis, 1860-61* (Baton Rouge: Charles Scribner's Sons, 1950); Daniel W. Crofts, *Lincoln and the Politics of Slavery: The Other Thirteenth Amendment and the Struggle to Save the Union* (Chapel Hill: University of North Carolina Press, 2016).

the compromise could not be repealed or amended.³ Senate Republicans, along with President Lincoln, rejected the plan as being too extreme – especially on the issue of slavery extension.

In the House, a simpler and more promising compromise was tried. Thomas Corwin (R-OH) proposed a constitutional amendment (H.J. Res. 80) – based on earlier proposals offered in the Senate by William H. Seward (R-NY) and in the House by Charles Francis Adams (R-MA) – that he believed would satisfy the concerns of both Republicans and his slave-state colleagues. It read:

No amendment shall ever be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.⁴

Corwin proposed his amendment as a joint resolution (H.J. Res. 80) on February 26, 1861.⁵ It was considered the next day, and initially failed to achieve the necessary two-thirds, 120-71.⁶ The House adjourned for the night, and on the following day, February 28, the membership agreed to reconsider the vote on the Corwin Amendment. This time it achieved the necessary two-thirds, 133-65.⁷ As Table 1 indicates, while a majority of Republicans voted against the Corwin Amendment, a significant minority (42.2 percent) voted with nearly every other House member to achieve the necessary vote total. Passage occurred largely because enough Republicans had been convinced to change their votes overnight (as GOP support on the initial vote was only 35.2 percent).

[Table 1 about here]

³ Peace Conference.

⁴ *Congressional Globe*, 36th Congress, 2nd Session, (February 26, 1861): 1236.

⁵ Corwin's amendment was actually offered as a substitute to Adams's much wordier amendment. It was adopted as a substitute on February 27, 1861, on a 120-61 vote. *Congressional Globe*, 36th Congress, 2nd Session, (February 27, 1861): 1264.

⁶ *Congressional Globe*, 36th Congress, 2nd Session, (February 27, 1861): 1264.

⁷ *Congressional Globe*, 36th Congress, 2nd Session, (February 28, 1861): 1285.

The joint resolution then went to the Senate, where Stephen Douglas (D-IL) served as floor manager. Time was of the essence, as the lame-duck session was soon to expire, and abolitionists in the Republican Party, like Charles Sumner (R-MA), attempted to delay in order to run out the clock. Eventually, a short and fierce debate was had, and on March 2, 1861, a vote was taken. The Corwin Amendment garnered exactly the two-third votes necessary to pass, 24-12.⁸ Just like in the House, a majority of Republicans voted against the joint resolution, but a large enough minority (40 percent) voted with the Democrats (and Americans) to achieve its passage.

President James Buchanan was “delighted with the result,” and affixed his signature to the Joint Resolution to Amend the Constitution of the United States (12 *Stat.* 251), aka the Corwin Amendment, even though he was not constitutionally obligated to do so. President-Elect Lincoln also supported the Corwin Amendment, advising members of Congress from his home state of Illinois to support it.⁹ Lincoln would validate the content of the Joint Resolution in his inaugural address, voicing the belief that he and his party had no “lawful right” or “inclination” to “interfere with the institution of slavery in the States where it exists.” Thus, per Daniel Crofts, “the man who would later be known as the Great Emancipator first came to power having just accepted a constitutional amendment designed to prevent any attack on slavery” where it was already entrenched.¹⁰

The Corwin Amendment was never ratified by the requisite number of states. Only Kentucky voted to approve the amendment (on April 4, 1861) before hostilities started between

⁸ *Congressional Globe*, 36th Congress, 2nd Session, (March 2, 1861): 1403.

⁹ Leonard L. Richards, *Who Freed the Slaves?: The Fight Over the Thirteenth Amendment* (Chicago: University of Chicago Press, 2015), 23. Daniel Crofts also contends that substantial circumstantial evidence exists that Lincoln “worked behind the scenes to get the amendment passed.” Crofts, *Lincoln and the Politics of Slavery*, 231.

¹⁰ Crofts, *Lincoln and the Politics of Slavery*, 236.

the North and South (with the bombardment of U.S Fort Sumter on April 12, 1861). Thereafter, only five states pursued some form of ratification.¹¹

Why did a significant portion of Republicans in Congress support the Corwin Amendment? Some of these “conciliators” felt that the narrowly written text of the amendment was consistent with general Republican ideology, which was predicated on eliminating the *spread* of slavery, but *not* the elimination of slavery where it was already in place. This had been Lincoln’s position all along, and many in the party felt similarly. Others backed the amendment for purely pragmatic reasons – as a way to support Southern Unionists and stop the secessionist slide of the remaining slave states. That is, eight slave states – Virginia, North Carolina, Tennessee, Arkansas, Kentucky, Maryland, Missouri, and Delaware – were still firmly in the Union, and support for the amendment was meant to reassure their leaders that their property in slaves was not being threatened.¹²

The firing on Fort Sumter by Confederate forces in April 1861, after Lincoln sought to resupply the beleaguered troops there, escalated the North-South conflict and hastened the move toward war. Lincoln immediately called for 75,000 volunteers, to support the Federal cause. And over the next two months, four more Southern states subsequently seceded and joined the Confederacy: Virginia, Arkansas, North Carolina, and Tennessee.¹³

Thus, the new (and smaller) 37th Congress – called into special emergency session by President Lincoln in July 1861 – was firmly controlled by the Republicans. Now that military

¹¹ These five were Ohio on May 13, 1861 (ratification would be rescinded on March 31, 1864); Rhode Island on May 31, 1861; Maryland on January 10, 1862; the “Restored Government of Virginia” (much of which would become the State of West Virginia) on February 13, 1862; and Illinois on February 14, 1862 (although there were conflicting decisions between the convention – which ratified the amendment – and a popular referendum that did not, and possibly invalidated the convention decision). See Crofts, *Lincoln and the Politics of Slavery*, 243-54.

¹² Crofts, *Lincoln and the Politics of Slavery*, 215, 226-27.

¹³ Dates of secession were: April 17 (Virginia), May 6 (Arkansas), May 20 (North Carolina), and June 8 (Tennessee).

operations had begun and restoration of the Union “as it was” seemed exceedingly unlikely, did Republican positions on slavery evolve? Not immediately. The pragmatic concern from earlier in the year remained – keeping the remaining slave states in the Union (and their male inhabitants out of the Confederate army). This group had shrunk to four – Kentucky, Missouri, Maryland, and Delaware – but many in the party, led by President Lincoln, felt that their loss would make sectional reconciliation (in some form) too great a burden to overcome.¹⁴

As a result, Unionist members of Congress from the four remaining slave states had considerable leverage, despite their small relative numbers. This became clear after the First Battle of Bull Run (First Manassas), on July 21, 1861, when the Confederate army routed the Union forces and forced them back to Washington, DC. Following Bull Run, the Republicans were, according to Herman Belz, “chastened by defeat and aware more than ever of the necessity of holding the border states in the Union.”¹⁵ This led to two Border state members – Unionist John Crittenden (KY) in the House and War Democrat Andrew Johnson (TN) in the Senate – to offer separate, but very similar, resolutions in their respective chambers. Together they specified the “War Aims” of the Union.

The text of the Crittenden (first) and Johnson (second) Resolutions were as follows:

[Clause 1] *Resolved by the House of Representatives of the Congress of the United States*, That the present deplorable civil war has been forced upon the country by disunionists of the southern States now in revolt against the constitutional Government, and in arms around the capital.

[Clause 2] That in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; this this war is not waged upon our part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and to preserve the Union with all the

¹⁴ See Harris, *Lincoln and the Slave States*.

¹⁵ Herman Belz, *Reconstructing the Union: Theory and Policy during the Civil War* (Ithaca: Cornell University Press, 1969), 24.

dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease.¹⁶

Resolved, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States now in revolt against the constitutional Government and in arms around the capital; that in this national emergency Congress, banishing all feeling of mere passion or resentment will recollect all of its duty to the whole country; that this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union, with all the dignity, equality, and rights of the several States unimpaired, that as soon as these objects are accomplished the war ought to cease.¹⁷

Both resolutions were clear in blaming the Southern states for the war, while identifying the Union's prime goal to be suppressing the "disunionist" insurrection, preserving the Constitution, and maintaining the rights and institutions of the States as they were (before the rebellion commenced). More to the point, as Belz notes, the resolutions were "supposed to convey that slavery was not, under any circumstances, to be interfered with, nor the rebellious states divested of any of their power or privileges."¹⁸

Both resolutions had the strong support of President Lincoln, who worried as much as anyone about the Border states (especially Kentucky) slipping out of the Union.¹⁹ As a result, when voting commenced on the two resolutions, the Republicans fell in line. As Table 2 indicates, on July 22, only two dissenting GOP votes emerged on the second clause of the Crittenden Resolution, and both parts passed by near-unanimous margins. The same was true of the Johnson Resolution three days later, as only one of 26 Republican senators defected, and the measure passed easily. That said, even amid the pressure to maintain a united front and support

¹⁶ *Congressional Globe*, 37th Congress, 1st Session, (July 22, 1861): 223.

¹⁷ *Congressional Globe*, 37th Congress, 1st Session, (July 25, 1861): 257.

¹⁸ Belz, *Reconstructing the Union*, 25.

¹⁹ Richards, *Who Freed the Slaves?*, 28-29.

their Commander in Chief, two dozen Republicans across the two chambers abstained on the resolution votes; many of these members would go on to adopt radical positions on post-war Reconstruction policy.²⁰

[Table 2 about here]

II. A Shift on Slavery: The Confiscation Acts

Through July 1861, Republicans in Congress had largely toed the line on maintaining (or not threatening) slavery where it existed, in keeping with Administration and Border state member preferences. But that fact was about to change. The exigencies of war forced the slavery issue into the political sphere in new and different ways, and provided strategic politicians with the ability to frame their responses so as to erode the traditional view of maintaining slavery rights at all costs. It was here that congressional Republicans first began to assert themselves and make inroads on eliminating slavery – not just in terms of its spread, but the institution itself. These initial GOP efforts would be encapsulated in two Confiscation Acts.²¹

As the war progressed, the notion that (a) the Union could squelch a rebellion by eleven Southern states while (b) operating as if the legalities that governed the institution – slavery – that drove the rebellion remained in place became increasingly untenable. While Crittenden, Johnson, and Lincoln preferred to keep slavery “in a box,” and somehow fight and conclude a civil war that would return the country to its set of pre-war institutions, events around them would end up shattering these naïve hopes.

²⁰ Belz, *Reconstructing the Union*, 27; Richards, *Who Freed the Slaves?*, 29.

²¹ Foundational works on the Confiscation Acts include Leonard P. Curry, *Blueprint for Modern America: Nonmilitary Legislation of the First Civil War Congress* (Nashville: Vanderbilt University Press, 1968), 75-100; Silvana R. Siddali, *From Property to Person: Slavery and the Confiscation Acts, 1861-1862* (Baton Rouge: Louisiana State University Press, 2005); John Syrett, *The Civil War Confiscation Acts: Failing to Reconstruct the South* (New York: Fordham University Press, 2005); Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War* (Chicago: University of Chicago Press, 2007).

The first event involved the actions of individual slaves themselves. As the Union army crept into Confederate territory, they began to encounter slaves – many of whom were fugitives from their masters. A key moment came on the evening of May 24, 1861, when three slaves who had been working to build fortifications for the 115th Virginia Militia at Hampton Roads decided to take a chance and flee. They paddled across the James River and approached Union-controlled Fortress Monroe at the mouth of the Chesapeake Bay. Major Benjamin Butler, in command at the fort, decided to treat the slaves as “contraband of war;” when approached by a Confederate emissary (under flag of truce) who sought their return under the Fugitive Slave Act of 1850, Butler replied that the law could only be invoked by U.S. citizens (which the Confederates, via their decision to secede, no longer were). This was a radical position at the time, as most Union commanders were turning away fugitive slaves or returning them their masters where possible.

Butler’s decision, while creating consternation for President Lincoln, found considerable support within the Republican Party. Secretary of War Simon Cameron, for example, publicly backed Butler. And the decision had far-reaching consequences – word spread within the slave society in the Upper South, and slaves began “freeing themselves” by departing their plantations and walking north. They sought refuge not only at Fortress Monroe, but also at other points behind Union lines.²² Thus, slaves’ pursuit of liberation from their masters, and their daily appearance in Union camps, provided a human face to the South’s “peculiar institution” – and had the effect, for many, of making slavery much more than a sterile public policy issue.

The second event was the First Battle of Bull Run. In the aftermath of the humiliating defeat, various members of Congress sought information – and through interviews with soldiers

²² Richards, *Who Freed the Slaves?*, 28-29.

involved in the battle learned of the critical role that slaves had played. Not as soldiers, of course, but as military support in a variety of key roles. They built and maintaining fortifications, resupplied ammunition, tended to the injured, maintained animal teams, cooked and dispensed food, etc. Through these various chores and activities, slaves allowed white Southerners to focus on soldiering – and killing Union troops.²³

The post-Bull Run information gathering thus helped many Republicans re-envision the slavery issue in more pragmatic terms. Slavery wasn't simply an "institution" that was established in the Constitution, and under the purview of the individual states, but rather was a major factor in the course of battles and perhaps the eventual outcome of the war. As a result, Republicans began asking themselves some hard questions. As Leonard Richards writes:

[Republicans] had voted for the Crittenden and Johnson Resolutions. They had agreed that Congress had not right to legislative against slavery in a state. But what about individuals who allowed their slaves to be used against the United States? Couldn't such traitors be punished? Didn't the laws of war authorize the seizure of any property, including slave property, used to aid the war effort directly?²⁴

In answering "yes" to these questions, the Republicans in Congress had reached a turning point. They were ready – at first, in a limited way – to attack slavery as an institution. The result was the First Confiscation Act. Authored by Senator Lyman Trumbull (R-IL), Chairman of the Judiciary Committee, the underlying bill (S. 25) sought to confiscate property used for insurrectionary purposes. Specifically, section four of the eventual law eliminated any claims of individuals on persons (slaves) who were employed directly or indirectly in hostile services against the United States. Thus, individuals in the South, rather than states, were the targets of the confiscatory language.

²³ Siddali, *From Property to Person*, 76-77; Syrett, *The Civil War Confiscation Acts*, 4; Richards, *Who Freed the Slaves?*, 30.

²⁴ Richards, *Who Freed the Slaves?*, 31.

While radical Republicans saw the First Confiscation Act as a step toward their preferred outcome – general emancipation for the population of Southern slaves – the provisions of the law were considerably more narrow. Thanks to amending activity done in the House, the legislation only applied to slaves used in military operations against the Union army (in support of the rebellion). And as John Syrett notes, these slaves “did not go free under the act; those claiming their services – the owners – simply forfeited their claim to them. The only liberty granted to [confiscated slaves] was not to remain slaves of rebels.”²⁵

While Border state Unionists and Democrats argued against the measure – on constitutional grounds and as a strategic prelude to emancipation – the measure passed easily, 61-48 in the House on August 3, 1861, and 24-11 in the Senate two days later.²⁶ As Table 3 indicates, the near-uniform Democratic and Unionist opposition was trumped by overwhelming Republican support. In the end, only 8 Republicans defected, as 57 (of 64) Republicans in the House and 23 (of 24) in the Senate voted for the First Confiscation Act.

[Table 3 about here]

President Lincoln signed the bill, but felt that the Republicans in Congress were moving too fast. The measure didn’t enjoy bipartisan support, and there was a very real concern that it could be struck down by the pro-slavery Supreme Court led by Chief Justice Taney. Nonetheless, Lincoln felt compelled to back his co-partisans. That said, he was not eager to enforce it, and did not pressure his Attorney General, Edward Bates, in that regard. (Bates, a conservative, had little interest himself.) As a result, the First Confiscation Act was mostly symbolic, as Union generals were effectively allowed to follow it or ignore it; some might behave as Butler did and confiscate, while others, like George McClellan, Don Carlos Buell, and Henry Halleck, all with Democratic

²⁵ Syrett, *The Civil War Confiscation Acts*, 6.

²⁶ *Congressional Globe*, 37th Congress, 1st Session, (August 3, 1861): 431; (August 5, 1861): 434.

leanings, were free to honor the Fugitive Slave Act and continue returning slaves to their Confederate masters.²⁷

Nevertheless, pressure for greater change continued. The new impetus sprang from the West, in the Border state of Missouri, which was undergoing its own civil war. Support for the rebellion was strong in Missouri, and pro-Confederate guerrilla forces jostled with pro-Union forces for control in various parts of the state.²⁸ Throughout July and August 1861, Major General John C. Frémont, Union commander in the West, struggled to turn the tide and eventually resorted to strong-arm tactics to restore order – he declared martial law throughout the state and went after civilians (bankers and planters) who were actively supporting the rebels. Specifically, Frémont declared that any individuals found to be directly or indirectly aiding the rebellion would have all real and personal property confiscated for public use, and their slaves set free.

Frémont’s proclamation – with its “emancipation clause” – sent shock waves through the North. Radical Republicans approved of his boldness, and Secretary of War Cameron sent along his hearty approval. President Lincoln, however, was not pleased. He requested that Frémont amend his order so that it complied with the First Confiscation Act – which allowed the seizure of only those slaves who were involved in military operations against the United States, and made no mention of “freedom” for them upon confiscation. Lincoln’s response was again driven by concerns about losing the Border states, as he received scores of letters from Unionists in Kentucky and Missouri condemning Frémont’s action. Frémont refused to comply with

²⁷ Siddali, *From Property to Person*, 91; Richards, *Who Freed the Slaves?*, 31-32.

²⁸ See Michael Fellman, *Inside War: The Guerilla Conflict in Missouri during the American Civil War* (New York: Oxford University Press, 1989). Pro-Confederate support was so strong in Missouri – as well as Kentucky – that the Confederate Congress recognized rump governments organized in these states and provided them with representation. See Kenneth C. Martis, *The Historical Atlas of the Congress of the Confederate States of America: 1861-1865* (New York: Simon & Schuster, 1994).

Lincoln's request, however, and tried to convince him that his judgment was sound and appropriate. As a result, in September, Lincoln revoked Frémont's order; six weeks later he relieved him of command and installed Henry Halleck, an opponent of slave confiscation, in his place.

Lincoln had effectively squelched Frémont's emancipatory initiative, and lowered the temperature in the Border states, but not without consequences. Support for emancipation was growing in the North, and radical Republicans in Congress were growing more frustrated with their president and increasingly desirous of positive action.²⁹ Lincoln was blindsided yet again as the second session of the 37th Congress opened, in December 1861, when Secretary of War Cameron issued his annual report. Along with the various facts and figures, Cameron also issued his opinions – strongly condemning the rebels and actively supporting property (including slave) confiscation. This was not surprising, given his earlier support of Butler and Frémont. But Cameron went farther by arguing for arming the slaves themselves (when necessary) and using them against the Confederates. Once again, Lincoln had to diffuse the situation, and assuage various interests in the Border state. He directed Cameron to collect all existing copies of his report and excise the offending text before reissuing it. A month later, he removed Cameron from his position and banished him (by making him minister to Russia).³⁰

Congressional Republicans had seen enough, and were now willing to engage with the president by taking action themselves. The first effort occurred in the House and was largely symbolic, but important. It involved an attempt by William Holman (D-IN) to have the House

²⁹ The Frémont episode in Missouri, Lincoln's response, and their various repercussions are discussed in Siddali, *From Property to Person*, 95-109; Syrett, *The Civil War Confiscation Acts*, 7-12; Richards, *Who Freed the Slaves?*, 32-37.

³⁰ Siddali, *From Property to Person*, 117-19; Richards, *Who Freed the Slaves?*, 40-41. Richards notes that Lincoln's decision to remove Cameron was not exclusively due to his overreach on the arming of slaves, but also likely involved other matters like "mismanagement, corruption, and abuse of patronage."

renew the Crittenden Resolution – maintaining the Constitution and preserving the rights of the states, and thus slavery where it existed. Much had changed between July and December, 1861, however. Thaddeus Stevens (R-PA), Chairman of Ways and Means, gained the floor and moved to table Holman’s motion. Stevens’ motion passed 71-65, with 70 of 88 Republicans voting in favor of tabling.³¹ This indicated a seismic shift, as Republicans who had almost uniformly supported the Crittenden Resolution in July were now on record as opposed to the pre-War status quo. Slavery – not just slavery extension, and not just slavery utilized in military operations against the Union – had thus become a viable target.

The second effort began in the Senate and involved a new confiscation bill. Republicans had grown frustrated with the narrowness of the First Confiscation Act and the general lack of enforcement on the part of many Union commanders. To make their wishes clear to generals like Henry Halleck, who were actively turning away fugitive slaves, a new, tougher law was needed. In early December, Judiciary Chairman Lyman Trumbull introduced a bill that would go far beyond the measure that he introduced earlier in the year (which became the First Confiscation Act).³² This new bill would confiscate *all* rebel property – including slaves, and not just those used in military operations against the United States. And, once confiscated, the slaves would be declared free.

Once offered by Trumbull, the bill, substitute bills, and confiscation more generally would be debated in Congress for the next seven months (effectively the remainder of the second session). Divisions of opinion would occur between conservatives (Democrats and Unionists, with a few Republicans) and Republicans, but also among Republicans (radicals and

³¹ *Congressional Globe*, 37th Congress, 2nd Session, (December 4, 1861): 15.

³² *Congressional Globe*, 37th Congress, 2nd Session, (December 4, 1861): 18-19.

moderates).³³ The nature of the confiscation debate would involve a number of themes – for example, the constitutionality of congressional action against slavery, congressional versus presidential authority on confiscation, how rebels should be punished and for how long, what form emancipation should take and how it should be enforced, and how the restoration of the South (back into the Union) should proceed. In the end, the ultimate law that was produced in the summer of 1862 would be a mish-mash of different ideological views, and one that, according to Leonard Curry (1968, 99), was “generally acknowledged to be ineffective and unworkable.”³⁴

Trumbull’s bill (S. 151), introduced on January 15, 1862, and taken up on February 25, was sweeping in nature.³⁵ It sought to confiscate all real and personal property of those in support of the rebellion, for all time (beyond the life of the person judged guilty). The U.S. military would assist with confiscation in areas where the U.S. courts could not operate. Slaves confiscated would be declared free, and should they choose, pursue voluntary colonization in “some tropical country” arranged by the president. (This was a concession to moderates within the GOP, like President Lincoln, who favored colonization.) Non-slave property seized would be sold, and proceeds deposited in the U.S. Treasury. Such proceeds would help pay for the war and compensate loyal citizens for property damage related to the rebellion.

Trumbull and his radical colleagues soon realized that their preferences on confiscation would not carry the day. Conservatives – Democrats and Unionists, by and large, but also some Republicans like Orville Browning (IL) and Jacob Collamer (VT) – were the most vocal in their

³³ For a description of the three ideological groups – conservatives, moderates, and radicals – see Hamilton, *The Limits of Sovereignty*, 23-28.

³⁴ Curry, *Blueprint for Modern America*, 99.

³⁵ *Congressional Globe*, 37th Congress, 2nd Session, (January 15, 1862): 334; (February 25, 1862): 942-44. The politics of the Second Confiscation Act are discussed in Curry, *Blueprint for Modern America*, 75-100; Syrett, *The Civil War Confiscation Acts*, 20-72; Siddali, *From Property to Person*, 120-250; Hamilton, *The Limits of Sovereignty*, 20-81.

critiques, as they attacked the constitutionality of Trumbull's bill, especially the disregard for private property rights. For conservatives, the seizure of property could only occur following an individual trial for treason – and, then, only for life. They blasted Trumbull for his willingness to confiscate in a blanket way via legislative edict and disavow the role for the judiciary entirely. Nevertheless, Trumbull and his radical allies could expect such critiques from their conservative opponents; if this was all they had to worry about, they would be fine. However, as Daniel Hamilton notes, the conservatives (led by Browning and Collamer) presented a “cohesive ideological counterattack that successfully drove a wedge between moderate and radical Republicans.”³⁶

John Sherman (OH), Henry Wilson (MA), and Daniel Clark (NH) would lead the moderate Republican opposition to Trumbull's bill. They fashioned a substitute, which Sherman introduced, that would limit property confiscation to civil and military leaders in the Confederacy only, thereby excluding ordinary Southerners who moderates held were largely swept along in the rebellion by secessionist elites. Their substitute also proposed a formal role for the judiciary and stipulated that property could be seized and put to use immediately, but transfer of title could only occur after individual judicial rulings. Slaves, however, would be set free upon confiscation; whether subsequent judicial rulings would also be required to “validate” their freedom was unstated (and thus perhaps open to legal interpretation).

The moderates' position eroded any sizeable (and pivotal) radical support on the Republican side of the aisle. In addition, the conservatives pushed their own substitute bill, written by Jacob Collamer. This bill required that the judiciary – rather the legislature – handle confiscation, and that individual treason trials must accompany each case of property seizure. In

³⁶ Hamilton, *The Limits of Sovereignty*, 48.

addition, upon conviction of the party in question, property could only be confiscated for life – not permanently.

Eventually, the various sides agreed to the creation of a select committee,³⁷ with Daniel Clark as chair, to author a new bill that might garner enough support.³⁸ That bill (S. 310) was reported on May 14.³⁹ The committee used Collamer’s conservative bill as a jumping-off point and built elements on top of it that would appeal mostly to moderates: all property of those aiding the rebellion would be forfeited upon a conviction (but only for life); property of civil and military leaders could be seized and held upon the completion of judicial proceedings; slaves of rebels could be set free if, sixty days after the president issued a warning proclamation to swear allegiance to the Union, such proclamation was ignored; freed slaves could pursue voluntary colonization; and slaves could be enlisted in the U.S. military.

The radicals were largely unhappy with Clark’s bill, aside from the military-enlistment-of-slaves provision. And after a week of debate, they successfully moved a postponement on the measure.⁴⁰ The Senate then moved on to other business, and the House took center stage.

The House had scuffled along on confiscation since March, with little to show for its efforts. Finally, on May 14, Thomas Eliot (R-MA), chairman of the select committee charged with developing legislation, was ready act. He reported two bills, one dealing with confiscation (H.R. 471) and the other with emancipation (H.R. 472).⁴¹ Both measures betrayed a radical bent. The confiscation measure allowed for the immediate seizure of all property of civil and military

³⁷ The vote to create the committee, on May 6, was 24-14, with Republicans voting . An earlier vote to create a similar (seven-man) committee on April 29 was defeated 18-22.

³⁸ Additional members of the committee included Republicans Collamer (VT), Sherman (OH), Wilson (MA), Cowan (PA), and Harris (NY); Democrat Henderson (MO); and Unionist Willey (VA). Trumbull refused to serve on the committee, believing that it would accomplish little. See Syrett, *The Civil War Confiscation Acts*, 48.

³⁹ *Congressional Globe*, 37th Congress, 2nd Session, (May 14, 1862): 2112, 2165.

⁴⁰ *Congressional Globe*, 37th Congress, 2nd Session, (May 21, 1862): 2253-54.

⁴¹ *Congressional Globe*, 37th Congress, 2nd Session, (May 14, 1862): 2128.

leaders of the Confederacy, authorized the president to issue a proclamation of allegiance and give rebels sixty days to comply else all of their property would be seized, and subjected all property to limited judicial proceedings (but did not require trials of property owners). The emancipation measure freed all slaves of owners who aided the rebellion, and did not require judicial action.

The following week was set aside for debate, and thirty-seven different speeches were made in a series of extra-long legislative sessions.⁴² Finally, the House was ready to vote on the measures. On May 26, the House passed the confiscation bill (H.R. 471), 82-68; as Table 4 indicates, Republicans voted 79-8 in favor and nearly all (but three) Democrats and Unionists voted in opposition.⁴³ Later that day, after defeating four amendments, the Republicans sought to pass the emancipation bill (H.R. 472). To their dismay, the measure was defeated, 74-78; fifteen Republicans voted against the measure, seven more than on the confiscation bill.⁴⁴ All seven of these members came from states that shared a border with at least one slave state.⁴⁵ The perception in the chamber was that the bill was too sweeping (“radical”) for some members, who feared their constituents might view its provisions as too extreme.⁴⁶

On June 23, the Senate took up the House confiscation bill (H.R. 471), and Clark immediately moved his Senate bill (S. 310) as a substitute amendment. Four days of debate followed, with radicals complaining about the ineffectiveness of Clark’s substitute as a confiscation measure. Clark held that he would not vote for the House bill, and only his substitute could be enacted. Finally, on June 28, a vote on Clark’s substitute amendment was

⁴² Curry, *Blueprint for Modern America*, 89.

⁴³ *Congressional Globe*, 37th Congress, 2nd Session, (May 26, 1862): 2361.

⁴⁴ *Congressional Globe*, 37th Congress, 2nd Session, (May 26, 1862): 2363.

⁴⁵ Syrett, *The Civil War Confiscation Acts*, 40; Curry, *Blueprint for Modern America*, 89.

⁴⁶ Curry, *Blueprint for Modern America*, 89-90; Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies during the Civil War* (Cambridge, MA: Harvard University Press, 1997), 224.

had, and it passed 21-17; Republicans were split, with half favoring the more radical elements in the House confiscation bill, which left the Democrats and Unionists to decide the matter.⁴⁷ The House then passed the amended H.R. 471 bill (encapsulating the text of the S. 310 substitute), 28-13; the majority of Republicans (27 of 30) voted in support, with most of the dissenters from the previous roll call “coming home” (albeit grudgingly).⁴⁸

There was more action still to come, however. On July 3, the House received the amended H.R. 471 from the Senate, and voted overwhelmingly (8-123) not to concur in the Senate amendment.⁴⁹ Five days later, the Senate voted 28-10 to insist upon its amendment and asked for a conference committee to sort of the chambers’ difficulties.⁵⁰ Later that day, the Senate agreed to the request for a conference committee.⁵¹

The conference committee, which was reasonably balanced between competing ideological interests,⁵² got to work and reported back a bill on July 11.⁵³ The bill, which included nine sections, was clearly a compromise bill, created to avoid a potential deadlock.⁵⁴ The conference bill left sections 1-4 and 10-14 of the amended H.R. 417 largely intact, which provided for punishments and fines for those committing treason or involved in insurrection, forbid the return of fugitive slaves, allowed the president to colonize former slaves abroad (should they wise) and employ them in service of putting down the rebellion, granted the president the ability to pardon (and/or grant amnesty to) rebels, and place enforcement of the Act

⁴⁷ *Congressional Globe*, 37th Congress, 2nd Session, (June 28, 1862): 2996.

⁴⁸ *Congressional Globe*, 37th Congress, 2nd Session, (June 28, 1862): 3006.

⁴⁹ *Congressional Globe*, 37th Congress, 2nd Session, (July 3, 1862): 3107.

⁵⁰ *Congressional Globe*, 37th Congress, 2nd Session, (July 8, 1862): 3166.

⁵¹ *Congressional Globe*, 37th Congress, 2nd Session, (July 8, 1862): 3178, 3187-88.

⁵² The Senate conferees included Clark (R-VT), Ira Harris (R-NY), and Joseph Wright (U-IN), while the House conferees were Eliot (R-MA), James Wilson (R-IA), and Erastus Corning (D-NY). *Congressional Globe*, 37th Congress, 2nd Session, (July 8, 1862): 3166, 3178.

⁵³ *Congressional Globe*, 37th Congress, 2nd Session, (July 11, 1862): 3187-88.

⁵⁴ Five of the six conferees signed the conference report. Only Corning withheld his signature. See *Congressional Globe*, 37th Congress, 2nd Session, (July 11, 1862): 3188.

in the hands of the federal courts. Sections 5-8, in somewhat weaker form, were taken from the original H.R. 417, and provided the president with the immediate ability to seize the property of six classes of civilian and military leaders of the Confederacy, as well as other rebels (conditional on a proclamation giving them sixty days to declare allegiance to the United States). Confiscated property could be used immediately, but would ultimately require judicial proceedings before title was permanently transferred and said property disposed of. Section 9 was the most controversial, which held that all slaves of rebels who were captured or escaped, or were behind Union military lines in former-rebel areas (i.e., now occupied), were considered “forever free.”

Conservatives in the House – led by Robert Mallory (U-KY) and Samuel S. Cox (D-OH) – insisted that the conference committee went beyond its mandate and created (in sections 5-9) what amounted to new legislation. But their complaints were in vain, as the House proceeded to pass the conference report, 82-42; as Table 5 indicates, 78 of 79 Republicans voted in favor and were joined by four Unionists, while all 26 Democrats and 15 Unionists opposed the report.⁵⁵ The Senate considered the conference report on the following day, July 12. The result was the same, as the report passed, 28-13, with 27 of 29 Republicans voting in favor (along with one Unionist) against all five Democrats and six Unionists.⁵⁶

The conference report, now passed by both legislative chambers, seemed to be on its way to law. But one more hurdle remained – President Lincoln, who had concerns with the measure and seriously contemplated issuing a veto. His chief concern was on how private property was

⁵⁵ *Congressional Globe*, 37th Congress, 2nd Session, (July 11, 1862): 3266-67. The only Republican to oppose the conference report was Bradley Granger (MI).

⁵⁶ *Congressional Globe*, 37th Congress, 2nd Session, (July 12, 1862): 3276. The two Republicans who opposed the conference report were Orville Browning (IL) and Edgar Cowan (PA). Note that the initial vote tally was 27-12. Two others – Timothy Howe (R-WI) and Benjamin Stark (D-OR) – were recorded later (as “yea” and “nay” votes, respectively). See *Congressional Globe*, 37th Congress, 2nd Session, (July 12, 1862): 3276, 3287.

dealt with in the conference report. Lincoln believed that property seizure should not extend beyond the life of the offender. He made this point clear in discussions with Senators Orville Browning (R-IL) and William Fessenden (R-ME), and Republican leaders in Congress acted quickly to devise a response. The solution was first implemented in the Senate, when Clark moved an amendment to a joint resolution (H.J. Res. 110) introduced by Horace Maynard (U-TN). The Maynard resolution was meant to be a straightforward clarification of the confiscation legislation – that the measure was meant to be prospective rather than retrospective (which was an uncontroversial interpretation) – to which Clark offered the following amendment: “Nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life.”⁵⁷

Clark explained, upon questioning from John Sherman (R-OH), that his amendment was being offered to circumvent a possible Lincoln veto. Nevertheless, Lyman Trumbull, Henry S. Lane (R-IN), Preston King (R-NY), and Benjamin Wade (R-OH) issued strong objections – relating to both executive interference and substantive effect (i.e., such amendment would weaken the confiscation elements of the bill substantially).⁵⁸ But their objections would be for naught – the Senate proceeded to a vote on the Clark amendment, and it passed 25-15. As Table 5 indicates, 22 of 30 Republicans ended up supporting the measure.⁵⁹ Maynard’s joint resolution then passed without a roll call, and the measure moved to the House. There, the amendment was concurred in, 83-21, with 74 of 79 Republicans voting in favor.⁶⁰

⁵⁷ *Congressional Globe*, 37th Congress, 2nd Session, (July 16, 1862): 3374.

⁵⁸ *Congressional Globe*, 37th Congress, 2nd Session, (July 16, 1862): 3374-77.

⁵⁹ *Congressional Globe*, 37th Congress, 2nd Session, (July 16, 1862): 3383.

⁶⁰ *Congressional Globe*, 37th Congress, 2nd Session, (July 16, 1862): 3400.

With the “explanatory resolution” now in place, Lincoln signed the conference bill.⁶¹ The Second Confiscation Act was now law. From the radicals’ viewpoint, the Act was a significant disappointment. From the beginning, they saw aggressive and punitive property confiscation, led by Congress, as a means to spur a true social and economic revolution in the South. By the end of the lawmaking process, however their hopes had been dashed. As Daniel Hamilton writes: “The moderates had ... won the crucial battle over whether confiscation would be legislative or judicial. Now [with the explanatory resolution adopted], not only would confiscation take place one trial at a time, but even after conviction all the government could seize was cumbersome life estate in the offender’s land.”⁶² As far as the radicals were concerned, property confiscation – as enacted – was effectively unworkable and unenforceable.

What about the Second Confiscation Act’s effect on slavery and emancipation? Section 9 was clearly bold in declaring that certain types of slaves of persons involved in the rebellion – those slaves who were captured or escaped, or who were in rebel areas occupied by Union forces – were to be “forever free.” On its face, this was a clear departure for congressional Republicans, who just a year earlier had supported the Crittenden and Johnson Resolution and thus agreed that slavery rights were to be respected. But the actual force of the Second Confiscation Act vis-a-vis emancipation was more limited. As John Syrett notes:

If the prospect of confiscation encouraged hopes of emancipation, the law itself made it difficult to free slaves. Under the act, slaves of rebels were free only when they came within the military’s control. The assumption was that emancipation would advance along with the army. However, slaves could be freed individually or in groups only when a federal court found their owners to be rebels; the military had no power to adjudicate the matter themselves. Doubts even arose about whether the military had the power to transfer slaves to federal courts for such proceedings. The second act would have required hundreds of thousands of trial of individual masters. Furthermore, it did not affect slaves owned by

⁶¹ He also passed along the draft of his would-be veto message to Congress, laying out his views and arguments. Curry, *Blueprint for America*, 98.

⁶² Hamilton, *The Limits of Sovereignty*, 76.

nonrebels who could prove they had given no aid to the rebellion or by those who swore allegiance to the North, even minutes before the act became law. It also omitted a method for resolving the issue if slaves claimed freedom under the act while their masters insisted on their loyalty to the Union, a conflict that seemed likely to arise.⁶³

And, of course, a more fundamental concern was whether Congress even possessed the power to legislate (via statute) on slavery, which was considered (by many) to be a fundamental right under the Constitution (per the *Dred Scott* Supreme Court decision in 1857).

Thus, the Second Confiscation Act was more symbolic than practical as an emancipatory measure. It highlighted that the old status quo – allowing slavery where it existed – was lost forever, and that putting the old Union back together (as it was) was impossible. President Lincoln was slow to accept this perspective early in the war – especially as he fretted about keeping the Border states in the Union – but increasingly came to share this viewpoint as the war progressed. And, in his view, if emancipation were to be achieved, a simple act of Congress would not do the trick. Rather, “a more effective and constitutional means to that end, for instance by executive proclamation, had to be found.”⁶⁴

III. President Lincoln, Congress, and Emancipation

To understand the evolution of emancipation policy up to and through President Lincoln’s Emancipation Proclamation on January 1, 1863, one must start by documenting the evolution of Lincoln’s thinking on slavery and emancipation. Lincoln’s singular goal, from the very beginning, was to preserve the Union. While he abhorred slavery, he felt that honoring slavery rights – and quieting the fears of the Southern and Border states – was the best route for political and military success. As we have already explained, Lincoln supported the Corwin

⁶³ Syrett, *The Civil War Confiscation Acts*, 57. Similar points are made in Hamilton, *The Limits of Sovereignty*, 74; Siddali, *From Property to Person*, 233-34.

⁶⁴ Syrett, *The Civil War Confiscation Acts*, 58.

Amendment upon ascending to the presidency, backed the Crittenden and Johnson Resolutions, and was on record as willing to accept slavery, where it existed, into the future if it meant keeping the Union intact.

After eleven Southern states had seceded, and a bloody civil war was underway, Lincoln began to consider emancipation in more detail. The exigencies of war – with fugitive slaves entering Union military camps, Union forces capturing rebel territory and coming into contact with rebel slaves, and commanders (Frémont) and cabinet officials (Cameron) issuing unilateral directives – and action in Congress – the First Confiscation Act – had forced his hand. Lincoln's view was that the emancipation of slaves in loyal areas, like the Border states, should be gradual and compensated, not unlike how many Northern states had handled emancipation in the late-18th and early-19th centuries. In addition, he believed that colonization outside of the United States, in a country like Liberia or Haiti, should accompany such emancipation. Like many others of his generation, Lincoln felt that black and whites could not live freely together in a peaceful way. His belief was that conflict between the races would naturally arise, and that only racial intermixing or complete dominance by one race would result. Neither of these outcomes was good, and avoiding the problem – via colonization – seemed to be the best alternative.

Lincoln was not passive in his support for gradual, compensated emancipation. In October 1861, with the help of the superintendent of the federal census, Lincoln devised a pilot program – whereby emancipation would play out over thirty years and be funded by a U.S. bond issue. He explained this plan to officials in Delaware – the loyal slave state with the fewest slaves –and it generated some interest. Ultimately, it ran afoul of pro-slavery interests in the state legislature. He then took his case to the Congress, and on two occasions (December 3, 1861, in his annual message, and March 6, 1862, in a special message) asked for federal money to be set

aside for states that pursued a policy of gradual emancipation with voluntary colonization. As Leonard Richards notes, “For Lincoln ... This was not simply a humanitarian gesture... It was a means for shortening the war, for if the border states abolished slavery it would reduce the lure that the Confederacy had for them, and that in turn would cause the rebellion to collapse.”⁶⁵

Lincoln had hoped to entice Border state representatives to support his plan, and organized a private meeting at the White House to make his case. For most of them, such a plan was a bridge too far because their own constituents had a stake in maintaining slavery. Lincoln found himself with few supporters.⁶⁶ Nonetheless, he did make some inroads with members of Congress. While congressional Republicans were starting to flex their muscles on slavery and emancipation – a new, tougher confiscation measure was in the early stages of development (see previous section), and on March 13, 1862, a law was passed that prevented U.S. military commanders from returning fugitive slaves to their masters – they were also willing to go along with the president’s plan on compensated emancipation, even if many lacked enthusiasm for it (and sought instead to chart a congressional course free of executive influence).⁶⁷

First up was a joint resolution, H.J. Res. 48, introduced by Representative Roscoe Conkling (R-NY) on March 10, 1862. His plan sought to implement compensated, gradual emancipation, in line with the president’s special message to Congress. That resolution stated:

*Resolved by the Senate and House of Representatives of the United States in Congress assembled, 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 sued by such State in its discretion, to compensate for the inconveniences, public and private, produced by such change of system.*⁶⁸

⁶⁵ Richards, *Who Freed the Slaves?*, 55.

⁶⁶ Harris, *Lincoln and the Border States*, 166-69; Foner, *The Fiery Trial*, 197-98.

⁶⁷ 12 Stat. 354. The law was based on H.R. 299, which passed 95-51 in the House (with Republicans voting 91-0, Democrats 1-34, and Unionists 3-17) and 29-0 in the Senate (with Republicans voting 27-0, Democrats 1-5, and Unionists 1-4). See *Congressional Globe*, 37th Congress, 2nd Session, (February 25, 1862): 955; (March 10, 1862): 1143.

⁶⁸ *Congressional Globe*, 37th Congress, 2nd Session, (March 10, 1862): 1149.

Conkling was able to secure the 2/3 necessary to suspend the rules, and after two days of debate and the defeat of several dilatory motions, the House passed the resolution 97-35; as Table 6 indicates, the Republicans voted as a unified bloc (86-0) against a majority of Democrats (3-24) and Unionists (9-11).⁶⁹ The resolution then shifted to the Senate, which spent several days debating the measure. Finally, on April 2, the Senate proceeded to pass the resolution, 32-10, with Republicans voting 28-0, Democrats 1-6, and Unionists 3-4.⁷⁰

Around the same time, Congress was dealing with a more targeted compensated emancipation bill, directed specifically at the District of Columbia. Introduced by Lot Morrill (R-ME) on March 12, 1862, the bill (S. 108) would immediately abolish slavery in the District, compensate loyal slaveholders up to \$300 for each slave freed, create penalties for those who attempted to re-enslave those freed, and create a three-man board of commissioners to rule on all claims up to a total outlay of \$1,000,000.⁷¹ The \$300 payment per slave was suggested by Lincoln and his Secretary of the Treasury Salmon Chase; Lincoln also wanted emancipation to be gradual, but congressional leaders balked at this request.⁷²

Border state representatives opposed the measure, continuing their opposition to compensated emancipation, and raised the (now familiar) concern regarding conflict between the races, should blacks be allowed to live freely among whites. Garrett Davis (U-KY) sought to eliminate this concern by offering an amendment to require that freed slaves be colonized outside of the United States, and \$100,000 be allocated out of the Treasury for that purpose.⁷³ After an adjournment, the debate was picked up again on March 18, when Doolittle sought to amend

⁶⁹ *Congressional Globe*, 37th Congress, 2nd Session, (March 11, 1862): 1179.

⁷⁰ *Congressional Globe*, 37th Congress, 2nd Session, (April 2, 1862): 1496.

⁷¹ *Congressional Globe*, 37th Congress, 2nd Session, (March 12, 1862): 1191.

⁷² Richards, *Who Freed the Slaves?*, 58.

⁷³ *Congressional Globe*, 37th Congress, 2nd Session, (March 12, 1862): 1191.

Davis's amendment, by making colonization voluntary;⁷⁴ he later agreed to modify his amendment such that the colonization expenditure not exceed \$100 per person.⁷⁵

On March 24, voting commenced, with the Doolittle amendment passing 23-16; as Table 7 indicates, Republicans supported passage 19-9, in opposition to a majority of Democrats and Unionists.⁷⁶ However, the amended Davis bill – now, effectively the Doolittle amendment as a substitute – went down to defeat; a 19-19 tie was broken by the “no” vote of Vice President Hannibal Hamlin.⁷⁷ A majority of Republicans (15 of 28), most of whom were radicals, had in fact opposed the Doolittle substitute, with the breakdown on the two roll calls indicating that many GOP senators preferred voluntary colonization to compulsory colonization, but also no colonization to voluntary colonization.

Debate continued for several days, when Doolittle tried his amendment again. This time, it passed 27-10, with a majority of Republicans (18 of 28) now in favor.⁷⁸ Six Republicans, including several prominent radicals, had changed their vote and now supported the amendment. As Leonard Curry notes: “it was apparent that a number of the Republican opponents of colonization had come to doubt their ability to push through an unamended emancipation bill.”⁷⁹ With the Doolittle amendment now attached, the Senate turned to final passage on the bill itself, and S. 108 passed 29-14, with the Republicans voting as a bloc (29-0) against a unanimous coalition of Democrats and Unionists.⁸⁰

⁷⁴ *Congressional Globe*, 37th Congress, 2nd Session, (March 18, 1862): 1266.

⁷⁵ *Congressional Globe*, 37th Congress, 2nd Session, (March 24, 1862): 1333.

⁷⁶ *Congressional Globe*, 37th Congress, 2nd Session, (March 24, 1862): 1333.

⁷⁷ *Congressional Globe*, 37th Congress, 2nd Session, (March 24, 1862): 1333.

⁷⁸ *Congressional Globe*, 37th Congress, 2nd Session, (April 3, 1862): 1522.

⁷⁹ Curry, *Blueprint for Modern America*, 40-41.

⁸⁰ *Congressional Globe*, 37th Congress, 2nd Session, (April 3, 1862): 1526.

The bill then moved to the House, where two days of debate were had before voting commenced on March 11. Several amendments were tried and defeated, before the House turned to a final vote on the bill – and it passed 92-38, with Republicans voting 83-0 in favor.⁸¹ Republicans rose in celebration as “the first real break in the southern slave system” had occurred.⁸² There was some concern that President Lincoln would veto the bill – for example, he was disappointed that emancipation was immediate rather than gradual – but he agreed that it embodied much of what he cared about (compensation and colonization). He therefore signed it, and it became law.⁸³ Over the next nine months, nearly 3,000 men, women, and children in the District were set free, and over 900 petitions for compensation were granted.⁸⁴

The Border state representatives were not happy with the District of Columbia bill, and saw it as the first attack on slavery in the Union “where it existed.” Lincoln warned them that the politics of slavery and emancipation were ever changing – especially as they related to the evolution of the war itself – and another incident with a Union military commander underscored this point. In early May, Major General David Hunter, who was in charge of the Department of the South that covered Union-controlled areas in Florida, Georgia, and South Carolina (essentially a group of islands off the coast of Georgia and South Carolina, and Fort Pulaski, Georgia) declared all slaves under his purview to be “forever free.” He then proceeded to enlist all able-bodied male ex-slaves into the military. Lincoln was furious with Hunter’s

⁸¹ *Congressional Globe*, 37th Congress, 2nd Session, (April 11, 1862): 1648.

⁸² Curry, *Blueprint for Modern America*, 42.

⁸³ *12 Stat.* 376-78.

⁸⁴ Richards, *Who Freed the Slaves?*, 59.

impetuosity – telling Secretary of the Treasury Chase: “no commanding general shall do such a thing upon my responsibility without consulting me.” On May 21, rescinded Hunter’s orders.⁸⁵

Also in May 1862, Congress sought to push the envelope on emancipation. On May 8, Owen Lovejoy reported a measure (H.R. 374) that would have targeted areas of exclusive federal jurisdiction – the territories, along with forts, dockyards, arsenals, armories, vessels on the high seas, and national highways, among others – for emancipation.⁸⁶ Emancipation would be immediate and without compensation. The House debated the bill for two days, and Lovejoy eventually decided to narrow the scope of the bill to cover all current and future territories only (as many members voiced concerns that the bill’s original coverage was too broad). On March 12, the House voted and passed the bill, 85-50; as Table 8 indicates, the Republicans were unanimous in their support (82-0).⁸⁷ The bill was slightly modified in committee in the Senate, and reported out on June 9. The Senate then went on to pass the bill, 28-10, with Republicans voting as a unified bloc (27-0).⁸⁸ The amended bill was then sent back to the House, where on June 17 it was adopted, 72-38, with all Republicans again on board (68-0).⁸⁹ Despite flying in the face of the Dred Scott decision, and not allowing for gradual or compensated emancipation, President Lincoln signed the bill two days later and it became law.⁹⁰

With the territories bill, Congress had taken the initiative and moved emancipation in a direction different than what Lincoln had wanted. Radicals were pushing for general emancipation, and moderate Republicans were increasingly open to that position. Lincoln

⁸⁵ Foner, *The Fiery Trial*, 206-08; Harris, *Lincoln and the Border States*, 174-76. Since March, Hunter had been taking smaller steps toward this larger action, and only gained notice in May with “bombshell” orders. See Richards, *Who Freed the Slaves?*, 59-61.

⁸⁶ *Congressional Globe*, 37th Congress, 2nd Session, (May 8, 1862): 2030. See also, Curry, *Blueprint for Modern America*, 55; Foner, *This Fiery Trial*, 203.

⁸⁷ *Congressional Globe*, 37th Congress, 2nd Session, (May 12, 1862), 2068.

⁸⁸ *Congressional Globe*, 37th Congress, 2nd Session, (June 9, 1862): 2618.

⁸⁹ *Congressional Globe*, 37th Congress, 2nd Session, (June 17, 1862): 2769.

⁹⁰ 12 *Stat.* 432.

continued to hold out hope for a gradual, compensated emancipation plan for the loyal (Border) states, and called another meeting of Border state representatives. On July 12, he made his case, citing recent events (like Hunter's unilateral move in the Department of the South and congressional Republicans' desire for general emancipation), and warned them that unless they agreed to his plan, they might in fact find themselves with nothing. Two days later, twenty of the 29 Border state representatives rejected Lincoln's plan; they were loyal to the Union, but felt that emancipation in any form would appear too radical for their constituents.⁹¹

Lincoln still plunged ahead, sending the draft of a bill to Congress on July 14 that would have provided federal compensation (through an authorized six percent bond issue) to any states that pursued emancipation – either immediate or gradual. Congress made various attempts through the remainder of 1862 and into the early months of 1863 to legislate on the president's plan, but largely failed.⁹² Individual measures were drawn up around the states of Missouri and Maryland, and a partial success occurred when the new state of West Virginia was carved out of the existing state of Virginia. The West Virginia bill called for gradual emancipation in the loyal counties that made up the state, but provided no compensation to slaveholders.⁹³

While his efforts to appeal to Border states continued, Lincoln was also cognizant of the changing winds on emancipation generally, and the degree to which slavery was wrapped up in the preservation of the Union. As Union forces drove deeper into rebel territory, it became clear to Union officers how important the slave population was to the military and economic condition of the Confederacy. Slaves allowed every able-bodied Southern white to take up arms, while providing ancillary military support and maintaining the South's agricultural and cotton systems.

⁹¹ Richards, *Who Freed the Slaves?*, 64-66.

⁹² On these various efforts, see Curry, *Blueprint for Modern America*, 46-55.

⁹³ Two years later, in 1865, West Virginia shifted to immediate emancipation (via statute). See Foner, *The Fiery Trial*, 274.

Union officers discovered that confiscating and employing slaves was a win-win – an extra laborer to help the Union cause and one fewer laborer to keep the Confederacy afloat. In addition, captured slaves provided valuable intelligence about the makeup of Confederate forces, the nature and effectiveness of supply lines, and the location of roads, rivers, and other landmarks. In short, it became increasingly clear to Lincoln that slaves – in a variety of ways – were vital to the Union war effort.

On July 17, 1862, Lincoln signed into law two acts of Congress: the Second Confiscation Act (discussed in the previous section) and the Militia Act. The Second Confiscation Act established that captured or fugitive slaves, or those slaves of rebels behind Union lines in rebel territory, were free. The Militia Act authorized blacks to be enrolled in the war effort, as laborers and soldiers.⁹⁴ Congress had thus continued to take the lead on formulating aggressive emancipation policy. But Lincoln had been pondering an ambitious move of his own. On July 13, he met with Secretary of State Seward and Secretary of the Navy Seward and informed them that, in his estimation, a presidential proclamation of emancipation was “absolutely essential for the salvation of the Union.”⁹⁵ He then met with his full cabinet on July 22, and shared with them his plans to issue a proclamation that would free rebel slaves.

Lincoln planned to construct his emancipation proclamation as a military order, and thus base it on his presidential war powers. In this way, Lincoln hoped to avoid a negative response by the Supreme Court, based on an application of the Fifth Amendment’s “taking clause,” which limits the federal government’s take private property for public use (“eminent domain”) without

⁹⁴ 12 *Stat.* 597. The Senate passed the measure on July 15 on a 28-9 vote, with Republicans voting 26-0, Democrats 1-4, and Unionists 1-5. The House passed the measure on July 16 without a roll call. See *Congressional Globe*, 37th Congress, 2nd Session, (July 15, 1862): 3351; (July 16, 1862): 3398.

⁹⁵ Taken from David Herbert Donald, Jean Harvey Baker, and Michael Holt, *The Civil War and Reconstruction* (New York: Norton, 2000), 332. Seward may have been consulted on the proclamation idea even earlier, as he indicated to Senator Charles Sumner (R-MA) on May 28 that such a proclamation of emancipation would be delivered in July. See Curry, *Blueprint for America*, 71.

just compensation. Chief Justice Taney had made this the centerpiece of his *Dred Scott* decision, to protect the rights of slaveholders in the territories. As Leonard Richards notes: “That the Taney Court would strike down emancipation if given the chance was beyond question. In fact, the chief justice had already written a preliminary opinion declaring emancipation unconstitutional.”⁹⁶ Lincoln also believed a proclamation would sidestep some of the legal hurdles in the Section 9 design of the Second Enforcement Act, and thus be a more efficient emancipation solution.⁹⁷

Lincoln’s cabinet approved of the decision, except for Postmaster General Montgomery Blair (of Maryland), who was worried about how it would be perceived in the Border states. Also, Seward, while a supporter of the proclamation, believed it would be better delivered after a Union victory. So Lincoln agreed to set it aside for the time being.

That moment arrived in September, after a nominal Union victory at Antietam. On September 22, Lincoln issued the preliminary proclamation.⁹⁸ Among other things, the proclamation reinforced his goals of restoring the Union and working with the loyal states on a system of compensated emancipation. It then made clear to the Confederate states that they had until January 1, 1863 – effectively 100 days – to end their rebellion, at which time their slaves would be “then, thenceforth, and forever free.”

⁹⁶ Richards, *Who Freed the Slaves?*, 72.

⁹⁷ See earlier section on the Confiscation Acts. In short, there was ambiguity in Second Confiscation Law, and the general belief was that permanent freedom could not be granted by the military, but only by the federal courts. In effect, a slaveholder would have to be found guilty of being a rebel (or have aided the rebellion). That, per Silvana Siddali would have required judicial proceedings “on a case by case basis, [which] would have hopelessly snarled the courts for years to come. This would have presented insurmountable obstacles for persons freed by the confiscation law, if one assumed slaves were to be treated like all other property under the law.” See Siddali, *From Property to Person*, 141.

⁹⁸ A number of works examine the Emancipation proclamation (the preliminary and final versions) and their consequences. See, for example, Foner, *The Fiery Trial*, 206-89; Allen C. Guelzo, *Lincoln’s Emancipation Proclamation: the End of Slavery in America* (New York: Simon and Schuster, 2004); Louis Masur, *Lincoln’s Hundred Days: The Emancipation Proclamation and the War for the Union* (Cambridge, MA: Harvard University Press, 2012).

None of the Confederate states responded positively to the preliminary proclamation, and on January 1, Lincoln issued a final proclamation – making good on this September promise. As David Donald, Jean Harvey Baker, and Michael Holt state:

For Lincoln, by 1863 emancipation was a military necessity, an act of justice, and an end to his placating approach to the slave border states. For although the proclamation did not interfere with what he considered the domestic institutions of Maryland, Delaware, Kentucky, and Missouri, slavery, now surrounded everywhere by freedom, was in fact fatally compromised.

The proclamation's provisions extended to the states (or portions thereof) still in rebellion, and thus excluded loyal states and rebel areas that were Union occupied (all of Tennessee, the portion of Virginia that made up West Virginia and seven counties in the Tidewater region, and thirteen parishes in Louisiana). Thus, over three million men, women, and children were granted their freedom. A provision also authorized the enrollment of black soldiers in the U.S. military (following up on the Militia Act of 1862).

The proclamation was, of course, symbolic, as the president (and the Union) had no way to execute the freedom provisions. That is, the areas where slavery was eradicated were under Confederate control. Yet, it yielded immediate diplomatic benefits, by eliminating the possibility of European recognition of the Confederacy.⁹⁹ Moreover, it established the eradication of slavery as a new northern war objective. Union and emancipation would now go hand in hand.

IV. The Thirteenth Amendment

Despite his framing of the Emancipation Proclamation as a military necessity, and invoking his constitutional war powers to fashion it, Lincoln worried that it would not stand up to Supreme Court scrutiny – should a pro-slavery Court decide to engage it. He thus began to envision a new

⁹⁹ Donald, Baker, and Holt, *The Civil War and Reconstruction*, 334.

way to abolish slavery that would have greater staying power. At the same time, Congress began considering the same thing. But their solutions were quite different. Lincoln sought to bundle emancipation in a broader scheme of Reconstruction, that is, a plan for restoring rebellious states to the Union. Such a plan would require state-by-state action, and thus state-by-state decisions on emancipation. Congress, on the other hand, sought a more definitive, blanket solution – via an amendment to the U.S. Constitution.

Lincoln’s plan for Reconstruction was quite moderate in nature, and sought to bring the rebel states back into the Union as quickly and painlessly as possible. If ten percent of a state’s white voting base from 1860 took an oath of loyalty, and agreed to abide by the Emancipation Proclamation and any other slavery-related legislation enacted by Congress, then they would be entitled to federal representation in Washington again (subject to the decision of each chamber of Congress). Republicans in Congress – led by the radicals – pushed back on this plan and sought something more punitive against the secessionists. They also hoped to provide a more revolutionary experience and raise the stature of blacks in the civil and political (and perhaps social) order of the South, rather than allow their former masters to regain a privileged power foothold. Lincoln, on the other hand, “recognized the traditional power of the states to determine the civil and political rights of their inhabitants.”¹⁰⁰ (Lincoln’s plan for Reconstruction, and Congress’s response, will be covered in considerably more detail in the following section.)

Thus, as the 38th Congress opened in December 1863, Lincoln and congressional Republicans were on different paths. Lincoln announced his Reconstruction plan in his annual message, while individual members of Congress began introducing abolition amendments.¹⁰¹

¹⁰⁰ Foner, *The Fiery Trial*, 272.

¹⁰¹ In the House, bills were proposed by James Ashley (R-OH) and James Wilson (R-IA); in the Senate, bills were proposed by John B. Henderson (U-MO) and Charles Sumner (R-MA). See Michael Vorenberg, *Final Freedom*:

The Senate was the first to act, on February 10, 1864, as Lyman Trumbull reported a bill (S.J. Res. 16) from the Judiciary Committee.¹⁰² S.J. Res. 16 was succinct, containing only two sections, and built on the language of the Northwest Ordinance¹⁰³:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Debate in the Senate spanned mid-March through early-April. Democrats raised a host of objections, many involving raw racist appeals as well claims of unconstitutional nature of the amendment itself. The Framers, they claimed, who accepted and established a compromise around slavery, so they would never have approved such a change.¹⁰⁴ Republicans were consistently supportive of the amendment, however, and suggested (to opponents and proponents alike) that a path to success was inevitable. A series of amendments meant to derail the bill – such as denying blacks citizenship or office-holding rights, or requiring that slaveholders be compensated before emancipation could take effect – were easily defeated.¹⁰⁵ The Senate then came to a final vote on S.J. Res. 16, and it passed 38-6 (with the required 2/3 necessary).¹⁰⁶ As Table 9 indicates, Republicans were unanimous in support of the proposed amendment, and were joined by two Northern Democrats and all but one of the Unionists.

The scene now shifted to the House, where the partisan dynamics were very different. In the House, Republican seat-share dropped considerably following the midterm elections of 1862. Unlike their co-partisans in the Senate, the Republicans needed support from Democrats and

The Civil War, the Abolition of Slavery, and the Thirteenth Amendment (Cambridge: Cambridge University Press, 2001), 48-53.

¹⁰² *Congressional Globe*, 38th Congress, 1st Session, (February 10, 1864): 553.

¹⁰³ For the politics of the drafting process, see Vorenberg, *Final Freedom*, 53-60.

¹⁰⁴ See Vorenberg, *Final Freedom*, 99-112.

¹⁰⁵ *Congressional Globe*, 38th Congress, 1st Session, (March 31, 1864), 1370; (April 5, 1864), 1424-25.

¹⁰⁶ *Congressional Globe*, 38th Congress, 1st Session, (April 8, 1864), 1490.

Unionists to achieve the necessary 2/3 required to pass the amendment.¹⁰⁷ Debate in the House began on May 31. That day a splinter party – calling themselves the “Radical Democracy” – met in Cleveland, nominated John Frémont for president, and endorsed an anti-slavery constitutional amendment.¹⁰⁸ Advocates of this new party felt that Lincoln was moving too slowly on slavery, and hoped to cleave off some traditional Republicans and War Democrats. This move finally led Lincoln to publicly endorse the congressional GOP’s proposed amendment, which he did in his nomination-acceptance speech on June 9, following the Republicans’ “Union” convention in Baltimore (June 7-8).¹⁰⁹ As Michael Vorenberg notes: “the Frémont candidacy ... forced [Lincoln] to act. By grafting an antislavery amendment onto Republican policy and claiming the plank as his own, Lincoln derailed the efforts of his rivals to use the amendment to rebuke his administration.”¹¹⁰

Thus, the House debate – and ultimate vote – on S.J. Res. 16 occurred at a time when presidential politics ramped up public attention on the emancipation amendment. Remarks were similar to those of the Senate debate – opponents relied upon racist invective and raised constitutional arguments, while supporters stressed egalitarianism and downplayed constitutional concerns. Ultimately, the emancipation amendment was viewed as part and parcel with partisan politics, as the Republicans had made it a plank in their convention platform and Lincoln had endorsed it. This made the job of James Ashley (R-OH), the House Republican floor manager

¹⁰⁷ Whereas the Republicans maintained a supermajority (66%) of Senate seats in the 38th Congress, they only possessed a plurality (47%) of House seats. Between the end of the 36th Congress and the beginning of the 37th Congress, the GOP’s share of House seats had dropped by 21. See Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress* (New York: Macmillan, 1989).

¹⁰⁸ See Harold M. Hyman, “Election of 1864,” in *History of American Presidential Elections, 1841-1868* (vol. 3), ed., Arthur M. Schlesinger, Jr. (New York: Chelsea House, 1985), 1155-78; Vorenberg, *Final Freedom*, 116-21. The Radical Democracy’s constitutional amendment most resembled the one introduced by Senator Charles Sumner, which included language guaranteeing “to all men absolute equality before the law.”

¹⁰⁹ The congressional amendment had also become a plank in the party’s platform. See Vorenberg, *Final Freedom*, 123-25.

¹¹⁰ Vorenberg, *Final Freedom*, 126.

on the bill, that much harder, as he needed to secure the votes of some Northern Democrats in advance of a closely-contested national election. And when a final vote on S.J. Res. 16 occurred, on June 15, 1864, Ashley was not able to accomplish it. While a majority voted in support of the amendment (94-64), it was eleven short of the 2/3 necessary. Republicans voted as a unified bloc for the amendment, along with most Unionists, but only four of 62 Northern Democrats ended up offering their support. The final vote became 93-65, as James Ashley – witnessing defeat – changed his vote from “yea” to “nay” before the House Clerk’s final tally, so that he was in a position to offer a motion to reconsider at a later date.¹¹¹

When such a motion might be tried, however, was unclear. During the summer of 1864, Union forces were bogged down in multiple areas throughout the South, and casualties were mounting. “The result,” according to Eric Foner, “was a crisis of morale and a growing clamor for peace.”¹¹² Lincoln was despondent, fearing that he would lose the presidential election in November, which would jeopardize the Union and the course of emancipation. Finally, a major victory occurred in early September, when General William Tecumseh Sherman captured Atlanta; Sherman’s victory turned the tide of war and boosted Northern morale. Congressional Republicans, many of whom had been critical of Lincoln’s management of the war and support for aggressive emancipation policy, circled the wagons around their Commander and Chief, and the GOP was united going into the election.¹¹³

¹¹¹ *Congressional Globe*, 38th Congress, 1st Session, (June 15, 1864): 2995. See, also, Richards, *Who Freed the Slaves?*, 8-9.

¹¹² Foner, *The Fiery Trial*, 303.

¹¹³ Lincoln helped boost this co-partisan support by removing Montgomery Blair from his cabinet position, much to the pleasure of congressional radicals who had grown tired of Blair’s conservative opinions on race and emancipation. John Frémont dropped out of the race at this point as well, and some speculated that Blair’s removal was part of quid-pro-quo agreement in this regard. See Vorenberg, *Final Freedom*, 155; Foner, *The Fiery Trial*, 308.

Lincoln faced off against former-General George McClellan, nominated on a peace plank by the Democrats, and beat him handily – winning 212 of the 233 electoral votes.¹¹⁴ Moreover, Lincoln had coattails, as Republicans in Congress made significant gains, such that they would possess supermajorities in the next (39th) Congress.¹¹⁵ Thus, the pieces appeared to be in place for a reconsideration of S. J. Res. 16 in the House once the 39th Congress convened; however, Republicans were not interested in waiting. Many Republicans – including Lincoln – interpreted the elections results as a mandate to abolish slavery. And Lincoln hoped to act on that mandate immediately, once the lame-duck session of the 38th Congress convened in December 1864. He made this clear in his annual message, with his vocal support of the Thirteenth Amendment.¹¹⁶

Thus, James Ashley got to work. He knew that he needed to add around a dozen votes, assuming he could hold his initial voting coalition from June together. He proceeded in a methodological and systematic fashion, by reaching out to political operatives who he believed would have the best sense of the political dynamics in their regions of the Union.¹¹⁷ To get a sense of whom in the Border states might be persuaded to back the amendment – and whose initial support needed to be shored up – Ashley consulted with Unionists Frank Blair (MO) and Henry Winter Davis (MD). To identify a set of Northern Democrats to target, Ashley reached

¹¹⁴ Lincoln won 55 percent of the popular vote, and carried all states except for Delaware, Kentucky, and New Jersey.

¹¹⁵ Martis, *The Historical Atlas of Political Parties in the United States Congress*.

¹¹⁶ Foner, *This Fiery Trial*, 311-12. Why was Lincoln insistent on getting the amendment passed immediately, rather than waiting for more favorable partisan conditions in the next Congress? Michael Vorenberg makes the following case: “If Congress quickly adopted the amendment and submitted it to the states, Lincoln could say that slavery was out of his hands. No longer could his opponents spread the false word that only his demands for emancipation stood in the way of peace. Also, the adoption of the amendment sooner rather than later might heal divisions among Republicans for reconstruction... and narrow the breach between Republicans and Democrats. [But] of all Lincoln’s reasons for wanting a speedy adoption of the amendment, by far the most influential was the public’s demand for the measure. Although the amendment was generally neglected during the campaign of 1864, people proclaimed the election results an endorsement of abolition.” See Vorenberg, *Final Freedom*, 177-78.

¹¹⁷ More than 25 years after the fact, Ashley documented his efforts in getting the Thirteenth Amendment passed in the House. See James M. Ashley, “The Passage of the Thirteenth Amendment to the Constitution.” *Magazine of Western History* 13 (1891): 663-79. For recent accounts of Ashley’s efforts, and the general twists and turns of acquiring enough votes to pass S.J. Res. 16 in the House, see Richards, *Who Freed the Slaves?*, 118-217; Vorenberg, *Final Freedom*, 176-210.

out to Republicans Reuben Fenton (NY) and Augustus Frank (NY) for their advice. Ashley came away with 35 names from these meetings, 18 members from the Border states and 17 Northern Democrats.¹¹⁸ He and others then went to work to convince them to back the amendment.

A feature common to the members on Ashley's list was their electoral condition – as Table 10 indicates, most were lame ducks, who either ran and lost or did not seek reelection. Overall, twelve of the 17 Northern Democrats and eleven of the 18 Unionists were lame ducks. These members were no longer officially tethered to their constituents through an electoral connection, and thus were (all else equal) more open to persuasion efforts.¹¹⁹ Thirteen of the 17 Northern Democrats and two of the 18 Unionists had cast a “nay” vote on the first amendment roll call, and six others (two Northern Democrats and six Unionists) had abstained. Thus, if those Northern Democrats and Unionists who had voted for the amendment were maintained – 14 in total – then Ashley had the names of 21 others that could potentially be “flipped.”

In December 1863, Ashley announced that the debate on the amendment would begin the following month.¹²⁰ The lobbying effort began right away. According to Ashley, “Every

¹¹⁸ For a list, see Ashley, “The Passage of the Thirteenth Amendment to the Constitution,” 674-75. Note that Ashley lists 19 members from the Border states. The problem is that one of the names was Frank Blair, who was unseated (in a disputed election case) by Samuel Knox. And Knox was seated on June 10, 1864, five days prior to the first House vote on the Thirteenth Amendment. Given that Ashley shared his personal history on the amendment's passage more than 25 years after the fact, his memory could have been slightly hazy. (Especially troublesome is that Ashley claimed that the names of the Missouri members came from Blair himself, who certainly would not have listed himself after being unseated.) Regardless, in referencing Ashley's list, we have chosen to note 18 names instead of 19.

¹¹⁹ An electoral connection, in the modern sense, did not exist in the pre-Civil War Congress. But while members were not congressional careerists in the contemporary sense, most did pursue a political career more generally. Such careers usually occurred within the party. See Jamie L. Carson and Jeffery A. Jenkins, “Examining the Electoral Connection across Time,” *Annual Review of Political Science* 14 (2011): 25-46. Nonetheless, the larger point holds: members without an electoral tie (and without a position in the short term, once the Congress ended) should have been more receptive to lobbying efforts, all else equal.

¹²⁰ *Congressional Globe*, 38th Congress, 2nd Session, (December 15, 1864): 53-54.

honorable effort was made by the Administration to secure the passage of the amendment.”¹²¹

Lincoln took a strong role in rounding up the necessary votes, but often in an indirect way – working through various congressmen and other interested Republican operatives. Secretary of State William H. Seward also played a significant part in lobbying “persuadable” House members, and employed four lieutenants to handle the face-to-face negotiations.¹²²

Debate on the amendment began on January 5, 1865, and extended over the next week. Republican lobbying attempts were met by similar efforts by the Democrats, and by January 13, Ashley estimated that he remained several votes short of the necessary two-thirds. In response, he postponed the final vote on the amendment until the end of the month.¹²³ At this point, Lincoln and Seward ramped up their lobbying efforts, with the president (especially) intimating that rewards would follow for those who showed the courage to back the amendment.¹²⁴ While little systematic evidence for vote-buying exists, a number of anecdotal accounts suggest that over the next two weeks patronage and outright bribery were used to round up the necessary votes.¹²⁵

On January 31, after supporters and opponents of the amendment were allowed some final comments, the House proceeded to a final roll call. After all votes were tabulated, the amendment achieved the necessary two-thirds and passed, 119-56.¹²⁶ Every Republican who voted (86 in all) supported the amendment; they were joined by 14 Northern Democrats and 19 Unionists. Overall, Ashley was able to add 15 new “yea” votes from the list of “persuadables”

¹²¹ Ashley, “The Passage of the Thirteenth Amendment to the Constitution,” 675.

¹²² For a detailed analysis of the “Seward Lobby,” see LaWanda Cox and John H. Cox, *Politics, Principle, and Prejudice, 1865-66: Dilemma of Reconstruction America* (New York: Free Press, 1963), 1-30.

¹²³ *Congressional Globe*, 38th Congress, 2nd Session, (January 13, 1865): 257.

¹²⁴ Vorenberg, *Final Freedom*, 198-99.

¹²⁵ Vorenberg, *Final Freedom*, 199-203.

¹²⁶ *Congressional Globe*, 38th Congress, 2nd Session, (January 31, 1865): 531.

that he had compiled – 10 Northern Democrats and 5 Unionists – all but two of whom were lame ducks (see Table 10).¹²⁷

Once the House Clerk announced the final tally, the House erupted in jubilation. Republicans and other opponents of slavery had finally won. The Speaker tried to call the membership – and the gallery – to order, but there was no quieting the celebration. The reporter for the *Congressional Globe* described the scene (in a parenthetical) this way:

The announcement was received by the House and by the spectators with an outburst of enthusiasm. The members on the Republican side of the House instantly sprang to their feet, and, regardless of parliamentary rules, applauded with cheers and clapping of hands. The example was followed by the male spectators in the galleries, which were crowded to excess, who waved their hats and cheered loud and long, while the ladies, hundreds of whom were present, rose in their seats and waved their handkerchiefs, participating in and adding to the general excitement and intense interest of the scene. This lasted for several minutes.

Outside of Congress, friends of emancipation welcomed the good news. Chief among them, perhaps, was President Lincoln who declared that the amendment, once ratified, would eclipse his own effort on behalf of ridding the nation of slavery (i.e., the Emancipation Proclamation). Moreover, Lincoln wanted to affix his name to the effort, and thus he signed the joint resolution (even though he was not constitutionally required to do so).¹²⁸ Lincoln, however, would not see the amendment become a formal part of the Constitution; he was assassinated on April 15, 1865, when only 21 states had successfully ratified the amendment. The necessary three-quarters (or 27 states) was not achieved until December 6, 1865.¹²⁹

¹²⁷ Two other Unionists who were *not* on Ashley's list – Samuel Knox (MO) and William H. Randall (KY) – ended up voting for the amendment after not casting a vote on the earlier (June 15) roll call.

¹²⁸ *Congressional Globe*, 38th Congress, 2nd Session, (January 13, 1865): 257. Michael Vorenberg also suggests another reason for Lincoln's signature: "He may also have wanted to redress the wrong done by his predecessor, James Buchanan, who signed the 'first' Thirteenth Amendment of 1861, the one that would have given slavery eternal life." See Vorenberg, *Final Freedom*, 210.

¹²⁹ The twenty-seventh state to ratify was Georgia. Eight of the 27 were Confederate states, which had not yet been approved for federal representation in Congress. For the politics of ratification, and the arguments for and against

With the Thirteenth Amendment now part of the U.S. Constitution, the decades of conflict over slavery, both inside and outside of Congress, had finally come to an end. With slavery now dealt with, others issues related to the Freedmen (the now-former slaves) would come to the forefront.

V. Creating the Freedmen's Bureau

Traveling with the Union Army as it pushed into Hampton, Virginia in 1861, Edward Pierce describes what they found. White residents having fled the city, but “anticipating a return at no distant day,” left many of their slaves behind. Those abandoned slaves “lived upon the little pork and corn-meal that were left and the growing vegetables. They had but little to do. The women looked after their meager household concerns, but the men where generally idle, standing in groups or sitting in front of shanties talking with the women.”¹³⁰ Brigadier General Byron Pierce recognized immediately the military benefits to be had by putting these one-time slaves to work on behalf of the Union cause. Soon after the Army's arrival he sent a telegram to General Benjamin Butler asking, “shall we put the contrabands to work on the intrenchments [*sic*], and will you furnish them with rations?” On July 8, 1861, Butler replied in the affirmative. “That was the first day,” Edward Pierce reports, “in which the negro was employed in the military works of our army.”¹³¹

Butler's decision represents his pragmatic pursuit of any strategic advantage to be had over the Confederate Army. Yet the question put to him by Brigadier General Pierce describes a significant problem confronting policymakers, and the military elite, as war aims came to involve a complete restructuring of Southern life: what was to be done with the lives and

including the eleven Confederate states in the denominator count (i.e., group of 36), see Richards, *Who Freed the Slaves?*, 218-51; Vorenberg, *Final Freedom*, 211-50.

¹³⁰ Edward L. Pierce, “The Contrabands at Fortress Monroe,” *The Atlantic Monthly* 8 (November 1861): 362.

¹³¹ Pierce, “The Contrabands of Fortress Monroe,” 362.

property taken by Union forces? How would the millions of ex-slaves be integrated into society as free men and women? Taken together, military battles and Lincoln's Emancipation Proclamation created a mass of "internally displaced persons" without homes or political status. Moreover, while the Confiscation Acts made possible the taking of Confederate land and property, it was not entirely clear how the land and persons confiscated would be dealt with at war's end. It would take members of Congress until the spring of 1865, when they passed legislation creating the Freedman's Bureau, to provide clearly articulated policy addressing these issues.

Organizing Freedmen Without Congressional Mandate

Without a clear policy to guide their treatment of escaped slaves, or the disposition of confiscated land, Union military leaders in control of southern territory retained broad discretion to determine the fate of both. By 1863 commanders throughout the south had put into place a variety of different policies. General Benjamin Butler ordered his troops in Hampton, Virginia to put "contraband" ex-slaves to work building military fortifications. Initially, he reimbursed them with food and supplies, but as their numbers continued to grow Butler required need of direction and support. To provide some direction he empowered a military chaplain – Horace James – to serve as his "superintendent of Negro affairs." In this role, Chaplain James oversaw the construction of homes for freedmen, the grouping of these homes into small villages, and the development of schools within these villages.¹³²

In late 1861, General Butler rotated out of Hampton and his replacement, General John Wool, expanded upon his work. Wool promulgated regulations determining the number of hours each day freedmen were to work, the ration allotment owed those employed at various tasks, and

¹³² Paul Skeels Pierce, *The Freedmen's Bureau: A Chapter in the History of Reconstruction* (Iowa City, IA: University of Iowa Press, 1904), 6-7.

the wage – \$8 per month – paid to male workers. While policy implemented by Butler and Wool proved effective, a commission of three officers sent to study its operations in early 1862 found that it was “incapable of expansion because of the expense involved and because the increase in the demand for labor in military departments could not keep pace with the increased demand for charity.”¹³³

Even as Butler and Wool were feeding and housing ex-slaves in Virginia, General Thomas W. Sherman and Commodore Samuel F. Dupont were implementing a different policy in South Carolina. Having taken control of Port Royal, the Sea Islands, and Beaufort in November 1861, Sherman and Dupont found a large population of abandoned slaves and property waiting for them. They immediately requested direction and material support from Washington, DC. In response, Assistant Secretary of War Thomas Scott directed Sherman and Dupont to put these ex-slaves to work harvesting cotton and building military installations. The War Department also promised to pay these workers from the proceeds earned directly from cotton sales so that no additional appropriations from Congress would be necessary.

In addition, Edward Pierce, whose article describing Butler’s efforts in Virginia had earned him a job in the Treasury Department, was sent by Treasury Secretary Salmon Chase to determine what could be done to aid South Carolina’s contraband population. By the time Pierce arrived, Union forces were responsible for nearly 200 plantations, housing between 8,000 and 12,000 freedmen, and producing 2,500,000 pounds of cotton.¹³⁴ Pierce recommended that the entire area be placed under the control of three “superintendents:” one for administration, one for agriculture, and one for education. In a letter to Chase, Pierce explained that these officials would be charged with “prevent[ing] the deterioration of the estates, secur[ing] their best

¹³³ Pierce, *The Freedmen’s Bureau*, 7.

¹³⁴ Pierce, *The Freedmen’s Bureau*, 21.

possible cultivation under the circumstances, and promot[ing] the welfare of the laborers.”¹³⁵ He then organized Port Royal’s black population into camps placed under the direct supervision of the superintendents he appointed. Pierce also provided families living in these camps with plots of land for cultivation, clothing from captured confederate soldiers and abandoned homes, as well as the promise of schooling.¹³⁶ More than fifty volunteers from three Northern private aid organizations – the Educational Commission of Boston, the National Freedmen’s Relief Association of New York, and the Port Royal Relief Committee – traveled to South Carolina to aid Pierce by serving as his superintendents.¹³⁷

Despite the effectiveness of Pierce’s plan, his efforts were frequently obstructed by officials from the War Department. As an official working on behalf of the abolitionist Salmon P. Chase, Pierce saw his primary task as social uplift. He viewed South Carolina’s black population as free men in need of the education and training required to become responsible, autonomous citizens. The policy he implemented in South Carolina sought to provide ex-slaves with “guardians” who shared his goals. He therefore directed subordinates to “instruct those anxious to learn and read, and in every possible manner prepare them to become worth and self-supporting citizens.”¹³⁸ Military officials in Port Royal, on the other hand, were less concerned with social uplift and the cultivation of future citizens. Their primary responsibility was in getting cotton harvested and shipped north where it could be sold for money that would aid the war effort.¹³⁹ This conflict between the War and Treasury Departments over the goals and extent of aid programs would repeatedly emerge throughout the early 1860s.

¹³⁵ Pierce quoted in George R. Bentley, *A History of Freedman’s Bureau* (Philadelphia, PA: University of Pennsylvania Press, 1955), 8.

¹³⁶ Pierce, *The Freedmen’s Bureau*, 21.

¹³⁷ Bentley, *A History of the Freedman’s Bureau*, 8.

¹³⁸ Pierce quoted in Bentley, *A History of the Freedmen’s Bureau*, 10.

¹³⁹ Bentley, *A History of the Freedmen’s Bureau*, 10.

When Lincoln's issued the Emancipation Proclamation, the federal government took on yet more responsibility for the fate of freedmen. Lincoln had pledged to "recognize and maintain" the freedom of ex-slaves, and he recommended "that in all cases when allowed, they labor faithfully for reasonable wages." In short, Lincoln's wartime proclamation suggested to hundreds of thousands of ex-slaves in military camps throughout the south that they were to be "provided with employment and with the necessaries of life." Still more he promised to protect from the "natural prejudice of southerners and the inordinate greed of northerners."¹⁴⁰ Yet there still existed no clear and uniform policy in place to guide military commanders or Treasury officials on the ground. In September 1863, the Treasury Department took steps to provide a coherent policy to govern land and people when it divided the entire south into five "special agencies." Each agency was to be administered by a superintendent and his aides, who would be responsible for distributing land parcels, overseeing the treatment of freedmen, and ensuring that agricultural production did not cease. "It was this small beginning," argues Salmon Chase's biographer, "which resulted in the creation of the Freedmen's Bureau."¹⁴¹

Even as the Treasury Department was trying to take the lead in determining how land and freedmen would be organized, it was still military leaders who most often found themselves responsible for their organization and treatment. These commanders responded to Lincoln's order by building on the programs implemented in Virginia and South Carolina. In late 1863, General Benjamin Butler, once again in command in Virginia and North Carolina, divided the territory under his control into still more districts. He then empowered yet more superintendents. These military superintendents "laid down full and definite rules concerning freedmen, encouraged them to buy small plots of land, build cabins, and form Negro settlements, and

¹⁴⁰ Pierce, *The Freedmen's Bureau*, 10.

¹⁴¹ Pierce, *The Freedmen's Bureau*, 22-23.

systematized the educational facilities for blacks and whites.” General Ulysses S. Grant, whose troops controlled large swaths of the Mississippi Valley in early 1863, implemented a similar program. Grant empowered his adjutant general to select superintendents who would be responsible for leasing plantation land to freedmen, enforcing contract, and organizing the distribution of aid and schooling. Under Grant’s order, “terms of leasing land and hiring Negroes were prescribed, wages fixed, provision for the temporal wants of laborers required hospitals established, and humane treatment insisted upon.”¹⁴²

General William T. Sherman went even further when, in 1865, he issued Special Field Orders 15. Sherman’s orders set aside land specifically for freedmen on the Sea Islands in South Carolina. His orders also encouraged black residents to form settlements, and they stipulated that settled families would be provided “not more than forty acres of tillable ground [...] in the possession of which land the military authorities will afford them protection until such time as they can protect themselves or until Congress shall regulate their title.” Butler, Grant, and Sherman each issued orders contravening the authority claimed by Treasury officials. In so doing, they demonstrate the confusion resulting from Congress’s inability to provide clear policy directing executive branch agents. In particular, what these plans indicate is lack of clarity on matters vital to the post-war world: would freedmen simply be released into southern society without any aid from the federal government? what might an effective program of aid look like? how could legislators best ensure that freedmen would not simply be re-enslaved once the war ended and troops withdrew? Between 1863-1865 members of Congress groped toward answers to these questions.

Congress Steps In

¹⁴² Pierce, *The Freedmen’s Bureau*, 12.

The programs implemented by military commanders and Treasury officials throughout the south in the early years of the war provided legislators with a guide for policymaking. They also took cues from the War Department's American Freedmen's Inquiry Commission. Secretary of War Edwin Stanton created the commission in 1863, and he asked its members to study "those measures which may best contribute to the protection and improvement of the recently emancipated," as well as "the question whether a system of provisional or permanent guardianship be necessary for "self-defense and self support." The Commission's proposed plan for organizing land and men in the South was never put into effect. Yet its findings are important because they would frame much of the debate that would soon consume Congress. In particular, the report warns that there is "as much danger in doing too much [for freedmen] as in doing too little." For "under the guise of guardianship, slavery, in a modified form, may be practically restored." Further, it find that while "refugees from slavery" are in need of aid, their needs are not more significant than those of "indigent southern whites fleeing from secessionism."¹⁴³

Where the War Department counseled caution, Freedmen's aid societies throughout the North appealed to Congress and President Lincoln for decisive action. In a letter to the president, members of these societies in Boston, Philadelphia, New York, and Cincinnati, called for the "immediate creation of a bureau of emancipation." They envisioned a "regularly constituted government bureau with all the machinery and civil powers of the government behind it." Some form of permanent bureaucratic establishment, they believed, would provide the kind of centralized leadership necessary to prevent conflicts between the War and Treasury Departments. It would also ensure that freedman would receive the financial appropriations commensurate with the challenges that they would soon be facing. Moreover, these reformers sought just the

¹⁴³ The final report of the American Freedmen's Inquiry Commission can be read here: <http://www.civilwarhome.com/commissionreport.htm>

kind of guardianship warned against by the War Department. “Has the government any moral right to free the slave without seeing to it that, with every chain it breaks, the best within its power is done to keep the freedman from hankering after his master and his bondage,” asks the letter.¹⁴⁴ Here we see in the dueling reports from the War Department and private aid societies, a preview of the debate over the fate of freedmen that would occupy Congress between 1863-1865: the extent and permanence of aid, and the racial considerations to guide its distribution.

In January 1863, Representative Thomas Eliot (R-MA) introduced the first legislative proposal to create a bureau of emancipation.¹⁴⁵ It was immediately referred to the House Select Committee on Emancipation where it sat untouched until the end of the 37th Congress. When members reconvened in December 1863 for the 38th Congress, Eliot immediately reintroduced his bill as H.R. 51.¹⁴⁶

As written, H.R. 51 sought to create a bureau of freedmen’s affairs within the War Department. The head of this bureau, characterized as a “commissioner” by the bill, would be empowered to create individual “departments of freedmen” within southern states. These departments were to be populated by assistant commissioners, each of which would be chosen by the head commissioner and the Secretary of War. All commissioners were empowered to “adjust and determine all questions touching the general superintendence, disposition, and direction” of freedmen. The commission was further charged with making “suitable regulations for the economical and judicious treatment” of freedmen so that “their rights and those of the government may be duly determined and maintained.” H.R. 51 also stipulated that freedmen would be allowed to “occupy, cultivate, and improve” abandoned southern land, or land to which

¹⁴⁴ Quoted in Bentley, *A History of the Freedmen’s Bureau*, 30.

¹⁴⁵ *Congressional Globe*, 37th Congress, 3rd Session, (January 12, 1863): 282.

¹⁴⁶ *Congressional Globe*, 38th Congress, 1st Session, (December 14, 1863): 19.

the union government has “acquired title.”¹⁴⁷ As Pierce explains, when viewed as a whole, this bill ensued that the commissioner and his subordinates were authorized to “regulate the cultivation of abandoned and confiscated lands, adjust wages, and have general supervision over Negro laborers.”¹⁴⁸

Eliot’s bill once again found its way to the Select Committee on Emancipation, which he chaired. In February 1864 it came to the floor for debate. As the bill’s author, Eliot himself made the first prolonged statement advocating for enactment. Eliot’s discussion of the bill stressed the obligations owed to freedmen once Lincoln issued his Emancipation Proclamation. “The shackles have been loosened for the slave,” he argued, “but defeated armies would leave the conquerors free to weld them on again with bolts that could not be stricken off.” Eliot was clearly not at all confident that freedom for black Americans would be assured even if the north won the war. Echoing the argument made in the letter from aid societies to President Lincoln, he warned that without legislation to protect them, freedmen could just as easily be re-enslaved. Further, citing the proclamation’s encouragement of freedmen to “where allowed, labor faithfully for honest wages,” Eliot asked, “who is to allow them?” This rhetorical question implies Eliot’s view that only through legislative protection could ex-slaves be assured of fair pay for their work.¹⁴⁹ Finally, in order to confront those who might question Congress’s power to provide these protections, Eliot cited the bureau’s location within the War Department. If the government retained the power to free slaves, he argued, then it certainly had the power to guarantee that such freedom would last.¹⁵⁰

¹⁴⁷ The text of H.R. 51 can be found here: <http://memory.loc.gov/cgi-bin/ampage?collId=llhb&fileName=038/llhb038.db&recNum=202>

¹⁴⁸ Pierce, *The Freedmen’s Bureau*, 35.

¹⁴⁹ For more on this point see: Herman Belz, *A New Birth of Freedom: The Republican Party and Freedmen’s Rights, 1861-1866* (Westport, CT: Greenwood Press, 1976). 77-78.

¹⁵⁰ *Congressional Globe*, 38th Congress, 1st Session, (February 10, 1864): 567-571.

Republican supporters of H.R. 51 generally stressed its practical advantages over arguments about the Union government's moral obligations to freedmen. Representative Cornelius Cole (R-CA), for example, claimed that the bill "proposes, in effect, to shorten the war." By protecting the families of freedmen, by ensuring their livelihoods and education, Cole claimed, the Union government would incentivize black enlistment. "Every slave added to the Union army is, in effect, also taking a soldier from the ranks of the rebels," he concluded.¹⁵¹ William Kelley (R-PA), meanwhile, argued that freedmen "must not be permitted to contract habits of idleness, indolence, and vagrancy." H.R. 51, he argued, counteracts these vices by providing "legal, constitutional, and inexpensive means" by which the federal government could ensure continued cultivation of millions of acres of land. "In the cultivation of its lands a nation finds its wealth," Kelly argued.¹⁵²

Unsurprisingly, House Democrats raised vehement opposition to Eliot's proposal. S.S. Cox (D-OH) led a campaign against the constitutionality of H.R. 51. Claiming that it turned the government into a "grand plantation speculator and overseer, and the Treasury a fund for the helpless Negro," Cox condemned the bill as a revolutionary break with constitutional federalism. Cox then went on to question whether the war power truly justified the power exerted in H.R. 51, and to assert that the bureau would open a "vast opportunity for greed, tyranny, corruption, and abuse." Concluding, Cox positing the entire Civil War as an "irrepressible conflict [...] not between freedom and slavery, but between black and white." Radical reformers like Eliot, he argued, intended not just to end slavery. They instead sought to promote "miscegenation" and "amalgamation."¹⁵³ Through the final two weeks of February, House Democrats took the floor to

¹⁵¹ *Congressional Globe*, 38th Congress, 1st Session, (February 18, 1864): 741.

¹⁵² *Congressional Globe*, 38th Congress, 1st Session, (February 23, 1864): 773.

¹⁵³ *Congressional Globe*, 38th Congress, 1st Session, (February 17, 1864): 709.

expand upon each aspect of Cox's argument: the Bureau of Emancipation represented an unconstitutional grant of authority to the federal government; it encouraged new forms of corruption and greed; it wielded power over men ostensibly freed from servitude; and it provided aid to people who should not be receiving it.¹⁵⁴

On March 1, H.R. 51 came to a vote. After a motion to table the bill failed 63-69, Eliot's un-amended proposal narrowly passed, 69-67.¹⁵⁵ As Table 11 makes clear, the vote fell along party lines. No Democrats voted to endorse the measure, while just four Republicans voted in opposition. Those Republicans voting no were joined by 13 "Unionists" from Border states. Having passed the House, Eliot's proposal now moved to the Senate where it would run into opposition from both Republicans and Democrats.

Once in the Senate, H.R. 51 went first to the Select Committee on Slavery and Freedmen, chaired by Senator Charles Sumner (R-MA). One of the leading Senate Radicals, Sumner and his allies were dissatisfied with President Lincoln's cautious approach to abolition. Sumner's political preferences overlapped more with those of Treasury Secretary Salmon P. Chase who, by late 1863, was being spoken of as an alternative to Lincoln for the Republican Party nomination in 1864.¹⁵⁶ Accordingly, Sumner led the committee to rewrite H.R. 51, and to instead place the Bureau of Emancipation in the Treasury Department. Sumner's committee also broadened the language of Eliot's proposal so as to ensure that it covered all slaves, not simply those emancipated by Lincoln's proclamation.¹⁵⁷

¹⁵⁴ For speeches on each of these points see: *Congressional Globe*, 38th Congress, 1st Session, (February 17, 1864): 709-711; (February 19, 1864): 761; (February 24): 804-805; (March 1, 1864): Appendix 54.

¹⁵⁵ *Congressional Globe*, 38th Congress, 1st Session, (March 1, 1864): 895.

¹⁵⁶ Leonard L. Richards, *Who Freed the Slaves?*, 134-137.

¹⁵⁷ For political purposes, the Emancipation Proclamation exempted particular regions and states. See: Belz, *A New Birth of Freedom*, 79.

When considering the disposition of property, Sumner's bill stipulated that the Bureau of Emancipation would retain authority to lease confiscated or abandoned land to freedmen "on such terms [...] and under such regulations as the commissioner may determine."¹⁵⁸ Bureau commissioners were to act as "advisory guardians" for freedmen to ensure that labor contracts were fair and all of their obligations satisfied. Sumner envisioned a system wherein freedmen would serve as "contract laborers on government-leased plantations."¹⁵⁹ As agents contracting with the federal government through the Bureau of Emancipation, rather than leasing or purchasing land from private owners, the argument went, the rights of freedmen would be better protected. Indeed, according to Sumner himself, the House bill authored by Thomas Eliot provided "no protection to the freedmen so as to keep them from being made serfs or apprentices."¹⁶⁰

When Sumner's version of the Bureau bill – S. 227 – came to the floor of the Senate in Spring 1864, these guardianship provisions came under immediate attack from Republicans. Presaging a dynamic of intra-party conflict that reemerges throughout the Reconstruction era, Sumner's radicalism met its match in the form of moderate, anti-slavery Republicans from western states. Senator James Grimes (R-IA), for example, vehemently opposed the provision of S. 227 empowering commissioners to "take care that the freedmen do not suffer from ill treatment or any failure of contract on the part of others, and that on their part they perform their duty." "Are they free men or are they not," Grimes asked. "Why do you confer upon these commissioners [...] the unlimited power to see to it that these colored men perform what [...]"

¹⁵⁸ Sumner's bill can be read here: <https://memory.loc.gov/cgi-bin/ampage?collId=llsb&fileName=038/llsb038.db&recNum=1115>

¹⁵⁹ Belz, *A New Birth of Freedom*, 80.

¹⁶⁰ Sumner quoted in Belz, *A New Birth of Freedom*, 80.

may be their duty? How are you going to enforce it? By stripes and lashes?” From his perspective, freedmen must be left alone to “stand as free men.”¹⁶¹

Echoing Grimes were Senator Timothy Howe (R-WI) and, poignantly, Frederick Douglass. During a back-and-forth with Sumner in late June 1864, Howe attacked the guardianship provision supported by Senate radicals. Howe asserted that the bill would “give to commissioners, the right to control the action and the efforts of all these freedmen.”¹⁶² Here Howe repeated an argument made by Fredrick Douglass in 1862. Speaking to representatives of freedmen’s aid societies, Douglass embraced what Belz has called the “laissez-faire post-emancipation policy.” When asked what should be “done” with freedmen after the war, Douglass replied, “do nothing with them [...] your *doing* with them is their greatest misfortune.”¹⁶³ Sumner, recognizing that S. 227 would fail without the support of Republicans who did not share his faith in “guardianship,” agreed to change the bill’s language so as to reaffirm that “every freedmen be treated in every respect as a free man, with all proper remedies in courts of justice.”¹⁶⁴ None of these textual changes to the bill received a roll call vote.

Unionist Party member Senator Waitman Willey (WV) authored the one amendment that did receive a vote. Willey proposed to allow Bureau commissioners the power to re-settle freedmen in northern and western states when it was not possible to find them work or land in the South.¹⁶⁵ Willey’s proposal instigated an immediate and negative response from Sumner. Meekly but repeatedly, Sumner explained his opposition as motivated by a belief that the

¹⁶¹ *Congressional Globe*, 38th Congress, 1st Session, (June 15, 1864): 2972.

¹⁶² *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3331.

¹⁶³ Herman Belz, “The Freedman’s Bureau Act of 1865 and the Principle of No Discrimination According to Color,” *Civil War History* 21 (September 1975): 207.

¹⁶⁴ *Congressional Globe*, 38th Congress, 1st Session, (June 27, 1864): 3299.

¹⁶⁵ *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3239.

language of Willey's amendment "goes too far."¹⁶⁶ In reality, Sumner likely recognized that if adopted, Willey's amendment would sink S. 227. For anti-slavery northerners and westerners were "acutely sensitive to the issue of Negro migration." As Belz explains, many of the Senate's most reliable abolitionists recognized that discussion of freedmen migration north would incite opposition from voters in their home states.¹⁶⁷ Despite Sumner's opposition, Willey's amendment passed 19-15.¹⁶⁸ As Table 12 demonstrates, it split the GOP, as 11 voted for it while 12 opposed. Republican party opposition came almost entirely from those representing western states.¹⁶⁹ Democrats likely supported the Willey provision knowing that it would likely sink the bill.

In order to salvage S. 227, Sumner offered an amendment stripping Willey's language from the bill. Sumner's amendment failed in a 14-14 tie vote (See Table 12).¹⁷⁰ Instead, through voice vote, the Senate adopted language encouraging bureau commissioners to correspond with northern state governors regarding the resettlement of freedmen.¹⁷¹ Then, before moving to a final vote on Sumner's bill, members weighed in on an effort to relocate the Bureau of Emancipation in the War Department as originally intended. This amendment, authored by Unionist Party member Reverdy Johnson (MD) failed 15-20 (See Table 12).¹⁷² After defeating Johnson's amendment, the Senate voted 21-9 in favor of S. 227, with all Republicans but one voting for it, and all Democrats voting no (See Table 12).¹⁷³

¹⁶⁶ *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3239-3240.

¹⁶⁷ Belz, *A New Birth of Freedom*, 83-84.

¹⁶⁸ *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3330.

¹⁶⁹ Belz, *A New Birth of Freedom*, 84.

¹⁷⁰ *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3337.

¹⁷¹ *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3341.

¹⁷² *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3337.

¹⁷³ *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3350.

Sumners's amended proposal now moved back to the House. On July 2, 1864, the House's Select Committee on Emancipation refused to concur with the changes made to Eliot's proposal. Then House members chose to delay further consideration of the entire bill until the following session of Congress. In the meantime, two organized interest groups emerged to press Congress for action. The first, a convention of representatives from seven different freedmen's aid societies met in Indianapolis to discuss the importance of the "African Bureau Bill." They called on President Lincoln to empower his own "supervising agent of freedmen's affairs in the west" because "of the failure on the part of Congress to establish a bureau."¹⁷⁴ The second, a group called the American Union Commission (AUC) organized itself to act on behalf of "loyal white refugees." As Belz explains, the AUC frequently explained its mission as providing "aid to the people of the South – not the black men because they are black, nor the white men because they are white, but all men because they are men."¹⁷⁵ Yet AUC officials acknowledged that they were not duplicating the work of freedmen's aid societies already operating. They organized aid for white southerners only, and their appeals to ostensibly "color-blind" policy would directly impact the next iteration of the debate over the freedmen's bureau.

When Congress reconvened in December 1864, the House quickly moved to a vote on whether to concur to the amendments made to H.R. 51 in the Senate. This vote failed 52-71.¹⁷⁶ As Table 11 makes clear, all but one House Republican refused to back the bill supported by Sumner and his allies in the Senate. After this vote, the House and Senate organized a conference committee chartered with putting together a compromise proposal.¹⁷⁷ Eliot discussed the compromise proposal – also numbered H.R. 51 – on February 2, 1865. The conference

¹⁷⁴ Pierce, *The Freedmen's Bureau*, 41.

¹⁷⁵ AUC mission quoted in Belz, *A New Birth of Freedom*, 94.

¹⁷⁶ *Congressional Globe*, 38th Congress, 2nd Session, (December 20, 1864): 80.

¹⁷⁷ Republicans on the Committee included: Thomas D. Eliot, William D. Kelley, Charles Sumner, and Jacob Howard; Democrats included on the Committee were: Warren P. Noble and Charles R. Buckalew.

committee's bill proposed the creation of an independent Bureau of Freedmen's Affairs "unconnected" with any existing executive department. Like the Department of Agriculture, it would "communicate directly with the president" instead of working through the head of a pre-existing agency.¹⁷⁸

In this way, Eliot and Sumner tried to sidestep the conflict between those who believed the bureau should be under military control and those who wised it to be a permanent, civilian-led agency. Those pushing for civilian control worried that the military cared little for the lives of ex-slaves, that military officers were amenable to freedmen working as de facto serfs, and that support for the bureau would dissolve when military hostilities ended if it was located within the War Department. Those pushing for military control saw it as the only way to protect freedmen from racist white southerners and economically rapacious northerners. They also believed that the wage system proposed by some of the bill's advocates would generate its own system of serfdom by constructing "a scheme of controlled labor in as though the former slaves were incapable of supporting themselves."¹⁷⁹

After detailing this important modification, Eliot went on to explain that the bill empowered the Commissioner of Freedmen's Affairs – appointed by the Senate and confirmed by the Senate – to create not more than two "freedmen's districts" in each state. These districts would be "brought under the military power of the United States" and, in turn, "governed by assistant commissioners whose primary responsibility was "general supervision of freedmen."¹⁸⁰ More specifically, these "advisory guardians" would determine the wages paid to freedmen,

¹⁷⁸ *Congressional Globe*, 38th Congress, 2nd Session, (February 2, 1865): 562-566.

¹⁷⁹ Belz, *A New Birth of Freedom*, 97.

¹⁸⁰ *Congressional Globe*, 38th Congress, 2nd Session, (February 2, 1865): 564.

ensure that labor contracts were upheld, arbitrate any disputes to which they were a party, and ensure that they received fair trials when charged with a crime.

Addressing the issue of land use, H.R. 51 stipulated that assistant commissioners were to provide freedmen with leases “not to continue beyond one year.” During that year, freedmen were encouraged to develop and cultivate their land so that the lease could be renewed in the following year. Ex-slaves would be responsible for negotiating the terms of these leases with their district’s advisory guardians. The conference committee report demonstrated that members of Congress never envisioned a land reform plan that would grant permanent ownership rights to ex-slaves.¹⁸¹ The bill’s final section dealt with administrative matters and proposed a system for punishing, under military law, any commissioners charged with perpetrating criminal acts while employed by the Bureau.

In both the House and the Senate, the terms of the debate echoed those outlined in 1864. Radicals defended the guardianship system because, in Eliot’s words, freedmen were “unused to self-reliance and dependent for a season somewhat upon our sympathy and aid.”¹⁸² Once again, western Republicans objected to this radical idea. In the words of Representative James Wilson (R-IA), “the better course for us [...] is to let [freedmen] have the responsibility upon themselves of disposing of their own services in such a way as they may deem proper.”¹⁸³ New to this iteration of the debate, however, were arguments from some members who wanted to see additional support for southern whites. Senator Henry Lane (R-IN), for example, proclaimed himself supportive of “temporary relief and temporary support to colored persons and equally to

¹⁸¹ Belz, *A New Birth of Freedom*, 95.

¹⁸² *Congressional Globe*, 38th Congress, 2nd Session, (February 2, 1865): 564.

¹⁸³ *Congressional Globe*, 38th Congress, 2nd Session, (February 10, 1865): 689.

the white refugees.”¹⁸⁴ More than one congressional Republican supported Lane’s argument. Their skepticism portended trouble for the bill.

H.R. 51 came up for a vote in the House on February 9, 1865. It passed 64-62; as Table 11 illustrates, it won with the support of all but four Republicans.¹⁸⁵ In the Senate, Sumner brought the bill to the floor for debate on February 13. Nine days later, Senators overwhelmingly rejected the compromise measure 14-24.¹⁸⁶ The bill failed because seven western and five eastern Republicans voted no. Then, in a last ditch effort to salvage a bill, the House and Senate formed a second conference committee comprised of only members who did *not* sit on the Senate/House committees on Emancipation/Freedmen. The bill crafted by this new conference committee would largely be based on a measure introduced by Representative Robert Schenck (R-OH) earlier in February.

Despite his own opposition to slavery, Schenck was one of four House Republicans who opposed the revised version of H.R. 51. Like many western Republicans, Schenck opposed the guardianship principle pushed by House and Senate radicals. As a spokesman for the position set forth by the AUC, Schenck also made clear that his belief that H.R. 51 failed to adequately support loyal southern whites. Accordingly, on February 9 – the same day that the House voted on H.R. 51 – Schenck introduced his own freedmen’s bureau bill (H.R. 698).¹⁸⁷

This bill included just two substantive provisions. First, it created a “Bureau for the Relief of Freedmen and Refugees” within the War Department which would operate throughout the south only “during the present war of rebellion.” Bureau agents were empowered to “supervise, manage, and control” all matters impacting “refugees and freedmen from the rebel

¹⁸⁴ *Congressional Globe*, 38th Congress, 2nd Session, (February 22, 1865): 984-985.

¹⁸⁵ *Congressional Globe*, 38th Congress, 2nd Session, (February 9, 1865): 694.

¹⁸⁶ *Congressional Globe*, 38th Congress, 2nd Session, (February 22, 1865): 989-990.

¹⁸⁷ *Congressional Globe*, 38th Congress, 2nd Session, (February 9, 1865): 691.

states.” H.R. 698 also granted the President power to distribute aid, and to authorize the “temporary” transfer of abandoned land to both ex-slaves and white refugees.

Defending his proposal against the compromise measure pushed by Eliot, Schenck stressed that under his bill, the bureau would serve as simply a solution to “one of the incidents of war – temporary in its character [...] to be disposed of as the war progresses, and to be ended about the time when the war ends.” Then he highlighted the fact that his bill “makes no discrimination on account of color.” The “peculiarity of the bill,” he went on, “is that it does not discriminate against whites; that it proposes to take care of all refugees, as well as all freedmen, who may need the help of the federal government.”¹⁸⁸

Schenck’s bill passed the House by voice vote on February 18, 1865.¹⁸⁹ As a consequence, when the Senate took up debate on H.R. 51 it had Schenck’s bill as a potential alternative. Once H.R. 51 failed in the Senate, the second conference committee drafted a measure that was “substantially in accord with the Schenck bill.”¹⁹⁰ Introduced in the Senate on February 28, 1865, this third revision of H.R. 51 created, within the War Department, a Bureau for the Relief of Freedmen and Refugees “to continue during the present war of rebellion and for one year thereafter.”¹⁹¹ The bureau would be led by a presidentially-appointed commissioner, supported by Senate-confirmed assistants, who would be appointed to each rebel state. Within the states themselves the bureau would manage “all subjects relating to refugees and freedmen,” would provide temporary aid to those made destitute by the war, and would be authorized to set aside 40 acres for each male citizen – white or black – to cultivate for up to three years. After three years, these tracts of land would be rented at a rate “not exceeding six percent” of its value

¹⁸⁸ *Congressional Globe*, 38th Congress, 2nd Session, (February 9, 1865): 691.

¹⁸⁹ *Congressional Globe*, 38th Congress, 2nd Session, (February 18, 1865): 908.

¹⁹⁰ Belz, *A More Perfect Union*, 103.

¹⁹¹ *Congressional Globe*, 38th Congress, 2nd Session, (February 28, 1865): 1182.

“as it was appraised by the state authorities in 1860 for the purposes of taxation.” The new H.R. 51, unlike its two predecessors, largely abandoned the guardianship principle and, despite the 40 acres stipulation, allowed for only “temporary use of rebel estates, with the rather remote possibility of subsequent ownership.”¹⁹² The radicals had lost.

On the final day of the 38th Congress, the Senate concurred with this new conference committee bill after almost no debate and without a roll call vote.¹⁹³ In the House, H.R. 51 passed with no debate and no roll call vote.¹⁹⁴ Congress had finally created a Freedmen’s Bureau. Yet, as we document elsewhere, their creation would not survive for very long.¹⁹⁵

VI. The Wade-Davis Bill

By June 1861 all eleven of the so-called Confederate States of America had declared themselves independent of the United States. As a consequence, President Lincoln and members of Congress found themselves debating not only how to win the war, but also how to put the nation back together once hostilities ended. In his July 4th message to Congress, Lincoln offered an early perspective on what reunion would look like. Here alluded to the “understanding of the powers and duties of the federal government relatively to the rights of the states” expressed in his first inaugural address.¹⁹⁶ In his inaugural Lincoln had explained that the federal government had no authority to “interfere with the institution of slavery in the states where it exists.” He also reaffirmed his commitment to the “maintenance inviolate of [...] the right of each state to order and control its own domestic institutions.” President Lincoln, in other words, characterized the

¹⁹² Belz, *A More Perfect Union*, 105.

¹⁹³ *Congressional Globe*, 38th Congress, 2nd Session, (March 3, 1865): 1348.

¹⁹⁴ *Congressional Globe*, 38th Congress, 2nd Session, (March 3, 1865): 1402.

¹⁹⁵ Jeffery A. Jenkins and Justin Peck, “Congress and Civil Rights: The Early Reconstruction Era, 1865-1871,” Paper Presented at 2016 Annual Meeting of the Southern Political Science Association, San Juan, Puerto Rico

¹⁹⁶ Lincoln’s message to Congress can be read here: <http://www.presidency.ucsb.edu/ws/?pid=69802>

war as a military effort designed to reestablish the antebellum status quo. On this point he spoke for many conservative Republicans and Unionists.

Radicals in Congress did not share Lincoln's view. Led by Senator Charles Sumner (R-MA), they immediately set out to be sure that rebel states would not simply be readmitted, and their representatives re-seated, without significant reform. Accordingly, in February 1862, Sumner introduced a resolution explicating the radical vision of the post-war world:

Resolved, That any vote of secession or other act by which any State may undertake to put an end to the supremacy of the Constitution within its territory is inoperative and void against the Constitution, and when sustained by force it becomes a practical *abdication* by the State of all rights under the Constitution, while the treason which it involves still further works an instant *forfeiture* of all those functions and powers essential continued to the existence of the State as a body-politic, 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.¹⁹⁷

Dubbed the “state suicide” theory, Sumner’s argued suggested that seceded states should be downgraded to “territories,” and run by Congress from Washington, D.C. State suicide, or more technically, “territorialization,” would never be implemented. Yet the back-and-forth between Lincoln and congressional radicals described here encapsulates the debate over the over the terms of reunion that would occupy Congress for the next two years. This debate would play out in two distinct phases: in the first, members debated whether or not to impose territorialization on the rebellious states. In the second, members of Congress fought among themselves, and with the president, over whether the terms to be met before a state would be readmitted should be set by the legislature or the executive. We address each period in turn.

Period One: Territorialization

¹⁹⁷ *Congressional Globe*, 37th Congress, 2nd Session, (February 11, 1862): 737.

The period between Lincoln's 4th of July message and mid-1862 was dominated by one basic question: what did secession "do" to the rebel states relative to the federal government? From Lincoln's perspective, the rebellion implied nothing about the status of confederate states. Lincoln did not believe that any state had the legal authority to remove itself from the Union. "Having never been states either in substantive or in name outside of the Union," he argued in his July 4th message, "whence this magical omnipotence of 'state rights' asserting a claim of power to lawfully destroy the Union itself? [...] The states have their status in the union, and they have no other status." Lincoln's view of secession as unlawful led him to post the rebellion as a criminal act perpetrated by disloyal residents of the eleven confederate states.

From Lincoln's perspective, therefore, the war itself was not an acknowledgment of the legitimacy of secession. In Lincoln's view, states simply could not be considered to have left the Union. Military hostilities were required to overcome the treasonous actions of southern political elites. Reconstruction along the lines of the argument laid out by Lincoln, argues Burgess, "consisted simply in placing the loyal elements in a 'state' in possession of the government of 'the state.'"¹⁹⁸ Before the Emancipation Proclamation, one's position on slavery was largely irrelevant to one's status as a "loyal" citizen. For this reason, Lincoln's early position on readmission could be seen as envisioning a post-war world in which slavery persisted within readmitted southern states.

Even before delivering his July 4th message, Lincoln was taking steps to act on his vision of Reconstruction. In April 1861 he provided federal military protection to loyal Virginians seeking readmission to the Union. With aid from Washington, D.C., a small group of loyalists elected Francis Pierpont as governor of the "restored government of Virginia." Loyalists also

¹⁹⁸ John W. Burgess, *Reconstruction and the Constitution, 1866-1876* (New York: Charles Scribner's Sons, 1902), 9.

elected three Unionist congressmen, while the reconstituted state legislature sent John S. Carlile and Waitman T. Willey to the Senate.¹⁹⁹ Believing that a similar outcome might be possible in North Carolina, Lincoln claimed in his December 1861 annual message to Congress that “the cause of the Union is advancing steadily and certainly southward.”²⁰⁰ Yet when elections were held, Unionist representative Charles H. Foster won with only 224 votes.²⁰¹ The House Committee on Elections, recognizing that Foster was in no way a “representative” of the state, refused to admit him. By rejecting Foster, members of the House served notice that they intended to weigh in on the policy that would guide states restoration; and with the new year came a prolonged debate over the status of the rebel states.

According to Belz, Lincoln’s primary antagonist from the radical wing of the GOP in the House was James M. Ashley (OH).²⁰² In March 1862, Ashley – then chairman of House Committee on Territories – convinced his committee to report H.R. 356 to the House floor for debate. Written by Ashley, H.R. 356 proposed to authorize President Lincoln to “establish temporary civil government possessing full legislative power over the seceded states.” Most importantly, however, Ashley intended this legislative power to cover “all rightful subjects of legislative, not inconsistent with the Constitution and laws of the United States.”²⁰³ This provision is consequential because it would have allowed provisional governments to amend, or repeal, all state laws protecting slavery. H.R. 356 then directed provisional governments to seize public and confiscated land, and then to leave it to “actual occupants, who are loyal,” as well as to establish schools for freedmen. Once these provisional governments were created, they would

¹⁹⁹ Donald, Baker, and Holt, *The Civil War and Reconstruction*, 509.

²⁰⁰ Lincoln’s message can be read here: <http://www.presidency.ucsb.edu/ws/?pid=29502>

²⁰¹ Belz, *Reconstructing the Union*, 46.

²⁰² Belz, *Reconstructing the Union*, 53.

²⁰³ In *Reconstructing the Union*, Belz reports details of Ashley’s bill. It was never formally introduced into Congress so it exists in his papers, but is not publicly available. All quotes to the bill come from Belz’s book.

exist “until such time as the loyal people residing therein shall form new state governments, Republican in form, as prescribed by the Constitution of the United States, and obtain admission into the Union as states.”²⁰⁴

In keeping with a pattern that held throughout Reconstruction, plans from Ashley and Sumner met with opposition from Democrats and Republicans alike. Democratic opponents, as was their wont, invoked the Constitution as they railed against radical proposals. “There is no power in this Congress to declare that the people of a state of this Union shall not govern shall not govern themselves in all matters touching their local and domestic affairs,” complained Senator Lazarus Powell (D-KY).²⁰⁵ Republicans, meanwhile, claimed that territorialization acknowledged the validity of secession. Senator John Sherman (R-OH) even likened Sumner’s “state suicide” resolution to the decisions made by Jefferson Davis. Sumner, he claimed “puts the states in the condition of abject territories, to be governed by Congress, Jefferson Davis puts it in the power of the states to govern themselves. As to which is the most dangerous or obnoxious doctrine, I leave every man to determine.”²⁰⁶

The determined opposition of Democrats and Republicans alike prevented the House from even debating Ashley’s bill. Indeed, when he attempted to bring it to the floor in March 1862 it was immediately attacked by Representative George Pendleton (D-OH). “This bill ought to be entitled ‘A bill to dissolve the Union and abolish the Constitution,’” he proclaimed. The House then voted 65-56 to table H.R. 356.²⁰⁷ As Table 13 indicates, the pivotal votes to table came from 22 Republicans who broke ranks to vote with the Democrats.

²⁰⁴ Belz, *Reconstructing the Union*, 53-63.

²⁰⁵ *Congressional Globe*, 37th Congress, 2nd Session, (July 7, 1862): 3141.

²⁰⁶ *Congressional Globe*, 37th Congress, 2nd Session, (April 2, 1862): 1493.

²⁰⁷ *Congressional Globe*, 37th Congress, 2nd Session, (March 12, 1862): 1193.

In the Senate, a more “moderate” approach to reconstruction, introduced by Ira Harris (R-NY), met a similar fate. Harris’s bill – S. 200 – also proposed to establish “provisional governments” in rebel states. Yet it excluded any reference to emancipation or the confiscation of land and it included a provision stipulating that governments created by the bill had no power to interfere “with the laws and institutions existing in such state at the time it seceded.”²⁰⁸ The provisional governments Harris proposed, in other words, would not be empowered to repeal state laws protecting slavery. According to Harris, his was simply a proposal to “govern these states *ad interim* during the interval that shall elapse between the time when the rebellion is subdued [...] and when [the states] shall be willing to reorganize themselves and come back and govern themselves in the Union.”²⁰⁹ Despite the bill’s moderate approach to slavery and reconstruction, Harris could not convince the Senate to take it up before the end of the 37th Congress.

With Congress unable to develop its own policy to guide the readmission of seceded states, President Lincoln took the initiative in pursuing his own approach. Lincoln’s strategy centered upon the appointment of military governors who he empowered to take charge of southern states controlled by Union military forces. It was the responsibility of these military governors to organize each state’s population of loyal citizens, and to then hold elections to reconstitute state governments and to send representatives to Washington, D.C. In order to preempt any legislative efforts to contest his readmission policy, Lincoln appeased congressional radicals by taking stronger steps toward the abolition of slavery. The Emancipation Proclamation should thus be seen as one consequence of this tacit agreement with the radical wing of his

²⁰⁸ S. 200 can be read here: <https://memory.loc.gov/cgi-bin/ampage?collId=llsb&fileName=037/llsb037.db&recNum=707>; Section 3

²⁰⁹ *Congressional Globe*, 37th Congress, 2nd Session, (July 7, 1862): 3141.

party.²¹⁰ Indeed, despite one more unsuccessful attempt by Ira Harris in early 1863 to get a provisional government bill enacted, the course of reconstruction was now largely in Lincoln's hands.²¹¹

Period Two: Congress versus the President

In order to formalize his reconstruction policy, and thereby assert his authority to guide readmission in the future, Lincoln issued a "Proclamation of Amnesty and Reconstruction" in December 1863.²¹² Here Lincoln set forth terms that each rebel state would need to satisfy before it would be readmitted. More specifically, the proclamation offered a full pardon to all of those who participated in the rebellion – excepting political and military elites – contingent upon their swearing an oath to "faithfully support, protect, and defend the Constitution," as well as all acts of Congress and executive proclamations issued since 1861. Next, it specified that for a given state's government to be reconstituted, ten percent of the number of voters who participated in the 1860 election would need to sign the loyalty oath. Once this threshold was passed, elections could be organized and new state governments formed.

Finally, and most crucially, Lincoln's proclamation left it up to readmitted state governments to set their own policies regarding the future treatment of freedmen. To be readmitted, these states would need to swear to abide by the Emancipation Proclamation, but that stipulation was the only term imposed on southern states regarding ex-slaves. In particular, the Proclamation stated, "any provision which may be adopted by such state government in relation to the freed people of such state [...] will not be objected to by the national executive."

Explaining this language in his annual message to Congress, Lincoln expressed his hope that the

²¹⁰ Belz, *Reconstructing the Union*, 101.

²¹¹ For more on Harris's second failed proposal see Belz, *Reconstructing the Union*, 200.

²¹² Lincoln's Proclamation can be read here: <http://www.freedmen.umd.edu/procamn.htm>

people of readmitted states would be more likely to permanently abolish slavery, and deal favorably with freedmen, “to the extent that this vital matter be left to themselves.”²¹³ Radicals read this statement as a signal that Lincoln had endorsed abolition. Combined with the oath requiring all reconstituted state governments to abide by the Emancipation Proclamation, Lincoln appeared to be indicating that “emancipation would be a condition of reconstruction.”²¹⁴ Yet Lincoln’s unwillingness to make readmission contingent upon the ratification of new state constitutions outlawing slavery, combined with the eventual failure of his ten percent policy and continued interest within Congress to take charge of reconstruction, reignited conflict between the president and Congress in 1864.

Lincoln’s Ten Percent Plan relied almost entirely on the powers wielded by military governors. As Belz explains in vivid detail, congressional Republicans spent a good part of 1862 and 1863 raising concerns about the incompatibility of martial law and republican governance.²¹⁵ Until 1864, however, military victories and movement closer to emancipation prevented Congress from countermanding Lincoln’s approach. In Louisiana, however, Lincoln’s military governor – General Nathaniel Banks – made a series of decisions that enraged radicals.

In early 1864, Banks tried to reorganize the government of Louisiana without first amending the state constitution to outlaw slavery. Instead, he simply made use of his military authority to nullify those aspects of the state charter protecting it. Louisiana’s abolitionists responded by asserting that Banks’ policy “recognized the old state constitution and gave unlimited and executive power to the military, in derogation of the principles of republican government.” They also claimed that Banks’s approach would “allow conservatives to get

²¹³ Lincoln’s 1863 Annual Message can be read here: <http://millercenter.org/president/speeches/speech-3738>

²¹⁴ Belz, *Reconstructing the Union*, 162.

²¹⁵ Belz, *Reconstructing the Union*, 168-197.

elected who might continue to recognize slavery.”²¹⁶ Indeed, the House candidates victorious in the 1864 elections organized by Banks came from Louisiana’s conservative planter class.²¹⁷ When they arrived in Washington, D.C. to take their seats, the House Committee on Elections rejected their credentials.

Following closely on the heels of the Louisiana election controversy, Representative Henry Winter Davis (R-MD) introduced legislation setting out a reconstruction policy intentionally designed to challenge Lincoln’s authority. H.R. 244, introduced on February 15, 1864, aimed to ensure that legislative statute – not executive proclamation – would determine the conditions under which states would be readmitted.²¹⁸ In this way, Davis’s bill represents the opening of the second phase of reconstruction – a phase that would outlast Lincoln – in which Congress and the president engaged in a protracted conflict over the constitutionally legitimate source of reconstruction policy.

For our purposes, however, H.R. 244 is important because it stipulated that before elections could be held to reorganize rebel state governments, constitutional conventions must first be held to rewrite state charters for the purpose of abolishing slavery.²¹⁹ In other words, Davis sought to ensure that formal abolition *preceded* readmission – a requirement that Lincoln was unwilling to impose. In the period between enactment and readmission, H.R. 244 proposed to establish provisional governments led by civilian governors. These governors would be appointed by the president and confirmed by the Senate. They would also be called upon to enforce all of a given state’s laws *except* those protecting slavery because, as H.R. 244 made

²¹⁶ Belz, *Reconstructing the Union*, 191.

²¹⁷ David Herbert Donald, Jean Harvey Baker, and Michael F. Holt, *The Civil War and Reconstruction* (New York: W.W. Norton and Company, 2001), 514.

²¹⁸ Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction, 1863-1869* (New York: W.W. Norton and Company, 1974), 70-83.

²¹⁹ H.R. 244 can be read here: <https://memory.loc.gov/cgi-bin/ampage?collId=llhb&fileName=038/llhb038.db&recNum=1091>

clear, all “persons held to involuntary servitude or labor in the states [...] are hereby emancipated.”²²⁰

Over the course of six weeks supporters of H.R. 244 worked hard to defend its constitutionality. Davis repeatedly built his argument upon the idea that Article IV, Section 4 of the Constitution “imposes upon Congress the duty of guarantying [*sic*] to every state in this Union a republican form of government.”²²¹ Slavery was not coincident with republicanism, he claimed. On this point, Davis had to invoke a crafty argument. From the day the Constitution was ratified until the outbreak of war, slave states were considered sufficiently “republican” to be left to govern themselves. Davis therefore was left to argue that slavery induced rebellion; and once rebellion was underway, republican governments perished. According to Davis and his allies no state governments in the confederacy were, in 1864, affording their citizens republican institutions. As a consequence, slavery made impossible permanent republican government.²²²

H.R. 244 generated opposition from radicals and conservatives alike. Republican Thaddeus Stevens (R-PA) condemned the proposal because it “takes for granted that the president may partially interfere in [the states] civil administration, not as a conquered by as President.”²²³ Stevens also opposed the bill because it failed to be explicit about the federal

²²⁰ H.R. 244 also included a number of important provisions not directly related to race. The bill stipulated that reconstruction would not officially begin until military resistance within a given state had been reduced to the point that the provisional governor could judge that the populace had “sufficiently returned to their obedience to the Constitution and the laws of the United States.” Having reached that point, all white male citizens could register to vote by taking an “iron clad” oath swearing that they had never participated in the rebellion. Once 50 percent of those who voted in 1860 had taken the oath, provisional governors would organize elections for the purpose of choosing convention delegates. These delegates would then meet to redraft state charters. Once these new charters were approved, state-wide elections could be held. Some of these provisions were amendments to the original bill (more below). Finally, the bill stripped citizenship and future voting rights from all of the confederate political and military elite, it set state residency requirements determining those eligible to vote in state elections, and it made no mention of restoring property to those disposed by the war. For a summary of the bill see: Belz, *Reconstructing the Union*, 200-205; Donald, Baker, and Holt, *The Civil War and Reconstruction*, 515.

²²¹ *Congressional Globe*, 38th Congress, 1st Session, (March 22, 1864): Appendix 82.

²²² *Congressional Globe*, 38th Congress, 1st Session, (March 22, 1864): Appendix 85.

²²³ *Congressional Globe*, 38th Congress, 1st Session, (April 19, 1864): 1741.

government's power to confiscate confederate property and keep it for "public use." From his perspective, in other words, the bill was not radical enough. Similarly, Representative William Kelley (R-PA) pushed for a more radical proposal by continuing to insist on "state suicide."²²⁴ Democrats, meanwhile, continued to insist that defeated southern states were entitled to readmission with their powers unchanged. "When the rebellion is suppressed," argued Representative Aaron Harding (D-KY), any state readmitted is "thereby restored to all its rights and privileges."²²⁵

In order to appease the bill's critics from within the GOP, Davis won approval for two substantive amendments to the bill – both of which were added without roll call votes. The first increased the percentage of voters required to take the loyalty oath before elections could begin from 10 (Lincoln's policy) to 50. Davis's original proposal also proposed to strip citizenship and voting rights from all state officers who participated in the Confederate government. By voice vote, however, the House approved a change disqualifying only "civil officers of ministerial rank and military officers with at least the rank of colonel."²²⁶ Finally, Davis agreed to a vote on language authored by Stevens for bill's preamble. The Stevens language read as follows:

Whereas the Confederate States are a public enemy, waging an unjust war, who injustice is so glaring that they have no right to claim the mitigation of the extreme rights of war which are accorded by modern usage to an enemy who has a right to consider the war a just act; and whereas none of the States which, by a regularly recorded majority of its citizens, have joined the southern confederacy can be considered and treated as entitled to be represented by Congress, or to take any part in the political government of the Union: Therefore [...]

²²⁴ *Congressional Globe*, 38th Congress, 1st Session, (March 3, 1864): 2080.

²²⁵ *Congressional Globe*, 38th Congress, 1st Session, (May 2, 1864): 2029.

²²⁶ *Congressional Globe*, 38th Congress, 1st Session, (May 4, 1864): 2107.

As Table 14 reports, the House voted 76-57 against Stevens' preamble, with 17 Republican voting no.²²⁷ Immediately thereafter the House passed H.R. 244 by a vote of 74-66.²²⁸ The vote count demonstrates that Davis' bill was able to win support from both radicals and moderates (See Table 14).

Once it was through the House, H.R. 244 moved to the Senate where it came under the jurisdiction of the Committee on Territories, chaired by Ben Wade (R-OH). Wade's committee reported the bill in May, but the Senate took no action on it until July. When it finally came to the floor on July 1, Senators immediately rejected an amendment that would have eliminated the provision preventing freedmen from voting in southern state elections (See Table 14). Wade explained his own support for this amendment by saying that "this amendment, if adopted, will probably jeopardize the bill."²²⁹

Next came an amendment from B. Gratz Brown (R-MO). Brown's amendment served as a substitute to limit the aims of H.R. 244 by simply stating that those living within Confederate states shall be disallowed from casting any electoral college votes, or for voting for members of the House or Senate, until the president issued a proclamation declaring that the rebellion had come to an end. Recognizing that his amendment would undermine Davis's original proposal, Brown acknowledged his desire to "leave the matter of reconstruction to a later day when events shall have perhaps altered some of the relations in which these districts now stand to us." Wade opposed this amendment, and he couched his opposition in an explicit appeal to electoral politics: "The question will be asked of every man who goes out to canvass during the coming election what do you propose to do with these seceded States in regard to their coming back?"

²²⁷ *Congressional Globe*, 38th Congress, 1st Session, (May 4, 1864): 2107.

²²⁸ *Congressional Globe*, 38th Congress, 1st Session, (May 4, 1864): 2108.

²²⁹ *Congressional Globe*, 38th Congress, 1st Session, (July 1, 1864): 3449.

[...] and we must be prepared to give an answer to it.”²³⁰ Despite Wade’s final appeal, however, the Senate voted 17-16 in support of the Brown amendment (See Table 14).²³¹

When the amended version of H.R. 244 moved back to the House, it immediately ran into opposition from Davis. Despite the fact that Congress was scheduled to adjourn the two days later, Davis called on the House to reject concurrence with the amended bill and instead call for a conference committee. House Republicans voted as a bloc – 63-42 – to reject the amended version of the bill, thus setting the stage for nothing to be enacted prior to adjournment.²³² Once back in the Senate, however, a “startling development took place.”²³³ Senator Wade successfully moved for the Senate to vote to withdraw the Brown amendment and agree to the original version of H.R. 244. With the Brown amendment withdrawn, Davis’s original bill passed 18-14, and the Wade-Davis bill was enacted.²³⁴ As Belz explains, there exists little historical evidence to explain why, only one day after voting for the Brown amendment, the Senate voted to recede from it.²³⁵ Regardless of why the flip occurred, the bill now went to the White House.

The Senate vote receding from Brown’s amendment was not the last surprise in store for advocates of the Wade-Davis bill. Noah Brooks, a Washington news correspondent through the war and reconstruction, spoke for most observers when he recalled that “nobody seemed to think that this extraordinary scheme [the Wade-Davis bill] would be disapproved by the president.”²³⁶ Yet Lincoln did “disapprove the bill” through a pocket veto. On July 8, less than a week after Congress adjourned, Lincoln issued a proclamation explaining his opposition to the measure. “I

²³⁰ *Congressional Globe*, 38th Congress, 1st Session, (July 1, 1864): 3449.

²³¹ *Congressional Globe*, 38th Congress, 1st Session, (July 1, 1864): 3460.

²³² *Congressional Globe*, 38th Congress, 1st Session, (July 2, 1864): 3518; The vote was not recorded.

²³³ Belz, *Reconstructing the Union*, 221.

²³⁴ *Congressional Globe*, 38th Congress, 1st Session, (July 2, 1864): 3491

²³⁵ Belz, *Reconstructing the Union*, 224.

²³⁶ Belz, *Reconstructing the Union*, 225.

am [...] unprepared by a formal approval of this bill, to be inflexibly committed to any single plan of restoration,” Lincoln argued.²³⁷ Continuing, Lincoln explained his unwillingness to “declare that the free state constitutions and governments, already adopted and installed in Arkansas and Louisiana, shall be set aside and held for naught.” At the same time, and rather confusingly, Lincoln declared himself “fully satisfied with the system for restoration contained in the bill, as one very proper plan for the loyal people of any state choosing to adopt it.”

If enactment of the bill and Lincoln’s pocket veto were surprising, the reaction from Wade and Davis was anything but: they were furious. Their response came one month later in the form of a *New York Tribune* article vehemently condemning Lincoln. This “manifesto” refuted every point made by Lincoln in his July proclamation. Previewing future battles between the legislative and executive over the terms of reconstruction, they concluded by stating:

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 the laws; to suppress by arms armed rebellion, and leave political reorganization to Congress.

Their attack on Lincoln’s authority failed to have the desired effect. Yet the position they set out here would soon be taken up by Republicans who found a new enemy in the person of President Andrew Johnson.

Conclusion

The American Civil War upended the country’s social, economic, and political status quo. Before the war, one out of every three people living south of the Mason-Dixon line was enslaved. The political influence of those defending the South’s “peculiar institution,” argued Frederick

²³⁷ Lincoln’s Proclamation can be read here: <http://quod.lib.umich.edu/l/lincoln/lincoln7/1:955?rgn=div1;view=fulltext>

Douglass, convinced many that the slave system was “impregnable.”²³⁸ Those concerned that slavery would never be abolished could point to the Missouri Compromise, the war with Mexico, the Compromise of 1850, and the Kansas-Nebraska Act of 1854 as evidence. Even after Lincoln’s election, Congress passed a constitutional amendment that would have protected slavery where it existed. Yet secession, the realization by northern policymakers that the war would be long and bloody, and the effective organizing of abolitionists, combined to generate the political will needed to finally outlaw slavery.

Once the war came, President Lincoln and his Republican allies in Congress were responsible for crafting the military and political strategies to defeat the south, and then reconstitute the union. In the preceding pages we set out to demonstrate how Republicans groped their way through the crisis. This new party – like the country it led – was divided. Some members were committed abolitionists; were more conservative, anti-slave free-soilers. As a consequence, the policies crafted between 1861-1865 reflect the ongoing intra-party struggle between radicals – those who sought immediate abolition, a significant expansion of federal power to protect freedmen, and a punitive approach toward the ex-confederate states – and moderates – those who advocated a more cautious approach to abolition, commitment to traditional conceptions of federalism, and a quick reintegration of southern states. Each policy that we discuss above represents a hard-fought compromise achieved by members from each ideological faction.

Furthermore, the overall political dynamic we describe above previews the coming battles over reconstruction policy. In short, radicals are consistently incapable of prevailing over their more moderate co-partisans. The political moderation of many within the GOP only grows

²³⁸ John Stauffer and Henry Louis Gates, Jr., eds. *The Portable Frederick Douglass* (New York: Penguin Books, 2016), 250.

more pronounced once Andrew Johnson and Ulysses Grant win the White House. As this position takes hold of the party, moderates effectively limit the impact of what might otherwise have been revolutionary changes to the American political system. The Civil War, in other words, led to the abolition of slavery but not destruction of those political impulses that protected slavery for so long.

Table 1. Votes on the Corwin Amendment (H.J. Res. 80), 36th Congress

Party	House Vote #1		House Vote #2		Senate	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	31	0	33	0	9	0
Southern Democrat	18	0	20	1	5	0
Republican	38	70	46	63	8	12
American	5	0	5	0	2	0
Anti-Lecompton Dem.	5	1	6	1	--	--
Independent Democrat	6	0	6	0	--	--
Opposition	17	0	17	0	--	--
Total	120	71	133	65	24	12

Source: *Congressional Globe*, 36th Congress, 2nd Session, (February 27, 1861): 1264; (February 28, 1861): 1285; (March 2, 1861): 1403.

Table 2. Votes on War Aims Resolution, 37th Congress

Party	House Crittenden Resolution, Part I		House Crittenden Resolution, Part II		Senate Johnson Resolution	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	25	1	34	0	3	2
Southern Democrat	0	1	0	0	1	2
Republican	78	0	64	2	24	1
Unionist	18	0	19	0	2	0
Total	121	2	117	2	30	5

Source: *Congressional Globe*, 37th Congress, 1st Session, (July 22, 1861): 223; (July 22, 1861): 223; (July 25, 1861): 265.

Table 3: Votes on First Confiscation Act, 37th Congress

Party	Senate		House	
	Yea	Nay	Yea	Nay
Northern Democrat	1	24	1	7
Southern Democrat	0	1	0	2
Republican	57	7	23	1
Unionist	3	16	0	1
Total	61	48	24	11

Source: *Congressional Globe*, 37th Congress, 1st Session, (August 3, 1861): 431; (August 5, 1861): 434.

Table 4. Votes on the Second Confiscation Act (Initial), 37th Congress

	<u>House</u> Confiscation Bill (H.R. 471)		<u>House</u> Emancipation Bill (H.R. 472)		<u>Senate</u> Substitute text of S. 310 for H.R. 471		<u>Senate</u> Pass Amended H.R. 471	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	1	37	0	38	3	0	0	4
Southern Democrat	0	0	0	0	0	0	0	1
Republican	79	8	74	15	15	15	27	3
Unionist	2	23	0	25	3	2	1	5
Total	82	68	74	77	21	17	28	13

	<u>House</u> To Concur in Senate Amendment to H.R. 471		<u>Senate</u> Insist on Senate Amendment to H.R. 471	
	Yea	Nay	Yea	Nay
Northern Democrat	1	24	1	1
Southern Democrat	0	1	0	1
Republican	57	7	23	3
Unionist	3	16	2	5
Total	61	48	26	10

Source: *Congressional Globe*, 37th Congress, 2nd Session, (May 26, 1862): 2361; (May 26, 1862): 2363; (June 28, 1862): 2996; (June 28, 1862): 3006; (July 3, 1862): 3107; (July 8, 1862): 3166.

Table 5. Votes on the Second Confiscation Act (Final), 37th Congress

	Second Confiscation Act (Conference Report)				Lincoln's 'Explanatory Resolution'			
	House		Senate		Senate		House	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	26	0	4	0	2	4	14
Southern Democrat	0	0	0	1	0	1	0	0
Republican	78	1	27	2	22	8	74	5
Unionist	4	15	1	6	3	4	5	2
Total	82	42	28	13	25	15	83	21

Source: *Congressional Globe*, 37th Congress, 2nd Session, (July 11, 1862): 3266-67; (July 12, 1862): 3276; (July 16, 1862): 3383; (July 16, 1862): 3400.

Table 6: Votes on Compensated, Gradual Emancipation, 37th Congress

Party	House		Senate	
	Yea	Nay	Yea	Nay
Northern Democrat	3	24	1	5
Southern Democrat	0	0	0	1
Republican	85	0	28	0
Unionist	9	11	3	4
Total	97	35	32	10

Source: *Congressional Globe*, 37th Congress, 2nd Session, (March 11, 1862): 1179; (April 2, 1862): 1496.

Table 7: Votes on D.C. Compensated Emancipation Act, 37th Congress

Party	<u>Senate</u> Doolittle Amendment to Davis Amendment		<u>Senate</u> Davis Amendment (as amended)		<u>Senate</u> Doolittle Amendment		<u>Senate</u> Final Passage of S. 108		<u>House</u> Final Passage of S. 108	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	1	3	1	2	4	0	0	6	4	25
Southern Democrat	1	0	1	0	0	0	0	1	0	0
Republican	19	9	13	15	18	10	29	0	83	0
Unionist	2	4	4	2	5	0	0	7	5	13
Total	23	16	19	19	27	10	29	14	92	38

Source: *Congressional Globe*, 37th Congress, 1st Session, (March 24, 1862): 1333; (March 24, 1862): 1333; (April 3, 1862): 1522; (April 3, 1862): 1526; (April 11, 1862): 1648.

Table 8: Votes on Emancipation in the Territories, 37th Congress

Party	House		Senate		<u>House</u> To Concur in Senate Amendment	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	29	1	5	0	23
Southern Democrat	0	0	0	1	0	0
Republican	82	0	27	0	68	0
Unionist	3	21	0	4	4	15
Total	85	50	28	10	72	38

Source: *Congressional Globe*, 37th Congress, 2nd Session, (May 12, 1862), 2068; (June 9, 1862): 2618; (June 17, 1862): 2769.

Table 9. Votes on the Thirteenth Amendment (S.J. Res. 16), 38th Congress

Party	Senate		House Vote #1		House Vote #2	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	2	4	4	58	14	50
Southern Democrat	0	1	0	0	0	0
Republican	31	0	77	1	86	0
Unionist	5	1	12	6	19	6
Total	38	6	93	65	119	56

Source: *Congressional Globe*, 38th Congress, 1st Session, (April 8, 1864): 1490; (June 15, 1864): 2995; 2nd Session, (January 31, 1865): 531.

Table 10. House Members Targeted for Amendment-Vote Lobbying, 38th Congress

Northern Democrats

Member (State-District)	Lame Duck?	Vote 1	Vote 2
Augustus C. Baldwin (MI-5)	Yes	Nay	Yea
Alexander H. Coffroth (PA-16)	No	Nay	Yea
Samuel S. Cox (OH-7)	Yes	Nay	Nay
James E. Edwards (CT-2)	Yes	Nay	Yea
James Ganson (NY-30)	Yes	Nay	Yea
John A. Griswold (NY-15)	No	Yea	Yea
Anson Herrick (NY-9)	Yes	Nay	Yea
Wells A. Hutchins (OH-11)	Yes	Nay	Yea
Francis C. Le Blond (OH-5)	No	Nay	--
Archibald McAllister (PA-17)	Yes	Nay	Yea
John F. McKinney (OH-4)	Yes	Nay	--
Homer A. Nelson (NY-12)	Yes	--	Yea
Warren P. Noble (OH-9)	Yes	Nay	Nay
Moses F. Odell (NY-3)	Yes	Yea	Yea
William Radford (NY-10)	No	Nay	Yea
John B. Steele (NY-13)	Yes	Nay	Yea
Charles H. Winfield (NY-11)	No	--	Nay

Unionists

Member (State-District)	Lame Duck?	Vote 1	Vote 2
Lucien Anderson (KY-1)	Yes	Yea	Yea
Jacob B. Blair (WV-1)	Yes	Yea	Yea
Henry T. Blow (MO-2)	No	Yea	Yea
Sempronius H. Boyd (MO-4)	Yes	Yea	Yea
William G. Brown (WV-2)	Yes	--	Yea
Brutus J. Clay (KY-7)	Yes	--	Nay
John A. J. Creswell (MD-1)	Yes	Yea	Yea
Henry Winter Davis (MD-3)	Yes	--	Yea
Austin A. King (MO-6)	Yes	Nay	Yea
Benjamin F. Loan (MO-7)	No	Yea	Yea
Joseph W. McClurg (MO-5)	No	Yea	Yea
James S. Rollins (MO-9)	Yes	Nay	Yea
Green Clay Smith (KY-6)	No	Yea	Yea
Nathaniel B. Smithers (DE-AL)	Yes	Yea	Yea
Francis Thomas (MD-4)	No	Yea	Yea
Edwin H. Webster (MD-2)	No	Yea	Yea
Kellian V. R. Whaley (WV-3)	No	Yea	Yea
George H. Yeaman (KY-2)	Yea	--	Yea

Note: “—” indicates not voting. Vote 1 and Vote 2 held on 6/15/1864 and 1/31/1865, respectively.

Table 11: House Votes on Freedmen’s Bureau Legislation

Party	H.R. 51 (Original)		H.R. 51 (Concur in Senate Amdts)		H.R. 51 (Conference Cmte)	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	50	42	0	0	46
Southern Democrat	0	0	0	0	0	0
Republican	63	2	1	63	60	3
Unionist	6	13	9	7	4	12
Ind. Republican	0	2	0	1	0	1
Total	69	67	52	71	64	62

Source: *Congressional Globe*, 38th Congress, 1st Session, (March 1, 1864): 895; 38th Congress, 2nd Session, (December 20, 1864): 80; 2nd Session, (February 9, 1865): 694.

Table 12: Senate Votes on Freedmen's Bureau Legislation

Party	Willey Amendment (S. 227)		Sumner Amendment (Stripping Willey)		Johnson Amendment (War Department)		S. 227 (Enactment)		H.R. 51 (Compromise)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	2	2	2	1	2	1	0	4	0	6
Southern Democrat	0	1	0	1	0	1	0	1	0	1
Republican	11	12	12	6	8	16	20	1	13	11
Unionist	6	0	0	6	5	2	1	3	1	6
Total	19	15	14	14	15	20	21	9	14	24

Source: *Congressional Globe*, 38th Congress, 1st Session, (June 28, 1864): 3330; (June 28, 1864, 1864): 3337; (June 28, 1864): 3337; (June 28, 1864): 3350; *Congressional Globe*, 38th Congress, 2nd Session, (February 22, 1865): 989-990

Table 13: House Vote on Ashley's Territorialization Proposal

	H.R. 356	
Party	Yea	Nay
Northern Democrat	23	0
Southern Democrat	0	0
Republican	18	56
Unionist	24	0
Ind. Republican	0	0
Total	65	56

Source: *Congressional Globe*, 37th Congress, 1st Session, (March 12, 1862): 1193

Table 14: Votes on Wade-Davis Bill

Party	Stevens Preamble (H.R. 244)		House Enactment (H.R. 244)		Freedmen Voting (Senate Amdt)		Brown Proposal (Senate Amdt)		Senate Recedes	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	45	0	52	0	4	5	0	0	5
Southern Democrat	0	0	0	0	0	1	1	0	0	1
Republican	52	14	67	0	4	14	5	16	18	4
Unionist	5	15	7	13	1	5	6	0	0	4
Ind. Republican	0	1	0	1	--	--	--	--	--	--
Total	57	76	74	66	5	24	17	16	18	14

Source: *Congressional Globe*, 38th Congress, 1st Session, (May 4, 1864): 2107; (May 4, 1864): 2108; (July 1, 1864): 3449; (July 1, 1864): 3460; (July 2, 1864): 3491