The Racial Ideas of the Authors of the Fourteenth Amendment.

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THE RACIAL IDEAS
OF THE AUTHORS OF THE FOURTEENTH AMENDMENT

A Thesis
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by
Lee Allen Dew
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ABSTRACT

Much of the confusion surrounding the question of race relations in the United States today has been due to the vacillation of the Supreme Court on the real meaning of the Fourteenth Amendment as applied to Negro rights and to the vagueness of the amendment itself. Today the Court has interpreted the amendment in an entirely different sense than was common fifty years ago. The purpose of this study is not to determine the correct interpretation of the amendment, but to attempt to discover what the ideas of the authors of that measure were in regard to the position of the Negro race in the United States. What did they believe this Constitutional provision would accomplish, and into what fields of race relations did they believe it would enter?

Many separate factors affect the ideas of men, and the Radicals were subject to many influences which helped shape their ideas and attitudes. Among these influences were the racial ideas of the North, particularly of the New England states, where most of them were born; the evangelical fervor of the Abolitionist movement, to which many of them subscribed; and the Free Soil movement, which many Radicals supported. As they gained political power during the years of the Civil War, they came under the influence of their constituents, who were responsible for their reelection, as well as military necessity in the winning of the war.

With the end of the war, the Radicals triumphed. Their ideas were enacted into law, and were later made more secure through
incorporation into the Constitution. The climax of the Radical movement came with the three amendments which they authored, guaranteeing freedom, civil and legal equality, and suffrage. They did not attempt to legislate directly on the question of social equality, however, and made no direct reference to it, except to assure their constituents that such was not the intent of the Fourteenth Amendment.

Radicalism is enigmatic, and its history is open to many interpretations. Two factors, however, become clear in the study of the racial ideas of the Radicals. They were influenced to a great degree by economic forces so that the demand for suffrage for the Negro was coupled with an insistence upon the abandonment of the drive for economic opportunities for the freedmen. Perhaps even more they were controlled by the movement which they had initiated. For by 1866 the drive for Negro rights had gotten out of hand, and was moving faster and toward greater goals than many Republicans either sought or approved. The demand for Negro rights had become popular, but at the same time that it was being endorsed by the voters of the North, some of its congressional supporters were becoming disillusioned. This is one of the tragedies of Reconstruction, that many of the men who voted approval of the Fourteenth Amendment interpreted its provisions as narrowly as possible, and saw it as a political expedient rather than as a guarantee of equal rights and equal justice for all.

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CHAPTER I

THE COURT AND THE FOURTEENTH AMENDMENT

On May 10, 1866, the Fourteenth Amendment passed the House of Representatives, thus securing the final necessary Congressional approval for the most far-reaching piece of legislation passed by the Radical Republicans during the Reconstruction period. This proposal demonstrated the concern of the Radicals with the rights of the Negro race; and the freedmen, who flocked into Washington during this time in droves, crowded the House galleries to applaud the passage of the proposal which they felt would assure them an equal position in American life. When the vote was announced, the applause was so great that one Congressman was forced to ask the speaker to stop the demonstrations in the galleries; but another caustically remarked that he hoped "the colored brethren and sisters in the galleries would be allowed to wave their pocket handkerchiefs." 1 Indeed, the colored people, newly freed, had great cause to rejoice, for now the Civil Rights Act, basis of their hopes for political and civil liberties and a future position in American society, was secured against attacks on its constitutionality.

The Civil Rights Act, the protection of which was sought by means of this amendment, had been made into law earlier in the year, over the objection of President Johnson. It had declared that all persons born in the United States were to be citizens of the United States, with

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1 New York Herald, May 11, 1866.
the exception of certain Indians not taxed. It further specified that such citizens, without regard to race, color, or previous condition of servitude, should have the same right as any other to make or enforce contracts, sue, be parties to suits in courts of law, give evidence in cases, and other such basic legal rights. It also specified certain property rights which were to be secured, particularly the rights to inherit, purchase, lease, sell, hold and convey real and personal property. In addition, the law contained provisions securing to all citizens the full and equal benefit of all laws and proceedings for the security of person and property as enjoyed by white citizens; and levied upon all persons the necessity of conforming to the provisions of the law or be subject to like punishments, pains and penalties. This law was incorporated into the first section of the Fourteenth Amendment as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The second section of the amendment dealt with apportionment of representatives of Congress, depriving the Southern states of representation if they should refuse to allow the freedmen to vote, and allowing for the disfranchisement of Rebel leaders. The third section made it possible to prevent former Confederates from holding Federal or state offices; the fourth section invalidated the Confederate debt,

2Statutes at Large XIV, 39 (1866).
while guaranteeing the Federal debt; and the fifth section gave to Congress the power to enforce, by "appropriate legislation," the provisions of the amendment.\(^3\)

There was much confusion and disagreement among the Radical Republicans as to the exact meaning and purpose of the amendment, even while they were fighting on the floor of Congress for its passage. Thaddeus Stevens, the recognized leader of the Radicals in the House, laid particular stress on the third section, which he claimed was included "to save or destroy the Union by the salvation or destruction of the Union party." "Give us the third section or give us nothing," he demanded.\(^4\) The possibility of Southern representation in Congress being increased from eighty-four to one hundred as a result of the end of the three-fifths compromise was a constant fear of the Pennsylvanian. While his statement was primarily oratorical it illustrates one Radical view - that the amendment was primarily designed to legalize the subjugation of the South, not to protect the rights of the Negro; for this had been accomplished already, they felt, by the Civil Rights Act.

Other Radicals complained that the amendment did not go far enough. George Boutwell of Massachusetts, a member of the Joint Committee on Reconstruction, the body which had drafted the original amendment, complained that it was "impossible in 1866 to go farther

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\(^3\)This last section was not thought necessary to include in an amendment until the time of the Radical Republicans, who tacked it on to all of theirs, the thirteenth, fourteenth and fifteenth.

\(^4\)\textit{Congressional Globe}, 39 Cong., 1 Sess., 2544.
than the provisions of the ... Amendment." He would have preferred to include a positive guarantee of Negro suffrage in the proposal, but this was not done until the Fifteenth Amendment, adopted in 1870. Boutwell also objected to the ambiguity of certain provisions, particularly the "privileges and immunities" clause, which he characterized by its "euphony and indefiniteness."\(^5\)

Representative George W. Julian of Indiana contended that the amendment was a "proposition to the Rebels that if they would agree that the negroes should not be counted in the basis of representation, we could hand them over, unconditionally, to the tender mercies of their old masters." He saw in the new law no absolute control over the Negro or the states by the Federal government, and therefore felt the amendment was seriously weakened. He believed there should be some definite statement of the Negro's voting rights, rather than the vague provisions that were included.\(^6\)

All were agreed that the first section, in spite of its vague wording and uncertain meaning, was a good law, and much needed for the defeated, frustrated, Southerners. They believed that the amendment was necessary to secure adequate, democratic representation of the Negro at Southern polling places; and supported Stevens's appraisal of the necessity of maintaining the position of the Union (Republican) party. Not all the Radicals were in full agreement with this,

\(^6\)George W. Julian, Political Recollections, 1840 to 1872 (Chicago, 1884), 272-73.
however. Governor John A. Andrew of Massachusetts violently opposed the amendment, claiming that it was "repugnant to the true republican principle" of basing representation on "the whole body of the people." He also felt, with Julian, that the proposal "would leave the freedmen entirely in the hands of their late masters," something which could not "honorsably" be done. 

Thus it seems the Radicals were uncertain as to how much power they were including in the amendment as far as the relationships between the freedmen and the state governments of the South were concerned. They expected to bring the Negro's basic civil rights, as outlined in the Civil Rights Act, under the protection of the Federal government; but they were not prepared to go all the way with political rights, for they felt Negro suffrage was not politically expedient in the year immediately following the end of the war. They were willing to leave the problem of ballots for the freedmen for a later solution. To them the Fourteenth Amendment was designed to incorporate the Civil Rights Act and nothing more, but they left the way open for the addition of more comprehensive legislation at a later date by the addition of section five, the enforcement provision, which would give color of law to later actions by Congress regarding the Negro. The Fourteenth Amendment did not, however, guarantee protection to the Negro in "all matters" as some writers have contended, for

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Harper's Weekly, January 20, 1866.
the Radicals were not yet willing to take such a step.  

Many of the Radicals were lawyers, and all of them were conscious of the power of the Supreme Court and other agencies of the Federal judiciary. They had had previous experience with the Supreme Court when it had frustrated them in their attempts to control what they felt were subversive activities during the war, and they were anxious to see how the judiciary would interpret the provisions of the Civil Rights Act and the amendment. They did not have long to wait, for soon litigation involving the two acts were before the courts. First to be contested was the Civil Rights Act, since it became law in 1866, while the amendment, although passed by Congress in that year, was not finally ratified by a sufficient number of states until 1868.

Much to the relief of the Radicals, the Civil Rights Act was upheld in its early tests. In a case before the Seventh Circuit of the District of Kentucky, late in 1866, Justice Swayne, an associate justice of the Supreme Court, pronounced the act constitutional in all its provisions, and an appropriate action under the second section of the Thirteenth Amendment, (the enforcement section, almost identical with section five of the Fourteenth Amendment). The follow-

8Frederick J. Stinson, The American Constitution as it Protects Private Rights (New York, 1923), 448, contends that the amendment was designed by the Radicals to protect "social or property rights as well as political." The Civil Rights Act, on the contrary, was designed to protect property and legal (or civil) rights, rather than political, while social rights did not enter into consideration at all.

9Ex parte Milligan, 4 Wallace 2.

10U. S. v. Rhodes, cited in Horace White, The Life of Lyman Trumbull (Boston, 1913), 274.
ing year, in a case heard in the Fourth Circuit of Maryland before Chief Justice Chase, the act was declared legal, and a valid restriction on all conditions prohibited by it, whether originating before, or since, its enactment. 11

Soon after the Fourteenth Amendment became law, it too was the subject of litigation, and with much less satisfactory results to the Radicals. In 1869 the Louisiana legislature had granted a monopoly to a New Orleans slaughterhouse, to which many independent butchers of the city objected. They alleged that the monopoly created a condition of involuntary servitude, abridged their privileges and immunities as citizens of the United States, denied them equal protection of the laws, and deprived them of their property without due process of law. In effect, they contended, the Louisiana act was in complete violation of section one of both the Thirteenth and Fourteenth Amendments, especially the latter. By 1873 the cases had made their way to the Supreme Court of the United States. 12

In the Slaughter-House Cases Justice Miller ruled for the state of Louisiana's right to grant the monopoly, contending it did not violate any federal right, but only rights which the butchers held as citizens of the state. But what was more important to the future of the amendment was the dicta which he included in the opinion. "We doubt very much," he wrote, "whether any action of a State, not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview

12 Slaughter-House Cases, 16 Wallace 36; Robert J. Harris, The Quest for Equality (Baton Rouge, to be published, July, 1960), 83.
of this provision.\(^{13}\) He did admit that Congress had the power to
bring the entire field of civil rights legislation into its domain,
but contended this had not been done by the legislation presented by
the plaintiffs to substantiate their contentions, that is, by the
Fourteenth Amendment.\(^{14}\)

The friends of the Negro in Congress, meanwhile, were working
rapidly to plug the holes which the Court had found in the amendment,
using the fifth section for their justification. The most important
idea of the Radicals at this time was the insuring to the Negro of
legal and political rights not guaranteed by the Fourteenth Amendment.
The Southern states could not, under the amendment, prevent a Negro
from holding office, but they could, extralegally, prevent him from
voting, or from being elected, and this the Radicals sought to stop.
In 1870 they passed a second Civil Rights Act, also called the En­
forcement Act, which provided that any person, under color of any
law, statute, ordinance, regulation or custom, who subjected any
inhabitant of a state to the deprivation of any right to make or
enforce contracts, sue in courts of law, be parties to suits, give
evidence at trials, and who in general sought to deprive any person
of the full and equal benefit of all laws and proceedings for the
security of person and property such as enjoyed by white citizens,
whether that person be an alien or because of his race or color, or
who subjected any person to any punishments, pains or penalties other
than those enjoyed by white citizens, should be guilty of a misdemeanor.\(^{15}\)

\(^{13}\) Wallace 81.

\(^{14}\) Ibid.

\(^{15}\) Stat. at Large XVIII, 140 (1870).
This law attempted to rewrite the 1866 Civil Rights Act, and to make it more binding, foreseeing perhaps the judgment of the court in the Slaughter-House Cases. In this law they sought to make any violation of a legal or property right a federal offense, subject to trial in a Federal District Court, rather than in the court system of the states. By this time these had been returned, for the most part, into the hands of Southern judges.

Soon this act, too, was in litigation, and again it was a Louisiana case which assumed prominence. A group of white men had broken up a Negro political meeting by violent means. They were arrested, tried, and convicted in the United States Circuit Court for the District of Louisiana; but were acquitted on appeal to the Supreme Court of the United States on the grounds that section five of the Fourteenth Amendment did not justify such legislation. In his decision, Chief Justice Waite contended that the amendment was designed only to limit the actions of states, not of individuals, and argued that the right of assembly was guaranteed only against the Federal government, not against the states. In other words, the citizen of a state, he ruled, could look only to the state government for protection of his rights from the private acts of other individuals.16

Shortly before the Cruikshank ruling, on March 1, 1875, Congress passed a third Civil Rights Act. This law provided that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters,

16U. S. v. Cruikshank, 92 U. S. 542; Harris, Quest for Equality, 86.
and other places of amusement." The only "conditions and limitations" which the law recognized were those "established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." Federal courts were given exclusive jurisdiction for the trial of offenders of this new law, and the aggrieved parties, it was stipulated, could recover $500 from the violator, who, in addition, would be judged guilty of a misdemeanor.17

The bill was a radical statement for 1875, when Democrats were gaining in strength in Congress, and when the final end of Reconstruction was approaching. It marked the epitome of civil rights action on the part of the Civil War generation. The Radical Republicans who remained in Congress placed their final hopes on this bill, the first to incorporate social as well as civil and political rights into federal statute. Even then they had to agree to a watered-down substitute for their original plan which would have demanded "full and equal enjoyment of the accommodations" of schools and cemeteries as well as the other facilities listed. This version was approved by the Senate, but was eliminated in the House of Representatives, and it was the House version which later became law.18

It did not remain law for long. Soon cases appeared contesting this statute, using the precedents established in the Slaughter-House Cases and the Cruikshank case as bases for the pleas of plaintiffs that the act was in violation of the Constitution. By 1883, five such cases had reached the Supreme Court, dealing with the denial of hotel accom-

17Stat. at Large XVIII, 335 (1875).
modations to Negroes in Kansas and Missouri, the denial of a theater seat to a Negro in San Francisco, the denial of a person (presumably a Negro) of the "full enjoyment" of the Grand Opera House in New York, and the refusal of a passenger train conductor to allow a Negro woman to travel in the "ladies' car" of a train between Memphis and Charleston. These five cases were decided together, since they all dealt with the same basic issues, and they became known as the Civil Rights Cases.

The Court's decision carried out the basic idea first suggested in the Slaughter-House Cases and fully expounded in U. S. v. Cruikshank, that Congress had illegally extended its power by initiating legislation regulating individual action, thus invading and destroying the basic police power of the states. Congress had only the power, the Court contended, to enact general laws regulating the enforcement of civil rights against infringement by state governments; thus the law, which attempted to regulate individual actions, was void. Under this decision it was impossible for Congress to enact a general code regulating or controlling the acts of private persons - this was to remain the prerogative of state governments. The contention of the plaintiffs that the private individuals concerned in this series of cases were exercising their power as agents of state governments, because they were licensed and regulated by the states, was dismissed by the Court.

The Court thereby eliminated the possibility that the Federal

19 109 U. S. 3.

20 Ibid. Compare Harris, Quest for Equality, 89-91.
government could enforce social integration under the guise of civil rights guarantees, involving transportational, recreational, educational, and other facilities. It further concluded that segregation, as such, was not a badge of involuntary servitude, as plaintiffs contended, and was not illegal under the Thirteenth Amendment. It also failed to act on the railroad segregation case under the regulatory power given to the Federal government by the commerce clause.21

All was not lost for the Negroes by this ruling. Justice Bradley, who wrote the majority opinion, did uphold the constitutionality of the 1866 Civil Rights Act, the basic statement of Negro rights. He listed the fundamental rights which he called the "essence of civil freedom," as: the right to make and enforce contracts, sue and be sued, be parties to suits, give evidence, inherit property, purchase, sell, lease and convey property - in effect, the basic property rights well recognized by the common law. His objection to the 1875 act was that it concerned "social rights of men and races in the community" rather than strictly civil or property rights.

Even before this case the Supreme Court had handed down another decision, which spelled doom for the more extreme parts of the 1875 act. In Hall v. De Cuir, decided in 1878, the Court invalidated a Louisiana statute which forbade discrimination on railroads and steamboats entering the state. In the decision, written by Chief Justice

21Ibid. Six years earlier, in the case of Munn v. Illinois, 94 U.S. 113, the Court had upheld state regulation of warehouses and grain storage facilities. The Court had said that this regulation was a valid exercise of state police power in the absence of federal action. In the Civil Rights Cases the Court went a step further, upholding state regulation of civil rights in spite of conflicting federal laws on the subject.
Waite, the Court pointed out that the law placed a burden on inter­
state commerce because it differed from the laws in effect in other
states. "A passenger in the cabin class set apart for the use of
whites without the state," the Chief Justice wrote, "must, when the
boat comes within, share the accommodations of that cabin with such
colored passengers as may come on board afterwards, if the law is
enforced." The Court was certainly not in a mood to allow this
sort of thing to occur if it could prevent it!

By this decision the Court established a precedent for segre­
gation in transportational facilities. This precedent was to get
its most famous test in 1895 when a New Orleans octroon named Plessy
was arrested for violating a Louisiana statute enacted in 1890 (long
after the Radical Reconstruction legislatures had been overthrown)
calling for segregation of Negroes and whites in passenger trains.
In a decision in which only Justice Harlan dissented, the Court held
that the Louisiana statute was a valid exercise of the state police
power, and not in violation of the equal protection clause of the
Fourteenth Amendment. 23

Justice Brown, in the majority opinion, included much dicta,
which is significant as illustrative of the opinion of the Court at
this time on the status of the Negro. "Legislation," he wrote, "is
powerless to eradicate racial instincts or to abolish distinctions
based upon physical differences, and the attempt to do so can only
result in accentuating the difficulties of the present situation."

2295 U.S. 485.
23163 U.S. 537.
He summed up the feeling of the majority of the Court with the contention that "if one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."  

Brown went on to argue that the amendment sought to enforce the absolute equality of the races before the law - or civil rights - but it could not abolish racial distinctions, or enforce social, as apart from legal or political, equality, or commingling of the races upon terms which would not be satisfactory to either group. He then expounded the doctrine that separation did not necessarily imply inferiority, and was valid so long as the separation was upon a basis of equality - the famous "separate but equal" concept.

Another problem facing Negroes during the late Nineteenth century was the preservation of another right guaranteed to them by the Civil Rights Act of 1866 and the Fourteenth Amendment - the right to justice under law. The Radical Republicans themselves had been split on this issue. On December 4, 1865, Charles Sumner of Massachusetts had introduced into the Senate a bill demanding that in any state in which Negroes counted one-sixth of the population, all grand juries should consist "one half of persons of African descent" and the same stipulation would apply to the trial jury in every case in which a Negro was a party. This motion was reported adversely from the Senate Judiciary Committee on July 7, 1866, after the passage of the Fourteenth Amendment, by Chairman Lyman Trumbull of Illinois, also a

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21 Ibid., 544. "The opinion ... is a compound of bad logic, bad history, bad sociology, and bad constitutional law," Harris, Quest for Equality, 107.
radical. Thus Sumner's plan died abortively, but it remained to illustrate the split in Radical ranks over the question of Negro jurors - Sumner taking the extreme view, while Trumbull maintaining a more traditional attitude toward the prospects of Negroes in the jury boxes of the South.

The rights of Negroes to serve on juries was not denied by the Radicals, but was endorsed in the 1866 act, as well as in the laws of 1870 and 1875. Soon these provisions were being tested in the courts, where the pattern is somewhat similar to that of the general issue of the acts themselves. Here again the courts began by upholding the Negro, then completely reversed their precedents, leaving the entire question in the hands of the states, and leaving the Fourteenth Amendment much weakened by their interpretations.

The first case dealing with Negroes on juries to reach the Supreme Court was Strauder v. West Virginia, heard during the October term, 1879. In this case, which challenged West Virginia statutes of 1872-73 barring Negroes from juries, the Supreme Court upheld the rights of the Negro petitioner, and declared the state laws unconstitutional. The case involved the indictment, trial and conviction of a Negro for murder in a state court by an all-white jury.26

This precedent did not long stand; in fact, it did not survive that term of the Court. In the case of Virginia v. Rives, the Court held that two Negro men, who were convicted by an all-white jury, could not, as a matter of right, demand a mixed jury. In this case

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26 100 U. S. 303.
the Court declared that the Fourteenth Amendment was not violated if it could not be shown that Negroes were excluded from the jury solely on the grounds of race or color.27

The Court had not made up its mind about this question on the basis of these decisions, and was in no hurry to commit itself to any one precedent. In *ex parte Virginia*, also decided in 1879, the Court managed to dispose of a case involving a judge arrested for failing to select Negroes as grand and petit jurors. The case was remanded to a district court for retrial, thus eliminating the problem of deciding whether or not the hapless judge was guilty of discrimination.28

Negro jurors were upheld in a case decided the following year, which freed a Negro convicted in a Delaware court of the rape of a white woman. Under the Delaware Constitution of 1831, Negroes had been barred from service on juries. The defendant moved to quash the indictment on the grounds of discrimination, and upon a writ of error appealed to the Supreme Court when the motion was denied by the trial judge. The Supreme Court upheld the defendant's contention that the law under which the juries had been drawn for the indictment and trial were in violation of the Fourteenth Amendment, and the defendant was freed.29

A similar case was *Bush v. Kentucky*, decided in 1882, in which a Kentucky law which forbade Negro jurors was ruled unconstitutional.

27100 U. S. 313.
28100 U. S. 339.
and the conviction of a Negro for murder was overruled. The Court, as in the Neal case, declared the state law to be a violation of the equal protection clause of the Fourteenth Amendment. By the 1880's it seemed that the Supreme Court was in the mood to demand Negro participation on juries indicting and trying members of that race, and had decided a sufficient number of cases to establish a precedent to that effect. This was not to be, however, for the next decade found the Court taking a substantially different position on the question, and completely beclouding the legal status of the Fourteenth Amendment as regards jury service.

This move began in 1894, in a case heard on appeal from an adverse ruling of a United States Circuit Court. One Andrews, a Negro, who had been indicted for murder in a New Jersey state court, petitioned in vain to the Circuit Court for a writ of habeas corpus on the ground that Negroes had been excluded from the juries involved. He then appealed to the Supreme Court from the Circuit Court's decision. The Supreme Court dismissed the petition, contending that petitioner had used the wrong method of procedure, thus failing to rule on the constitutional question involved.

The following year the Court made a complete reversal of its previous position. One Gibson, a Negro, had been indicted, tried and convicted of murder by a Mississippi court, in which Negroes had been excluded from the juries. On appeal to the Supreme Court, the conviction was upheld, the Court pointing out that there was no proof that

30 107 U. S. 110.

Negroes had been excluded from the juries "solely on the ground of race or color." Thus the Court abolished its earlier precedents, except in the case of state laws expressly forbidding Negro jurors, and instituted a new criterion in cases in which there were no laws discriminating against Negro jurors. Under this rule, Negroes would have to present proof that members of their race were excluded from juries solely because of the color of their skin, something that was to prove to be difficult to accomplish.

In the years following the Gibson case, several cases were decided by the Supreme Court, following the same line of reasoning, and in each case the Court held that all-white juries did not violate the provisions of the Fourteenth Amendment, since no proof was introduced that Negroes had been excluded "solely" because of their race. Typical of these cases were Charley Smith v. Mississippi and Murray v. Louisiana, decided in 1895, and Williams v. Mississippi, decided in 1897. In each of these cases the ruling was the same as the Gibson case, the Court holding that no proof had been introduced to substantiate the contentions of the petitioners.

The Supreme Court was adamant in its contention that all-white juries must not be considered legal if discrimination because of race was involved. In 1899, in the case of Carter v. Texas, it remanded a murder conviction because the defendant had sought to introduce proof that Negroes had been excluded from the jury because of their race; and the trial judge had refused to allow the motion. The Supreme

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32 Gibson v. Mississippi, 162 U. S. 565.

33 162 U. S. 592; 163 U. S. 101; 170 U. S. 213.
Court ruled that the trial judge had erred in this ruling, and demanded the case be retried, with the motion and supporting proof being introduced as evidence.\textsuperscript{34}

The pattern of the 1890's was begun again in 1902, when the Court upheld the conviction of a Florida Negro by an all-white jury when no proof was offered of discrimination in the selection of that jury, and in a South Carolina case where the defendant could not prove discrimination, although tried by an all-white jury in a county where four-fifths of the population was Negro.\textsuperscript{35}

In 1903 the Court upheld the Carter rule in the case of an Alabama Negro who was convicted of murder by white juries, after his motion to quash the indictment on account of racial prejudice was denied by the Court and ordered stricken from the record. The Supreme Court reversed and remanded the case, contending that the motion was valid and relevant, and should have been allowed by the trial judge, and not stricken from the record on the ground of local practice.\textsuperscript{36}

The more common pattern remained, however, to uphold convictions by state courts in cases where no proof of discrimination was offered, the Supreme Court refusing to presume discrimination in such cases.\textsuperscript{37}

By 1909 the Court had even extended the doctrine to a case involving

\begin{itemize}
\item \textsuperscript{34}177 U. S. 142.
\item \textsuperscript{35}Tarrance v. Florida, 188 U. S. 519; Brownfield v. South Carolina, 189 U. S. 426.
\item \textsuperscript{36}Rogers v. Alabama, 192 U. S. 226.
\item \textsuperscript{37}Martin v. Texas, 200 U. S. 316; Thomas v. Texas, 213 U. S. 278; Franklin v. South Carolina, 218 U. S. 161.
\end{itemize}

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extradition of a Negro, charged with murder, who had fled from Missis­
sippi to Missouri. The Court refused to accept the petitioner's
contention that he could not receive a fair trial because of his race
if returned to Mississippi, pointing out that he had offered no proof
in support of this contention.38

By 1910 the pattern was well established by a long series of
decisions. The Supreme Court would not accept the contention made
by Negroes that they were being deprived of the right to sit on
juries simply because of their race or color unless proof to support
this claim was introduced, which it was not. Thus the Fourteenth
Amendment's sanction of equal protection was being abrogated, the
Negroes contended, in favor of a tacit acceptance on the part of the
Court of the doctrine of white supremacy. The Fourteenth Amendment
guarantee upheld against the states in Strauder v. West Virginia and
Neal v. Delaware was not to be applied by the Court against the
actions of individuals. State laws against Negro jurors were illegal,
but state customs forbidding jury service were acceptable so long as
it could not be proven that they existed.

The Court's refusal to act against private individuals in cases
involving relations between the two races was illustrated by a 1905
decision involving an attempt by a group of white men to intimidate
Negro workers in an Arkansas lumber yard. The whites demurred on the
indictment, and their demurrer was upheld by the Supreme Court, which
contended that since the alleged offense was committed by private in-
dividuals it was not within the jurisdiction of a federal court.39

At the turn of the century the Supreme Court was called upon to face an issue shunned by the Congress in 1875, the question of the Negro's educational rights. In the Plessy case the Court's doctrine of "separate but equal" facilities had been seized upon by the South as a rationale for segregated educational facilities; and a system of separate education had been fully implemented. Litigation soon arose challenging instances where separate education was shown to be definitely not "equal" in the sense of the Plessy decision, and seeking the equal protection of the laws, as guaranteed by the Fourteenth Amendment, as a means of rectifying this situation. Such a case was instituted by one Cummings, a Negro taxpayer, in Georgia.

In this case, an all-Negro high school had been closed "for economic reasons" while the white high school in the same county remained in operation. Cummings contended this was discrimination, and in violation of the privileges and immunities and equal protection clauses of the amendment. When the case was argued before the Supreme Court, the constitutionality of laws providing separate accommodations for whites and Negroes in the public schools was challenged by counsel, but did not appear in the records of the court. 40 The decision of the Supreme Court upheld that of the Supreme Court of the state of Georgia; that the closing of the school was a legitimate discretionary act of the county board of education.

In his opinion in this case, Justice Harlan, who had been the lone dissenter in the Plessy case, maintained the right of the states to

40 Cummings v. Board of Education, 175 U. S. 528; Charles W. Collins, The Fourteenth Amendment and the States (Boston, 1912), 56.
regulate their own school systems. "... any interference on the part of Federal authority with the management of such schools cannot be justified," he wrote, "except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

Harlan was to dissent, however, in 1908, when the Court upheld a decision supporting a state law forcing the segregation of a previously integrated college in Kentucky. By an act of the state legislature in 1904 no school or college which was not segregated could operate within the state. Berea College, a Kentucky corporation, was such a mixed school, having traditionally upheld integration. The facts in this case were undisputed, the only question being the constitutionality of the Kentucky statute. The Court, taking the course of least resistance, decided the case in favor of the state on the technical point that since the corporation was chartered by the state, it was subject to its control. The question of the power of the state to enforce segregation in schools was not decided, but the state law to that effect was tacitly upheld.

During the last two decades of the nineteenth century the Court had also succeeded in undermining other rights which were allegedly

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11 Collins, Fourteenth Amendment, 69, quoting Harlan's opinion.

12 Berea College v. Kentucky, 211 U. S. 45. Collins, Fourteenth Amendment, 60-61, supports the Court's position, commenting that "one cannot but admire the logic and ultimate justice of such a rule." Stinson, The American Constitution as it Protects Private Rights, 52, contends that this case illustrated the contention that the Fourteenth Amendment required education of the races, but that their schools may be separated, following the Plessy rule. The Court, however, did this only tacitly, not deciding the case upon the issue of integration as against segregation, although some legalists seek to make it so appear.
established by the Fourteenth Amendment. In 1882, for example, an Alabama law was upheld which provided more severe punishment for cases of fornication and adultery between Negroes and whites than between members of the same race. Upon appeal to the Supreme Court, this law was held not to be a denial of the equal protection clause of the amendment.\textsuperscript{43} While the rights of Negroes to hold, lease, sell, convey and inherit property, as guaranteed by the Civil Rights Act of 1866, were not challenged, the Supreme Court refused to hear a Georgia case denying the right of a Negro woman, in 1854, to sell a lot she owned in Augusta under an antebellum Georgia statute which forbade Negroes to own property. The Court contended that this did not involve a federal question, and dismissed the plaintiff's writ of error.\textsuperscript{44}

This period also witnessed the rise in the South of voting restrictions against the Negro. One Giles, a Negro, instituted a case to test the constitutionality of the suffrage clauses of the Alabama constitution of 1901. While the Fifteenth Amendment was the main issue in this case, Giles argued that the restrictions in the state constitution were a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment. He appealed an adverse decision by the Supreme Court of Alabama, which was dismissed for want of jurisdiction by the United States Supreme Court. The Court contended that the record did not present a federal question, the right to determine eligibility of voters being reserved to the states.\textsuperscript{45}

\textsuperscript{43}\textit{Pace v. Alabama}, 106 U. S. 583.
\textsuperscript{44}\textit{Beatty v. Benton}, 135 U. S. 214.
\textsuperscript{45}\textit{Giles v. Harris}, 189 U. S. 475. (Brewer, Brown and Harlan, dissenting).
The following year Giles again attempted to test the issue, but the Court again refused jurisdiction.\textsuperscript{46}

As a result of these decisions, by the early years of the Twentieth century the amendment had been reduced to a mere truism, stating rights made meaningless by court interpretations. The only right which the Supreme Court consistently had upheld was that of Negro jury service in cases where there were state laws specifically denying them that right, and in cases where proof was presented that Negroes had been wilfully left off jury panels because of their race or color. (No case was decided in which such proof was satisfactorily presented, although cases were remanded for retrial when defendants attempted to include such proof, and trial judges had refused to allow it.) Tacitly the Court had admitted the right of states to control almost all facets of race relations, including segregation of public schools and interstate transportational facilities.\textsuperscript{47} The Negro, by 1900, was at the mercy of state legislatures, and his rights were only those which the states chose to give him, except for the basic civil rights preserved by the Act of 1866, such as those dealing with property and the use of the courts.

The Supreme Court which had so curtailed the Negro's rights in America during this period was almost completely of Northern origin, and most of the Southerners appointed during the immediate post-war

\textsuperscript{46}\textit{Giles v. Teasley}, 193 U. S. 116. (Justice Harlan dissenting.)

\textsuperscript{47}A learned and articulate Negro's opinion of this period is Rayford W. Logan's \textit{The Negro in American Life and Thought: the Nadir, 1877-1901} (New York, 1954), 175. The title is suggestive of the contents, an excellent appraisal from a seldom-considered point of view.
period were Republicans. In 1883, when the Civil Rights Cases were decided, there were only two Southerners on the Court, both Republicans, and only one Democrat, from California. In 1896, when the Plessy case was heard, there was only one Southerner on the bench, Edward Douglass White of Louisiana. Thus the decisions of the Court during the entire period from the Civil War until the turn of the century were written according to the beliefs of Northerners and Republicans.\(^8\)

This same group was to continue curtailing Negro rights in the period following 1900. During the McKinley administration outrages on Negroes in the South and the lack of justice for the race in the courts and Congress prompted a group of Massachusetts Negro leaders to publish an open letter to the President. "We have suffered, sir - God knows how much we have suffered!" they wrote. They criticized the President for not interceding in behalf of Negro rights, and they listed injustices suffered by Negroes in the South. The letter closed with the plea that the colored people of the United States would obtain "equal consideration with the Cuban people at the hands of your administration..."\(^9\) The President, however, was not to live long enough to improve the condition of the Negroes, even if he had been able to, and his successor, Theodore Roosevelt, was too concerned with other matters.

The cause of Negro rights fared badly in the early years of the

\(^8\)Ibid., 97-98.

\(^9\)Open Letter to President McKinley by Colored People of Massachusetts (Boston, 1899), 2-3, 11.
Twentieth century. President Taft was accused of "abetting" segregation because of his announcement at the time of his inauguration that he would not appoint Negroes to office where they would not be wanted by white workers. This meant, in effect, that no Negroes would be appointed to government positions. More than merely handicapping Negro workers, this illustrated a growing trend of Negrophobia throughout the nation.

The principle of the separation of the races, which had received legal sanction in the Civil Rights Cases and Plessy v. Ferguson, had been implemented in various degrees throughout the nation, from the rigid segregation practiced in the South to the residential, economic, transportational and recreational segregation accepted, if not legally authorized, in the North. By the end of Taft's administration, it was possible for one student of the amendment to summarize the gains made by the Negro since the amendment's passage in one word: Nothing. "The operation of the Amendment in its relation to the negro race has in it all of the irony of history," wrote Charles W. Collins of Alabama in his summary of the amendment's early career. He pointed out that in the period between 1868 and 1912 there had been 604 cases involving the amendment decided by the Supreme Court, and only twenty-eight of them had concerned Negroes, or less than five per cent. Most of the cases arose, not in the South, but in the West, with a considerable number also originating in the Northeast.

51 Collins, Fourteenth Amendment, 76-77, 38.
Collins concluded his survey of the history of the amendment with the opinion that "to-day there is the general feeling, even among the educated classes, that the Amendment is a matter of only historical interest." "They have a vague notion," he continued, "that it had something to do with the Civil War and slavery and that it is now of no practical concern." He believed that by 1912 the Negro could no longer look to the federal government for protection of any of his rights, but only to the states, where, if he failed to "gain for himself the full fruits of citizenship, there is no recourse left to him."\(^{52}\)

This complete abandonment of the Negro to the states is perhaps one reason for a noticable swing of Negro votes in 1912 to the Democratic candidate for the presidency, Woodrow Wilson. Wilson, who had promised the Negroes that they would have "justice abundantly" during his administration, proved disappointing. He eliminated Negroes from all the higher governmental positions, and completed segregation of the civil service; in effect, he acted more anti-Negro than the Republicans before him. One Negro historian summed up Wilson's feeling toward the Negro as "practically that of Jefferson Davis.\(^{53}\)

During this period the Negro fared little better in the courts. In one instance the Negroes won a right which they had been seeking as a part of their civil liberties under the Fourteenth Amendment, the right to purchase and own property where they chose. In a series of cases beginning with Buchanan v. Warley in 1917, the Supreme Court upheld the right of whites to sell residence property to Negroes in

\(^{52}\)Ibid., 38, 80.

\(^{53}\)Woodson, The Negro in Our History, 489-90.
spite of state laws forbidding such sales. The pioneer case involved a Louisville city ordinance which prevented the occupancy by members of one race of any city lot in a block where the majority of residents were of another race. The Court refused to accept the respondent's arguments that the main purpose of the ordinance was to prevent miscegenation and secure the public peace, and refused to consider that the law was applied to both races impartially, thus guaranteeing equal protection. Justice Day, in his opinion, begrudgingly struck down the law. "Desirable as this is," he wrote, "it cannot be accomplished by laws which deny rights created or protected by the Federal Constitution."54

This was a hollow victory for the Negroes, however, for soon realtors, property owners and politicians turned to the device of the restrictive covenant to limit sales of residential property to minority groups. They reasoned that since no white person could be compelled to sell property to a Negro, there was nothing unconstitutional about restrictions on the sale to the white man prohibiting resale to Negroes. Covenants soon became common features of property deeds in certain areas.55

These arrangements were dealt a serious blow in 1948 by the unanimous decision in Shelley v. Kraemer, which held that state court action enforcing such restrictive covenants contained in property deeds violated the equal protection clause of the amend-

54 U. S. 60.


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ment. This was not an absolute ruling, for in 1950 the Court refused to review a New York case which held that a private corporation could exclude Negroes from a housing development constructed with the assistance of city tax exemptions and state-enacted eminent domain.\(^5^7\)

Another source of great irritation to Negroes during the period following the Plessy decision was segregated transportational facilities. Since the time of the decisions in *Hall v. De Cuir* and the *Civil Rights Cases*, segregation had been legal in interstate commerce. In 1912 this was upheld in the case of *Butts v. Merchants and Miners Company*, in a case involving the segregation of a Negro woman passenger on a coasting vessel plying between Boston and Baltimore. Although the plaintiff had paid for a first-class ticket, she had been denied a seat at the first-class table and had been barred from the best ladies' cabin on the vessel. In the Court's decision, it was held that the Civil Rights Act of 1875, upon which she had based her case, was wholly unconstitutional, even upon the high seas, because of its attempt to interfere with individual action.\(^5^8\)

Segregation continued to be the rule throughout the period of the 1920's and 1930's, with the facilities in many states being required by law to be separate, as under the Plessy rule, but generally they were not concomitantly equal. Such were the facts of a case which was decided in 1941, and which involved a Negro Congressman traveling from Chicago to Hot Springs, Arkansas. He had purchased a

\(^{56}\) *Dorsey v. Stuyvesant Town*, 339 U. S. 981.

\(^{57}\) *Dorsey v. Stuyvesant Town*, 339 U. S. 981.

\(^{58}\) 230 U. S. 126.
first-class ticket, and sleeping-car accommodations, but was forced to move into a coach when the train crossed the Arkansas line. The Court held that the railroad's contention that there was not enough business to warrant the inclusion of a Negro sleeping-car on the train was not valid. In order to meet legal requirements, the Court held, the accommodations for both races, if separate, had to be equal. 59

Five years later the Court struck down completely a state law requiring segregation in transportation facilities engaged in interstate commerce. A Negro woman who refused to move to the back of an interstate bus traveling between Virginia and Maryland was prosecuted under a Virginia statute requiring such segregation. The Supreme Court of the state upheld her conviction, but the United States Supreme Court overruled it on appeal, contending that the Virginia "Jim Crow" law was a burden on interstate commerce in a situation where the expeditious flow of commerce demanded uniformity. 60

Following the Virginia decision, the Court continued to chip away at "Jim Crow" legislation, until by 1958 it had ruled unconstitutional all segregation on transportation facilities, including municipal bus and streetcar lines, as well as all forms of interstate commerce. The cycle had been completed in ninety years since the passage of the amendment, and fifty-three years after the Plessy case.

The end of segregation on interstate vehicles did not mean the

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60 Morgan v. Virginia, 328 U. S. 373. It is interesting to note that this decision was made under the commerce clause of Article I, Section 8, rather than the equal protection clause of the Fourteenth Amendment, which had been used as a basis for the decision in the Arkansas case.
end of all marks of second-class citizenship for the Negro, however. In both North and South segregation remained, either sanctioned by statute, as in the South, or accepted by custom and usage, as in many areas of the North. Even in the District of Columbia the Negro was still segregated in hotels, restaurants, theaters, and other such places, as well as in schools. In the North there were scattered instances of legalized segregation. In New Jersey, for example, as late as 1947 there was a statute which demanded separate Negro and white regiments in the state guard, and, although segregation in the public schools was not specifically demanded, the state maintained a separate training school for Negroes. In California, where there was a more complicated minority problem, state antimiscegenation laws, alien-land laws, and separate school laws applied not only to Negroes but to Orientals and Indians as well.61

In the North, segregation took an institutional form, rather than the statutory methods used in the South. White Northerners excluded Negroes from their schools, parks, playgrounds, stores and businesses, theaters, hospitals, and other institutions on a community or neighborhood basis. Both races tended to congregate in separate areas, thus setting up Negro and white school districts, shopping areas, parks, playgrounds and other facilities.62

By far the most publicized effort on the part of the Negro in the period of the 1940's and 1950's to gain equality under the Fourteenth Amendment was in the field of education. The rule of the Plessy case

62Ibid., 139.
was still in force by the end of World War II, although wide areas had eliminated segregation in the public schools and colleges supported by state taxes. The Plessy rule had remained unaltered, however, as the official stand of the Supreme Court on the question. The Court had, in 1938, strengthened the demand for "equal" as well as separate facilities in a Missouri case involving a Negro student who sought admission to the all-white law school at the University of Missouri, since there was no law school at the all-Negro state university. The Court held in this case that equality of treatment was the only justifiable basis for segregation, and ordered either the admission of the plaintiff to the white school or the creation of a separate Negro law school. In the majority opinion, the Court maintained that laws demanding the segregation of the races could be accepted only if they provided equal enjoyment of the "privileges which the laws give to the separated groups within the State."\(^{63}\)

This decision did nothing to undermine the basic pattern of school segregation. By 1947 there were still twenty states which either demanded or expressly permitted segregated public schools, twelve states which made separate colleges mandatory, and fourteen states which maintained separate teacher training schools.\(^{64}\)

\(^{63}\)Missouri ex. rel. Gaines v. Canada, 305 U. S. 337.

\(^{64}\)Konvitz, The Constitution and Civil Rights, 132-33. The states which allowed separate public schools were: Alabama, Arizona, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. Separate colleges: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Maryland, Missouri, North Carolina, Oklahoma, South Carolina, Virginia. Separate teacher's colleges: Alabama, Arkansas, Delaware, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas and West Virginia.

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The following year came the first break in the lily-white school system of the South. A Negro woman had applied for admission to the law school at the University of Oklahoma, and the school had attempted to postpone her admission until a separate Negro law school could be established, under the pattern of the Missouri case. The Court held that the equal protection clause demanded that the plaintiff be given equal law training, and be given it "as soon as ... applicants of any other group."

Following this decision Oklahoma decided to integrate its institutions of higher learning; but the Negro students were to be set apart from other students by separate study areas in the library, special seats in classrooms screened off from the rest of the class, and by other facilities designed to keep them as completely apart from the rest of the student body as possible. One McLaurin, admitted to the University law school under such restrictions, sued for their abolition, contending that they deprived him of equal educational privileges. The Court agreed. In the majority opinion, written by Chief Justice Vinson, the Court declared that such restrictions tended to "impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and in general, to learn his profession." The removal of these artificial restrictions, the Court continued, would not "necessarily abate individual and group predilections, prejudices and choices," and there would be no forced "commingling of students" as a result. There would be, however, a much greater opportunity on the part of the appellant "to

secure acceptance by his fellow students on his own merits."^66

At the same time as the McLaurin case was decided, the Court issued its opinion on another school integration case, which was of even greater importance. One Sweatt, a Negro, had sought admission to the University of Texas law school, and had been rejected. He brought a writ of mandamus to force his admission, since there was no law school for Negroes in the state. Texas, to block this move, established a Negro law school, but Sweatt refused to enter it, contending that this school could not provide him with an equal education, as guaranteed by the equal protection clause. The Court, in a decision written by Vinson, refused to rule on the "broader issues" brought by the petitioner, who demanded a complete re-examination of the Plessy case. The Court agreed that the education afforded by the newly-established school could not compare with that obtainable at the University of Texas, either in staff, library facilities, prestige, opportunity for professional association, or other criteria. Thus, the Court ruled, Sweatt was entitled to an education fully equal to that afforded white students, not "approximately" equal, and therefore had a right to admission to the white school.67

This case was decided on a purely pragmatic line of reasoning, with the Court dodging the main constitutional question at stake; namely the reappraisal of the Plessy case in line with more modern ideas and interpretations of the Fourteenth Amendment. The Court was not going to be able to side-step this issue nearly so easily the next time it was presented, and was to be forced into giving a ruling

destined to become one of the most controversial in its career, and
was to mark the end of the famous "separate but equal" rule. Hence­
forth only the "equal" part was to be acceptable.

In December, 1952, five cases appeared on the docket of the Court,
dealing with school segregation in public schools in four states and
the District of Columbia. The four state cases were dealt with col­
lectively, while the District of Columbia case was treated separately,
since it was a purely federal question. At this session the Court
heard arguments on the five cases, with counsel for the appellants
contending that most Negro schools were not equal to white schools by
the very fact of segregation, which, they argued, created a "sense
of inferiority on the part of Negro children and impaired the learn­
ing process." The Court was unable to reach an agreement at this
time, and the cases were ordered restored to the docket for reargu­
ment later.68

The cases reappeared on the docket in 1954, with approximately
the same arguments being presented. The main question in the state
school cases, as presented by appellants, centered around the prob­
lem of the conformity of the doctrine of "separate but equal" with
the equal protection clause of the Fourteenth Amendment. The Court,
faced squarely with the issue, was forced to take a stand, and in so
doing it struck down the Plessy decision. Segregation, the Court held,
deprived Negroes of equal educational opportunity, even when facil­
ities, faculties, and other factors are equal. The mere separation
of the race generates a "feeling of inferiority" as to the Negro's

68 Swisher, American Constitutional Development, 1049.
status in society, and may have an adverse effect on the minds of
the children so segregated. Thus, the Court ruled, the separate but
equal doctrine had no place in the field of education, separate educa­
tional facilities are inherently unequal, and the plaintiffs were,
as contended, deprived of the equal protection of the laws by the
operation of segregated schools.\footnote{70Bolling v. Sharpe, 347 U. S. 497.}

The arguments on the case involving segregation in the District
of Columbia followed a somewhat different turn, since the Fourteenth
Amendment does not apply to the District, but only to the states. In
this case plaintiffs argued for integration on the basis of the due
process clause of the Fifth Amendment, and such argument was upheld by
the Court.\footnote{70}

Thus, by 1954, the Court had completed its reversal on the Four­
teenth Amendment, taking the question of civil rights out of the
hands of the states and placing the entire problem in the lap of the
federal government. The cycle was therefore completed. The Four­
teenth Amendment, designed by the Radicals to give a strong federal
control over state affairs, had been gradually weakened by court de­
cisions until its influence was practically nothing; then gradually
it was restored until it reached such importance that it could be
construed to control not only the state governments, but local admin­
istrative areas within the states, such as boards of education. The
sweep of the school segregation decisions was, of course, more vast
than the schoolroom, for segregation, if illegal there, was equally
illegal in other fields of activity. The Court had accepted, in these cases, the sociological-psychological argument that the fact of segregation makes for insecurity and inequality - if this was true in schools, was it any less true in other fields? This was the problem now, but whatever its solution, one result was outstanding; the Negro was on his way rapidly to complete legal equality with the white, whatever the personal feelings of individuals concerned.

It had taken the Court nearly ninety years from the passage of the amendment to arrive at the conclusion that the controls and restrictions legalized by it were to be applied by the direct force and intervention of the federal government. But there the matter finally rested, no doubt to the great satisfaction of the spirit of Charles Sumner, for the Court's modern decisions but confirmed what he had felt was the purpose of the amendment from the beginning. In the public school segregation cases the Court finally wrote into law what Sumner had introduced into the Senate as a bill in 1865, namely "the organization of an educational system for the equal benefit of all, without distinction of race or color."71

For Sumner the Court's decision would no doubt have been a sweet victory, but not so for all of his Radical colleagues, including some men instrumental in drafting the amendment. They would have looked upon the present decisions with horror and alarm as illegal both from the standpoint of the federal system, and from the point of view of racial autonomy. The Court's decisions have the force of law, and the

71 Cong. Globe, 39 Cong., 1 Sess., 2; Sumner, Works, X, 33-34.
amendment reads as the bench interprets it; but it is of historical interest to determine the real feelings, motives and ideas of the men who drafted this amendment which has become so significant, and so controversial, in our own day.

To accomplish this, one must return to the days before the cataclysmic Civil War, to the turbulent 1850's, when the Radical Republicans were beginning to form their political creed, and when the question of the Negro's place in American society was a much simpler one, yet fraught with many complications.

What were the rights of the Negroes in the 1850's, and how were they accepted into the society of the North, the section which was becoming increasingly vocal in their behalf? What, too, were the ideas of the Radicals themselves toward the black man, and what factors influenced them in determining the stand that they would take toward the Negro? What influences did the war, with its many problems, have upon these individuals, and how did their ideas change during its course; or, if their ideas did not change but remained steadfast through the vicissitudes of the conflict, what made them remain so firm? These are questions that must be answered in order to understand the position of the Fourteenth Amendment at the time of its adoption. While their answers will not serve to alter the law, they will, perhaps, serve to increase our understanding of its history and development, and may serve to illustrate how men, motivated by powerful social and political forces, can act in such a way as to influence ages beyond their own and millions yet unborn.

Who, then, were the Radicals, the authors of this enigmatic amendment, and what were their ideas on civil and social rights for the Negro?
CHAPTER II

NEGRO RIGHTS IN THE NORTH IN THE 1850'S

The litigation-marked history of the Negro's struggle for political and civil rights since the passage of the Fourteenth Amendment has been but the natural result of the spirit as well as the letter of that law, as passed by the votes of the Radical Republicans. By 1866 feeling in the victorious North ran high for Negro rights, due in part to the role played by the freedmen and free Negroes during the war. The vast majority of Northerners, no doubt, sincerely favored the granting of political and civil rights to the Negroes, and securing these grants by appropriate measures. Particularly they were anxious to retain for the freedmen their rights in the states of the former Confederacy. The story was a little different closer to home, however, for in most of the Northern states the Negro, even after the passage of the amendment, was still a second-class citizen - cursed by a traditional social system nearly as binding upon men of color as any Black Code passed by ex-Confederates.

In 1865 only five Northern states allowed the Negro to vote, and in one of these, New York, he had to meet a property qualification not levied on whites. In Illinois, Indiana, Iowa, Ohio and other states Black Codes similar to that of the former slave states restricted the entry of Negroes. In Illinois, litigation for the enforcement of a Negro-restriction statute had begun as late as 1863, during the height of the Civil War and after the issuance of the Emancipation Proclamation.¹

¹White, Trumbull, 243.
In spite of these paradoxical laws, the position of the average Negro in the North in 1866 was infinitely better than it had been in the previous decade. True, for the most part he could not vote, his children could go to school only in segregated schools if they went at all, his opportunities for earning a living were greatly limited, and in most areas he was segregated in many aspects of life. But he had gained a status which he had never held before. He was free, he was a citizen, and he was certain that as a reward for his services during the war, both military and civilian, he would receive increased recognition from his white fellow-citizens.

In 1850 it was different. The beginning of the second half of the nineteenth century marked the low point in the Northern Negro's struggle for political and civil rights; yet at the same time it was the real beginning of his slow rise to citizenship and to eventual full legal equality with his fellow Americans in the Northern states. He began the decade in a condition described as "appallingly wretched," yet by the time the decade was over, he was able to hold great hopes for better things soon to come.

Although in 1850 the Northern Negro was free (for the most part), he was hampered in many ways by laws, social customs, and economic restrictions. He encountered great difficulty in earning a living, yet was jailed for vagrancy if he did not work. He was kept out of many states on pain of prison or virtual slavery, and was uniformly segregated on streetcars, railroads and other public conveyances.

2Ralph Korngold, Thaddeus Stevens, a Being Darkly Wise and Rudely Great (New York, 1955), 113.
As late as 1863 the plight of the average Northern Negro was summed up by the conservative North American Review, which pointed out the anomalies of the Negro's existence in the "free" states:

We can enforce upon him the restraints of law and order; we can punish him for begging, and at the same time prohibit his practicing any trade of which he feels himself capable, and by which he might earn an honest livelihood; we may tax him, though he has no political status; we may exclude him from our public conveyances, our churches, and our schools, and ... may drive him from the borders of States whose lands lie untilled for want of the very labor he would bring...

The condition of the free Negro population in the North was described in the same article as "inferior to what it was in 1816." The decline of the Negro was attributed to the increase in the "aggregate population" of the nation, which was leading to "closer contact" between Negroes and whites, resulting in "collisions, of old unknown," which were tending to divide the population.

This was in great measure true, for the Negro in the North at the beginning of the nineteenth century had many more rights than he enjoyed at its mid-point. Most Northern Negroes, having received enfranchisement along with the lower white classes, could vote during the early years of the nation. The Congress of the Confederation twice, in 1778, refused to insert the word "white" into the Articles of Confederation. In 1783 free Negroes were recognized for purposes of taxation, and in 1784 they gained recognition as voters in the territories. The Negro's right to the franchise was further emphasized


4Ibid., 108.
in 1787, when the Northwest Ordinance stipulated that all "free male inhabitants of full age" would have the ballot.\(^5\)

These halcyon days of political freedom for the Negro soon ended, and by 1821 all but six states in the North had denied him the suffrage. The Negroes of Maine, New Hampshire and Vermont could vote by this date if they could meet the property qualifications. In New Jersey they had regained the ballot in 1820 after having lost in 1807, but were destined to again be deprived of this right in 1847. In New York they could vote, but had a discriminatory property qualification of $250 levied upon them for the privilege. In Rhode Island also they could vote, but were to be disfranchised by the constitution which was established following Dorr's Rebellion. In the new states of the West, in spite of the fact that neither the Northwest Ordinance nor the Louisiana Purchase treaty made any discrimination as to color, Negroes were disfranchised. Thus the Negro lost the ballot in Ohio in 1803, Indiana in 1816, Illinois in 1818, Michigan in 1837, Iowa in 1846, Wisconsin in 1848, Minnesota in 1858 and Kansas in 1861.\(^6\)

The provisions in the various state constitutions dealing with the franchise were strikingly similar. In Maine the constitution

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\(^{5}\)Dubois, Black Reconstruction, 7-8.

\(^{6}\)Ibid., 8. There is some controversy over these figures, however. Francis B. Simkins, in The South, Old and New, a History, 1820-1947, (New York, 1949), says that only five Northern states allowed the Negro the ballot in 1821. He does not name the states. For slightly different figures, Leslie's Weekly, June 23, 1865, says that "about the year 1826" the New York constitution was altered to eliminate the property qualification for white voters, thus making the provision discriminatory against Negroes. Dubois, however, contends that the qualification for whites was eliminated by 1821.
allowed "every male citizen of the United States of the age of
twenty-one years and upwards" to vote, "excepting paupers, persons
under guardianship, and Indians not taxed..." Massachusetts was more
explicit, giving the right to "every male person" who met the age and
residence requirements, while New York added the qualifying stipula-
tion that "no man of colour, unless he shall have been for three years
a citizen of this state, and for one year next preceding any election
shall be seized and possessed of a freehold estate to the value of
two hundred and fifty dollars, over and above all debts and incum-
brances charged thereon, shall be entitled to vote at such election."
New Jersey's property qualifications were more general. There "all
inhabitants of this colony of full age" could vote, providing they
were "worth fifty pounds, proclamation money, clear estate in the
same." Much the same requirements were demanded by Pennsylvania,
which allowed "every freeman" to vote if he had resided within the
state for two years and "within that time paid a state or county
tax, which shall have been assessed at least six months before the
election."

In other states the story was very different. Connecticut
granted the right to vote only to "white male citizens of the United
States, who shall have gained a settlement in this state," and "at-
tained the age of twenty-one years." Indiana also stipulated that
the electorate was to be confined to "every white male citizen,"
while Ohio and Illinois demanded that voters be only "white male

7The American's Guide: Comprising the Declaration of Independ-
ence; the Articles of Confederation; the Constitution of the United
States, and the Constitutions of the Several States composing the
Relations between the two races were sorely strained during the first half of the century, and race riots added to the general distrust of the Negro which manifested itself in his disfranchisement. In 1829 most of the Negro population of Cincinnati fled into Canada after a race riot which lasted for three days. In Philadelphia there was periodic strife between the two races until after the Civil War. In 1834 a riot resulted in the destruction of thirty-one houses and two churches, while in 1842 the militia, including artillery, was called out to put down a two-day riot which threatened the entire city. In Detroit, in 1833, the mayor was forced to send an urgent plea to Secretary of War Lewis Cass for troops to keep order. He cited the "recent excesses committed ... by the black population, ... particularly the repeated attempts to fire the town," and pleaded for a detachment of Federal troops to act under the direction of the "municipal authority" until "tranquility" had been restored. Cass, anxious to appease the voters back home, hastily complied, and most of the Negro population of Detroit fled into Canada upon the arrival of the troops.  

The only bright spot for the Negro in the pre-Civil War North was New England, and in only certain states of that small area, the brightest of which was Massachusetts. There, according to the state

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8 Ibid., 109, 270, 254, 309.

constitution, the equal rights philosophy of the Declaration of
Independence was fully accepted. The constitution stipulated that
"all men, without distinction of race or color, are equal before the
law."\(^{10}\)

The people of the state were not in full agreement as to just how far this equality should extend, however, as illustrated by the struggle to integrate the public schools of the state. The problem of school segregation or integration was to plague Massachusetts for several years before finally being resolved. The legislature had set up, in the 1840's, a system of Common Schools, with no discrimination of race or color. In Boston, however, there were two schools set aside for the use of Negro pupils, while the other schools in the city were reserved for white children. This arrangement was destined to divide the Negroes of the city into two groups, some demanding integration and others determined to retain the segregated schools.\(^{11}\)

A movement was begun by a group of the city's Negroes to integrate the school system, contending that Negro children should be allowed to attend school in the Common School nearest their homes. Benjamin F. Roberts, a leading Negro, in a letter to the abolitionist organ, the *Liberator*, appealed for funds to aid in the fight for integration. Roberts was the father of a child who had sought admission to an all-white school and was refused. The supreme court of the state had upheld the right of the Boston school board to determine who should be enrolled in the various city schools. In his letter, Roberts called attention to the "great injustice against the colored people" caused

\(^{10}\) Sumner, *Works*, II, 330.

\(^{11}\) Ibid., 342, 348, 367, 373.
by the court's ruling. He pointed out that the right to abolish segregation in Boston's schools would require "means to prosecute this effort," and called upon all "friends of equal rights" to "govern themselves accordingly."\(^{12}\)

Not all the Negro population of Boston supported the movement for integration. Roberts' letter was followed by one from Thomas Paul Smith, who pointed out that "we are colored men, exposed alike to oppression and prejudice; our interests are all identical - we rise or fall together." Smith contended that the colored schools were institutions which, if "properly conducted," would be of "great advantage" to the colored people. He believed that "society imperatively requires" that separate schools continue, and begged the Negroes of the city not to support any measure which would "interrupt or retard" the "elevation" of the colored children of Boston.\(^{13}\)

Despite this plea, agitation by the more radical Negroes, supported by white abolitionists and social reformers, finally bore fruit. In 1855 the Massachusetts legislature approved an act which specifically stated that "in determining the qualifications of scholars to be admitted into any Public School or any District School in this Commonwealth, no distinction shall be made on account of the race, color, or religious opinions of the applicant or scholar." Thus, by 1855, Boston schools were integrated. The Negroes celebrated with a testimonial banquet honoring the men instrumental in bringing about


\(^{13}\)Ibid., 298.
the school reform. One of the sponsors was Dr. John S. Rock, later to become the first Negro lawyer admitted to practice before the United States Supreme Court.\textsuperscript{14}

In other states the story was quite different. In Philadelphia, an embittered Negro father wrote the city tax collector in 1853 informing him that he would not pay that part of his assessed taxes which were apportioned for schools, contending that he did not benefit from the tax fund. He described his experience in attempting to enroll his child in an all-white school in Philadelphia:\textsuperscript{15}

I was informed by a pious Quaker director (of the school), with a sanctifying grace, imparting, doubtless, an unctious glow to his saintly prejudices, that a school in the village of Mechanicsville was appropriated for "thine." The miserable shanty, with all its appurtenances, on the very line of the township, to which this benighted follower of George Fox alluded, is, as you know, the most flimsy and ridiculous sham which any tool of a skin-hating aristocracy would have resorted to, to cover and protect his servility.

The situation of the Negro in Philadelphia was certainly bad, and with a history of race riots, segregation, and second-class citizenship as the Negro's heritage in that city, it is little wonder that one Negro slave woman, Lina Conquest, given the opportunity for freedom when her Virginia master moved to the city in 1860, refused it. She told the judge at the Quarter Sessions court that she would much prefer to return to slavery, and was thus remanded to her master in spite of state laws to the contrary.\textsuperscript{16}

\textsuperscript{14} Ibid., 376-77; Sumner, Works, II, 327.
\textsuperscript{15} Ibid., 360.
\textsuperscript{16} Harper's Weekly, September 8, 1860.
In New York the question of Negro suffrage was raised in 1845. At a constitutional convention held in that year Thurlow Weed and other liberals championed a series of electoral reforms, including free universal suffrage, but their proposal for free Negro voting was defeated.17 New York Negroes accepted the responsibilities of citizenship, even if they could not enjoy its benefits. By 1857 they could report that in the city of New York alone there were at least 1,000 colored persons who owned taxed real estate worth a total of $1,400,000. In addition, New York City Negroes owned an additional $250,000 worth of untaxed property in the form of churches, and could report that their race had a total of $1,121,000 in savings banks in the city.18 Thus in New York some Negroes were prospering, even if they were not all voting.

The Negro school situation in New York was a different story. In the same year that the Negroes reported such favorable economic circumstances, they reported only 1,153 colored children between the ages of 4 and 17 years attending school, out of a total population of 3,000 children. The proportion of colored children to white children attending public schools in New York City at that time was one to forty, or about two and one-half percent.19

In spite of the setback suffered in 1845, New York Negroes continued to agitate for the ballot. In 1854 Horace Greeley, a recognized

17 Glyndon G. Van Deusen, Thurlow Weed, Wizard of the Lobby (Boston, 1947), 143-144.
18 Aptheker, Documentary History, 401.
19 Ibid., 398-99.
friend of the Negro and champion of Negro rights in the free states, warned the colored men that they were going too far. He assured them that the property qualification for voting would not be removed "for many weary years." Meanwhile, they should be working to win the respect of their white fellow-citizens by "patiently hewing out a modest, toilsome independence," which would be worth more to the cause of Negro rights than "an Ethiopian (or any other) convention, clamoring against White oppression with all the fire of a Spartacus." Before gaining universal political enfranchisement, the black man, Greeley continued, had first to secure "an intellectual and essential enfranchisement" by means of "toil, privation and suffering."20

In spite of the growing demands on the part of Negroes for the ballot, by the year 1858 only four Northern states allowed them to vote. In New Hampshire, Massachusetts, New York and New Jersey all free native-born Negroes, who could meet all other qualifications, were enfranchised.21 But there were other considerations which entered into the picture to cloud the Negro's position in these states. In New Jersey, for example, there was still some slavery, in spite of the state constitutional provisions to the contrary. While these slaves were "mostly the attached servants of old families," and were not "regarded in the light of slaves," they apparently remained slaves in the technical sense, even as late as 1860.22


22 Appleton's Annual Cyclopaedia, 1860, 514.
Thus, by 1858, of the nearly 235,000 Negroes in the North, approximately 84,000 were able to vote, providing they met the other qualifications, which many of them did not. By far the most populous state allowing Negro voting was New York, where the Negro population was declining slightly, dropping from 49,069 in 1850 to 49,005 in 1860. Here the $250 qualification remained a barrier to the black man's exercise of the ballot. In New Jersey, which still tolerated slavery, there were 24,046 Negroes in 1850 and 25,336 in 1860; while in the most liberal states, Massachusetts and New Hampshire, there were 9,064 and 520 Negroes respectively in 1850. By 1860 the Massachusetts Negro population had grown to 9,602, while that of New Hampshire dropped to 494. It would seem that Negroes were not particularly attracted to these states which afforded them the most liberal civil rights laws. In this decade there was no appreciable change in the Negro population of these states, in spite of the fact that in other states of the North the Negro lived under much greater civil and political restrictions. Apparently the majority of Northern Negroes were either determined to win their rights in the other states, or were prevented from moving to the more liberal states, either through apathy, or by economic or sentimental considerations which they felt were more important than the right to vote.

The New England state with the greatest Negro population, excepting Massachusetts, was Connecticut, where the number of Negroes had grown from 7,693 in 1850 to 8,627 ten years later. Here

23Statistical Abstract of the United States, 1910, pp. 36-41.
24Ibid.
Negroes were completely deprived of all political rights. They
had been disfranchised in 1818, when a new constitution was adopted,
and in 1847, when a special referendum was held on the subject,
Negro voting was decisively defeated.\footnote{Aptheker, Documentary History, 291.}
The Negroes of Connecticut were not to get the ballot until the passage of the Fifteenth Amend­
ment.

Connecticut Negroes were encouraged in their struggle for
suffrage by the colored population of Massachusetts and other New
England states. In 1859 a New England Colored Citizens Convention,
meeting in Boston, passed a resolution encouraging the Negroes of
Connecticut to keep up their "long-continued efforts for the elective
franchise," in spite of their "many defeats." This same group also
passed resolutions calling for equal rights for Negro school children
in another New England state, Rhode Island. They pointed out that
there were in that state "colored persons disposed to throw obstacles
in the path that leads to the equal school rights of their children,"
but noted that other Negroes were filled with the "intelligent zeal
and perseverance" necessary to carry out the struggle for "justice and
equality."\footnote{Ibid., 434.}

Apparently the Negroes of Rhode Island were as badly
split as were the colored people of Boston a few years earlier on the
question of school segregation.

In spite of these many limitations, the Negroes of the East, and
particularly of New England, were much better off than were the colored
people of the states further west. Here the Negro was universally

\footnote{Aptheker, Documentary History, 291.}
\footnote{Ibid., 434.}
disfranchised, and hampered by many civil and legal restrictions, including, in some states, limitations on Negro testimony in courts of law. Governor James W. Grimes of Iowa, in attempting to gain support for a law in his state to allow Negro testimony to be admitted in courts, cited in a circular letter, September 3, 1857, that "every free State in this Union, save in Illinois and Indiana" allowed Negro testimony. Grimes admitted in the letter that he did not know what the law was in Illinois and Indiana, and apparently was not too familiar with the laws of some other states. One man who probably knew much more what the situation was regarding Negro testimony was the ex-slave Frederick Douglass, who as late as 1865 could state that Illinois, Indiana and Ohio all forbade testimony by members of his race.

In Iowa, Negroes had been severely handicapped even during the territorial period. According to an 1839 law, no "black or mulatto" could settle in the Territory unless he could produce a "certificate under seal showing his freedom, and give a bond of $500 conditioned on his good behavior." Any conviction of any crime or misdemeanor would result in forfeiture of this bond, and if a Negro could not provide the security, it was the duty of the county commissioners to "hire him out to the highest bidder for cash."

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28 Aptheker, Documentary History, 548.
29 Clifford Powell, "History of the Codes of Iowa Law," Iowa Journal of History and Politics, IX (October, 1911), 504.
In 1844, during the state constitutional convention, the delegates agreed that they could "never consent to open the doors of our beautiful state and invite him [the Negro] to settle our lands." They feared that "the ballot box would fall into his hands and a train of evils would follow that would be incalculable." In 1857, a new state constitution, the word "white" was included in the article dealing with suffrage requirements. Only 8,207 persons voted against the inclusion, while 78,992 supported it. At this time the Negro population of the state was insignificant, far too small to have constituted a determining element on any question which might have been placed on the ballot. In 1850 there were only 333 Negroes in the State, and by 1860, only 1,069.

Another Western state with stringent anti-Negro laws was Ohio. When the state was founded in 1803, laws were passed forbidding Negroes from entering the state, and imposing fines and other penalties on persons introducing them. While these laws were repealed in 1819, the state still refused to recognize the Negro as a citizen, forbidding him membership in the state militia and depriving him of other rights. He was unable to testify in the state courts, and thus could not hope for legal aid, and was deprived of any right to use

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31Salter, Grimes, 94.


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property. He was, to all purposes, a second-class citizen. 33

The position of the Negro in Ohio was well summarized by a resolution passed by a state convention of colored men, which met at Cincinnati in 1858. They summed up their position thusly: 34

... we are subjected to iniquitous and burdensome legislation. We are refused the right to vote; we are refused a fair trial by jury; we are refused participation in the emolument and honors of office; we are denied equal education; those of us who are reduced to pauperism, or afflicted with lunacy, are thrust into the cells of the felon's jail, all of which is unjust, tending to destroy those sentiments of self-respect, enterprise and patriotism which it would be wisdom to foster in the people of the State.

In Indiana the anti-Negro sentiment was even stronger. There, as late as 1851, a provision was placed in the constitution denying Negroes admission to the state - a provision that was not repealed until 1880. George W. Julian, the Radical leader, spoke of the state as "an outlying province of the empire of Slavery." 35 Indiana had been settled chiefly by immigrants from Southern states, particularly the Carolinas, Virginia, Kentucky and Tennessee, and had a much smaller percentage of foreign elements in its population than did its neighbors. This tended to intensify the anti-Negro feeling of its citizens. Julian, in a speech at Raysville in 1858, called Indiana "the most proslavery of all the Northern States." "Our people


34 Aptheker, Documentary History, 412.

35 Walter R. Sharp, "Henry S. Lane and the Formation of the Republican Party in Indiana." Mississippi Valley Historical Review, VII (September, 1920), 94. Hereinafter cited as MVHR.
hate the Negro with a perfect if not a supreme hatred," he declared. 36

Illinois also was violently anti-Negro. There "Logan's Black Law," passed in 1853 under the leadership of the future Radical, John A. Logan, levied fines on free Negroes entering the state, and, if the fine was not paid, stipulated that the Negro be sold for a length of time to pay his fine and court costs, much in the manner of the Iowa law. In addition, the free Negro could not hold property in the state, and, as in Indiana, contracts between whites and free Negroes or Mulattoes were void. Of course, the Negro could neither vote nor testify in courts in either state. 37

There were in the Western states certain areas which were much more Radical than the majority of this section. This was particularly true of the former Western Reserve of Connecticut, now a part of Ohio. This area had been settled by pioneers from the New England states and had traditionally been the seat of abolitionist and equal rights sentiment in the West. Led by Theodore Weld and James G. Birney, and centered at Oberlin College, the abolitionists of Northeast Ohio were especially strong. The rest of the state did not share their enthusiasm for the Negro during the 1850's; and the abolitionists had been segregated in the Western Reserve area, having been forced out of Cincinnati, where, at Lane Seminary, the movement had begun.

Other abolitionists were at work in Chicago, and in some areas of


37 Henry C. Hubbart, "Pro Southern Influences in the Free West, 1810-1865," MVHR, XX (June, 1933), 49.
Michigan and Wisconsin, where the New England influence was strong, but nowhere were they numerous enough to control elections. They consistently failed in their efforts to establish Negro suffrage and civil rights in these states until the 1860's, when their cause for the first time became not only popular but patriotic and socially acceptable. 38

In Michigan, in spite of the bad feeling engendered by the riot of 1833, Negroes had made some gains. In 1839 a group of Negroes presented a petition to the legislature asking that the "colored citizens of Detroit" be allowed "to constitute ... a separate school by themselves." In the following year the legislature approved a law granting this wish, and in 1841 a Negro school was organized in that city, with eighty-eight pupils, "and the rent of the school-house free," for it was usually held in one of the Negro churches. 39

Negroes remained disfranchised in Michigan, as they did in Minnesota when that state was admitted to the Union in 1858. In the latter state, the constitution provided that all "free white males" would be enfranchised, together with "Indians and persons of mixed white and Indian blood, who have adopted the language, customs and habits of civilization." 40 There were, in 1860, only 259 Negroes in the state, 41 which meant that few persons would be deprived of the

38Ibid., 48.

39William D. Wilkins. Address before the Teacher's Institute, Detroit, Feb. 12, 1871. Historical Collections, Pioneer and Historical Society of the State of Michigan, I (1887), 153.

40Appleton's Annual Cyclopaedia, 1860, 472.

41Statistical Abstract of the United States, 1910, pp. 36-41.
ballot as a result of this enactment; but also it meant that the Negroes were in such insignificant numbers as to be no decisive factor in the state even if they voted in a bloc. This did not alter the opinion of the whites and half-breeds, who were determined to keep the franchise for themselves.

One group throughout the North which, on the whole, was bitterly opposed to the Negro, and, incidentally, to the abolitionist movement, was the wage laborers. Workingmen throughout the section often opposed both the idea of freeing the Negro slave in the South, and letting him emigrate to the North, where they felt he would compete with them for jobs. Abolitionists, they felt, were "actuated by a species of theological fanaticism," and wanted to emancipate the slaves "more for the purpose of adding them to a religious sect than for love of liberty and justice."

The real reason for the growing demand in the North for emancipation, they felt, was not "commiseration" for the Negro, but because they "covet the property of the Southerner: they hanker after the fleshpots of Egypt .... These men know," they continued, "the preference of CHEAP HIRED LABOR over chattel..." Many workingmen also were convinced that the Negro was an inferior being. This idea was emphasized by a Philadelphia typesetter, John Campbell, who in 1851 published the book, Negromania, which attempted to prove the Negro racially inferior. "Will the white race ever agree," he argued, "that


\[\text{\textsuperscript{13}}\text{Ibid., 154.}\]
the blacks shall stand beside us on election day, upon the rostrum, in the ranks of the army, in our places of amusement, in places of public worship, ride the same coaches, railway cars, or steamships? Never! Never! ... God never intended it, had he willed it, he would have made all one color."^[44]

Conspicuous among the working classes in opposition to Campbell's views were the Germans, who on the whole were bitterly opposed to slavery, and supported the abolitionist crusade. They were encouraged in their belief by the Radicals, who saw in them a large group of allies for their cause. As early as 1853, Sumner wrote to a German immigrant leader, urging him to support the abolitionist movement. "The German emigrant who is not against Slavery here," wrote Sumner, "leads us to doubt the sincerity of his opposition to the Tyranny he has left behind in his native land."^[45]

This activity among the Germans paid dividends for the abolitionist cause. In 1854, the largest German workers' organization in this country, the Arbeiterbund, passed a resolution stating: "We have, do now, and shall continue to protest most emphatically against both black and white slavery." The anti-slavery and Negro rights movement in the North also gained the support of a smaller group, the Communist Club of New York City, which went so far as to eliminate from its membership all persons thought to be pro-Southern.^[46]

[^44]Ibid., 157.


Generally the Northern workman, with some exceptions, was against slavery, but was just as vigorous in his opposition to emancipation because he feared the possible competition from the freed Negroes. Also he opposed the indifference of the reformers toward wage slavery in the North, and was too much concerned with benefiting his own lot to worry too much about the fate of the Negro.47

Siding with the working classes against the Negro was Horace Greeley's New York Tribune, and its correspondent, James S. Pike. Pike opposed the idea of allowing the institution of slavery to expand into the territories, and advocated instead confining slavery to the smallest possible area. He believed that the only way the Negro problem could be solved was by driving them out of the country. His, he admitted, would be a "cruel and unchristian process," but he felt it was the only solution possible. He urged that a portion of "our own territory lying upon the Gulf of Mexico" be utilized for this purpose, to rid the country of the "burden and hindrance" of the Negro population,48 and incidentally, thus eliminating the Negro as a factor in economic competition.

Pike felt that if the Negro was allowed to remain in this country after emancipation, it would result in great misfortune both for the freedmen and for the whites. To this end he, as chairman of the resolutions committee of the Maine Republican convention in 1857, proposed

\[47\] Ibid.

a report stating that "the natural increase of the white race on this continent demands the widest possible area for its expansion, and thus requires the confinement of the degrading character and influence of African slavery to the narrowest limits.^^ This resolution expressed the fears of many persons in the North that the Slave power, if it expanded into the territories, would eliminate these choice pieces of real estate as areas of settlement for whites coming from the free states.

As a result of the Kansas-Nebraska bill, proposed by Senator Stephen A. Douglas in January, 1854, race feeling became more intense throughout the North. Particularly was this true in the West, where many persons were anxious to emigrate to the new territories, and were determined that they were to be kept free for white settlement, without the heinous competition of Negro slaves. In these areas the Republican party was fast arising as the rallying point for the free-soil sympathizers, and, in consequence, also the abolitionists. This caused the party some difficulties in the early years of the 1850's, particularly in the strongly anti-Negro states of the West, such as Illinois, where the Democrats charged that the new party was really a "Negro equality party." To offset this charge, the Republicans were forced to act as a "people's party" in order not to discourage the more conservative voters, and even them the presence of more radical candidates on the Republican ticket cost the party many

^^Durden, Pike, 31.
votes.  

However, the Illinois Republican party soon found a spokesman who resolved all doubts of the more conservative voters. Abraham Lincoln left no questions unanswered on his stand on the race issue. Lincoln hated slavery, and sympathized with the lot of the bondman, but he also admitted that he felt the Negro was an inferior person, who could not hope for integration into white society. Lincoln made no attempt to conceal his anti-Negro feelings, but used them effectively to gain support for his party's position on the forbidding of slavery in the territories. In a speech in Springfield, Ill., June 26, 1857, Lincoln took the opportunity to spike Democratic contentions that the Republicans favored Negro equality, and, worst of all, intermarriage with the despised race.

"There is a natural disgust in the minds of nearly all white people," Lincoln argued, "to the idea of ... amalgamation of the white and black races..." He protested against the "counterfeit logic" of his opponent, Douglas, "which concludes that, because I do not want a black woman for a slave, I must necessarily want her for a wife. I need not have her for either, I can just leave her alone." As for the equality of Negroes with whites, Lincoln supported the idea of the Declaration of Independence, that all men were created equal. He admitted that "in some respects," the Negroes were certainly not equal, but in their "natural right to enjoy the products of their own labor" they were equal, and that was the basic right

which the Republicans demanded.  

He pointed out that a "separation of the races is the only perfect preventive of amalgamation," but admitted that an immediate separation was "impossible." "The next best thing," he therefore contended, "is to keep them apart where they are not already together. If white and black people never get together in Kansas, they will never mix blood in Kansas." He pointed out that in one of the free states where the Negro was most equal, New Hampshire, there were only 181 mulattoes. He did not mention, however, that this was more than one-third of the total Negro population of that state.

The following year, during the campaign for Senator from Illinois, Lincoln and Douglas continued their debates. At Charleston, Douglas asked Lincoln if he favored Negro citizenship in the light of the Dred Scott decision. Lincoln replied that the Court had held that a state could not make a Negro a citizen, even though Lincoln himself felt that it could. Nonetheless, he added, even "if the State of Illinois had that power, I should be opposed to the exercise of it." This rejoinder was received by the crowd with applause and cries of "good."

Another illustration of the feelings of the Illinois Republicans toward the Negro during this period occurred in this same series of

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52 Basler, Abraham Lincoln, his Speeches and Writings, 363.

53 Beveridge, Lincoln, II, 676.
debates, at Alton. There Lincoln openly admitted that the main reason why he supported the idea of eliminating slavery from the territories was to keep them open for white men "where they can settle upon new soil and better their condition in life." This statement was greeted with "great and continued cheering" by the crowd, which perhaps was more personally interested in this economic agreement than in the moralistic reasoning of the abolitionists or the double-meaning sophistry of Douglas's complicated Popular Sovereignty plan.54

The question of Negro citizenship and the blocking of the movement of slavery to the West arose after the decision by the Supreme Court in the case of Dred Scott v. Sandford. The broad question, according to one contemporary account, was whether "any descendant of imported African slaves, however remote, and however minute the remaining portion of African blood, could be a citizen." The Court ruled that Negroes and mulattoes could not enjoy the rights of citizens, in a decision which this account called "monstrous."55

Throughout the North the Dred Scott decision was greeted with opposition, even in the states where the free Negro was most restricted and segregated. The Ohio General Assembly, for example, passed a resolution declaring that "every free person, born within the limits of any state of this union, is a citizen thereof," and contending that to deny him the right to sue in the courts of the United States was a

54 Ibid., 693.

"palpable and unwarrantable violation" of the Constitution. At that time Negroes were not allowed to testify in the courts of Ohio, a fact that did not seem to enter into consideration. In Connecticut, the most anti-Negro of the New England states, the legislature declared that "the majority of the judges of the Supreme Court of the United States ... have volunteered opinions which are not law," thus intimating that in Connecticut the Negro was to be considered a citizen, even though he was still deprived of the basic rights of citizenship, including the ballot.

Most Northern states acted in accordance with the opinion of the North American Review, which contended that in spite of the decision, "such states as may choose to invest their free colored inhabitants with any or all of the rights of citizenship, will not be likely to desist therefrom." These states which had constitutional provisions recognizing Negroes as citizens continued to abide by their state laws, rather than follow the ruling of the Court. Massachusetts still recognized all persons, "without distinction of color," as citizens, while New Hampshire, New York, and New Jersey all continued to allow the Negro to vote and enjoy other privileges of citizenship.

Even the states of the West, where Negro rights were more limited, continued to allow the Negro to hold property, and the Federal

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57 Ibid., 297-98.
government permitted free Negroes to own stocks, United States bonds, Treasury notes, and other bills of credit on the government, and "rigidly held" the Negroes to pay their quota of taxes on these possessions. 60

The climax of the controversy over the admission of slaves into the territories, and the position of the Negro as illustrated by the Dred Scott Case, was the election of a Republican, Lincoln, as president in 1860, and the resulting secession of the Southern states. It also brought into office a group of Republicans who were quite different in their racial views from Lincoln, and much more radical, on the whole, than the laws of the states they represented. These men were the Radicals, and they were to enact the laws which were radically to change the position of the Negro in the society of the United States.

Their day was yet to come, however, and even in 1860 the rights of the Negro were not of great interest to the majority of the people of the North. While there was increased agitation for emancipation on the part of the abolitionists, whose ranks were swelling greatly, even the most outspoken of the anti-slavery crusaders hastened to picture Lincoln in a moderate light. Horace Greeley's influential New York Tribune, long an ardent emancipationist organ, was quick to reassure the border states and the conservatives in the North that Lincoln's election would not mean immediate emancipation of the horde of slaves below Mason and Dixon's line, and that the Illinois lawyer definitely was not in favor of Negro suffrage. 61

60 Ibid., 176-79.
Emancipation was still looked upon as a mixed blessing at best by many groups in the North, and most people were willing to accept the formula proposed by one popular periodical, that of an ultimate freedom after a long period of preparation. Emancipation was to be the last step in a process which was to be characterized by the application of a "moral principle" to the relationship between slave and master. Gradually, "right after right" was to be conceded to the slave, under this plan, starting with a law forbidding the separation of families by sale. The restrictions on education were to be removed, and the slave was to be encouraged to "become the laborer attached to his native soil." Freedom was to be conferred only with the "growing capacity for its duties and responsibilities" engendered in the Negro through this long period of apprenticeship.  

Most people in the North in 1860 probably agreed, at least in part, with Lincoln that a mixture of the races was not practicable, and it was not possible to have a fully equal Negro society apart from the white. White-Negro clashes resulted, many believed, from the law that "invariably prevails where two races that cannot amalgamate by intermarriage occupy the same land." This law was to act to prevent the Negro from becoming a part of American life, according to a popular Northern belief of 1860.

Many Northerners also agreed with the idea that the Negro was

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63 "Liberia College," *North American Review*, XCVII (July, 1863), 108. Note that this assertion was made after the Emancipation Proclamation had already been promulgated.
of an "undoubted inferiority." The only question to many in that section was whether the inferiority was "inherent and irremovable, or whether it is the result of centuries of degradation." This, it was popularly believed, placed the Negro at an obvious disadvantage in his relations with the whites, a disadvantage which would force him always into a lower economic and social position. The trouble with the Negro, it was asserted by a reputable periodical, was that his brain capacity was too small; but it was hoped that, under ideal conditions, the Negro might acquire "fuller frontal development," which would allow the "African mind" to "take its place with the new more favored nations in art, taste and literature."^{64}

For the present, the average American in the North at the time of Lincoln's election was probably content to virtually ignore the Negro question. Many perhaps accepted the solution of a popular pamphlet of the day which contended:^{65}

The white race must of necessity, by reason of its superiority, govern the negro, wherever the two live together.

The two races can never amalgamate, and form a new species of man, but must remain forever distinct; though mulattoes and other grades always exist, because constantly renewed.

Each race has a tendency to occupy exclusively that portion of the country suited to its nature.

This was the hope of the North - that the Negro, even if free, would still be under white dominance, that the two races must always be kept apart, and preferably be completely segregated into two separate

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{65} Ibid., 508, quoting a pamphlet by Willis P. Hazard, "The Laws of Race, as Connected with Slavery," (1860).
areas of the country, where they could have no cause to come into contact with each other.

It was to take a bloody war and forced emancipation to bring the people of the North their opportunity to realize these ambitions; and to accomplish this purpose they were to put into office a group of oddly-assorted yet strong-willed politicians and philosophers - the Radical Republicans.
CHAPTER III

THE RADICALS DURING THE 1850'S

The arrival of Charles Sumner in the Senate of the United States in the early spring of 1851 marked the beginning of a new era. On the same day that the Radical abolitionist from Massachusetts was sworn in as a member of that body as the successor of Daniel Webster, Henry Clay, old and sick, made his last speech on the floor which he had dominated for so long. As Carl Schurz, great Radical in his own right, described the scene in his biography of Sumner, it illustrated the changing political tenor of the North - "the statesmanship of expediency and compromise departing, and the moral antislavery idea in its severest impersonation stalking upon the scene."¹

Sumner was certainly a fitting choice for the Radicals of Massachusetts to pick to represent them in the Senate, for by 1850 the Bostonian had earned a wide reputation for his defense of the rights of the Negro, and as a leading spokesman for the anti-slavery party. He was well equipped for his new position, having been trained in the law. He had served as editor of a law journal, and for a time was reported for a United States Circuit Court.² But he was most famous in Boston for his work in defense of the Negro, both free and escaping slave.

¹Carl Schurz, Charles Sumner (edited by Arthur Reed Hogue) (Urbana, 1951), 44.

In 1846 the anti-slavery sentiment in the North was not widespread. Texas had been annexed the year before, in spite of a vigorous propaganda campaign waged against annexation on the grounds that Texas would add vast slave territories to the Union. The Liberty party had been born, but had proved only abortive. Yet in 1846 Charles Sumner was defending the Negro, and fighting for the bondman's freedom. In September of that year he was found, together with his friend John A. Andrew, later to be war governor of Massachusetts, lending the dignity of his name and the weight of his arguments to an abolitionist rally in Faneuil Hall. The presiding officer at this meeting was no less a dignitary than John Quincy Adams, who was rapidly becoming converted to abolitionism. As one observer described it, either the abolitionists were "getting into good society, or else it was itself in bad company, according as the rest of the city divided its opinion."

By 1849 Sumner had gained sufficient stature to enable him to proclaim the gospel of Negro rights and abolitionism not only in Massachusetts but throughout the North. In that year he declared, in a letter to an Ohio meeting, that it was to be necessary to "emancipate" the national government from the "Slave power." "Ours be the duty, worthy of freemen," he proclaimed, "to place the Government under the auspices of Freedom, that it may be true to the Declaration of Independence and the spirit of the Fathers."

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4 Sumner, *Works*, II, 278.
Exactly what was meant by this Sumner did not say. He did admit that "men are not born equal in physical strength or in mental capacity, in beauty of form or health of body." "But," he continued, "this inequality is in no particular inconsistent with complete civil and political equality."\(^5\) Sumner's exposition of this theory was to become a guidepost for further Radical argument in later years.

Sumner's espousal of the cause of integration in Boston's public schools further enhanced his stature as a spokesman for the Negro. In the case of Roberts v. City of Boston,\(^6\) which he pleaded before the Supreme Court of the state, he opposed segregated schools on the ground that the colored children were subject to a "constant inconvenience" which was not borne by the whites. Here he contended was a practice grievously unconstitutional and unjust, for in segregated schools "the black and white are not equal before the law." "All men are born free and equal," he argued, quoting the Massachusetts constitution, and demanded that Negroes be given full recognition in all "civil and political" institutions.\(^7\)

Sumner's position on integration in schools was summed up before the court as follows:\(^8\)

The equality declared by our fathers in 1776, and made the fundamental law of Massachusetts in 1780, was Equality before the law. Its object was to efface all political or civil distinctions, and to abolish all institutions founded upon birth. "All men are born free and equal" says the Massachusetts bill of rights.... Within the sphere of their influence, no person can be created, no person can be born, with civil or political

\(^5\)Ibid., 346.
\(^6\)See above, Chapter II, 45.
\(^7\)Sumner, Works, II, 340.
\(^8\)Ibid., 341.
privileges not enjoyed equally by all his fellow-citizens; nor can any institution be established, recognizing distinction of birth.

For this oratorical effort in behalf of integrated schools, Sumner received encouragement from many sources, including a rising Ohio politician named Salmon P. Chase. Chase wrote on December 11, 1849: "I thank you for your argument in defense of equality before the law for the colored people of Boston in respect to public instruction. It is something more than reason - it is reason inspired by the sentiment of humanity." 9

Thus armed with publicity and praise Sumner was prepared, the following year, to make a strong bid for political office. With the weight of his record behind him, he was the nearly unanimous choice of the Free Soil party's convention for Senator, and the Democrats in caucus supported his name nearly as strongly. When it came time to vote in the legislature, however, more than twenty Democrats, led by Caleb Cushing, refused to support Sumner, contending that his anti-slavery principles were too strong. He was finally elected after several ballots, together with George S. Boutwell, who was named governor by a combination of Democrats and Free-Soilers.10

Boutwell was a native of Brookline, and a former merchant. He had become a lawyer and had been a member of the state legislature. He had served as a member of the state constitutional convention in 1853, and for a long period was a member and secretary of the state


10 Schurs, Sumner, 37.
board of education. In 1863 he became a member of Congress, and was active in the Radical wing of the Republican party. He was a leader in the struggle for the Fourteenth Amendment. Boutwell's nomination for governor by the Democrats, which was accepted by Sumner and the Free Soilers, greatly aided the fusion arrangements between the two parties which put Boutwell in the statehouse and Sumner in the Senate. Boutwell himself contended that this fusion was what made possible the defeat of the Whigs, thus allowing Sumner and him to be elected.

During his service in the state legislature Boutwell did not demonstrate the Radical propensities he was later to show as a member of Congress. In the legislature he opposed a series of resolutions in favor of a national anti-slavery policy. Later, as governor, he did not oppose the pro-slavery policy of the Pierce administration, and he voiced support for compromise between the two sections. As a result, Massachusetts Radicals became greatly opposed to him. John Greenleaf Whittier wrote to Sumner in 1851, complaining about the governor's "detestable message." Later Boutwell redeemed himself in the eyes of the Radicals, and served on the Joint Committee on Reconstruction, helping to draft the Fourteenth Amendment. This redemption did not take place until after 1861, for in that year Boutwell spoke to the committee called to attempt a peaceful solution to the differences between the two sections. Here Boutwell made the

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11 Barnes, Thirty-Ninth Congress, 581; Biographical Directory, 871.


supreme sacrifice for a Massachusetts man; he agreed to respect the rights of the slave states to extend their influence into the territories under the Dred Scott decision. But Boutwell was soon to change his mind!

Sumner, on the other hand, was much more extreme, and much more determined to maintain his position. Sumner did not equivocate, he did not vacillate, but he did crusade. Formerly one of the leaders of Boston society, by 1851 he found himself an outcast, in spite of his political successes. In that year a visitor to Boston recorded that the mention of his name in Boston social circles "made certain people shiver, because he was a Free Soiler and suspected of abolitionism, though otherwise nothing ill was said of him." 

Sumner was not greatly concerned about Boston society, for he was off to Washington, where he was to fight the uphill battle for the right of the Negro. The Senate to which he had been elected in 1850, and which he entered the next spring, was not greatly enthusiastic about anti-slavery principles or exponents. The Compromise of 1850 was still thought to be the answer to the sectional controversy, and only John P. Hale of New Hampshire and Salmon P. Chase of Ohio were raising their voices in abolitionist pleas. Sumner's duties as a freshman Senator were not so great that he remained out of touch with the anti-slavery movement in Boston, and he readily responded when Thomas Sims, a fugitive slave from Georgia, was arrested and brought before the federal court in Boston under the provisions of

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14Boutwell, Reminiscences, I, 279.

the Fugitive Slave Act of 1850. Sumner was among those who acted as counsel for Sims, who fought in vain to retain his freedom.16

It was this same law which brought Sumner his first recognition in the Senate, when, in 1852, he presented a petition from the Society of Friends in New England begging for repeal of the Fugitive Slave law. Sumner's speech in opposition to this measure gave him, for the first time, a national sounding board for his doctrine that "slavery is sectional and freedom national;" and that the Fugitive Slave law lacked the necessary support of the people in the states where it was to be enforced. Sumner's attack on the law was answered by Senator Dodge of Iowa, who supported the law's constitutionality. Dodge contended that the Massachusetts Senator's ultimate aim was to "introduce black-skinned, flat-nosed, and wooly-headed Senators and Representatives" into Congress,17 a contention that seemed than absurd but as the tide of Radical fortunes turned, became eventually a reality.

The following year, 1853, Sumner returned to Massachusetts, to attend a convention called to revise the state constitution. He did not, however, take an important position in this meeting. Boutwell, who was also a member of the convention, recalled that Sumner's influence upon the group was "very limited. He was not only not practical," Boutwell continued, "he was unpractical and impractical." The governor's conclusion was that Sumner, "in quiet times," would

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16Sears, Phillips, 145.

17Pierce, Summer, III, 300-301; Congressional Globe, 32 Cong., 1 Sess., Appendix, 1102, 1103, 1113, 1119.
have had only a very short public career, if he could have been elected at all. At any time but the troubled 1850's and 1860's, Sumner's influence would have been "brief and valueless alike to himself and to the public."^8

But the years before the Civil War were not "quiet times," and Sumner was busily making them as noisy as possible, with his demands for admission of Negroes to the state militia. Negroes had been banned from the army since the War of 1812, after having served both in that war and in the Revolution. They had, however, formed many private military companies. In 1853 a group of Massachusetts Negroes petitioned to enter the regularly-constituted militia. Their petition was presented to the constitutional convention and was immediately seized upon by Sumner and his abolitionist colleague, Henry Wilson of Natick. Wilson introduced a resolution calling for an end to discrimination in the volunteer militia, and Sumner spoke in its support. He admitted that interference with the "enrolled militia" would be "futile," since it was governed by federal laws, but contended that the volunteer companies of the state, "marshalled under her own local laws," should be integrated.19 His attempt was unsuccessful, and it was not until the Civil War that the Negro was to be allowed to wear the uniform, and then he was strictly segregated.

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19 Aptheker, Documentary History, 357, contains the petition. Sumner, Works, III, 221, 227, contains Wilson's resolution and Sumner's speech.
Wilson, who showed a close working relationship with Sumner during this fight, was originally from New Hampshire, having moved to Massachusetts when he was twenty-one. He was at the time serving as president of the state senate, and in 1855 was to be elected to the United States Senate. Boutwell, still at odds with the Radicals during this period, saw Wilson as an active politician, but he feared that his "learning was inadequate." But, he admitted, Wilson had some attributes that are essential to a good politician: "his judgment of the popular feeling was unequalled," he wrote, "and he had capacity for shaping public opinion, whenever it was found to be hostile or uncertain, far superior to that of any of his contemporaries." This characteristic was to come in handy in the years to come.

Sumner and Wilson worked in harmony during the fight for Negro rights in Massachusetts, and, after Wilson's election to the Senate, both were active in the same battle on the national scene. Wilson was later to become, under Sumner's guidance, one of the strong Radical leaders in the drafting of the Fourteenth Amendment, and other Radical Reconstruction legislation, and was to aid the Radical movement by the same talents which Boutwell described, and with which Sumner himself was less endowed.

While Sumner lacked the persuasive power of Wilson in dealing with public opinion, he was the master of the flamboyant technique

20 Barnes, Thirty-Ninth Congress, 622-23; Biographical Directory, 2027.
21 Boutwell, Reminiscences, I, 228.
to dramatize his position and to call attention to his movement. In 1855 he was instrumental in "completing a transaction" which freed a family of slaves. The children in this family were very light mulattoes; the oldest, a girl, so nearly Caucasian that she was called Ida May, after the heroine of an anti-slavery novel. Daguerreotypes of the children were taken upon their arrival in Boston and were widely circulated by the abolitionists, who reported that "many were affected by the sight of slaves apparently white, who were unmoved at the contemplation of negroes in bondage."

Sumner took full advantage of this emotion, and when he delivered an anti-slavery speech in Tremont Temple on March 29, 1855, two of the children sat near him on the platform.  

Sumner's main interests at this time were to be found in the Senate and the newly-founded Republican party. In the Senate his attentions were limited to foreign affairs and the slavery question, to which he devoted himself "not merely with unswerving fidelity, but with all the power and ardor of his nature." He was not interested in the general business of the Senate, and rarely participated in debate except on these two subjects. He became a major spokesman for the Republican party, and "more than any other man" was responsible for promoting the anti-slavery cause in the new organization.

It was a combination of his Radical anti-slavery feeling and his zeal for proclaiming the Republican doctrine of free soil for Kansas

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22Pierce, Sumner, III, 413-14.

that led Sumner into his famous speech on the Kansas question, in 1856, which in turn led to the assault upon him by Representative Preston Brooks of South Carolina. This assault was capitalized upon by Sumner to the fullest. He absented himself from the Senate until 1859, claiming that his injuries were such as required a prolonged convalescence, most of which was spent in Europe. He complained of feeling "exhaustion and distress" after the "slightest labor or excitement," and it was contended that his spinal cord had been damaged. His friends feared that he had suffered from "softening of the brain."  

Sumner gained much from the assault, in spite of this alleged injury, for the attack, its publicity, and Sumner's eloquent "vacant chair" so strengthened his hold on his Massachusetts constituency that the Senator no longer had to worry about campaigning for re-election. It also made him a major figure among the "radical and progressive Republicans" throughout the North, and an important contender for that party's presidential nomination in 1860.  

Sumner's three-year absence from the Senate did not jeopardize his position in that body, for he had by 1856 so strengthened his reputation as a Radical Republican that his place was secured. As early as 1854 he was ranked as one of the leading Radical members

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24 Schurz, Sumner, 67. The attending physician testified that Sumner's wounds were so slight that he could have resumed his seat the following day. See George F. Milton, The Eve of Conflict (Boston, 1934), 236-38 for a discussion of Sumner's actions in this case.

25 Blaine, Twenty Years of Congress, I, 318.
of the Senate. At this time the Senate consisted of sixty-two mem-
bers, of whom Sumner and Chase of Ohio were listed as Free-Soilers.
Among the twenty Whigs were Everett of Massachusetts, soon to be
replaced by Wilson, and Benjamin F. Wade of Ohio and William Pitt
Fessenden of Maine, who shortly changed their allegiance to the new
Republican party. All of these men were to be later classified
as Radicals, and were to serve in the drafting of the Fourteenth
Amendment, with the exception of Chase, who by then would be the
Chief Justice of the Supreme Court.

Particularly important were Sumner, Chase and Wade. These men,
among the later Radicals, had the longest tenure in the Senate,
Chase having entered in 1849, Sumner in 1851, and Wade in 1852.
When Sumner, in 1852, had attempted to repeal the Fugitive Slave
law, these three, together with Senator Hale of New Hampshire, were
the only ones to vote in favor of the amendment. It is particularly
interesting to note that by 1852 the state of Ohio was represented in
the Senate by two outspoken Radicals on the Negro question, open ad-
vocates of abolitionism, while the state they represented was one of
the most anti-Negro states of the North.

Of the two Ohio Senators the most significant was Benjamin
Franklin Wade. Born and educated in Massachusetts, he had emigrated
to Ohio when he was twenty-one, studied law, and was admitted to the
bar. He became active in politics in his home county of Ashtabula,

26 Francis Fessenden, Life and Public Services of William Pitt
27 Frasure, "Charles Sumner and the Rights of the Negro,"
lc. cit., 129.
in the heart of the Western Reserve. His career included service as
justice of the peace, prosecuting attorney, state senator, circuit
judge, and, since 1852, Senator. In the Senate Wade opposed the
extension of slavery into the territories, and defended the rights
of the Negro. It was particularly in the debate over the Kansas-
Nebraska bill in 1854 that Wade revealed his hatred for slavery,
his belief in Negro rights, and especially his reasons for wanting
slavery excluded from the territories.

Wade admitted, in the Nebraska bill debate, that he opposed
the bill because "the people I represent are all agreed that slavery
shall never pollute territory which is now free." He relied on the
Declaration of Independence, the same argument used by Sumner in the
debate over integrated schools, declaring that the "slaves of the
southern states, in my doctrine and the doctrine of the fathers, have
precisely the same rights as he who has trampled them down." The
only difference, he contended, was that, in the case of the slave,
"some one, either by force or fraud," has wrested from the other his
rights, which justice demands should be restored without delay.29

While Wade did not identify what he meant by "rights," he
certainly must have had in mind political equality, for he made the
statement in reply to a contention by Senator Pettit of Indiana that
"the Negro ... and the free-born American are not created equal."30

28 Barnes, Thirty-Ninth Congress, 620; Biographical Directory,
1960.

29 Congressional Globe, 33 Cong., 1 Sess., Appendix, 330, 310.

30 Ibid., 310.
There was more to Wade's opposition to the Kansas-Nebraska bill than mere concern for the rights of the slave, however. Wade was strongly opposed to the extension of slavery into the territories because he was convinced that they should remain in the hands of white men. He called upon his colleagues to think of their children, of the new generations to come, and asked: "Shall we consign their inheritance to slavery...?" He warned the Senate that the bill would mean the "consignment of an empire to slavery, which was until now dedicated to freedom and free labor." Wade apparently was appealing to the groups in Ohio who not only supported the Negro's fight for freedom and equality but also those who opposed him. It also seems that perhaps Wade was less concerned about the rights of the Negro to equality than the rights of the white men to land. He feared the advance of slavery into the territories because this would mean also the advance of the Negro, with the resultant competition for the free white farmer and laborer.

The other Ohio Senator, Salmon P. Chase, also had a long record of fighting for Negro rights. Born in Cornish, New Hampshire, Chase had emigrated to Ohio, where he had become first a Whig, and then a member of the Liberty party. He attended the national conventions of this abolitionist group at Buffalo in 1843 and at Cincinnati in 1847. In 1848 he was in attendance at the Free Soil party's Buffalo convention which nominated Van Buren for the presidency. In 1849 he was elected to the Senate by a fusion of Democrats and Free-Soilers in much the same manner as his colleague, Sumner. He served in the Senate

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31 Ibid., 764.
until 1855, when he resigned to become governor of Ohio, running as a Free-Soil Democrat with Republican support. He was returned to the Senate in 1860, only to resign to become Secretary of the Treasury and then Chief Justice. While not a significant Radical leader during the Fourteenth Amendment struggle, Chase's career during the 1850s is important for the insight it gives into politics in Ohio during the period, and he is noteworthy because of his relationships with men who were later to become prominent Radicals.

Chase's election to the Senate shows the way in which the issue of the Negro became entangled with other political issues. In 1849 the Whigs proposed to the Democrats that they would support the Democratic candidate for the State Supreme Court if the Democrats would support Chase and repeal the state's "Black laws." Chase himself drew up a bill for the repeal of the anti-Negro statutes, but it was revised to remove provisions which would have repealed the laws banning Negroes from juries and schools. It did, however, provide state support for segregated schools. Thus in 1849 Chase's views favoring integrated schools and Negro juries were too extreme even for the liberal Whigs, Free-Soilers and Democrats of Ohio, although they probably accurately represented the views of the Western Reserve.

In 1855, on the other hand, Chase was incurring the scorn of more Radical abolitionists, such as Wendell Phillips, for his defense of the institution of slavery. In a speech at Dartmouth college, New Hampshire, Chase had asked the students to pledge themselves to "no

32 Biographical Directory, 969.
slavery - outside the slave states." Phillips replied by demanding "no slavery in the slave states" as the only "effective principle" to be followed.34

Chase's views seem to parallel Wade's in regard to the question of the Negro in the territories. Chase was less opposed to Negro slavery than he was to its expansion into areas which were capable of exploitation by free white men. Probably he, like Wade, was influenced by political considerations at home - the need to get re-elected; but probably he also was voicing his own economic beliefs. At any rate Chase was viewed as too much of a Radical even by some Republicans in Ohio, because of his intense views on the Negro question. John Sherman recorded that Chase's past career in the Liberty and Free Soil parties caused a serious "difference of opinion" when his name was placed before the Republican State convention in 1855 as a candidate for governor. While Chase did receive the party's support for the governorship, it was not with that group's full backing.35 Sherman, president of the convention, admitted that "with Mr. Chase I had but little acquaintance and no sympathy during his early political career."36

Sherman, who served as Republican congressman from Ohio from 1855 to 1861, and who replaced Chase in the Senate in 1861 when the latter resigned to become Secretary of the Treasury, was a far different brand of Ohio Republican than either Chase or Wade. A native

34Sears, Phillips, 169-70.
36Ibid., 339.
of the state, he had been a Whig before he joined the new party, serving as a delegate to the Whig national conventions of 1848 and 1852.\(^{37}\) By 1855 he was one of the leaders of Ohio Republicanism, judging from his election to the presidency of the state party convention.

Basically conservative, Sherman supported the compromise of 1850 as the "best solution of dangerous sectional divisions."\(^{38}\) This conservatism was perhaps strengthened by his brother, William T. Sherman, then president of the Louisiana Seminary at Alexandria, later to gain fame by his techniques of total war as practiced in Georgia. William T. Sherman wrote to his brother in October, 1859, encouraging him to support local rights. He claimed that "each state had a perfect right to have its own local policy," and pleaded with John to adopt a conciliatory attitude toward the South. "The North, being so strong in every sense of the term," he explained, "can well afford to be generous, even to making reasonable concessions to the weakness and prejudice of the South."\(^{39}\)

During the turbulent last years of the decade of the 1850's William T. Sherman chided his brother for his growing anti-slavery sentiment, particularly his endorsement of Hinton Helper's *Impending Crisis*, which was being used by the Republicans as a campaign document. John Sherman replied that his recommendation of the book was

\(^{37}\)Biographical Directory, 1806.

\(^{38}\)Sherman, *Recollections*, I, 94.

\(^{39}\)Rachel Sherman Thorndike, ed., *The Sherman Letters: Correspondence between General and Senator Sherman from 1837 to 1891* (New York, 1892), 77.
a "thoughtless, foolish and unfortunate act." He admitted that he had signed the recommendation "in the hurry of business" after he had been assured "that there should be nothing offensive in it." Both Sherman brothers reflected the conservatism of many of their fellow-citizens in Ohio at the beginning of the war. Sherman's election to the Senate to replace the extreme Chase illustrates that Ohio, even after the secession of the Southern states, was basically willing to elect a man known for his moderate views on slavery and the race question. Sherman was later to be included in the Radical camp, although reluctantly; maintaining even during the Fourteenth Amendment fight a lukewarm enthusiasm, although forced through political pressure to support the Radicals.

Another moderate Republican who was to become one of the important figures on the Committee of Fifteen and one of the leaders in the Fourteenth Amendment struggle was William Pitt Fessenden of Maine. A slight, thin man, with grey hair and side whiskers, he was not a man who would stand out in a crowd. Fessenden, however, had many attributes to recommend him to the Senate, where he was held in the "highest esteem" as a "gentleman of truth and conscience," and as a "party man of most honorable principles and methods."

Born in Boscawen, New Hampshire, Fessenden had been educated at Bowdoin College, and had taken up the practice of law in Portland, Maine. He soon became active in politics, serving in the state legis-

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40 Ibid., 78.

lature. He entered the Senate in 1853, serving throughout the period of the Civil War and Reconstruction era, except for a brief interruption during 1864-65, when he was Secretary of the Treasury. He gained the particular recognition of being named by the Radicals as chairman of the Joint Committee on Reconstruction, primarily on his past record as an anti-slavery and free-soil campaigner.

Fessenden came from an anti-slavery background. His father had been the Liberty party's candidate for President in 1848 and a life-long campaigner for abolition. Fessenden himself had gained wide recognition in Maine for his opposition to the Compromise of 1850 and to its recognition in the Whig platform of that year. When Douglas proposed his Kansas-Nebraska bill, Fessenden used it as the main point of attack in his campaign for the Senate. His demand that Maine send a man to the Senate who would "boldly announce the outrage about to be perpetrated upon the North," paid off in his election, which was greeted with "expressions of satisfaction from Abolitionists."^3

Fessenden's opposition to the extension of slavery into Kansas and Nebraska led him to support organizations founded for the purpose of encouraging emigration to those territories. He was active in establishing such a group in Maine. He insisted, however, that free Negroes be allowed to emigrate to those areas, a subject that was not mentioned by his more Radical colleagues, Wade, Chase and Sumner.

^2Barnes, Thirty-Ninth Congress, 591; Biographical Directory, 115h.

^3Fessenden, Fessenden, 38, 45.
Fessenden opposed the admission of Oregon as a state on this point, contending that the Oregon constitution, which barred free Negroes from admission to the state, was a deprivation of the privileges and immunities of the citizens of Maine. He pointed out that the Maine constitution made free Negroes citizens of the state, and the Oregon law would deprive a portion of the citizens of Maine from becoming citizens of Oregon and enjoying the rights which they had held in Maine.\textsuperscript{lh}

Fessenden was adamant in his insistence upon the political equality of all men. In a speech in the Senate on March 3, 1854, in opposition to the Kansas-Nebraska bill, he contended that in New England "all men are equal politically." (He apparently conveniently forgot about Connecticut.) As to their social relations, however, "this they make for themselves." Fessenden saw nothing wrong in social stratification based upon economic position, but he contended that the fact that a man was forced to "labor in a menial employment" did not detract from "any political right or any social right or any other right" that he should have.\textsuperscript{145} Whether Fessenden intended to go so far as to apply this to the bondmen of the South is left to conjecture, but judging from his background and experience it is probably certain that he would apply this formula to freed slaves as well as free Negroes.

For his work in the Senate, Fessenden won unanimous renomination by the Republican legislature of Maine in 1859, and praise from throughout the country for his "ability, purity, and firmness." He

\textsuperscript{lh}\textit{Ibid.}, 63-64, 96-97.

\textsuperscript{145}\textit{Ibid.}, 113; \textit{Congressional Globe}, 33 Congress, 1 Sess., Appendix, 319-21.
was lauded as an advocate of "free soil and free labor," whose "manly bearing, command of temper, dignified manner, and proud assertion of principle" had won great victories over "the most formidable of the slave propagandists."\(^6\)

Fessenden was at this time much under the influence of Senator Wade, with whom he shared not only a common native state but also a similar background in anti-slavery agitation. In May, 1854, at the close of his freshman year in the Senate, Fessenden confessed, in a letter to his father, that "the man of all others that I like best in the Senate is Mr. Wade of Ohio." "He is rough," Fessenden admitted, "but bold and honest. I wish we had more such men."\(^7\)

As representative of the far West as Fessenden was of "down East" Maine was Zachariah Chandler, who entered the Senate from Michigan in 1857. Like many of the other Radicals, he had been born in New Hampshire, and had moved to Michigan when a young man. A resident of Detroit, he had been mayor of that city in 1851, and in 1852 had been an unsuccessful candidate for governor.\(^8\) Before becoming a Republican, Chandler had been a leading member of the Whig party. Most Whigs in Michigan were of New England origin, and most were anti-slavery in sentiment. The few Congressmen the party was able to elect voted uniformly against the extension of slavery into free territories. Chandler himself was violently opposed to slavery.

\(^6\)Ibid., 101, quoting a St. Louis newspaper.

\(^7\)Ibid., 47.

\(^8\)Barnes, Thirty-Ninth Congress, 583; Biographical Directory, 965. See also Wilmer C. Harris, \textit{Public Life of Zachariah Chandler, 1851-1875} (Lansing, 1917).
and its extension, and took a lead in making the Republican party in Michigan a "radical" party. In this he was aided by his former prominence as a Whig, and many members of that party later became Republicans. As a Senator, Chandler early allied himself with the more Radical wing of the Republicans, and became a leading force in Negro rights movements and in the Fourteenth Amendment fight.

Another Westerner of similar background was Lyman Trumbull, who entered the Senate in 1855, from Illinois. Also a native of New England, he had been born in Connecticut, and, after being educated in the law, removed to Illinois. He served in the state legislature, as secretary of state, and as justice of the state supreme court. As early as 1842 Trumbull had been active in the cause of Negro rights, having served as a lawyer for one Joseph Jarrot, who brought suit against his mistress, Julia Jarrot, alleging that he had been held in involuntary servitude and demanding wages. Trumbull won the case, thus establishing a legal precedent which "practically" ended slavery in Illinois.

With the introduction of the Kansas-Nebraska bill by Senator Douglas, also of Illinois, Trumbull began a concerted campaign for election to the House of Representatives. He used as his main argument the dangers of allowing slavery into the heretofore white territories. In this election, in 1854, Trumbull was successful,

49 The Detroit Post and Tribune, Zachariah Chandler: an Outline Sketch of his Life and Public Services (Detroit, 1880), 71, 119.
50 White, Trumbull, 29.
running as an Anti-Nebraska Democrat, polling 7,917 votes against 5,306 for his opponent, who ran independently as a Douglas Democrat. Before he could take office as representative, however, he was named to the Senate in a close election in the state legislature. It was not until the tenth roll-call vote that he finally gained a majority, defeating his nearest rival fifty-one to forty-seven. A third candidate, Abraham Lincoln, ended up out of the running, gaining no votes at all on the final ballot.

The following year Trumbull and Douglas engaged in a series of debates much like those which were to follow between Douglas and Lincoln during the next two years. Douglas bitterly attacked the "black Republican" party as a whole and Trumbull in particular, whom he called a "traitor." Douglas also charged that the Republicans, by their espousal of Negro rights, were for the ultimate amalgamation of the two races, a charge which Trumbull vehemently refuted.

Trumbull's efforts on the stump against Douglas brought him a reward from Sumner, who wrote on March 21, 1856: "Trumbull is a hero, and more than a match for Douglas. Illinois in sending him does much to make me forget that she sent Douglas."

Trumbull's opposition to Douglas was similar to that of Wade and Chase. He primarily opposed the "slaveholding oligarchy" which he felt had as its "chief object" the "spread and perpetuation of negro slavery and the degradation of free white labor."

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51 Ibid., 38.
52 Ibid., 45.
53 Pierce, Sumner, III, 136-37.
54 Ibid., 433.
55 White, Trumbull, 71.
was not so concerned with the abolition of slavery within the slave states as he was in keeping the Negro out of the free territories, where he would ultimately become competition for white settlers - settlers who at that time were still constituents of the Radicals in Illinois, Ohio, Iowa, and other free western states.

The same views were held by the governor of Iowa, who wrote on April 8, 1854: "I am content that the slaveholders of the South may possess their slaves, and be responsible for their control over their own laws and to their consciences. I will not even presume to judge them." James W. Grimes, who had been elected governor by a coalition of Whigs, Free-Soilers and Free Democrats, was appealing to the people of Iowa to renounce the Kansas-Nebraska bill in an open letter. He pointed out that he was being denounced in some quarters as an abolitionist because of his anti-Nebraska sentiments, but he urged his constituents to ignore the "senseless charge." "I do not attempt or desire to interfere with slavery in the slaveholding States," he assured the people of Iowa.

Grimes, elected by the votes of all the major parties of the state, was the greatest political power in Iowa at the time. Born in Deering, New Hampshire, he had been educated at Dartmouth college before moving to Iowa. He had served in the first territorial legislature, and had been active in Whig and Free-Soil politics throughout the 1840's and 1850's. He had won election as governor by a substantial majority, polling 13,594 votes, a majority of 2,486.

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56 Salter, Grimes, 49-50.
57 Ibid.
58 Barnes, Thirty-Ninth Congress, 593; Biographical Directory, 1239; Salter, Grimes, 33.
His close friend, Salmon P. Chase, wrote his congratulations on September 24, 1854, after the gubernatorial election. He lauded Grimes's "indefatigable exertions" in the free soil cause, and cautioned him on the need of securing the "fruits of victory and permanent ascendancy." Two years later Chase wrote again, giving some evidence that these "fruits" were being gained. "The sun has risen now," he penned, "Your election was the morning star."

Iowa was divided geographically into areas of greatly divergent views on the question of slavery in the territories. Grimes wrote to Chase in 1854 that the southern half of the state was "strongly pro-slavery," but expressed the hope that the free state men would be able to "carry a majority with us for free principles, and for a disconnection with slavery." The northern third of the state he compared to the Western Reserve of Ohio, a strongly abolitionist, free-soil area settled mainly by New England emigrants. He assured Chase that no candidate would be able to carry the state in 1856 who favored the Kansas-Nebraska bill, or, he equivocated, "such ... is my opinion at this time."

Another group which Grimes opposed during the 1850's was the Know-Nothings. Many of the members of this party were men ambitious for political office, and who "played on the strings of racial hatred" to gain recruits from those left partyless with the decline of the

59 Salter, Grimes, 52-53, contains the text of these two letters.

60 See Ibid., 54-55, for text of letter, together with Chase's reply, urging "courage" in fighting the "battle for freedom."
Whigs and the split among the Democrats over the Kansas-Nebraska issue. Grimes felt the extreme nativism of this group would alienate foreign-born immigrants, many of whom were settling in Iowa. The nativists and immigrants, he believed, would both eventually become members of the Republican party. He admitted that the Know-Nothings were doing "a great work in breaking down the two old parties," and was sure the new Republican organization would be able to capitalize on the results.  

Grimes was anxious that his friend Chase be the Republican candidate for the presidency in 1856. He wrote on April 8, 1855, expressing the belief that "a very large party of the friends of freedom in Iowa would be glad to see you a candidate," and assured him that "I am one of the number." He expressed his opposition to the leading candidate, William H. Seward of New York. He feared that there was "too much asperity of feeling throughout the country" to justify his nomination, and besides, "I have horror of New York politicians."

In spite of this "horror" Grimes corresponded occasionally with Seward, and in 1858 received a letter from him congratulating him on his preparations to fight the "exactions of the slaveholders" on the "constitutional ground of State rights and State authority." This comment by Seward illustrates Grimes's essential conservatism. He

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62 Salter, Grimes, 68-69.

63 Ibid., 76.
opposed the growing centralization of power in the national government, and believed in the retention by the states of their basic rights. He feared that the states would soon become "mere municipal appendages to the central power." He particularly opposed the assumption on the part of the Supreme Court in the Dred Scott case to declare state laws extending citizenship to Negroes to be unconstitutional. He called upon the general assembly of the state, in his annual message, January 12, 1858, to repudiate the Dred Scott decision, "let the consequences of dissent be what they may." His opposition to the case was not because it deprived the Negro of citizenship, (which he did not have in Iowa anyway), but because it would make the state a part of "a great slave republic." The fear of the Negro encroaching upon the white man's domain was again in evidence.

Another western Radical was Samuel C. Pomeroy of Kansas, who was not to enter the Senate until 1861, but who at this time was extremely active in the struggle over the extension of slavery into Kansas. Born in Massachusetts, Pomeroy had been an active member of the Anti-Slavery party for many years. He had been that party's unsuccessful candidate for the state legislature annually for eight years, until finally, in 1852, he defeated both the Whig and Democratic candidates. He was one of the organizers of the New England Emigrant Aid Society and served as its financial agent. In 1854 he conducted a party of New England emigrants to Kansas Territory. He served on the territorial defense committee, organized to protect the territory against the border raiders from Missouri, and was active

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64See ibid., 110-12 for text of message to the General Assembly.
in Republican politics, serving as delegates to the Republican National conventions in 1856 and 1860. Later in the story of the Radical Republicans Pomeroy was to achieve much greater importance.

The House of Representatives during the 1850's was also the scene of much Radical activity. As in the Senate, the few Radicals on the scene early in the decade swelled until by the election of Lincoln the Radical membership was becoming a significant section of the Republican side of the House. The leader of this group, and perhaps, with Sumner, the most famous of all the Radicals, was Thaddeus Stevens. His long, pallid face, brown wig, beetle brows, stern countenance and deformed foot were familiar sights to habitues of Capitol Hill, and his "hollow voice," filled with "contemptuous scorn for adverse argument," was often heard demanding free soil and berating the slave power.

Stevens was born in Caledonia County, Vermont, graduated from Dartmouth college, and had settled in Pennsylvania, where he was admitted to the bar. He had served in the state legislature during the 1830's, where he had organized the state's public school system. He served in Congress from 1849 to 1853, and from 1859 to his death in 1868. During the battle over the Fourteenth Amendment Stevens served as a member of the Committee of Fifteen, and was the leader of the pro-amendment forces in the House of Representatives.

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65 Barnes, Thirty-Ninth Congress, 606; Biographical Directory, 1863.

66 Schurz, Reminiscences, III, 214.

67 Barnes, Thirty-Ninth Congress, 615-16; Biographical Directory, 1863.
Stevens's racial views were formed early in his career, and he maintained his belief in the equality of the Negro throughout his life. As a member of the state constitutional convention in Pennsylvania in 1836 he gained nationwide recognition as the only member of the convention who refused to sign the revised document. Stevens's rejection of the constitution was because the word "white" had been inserted as a qualification for voting, thus disfranchising all free Negroes in the state, a group which had formerly been able to vote. For this reason he also campaigned vigorously against the ratification of the new constitution, but he was unsuccessful.\(^6^8\)

Another occasion when Stevens demonstrated his hatred of slavery and feeling for the Negro was shortly after he had passed the bar. Through assiduous economy he had saved $300, which he took with him on a journey to Baltimore to replenish his law library. On the way he encountered a slave-dealer who was attempting to sell a slave named John. Stevens bought and manumitted the Negro, thus using all his book money, and he returned to his home without either books or cash.\(^6^9\)

During his tenure in the House in the tempestuous years of the 1850's, Stevens was noted for his intense hatred of slavery and its representatives. He advocated war as the only policy of dealing with the slave states. Stevens left the House in 1853, planning to retire,

\(^6^8\) Memorial Addresses on the Life and Character of Thaddeus Stevens, Delivered in the House of Representatives, Washington, D. C., December 17, 1868 (Washington, 1869), 5. Hereinafter cited as Stevens Memorial.

\(^6^9\) Ibid., 54.
but the agitation over the Kansas-Nebraska act brought him back to the political arena even more convinced that the only solution to the sectional division of the country was war. During the period in which he was not in the House, Stevens was still active in his anti-slavery work. He vigorously opposed Douglas's bill, and in speeches throughout the Northeast argued against the opening of the territories to slavery and to enforcement of the Fugitive Slave law. He appeared on the lecture platform with such distinguished anti-slavery spokesmen as Charles Sumner, Cassius M. Clay of Kentucky, Henry Ward Beecher, Horace Greeley, and Ralph Waldo Emerson, and often financed his lectures and campaigns from his own pocket.⁷⁰

In 1858 Stevens was returned to Congress as a Republican, at the age of sixty-eight, after a campaign based on the need for a "positive and aggressive stand against slavery extension."⁷¹ Stevens's attraction for his Lancaster, Pennsylvania, constituency seemed assured, in spite of his personal belief in, and practice of, Negro equality. Stevens always was on record as favoring the complete equality of the Negro race, even social equality, which was not advocated by most of the extreme Radicals. The extent of Stevens's belief in racial equality is pointed out in an article in the Lancaster (Pa.) Intelligencer:⁷²

Nobody doubts that Thad Stevens has always been in

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⁷⁰James A. Woodburn, The Life of Thaddeus Stevens (Indianapolis, 1913), 112, 122, 126.
⁷¹Ibid., 128.
⁷²Alphonse B. Miller, Thaddeus Stevens (New York, 1939), 11, quoting Lancaster Intelligencer.
favor of negro equality, and here, where his domestic arrangements are so well known, his practical recognition of his pet theory is perfectly understood. There are few men who have given the world such open and notorious evidence of a belief in negro equality as Thaddeus Stevens. A personage, not of his own race, a female of dusky hue ... has presided over his house for years. Even by his own party friends, she is constantly spoken of as Mrs. Stevens.

This was carrying things a little far even for a Radical Republican, but Stevens did not seem to mind. In fact, he did not make any attempt to bring suit for libel against the newspaper, or in any way give any indication that the article was anything but true. Thus Stevens, by the end of the decade, was, like Sumner, an oddity even among the Radicals. He was of all the most extreme, the most violent in his attacks upon the South and his urging of war to settle the slavery question; and the most radical in his acceptance of the Negro as a social equal, even in his own house — perhaps in his own bed.

Another Radical member of the lower house was George W. Julian of Indiana. A native of the state he represented, Julian had been a member of the Free-Soil party since the 1840's. He had attended the Buffalo convention of that group in 1848, and had been elected to Congress the same year as a Free-Soil candidate. In 1852 he was that party's candidate for vice president on the ticket headed by John P. Hale of New Hampshire. He was re-elected to the House in 1860 after an eight-year retirement. During this period of retirement Julian was very active, serving as vice president of the first convention of the National Republican party, held in 1856 at Pittsburgh. He was chairman of the Committee of Organization of that group.
During Reconstruction, he was to become an ardent supporter of the Fourteenth Amendment, and was the first public man to demand suffrage for the freed slaves.\textsuperscript{73}

Always active in behalf of Negro rights, Julian was a tireless speaker at Free-Soil and abolitionist meetings. In 1853, in an address to the Free-Soil state convention in Indianapolis, Julian summed up his views on the Negro. "If the African is a man, and the natural equal of the white man," he contended, "only wanting equal opportunities, he should be free, whether in America or Liberia."

"If he is not a human, but an animal," on the other hand, "he should not be subject to law." Julian believed that unless the Negro be recognized as "naturally" the equal of the white man he "should not be hung for murder, nor allowed to marry, nor hold or transmit property, nor be baptized as a Christian..."\textsuperscript{74} Julian, however, unlike Stevens, made no mention of the social equality of the Negro, or of the injustice of keeping him in a segregated condition. Julian was willing to grant the Negro basic rights, but he was less adamant on the Negro's position in society in relation to the white race.

Like Grimes, Julian was much opposed to the Know-Nothings. He was particularly unhappy with them because the nativists ignored the anti-slavery cause for other issues. Julian was an ardent advocate

\textsuperscript{73}Barnes, Thirty-Ninth Congress, 600; Biographical Directory, 1391-92; George W. Julian, Speeches on Political Questions: With an Introduction by L. Maria Child (New York, 1872), xi-xii.

\textsuperscript{74}Julian, Speeches, 96.
of a liberal homestead law, as a concomitant measure to his free-soil beliefs, and opposed the stand taken by the Know-Nothings against unrestricted immigration into the West. It is impossible to determine to what extent Julian's desire for free lands in the West influenced his stand against the expansion of slavery into that area, but there was probably a strong correlation, as in the case of other Western politicians.

As the 1860 campaign approached, Julian reluctantly supported the Republican nominee, Abraham Lincoln, although he later admitted that "as a thorough-going Free Soiler and a member of the radical wing of Republicanism, my prepossessions were against him." Julian did admire the "grasp of thought and aptness of expression" of the Illinois lawyer, and was impressed by his "great" debates with Douglas. But Julian, like many of the more radical Republicans, was somewhat dismayed by the nomination of the more conservative Lincoln.

Another western representative who became prominent in Radical ranks was John A. Bingham, who entered the House in 1855 as a representative of Ohio's Western Reserve area. Born in Pennsylvania, he was for a time a printer before moving to Ohio, where he attended Franklin College. He was admitted to the bar in 1840, and served as prosecuting attorney of Tuscarawas County. His colleague from Ohio, John Sherman, described him as a man of "genial, pleasing

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76 Julian, Recollections, 181-82.
address," but complained that he was "rather too much given to flights of oratory." He was, however, "always a favorite with his colleagues and associates."77

Bingham served on the important judiciary committee of the House and was principally responsible for the drafting of Section I of the Fourteenth Amendment. His belief in the basic natural rights of the Negro, manifested in his work in the years before the Civil War, served him in good stead when it came time for his Radical colleagues to appoint him to the Committee of Fifteen.76

Elihu B. Washburne, originally of Livermore, Maine, and destined to be a Radical colleague of Bingham's on the Joint Committee on Reconstruction, also began life as a printer. Washburne was educated for the law at Harvard, later moving to Illinois, where he settled at Galena, in the predominantly Radical Northwest corner of the state. Active in abolitionist circles, he was a member of the Whig party, becoming a Republican as soon as that party was founded. Always an anti-slavery spokesman, he was a contemporary of Lincoln in Illinois politics, and supported his neighbor for the presidency in 1860. He was particularly opposed to the extension of slavery into Kansas.79

77Barnes, Thirty-Ninth Congress, 580; Biographical Directory, 850; Sherman, Recollections, 226-27.


79Gaillard Hunt, (comp.), Israel, Elihu and Cadwallader Washburn, a Chapter in American Biography (New York, 1925), 133.
Thus in the 1850's the Radical Republican movement was represented in Congress by a number of men destined to become instrumental in the passage of the Fourteenth Amendment. Of these, most were born in New England and subject to the influence of that liberal section on the racial question. Of the later Radicals, five were born in New Hampshire, Chase of Ohio, Wilson of Massachusetts, Fessenden of Maine, Chandler of Michigan and Grimes of Iowa; and two were born in Massachusetts, Sumner, who remained in that state, and Wade of Ohio. Pomeroy of Kansas, later to be one of the most extreme of the Radicals, also was from Massachusetts but did not enter the Senate during this period. Maine was represented by Washburne of Illinois, while Trumbull of Illinois was from Connecticut and Stevens of Pennsylvania was born in Vermont.

New England was therefore represented in Congress by a far greater proportion of men than its population would warrant, men who were to make the liberal racial ideas of that section the standard that under the stimulus of war was to become accepted by the whole North, and which was to be made a part of the Constitution by the amendment these men helped author. Of the fourteen Radicals who were most active during the decade, all but two were born in New England states, while only three, Sumner, Wilson and Fessenden, represented that area in Congress. All the others, except Stevens, represented states west of the Appalachian mountains, states in which the anti-Negro feeling was intense, but which had large segments of population of New England origin.

While the Radicals on the whole represented states in which the Negro was denied basic civil and political rights, and some states in
which free Negroes were not even allowed admittance, the important fact is that these men were chosen as Representatives and Senators. While the state laws during this period did not indicate a public acceptance of the idea of Negro civil and political equality, the population of these states was electing men who were outspoken in their endorsement of this belief.

Probably the voters of the West were more concerned with the opposition by the Radicals to the Kansas-Nebraska bill, which threatened to deprive them of the western territories which they, as a pioneer population, regarded as rightfully theirs. Why else would a state like Illinois, which refused Negroes any rights at all in the state, elect a man like Trumbull or Washburne, or Ohio send men like Chase and Wade to the Senate.

The motives which placed the Radicals in office are of secondary importance. The main concern is they were there, and their numbers and significance were growing. More and more men during the decade of the 1850's were being elected who agreed with Sumner that "the slightest act of surrender" on the part of the Radicals "would be a signal for the abasement of the free States." They were, on the whole, willing to stand with the Massachusetts Senator when he proclaimed: "I fear nothing now but compromise." They were willing to accept, "with devout faith in the moral law of the universe," the battle which they were sure would lead to the "triumph of the national cause and of human freedom."80

The decade of the 1850's was over, the star of Radical Republi-

80Pierce, Sumner, IV, 17; Schurz, Sumner, 78-79.
carnism was beginning to ascend, Lincoln triumphed over his hapless opponents; and in South Carolina Major Robert Anderson, U.S.A., prepared to evacuate the Charleston fortifications and move his command into Fort Sumter.
The year 1860 opened with the shadow of the slavery controversy hanging over politics. For months before the November elections and the secession of the Southern states, the problem of slavery was paramount. The Radical Republicans were not yet certain as to how far they could carry their free-soil agitation in an election year; but they were determined that slavery should be banned from the territories and confined to its present limits, there to wither and die. The more prescient among the politicians saw in the struggle more than the question of slavery extension. Carl Schurz, a German immigrant and Republican leader in Wisconsin, felt the basic issue was a "struggle between two antagonistic systems of social organization; between advancing civilization and retreating barbarism; between the human conscience and a burning wrong."\(^1\)

The more conservative view was that of William T. Sherman, outlined in a letter to his brother, Representative John Sherman of Ohio. "I do hope that Congress may organize," he wrote, "and that all things may move along smoothly. It would be the height of folly to drive the South to desperation, and I hope...there is no intention to disturb the actual existence of slavery."\(^2\) In May,


\(^2\)Thorndyke, Sherman Letters, 79.

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Sherman urged his brother to show "impartiality," and chided him for voting as if he had "feeling" against slavery. "I was glad to see," he added, "that you disavowed any intention to molest slavery..."  

Representative Sherman typified the more conservative view among this wing of the Republican party, being at once violently opposed to the spread of slavery into the territories, and content to leave it unmolested in the South. The more extreme Radicals were demanding that the institution be eliminated completely. Between these two groups there was one common ground; their opposition to the "slaveocracy" and their unique property.

The lack of unity within the party on the Negro question was to cause some complications during the summer of 1860 in the selection of a candidate for the party's nomination for President. Most Republicans were anxious to find a "compromise" candidate, one who would not be too offensive to the South, but who at the same time would be strong enough to carry the Northern states. This ruled out the more Radical members of the party. Benjamin F. Wade, for example, was the subject of a letter from James G. Blaine of Maine to his colleague William P. Fessenden. "Wade cannot be made a compromise candidate," Blaine wrote from Chicago, "his speeches in Maine and on the Western Reserve are remembered by too large a number."  

Another who suffered from the taint of being too Radical was

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3 Ibid., 83. While W. T. Sherman is not himself an example of Republican opinion at this time, his reactions are important because of his possible influence on his brother.

Charles Sumner. James W. Grimes of Iowa accused Sumner of being "harsh, vindictive and slightly brutal." "Mr. Sumner furnishes no remedy for the evils he complains of," the practical Grimes noted. He "has done the Republicans no good."  

The man who eventually became the Republican nominee, Abraham Lincoln, was not a member of the more Radical faction of his party, but the effects of Radical politics soon became evident in the campaign. The Democrats were particularly quick to seize upon the Radical demands for immediate emancipation. At a Democratic rally in New York, a candidate for Congress warned his audience, particularly his "friends from Ireland," that the Republicans were an abolition party. "Abraham Lincoln, if honest to his party," he declared, "means to do his best that the free men of the North shall make free the laboring population of the South." The speaker urged his hearers to "vote against Abraham Lincoln as you will have negro labor dragging you from your free labor."  

This interpretation of the Republican stand in 1860, although widespread, was not entirely correct. Even after Lincoln's election, not all Republicans were willing to accept the idea of emancipation. Typical of the more conservative view was John Sherman, who wrote to his brother in Louisiana: "The Republican party is not likely to interfere directly or indirectly with slavery in the States or with the laws relating to slavery..." He saw the question as relating only

5Grimes to Mrs. Grimes, June 1, 1860; Salter, Grimes, 127.  
6New York Herald, October 9, 1860. The speaker was interrupted with shouts of "never" and cheers when he mentioned freeing the laboring population of the South."
to "Kansas and perhaps New Mexico," and felt that the results of the election were only a "condemnation of the narrow sectionalism of Buchanan's administration and the corruptness by which he attempted to sustain his policy."⁷

The more extreme Republicans saw the sectional controversy in a different light from the optimistic Sherman. Senator Grimes felt that it would be impossible to arrive at a peaceful solution to the problem. He did not feel that Lincoln's election was the cause of the movement toward secession which was beginning, or that the personal liberty laws enacted by some Northern states were precipitating the division of the nation. Rather he believed that the desire of the Southerners to "debauch the moral sentiment of the people of the North," by attempting to force them to accept the idea that slavery "is a benign, constitutional system, and that it shall be extended in the end over all this continent."⁸

Grimes, however, was more interested in practical politics than in theorizing on the causes of the rift between the states that was continually growing. He was soon writing to his friend Salmon P. Chase, urging him to accept the proffered post of Secretary of the Treasury in Lincoln's cabinet. Grimes knew the value of having a Radical Republican in the cabinet, and assured Chase that "it is the almost universal desire of our true friends here that you should accept..."⁹ Chase was to take the position, to the great

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⁷J. Sherman to W. T. Sherman, November 26, 1860; Thorndyke, Sherman Letters, 85-86.
⁸Grimes to Mrs. Grimes, December 16, 1860; Salter, Grimes, 132.
⁹Grimes to Chase, January 11, 1861; Ibid., 133.
delight of the Radicals, for he was developing into one of the most Radical of all the Republicans. He deplored any thought of compromise with the seceding states. "My faith is fixed; no compromise now, and no proposition of adjustment until the executive department of the government is ours," he wrote on January 23, 1861, to Charles Sumner. His stand for "inauguration first, adjustment afterwards" became the slogan of the more Radical members of the Republican party during the days between Lincoln's election and his assumption of the presidential office.

The views of Grimes and Chase are particularly significant because both men were members of the so-called Peace Congress, called by the state of Virginia, which met in Washington in February, 1861. The proceedings of this convention, together with the attempts in Congress to reach acceptable compromises which would serve as a basis for restoring the Union, show both the fluid state of public opinion in the North regarding abolition, and the uncertainty of the Radicals themselves on the question of the future of the Negro in the slave states.

The Washington meeting, which was in session throughout the month of February, was attended by three Radicals who would be active in the cause of Negro rights in later years. They were Grimes, Chase, and Representative Boutwell of Massachusetts. Grimes, however, attended only because he was "requested" to by the governor of Iowa and took no part in the proceedings of the convention. Chase and Boutwell, on the other hand, both participated in the debates and discussions, and

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10 Pierce, Sumner, IV, 22-23.
upheld the Radical point of view that there was no need for amending the constitution in any way. The Virginia delegation had proposed an amendment which would have protected slavery in the states below the Missouri Compromise line, which Chase took the lead in opposing. "[T]he constitution as it now stands," he contended, if fairly interpreted and obeyed, contains ample provisions for the correction of all the evils which are claimed to exist."\(^{11}\)

Boutwell, too, felt that the Constitution was sufficient, and assured the Southerners that Massachusetts was not inclined to "assail" slavery "where she has no right to assail it."\(^{12}\) When a Southern delegate denied the right of any state to either establish slavery or prohibit it, Boutwell disagreed. These rights, he felt, were reserved to the states, and all states "stand on a footing of perfect equality."\(^{13}\)

The position of the Radicals at the Peace Congress was weak. There were not enough Radicals in attendance to influence debate, and many of the more avid Radicals refused to attend. "No Republican state should have sent delegates," wrote Senator Zachariah Chandler of Michigan to Governor Austin Blair of that state "I hope you will send stiff-backed men, or none."\(^{14}\) The Congress finally adjourned, after agreeing to a proposed Thirteenth Amendment to the Constitution, calling for the prohibition of slavery above the Missouri Compromise

\(^{12}\) Ibid., 99.
\(^{13}\) Ibid., 218-19.
\(^{14}\) Ibid., 468-69.
line, and the protection of slavery below it, both in states and territories, forbidding abolition in the District of Columbia except with the agreement of Virginia and Maryland, and other provisions designed to placate the South.

The Radical position on abolition became more pronounced when John J. Crittenden, Henry Clay's successor in the Senate from Kentucky, introduced a series of resolutions into the Senate calling for a basically similar program. The Crittenden Resolutions, introduced two days before the secession of South Carolina, recognized the 36°30' line and the sanctity of slavery in the District of Columbia, and further stipulated that Congress was to have no power to abolish slavery in areas under its exclusive jurisdiction within the limits of states where slavery was permitted. The proposals also denied the right of Congress to prohibit or hinder the interstate transportation of slaves, and provided for compensation for the owners of fugitive slaves who were rescued by abolitionists before they could be returned South.

The checkered career of the Crittenden Resolutions demonstrates the gradual solidification of Radical opinion on abolition during the period immediately after the beginning of secession. Many persons in the North, in the days immediately following the secession of the Deep South states, were intent merely on restoring the Union, and the question of abolition was not considered. The Crittenden proposals, however, with their guarantees of protection of the institution of slavery, were violently opposed by the Republicans, both Radicals and conservatives. When voted upon in the Senate the measure was
defeated by only one vote, with six Southern senators not voting. 15

The vote on the Crittenden Resolutions demonstrates the strength of the Radicals in the Republican organization. Every Senator from the New England states opposed the plan, as did all the other Republican senators. Among the Radicals who voted to table the resolutions were Clark of New Hampshire, who had earlier offered a resolution stating that the Constitution as it was was sufficient to solve all sectional problems, Sumner and Wilson of Massachusetts, Fessenden of Maine, Bingham and Wade of Ohio, Trumbull of Illinois, Chandler of Michigan and Grimes of Iowa.

Opinions as to the efficacy of the compromise varied widely. Samuel S. Cox, conservative Democratic member of Congress from Ohio, contended that the war could have been avoided by the adoption of the plan. He felt that, far from protecting slavery, the proposed amendment would merely remove it from national politics, and allow it to "exhaust its vitality in a natural death." 16

The chief spokesman for the Radical opposition was Charles Sumner. In a speech at Cooper Institute in New York in November, 1861, Summer defended the Radical stand against the Crittenden proposals. The plan, he felt, would have opened the way for a "roll-call of slaves at the foot of Bunker Hill or the door of Faneuil Hall," and, significantly, would have led to the "disfranchisement of nearly ten thousands of my fellow-citizens in Massachusetts, whose rights are

15 Congressional Globe, 36 Cong., 2 Sess., 1105.

16 Samuel S. Cox, Three Decades of Federal Legislation (Providence, R.I., 1885), 219-20.
fixed by the constitution of that commonwealth."  

While Summer was concerned with the effect of the proposed amendment on the civil rights of Negroes in Massachusetts, Senator Grimes was dealing with another aspect of the plan. The protection of slavery below the 36° 30' line, he believed, would lead immediately to a drive, on the part of the Southern states, for the acquisition of the northern states of Mexico as additional slave territory. He felt that the inevitable result would be war with Mexico, and the absorption of the provinces of "Sonora, Chihuahua, Coahuila, Nuevo Leon, Tamaulipas and other provinces," and their ultimate admission as slave states.  

Thus while the Republicans, and particularly the Radicals, were opposed to the compromise resolutions, it was from differing motives. Certainly Summer's concern with the civil rights for Massachusetts Negroes was sincere, although nothing in the compromise was directed against free Negroes in the North. Grimes, on the other hand, typifies the fear of others of a return of political power to the Southern states, with its consequent lessening of the new-found power of the Republican party.  

The final attempt at compromise between the sections was the proposal of a Thirteenth Amendment less complicated than either of the two previous plans. This measure stated simply that "no amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any state, with

17Sumner, Works, VI, 90.
18Grimes to Samuel J. Kirkwood, Governor of Iowa, January 28, 1861; Salter, Grimes, 134.
the domestic institutions thereof, including that of persons held to labor or service by the laws of said state." This amendment was reported in Congress by two committees which had been established for that purpose, a Committee of Thirteen in the Senate, and a Committee of Thirty-three in the House. The Senate committee consisted of seven Democrats, five Republicans and Senator Crittenden, who belonged to neither party. The Republicans were Senators Collamer, Seward, Wade, Doolittle and Grimes, of whom Wade and Grimes were recognized Radicals.19

The subject of the amendment came up for consideration first in the House of Representatives. There Representative Charles Francis Adams of Massachusetts proposed an amendment which would forbid the introduction of any further amendment "having for its object any interference with slavery..." This proposal, which the Radical James G. Blaine called more extreme than ever submitted by a Southerner, was tabled; and the House adopted instead the proposal of the Committee of Thirty-three. This amendment was adopted by a vote of 133 to sixty-five.20

The Republicans in the House were split on the vote for this amendment. Among the Republicans who favored it were John Sherman of Ohio (soon to be moved to the Senate), Adams of Massachusetts, and Jacob M. Howard of Michigan. The negative votes were all Republican. The dissenters were led by Thaddeus Stevens of Pennsylvania, Israel

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19 Congressional Globe, 36 Cong., 2 Sess., 158.

20 Blaine, Twenty Years of Congress, I, 260, 266; Congressional Globe, 36 Cong., 2 Sess., 1254-84.
and Elihu Washburn, James A. Bingham of Ohio, Roscoe Conkling of New York, Owen Lovejoy of Illinois, and Galusha A. Grow of Pennsylvania. They personified the most Radical of the Republicans in the House and included the men who were to be active on behalf of the Negro throughout the period. 21

In the Senate, the amendment was adopted by a vote of twenty-four to twelve. Eight Republicans voted in favor of the proposal, including Grimes and Harlan of Iowa, Morrill of Maine and Ten Eyck of New Jersey. Only twelve of the twenty-five Republican senators voted against the measure. Several of the Republican leaders, such as Seward, Fessenden and others were not recorded as voting, but no pairs were announced. 22

The main opponent of the compromise proposal in the Senate was Sumner. He called it "crude and ill-shaped,-a jargon of bad grammar, a jumble and hodge-podge of words, - harmonizing poorly with the accurate text of our Constitution." 23 Sumner's views on the "obnoxious" proposal were not shared by everyone in the North. The New York Herald claimed he was only leading the South further into "fatal error and delusion" for the sake of "Antislavery propagandists," while the New York Journal of Commerce warned of Sumner's desire for a future "Abolition revolution," and decried his "insidious" methods of preparing his audience to accept this contemplated event "complacently." 24

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21 Congressional Globe, 36 Cong., 2 Sess., 1285; Blaine, Twenty Years of Congress, 1, 266.

22 Congressional Globe, 36 Cong., 2 Sess., 1403.

23 Speech at Cooper Institute, November 27, 1861; Sumner, Works, VI, 90-91.

24 Sumner, Works, VI, 116-17.
Having been passed by two-thirds of both houses of Congress, the amendment was submitted to the states for ratification. But only two states, Maryland and Ohio, acted favorably on it. In the New England states it was rejected by the state legislatures, and in the other states it was not acted upon. The fate of the amendment demonstrates the change in public feeling which was to occur within the year after its passage, a change which was to mark the real beginning of the strength of the Radical wing of the Republican party, and which was to herald the beginning of the movement for Negro rights. Slavery was upheld by the Thirteenth Amendment of 1861; abolition was strengthened by its defeat.

Early in 1861, as the first guns of the war were being fired, sentiment in the North was still badly divided. The abolitionists saw the conflict as the opportunity to end slavery for all time; but others felt that the only real consideration should be the restoration of the union, and looked upon the abolitionists as nearly as great sinners as the Southerners. Even in Massachusetts the sentiment for abolition was not universal. Charles Francis Adams, Jr., attended church services in Boston in November, 1861, and was impressed with a sermon which "made some people stare." The pastor contended that he "did not consider negro servitude as necessarily a wrong," Adams wrote, adding that "as it was an occasional sermon it will not hurt him any."26

Even the most vitriolic Radicals were not entirely consistent in their demands for emancipation and abolition. During this period the Republicans, who gained control of both Houses of the Thirty-Seventh Congress with the departure of Southern members from Washington, allowed the establishment of the territories of Colorado, Dakota and Nevada. None of the acts establishing these territories contained any mention of slavery. As Blaine demonstrated, the fact that after nearly a decade of continual agitation on the question of slavery in the territories, the Republicans, once they achieved power, proceeded to organize three territories while avoiding the slavery issue completely. The most Radical Republicans, such as Sumner, Wade, and Chandler, allowed the territorial bills to be approved as reported by Senator James S. Green of Missouri, a Democrat. A similar situation existed in the House of Representatives, where such Radicals as Stevens, Lovejoy and the Washburns were silent on the question.27

The Radicals were concerned about the question of the security of anti-slavery sympathy in another quarter, namely in Lincoln's cabinet. They began to distrust Secretary of State Seward, who had formerly been a leading Free-Soil man and outspoken supporter of abolitionist doctrines. Seward, however, seemed changed since he had been beaten for the Republican presidential nomination in 1860, and appeared less the "hero of principle" whom the Radicals had formerly supported, than as a "deeply disappointed man, who was in

27Blaine, Twenty Years of Congress, I, 269-70. The Radicals were probably motivated in their actions by a desire to restrain the Border States from seceding. Their acceptance of the Missouri proposal was probably an attempt at placating these states.
danger of being morally lost."

Another weak point in the Cabinet was Secretary of the Treasury Chase. They particularly feared Chase's ambition, and these fears were apparently encouraged by Chase, who distributed patronage plums not only to deserving Radicals, but also to conservative Republicans. Among the most extreme critics of the Cabinet were Benjamin F. Wade in the Senate and Owen Lovejoy in the House. They felt that the Cabinet constituted a "disgraceful surrender to the South." The opinion was common among the Radicals that the Cabinet was even more pro-Southern than Buchanan's had been. Stevens contended that the group was composed of "an assortment of rivals whom the President appointed from courtesy, one stump-speaker from Indiana, and two representatives of the Blair family." 

This Radical opposition to Lincoln's official family, and, indirectly, to Lincoln himself, was to make itself felt more and more as the attention of the nation turned to the problems of the war and its concomitant question, the Negro. With the organization of the first Republican-controlled Congress, the Thirty-Seventh, on July 4, 1861, the Radicals began a concerted effort to enact their ideas on the question of abolition, instead of following the rather conservative load set by the President and the Cabinet.

The Radicals won an immediate victory in Congress. They managed to elect one of their number, Galusha Grow of Pennsylvania, 

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28 Julian, Recollections, 195.
29 Ibid.
30 Blaine, Twenty Years of Congress, I, 285-86.
Speaker of the House. Grow, a native of Connecticut, was from the old Wilmot district in northern Pennsylvania, which was strongly anti-slavery. One of the main reasons for his selection apparently was his anti-slavery views.\(^{31}\)

Grow typified many of the more Radical members of the Republican party, particularly with reference to his birthplace. Many of the more Radical Republicans from western states were originally from New England. Of all the representatives from Illinois and Wisconsin, for example, nearly all were of New England or New York origin. These men almost invariably displayed Radical tendencies, and gave a considerable preponderance in Congress to the abolitionist sentiments of northern Illinois, as against the distinctly conservative sympathies of the southern part of the state.\(^{32}\) Both of these states, of course, had rigid anti-Negro laws on their statute books, and Negroes were only tolerated by means of the most stringent restrictions.

A growing abolitionist sentiment was manifesting itself in the new Congress. As the war developed into a full-scale conflict and it became obvious that the division of the country was not going to be healed without a long and bitter struggle, more Republicans became convinced that some interference with slavery was going to be necessary. The recognized leader of the extremists in the Senate was Charles Sumner, and in the House Thaddeus Stevens assumed command

\(^{31}\)Ibid., 324; Congressional Globe, 37 Cong., 1 Sess., 4.

Even the more compromising Republicans, men who did not side with the Radicals on the abolition issue, were coming under increasing pressure. Nearly all the Republicans had joined that party because of its free-soil stand, but many were not in favor of a complete emancipation. Typical of these was William P. Fessenden. At the beginning of the war Fessenden opposed the Radical pressure for emancipation, although he held "great hope of ultimate success in the purpose for which our party was formed," that is, in blocking the spread of slavery.34

With these moods as a background, the Thirty-Seventh Congress met and immediately was deluged with a series of confiscation bills. Four days after the opening of Congress the House instructed the Judiciary Committee to draft a bill confiscating the property of persons holding office under the Confederacy or any seceded state.35

In the Senate, several bills were introduced. Zachariah Chandler urged the seizure of the property of all high civil officers of the Confederacy and the seceded states, and of all military officers above the rank of lieutenant. Sumner, more simply, demanded the confiscation of the property of all persons in rebellion. Only one of the proposals, however, that of Samuel C. Pomeroy of Kansas, specifically demanded the abolition of slavery in the seceded states.36

33 Maine, Twenty Years of Congress, I, 325; Müller, Stevens, 177.
34 Fessenden, Fessenden, I, 120.
35 Congressional Globe, 37 Cong., 1 Sess., 23.
36 Ibid., 11, 134, 142.
The bill finally selected by the Senate was one proposed by Senator Lyman Trumbull of Illinois, which was reported by its author from the Judiciary Committee on July 20. Trumbull moved that an amendment be incorporated as an additional section of the bill which would provide:37

That whenever any person claiming to be entitled to the service or labor of any other person, under the laws of any State, shall employ such person in aiding or promoting any insurrection, or in resisting the laws of the United States, or shall permit or suffer him to be so employed, he shall forfeit all right to such service or labor; and the person whose labor or service is thus claimed shall be henceforth discharged therefrom, any law to the contrary notwithstanding.

This statement seemed to pacify the Senate, which approved the substitute bill, rather than the more extreme measures of the abolitionist type. In the House, however, there was some question as to what this last section really meant. Representative Henry C. Burnett, Democrat of Kentucky, felt that it would mean that "the use of a slave by authority of the owner, in any mode which will tend to aid or promote this insurrection, will entitle that slave to his freedom."

"Certainly it will," replied Representative John A. Bingham, Republican of Ohio.

"Or with his consent," inquired Burnett, "or with the consent of his agent, in any mode whatever, then the negro is entitled to his freedom?"

"Yes, sir," replied Bingham.

37 Ibid., 216-17.
"Then," exclaimed Burnett, "that amounts to a wholesale emancipation of the slaves in the seceding or rebellious States."

Bingham demurred. "No just court in America," he replied, "will ever construe this fourth section, if it becomes a law, to the effect, that because it happens that citizens of the United States, residing in a seceding State, hold slaves, this law amounts to an emancipation of their slaves."

This exchange illustrates the basically conservative attitude of most Republicans at this time. Even the more Radical members, such as Bingham, were unwilling to accept complete emancipation, although the extremists, such as Sumner, Pomeroy and Stevens, would have welcomed it. With this limiting interpretation placed upon it, the bill was approved by the House, and became law on August 6. Its passage prompted the bitter statement by Stevens, who was dissatisfied with the bill, that the South would be "laid waste, and made a desert," if necessary in order to preserve the Union.

No one seemed particularly happy about this law. The Radicals viewed it as "a child of ... sickly ancestry," and felt that the final section was "a bribe to them, [i.e. the slaves] to fight us, rather than a temptation to espouse our cause. The opposite extreme was the opinion of Democratic Senator John C. Breckinridge of Kentucky, who declared that the act was the first "of a series of

38 Ibid., 410-11.
39 Ibid., 430-31, 434, 454.
acts loosening all bonds" between the sections. As a compromise measure the first Confiscation Act pleased none; its only real value was as a precursor of things to come. The only positive good it demonstrated was that it showed a willingness on the part of Congress to strike a blow at the institution of slavery if it should be deemed advantageous to the Union cause to do so.

At the same time the debate on the Confiscation Act was being held, Congress was considering another matter which, in philosophy and intent, was its exact antithesis. This was a resolution which had been introduced into the House on July 22, the day after the first battle of Bull Run, by John J. Crittenden of Kentucky. This resolution stated that "this war is not waged ... in any spirit of oppression, or for any purpose of conquest or subjugation, or ... of overthrowing or interfering with the rights or established institutions" of the seceded states, "but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease."

The Crittenden Resolution was adopted by the House immediately, with only two dissenting votes. Two stalwart Republican Radicals

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41 Blaine, Twenty Years of Congress, I, 343.

42 Congressional Globe, 37 Cong., 1 Sess., 222.
opposed the measure, Albert G. Riddle from Ohio's Western Reserve, and John Fox Potter of Wisconsin. Thaddeus Stevens, who had blocked a similar resolution the week before, and Owen Lovejoy absented themselves during the roll-call.\(^3\)

Three days later, on July 25, the Senate approved the resolution by a vote of thirty to five, with only one Republican, Lyman Trumbull of Illinois, opposing the measure. Sumner was absent. Trumbull's opposition, however, was not on the same grounds as that of Stevens and Lovejoy, for he opposed the measure because of a dislike of its phraseology, rather than disagreement with its content.\(^4\) Thus almost without exception, the Republicans agreed to a measure which, in effect, pledged them to a restoration of the Union "as it was," with slavery intact. The Crittenden Resolution was almost universally the voice of the Republican party as well as the Democracy. The only opposition to the content of the measure came from little-known politicians, while the leaders of the Radicals contented themselves with absenteeism.\(^5\)

To complicate the problem which faced the Republicans in attempting to determine just where they stood on the problem of slavery and abolition, the House, on July 9, had passed another resolution, which declared that "it is no part of the duty of the soldiers of the United States to capture and return fugitive slaves." This resolution had been introduced by Owen Lovejoy, who happily

\(^3\)Ibid., 223.
\(^4\)Ibid., 265.
\(^5\)Blaine, Twenty Years of Congress, I, 341.
informed Sumner, after its passage, "Our conservative people were timid and vexed, but they had to vote right at last."

This vacillation on the part of Congress on the question of the Negro brought sharp criticism from one Radical Republican who was in a position to determine its effect on the Northern cause in Europe. Carl Schurz had recently been named by Lincoln as United States minister to Spain. Bitterly he wrote to Secretary of State Seward decrying the government's position. Taking a slap at the Crittenden Resolution, Schurz wrote: "It is exceedingly difficult to make Europeans understand ... why the ... North should fight merely for the privilege of being reassociated with the imperious and troublesome slave States..." He declared that European public opinion would not universally favor the North until the war "becomes distinctly one for and against slavery."

This call was echoed by Charles Sumner, who spoke before the Republican state convention in Worcester, Massachusetts, on October 1. In a speech entitled "Emancipation our Best Weapon," he advocated that the Union "carry Africa into the war in any form, any quantity, any way."

"The moment this is done, he continued, "Rebellion will begin its bad luck, and the Union become secure forever." All he felt would be necessary was a "simple declaration, that all men within the line of the United States troops are freemen," which he

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46 T. Harry Williams, Lincoln and the Radicals (Madison, 1941), 26; Congressional Globe, 37 Cong., 1 Sess., 32.

47 Schurz to Seward, September 14, 1861; Schurz, Speeches, I, 187.
felt would be entirely Constitutional. ⁷⁸

Sumner's speech was an exposition of extreme Radicalism for that time, and its reception in the Northern press illustrates how far in advance of public opinion the Radicals were. Even in Massachusetts Sumner's speech was called "unfortunate." The Boston Daily Advertiser lamented the tendency, which was illustrated by the speech, "to represent the Republican party ... as a party of Emancipation, a 'John Brown party,' a party that desires to carry on this war as a war of Abolition..." The Advertiser warned that "neither men nor money will be forthcoming for this war, if once the people are impressed with the belief that the Abolition of Slavery, and not the defense of the Union, is its object." ⁷⁹

The Boston Evening Gazette called Sumner "one of the most irresponsible impracticables of the party," and declared that his ideas were "opposed to the spirit of the times, to the policy of the Administration, and ... detrimental to the prosperity of the cause." The Boston Journal warned of "the unutterable horrors of a servile insurrection," as well as "the economic problem of supporting four millions of human beings who have never been self-dependent..." It deplored the "miscalled philanthropy" of Sumner and the extremists, which it called "as impracticable as it is visionary," and warned that the Radical doctrine would "lay waste to the most prolific

⁷⁸ Sumner, Works, VI, 13, 16.

⁷⁹ Quoted in Ibid., 38.
soil, and fill our land with vagrants and marauders."

The Springfield (Mass.) Republican called the speech "reckless," and an example of the "mental perversity produced by entire absorption in a single aspect of a great question, without regard to its manifold relations..." The Boston Post, a Democratic organ, declared that if Sumner's proposal became the policy of the government, "not a brigade could be kept in the field." It asserted that the only punishment for Sumner "and his ilk" who "do not fight nor pay," was to be "ducked in a horse-pond."\(^51\)

In other areas the criticism was also severe. The New York Herald warned of the "fanatical hostility of this Abolition faction" to the Lincoln policy, and urged the President and his Cabinet to "exert their energies to the uttermost for a speedy blow or two which will break the back-bone of this Rebellion," and save the nation from the Radicals. The New York Journal of Commerce noted the opposition to Sumner by the Massachusetts papers and felt that the Massachusetts Republican organization desired "to be rid of any connection with the fanatic Senator's remarks." "The signs of the times improve," was its wry comment.\(^52\)

The other side of the coin is typified by the reaction of the National Antislavery Standard of New York, which saw the speech as "a bold, clear, and conclusive exposition of the policy which the

\(^{50}\)Ibid., 38, 39.

\(^{51}\)Ibid., 40.

\(^{52}\)Ibid., 41-42.
United States Government should adopt, and make the vital principle of their action, in the present war." Abolition, it contended, was the "true and only way of escape for this nation."^53

Perhaps the most objective and rational critique of Sumner's speech was by the Philadelphia Public Ledger, which warned that the next Congress should be prepared to consider seriously Sumner's proposals. "Mr. Sumner has proven very conclusively," it demonstrated, "that, as a punishment to Rebels and bad citizens, the manumission of the slaves is fully recognized by those old Roman laws which the South-Carolinians have been so fond of quoting..." The weakness in Sumner's argument, however, was that he had "not proved" that it would be "policy to adopt at once and irrevocably so extreme a measure as to set at liberty some four millions of slaves."^54

The Radical extremists were overjoyed. Schurz wrote from Madrid, praising Sumner for his "glorious speech." "I agree with you on every point," he exclaimed, "and expect shortly to fight by your side."^55 Yet later, after he had had time to ponder the point, even Schurz's ardor cooled somewhat, and in a later letter he wrote: "You know well that my opinions in relation to slavery are sufficiently decided. And yet, in point of principle, I would not be anxious to see the emancipation measure adopted so suddenly, for I think slavery will perish at all events in consequence of this struggle."^56

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^53Ibid., 42.
^54Ibid., 47.
^55Ibid., 56.
^56Schurz, Speeches, I, 197.
Lincoln's opinion on the emancipation question was not clear at this time, but Sumner seemed confident that his extreme position would soon have official backing. In a letter to Governor Andrew of Massachusetts on December 27, he seemed encouraged about the prospects of quick emancipation. "He tells me that I am ahead of him only a month or six weeks," he wrote expectantly.  

Sumner and his fellow Radicals were still far ahead of public opinion in the North, as reflected by editorial attitudes. It has been estimated that during the first year of the war only one person in ten thousand in the North believed that the war must necessarily result in the end of slavery. Many of those who did advocate abolition refused to accept it without an accompanying provision for resettlement or colonization of the freed slaves. Illustrative of this view was Horace Greeley's *New York Tribune*, which advocated segregation of the Negroes in the Gulf states, east of the Mississippi river.  

Even the vast majority of the Republican politicians were averse to emancipation. The conservative element within the party was so strong that a bill calling for abolition in the seceded states, introduced into the Senate on July 16, 1861, by Samuel C. Pomeroy of Kansas, failed to gain enough support for passage in the Republican-controlled Senate. The majority of the party agreed with Republican Senator John C. Ten Eyck of New Jersey, who argued against the bill.

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57 Sumner, *Works*, VI, 152.
58 Woodburn, Stevens, 171-72, gives the 1 in 10,000 figure. The Negro historian, W. E. B. Dubois, in *Black Reconstruction* estimates the figure at 1 in 100. The plan of Greeley and his editorial writer, James S. Pike, is explained in Durden, *Pike*, 38-39.
"I did not know what was to become of these poor wretches," Ten Eyck testified before the Senate, "God knows, we do not want them in our section of the Union." 59

Another conservative viewpoint is that of William T. Sherman, who wrote to his brother on April 22, 1861: "The question of the national integrity and slavery should be kept distinct, for otherwise it will gradually become a war of extermination, - a war without end." Again, on April 25, the future general wrote the Senator: "I ... recoil from a war, when the negro is the only question." 60

The problem of the Negro was to appear in a practical as well as theoretical way almost as soon as the war began. As early as May, 1861, fugitive slaves began filtering through the Union lines, seeking sanctuary. The problem of what to do with these fugitives was vexing. Some commanders allowed Southerners to enter their lines, under flags of truce, to regain their property, while others used Northern troops to apprehend fugitives and return them to their rebellious owners. The Union commander at Fortress Monroe, Virginia, refused to have any part of these activities. Benjamin F. Butler of Massachusetts was a thorough-going Radical, although raised a Democrat. Butler refused to allow Southerners to claim their property, and, since the slaves were useful to the Confederates in military operations, Butler declared they were "contraband of war." Thus the fugitive slave got a new name, and the Radicals got a new problem. 61

60Thorndyke, Sherman Letters, 113, 115.
61Blaine, Twenty Years of Congress, I, 368-69.
Many commanders continued to allow Southerners to pursue their slaves into the Union lines. As late as June, 1861, one Union general, Robert Patterson, ordered his troops to protect the property of loyal slaveholders. General George B. McClellan in Western Virginia issued a proclamation declaring that the war was being waged "for the good of the whole country," and assuring the Virginians that the Union forces were prepared to suppress "servile insurrections." 62

To counteract this policy, the Radicals introduced a series of "slave-catching" resolutions. On July 9, 1861, Lovejoy's resolution, mentioned above, was introduced, and in December three other proposals were placed before Congress. In the Senate, Henry Wilson of Massachusetts declared he would introduce a bill to punish officers and privates of the army for "arresting, detaining, or delivering persons claimed as fugitive slaves." On the seventeenth of December, Charles Sumner introduced a resolution directing the Committee on Military Affairs to investigate the expediency of "providing by additional legislation" means whereby "our national armies shall not be employed in the surrender of fugitive slaves." 63

In the House of Representatives, Thomas D. Eliot of Massachusetts introduced a joint resolution on December 2, instructing the army to "emancipate all persons held as slaves in any military district in a state of insurrection against the National Government."

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63 Congressional Globe, 37 Cong., 1 Sess., 32; Congressional Globe, 37 Cong., 2 Sess., 8, 110.
This motion was amended, however, by Roscoe Conkling of New York, to be applicable only to the slaves of disloyal persons, in a move to retain the loyalty of the border states and the Unionists of the South. 64

But while the Radicals were anxiously defending the liberty of fugitives, they refused to defend the rights of free Negroes in the North. On December 16, Sumner introduced a resolution in the Senate which would have allowed "persons of African descent" to "take out patents for useful inventions." The move was prompted by the refusal of the patent office to grant a patent to a Boston Negro inventor because he was not a citizen under the ruling in the Dred Scott case. The Committee on Patents and the Patent Office, to which this resolution was referred, made no report on the case. The question was finally settled by a report of the Attorney General in November of the next year that a free man of color, born in the United States, was a citizen. 65

In this case the Radicals refused to support the rights of Negroes as citizens at the same time that they were demanding that the Negro be allowed to gain his freedom within the lines of the United States troops. Except for Sumner, none of the Radicals seem, during 1861, to have thought beyond the basic question of freedom for the slave. None save him seem to have been concerned with what was to happen to the Negro after he gained his freedom.

64 Ibid., 37 Cong., 2 Sess., 5.

65 Sumner, Works, VI, 144; Opinions of Attorneys-General, X, 382. (November 29, 1862).
That the Negro was destined to gain his liberty as a result of the war was more and more evident as the year 1861 drew to an end. A good barometer of the abolitionist feeling was the refusal on the part of the House of Representatives to re-affirm the Crittenden Resolution, which had been passed the preceding July with only two negative votes. On this occasion the resolution was tabled on a motion by Thaddeus Stevens, by a vote of seventy-one to sixty-five. Twenty-six conservative Republicans voted with the Democrats against Stevens's motion, a fact which shows the growing split between conservatives and Radicals in the Republican party. This division was to grow in the year 1862, wedged wider apart by a series of laws and proposals which served to solidify the Radical position on the Negro, and open the way for not only his emancipation, but for the beginning of agitation for his civil rights.

For the present, however, the Radicals could only curse the more conservative members of their party. Referring to one of these men, Thaddeus Stevens wrote bitterly: "He has too much of the vile ingredient called conservatism, which is worse than secession." In the year to come conservatism was to become even more distasteful to the Radicals.

67 Quoted in Korngold, Stevens, 164.
CHAPTER V

"TAX, FIGHT AND EMANCIPATE"

What to do with the Negro? As the war advanced and more and more "contraband" filtered through the lines or were "liberated" by advancing Union forces, this question became more prominent. The circumstances surrounding the war itself and its origin made this problem the "most delicate" with which the Lincoln government had to deal in the early years of the conflict, and the attitude of the Radicals made the problem worse.¹

General John C. Fremont was a Radical. He had been the first Republican nominee for president, in 1856, and in 1861 he was commanding the Union forces in Missouri. He resented Lincoln and was encouraged by some of his Radical friends in the hope that eventually he might replace him, or at least emerge from the war a great hero. To this end, he actively intervened on August 30, 1861, by issuing a military proclamation establishing martial law in Missouri. One section of this order freed the slaves of all persons resisting the government and ordered the confiscation of all their property.²

Fremont's action came as a surprise, and immediately caused a great furor. Conservatives decried the scheme as tending to make the liberation of slaves "an avowed object of the war," and con-

²O. R., Series 1, 3:467-468; Williams, Lincoln and the Radicals, 39-40.

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demning the application of the "law of force, against the wishes and interests of the parties concerned." The Radicals, however, were sure that this action was "the only real noble and true thing done during this war," and felt that "the people are all with Fremont."  

Lincoln refused to be forced into acceptance of Fremont's abrupt tactics, and, much to the disgust of the Radicals, he suspended the general. "Cold chills began to run up and down people's backs," Senator Grimes wrote, describing the results of Fremont's suspension. "They bit their lips, said nothing, but refused to enlist." They felt that Lincoln had endangered his position by the action and accused him of "causelessly" tampering with a policy inspired by "sublime moral courage."

The administration remained adamant in its stand that despite this Radical attack, abolition should not be an avowed policy of the government. But this policy was to receive an even more severe test the following year. On May 9, 1862, General David Hunter, in command of the Department of the South, comprising South Carolina, Georgia and Florida, issued a proclamation which declared that all slaves in his department were "forever free," and further provided that they should be enrolled for military service.

Immediately the Radical leaders, headed by Secretary of War

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3National Intelligencer, September 23, 1861; Grimes to Fessenden, September 17, 1861; Salter, Grimes, 153.

4Grimes to Fessenden, September 19, 1861; Salter, Grimes, 153.

5O. R., Series 1, 14:341

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Stanton and Secretary of the Treasury Chase, hurried to Lincoln, and demanded that he endorse the policy. It was approved, Chase claimed, by "more than nine tenths of the Republicans." Lincoln, however, had no intention of backing Hunter, for he feared that such a move would cost him the support of the conservatives of both parties and alienate the border slave states. On May 19 he overruled Hunter, contending that he alone, as Commander in Chief, had the right of emancipation. He attempted to pacify the frustrated Radicals by hinting that at some future time he might decide that emancipation was necessary.\(^6\)

The Radicals were "indignant." They were convinced that the proclamation had been justifiable and practical, although perhaps a bit "premature" and they were certain that the majority of the people of the North would accept it "as the most natural thing in the world."\(^7\) Their reaction to Lincoln's position was intense. They felt that emancipation was a necessity. It "must come, protracted by the obstinacy and stupidity of rulers it may be, but come it will nevertheless," wrote Senator Grimes bitterly.\(^8\)

For months the Radicals had been campaigning vigorously for emancipation. The second session of the Thirty-seventh Congress had opened in December, and had been deluged with bills and speeches


\(^7\) Schurz to Lincoln, May 16, 1862; Schurz, Speeches, I, 206.

\(^8\) Grimes to Mrs. Grimes, May 24, 1862; Salter, Grimes, 196-97.
relating to the questions of confiscation and emancipation. The keynote of the Republican campaign had been sounded in the House of Representatives by George W. Julian of Indiana, who contended that the institution was in violation of the Declaration of Independence.

Julian appealed to Congress to free the slaves, not only to "weaken the enemy," but to "restore" to the Negroes their "natural rights." He did not elaborate on what these "rights" were to be. He bitterly attacked the Confiscation Act passed in the previous session as a "wretched legislative blunder," and scorned the "never-ending platitudes about our kind intentions" toward the Negro. Claiming that the act "bribes all the slaves of the South to murder our people," he asked the House this bitter question: "is not this a practical espousal of the rebellion by the administration?"

This statement, accusing Lincoln of near-treason, was occasioned by the introduction of a second Confiscation Act, designed to remedy the alleged faults of the first bill. This measure had been introduced into the Senate by Lyman Trumbull of Illinois, author of the first Confiscation Act. The act was designed, he assured the Senate, to deal with the Southerners "as their crimes deserve, prosecute the war with vigor," and bring it to a "successful issue."

A similar act was introduced by Senator Lot M. Morrill of Maine. This measure called for the confiscation of the "property of rebels,"

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10 Ibid., 1, 18, 19.
to "satisfy the just claims of loyal persons." Morrill's plan was too radical a proposal for all but the most extreme of the Republicans, and was watered down by Senator Sherman. He moved to amend the act to make it applicable only to "certain leading classes of rebels." Sherman assured the Senate that he was in favor of the basic proposal, in spite of his amendment, and was anxious to see enacted "the most rigid law of confiscation against the leaders of the Rebellion." Sherman was concerned, apparently, with the possibility that such a law might put the government in the position of superseding basic property rights. These fears were quieted by Senator Henry Wilson of Massachusetts. He admitted that the provisions of the bill emancipating the slaves was for him "the chief object of solicitude." "I do not expect that we shall realize any large amount of property," he continued. As far as other property was concerned, he assured the Senate, he would only take that belonging to "the leaders," "I would take the bondmen from every rebel on the continent," he added significantly.

This demand for ultimate confiscation of all the slaves of the rebellious states was echoed the next day by Senator Wade. "You cannot escape from this war, without the emancipation of your negroes," he warned. Trumbull agreed. "I would free the slaves of all who shall continue in arms after the passage of the act," he declared. Sumner, of course, approved. "I confess frankly that I

\[11\] Ibid., 49-50, 1491-96, 1604.

\[12\] Ibid., 1896.
look with more hope and confidence to liberation than to confiscation. To give freedom is nobler than to take property.  

The Senate, led by Sherman and Fessenden, finally agreed to a weakened version of the original bill, altered to eliminate the confiscation provisions for all but the "leading classes" of rebels. Many of the Radicals were dissatisfied. Zachariah Chandler summed up the extremist position - to him the bill was "utterly worthless," and he voted against it. Fessenden, however, saw it as a more just measure than the original proposal. He realized that he was going against the leaders of the Republican party in the Senate on this issue, but was convinced that the bill was "useless and impolitic" as originally proposed. "I expect to be very unpopular when I come home," he wrote, "for I have voted on the unpopular side of the confiscation bill... It was not to be helped; with my opinions I could not do otherwise."

Fessenden's stand served to illustrate the growing split in the Senate among the Republicans. He became more closely identified as one of the spokesmen for the "Conservative wing," together with Senator Collamer, and, generally, Senator Trumbull. The "Radical wing," on the other hand, led by Sumner, Wade, Chandler and other extremists, became increasingly antagonistic toward their fellow Republicans as a result of the dispute over the Confiscation Act.

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14 Harris, *Chandler*, 62.

15 Fessenden to Mrs. Fessenden, June 29, 1862; Fessenden, *Fessenden*, I, 275.

The Radicals were typified by Chandler, who contended that "a rebel has sacrificed all his rights. He has no right to life, liberty or the pursuit of happiness." These were men who could regard General Benjamin F. Butler as a "spotless hero," although few went as far as Chandler and his Michigan colleague, Jacob M. Howard, in voting against the Confiscation bill because of its laxness. When the measure was finally voted upon in the Senate, only Fessenden, Collamer, Chandler, Howard, and Browning of Illinois voted against it, out of all the non-slave state Republicans.

In the House of Representatives the Radicals were able to exert more control than in the Senate. There, under the guidance of Thaddeus Stevens, a stringent Confiscation Act was passed. Stevens was particularly disappointed in the Senate version of the bill because of the modification of the provision concerning the confiscation of property of all but the leaders of the Confederacy. He had felt such a law necessary to "insure the speedy termination of the present rebellion," and to end forever the power of the landed Southern aristocrats. It was not his intention, he added, that the provision should be used to injure the "common people" of the South.

Typical of the Radical attitude in the House was Julian. In January, 1862, he had declared himself not only for confiscation of slaves of rebels, but also those of loyal slaveholders, allowing to the latter "on due proof of loyalty," the "fairly assessed value of his slaves." This was not to be as "compensation," for "no man

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17 Congressional Globe, 37 Cong., 3 Sess., 133; Harris, Chandler, 59, 72.
18 Korngold, Stevens, 176.
should receive pay for robbing another of his earnings..." Instead, it was to be a "means of facilitating a settlement of our troubles, and securing a lasting peace."\(^1^9\)

Julian's stand was not universally popular in the North, as many people felt that he was going too far. Even in his home state, he recalled, he had to fight the "intense hostility" of Governor O. P. Morton, "nearly all the politicians" in his home district, and "ten of its twelve Republican newspapers..."\(^2^0\)

In spite of this opposition Julian was adamant in his stand. The opposition to the measure, he contended, came "from men who believe in the divinity of slavery." He was seconded by Representative Sedgewick of New York. "I am for destroying this hostile institution in every State that has made war upon this government," he declared, "and if we have military strength enough to reduce them to possession, I propose to leave not one slave in the wake of our advancing armies; not one."\(^2^1\)

The act as finally approved by the House provided that slaves of rebels coming into the Union lines should be made free, and that the property of their owners, both real and personal, should be confiscated. The Senate accepted the more stringent House version of July 12, with Chandler and Howard leading the support for the harsher measure. Lincoln, however, refused to sign the bill. He particularly

\(^1^9\)Congressional Globe, 37 Cong., 2 Sess., 331.
\(^2^0\)Julian, Recollections, 215-16.
\(^2^1\)Congressional Globe, 37 Cong., 2 Sess., 2327; Appendix, 135.
objected to the provisions resulting in the "divesting of title forever" to the property confiscated. The Constitution, he pointed out, prohibited forfeiture "except during the life of the person attainted." He also urged that personal property be exempt from the workings of the law. When these changes were made, he accepted the bill.

The Radicals were highly pleased. Not only were slaves of rebels freed when they entered the Union lines, a specific provision forbade the military authorities from refusing them admittance or returning them to their masters. Of particular satisfaction to the Radicals was section eleven of the act. This clause allowed the president "to employ as many persons of African descent as he may deem necessary and proper for the suppression of this rebellion, and for this purpose he may organize and use them in such manner as he may judge best for the public welfare." It further allowed the President to colonize Negroes with their own consent and the consent of the foreign government receiving them.

The Confiscation Act was a great victory for Radicalism. It repudiated the Crittenden Resolution's definition of the purpose of the war, and forced Lincoln further toward an alliance with the Radicals. His approval of the measure had lost him the support of many

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23 Congressional Globe, 37 Cong., 2 Sess., Appendix, l12-13; Williams, Lincoln and the Radicals, 166-67; Julian, Recollections, 219-20; White, Trumbull, 176.
conservative Republicans, War Democrats, and border state men. Perhaps this change in his thought was prompted by the generally favorable response to the act in the North. Even the conservative Thurlow Weed of the New York Journal approved of the bill, an action which probably had some impression on Lincoln, who was always conscious of popular opinion.24

With the growing acceptance of the idea of abolition, the Radicals worked frantically to gain its benefits for as many people as possible. In March, 1862, a resolution was introduced into the House which would prohibit slavery in the territories. This measure was reported from the Committee on Territories by Owen Lovejoy, who championed its course through the House.25 In the Senate on May 26, Sumner introduced a resolution appealing to the slaves of the South to "make their loyalty manifest by ceasing to fight or labor for the Rebels," and inviting them to enter the Union lines. He called upon Congress to enact further laws which would guarantee to them "their rights as men, according to the principles of the Declaration of Independence."26 Again a Radical used the Declaration as argument for freedom, but, like Julian earlier, spoke only in generalities, not specifying any rights or privileges to be accorded to the freedmen.

A more tangible step was taken by the Radicals toward human

24 Van Deusen, Weed, 299; Williams, Lincoln and the Radicals, 170.


26 Ibid., 2342.
freedom on December 1, 1861, at the opening of the second session of the Thirty-seventh Congress. Senator Henry Wilson introduced a resolution calling on the Committee on the District of Columbia to consider the expediency of abolishing slavery in the District, with compensation to loyal slaveholders. Supporting this bill, among others, were Grimes, Morrill of Maine, and Wade, all opponents of slavery and Radical extremists.27

A similar measure was introduced into the House. There, in February, Maine Republican Frederick A. Pike gave the Radicals a slogan for use throughout the session. "Our duty to-day," he proclaimed, "is to tax and fight... [T]o them in good time shall be added a third. ... Come he will, and his name shall be Emancipation. And these three - Tax, Fight, and Emancipate - shall be the Trinity of our salvation. In this sign we shall conquer."28

Other Radicals took up the fight for the bill. John T. Nixon of New Jersey declared that the people of the North would "arm every slave against his rebel master" rather than accept defeat. The Union, he declared, "will drive the whole white population beyond the borders; and hold the once proud states ... as Territories for the home of the enfranchised negro."29 This was perhaps the most Radical pronouncement made up to this time in Congress. Not only was Nixon going to free the slaves, he was going to give them the ballot! Significantly

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27Ibid., 12.
28Ibid., 658.
29Ibid., 1629-31.
he was also going to keep them completely segregated in the "once proud" slave states.

The more common argument in the House was that of Radical Chioan Albert G. Riddle, who saw the bill as the first step toward complete emancipation. He prophesied that the war would continue "without compromise or cessation" until complete emancipation was finally achieved.\textsuperscript{30}

On April 11 the bill was passed by the House, by a vote of ninety-two to thirty-eight. By its provisions some three thousand slaves in the District of Columbia were freed, and slavery made illegal in the Capitol. Also, the black codes and ordinances concerning Negroes in the District were repealed.\textsuperscript{31}

In the Senate, the extremists were opposed to the provisions of the original bill which provided compensation for loyal slave-owners. On March 19, Senator Pomeroy informed the Senate that he proposed to offer an amendment which would strike out all of the bill except the first and eighth sections, which gave the slaves their freedom and prevented them from being kidnapped and sold back into slavery.\textsuperscript{32}

Democrats in the Senate were bitter about the bill. Garrett Davis of Kentucky attacked the Radical obsession with the Negro, and their continual efforts to enact their ideas into law:\textsuperscript{33}

\textsuperscript{30}Ibid., 1640-42.

\textsuperscript{31}Wilson, Antislavery Measures, 77.

\textsuperscript{32}Congressional Globe, 37 Cong., 2 Sess., 1285.

\textsuperscript{33}Ibid., 1339.
You have originated in the North-east, Mormonism and free love, and that sort of ethereal Christianity that is preached by Parker and by Emerson and by others, and all sorts of mischievous isms; but what right have you to force your isms upon us? What right have you to force your opinions upon slavery or upon any other subject on an unwilling people? What right have you to force them on the people of this District? Is it from your love for the slaves, your devotion to benevolence and humanity, your belief in the equality of the slaves with yourselves? Why do you not go out into this city, and hunt up the blackest, greasiest, fattest old negro wench you can find, and lead her to the altar of Hymen? You do not believe in any such equality; nor do I. Yet your emissaries proclaim here that the slaves, when you liberate them, shall be citizens, shall be eligible to office in this city. A few days ago, I saw several negroes thronging the open door, listening to the debate on this subject; and I suppose, in a few months, they will be crowding white ladies out of these galleries.

Even some Republicans were unhappy with the proposal. Senator Waitman T. Willey of Virginia wanted to hold an election, and allow all "free white men" of the District to vote on the question of emancipation. He was bitterly attacked by Pomeroy. "If you are going to leave this question to the people to vote upon it," he insisted, "the senator from Virginia should amend his amendment by striking out at least two words, "free white."" Pomeroy demanded that, if an election was to be held, both Negroes and whites be allowed to vote, for "it is as much for the interest of the colored man as the white man." 34

The bill gained general support from many of the more conservative Republicans. Most agreed with Senator Sherman. "I had from the beginning declared my opposition to any interference with slavery

34Ibid., 1478.
in the District," he said, "but the changed condition of the
country demanded a change of public policy in this respect." With
the support of most of the Republicans, the bill passed the Senate
on April 3, by a vote of twenty-nine to fourteen.35

The credit belonged to Sumner. "To you, more than to any other
American Statesman," the Negro abolitionist leader Frederick Doublass
wrote, "belongs the honor of this great triumph of Justice, Liberty
and Sound Policy."36 Sumner was not content to rest on these laurels,
however, and was actively engaged in gaining further rights for the
recently emancipated District Negroes.

The original emancipation bill had provided that any claimant
may be summoned before a board of commissioners, who would determine
his claim to any slave; and the slave himself might also be examined,
and could testify before the board. Sumner amended the measure to
empower the commissioners to take testimony "without the exclusion
of witnesses on account of color."37 This amendment was accepted
by the Senate, and became the first recognized statement of Negro
rights in the federal court system.

A supplementary emancipation bill was introduced shortly there­
after to include certain persons not covered by the original measure,
and Sumner moved an amendment which provided: "That, in all the
judicial proceedings in the District of Columbia, there shall be

35Sherman, Recollections, 310.

36Phillip S. Foner, The Life and Writings of Frederick Douglass

37Congressional Globe, 37 Cong., 2 Sess., 89-90, 1518.
no exclusion of any witness on account of color." This too passed by a large margin.

The "changed condition of the country" which Sherman had noted had not escaped the President of the United States. In a special message to Congress, March 6, 1862, Lincoln urged that a joint resolution be adopted which would grant to any state "pecuniary aid" in bringing about gradual abolition of slavery. This request was received with mixed feelings; the Radicals opposing the idea of compensation, the conservatives against the thought of emancipation of the border state Negroes.

Typical of the conservative view was that of Charles Francis Adams, Jr., who felt that it would be a "terrible calamity to the blacks as a race." Adams opposed any rapid emancipation, feeling rather that any scheme for freedom should be "one proportioned in length to the length of their captivity." Adams wrote from Port Royal Island, S. C., where he was on duty with the Federal occupation forces, and was in constant contact there with numerous "contrabands."

The Radical side was represented by men with much less opportunity to investigate first-hand the people whom they proposed to liberate.

Owen Lovejoy was one of these, a professional abolitionist. "I

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38 Ibid., 3136. Garrett Davis of Kentucky bitterly attacked Sumner's position on this bill. He decried "sticking the perpetual, the all-pervading, the everywhere-to-be-found, the ever-in-the-way negro to this bill." Davis wished that Sumner would bring up his Negro rights ideas in separate bills, "and not make everything odoriferous of his friend." Ibid., 3101.

39 Richardson, Messages and Papers, VIII, 3269.

40 Adams to Henry Adams, April 6, 1862; Ford, Adams Letters, I, 131.
am for the Union entire," he declared in April, "but I am not for the return of the domination and tyranny of slavery.... I insist that slavery must perish.\textsuperscript{11} Carl Schurz agreed. In a letter to Lincoln on May 16, he urged not only "liberation of those slaves who offer us aid and assistance," but the even more extreme measure of "arming the negroes." Both of these plans "must and will inevitably be done," he assured the President.\textsuperscript{12}

Lincoln was not to be pressured. He refused to commit himself on the general issue of abolition in the rebellious states. The dual problems of the continuing loyalty of the border slave states and the congressional elections scheduled for November made him hesitant. The lack of success of the Union armies in the East further handicapped him. An indication of his thoughts comes from an interview with George S. Boutwell of Massachusetts. Following the adjournment of Congress in July, Boutwell spoke with Lincoln in an attempt to discover where he stood on the question of general emancipation. Boutwell suggested that the Union could not hope to win until the slaves were freed. "You would not have it done now; would you?" Lincoln asked. "Had we not better wait for something like victory?"\textsuperscript{13}

The Radicals desperately needed abolition. They were determined that the slave states were not to be allowed to return to the Union

\textsuperscript{11}Congressional Globe, 37 Cong., 2 Sess., 1316.
\textsuperscript{12}Schurz, Speeches, I, 207.
\textsuperscript{13}Blaine, Twenty Years of Congress, I, 439.
with the institution intact and the political position of the slave-
owning class still secure. They feared for the continued dominance
of the Republican party if such an eventuality occurred. Too, they
wanted Congress to be the agency from which emancipation emanated,
in order to establish a precedent for legislative supremacy which
would include the entire prosecution of the war. 14 Emancipation,
in effect, was going to be the sole means whereby the Southerners
would be allowed to re-enter the Union. Henry Wilson's view was
typical: 15

When slavery is stricken down, they will come back
again, and offer their hands, red though they be with
the blood of our brethren; and we shall forgive the past,
take them to our bosoms, and be again one people. But,
Senators, keep slavery; let it stand; shrink from duty;
let men whose hands are stained with the blood of our
countrymen, whose hearts are disloyal to our country,
hold fast to the chains that bind three millions of men
in bondage, — and we shall have an enemy to hate us,
ready to seize on all fit opportunities to smite down
all that we love, and again to raise their disloyal
hands against the perpetuity of the Republic.

A similar view was that of Charles Sumner, who, in his typical
style, refused to commit himself as to exactly what he meant, but
spoke nonetheless appealingly. The "watchword" for the country, he
said, should be "indemnity for the past, and security for the future."
This, he contended, "should be our comprehensive aim; nor more, nor
less." His meaning was explained more fully by Ohio Congressman
James M. Ashley. Speaking before the House, Ashley called for the
destruction of "the institution of slavery." "Justice, no less than

14 Williams, Lincoln and the Radicals, 10-11, 163.

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our own self-preservation as a nation," he continued, "requires that we should confiscate and emancipate, and thus secure indemnity for the past and security for the future."46

There was still considerable disagreement as to the efficacy of a general emancipation policy. General McClellan felt that it would "rapidly disintegrate our present armies." Young Charles Francis Adams, Jr., felt that the "course of Sumner, Wade, Stanton, etc., have ruined us ... in the war, by making success subservient to their preconceived plans of negro good..."47

By the end of the summer of 1862 the opposition to general emancipation was rapidly fading. "You can form no conception at the change of opinion here as to the Negro Question," Senator Sherman wrote to his brother the general. "Men of all parties ... agree that we must seek the aid and make it the interests of the negroes to help us." The only thing that prevented immediate emancipation, he felt, was "our party divisions and our natural prejudice of caste," which has "kept us from using them as allies."48

The general sounded a note of caution in return. "Congress may command 'slaves shall be free,'" he wrote, "but to make them free and see that they are not converted into thieves, idlers or worse is a

46 Ibid., Appendix, 227; Wilson, Antislavery Measures, 136.
48 J. Sherman to W. T. Sherman, August 24, 1862; Thorndyke, Sherman Letters, 156-57.

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difficult problem.... Where are they to get work? Who is to feed them, clothe them, and house them?" Charles Francis Adams, Jr., also questioned the policy. "Will they be educated and encouraged and cared for?" he asked, "or will they be challenged to compete in the race, or go to the wall, and finally be swept away as a useless rubbish?" From his observations of South Carolina Negroes, Adams concluded that "no spirit exists among the contrabands ... which would enable them to care for themselves in a race of vigorous competition. The Blacks must be cared for or they will perish, and who is to care for them when they cease to be of value?"

Lincoln appreciated the diversity of feeling toward the Negro, but he had finally made up his mind. "You must not expect me to give up this government without playing my last card," he wrote to a Louisiana loyalist who criticized any emancipation policy. Finally, on September 22, 1862, he issued the preliminary Emancipation Proclamation. As to what his exact motives were is still in doubt. It is possible that the proclamation was issued not because of its desirability from the military point of view, but because Lincoln feared what Congress might do when it met again in December.

The Radical reaction to Lincoln's move was generally favorable. Thaddeus Stevens, in an open letter to his constituents in Pennsylvania, praised the President. "Lincoln's proclamation," he wrote,

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50 Blaine, Twenty Years of Congress, I, 439.

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"contained precisely the principles which I had advocated." Charles Sumner was equally enthusiastic. In a letter to a public meeting in Philadelphia he contended that the proclamation "had done more than any military success to save the country." "It has already saved the national character," he continued. "We must press forward," he warned, "in the work of justice to the colored race, until abuse and outrage have ceased, and all are equal before the law." ⁵¹

Some Radicals had reservations, however. Representative Roscoe Conkling, speaking before the New York Republican convention at Rome, on September 26, warned that the proclamation offered "strong inducement of every Southern district which can get up even the form of a Congressional election to do so, and there is no knowing the number of half loyal localities from which seats will be claimed." ⁵²

But while Conkling worried about the possible political repercussions of the proclamation, Sumner was more concerned with its implications for the Negro. His views on what was needed to supplement emancipation were outlined in a letter to the English reformer, John Bright. "Can emancipation be carried out without using the lands of the slave-masters?" he wondered. "We must see that the freedmen are established on the soil, and that they may become proprietors." In addition, all persons must be made "equal before the law." "In other words, he concluded, "there shall be no discrimination on

⁵¹Fawn M. Brodie, Thaddeus Stevens, Scourge of the South (New York, 1959), 159; Sumner Works, IX, 192.

account of color. If all whites vote, then must all blacks; but
there shall be no limitation of suffrage for one more than the other."

During the time that the demand for emancipation in the South
was increasing, the extremists were moving to put Sumner's ideas
into practice in the District of Columbia, where emancipation had
already been accomplished. On April 29, 1862, Senator Grimes had
introduced a bill providing for the education of "colored children"
in the city of Washington. It was amended by Henry Wilson to include
a guarantee of many basic Civil rights for the freedmen. Wilson's
amendment provided:54

That all persons of color in the District of Columbia,
or in the corporate limits of the cities of Washington and
Georgetown, shall be subject and amenable to the same laws
and ordinances to which free white persons are or may be
subject or amenable; that they shall be tried for any
offences against the laws in the same manner as free white
persons are or may be tried for the same offenses; and
that, upon being legally convicted of any crime or offence
against any law or ordinance, such persons of color shall
be liable to the same penalty or punishment, and no other,
as would be imposed or inflicted upon free white persons
for the same crime or offence; and all acts, or parts of
acts, inconsistent with the provisions of this act, are
hereby repealed.

The bill for Negro schools passed overwhelmingly. This measure
illustrates the Radical desire to make the Negro legally equal to the
white, primarily through the abolition of the black codes which had
formerly governed his legal relations. He was not yet to be politi-
cally equal, however and socially he was still to be completely seg-
regated in special schools and deprived of such rights as that of

53Pierce, Sumner, IV, 229, contains the text of the letter.
riding on streetcars, and lodging in hotels.

By early summer it was evident that the issue raised by the Negro was going to play a predominant role in the November elections. The Democrats lost no time in organizing a campaign based upon the threats of Radicalism to the nation's security, and the dangers of freeing "hordes of uncivilized and ignorant Africans." Sumner was particularly singled out for condemnation. As early as June one Democratic speaker in New York recommended that "the next man who walked up the scaffold after Jefferson Davis should be Charles Sumner."

The New York Herald was particularly bitter. Speaking of the Radicals, the Herald contended they had "by the foulest means ... succeeded in clogging the wheels of our progress in the war.... More than any other men they are responsible for the useless sacrifice of blood and treasure...." The Radicals were concerned about the fate of New York, where conservative sentiment was strong. The Maine elections, in September, heightened their fears. The Republican gubernatorial candidate had managed to win by only the most meagre majority, and for the first time in ten years a Democratic Congressman had been elected.

Moving quickly, the Radicals hastened to disentangle themselves from the stigma of the Negro. Typical was Conkling. Speaking before the State Republican convention, a few days after the Maine election,

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56 New York Herald, July 16, 1862.
he disavowed Radicalism. "During my service in Congress," he pro-
claimed, "I never, by word or by act, have introduced the subject of
the negro or of slavery, never save once, and that was when I offered
a resolution, which the President drew with his own hand and recom-
manded Congress to adopt."57

In other states, too, the Radicals were having troubles. In
Indiana the Union party, composed of Republicans and War Democrats,
voted in its state convention to condemn "the suicidal and visionary
scheme of crazy enthusiasts to inaugurate forcible emancipation with
its untold horrors." The Democrats of the state saw Sumner as the
"craziest of all the crazy pack of abolitionists," and referred to
the "fanatical and insane ravings of Thaddeus Stevens." "He who
loves abolition," they contended, "hates the Constitution and the
Union."58

The extent of anti-Negro feeling among a significant portion
of the Northern population may be determined by the platforms adopted
by the Democratic state conventions in Northern states. In Indiana
the platform warned against the competition afforded by Negroes to
the "honest laboring white man." In Illinois the Democratic platform
contended that "the Government of the United States was made for
white men," and that negroes could not be admitted on terms of

57 Conkling, Conkling, 183. (Italics in original). Not all
the blame for the Maine losses was because of the Negro issue. Some
losses are normal for a party in power in an off-year election. The
Maine canvass shocked the Radicals, however.

58 J. A. Woodburn, "Party Politics in Indiana during the Civil
War." American Historical Association Annual Report for the Year
1902, 1, 230, 236.
equality in civil rights. Pennsylvania Democrats decried emancipation as a scheme to "turn loose the slaves" to "overrun the North and to enter into competition with the white laboring masses." Ohio Democrats made a similar appeal.59

A contemporary periodical characterized the campaign as based on the "everlasting negro." The Radicals were acting, it contended, "as if slavery were the only form of oppression on earth," and it derided those who saw in emancipation a "millennium."60 Even among some Massachusetts Republicans, Summer was being questioned. "I sincerely hope Sumner will be defeated in the fall election," Charles Francis Adams, Jr., wrote. Many in the army seemed to agree with him. "[I]t makes me sick to hear New England men talk on the subject of the negroes here...," he continued, deploring their "prejudice and narrow bigotry." "There is no abolitionism ... in the army here," he concluded. "The ultras in their eagerness have spoilt all."61

The results of the election of 1862 were discouraging for the Radicals. In Ohio, the Democrats carried fourteen of the nineteen Congressional districts. In Indiana, the Republicans won only three of the eleven seats. In Pennsylvania, the Democrats elected one-half

59 Quoted in Blaine, Twenty Years of Congress, I, 436-37.
60 "The Character of the Rebellion and the Conduct of the War." North American Review, XCV (October, 1862), 530.
61 Adams to Henry Adams, July 28, 1862; Ford, Adams Letters, I, 172. While Adams was an officer, and divorced from the opinions of civilians back home, he nonetheless reflected rather competently the views of his Massachusetts regiment. He was, however, perhaps somewhat prejudiced by his own conservatism.
the members of the House, as they did in Wisconsin. In Michigan, thanks to the "superhuman" efforts of Zachariah Chandler, the Republicans were able to gain a six thousand vote majority, although their 1860 majority was twenty thousand votes. 62

There were a few bright spots, however. In Massachusetts and New Hampshire the Radicals were sustained. In Iowa, Kansas and Minnesota the Republicans swept the Congressional delegations, and on the Pacific Coast, where the Negro was not a problem, California and Oregon sustained the Republican position. There were many casualties, nonetheless. Roscoe Conkling was defeated in New York, despite his efforts to divorce himself from the Negro question. John A. Bingham and Samuel Shellabarger, both extreme Radicals, were beaten in Ohio, and House Speaker Galusha A. Grow lost his bid for re-election in Pennsylvania. 63

While on the whole the prospects for the Thirty-eighth Congress were none too bright for the Radicals, some of the newly-elected Congressmen showed promise. In the House the new members would include James G. Blaine of Maine, Oakes Ames and George S. Boutwell of Massachusetts, and General James A. Garfield of Ohio. In the Senate there would be the violently Radical D. Gratz Brown of Missouri, as well as others who could be relied upon to vote as

62 Blaine, Twenty Years of Congress, I, 418-419. As an active Radical, Blaine's comments on this election are particularly interesting.

63 Ibid.
ordered by the Radical leadership. 64

Despite the setback incurred in the election, the Radicals proceeded on their work of emancipation. One of the first items to be considered by the "lame duck" session of the Thirty-seventh Congress was Lincoln's plan of compensated emancipation. A joint resolution, proposed by Lincoln, had been introduced into the House by Conkling in March of 1862, where it had been approved by a vote of eighty-nine to thirty-one. On March 20 it was reported in the Senate by Trumbull, who urged that it be passed, but it had been tabled. On January 14, 1863, Trumbull moved that the bill be considered. 65

According to the provisions of the measure, applicable to the state of Missouri, slavery was to be gradually abolished by 1876. Pomeroy violently attacked this provision. "You cannot keep slavery in Missouri thirteen years without a standing army," he contended. On February 12, 1863, Sumner moved to amend the bill so as to allow for immediate emancipation in Missouri by striking out "1876" and inserting "1864." This move was defeated by a vote of eleven to twenty-seven. Included in the vote for the amendment were Senators Carlile, Collamer, Cowen, Fessenden, Grimes, Harlan, Lane of Kansas, Pomeroy, Sumner, Wade and Wilson of Massachusetts. Republicans opposed included Chandler, Howard, Morrill, Sherman, Trumbull and


65 Congressional Globe, 37 Cong., 2 Sess., 1149, 1298; 37 Cong., 3 Sess. 303; Wilson, Antislavery Measures, 233.
The bill allowing for gradual, compensated emancipation was then approved by a vote of twenty-three to eighteen. The negative votes were all Democratic, with the exception of Fessenden and Grimes. Despite the approval of the Senate, many people were dissatisfied with the plan, and opposed its cost. Typical is the story told by Senator Jacob Collamer of Vermont. During the fall recess he had spoken to a meeting in Vermont, describing the bill, and stated that it would involve the payment of about $300 apiece for about four million slaves. During the meeting an old man spoke on the responsible part played by the North in establishing slavery, and claimed that the North ought to help pay the bill for emancipation. A few days later, however, he had changed his mind. "Senator," he exclaimed, "me and wife and the boys figure that our share would be just about all we've got; so I guess you might as well let that damned Negro question alone."  

Most members of the House of Representatives were also willing to let the question alone. When the Senate measure came up for consideration, under suspension of the rules, it failed to receive the necessary two-thirds vote for such consideration, and thus was killed.  

Summer's extreme Radicalism, manifested by his proposed amend-
ment to the Missouri bill, received another setback during the Senate's consideration of the admission of West Virginia. The proposed state constitution allowed slavery, but was amended to emancipate all children born after July 4, 1863. Sumner proposed an additional amendment stating that "within the limits of the said state there shall be neither slavery nor involuntary servitude otherwise than in the punishment of crime whereof the party shall have been duly convicted." Many Radicals opposed this plan, including Collamer and Foot of Vermont, and Wade of Ohio. The proposed amendment was defeated by a vote of eleven to twenty-four, of which seventeen were Republicans. 69

The subject of the Negro came up again in the last days of the Thirty-seventh Congress when Senator Wilson introduced a bill to incorporate an "institution for the education of colored youth," in the District of Columbia. During the debate on the measure Senator Lot N. Morrill pointed with pride to the educational system of Maine, in which "the negro ... stands on an equal footing with every other child." "The law knows no complexion in its duty of public education," he continued, "and the system of public education throughout New England knows no distinction whatever." 70 The Radicals were not willing to make such practices law in the District, however, and the schools there were continued on a strictly segregated basis.

The growing concern with Negro freedom and Negro rights on the

69 Blaine, Twenty Years of Congress, I, 161-62.
70 Congressional Globe, 37 Cong., 3 Sess., 1018, 1326.
part of the Radicals brought a stinging rebuke from a Democratic senator with a sense of humor and a feeling for biting satire. Speaking in the Senate, Garrett Davis of Kentucky made a dire prediction as to the possible fate that would befall the Radicals if they continued on their present course. He told the following story to illustrate his point:71.

I recollect a fact in relation to the Island of St. Lucia, one of the West Indian Islands. When it became one of the British possessions, a great many Irish who spoke the Gaelic language migrated from the Island of Erin to St. Lucia. In the course of a few years, they possessed themselves of African slaves, slaves from the continent; and, in adhering to their Gaelic language, the Africans whom they introduced, and the young ones that were raised, of course learned to speak the Gaelic too. After a while, some of their kinsfolk, who had been left behind in the mother country, visited the Island of St. Lucia, and they discovered all the negroes there talking the real Gaelic, the genuine Irish; and they wrote back to their countrymen, for God's sake no more come to St. Lucia, because all the Irish turned to be negroes there.

"I really think, sir," he concluded, "that, if the subject of negroes is handled much longer in the Senate, there is very great danger of some senators meeting such a fate..."

Undaunted by Davis's facetious threat, the Radicals were determined to keep on with their struggle for the Negro, and the Negro was soon to begin to play a part in the conflict that was to make his cause much more acceptable to all but the most violent Negrophobes.

71Ibid., 1326.
CHAPTER VI

SOLDIER OR COLONIST

From almost the very beginning of the war, there had been some agitation for the use of Negroes as soldiers. On May 8, 1861, the Boston Traveller advocated the enlistment of several Negro regiments for use around New Orleans and the lower Mississippi valley. Since this was yellow fever country, the Traveller was especially anxious that the Negroes be utilized there during the summer months, as it would be a "great sacrifice of life to occupy these positions with white men."¹

It was not until the following year that the idea of Negro soldiers began to take hold of the Radical imagination. In April James W. Grimes urged that Negroes be used to garrison the captured areas along the Georgia and Carolina coasts, and that fleeing slaves be used as soldiers rather than returned to their rebel masters. Senator Grimes applauded an order by Secretary of the Navy Gideon Welles which directed that "contrabands" be enlisted in the navy. Precisely he saw this act as being "of vastly more importance in putting an end to slavery than all the confiscation acts that could be devised by the ingenuity of man."²

Thaddeus Stevens campaigned for Congress in the fall of 1862


²Grimes to Mrs. Grimes, May 4, 1862; Salter, Grimes, 190, 196.
on the promise "that every man be armed, black and white, who can aid in crushing the rebellion..." Stevens also saw in the arming of the Negroes a deterrent to the continuation of the institution of slavery. He was not entirely altruistic in this view, and demonstrated singularly strong feelings about the question. "If men are to be shot in this war," he said, "let it not be our cousins, relatives and friends. Let it be the slaves of the traitors who have caused the war."^1

Many people in the North disagreed with the Radicals on this issue. Charles Francis Adams, Jr., the conservative Republican, opposed General Hunter's experimental regiment, established in 1862 among the contrabands of South Carolina. "It will be years before they can be made to stand before their old masters," he prophesied. Later he wrote about the dissolving of the unit. "Its breaking up was hailed here with great joy, for our troops have become more anti-negro than I could have imagined."^5

Attempts on the part of Northern Negroes to organize themselves into independent companies for the purpose of learning the drill and manual of arms were looked upon unfavorably in many areas. In Providence, Rhode Island, the police broke up drilling sessions, contending that they were "disorderly gatherings." New York's chief of police forced Negro companies to discontinue drilling, claiming that if they

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^3Korngold, Stevens, 193,104.

^4Woodburn, Stevens, 185.

did not he could no longer protect them from the "public wrath." Cleveland Negroes were told that the Chio constitution forbade their enlistment in the military service.6

Gradually opinion in the North, due in part to the military reverses of 1861 and 1862, began to change. Even the strong Negro-phobes began to see logic in arguments such as that of the Chicago Tribune, which asked: "Why not let 'nigger' fight 'nigger'?" and of Governor Samuel J. Kirkwood of Iowa who demanded to see, before the end of the war, "some dead niggers as well as dead white men."

Soldiers in the army complained that they were being forced to do heavy labor, while Negroes were being "kept out of our lines," and demanded the use of Negroes to relieve the "overworked and overtasked" white soldiers. Constituents at home urged their representatives in Congress to support the use of Negroes. Direct and to the point was one letter received by Senator Chandler: "I hope that Mr. Lincoln will in list every man south black or white that wants to in list & give them a bounty & nock this infernal Rebellion to H. where it belongs."7

The arguments for Negro troops were expounded vigorously by Senator James S. Lane of Kansas, who was busy in the summer of 1862

6Benjamin Quarles. The Negro in the Civil War (Boston, 1953), 29.

recruiting contrabands from Missouri for an irregular force. Negroes might "just as well become food for powder as my son," he argued. "The negroes are mistaken if they think white men can fight for them while they stay home. We have been saying that you would fight, and if you don't, we will make you."⁸

Lane's recruiting campaign was a result of legislation passed by the Thirty-seventh Congress earlier in the year. In April, Senator Grimes had amended a bill aimed at "slave-catching" by the army to include an investigation into what "reorganization of the army, in its personnel or otherwise," might be necessary to speed the end of the war. On July 8 Senator Wilson reported, from the military affairs committee, a bill dealing with the raising of additional troops, which was amended by Grimes on July 9 to include three sections which provided for calling Negroes into the military services, and stipulated that they be organized into companies according to their "race or color."⁹

Republican Senator King of New York then amended it to allow for the freedom of the family of any Negro slave enlisting under the provisions of the act. By his proposal the soldier himself, his mother and his wife and children would be thereafter free. Conservative Republicans balked at the inclusiveness of this amendment. Senator Sherman suggested that by "inadvertance" a clause had been left out which would make the abolition provision applicable only to those slaveholders who actively had "waged war against the United States"

⁸Cornish, Sable Arm, 71, 73.
⁹Congressional Globe, 37 Cong., 2 Sess., 1650, 3178, 3198.
or "aided and assisted" the rebellion. Senator Sherman's arguments were made into the form of an amendment, which was passed by a vote of twenty-one to fourteen, with Fessenden, Ira Harris of New York, and Sherman included in the affirmative. The fourteen opponents were all Radicals.\textsuperscript{10}

The House of Representatives had passed a similar bill, under the leadership of Stevens, but it had not included the emancipatory provision. In the conference committee, of which Wilson and Grimes were both members, this provision was upheld. The Senate version was then accepted by the House.\textsuperscript{11} This was not done without a fight, however, and Stevens was called upon to explain in detail what the Negro's position as a soldier would be. According to him it was to be definitely one of inferiority. In response to opposition charges that the bill would allow Negroes to command white men, Stevens was explicit. "I do not expect to live to see the day when, in this Christian land, merit shall counterbalance the crime of color," he declared. "True, we propose to give them an equal chance to meet death on the battlefield. But even then their great achievements, if equal to those of Dessalines, would give them no hope of honor. The only place where they can find equality is in the grave. There all God's children are equal."\textsuperscript{12} This statement was not a reflection of Stevens's personal desires, but his realistic acceptance of prevailing public

\textsuperscript{10}\textit{Ibid.}, 3196, 3337, 3351. \\
\textsuperscript{11}\textit{Wilson, Antislavery Measures}, 222-23. \\
\textsuperscript{12}\textit{Congressional Globe}, 37 Cong., 3 Sess., \textit{Appendix}, 79-80.
opinion. If given his way, Stevens would have granted to the Negro complete equality in all ranks of the military service, just as he supported complete integration in all other phases of life.

Sumner was quite enthusiastic about the prospect of Negro soldiers. On Christmas Day, 1862, he wrote to his Negro friend J. B. Smith the encouraging news that Lincoln favored "employing colored troops to occupy the posts on the Mississippi River, South Carolina and the Southern places." Even the New York Times, generally less than enthusiastic about Radical proposals, was encouraged. Early in January, 1863, the Times was praising the ability of Negroes to withstand the Southern climate, and to utilize their "intimate knowledge of the South" to benefit the Union cause. They would fight, the Times contended, "for less pay and fewer comforts" than whites. The "last and crowning reason" seen for their employment was that "there has as yet been no race discovered, however effeminate or weak or pusillanimous or digraded, that will not make at least tolerably good soldiers under officers whom they fear or respect."  

Even Boston, the hotbed of abolitionism, had some lingering doubts of the efficacy of arming the Negro. In May, 1863, when the first Massachusetts Negro regiment, (the 54th), embarked for the South the police chief called out one hundred extra police "to clear the streets and keep order," and additional reserves of police were

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13 This letter is in Pierce, Sumner, IV, 113.

held in readiness in case of riots or disorders.  

The army, too, had its doubts. One opinion was that of an enlisted man from Indiana, Theodore F. Upson, who wrote in March, 1863: "... none of our soldiers seem to like the idea of arming the Negroes." He felt that it was a "white man's war, and the Negro has no business in it..." The plan was approved by him, however, because "if Old Abe thinks it the best thing to do, all right; we will stand by him." 

By the following year the public attitude was beginning to change. Negro troops had proven themselves able fighters, and the early fears as to their lack of ability as combat troops were being quieted. The New York Times summarized these changing views: "Eight months ago the African race in this city were literally hunted down like wild beasts... How astonishingly has all this been changed.... It is only by such occasions that we can at all realize the prodigious revolution which the public mind everywhere is experiencing. Such developments are infallible tokens of a new epoch." One of John Sherman's constituents expressed the idea more succinctly. Praising the Conscription Act, which provided for Negro enlistments, he added: "They don't smell half so bad since the Bill passed." 

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15 Quarles, Negro in the Civil War, 10. 
16 Oscar O. Winther, ed., With Sherman to the Sea, the Civil War Diaries and Reminiscences of Theodore F. Upson (Bloomington, Ind., 1958), 35-56. 
17 The military career of the Negro soldier is described in detail in Dudley T. Cornish, The Sable Arm. The one weakness of this work is its pro-Negro bias. 
Even by 1864, however, the Negro soldier was in a position of marked inferiority. Most strikingly illustrative of this was his pay, which was considerably less than that of the white troops. Charles Sumner and other of the more extreme Radicals took the lead in eliminating this stigmatizing provision. A bill was introduced into the Senate by Henry Wilson equalizing the pay of Negro troops on a retroactive basis, which would have paid them in a lump sum for the time since they had enlisted. Some of the more conservative members objected to this provision. Senator Fessenden was one of these. He opposed the retroactive clause, thus gaining the opprobrium of both the extremists, who felt he was anti-Negro, and the Negrophobes, who felt he was attempting to place the Negro on a basis of equality with the white soldiers.19

Another conservative who approved the equalization of pay was Senator Cowen of Pennsylvania. He was in favor of treating the Negro "precisely the same as any other man." Cowen's position on the Negro in 1864 illustrates how profoundly the success of the Negro soldier had influenced his stature in American society. "He is a citizen of the United States," Cowen declared, but added: "When I say that the Negro is a citizen, I do not mean to say that he is equal to the white man."20 Nonetheless Cowen's acceptance of the Negro was finally gaining recognition, even from conservatives, as a man, not just a piece of property or a contraband of war.

19 This attitude is ruefully described by the Senator in several letters and other remarks. Fessenden, Fessenden, I, 227.

20 Congressional Globe, 38 Cong., 1 Sess., 642.
This was not to be construed as an acceptance of Negro equality, however, even on the part of men much more Radical than Cowen. Senator Wilkinson of Minnesota, generally considered a Radical, saw the Negroes as occupying a not-quite-equal position in the army. "We do not expect to sustain the war alone with negro troops," he said during the debate on the pay equalization bill, "but I suppose that every negro who enters into the service takes the place of one white man, or at least every three negroes will take the place of two white men."  

The Negro soldiers were strictly segregated in the army, into their own companies and regiments, commanded by white officers. This presented another problem in race relations and illustrates not only the feelings on the part of the individuals involved, but a minor problem in getting men to serve in the Negro regiments as officers. A Negro historian contends that "white soldiers did not object to serving in the same unit with Negroes if there was a sufficient difference in their respective rank," and quotes Horace Greeley as contending that "there is no case on record where a soldier deemed fit for a captaincy in a colored regiment rejected it and clung to the ranks, in deference to his invincible antipathy to 'niggers'."  

This was not entirely true. In at least one case a Union sergeant declined a captaincy, and another soldier a colonelcy because of this antipathy. Theodore F. Upson recorded in his diary: "We have heard from our exams. And it beats me, I am offered a Captain's...

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21Ibid., 3488-89.
22Quarles, Negro in the Civil War, 197.
commission in a Negro Regiment. I don't think I want it. Not any niggers for me! Thank you Uncle Sam, but if it all the same to you, NO! NO! NO! But I am glad I could pass the exam. None of our boys will take commissions as far as I know, though one was offered a Colonelcy."^{23}

Officering the new Negro regiments was a problem. George L. Stearns, Chief of the Bureau for Colored Troops, wrote to Julian on July 14, 1863, assuring him that... "any army officer or private whom you can ... recommend will have a good chance for a commission if he passes the board favorably." Many persons, on the other hand, sought commissions in the new units. S. D. Hamlen, a Lieutenant in a Pennsylvania volunteer regiment, wrote to Stevens asking his help in securing him a "majorship in the Colored department." Hamlen had been wounded in the leg at Gettysburg, and urged that he be granted the major's commission so that he might be able to ride. Both Stevens and Wade received letters from parents urging that their sons be given opportunity to attain commissions in Negro units.\(^{24}\)

Senator Wade's son, Henry P. Wade was appointed a captain in the Fifth U. S. Colored Cavalry regiment on October 28, 1864, in a move which was perhaps at least in part facilitated by his famous father. He did not long remain in the Negro regiment, although on

\(^{23}\) Winther, Upson Diary, 197.

\(^{24}\) Stearns to Julian, Giddings-Julian Correspondence, (Division of Manuscripts, Library of Congress). Hamlen to Stevens and Jacob Souder to Stevens, May 2, 1864, in Stevens Papers, Division of Manuscripts, Library of Congress. Parkman Baker to Wade, Wade Papers, (Division of Manuscripts, Library of Congress).
November 12 he was appointed commander of a company. On November 20 he received orders transferring him to the Headquarters of the Military District of Kentucky. In this capacity he would still be officially connected with the colored troops, but would not be forced to associate with them, but rather the lily-white headquarters staff.

Many of the others who took command of colored troops stayed with their men, although some had low opinion of their troops. Charles Francis Adams, Jr., was one of these. In a letter to his father he remarked about the "ugly characters" under his command, and felt that they had "the spirit, not of men but of the lowest order of known animals." The presence of the Negro in the army was a good thing, he felt. "My hope is that for years to come our army will be made up mainly of blacks," he wrote. "I would have at least a four years term of enlistment and yearly send out from the Army from fifteen to twenty thousand black citizens, old soldiers and masters of some form of skilled labor."26

Hard as the life of a Negro soldier was, with unequal pay, the scorn of his white fellow-soldiers, the lack of enthusiasm on the part of some of his officers, nonetheless his fate was much better than it would have been had some of the Radicals had their way with him earlier in the war. These men were strong advocates of segregation as well as equal rights, and demanded on several occasions that the Negroes be colonized after they were freed or, later, after they were discharged.

25 H. P. Wade to Benjamin Wade, October 28, 1864; Letter, Headquarters, 6 U.S.C. Cav. to Captain Wade, Nov. 12, 1864; Special Orders No. 1, Headquarters, Mil. Dist. of Ky., Nov. 20, 1864; All in Wade Papers.

In January, 1862, George W. Julian, urging emancipation, also sought colonization, and other Radicals approved his stand.

Julian felt that "our prejudices, borrowed from slavery, and still continuing to hold their sway..." would aid in his proposal to colonize freed Negroes outside the country. "Colonization is one of the great tidal forces of modern civilization," he declared, "and the enslaved races can scarcely escape the appeal it will make to their approving judgment. Hayti, near our shores, stretches forth her hands to welcome them to happy homes among a kindred people, where they can enjoy the blessings of equal rights.27

Julian's plea merely summarized a growing body of opinion in the North, opinion which had been forming for many years. As early as 1821, the Ohio legislature had suggested that the national government develop a scheme whereby emancipated Negroes could be colonized in some foreign area. This plan was endorsed by the slave state of Delaware and by the free states of Pennsylvania, Vermont, New Jersey, Indiana, Connecticut, and Massachusetts. As late as 1854 the Negroes themselves felt that colonization was perhaps their only hope. A national emigration convention of Negroes was held in that year in Cleveland, which declared that they could not be free so long as they did not constitute a part of the "ruling element of the country." They recognized that the white race would not grant them this privilege and therefore they recommended emigration for the members of their race.28

27 Congressional Globe, 37 Cong., 2 Sess., 332.
Most people in the North, with the exception of the most radical of the abolitionists, before the civil war would not have supported the idea of emancipation without colonization. Many, on the other hand, felt that colonization would be a positive good. Horace Greeley of the New York Tribune, for example, felt that the settling of American Negroes in tropical areas would serve to spread "ourselves, our ideas, our civilization, our commerce, industry, and political institutions" throughout the area. The New York Courier and Inquirer was in favor of this idea. It felt that the Negroes "must necessarily take possession of the tropical regions... to which they may be transported. They will expel the whites by the same law of nature which has given the blacks exclusive possession of corresponding latitudes in Africa."29

James Shepherd Pike, the abolitionist newspaperman, believed that the civil war could be brought to a speedy end by means of such a plan. He avowed that "there is nothing in our difficulties but the nigger and that when the Govt. chooses it can end the contest, simply by destroying slavery, and that it will do it, whenever it has to choose between doing that or submitting to dismemberment." As late as July, 1862, Pike was attempting to gain support for a scheme for settling freed Negroes in a separate area of the South. His idea was to "carve out a portion of the country, embracing some states East of the Mississippi & South of the Potomac & Ohio.... and surrender it to the blacks, and such of the whites as desire to go with them."

29Ibid., 8-9.
While he would have much preferred to settle them in some foreign country, he felt that "we have no option of this sort."

Pike's editor on the Tribune, Greeley, also had a similar plan during this time, only his was a little less grandiose. Greeley felt that Florida could be made into a "paradise of freedom" to which, in time, the entire Negro population of the nation might be induced to emigrate.

The feeling in the North was so strong on this question that in 1862 a special Congressional Committee on Emancipation and Colonization was formed to investigate the possibilities of attempting some sort of organized and subsidized program to get rid of the troublesome race. The report of this committee summarized well the feeling of Northerners on the question in 1862. The group felt that the presence of the Negro race in this country, whose members "ought not to be admitted to our social and political privileges," would be a continual source of trouble. The report felt that slavery itself was not the crux of the problem; that freed the Negro would constitute a continued threat. The freedman would become a competitor with the white laborer, they warned, if allowed to remain in the United States.

The advantages of colonization of the Negro, on the other hand, were numerous. The problem of emancipation would be immediately solved. The resettlement of Americanized Negroes in Latin America would serve to "stabilize" the governments of those nations, for they

30 Durden, Pike, 75, 94-95.

31 Van Deusen, Greeley, 20f.
would come under the supervision of the United States. Into the labor vacuum resulting from the departure of the Negroes from the South would come white laborers, who would improve the economic position of that section. Finally, and perhaps most important, a considerable commerce would begin between the United States and the areas settled by the Negroes, for these folk, anxious to obtain American manufactures, would stimulate trade, much in the manner of the British colonies.  

Lincoln supported the views outlined in this report to a great extent. By this time he had fully recognized the need for emancipation, but was determined that the two races should be completely separate. In these views he again came into conflict with the extreme Radicals. These people felt that the advocates of colonization were fostering race prejudice and strengthening slavery. They were not in sympathy with the American Colonization Society, which had been founded many years earlier to settle freed Negroes in Liberia. The extremists felt that there was indeed a place for the freed Negro in America; they differed as to what that position was to be, and where it was to be assumed.

In this basic premise they were supported by the Negroes themselves. James G. Blaine estimated that if given the choice between slavery and deportation, that nine-tenths of the Negroes would have

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chosen to remain in bondage. They were also supported by arguments based on finance. The United States had too many undeveloped resources in its own sub-tropical areas, which demanded the Negro labor force to exploit them, it was argued; the colonization schemes were deliberate attempts to strip the United States of laborers. Also it was contended that the cost involved in such projects would be tremendous, for not only would the government have to move the Negroes to their new homes, they would also be obliged to defend them once their new colonies had been established. 34

Not all the Radicals agreed with this argument. Salmon P. Chase felt that colonization would be a good thing, particularly because it might "contribute largely to settle the negro question in the free states." Chase believed that a plan whereby free Negroes could be colonized on lands controlled by the Department of the Gulf would draw Negroes from the oppression of the anti-Negro laws of the North to the freedom of the South. He went so far as to write of this plan to the commander of the Department of the Gulf, General Benjamin F. Butler. 35 Chase, unfortunately, was not in a position to make his ideas into law. Other ideas were to be offered to Congress for consideration, however, which closely paralleled Chase's recommendations.

The question of emancipation in the District of Columbia, which would have created the first large group of suddenly-freed Negroes in

34 Maine, Twenty Years of Congress, I, 371.
the nation, prompted the first consideration of colonization. Representative Browning of Illinois, a Republican, urged some sort of colonization plan be adopted. Speaking in April, 1862, he told the House that the proposed emancipation in the District would do no "substantial good" to the Negroes, unless it was combined with a system of either mandatory or voluntary colonization. "We may confer upon them all the legal and political rights we ourselves enjoy," he contended, and they will still remain "a debased and degraded race, incapable of making progress, because they want that best element and best incentive to progress, social equality, which they never can have here."36

Most Congressmen, even most of the Radicals, probably agreed with Browning's contention about social equality being impossible (at least at the time), but they were unwilling to support his ideas. The main opponents of his colonization suggestions were to be found, strangely enough, among the Democrats and the extreme Radical Republicans, two groups who rarely agreed on anything.

Typical of the former was Garrett Davis. "The liberation of the slaves in this District and in any State of the Union," the Kentuckian claimed, "will be just equivalent to settling them in the country where they live; and whenever that policy is inaugurated, especially in the States where there are many slaves, it will inevitably and immediately introduce a war of extermination between the two races..."37

36 Congressional Globe, 37 Cong., 2 Sess., 1520.
37 Ibid., 1191.
Democratic Senator Willard Saulsbury of Delaware, as a gesture of protest, introduced an amendment to the bill which would have provided for colonization of the freed slaves among the loyal states. This proposal was greeted with indignities on the floor of the House, Republicans and Democrats alike opposing it. Apparently on both sides of the aisle the prospect suggested by Davis that the emancipated Negroes would probably stay where they lived rather than emigrate to the North was more appealing than the idea of transplanting some three thousand freedmen in the loyal states. When Saulsbury's amendment was voted upon, it was unanimously rejected, even its author voting in the negative. 38

The other great opponent of the idea of colonization was Thaddeus Stevens, as spokesman for the Radicals in the House. He led the fight which resulted in the eventual defeat of Browning's ideas and the victory for emancipation. Some historians have seen him, in his opposition to colonization, as the "truer friend of the South" than Lincoln, for he opposed the deportation of the Southern labor force. 39 Nothing in Stevens's stand on this question during the District of Columbia debates justifies this assertion, however. Stevens was more concerned apparently with the Negro himself than with the future of the Southern economy.

Another of the extreme Radicals took a vigorous stand on the issue of colonization during 1862. Senator Samuel C. Pomeroy of Kansas

38 Ibid., 1375, 1379. Delaware was not specified as one of the nineteen states to receive the resettled freedmen.

39 Brodie, Stevens, 163, 170.
led a movement during the latter part of the year to establish a Negro settlement at Chiriqui, an area in Central America. Pomeroy proposed to establish, with the approval of the New Granadan government, which controlled the area, a settlement of Negroes who would exploit deposits of coal and other natural resources. In this plan he was supported by Lincoln, as well as by other men "of integrity and character.\(^1\)

Lincoln advocated the idea in a cabinet meeting in September, when he urged the cabinet to give it "serious consideration." He felt, according to Navy Secretary Gideon Welles, that a treaty could be made acquiring the territory. He "thought it essential to provide an asylum for a race which we had emancipated, but which would never be recognized or admitted to be our equals," Welles wrote.\(^2\)

Pomeroy's scheme finally collapsed. The governments of the Central American nations made vigorous objections to the settlement of Negroes in their area, the coal which the Negroes were to mine was proven to be of such inferior quality as to be commercially impractical, and the supporters of the scheme seemed to be mostly speculators, interested in disposing of the land to the government at a profit for themselves. Pomeroy himself seems to have been earnestly seeking a means of benefitting the Negro, rather than just sponsoring a plan for making money. After the Chiriqui plan fell through, he offered to take a "cargo of negroes and hunt up a place

\(^{1}\) Gideon Welles. The Diary of Gideon Welles, edited by John T. Morse. (3 vols. Boston, 1911), I, 123.

\(^{2}\) Ibid., 152.
for them."

Pomeroy, Radical though he was on the race issue, saw the Negroes doomed to a "life of servil labor" if they remained in this country. In a letter to Senator James R. Doolittle of Wisconsin, a conservative Republican who supported his scheme, Pomeroy outlined his stand. He contended that others sought only freedom for the negroes, but he also wanted "rights and enjoyments for them." This would be impossible in the United States, Pomeroy felt. "What are the teachings of two hundred and fifty years of history?" he asked. "Only this, that the free colored men of the free states are doomed ... no hope of elevation. I am for the negro's securing his rights and his nationality in the clime of his nativity." He felt that the basic question was the destiny of the colored race in the country; the only answer, emigration.

At least a portion of the population of the Northern states supported some plan of Negro emigration or segregation, some of which were rather extreme. One of the most far-fetched was a scheme suggested by a constituent of Lyman Trumbull's. He suggested a war with Mexico, to re-unify the North and South; and drive the French from that country, which in return would cede its Northern provinces to the United States. These would then be divided, with slavery allowed in the Eastern half, where cotton could be produced, while slaves would be forever excluded from the western portion. The ultimate result of this plan, its author felt, would be the elimination of all

\[142\] Ibid., 150-52.

\[143\] Quoted in Fleming, "Deportation and Colonization," loc. cit., 18.
Negroes from the Northern and border states and the eventual independence of the Negroes in the extreme South. He realized that his plan was unusual, but assured Trumbull that "what may be whimsical today may be practical some other." 

In 1864 this idea was to be expressed in similar form by Senator James H. Lane of Kansas. Lane had been a long time free-soiler and fighter for abolition. He had led the movement for Negro troops, even demanding that they be forced to fight. He was a Radical of the extreme type - and he also hated Negroes! Early in January, 1864, he introduced a bill into the Senate to "set aside a portion of the State of Texas for the use of persons of African descent." 

The measure went to the Committee on Territories, headed by Senator Benjamin F. Wade of Ohio, of which Lane was a member. The Committee report on the bill, written by Lane, summed up his arguments in favor of the measure. He saw an "unparalleled flood of foreign emigration" coming to the United States at the end of the war, which would tend to "press the black man southward." This would necessitate setting up an area for their "concentration" as far South "as we can control." Lane wisely saw that the South would keep the interests of the Negro "in an unsettled State" unless the government of the Southern states could be placed in the hands of the freedmen. This, he felt, was impossible. According to his plan, on the other hand,

145 John J. Rinaker to Trumbull, July 31, 1863; Trumbull Papers, Rinaker identified himself as an army officer from Illinois, presently stationed at Saulsbury, Tenn.

145 Congressional Globe, 38 Cong., 1 Sess., 145.
the Negroes would have their own state, where they would be in the majority, and "possessed of undisputed sovereignty ... and all the rights which spring from eminent domain."[46]  

Lane presented many arguments in favor of the plan. It would end the threat of "amalgamation" and miscegenation by removing the Negroes from among the white population. It would lead to the possibility of annexation of Northern Mexico, for the Negroes would intermarry with the Mexicans and "Americanize" them to such an extent that they would demand annexation. He favored an amendment to the proposed bill which would allow some compensation to be paid to Texas for the lands which she would lose as a result.[47]  

When the bill came up for consideration, Sumner attempted to delay it, claiming that the Senate needed more time to study the proposal and the committee report. He felt that the question was of such importance that its consideration should be postponed to allow for this further study. He was particularly concerned, he said, about the cost of the program. Lane, however, insisted upon consideration.[48]  

Lane's defense of his bill in the Senate illustrates his attitude toward the colored race, an attitude which he shared with James S. Pike, and with others who advocated a complete segregation of the Negro, under the guise of an altruistic benevolence.

"What is our duty toward the disfranchised race?" he demanded.

[46] Senate Reports, No. 8, 38 Cong., 1 Sess., 1861.  
[47] Ibid.  
Emancipation would leave them in the midst of "unfriendly influences and an unfriendly people," who would seek to undo all which "you and your armies have done." "The best interests of both races," he continued, demanded the concentration "by every prudent means consistent with their free choice," of the "large mass" of freedmen in the proposed territory. 149

To show that he really had the best interests of the Negroes at heart, Lane contended that the suggested settlement would free the Negroes from the "cupidity" of the white race. He feared that the Negro would be unable to "hold his own" in competition with the whites after emancipation; whereas in this area with its semi-tropical climate, more suited to his "constitution," he would be "lord of the soil." Lane foresaw, in the future, an "empire of the educated and civilized children of our freedmen" resulting from the act which he proposed. 50

Northern sympathy for the Negroes, manifested during the war, would end with the peace, Lane felt, when the Northern people would again be obsessed with peaceful pursuits. The Negroes would be left, a disfranchised class, to the "caprice and cupidity of the capitalists of the ruling race, many of whom are as heartless as the slave-master." Lane did not conceive that the Negroes could gain political equality in order to protect their rights. To gain either political or social equality, Lane felt, there would have to be a "legal and honorable

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149 Ibid., 673.
50 Ibid.
admixture of the African blood with that of our race," which he
discounted as impossible. 51

Lane had several solutions to Sumner's objection to the cost
of the plan. He contended that most emigrants would have to go at
their own expense, but he felt that this cost would be small. In
addition, he proposed that some $600,000, appropriated earlier for
use in overseas colonization plans, be diverted to the Texas plan.
Further, he proposed transferring large numbers of Negro troops to
Texas, and there discharging them, thus providing a nucleus of
settlement in the area. Negro soldiers were not to be the only ones
to share in the benefits of this phase of the plan, however. Lane
also recommended that the government confiscate rebel lands east
of the boundary of the new territory, and give these lands to white
soldiers. They would then serve to block the Negro state off from
the rest of the nation, and effectively segregate the resettled
freedmen. 52

The effect of this plan, Lane believed, would be the final
solution to the question which had "disrupted the peace of the nation
during my entire life." The United States would at last be "freed
from all her clogs." "With the shades that dim her light removed,
she will stand forth before the world a guide to the nations, with
power sufficient to command the respect of men and virtue sufficient
to secure the approval of the divine Ruler." 53 All this, when the

51 Ibid.
52 Ibid., 673, 675.
53 Ibid., 675.
Negro was gone.

Significantly, the Senate postponed consideration of Lane's plan, and turned its attention to the passing of the bill to equalize the pay of Negro troops. The time had already passed when the Radicals needed to worry about eliminating the Negro, for the Negro had advanced too far along the road to citizenship and the Radicals were already beginning to see him as a potential voter, and potential Republican.

One other Negro colonization plan was introduced into Congress, this time by Ohio Representative James S. Wadsworth. He wanted to organize the freedmen into agricultural colonies, which would be self-governing and self-sustaining. These were to be located on lands either confiscated from rebel owners, or unsettled and uncultivated lands in the West. Wadsworth's idea, like Lane's, never reached the stage of a vote. 54

Both men mirrored the feeling of a large part of the Northern population, even until the end of the war. Many Northerners were firm advocates of separation of the races. This was particularly true of the army, which had never been especially fond of the Negro. Illustrative of the official army stand on the matter are the orders issued by officers in control of the conquered areas along the Eastern coast and the Mississippi valley. These regulations almost always established Negro communities from which whites were barred. General Sherman followed this pattern in his Field Order No. 15, which set

54 Gurowski, Diary, II, 375.
aside the coastal areas of Georgia and South Carolina for Negroes, and which stipulated that no whites were to be allowed to reside in the Negro areas.\footnote{Fleming, "Deportation and Colonization," loc. cit., 29. Walter L. Fleming, A Documentary History of Reconstruction (2 vols. Cleveland, 1906-1907), I, 350.}

By this time such laws were no longer acceptable to a growing number in the North. As the nation, in 1864, approached the presidential campaign and its concomitant question of Reconstruction, the position of the Negro became more important. By the middle of 1864 the Negro had secured himself, through his military service and through the support of his stalwart backers among the Radicals, a degree of recognition which would not permit his exile. Some 180,000 Negroes had served as soldiers, and had proven their manhood. They had shown that they were able to fight for their freedom, and they were rapidly approaching the time when their strength was to be applied to gaining the fruits of that freedom. The abortive schemes for Negro colonization were to be some of the last attempts to make the Negro a completely-separate entity within the American social structure.

Interestingly enough, both Pomeroy's and Lane's plans for colonization foresaw the ability of the Negro to rule himself, once he became established in an independent state. Thus both men tacitly acknowledged the growing political maturity of the Negro. No longer was he to be accepted as completely unable to make political decisions. The question was soon to be raised: Is he not capable of exercising political rights in this country?
The Negro's political ability had received a welcome recognition in 1862, when Congress, under the leadership of Sumner, had approved a bill allowing for the appointment of diplomatic representatives to the Negro republics of Liberia and Haiti. The passage of this bill was hailed by the Radicals as another step in the direction of securing political freedom for the Negro. "The law ... will be a recognition of the Colored Man, not merely of Hayti," Governor John A. Andrew of Massachusetts prophesied in a letter to Sumner.56

By the beginning of 1864 times were changing, the Negro had gained the right to be recognized as a man, not a chattel; the war was progressing satisfactorily; and a new election approached, upon which the Radicals were to pin their hopes. With their success and fortunes, it was obvious, rode the future of the Negro race in America.

56 Congressional Globe, 37 Cong., 2 Sess., 619, 1807, 1815, 2536; Sumner, Works, VI, 170-71.
CHAPTER VII

"YOU HAVE NOT YET HEARD THE LAST ON ACCOUNT OF THIS."

The period from the beginning of 1864 to the death of Lincoln in April, 1865, marked a great advance for the American Negro. In the North he became a soldier, in the South he became free. For the Radicals, too, this was a significant period. It was at this time that the Radicals first attempted to control the Reconstruction of the South. While this was forestalled, nonetheless ideas of Radical Reconstruction were formulated, and, with the death of Lincoln, the last major barrier eliminated.

Charles Sumner, as usual, was engrossed with his idea of Negro rights. One of his first projects was to make Negroes eligible to carry the mails. In 1862 he had attempted a similar bill, but it had been tabled in the House. This time he was more successful, and the law was altered by striking out the provision that only "free white" persons could carry the mails.

He also sought a change in the charters of the various street railway companies of Washington that would allow Negroes to ride in the cars. Until this time Negroes had been relegated to separate cars. Until this time Negroes had been relegated to separate cars, or else forced to ride on the outside steps and platforms rather than in the interior of the car. He had established the precedent for this action a year earlier, when he had forced the inclusion of a clause in the charter of the Alexandria and Washington Railroad providing that "no person shall be excluded from the cars on account
of color. 1

In March, 1864, Sumner moved to amend the charter of the Metropolitan Railroad Company to include a similar provision. This was approved by the Senate by a vote of nineteen to seventeen, and agreed to by the House. 2

There was still one streetcar company allowing segregation, however, and in June, Sumner took steps to stop the practice. The charter of the Washington and Georgetown Railroad Company was up for renewal, and Sumner moved that the charter be amended to include a provision similar to that which he had inserted into the charters of the other two companies. Unexpectedly, his suggestion drew resistance from some of the Radicals and other Republicans.

Lyman Trumbull spoke against the amendment, calling it "distasteful," and contending that "this provision can give no additional rights to the negro." John Sherman also opposed it. "The amendment ought not to be adopted," he said. On the first vote on the amendment, it was defeated, fourteen to sixteen, with Sherman, Trumbull and James W. Grimes siding with the Democrats. The Radicals hurriedly marshalled their strength, called for a reconsideration, and passed the amendment by a vote of seventeen to sixteen, with Sherman, Trumbull and Grimes still opposed. On the vote on the renewal of the

1 Congressional Globe, 37 Cong., 3 Sess., 1329.
2 Ibid., 38 Cong., 1 Sess., 1161.
charter as amended, the Republicans closed ranks, and the three dissenters voted for approval.³

This minor squabble in the party was not at all serious, but it illustrated the growing disgust with Sumner and his continual harping on the Negro question. Some Senators felt that Sumner was attempting to move too quickly, others that he was jeopardizing beneficial legislation by including Negro rights amendments, which tended to either defeat the measure or delay it considerably. In spite of this feeling Sumner kept up his fight for the rights of the Negro.

The Washington and Georgetown Railroad, integrated with much difficulty, refused to recognize the alteration of its charter, and continued to forbid Negroes from entering the interior of its cars. Sumner wrote to the president of the road, threatening to move the forfeiture of the company's charter if the law was not complied with. At the same time he wrote to the district attorney for the District of Columbia, asking him to begin proceedings against the company. Because of this pressure, the company finally relented, and agreed to obey the law.⁴ By this action Sumner had shown that his concern for Negro rights transcended the halls of Congress; not only was he anxious that the laws be changed, but that the new laws be obeyed. Not all Radicals were to follow his example.

Henry Wilson of Massachusetts was also active during this period.

³Ibid., 3131, 3132, 3135, 3137.
⁴Sumner, Works, VIII, 117.
in gaining recognition of the changed status of the freed Negroes of the District of Columbia. As early as 1862, he began a campaign designed to eliminate odious laws which were aimed at Negroes alone, rather than all persons. Typical of this was his campaign against the miscegenation laws of the District. The laws provided that if a free Negro married a white person, or if a black woman allowed herself to be seduced by a white man, the penalty was to be sold into slavery. Wilson led the drive to eliminate these laws, which illustrated the common view that on the subject of miscegenation "only the negro could sin."5

In June, Sumner proposed an amendment to the Civil Appropriations Bill which provided "that, in the courts of the United States, there shall be no exclusion of any witness on account of color." This was typical of his method, tacking on an amendment to an important measure which needed to be quickly passed. The amendment was approved by the Senate by a vote of twenty-nine to ten, with only Lyman Trumbull being counted against it from the Republican side. John Sherman, while he voted for the measure, berated Sumner for his tactics. He said that he had always voted, and would continue to vote, to eliminate any restrictions on witnesses because of color or other factors; "but I beseech the Senator from Massachusetts not to load down this, the last of the appropriation bills, with amendments that are likely to create controversy between the two Houses."6

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6 Ibid., 38 Cong., 1 Sess., 3260, 3264.
Sherman was pleading in vain, for Sumner was wise in the ways of Congress and knew that, with adjournment rapidly approaching, Congress was much more likely to accept his ideas as amendments to bills which had to be approved before the Congressmen could go home. Such was the case this time. The House, with Stevens cracking the parliamentary whip, acquiesced in the amendment, and on July 2, 1864, it was approved by President Lincoln.\(^7\)

Sumner was secure in the thought that his party had firm control of both houses of Congress. This enabled his measures, once approved by the party, to be reasonably sure of a favorable final vote. Throughout this period the measures designed to increase the rights of Negroes were all approved by an almost unanimous party-line vote. In addition, he knew that the Radicals, in this election year, were anxious to make their position clear, and he was eager to do all he could to move their platform as far in the direction of complete Negro equality as possible.

By the middle of 1864 Sumner was pleased. He was especially happy about the law allowing Negro testimony. He called it "The most important of all in establishing the manhood and citizenship of the colored people ... For this result, I have labored two years."\(^8\)

Many Radicals were not so happy, however, particularly the more practical-minded men who saw Reconstruction as primarily a field of practical politics rather than theoretical Negro-rights concepts.

\(^7\)Wilson, Antislavery Measures, 361.

\(^8\)Sumner to Mrs. L. Maria Child. Pierce, Sumner, IV, 181.
In December, 1863, Lincoln had surprised the Radicals in a move to reserve for the executive the main power of Reconstruction of the South. The Radicals were furious.9

To block Lincoln's proposal, Henry Winter Davis, a Radical extremist from Maryland, introduced a bill into the House of Representatives on February 15, 1864, designed "to guarantee to certain States whose governments have been usurped a republican form of government." Davis was a new member, serving his freshman term. The Radical diarist, Gurowski, morosely viewing the Washington scene, was pleased with the newcomer. "Among the new members, Winter Davis of Maryland is undoubtedly the first genuine orator in Congress, and has few equals out of Congress. He is bold, and his mind is broad and statesmanlike."10

The Radicals were determined that they, not the President, were to have the controlling voice in Reconstruction. To accomplish this they had to launch a concerted drive to replace the Lincoln plan with their own, as exemplified by Davis's proposal. This campaign, Davis told Sumner, must be based "not on the rights of the negro - nor the general requirements of justice and humanity - they are vague generalities that solve nothing - but on the direct and practical consequences of allowing the rebel States to go into exclusive control

9Richardson, Messages and Papers, VIII, 3414-3416. Many people in the North supported the President's plan. "The President's Amnesty proclamation was a good one & raised him wonderfully in the estimation of the people," J. B. Nichols wrote to Zachariah Chandler, March 16, 1864. Chandler papers,

10Congressional Globe, 38 Cong., 1 Sess., 668; Gurowski, Diary, III, 111.
of the men who led or the men who followed the rebellion - for us equally fatal.\textsuperscript{11}

According to the provisions of the Davis proposal, a constitutional convention was to be chosen in each state by the "loyal white male citizens," who could constitute a majority of the persons enrolled in the state. This convention had to meet certain conditions, such as abolishing slavery and freeing all slaves. The bill passed the house on May 4.\textsuperscript{12}

In the Senate, the bill was sent to the Committee on Territories, of which Benjamin F. Wade of Ohio was chairman. Wade reported the bill on July 1, with amendments, the most important of which would have struck out the word "white" from the clause regulating voting requirements. This amendment was rejected, five votes to twenty-four, with only B. Gratz Brown of Missouri, James H. Lane of Kansas, Edwin D. Morgan of New York, Samuel C. Pomeroy of Kansas, and Charles Sumner of Massachusetts voting in the affirmative.\textsuperscript{13}

Brown then moved to strike out all after the enacting clause, and insert, "that when the inhabitants of any State have been declared in a state of insurrection by the proclamation of the President ... they shall be incapable of casting any vote for President ... or of electing Senators and Representatives in Congress."\textsuperscript{14} This amendment was approved by a vote of seventeen to sixteen, with Brown, Grimes and Trumbull siding with the Democrats and conservative Ne-

\textsuperscript{11}Howard K. Beale. The Critical Year, A Study of Andrew Johnson and Reconstruction (New York, 1930), 311-15.

\textsuperscript{12}Congressional Globe, 38 Cong., 1 Sess., 668, 2108.

\textsuperscript{13}Ibid., 2510, 3449.

\textsuperscript{14}Ibid., 3449.
publicans. Against the motion were the great majority of the Repub-
licans, including all the extreme Radicals.15

The House of Representatives, on the motion of Davis, refused to
concur in the Senate amendment, and asked for a committee of conference
on the measure. In order to save time, ostensibly, Wade asked the
Senate to reconsider its vote, and the Senate receded from the Brown
amendment by a vote of eighteen to fourteen. Seventeen Senators were
absent, including Brown and Grimes. Trumbull remained adamant.16

What pressure was put upon these two to absent themselves is
not known. Could it be that already the Radicals had visions of
Negro Senators and Representatives sitting in Congress, voting as
they were directed by the Radical leadership? According to Brown’s
amendment this would have been impossible. Was this why Brown’s plan
had to be blocked?

The Radicals were not going to get their way completely with
this bill. Sumner attempted to amend it to incorporate Lincoln’s
Emancipation Proclamation so as to give the proclamation the force of
a statute. This was defeated by a vote of eleven to twenty-one, with
only the most extreme Radicals voting “yea.”17

The voting on the Brown and Sumner amendments does not illustrate
fully the feelings of the Republicans on these proposals. Typical of
those who opposed both measures was Senator John P. Hale of New

15Ibid., 1460.
16Ibid., 3491.
17Ibid., 3461. Those in favor were Chandler, Conness, Lane of
Kansas, Morgan, Morrill, Pomeroy, Ramsey of Minnesota, Sumner, Wade,
Wilkinson and Wilson.
Hampshire, who was not an extremist on the Negro issue. "I voted against the amendment of the Senator from Missouri ... while at the same time I was in favor of the proposition as an independent measure," Hale told the Senate. As to Sumner's proposal, he said: "However much I might be in favor of such a proposition as this, I think it is incongruous and out of place here."  

Lincoln was as determined to keep the basic powers of Reconstruction for himself as the Radicals were to gain them for Congress; so he pocket-vetoed the Wade-Davis bill. The Radicals were enraged. Gurowski was even more bitter than usual: "Mr. Lincoln spites Congress and pockets the bill for reconstruction as passed by both houses," he wrote on July 6, 1864: "Mr. Lincoln finds the bill good and finds it not good; exactly the Lincoln shilly-shallyness. The bill pushes aside Mr. Lincoln's fussy one-tenth reconstruction. Wait, wait, Mr. Lincoln! you have not yet heard the last on account of this..."  

Lincoln's refusal to approve their measure led Wade and Davis to issue a "scathing criticism of the President's position." This was the so-called Wade-Davis Manifesto. It was a colossal blunder, coming close before the presidential elections of 1864, and at a time when the legend of "Father Abraham" was already taking hold of the American imagination. Perhaps its only practical result was that it cost Henry Winter Davis his seat in the House. He was not renominated by his Maryland district. Davis was a martyr, Gurowski contended  

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18 Ibid., 3460.  
19 Gurowski, Diary, III, 274.
sacrificed by "the intrigues of his most bitter enemies, the traitors in Baltimore and the simon-pure Lincolnites."  

As radical was the Wade-Davis bill was in comparison with the Lincoln plan, it was not the real Radical objective for Reconstruction of the Southern states. It was based upon white suffrage, and the Radicals were becoming more convinced that the Negroes would have to be given the vote to insure the growth of an indigenous Republican party in the South. It admitted that the states of the Confederacy still had rights under the Constitution, while extremists were already agreeing with the "conquered provinces" theory later to be championed by Stevens. The bill did not allow for confiscation of rebel property, which the Radicals were going to demand. It was felt by its supporters that it was the best available bill at the time; a harsher one might not have been approved by the Congress. Its main purpose was to block Lincoln in his attempt at restoration of the South.  

The authors of the bill, nonetheless, became heroes to the Negroes of the North. When Henry Winter Davis died the following year, a Baltimore Negro paper called him "an accomplished gentleman, a true patriot, and a finished statesman." He was a "tried friend" of the Negro, "never faltering in time of need." 

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20 Ibid., 380; Julian, Recollections, 246-47. For a popular opinion on the bill, as well as an evaluation of Wade and Davis, see Harper's Weekly, August 20, 1864.

21 Williams, Lincoln and the Radicals, 319.

22 Quoted in Sumner, Works, X, 108.
The appeal of men like Davis to the Radicals of the nation, coupled with the leniency of Lincoln's Proclamation of Amnesty of December, 1863, turned many of the more extreme members of the Republican party against the president. There was a growing feeling among the extremists that Lincoln should be discarded in the 1864 presidential election, and a more radical candidate nominated.

Some men were for Salmon P. Chase. Chase had a good record in the 1850's as an abolitionist and free-soiler, and he was intensely ambitious for the Presidency. A committee of congressmen was formed to aid the Chase candidacy, including Senators Samuel C. Pomeroy of Kansas and John Sherman of Ohio, and Representatives James A. Garfield of Ohio and George W. Julian of Indiana. Julian, however, "on reflection," decided to withdraw from the committee, "and let the presidential matter drift."23 In other words, he wanted to wait and see which side seemed most likely to win.

Leader of the Chase forces was Pomeroy. Surprisingly enough, it was not because of Lincoln's lack of radicalism that Pomeroy was opposed to him, but because he felt that Lincoln was not giving him his fair share of the Kansas patronage. Pomeroy was convinced that his colleague, James H. Lane, was getting too much attention from Lincoln. He was in favor of Chase partly because the latter, quite legitimately, had granted certain favors while Secretary of the Treasury to the Hannibal and St. Joseph Railroad, in which Pomeroy

23Charles R. Wilson, "The Original Chase Organization Meeting and the Next Presidential Election." MWHR, XXIII (June, 1936), 63. Julian, Recollections, 237.
was interested. 24

Pomeroy issued, in the winter of 1863-1864, a document, known as the "Pomeroy Circular," advocating Chase's nomination. It damned Lincoln's "manifest tendency toward compromises and temporary expedients of policy," and urged the election of Chase. A few days after the appearance of the document, the Ohio legislature passed a resolution favoring Lincoln's candidacy, and Chase officially withdrew, unable to continue without the support of his home state. 25

A second menace to the Lincoln candidacy by the extremist-fringe Radicals came with the nomination of General John C. Fremont for President on a Radical ticket. Fremont was not actively supported by the Congressional Radicals, although many sympathized with his platform, which called for the suppression of the rebellion, an amendment prohibiting the re-establishment of slavery, and confiscation of rebel lands for distribution to soldiers and "actual settlers." The Radicals in Congress put considerable pressure on Lincoln, however, for a compromise with Fremont. Finally Lincoln agreed, and removed Montgomery Blair, an old enemy of Fremont, from the cabinet. Fremont then withdrew as a candidate. 26

24 Wilson, "The Original Chase Organization Meeting and the Next Presidential Election." loc. cit., 63.

25 Blaine, Twenty Years of Congress, I, 515-16, gives an interesting account of this from a Radical point of view.

26 Ibid.; Julian, Recollections, 213-41, also pictures the Radical position. Wade wrote to Chandler after the firing of Blair: "We both think that the withdrawal of Fremont was coupled with the resignation of Blair. But he has gone and I thank God for it, I only wish Seward was with him." Wade to Chandler, October 2, 1864, Chandler papers.
The Republican convention met in June, 1864. Lincoln, after weathering these two threats, was renominated, with only the state of Missouri voting against him, although of the more Radical Republicans, probably "not one in ten" really favored him. The platform of the "Union" party, as it was called to incorporate the War Democrats who collaborated, also contained a demand for the end of slavery, in the form of a constitutional amendment.27

Lincoln having received the nomination, Andrew Johnson of Tennessee, a War Democrat, was selected for Vice-President, and the campaign began. The canvass got off to a rousing start, and, naturally enough, the Negro was the main factor. The center of attention was the most ugly feature of the bi-racial problem, miscegenation.

In February, 1864, Democratic Congressman Samuel S. (Sunset) Cox of Ohio had introduced into the debate on the first Freedmen's Bureau bill the subject of miscegenation, reading from a pamphlet by that name to discredit the Republican position. An immediate furor broke out, with newspapers and politicians taking sides on the issue. Some of the positions taken were quite interesting. The Anglo-African, a Baltimore Negro paper, strongly defended the right of intermarriage. On February 20 it described the "opposite and complementary characteristics, physically and mentally" of the two races, which "by their admixture," were more likely to produce "a

27 Julian, Recollections, 243-44; Edward McPherson, A Political Manual for 1866 (Washington, 1866), 117, contains the Union platform.
more perfect race than either are separately.”

The New York Herald supported the idea of intermarriage as a theoretical right, contending: "We certainly believe that the African-tinted members of our community will in the future gradually bleach out their blackness.” The Herald foresaw the day when the Negro, "growing paler with every generation, will at last completely hide his face under the snow.”

James H. Lane of Kansas agreed with the Herald’s position. Speaking in the Senate on February 26, 1864, he called the problem of miscegenation a "mere question of taste." Lane felt there was nothing to be feared from the question. "There is not a white lady in Kansas who requires the eloquence of a Senator or a legal enactment to control her choice as to a husband," he declared. "I have no fears myself that the ladies of Kansas will prefer the colored race. They are intelligent, refined, proud of their blood and race, and will select husbands therefrom." Lane was apparently willing to leave the matter completely at the discretion of the "ladies," however, for he made no mention of any enactments forbidding such unions.

One reason many persons were not too concerned about the miscegenation problem was that they were convinced that the Negro strain

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30 Congressional Globe, 38 Cong., 1 Sess., 841.
gradually disappeared. "It is an acknowledged fact," wrote Gurowski on March 9, "that the color and features of the negro or European are entirely lost in the fourth generation, providing that no fresh infusion of one or the other of the two races takes place."  

Horace Greeley supported the idea of miscegenation on other grounds. He was by nature opposed to it, but he favored it as a theoretical right. His paper, the New York Tribune, felt that under the doctrine of "equal human rights" the idea had to be accepted. "If a man can so far conquer his repugnance to a black woman as to make her the mother of his children," he declared, "we ask, in the name of the divine law and of decency, why he should not marry her."  

Gurowski, Radical that he was, saw in the argument a basic weakness on both sides. The opponents of miscegenation were "worshippers of darkness and of ignorance," uttering "falsehoods and lies." The defenders of the idea on the other hand "pitch into the contest as empty-headed as their antagonists, and by high-sounding generalities and phraseology try to make up for their thorough want of scientific information."  

This was too good an issue to pass up, with the campaign approaching, and the Democrats capitalized upon it. They published such rumors as that of young girls parading the streets with banners  

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31 Gurowski, Diary, III, 111.  
33 Gurowski, Diary, III, 139-40.
emblazoned, FATHERS PROTECT US FROM NEGRO EQUALITY. Democratic newspapers publicized the story that sixty-four white school teachers at the Negro settlement of Port Royal, South Carolina, had given birth to mulatto babies. A negro historian suggests: "From a reading of the Democratic and Copperhead press, one gathers the impression that the main plank of the Republican party was compulsory intermarriage."34

Thaddeus Stevens was particularly vulnerable, because of a rumored affair with his Negro housekeeper. A Democratic pamphlet, entitled The Lincoln Catechism, described him as "an amalgamationist from Pennsylvania who practices what he preaches." The Democrats also distributed copies of the "Black Republican Prayer," which was as follows:35

May the blessings of Emancipation extend throughout our unhappy lands, and the illustrious, sweet-scented Sambo nestle in the bosom of every Abolition woman, that she may be quickened by the pure blood of the majestic African, and the Spirit of Amalgamation shine forth in all its splendor and glory, that we may become a regenerated nation of half-breeds and mongrels, and the distinction of color be ever consigned to oblivion, and that we may live on bonds of fraternal love, union and equality with the Almighty Nigger, henceforward, now and evermore, Amen.

The Republicans attempted to counteract this attack with appeals for abstract Negro rights. Their most effective weapon on behalf of the Negro had been eliminated, however, by the platform committee of the convention. In May, the House of Representatives had passed a

34Quarles, Negro in the Civil War, 256-57.
Homestead bill by a strictly party vote of seventy-five to sixty-four. This bill had been introduced by Julian, and was, as he described it, "a very radical proposition, proposing to deal with these lands as public lands, and parcel them out into small homesteads among the poor of the South, black and white." This measure was to apply to lands which were to be confiscated from rebels.\(^{36}\)

In the convention this measure was not included as a plank in the Republican-Union platform. The National Union League, a Radical organization, approved it and urged its inclusion, but it was defeated by the conservatives, "much to the disappointment of the Republican masses."\(^{37}\)

The Republicans relied during their campaign on the anti-slavery plank, which, they felt, united "Freedom and the Union." They damned the Democratic party as a slave party, and contended that the Democrats comprised a "powerful nucleus for a most infernal reaction in favor of slavery."\(^{38}\) These were superficial issues, however; the main question was control of the government. As the Rochester Democrat saw the campaign, it was one "not for principle, but for the chance of plunder."\(^{39}\)

The Republicans conducted a routine campaign. Although they had not entirely healed the party split, they managed to retain a

\(^{36}\)Conceessional Globe, 38 Cong., 1 Sess., 2253; Julian, Recollections, 236-40.

\(^{37}\)Julian, Recollections, 242.

\(^{38}\)Blaine, Twenty Years of Congress, I, 520; Foner, Douglass, Ill, 380.

\(^{39}\)Van Deusen, Weed, 315.
degree of unity when faced with the threat of the "Copperheads" and their candidate, General George C. McClellan, whom they were convinced was a traitor. The issues resolved themselves into the Republican party and war; the Democratic party and peace. The election was, to most Republicans, "the most sublime mortal spectacle of all time." Lincoln was re-elected, and the Radical branch of the Republican party was infused with new strength.

Perhaps one of the most important immediate results of the Republican victory was that it produced quick reconsideration of the proposed Thirteenth Amendment abolishing slavery, which was rapidly approved by the House. The history of this amendment was a long and turbulent one, beginning nearly a year before the election.

In December, 1863, the House of Representatives was in no mood to consider alteration of the status of slavery. George W. Julian introduced a bill calling for the repeal of the Fugitive Slave law, and offered a resolution calling on the Judiciary Committee to report such a bill to the floor. This proposal was tabled, "much," he wrote, "to my astonishment," by a vote of eighty-two to seventy-three. Many congressmen, even some Republicans, were "still under the lingering spell of slavery."

A similar measure was introduced into the Senate by Charles Sumner in February, 1864. This bill called for the repeal of all laws dealing with the rendition of fugitives. Senator Sherman objected to

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10 C. F. Adams, Jr., to Henry Adams, November 14, 1864; Ford, Adams Letters, II, 221.

11 Congressional Globe, 38 Cong., 1 Sess., 22; Julian, Recollections, 236-37.
this idea. He preferred that the law of 1793, dealing with rendition on a state basis, be allowed, and so moved to amend the measure. Sherman's amendment was approved by a vote of twenty-four to seventeen, with Ira Harris of New York, Sherman and Trumbull being included in the majority, while the "nays" were all Republicans.\textsuperscript{42}

A compromise was finally reached when the House of Representatives approved an act introduced by Republican Daniel Morris of New York. Morris's bill was entitled: "A Bill to repeal the Fugitive Slave Act of 1850, and all acts, and parts of acts, for the rendition of fugitive slaves." In effect, it retained the 1793 bill, eliminating only the slave-catching provision. This measure was approved by the House, and passed the Senate by a party vote on June 23.\textsuperscript{43} Thus was eliminated a law which since its inception had been greeted with scorn and which had been flagrantly violated by a large percentage of the Northern population.

Emancipation of the slaves was the next logical step. A bill proposing an amendment to the Constitution to accomplish this was first proposed in the House by Representative James M. Ashley of Ohio. Similar motions were made by Representatives James P. Wilson of Iowa and Isaac Arnold of Illinois. A motion was made to table Arnold's resolution, which failed by a vote of seventy-nine to fifty-eight, illustrating that the House could not muster the necessary

\textsuperscript{42}Congressional Globe, 38 Cong., 1 Sess., 521, 171.\textsuperscript{43}\textsuperscript{Ibid.}, 2774, 3191.
two-thirds vote to approve the proposed amendment.  

On January 13, 1864, Senator James H. D. Henderson of Missouri introduced into the Senate a proposed amendment calling for the complete abolition of slavery: "Neither slavery nor involuntary servitude except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction."  

On February 3, Sumner introduced a joint resolution providing that "everywhere within the limits of the United States, and of each State or Territory thereof, all persons are equal before the law, so that no person can hold another as a slave." This proposal was too much for the Judiciary Committee, to which it was referred. On the tenth it was reported adversely by Trumbull, the committee chairman, who at the same time reported on Henderson's proposed amendment. The committee had made one change in Henderson's plan, the addition of a second section giving Congress the power to enforce the article by appropriate legislation.  

Radical opinion on this amendment was roughly divided into two categories, those who supported it because of their altruistic devotion to the abstract cause of Negro rights, and those who saw it as a supreme blow against the traitorous Southerners. Typical of the former was Henry Wilson. The amendment heralded the day, he believed,

\[\text{\textsuperscript{141}}\text{Ibid.}, 19, 21.\]
\[\text{\textsuperscript{145}}\text{Ibid.}, 145.\]
\[\text{\textsuperscript{146}}\text{Ibid.}, 521, 553.\]
when "the slave mart, pen and auction-block, with their clanking fetters for human limbs, will disappear from the land they have brutalized; and the schoolhouse will rise to enlighten the darkened intellect of a race imbruted by long years of enforced ignorance."\(^{47}\) Sumner, of course, belonged to this school, but he was not happy with the amendment, feeling that his unemasculated version was far superior.

Typifying the other position was Zachariah Chandler. He saw the proposal as a means whereby the "secession traitor" would be pushed "beneath a loyal negro." "I would let a loyal negro vote;" he declared, "I would let him testify; I would let him fight; I would let him do any other good thing; and I would exclude a secession traitor."\(^{48}\)

The Democrats in the Senate could see the obvious implications of the act. They feared the idea of political power being given to the freedmen, and took steps to block such an eventuality. Senator Garrett Davis of Kentucky introduced an amendment which would have excluded all Negroes on the maternal side from holding any office or trust under the federal government. This measure was, however, defeated.\(^{49}\)

On the final vote on the proposed amendment, only six Democrats voted against it. "I now bid farewell to any hope of the reconstruction of the American Union," declared Senator Willard Saulsbury of Delaware, one of the opponents.\(^{50}\)

\(^{47}\)Ibid., 132h.
\(^{48}\)Wilson, Antislavery Measures, 335.
\(^{49}\)Congressional Globe, 30 Cong., 1 Sess., 11:2h.
\(^{50}\)Ibid., 11:90.
In the House the vote was not so near to unanimity. There the results were ninety-three to sixty-five, or twenty-seven short of the necessary two-thirds. Thus the measure was forced into the campaign of 1861, and the Republican plank of that year resulted.

Immediately after Congress met for its lame-duck session after the fall election, Representative Ashley moved to reconsider the amendment. This time the results were different. The vote of 119 to fifty-six was hardly announced when the members on the Republican side began cheering and clapping their hands, while spectators on the floor and in the galleries joined in the cheering. The Thirteenth Amendment was a reality.

One of the men most pleased was Thaddeus Stevens. As a lifelong advocate of abolitionism, as a consistent fighter for emancipation when the leaders of his party were unwilling to take that step, he was enjoying his moment of triumph. Shortly after the successful passage of the amendment, he announced: "I will be satisfied if my epitaph shall be written thus: "Here lies one who never rose to any eminence, and who only courted the low ambition to have it said that he had striven to ameliorate the condition of the poor, the lowly, the downtrodden of every race and language and color.""

Perhaps the most significant importance of the Thirteenth Amendment was its clarification of the status of the Negroes. They were

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\text{\(51\text{Ibid., 2995. The House voted on June 15, 1861.}\)
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\text{\(52\text{Ibid., 30 Cong., 2 Sess., 133-41, 531.}\)
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\text{\(53\text{Ibid., 265-66.}\)
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newly completely free, with no strings attached; as free as any other member of society. So far as the theoretical question of their status was concerned, this problem had at last been definitively solved. Their freedom was, like everyone else’s, constitutional rather than statutory.

But now that they were equally free, other problems arose. Were they equal as to condition and status? What obligations did the nation have toward them, and what rights did they enjoy?

Dramatizing the problem still more, Congress, on March 3, 1865, passed a bill which set up the Freedmen’s Bureau. This was an agency designed to aid freed Negroes and "refugees," that is, persons "driven from their homes by the rebels on account of their loyalty to the Union." The Bureau was to last until a year after the end of the war, and was to have as part of its duties the distribution of food, clothing, and fuel to the destitute, and the parceling out of vacant lands to the deserving freedmen and Unionists in lots of not more than forty acres. These lands were to be rented for a period of three years, and then purchased from the United States Government.54

The Freedmen’s Bureau Bill demonstrated more than any other measure passed up to that time that the Negro was going to remain a part of the Southern political and economic picture. Those who wanted him colonized abroad or restricted to some specific area were not

54 Stat. at Large XIII (1863-1865), 507-09; Blaine, Twenty Years of Congress, II, 163; Woodburn, Stevens, 369.
going to get their wish, for in this measure the Negroes were given protection and rights to land throughout the South.\textsuperscript{55} Thus the Negro was going to remain where he was; and now, even more, the question arose: What is his condition to be? What rights would he be able to enjoy?

\textsuperscript{55}For a discussion of the importance of the land provisions in the first Freedmen's Bureau bill, see LaVandra Cox, "The Promise of Land for the Freedmen," MUHR, XLV (December, 1958), 113-120, especially 113.
CHAPTER VIII

THE BLACK CODES, NORTH AND SOUTH

By the spring of 1865 the war was nearly over. The question of slavery had been settled by the Thirteenth Amendment, and the government had, in the Freedmen's Bureau Bill, accepted responsibility for the welfare of the freed Negroes. The position of the freedmen was still questionable, however, for there was no agreement as to what their rights were as free men and citizens. The question was further clouded by the contradictory laws and practices regulating the Negro citizens of the Northern states. In some areas Negroes had full civil and political equality; in other areas they remained under strict "black codes" unchanged from the days before the war.

There was, moreover, much strong Negrophobia throughout the North. While in some regions, principally in New England where the Negro population was small, there was little racial feeling, in much of the North there was still a strong anti-Negro bias on the part of many whites. This was forcefully illustrated in the 1864 election campaign, with its hysteria over the miscegenation question. Anti-Negro feelings were being slowly overcome in some cases, but the continuing dislike and distrust of the Negro remained a common feature of the racial thinking of most of the Northern white population. It was in opposition to this feeling that the Radicals had to operate; and the changing racial ideas of the North illustrate the increasing radicalism of public opinion. As the people grew more tolerant of Negro rights, the Radicals grew in strength in Congress. The changing
Northern ideas toward the Negro illustrates the climate of public opinion that both helped and hampered the Radicals in their campaign for their program.

During the war there had been a perceptible change of feeling in the North. Although most of the stringent anti-Negro laws which had characterized much of the North during the 1850's remained on the statute books, there was a gradual changing of sentiment toward the black man. Slowly the idea gained acceptance that the Negro should be entitled to certain minimum rights which the Constitution granted to every citizen. The Negroes themselves were in large measure responsible for this change. Their conduct during the war, in spite of their handicaps, had been generally patriotic. Their services in the military forces, in particular, had gained for them much support throughout the North, for the Negro had proven that he was capable of defending his freedom. The sight of Negro soldiers served to diminish the number of those who denied that Northern Negroes should be given the rights of citizenship.

Even the most conservative groups in the North eventually accepted the idea of emancipation as a necessary war measure, and increasing numbers of people supported the idea that freed Negroes should be allowed certain basic rights. Particularly, many persons felt that the freedmen should be guaranteed equal opportunities to earn a living. It was argued that to do less would be a tacit admission of error, and a victory for the "slaveocracy" and its allies.\(^1\)

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\(^1\)Miller, Stevens, 183.
These ideas developed very slowly, however, and the history of their maturation is one of violence and frustration. One of the best examples is to be found in the state of New York.

During the early years of the war there had been a series of anti-Negro riots in many areas of the North. In 1862, in New York, Negroes had been used as longshoremen to replace white workers who were on strike, and a severe riot had resulted. In Buffalo and Albany there were riots against colored workers. In August, 1862, Negro workers in a Brooklyn tobacco factory were attacked, and in July, 1863, the draft riots occurred in New York City, bringing death to many Negroes.

New York held no monopoly on this type of anti-Negro feeling. In Cincinnati there had been similar riots, and there was anti-Negro disturbances in Chicago, Cleveland, Detroit, New Jersey and Pennsylvania. But the New York riots were the worst and the bloodiest. As late as 1864 the situation in that state was so bad that the Radical, Gurowski, claimed that the "immense majority" of the state's population was "copperhead, and even open partisans of Jefferson Davis." Although this indictment is unduly severe, New York was undoubtedly very anti-Negro. Even at the end of the war, Negro-phobia was so strong in New York City that Negroes were refused permission to march in the funeral parade for President Lincoln. The city common council refused to allow Negro organizations to participate in the parade; and although the police commissioner

2Gurowski, Diary, III, 344; September 13, 1864.
assured them that they could march "without hindrance from any quarter," the council refused to revoke the ruling.\(^3\)

As late as 1866, when radicalism was sweeping the North, there was boycotting of Negro workers in the state. Even the son of one of the most famous of all Northern Negroes, Frederick Douglass, was refused work. A veteran of the Union army and a skilled typographer, he was denied a job because members of the Rochester Typographical Union refused to work alongside a Negro.\(^4\)

During the early period of the war there was much concern among laboring groups that emancipation of the slaves of the South would mean the North would be flooded with great numbers of workers willing to accept low wages. These arguments carried great weight in the urban, industrial centers of the North, and among immigrants, who were themselves consigned to manual labor, the type of job the freed slaves conceivably could most easily fill. A major spokesman for this type of thinking was the \textit{New York Herald}. "The Irish and German immigrants, to say nothing of native laborers of the white race, must feel enraptured at the prospect of hordes of darkeys overrunning the Northern States and working for half wages, and thus ousting them from employment," wrote the \textit{Herald}'s editor, James Gordon Bennett, in October, 1862.\(^5\)

\(^3\)DuBois, \textit{Black Reconstruction}, contains an interesting, if emotional, account of anti-Negro feeling in the North during this period. See especially 216-17.

\(^4\)Foner, \textit{Douglass}, IV, 58.

\(^5\)\textit{New York Herald}, October 20, 1862; Quarles, \textit{Negro in the Civil War}, 166.
This opposition was fruitless after the Emancipation Proclamation went into effect, and Northerners were forced to rely on more subtle ways of demonstrating their hatred for the Negro. In most areas complete segregation remained the rule, and the Negro was shunned as a second-class citizen even by those who recognised his freedom and manhood. Charles Sumner refused a speaking engagement in Albany because of racial restrictions there. In a letter to the Young Men's Association of that city he declined an invitation to speak to one of their meetings because the audience was apparently "too delicate to sit beside a black citizen." He accused the organization of championing "caste and vulgar prejudice" in maintaining a policy of segregation at their meetings. 6

In the years between 1863 and 1865, the position of the Negro improved perceptibly. By this time Negroes were proving themselves in battle, and their friends, the Radicals, were gaining in political strength. In 1863 the Negro's position was still doubtful, for, as Frederick Douglass said, people did not like the idea of having the black man in the "body politic." "He may remain in this country, for he will be useful as a laborer - valuable, perhaps in time of trouble," Douglass continued bitterly, "... but to make him a full and complete citizen, a legal voter, that would be contaminating the body politic." 7

By 1865 the picture had changed, and the Negro had won a status

6 Sumner, Works, VIII, 102.

7 Foner, Douglass, III, 381; speech at a meeting of the American Anti-Slavery Society, Philadelphia, December 3, 1863.
which he did not have two years earlier. Still Douglass feared interference with the Negro's slow evolution toward full citizenship. He appealed to the Massachusetts Anti-Slavery Society to let the Negro alone. "If you see him on his way to school, let him alone, don't disturb him," he begged. "If you see him going to the dinner-table at a hotel, let him go! If you see him going to the ballot-box, let him alone, don't disturb him! If you see him going into a workshop, just let him alone - your interference is doing him a positive injury." Significantly, the abolitionists were recorded as applauding only the appeal for rights at the ballot-box. 8

The question of Negro suffrage was becoming one which the people of the North were being called upon to answer. Most of the Northern states, by the end of the war, still refused the ballot to the Negroes. No state which had deprived Negroes of the right to vote before the war granted them the suffrage during the war, in spite of the black men's changed position in Northern society. In the fall of 1865 an attempt was made in Connecticut to remove the word "white" as a qualification for voting, but this was defeated by a vote of 33,489 to 27,217, or a majority of 6,272 against Negro suffrage. 9

The Connecticut vote was a blow to the Radicals, who had hoped to make the state a test case for their growing demands for Negro

8 Ibid., IV, 164.
9 McPherson, Political Manual, 120.
suffrage in the South. The defeat was shrugged off, however, by Henry Winter Davis of Maryland. The setback to the Negro suffrage movement did not touch the "republicanism" of the Connecticut government, Davis declared in a letter to the editor of the Nation, for the persons who remained excluded "form no material or appreciable portion of her citizens." Davis refused to see the defeat as a deterrent to Radical plans for Negro suffrage in the South. "But Negro suffrage is one thing in Connecticut and another thing in South Carolina," he added, warningly. 10

The question of Negro voting also arose in Pennsylvania. This state had a record of anti-Negro violence during the war. In 1862 the legislature had considered, but not passed, a bill designed to prevent free Negroes from even entering the state. Rigid segregation was practiced on streetcars in Philadelphia, and colored volunteers for the Massachusetts Fifty-fourth regiment had to be shipped North individually "in order to avoid any scenes." 11

The Republicans were determined to make Negro voting an issue in the state elections in 1866. They adopted a plank which called for the removal of the "white" qualification for electors. Pennsylvania Democrats countered in their platform with a claim that "each State has the exclusive right to regulate the qualifications of its own electors," and asserted that "the white race alone is

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10 Henry Winter Davis. Speeches and Addresses, Delivered in the Congress of the United States, and on Several Public Occasions (New York, 1867), 590.

11 Quarles, Negro in the Civil War, 186-87.
entitled to the control of the Government of the Republic, and we are unwilling to grant the negroes the right to vote.\textsuperscript{12} The question in Pennsylvania was still unsettled at the time of the passage of the great Radical legislation, and remained a subject of bitter debate, even in Thaddeus Stevens's home district.

A similar situation existed in Maryland. There the Radicals, with the inspiration of the now-dead Henry Winter Davis, were determined to press the suffrage issue in the 1866 campaign. They met opposition, however, not only from the Democrats, who were completely against the idea, but from a branch of the Union party itself. This group saw the Negro suffrage issue as a question "raised by the enemies of the Union party for the purpose of dividing and distracting it, and by this means to ultimately enable rebels to vote."

These anti-suffrage Unionists were determined to prevent "rebel suffrage and negro suffrage," and to uphold the state's registry laws, which disfranchised rebels and completely excluded Negroes from the polls.\textsuperscript{13}

In Indiana, too, the Negro was having a difficult time. There the laws were still in force which denied the Negro the franchise, and which forbade free Negroes from entering the state except under certain restrictions. Governor O. P. Morton cited the state's anti-Negro laws in opposition to Radical demands for political and civil rights for Southern Negroes. How, he asked, could the people of

\textsuperscript{12}McPherson, \textit{Political Manual}, 123, contains the Democratic platform.

\textsuperscript{13}This platform is contained in \textit{ibid.}, 124.
Indiana demand these rights for the Negroes of the South, when they refused them to Indiana Negroes. The Radicals demurred. George W. Julian, leader of the Indiana extremists, called this an evasion of the question. "The people of Indiana," he wrote later, "had no right to take advantage of their own wrong, or to sacrifice the welfare of four million blacks on the altar of Northern consistency." Julian, like Winter Davis, illustrates a familiar reform psychology: They were more concerned with the great reforms necessary in a more remote area than they were in less pressing reforms needed closer to home. The welfare of the Southern Negroes must come first, not only because they were in greater need, but also because reforms in the South could be accomplished with less opposition from the Northern electorate.

The question of Negro rights in Indiana was especially pressing in 1865 and 1866. Conservative Republicans, led by Governor Morton, opposed Radical attempts to take over the state party machinery, using the Negro rights question as the main issue. Doggedly Morton and other conservatives opposed the idea of Negro rights. Morton argued that Negro suffrage would mean Negro governors, judges, Congressmen and a "negro balance of power in our politics, and a war of races." In this he was seconded by Huch McCullouch, who spoke against Negro suffrage in Fort Wayne in October, 1865. Referring to the Radical proposals for Negro voting, both North and South, he declared that he "knew that they are not the views of a majority of the people.

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14 Julian, Recollections, 265.
of the North."

In Ohio, too, the land of the Western Reserve and the home of Benjamin F. Wade, the people were not enthusiastic about Negro rights. There the constitution contained the ubiquitous "white" qualification. Ohio voters refused to remove it at this time, and retained it even after it was nullified by the Fifteenth Amendment several years later. In fact, in an election held as late as 1912, the Ohio electorate refused to remove the now-meaningless limitation by a vote of 265,693 to 242,735. "Race prejudice," one observer wrote after the 1912 election, "is evidently still strong in Ohio."

The extreme racial conservatism of many Ohioans was reflected in Congress by "Sunset" Cox, who, although defeated in the 1864 triumph of Radicalism, illustrated the feelings of many Ohioans toward the black man. Cox opposed all the Radical legislation during the period in which he was in Congress, and was vitriolic in his denunciations of any attempt on the part of the Radicals to aid the Negro. "In the North," he contended, "the volunteers had to be rejected by tens of thousands when the cry was 'Fight for the Union.' When to this cry was added the command - 'Fight for the negro,' there

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16 James A. Garfield received an unsigned letter from Ohio, January 16, 1866, which contended that "a great many" at the Republican State convention "were not prepared to vote upon the question" of Negro suffrage. "It could not be a practical issue for the present in Ohio..." the letter added. Garfield papers. (Division of Manuscripts, Library of Congress). On the 1912 election see C. B. Galbraith. "The Vote on the Ohio Constitution." The Independent, LXXXIII (1912), 1108-09.
was great need of conscription. 17 While the ideas represented by Cox were on the decline in Ohio in 1865 and 1866, nonetheless they were still strong, and many people in the state were more willing to ignore the race problem at home, and see it only as a Southern phenomenon.

The Negro was making some progress in other Northern states, however, in spite of the bleak outlook for Negro suffrage. Early in 1865 the states not covered by the Emancipation Proclamation took steps to eliminate slavery within their borders. In January Missouri freed her slaves, shortly followed by Tennessee, and the governor of Delaware urged that state's legislature to follow their example. 18 And in Illinois, the home of Owen Lovejoy and Lyman Trumbull, the legislature began altering its black code.

In Illinois the worst part of the anti-Negro laws were repealed, due in large measure to a firm Union party control of the state legislature. They were not, however, eliminated completely, even after alteration, the state's apprenticeship laws made distinctions between whites and "Negroes and mulattos," not requiring that the latter be taught writing and arithmetic, as were white apprentices. Still on the books were laws restricting Negro testimony in courts of law, and provisions requiring the posting of good conduct bonds by Negroes. The legislature did eliminate the law entitled "An Act to Prevent the Immigration of Free Negroes into this State," which

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17 Cox, Three Decades of Federal Legislation, 222-23.
18 Quarles, Negro in the Civil War, 313.
had provided that any free Negro should be sentenced to forced labor upon entering the state, and, upon completion of his term, should leave the state within three days.\textsuperscript{19}

The change in the attitude of Illinois was applauded in the North, even though the change was not too great. \textit{Harper's Weekly} hoped that "sensible men and women" could "now emancipate themselves from a black law of a most cruel and senseless prejudice." "Now that Illinois has repealed her black law," it continued, "is it too much to hope that New York will do the same thing?" New York still retained the pre-war voting qualifications for Negroes, which demanded the payment of double taxes and a doubled residence requirement for Negro voters.\textsuperscript{20}

Massachusetts, as was its habit, was the most Radical of all the states during this period. In 1866 two Negroes were even elected to the state legislature. Commenting wryly upon this, Secretary of the Navy Gideon Welles, a Republican but not a Radical, was convinced that the new legislators had been named, "not for talents, ability, or qualifications, but because they are black. Had they been white, no one would have thought of either for the position."\textsuperscript{21}

Even in this state the lot of the Negro was not one of complete equality. The feelings of a prominent Massachusetts Negro are portrayed vividly in a letter from a physician, J. B. Smith of Boston,"

\begin{itemize}
  \item \textsuperscript{19}Beale, \textit{Critical Year}, 182.
  \item \textsuperscript{20}\textit{Harper's Weekly}, February 11, 1865.
  \item \textsuperscript{21}Welles, \textit{ Diary}, II, 620.
\end{itemize}

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to Charles Sumner. "The white people of this country have been so accustomed to regard and treat us as their natural inferiors," he wrote, "that we dread the very thought of submitting to them the adjustment of our rights after their own are made secure."

"What is not gained for us now," he added significantly, "will not be obtained for a quarter of a century after peace is declared." Smith's plight was eloquently, although not intentionally, demonstrated by Wendell Phillips, the prominent abolitionist. Speaking in January, 1865, to a meeting of the Massachusetts Anti-Slavery Society, Phillips demanded the ballot for the Negro as a condition for the re-admission of any rebel state. "Justice and absolute equality before the law is the high-water level of American politics," he declared. But he demanded the ballot only for the Negroes of the rebel states; he did not even mention the states of the North and the loyal border states which refused to enfranchise the black man.

Within the year Connecticut voted down Negro suffrage, as did Minnesota and Wisconsin. In the latter states there were few anti-Negro demonstrations, although in Wisconsin a Negro woman was injured while being ejected from a train. As professor Beale indicates, racial incidents were rare in these areas "principally because of the paucity of blacks in the North."

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23Sears, Phillips, 254.
24Beale, Critical Year, 181.
These instances illustrate the rareness of political or civil rights for Negroes in the North. In another field of interracial relationships there was not even any meaningful attempts at equality; this was in social affairs. Negro servants travelling with white employers were denied rooms in New York hotels, Negro veterans were denied access to street cars. Horace Greeley was even forced to give up an attempt to "pilot ... a most respectable colored clergyman" through the streets of New York.25

Even in the areas of the South occupied by Northern troops, in which Radicals had taken over operation of schools and hospitals, there was a strict line of social distinction. There people showed little desire to grant the Negroes even the common distinction of the titles of "Mister," or "Miss." A Quaker nurse, writing to her mother from a Union hospital in Virginia, requested that in the future her mother add the prefix "Miss" to her name, for otherwise her letters were delivered to the Negro settlement.26

The social status of the Negro in the North was succinctly summed up by James G. Blaine. "In no State of the North had there ever been social equality between the negro and the white man," he wrote. Even in New England he found "points of prejudice which time had not effaced nor custom changed," while in the West the anti-Negro feeling was "much deeper."27

25Ibid.
26Quarles, Negro in the Civil War, 288.
27Blaine, Twenty Years of Congress, II, 180.
Few Radicals at this time were willing to make any attempt to alter in any way these established customs. One who did was Thaddeus Stevens. The Pennsylvanian had been disgusted with the opposition which developed during the war to the recognition of Liberia and Haiti because of the possibility of Congressmen having to fraternize socially with the Negro diplomats of these countries. While this feeling was not confined to the Democratic side of the aisle, it was most dramatically expounded by Representative Cox of Ohio. After listening to Cox warn of the danger of black diplomats being allowed in Washington, Stevens rose. "I hope that we shall not be less liberal," he said, "than a very rich colored merchant in Jamaica that I heard a gentleman from Boston ... speak of. He said to this gentleman ... that he had no prejudices about color; that he would never prefer a man of color, and that he would just as soon dine with a man as white as his table-cloth."28

But while few Republicans were willing to go to the extremes that Stevens advocated, many were convinced the Negro was ready for full civil equality. This, to them, meant equality of procedural rights under the law, such as the right to testify in court, the right to own property and transfer it, the right to earn a living - things which were denied in many parts of the North. They shied away from

28 Congressional Globe, 38 Cong., 1 Sess., 133. The diplomats from Haiti, once allowed to enter the country, proved that they, too, had race prejudices. A Negro delegation once called at the Haitian Ministry. The Minister received them "indignantly," and assured them that he was not an "African negro," and that a Haitian was "quite a different sort of man." Newspaper clipping, Gideon Welles's Scrapbook. (Division of Manuscripts, Library of Congress).
any concept of social equality, however, and were content to strive only for "civil liberty" for the Negro. The conservative Senator William Pitt Fessenden of Maine typified this attitude. In January, 1865, he bragged about Maine's tradition of civil liberty, and voiced the hope that the state would continue to struggle, after the end of the war, for the liberties of the Negro.29

The Radicals were dissatisfied with this kind of ambiguity. They demanded a more concrete statement of aims and principles. They wanted an assertion of their own right to control Southern reconstruction, as well as a more definite delineation of the Republican party's position on Negro rights, particularly in the South. The man who made the most significant statement of the Radical position was Charles Sumner.

The Massachusetts state Republican convention met at Worcester on September 11 to hear Sumner's plea for equal rights for Negroes and for a freehand in Reconstruction for Congress. "The work of liberation is not yet complete," he assured the delegates, "[n]or can it be, until the Equal Rights of every person once claimed as a slave are placed under the safeguard of irreversible guaranties."30 "It is not enough," he contended, "to declare Emancipation; the whole Black Code, which is the supplement of Slavery, must give place to that Equality before the Law which is the very essence of liberty." Sumner outlined the rights that Negroes should be guaranteed; "Every freedman must be

29 Fessenden's speech to the Maine legislature on his re-election to the U. S. Senate, January, 1865; Fessenden, Fessenden, II, 5.

30 Sumner, Works, IX, 442.
able to claim his wife as his own ... his child as his own" and "the privileges of education." He must be "protected in his industry," and allowed to enter the courts freely," as witness or as party."

To accomplish these things, Sumner demanded "enfranchisement... both civil and political." "Unless this is done," he warned, "the condition of the freedmen will be deplorable." He insisted also on complete integration of the races. He demanded public schools "for the equal good of all," based on the example of Massachusetts, which practiced legal integration. The "irreversible guaranties" which he sought, he claimed, could never be attained by "yielding to the prejudice of color, and insisting upon a separation of the races." 

To guarantee these rights, Sumner called for a constitutional amendment, to provide especially "that hereafter there shall be no denial of the electoral franchise or any exclusion of any kind on account of race or color, but all persons shall be equal before the law." 

This speech was the most Radical pronouncement yet to be made by a congressional leader, and one of the rare times when any of the Radicals were to commit themselves to such an extreme egalitarian position. Although Sumner's statement was far more extreme than most of his Radical associates were willing to accept, his views were seen as an exposition of the position that the Radicals were

31 Ibid., 443.
32 Ibid., 457-58, 460, 466.
33 Ibid., 473.
going to adopt when Congress reconvened in December, 1865.

The New York Herald, never a friend of the extremists, was appalled at Sumner’s demands. It described the speech as a "furious assault" upon "everybody except the blacks in the South. The paper declared that Sumner had not made public the official Radical position, and predicted that the Republicans would begin pushing for these demands in the coming Congressional session. "A rebellion," the Herald concluded, "has commenced in the North, and has been inaugurated in Massachusetts, with Senator Sumner as high-priest and prophet." 34

The New York World did not go to the extreme of the Herald in attacking Sumner’s speech, but noted that it was probably "a true exposition of the purposes of the Republican party." "Charles Summer," the World continued, "is the Republican platform incarnate." 35

This was hardly true, for Summer was way ahead of his party on this issue. But many Republicans were being forced into the Radical column during the summer of 1865, and these new recruits were to strengthen the position of Sumner, Stevens, and the other extremists. The stand on Negro rights which history associates with radicalism was not original with most of the men who were to vote for the Radical bills of 1866; these men felt themselves forced into the extreme position by events which were taking place in the South, and which, they were convinced, threatened to undo the Union victory.

34 Quoted in Summer, Works, IX, 483.
35 Ibid.
The main question involved was the political and civil status of the freedmen, which was practically unknown. All that was official was that they were free and for all practical purposes wards of the federal government under the protection of the Freedmen's Bureau. Many people in the North, of all political complexions, were concerned about the effect of the Thirteenth Amendment on the Southern social system, and were afraid that the Negroes would be kept in some type of inferior position by the majority race. They realized, with Gideon Welles, that the amendment would be a "shock to the framework of Southern society," and hoped that the Southerners would accept it without rancor.36

Both Southerners and Radicals realized that the position of the Negro had greatly changed, and with it new problems had been created. They realized, too, that the Negro still needed regulation and direction, that he could not be allowed to drift aimlessly in his newly-found freedom, for which he had received no preparation. Family life, social conduct, and labor contracts had to still be regulated, some definite legal status had to be given to the freedmen, an educational system adopted, and some sort of regulation for interracial conduct set up. Southerners were determined that in accomplishing these things they would keep the Negroes in a position of social and economic inferiority; the Radicals were determined that they would not.37

Lincoln had died in April, 1865, and the new president, Andrew

36Welles, Diary, II, 234.
37Simkins, The South, Old and New, 181-82.
Johnson, was attempting to follow Lincoln's precedent, and keep Reconstruction in the hands of the executive department. Despite the emergency conditions resulting from Lincoln's assassination and the surrender of the Confederate armies, Johnson refused to call a special session of Congress. During this interim period he put into effect his own plan for Reconstruction, incorporating much of the Lincoln plan as announced in December, 1863.

Southerners, during this time, in an attempt to retain control over the Negro masses, enacted various laws, termed the Black Codes. These laws were directed at all persons possessing a specified amount of Negro blood, usually one-eighth. Under the Codes Negroes and Mulattoes were strictly regulated, provision being made for them to make contracts, to acquire, hold and convey property, to sue and be sued, and to practice the other common civil liberties. They were, however, severely limited as to places of residence, types and terms of employment, and were subject to differing punishments for crimes.38

The provisions of the Black Codes which worked greatest severity against the Negroes were little different than the codes of several Northern states, but in the North these anti-Negro laws were often laxly enforced, if indeed they were enforced at all. Because of the great distrust created in the North by their enactment, however, they were quickly vetoed by Union army commanders, and were unceasingly attacked by the Radicals.39

The extremists objected particularly to the lack of positive guarantees of civil equality in the codes. The Negro was not per-

38 Ibid., 182-83.
39 Ibid., 184.
mitted to serve on juries, he was not allowed to testify against a white man, he was restricted to such an extent it was felt he would be unable to improve himself economically. In some cases it was specified that no more money should be expended on Negro education or poor relief than was collected from the freedmen in taxes, and the schools that were provided were strictly segregated. There was no mention whatsoever of suffrage for the freedmen.\textsuperscript{40}

The Radicals viewed such conditions with grave concern. Carl Schurz summed up the objections felt by most of the more Radical Republicans: "The abolition of slavery... was again at stake. Everywhere the negro population was oppressed by laws which only stopped short of the reintroduction of slavery..." Charles Sumner agreed, and urged the Negroes of the South to oppose any attempt to coerce them into acceptance of the Black Codes. "I see little chance of peace or tranquillity in any Rebel State," he wrote to the Negroes of Charleston, in May, 1865, "unless the rights of all are recognized without distinction of color." In reply to a question from the Negroes on what their course of action should be, he wrote: "You must insist on all the rights and privileges of a citizen. They belong to you... and whoever undertakes to rob you of them is a usurper and imposter." In another letter, to the editor of a Charleston Negro newspaper he assured the Southern freedmen that "their friends will stand by them" in the fight to achieve a "new order" in the South.\textsuperscript{41}

\textsuperscript{40} Miller, Stevens, 216, contains a general summary of the Black Codes.

\textsuperscript{41} Schurz to Heinrich Meyer, November 8, 1866; Schurz, Speeches, II, 417; Summer, Works, IX, 364, 366.

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Summer and Stevens were determined that first of all the Negro should be guaranteed the ballot, and they had already begun working toward that end before the passage of the Black Codes. They had successfully blocked the admission of Louisiana, whose government had been reconstructed according to the Lincoln plan, because Negroes were denied the suffrage. Some Radicals felt the Louisiana government was again falling "into the hands of those Scoundrels who carried the State so swiftly into the late rebellion."  

The Radicals were determined to force the question of Negro suffrage upon the South, and began organizing a concerted campaign to accomplish this end. The keynote was sounded by Sumner in a letter to Carl Schurz in July, 1865. "No State will be allowed a Representative in Congress unless under government founded on the consent of the governed and Equality before the law," he wrote. "Let them begin at once with complete justice to the negro." To accomplish this, he urged Schurz to "preach this doctrine - talk it wherever you go. You will be sustained." He assured his friend that the country was "morally and intellectually" in accord with the idea, and, he added, "the administration will not be allowed to lag behind."  

Schurz was of particular interest to Sumner at this time, and the Senator was cultivating him assiduously, for Schurz had just been appointed by President Johnson to make an investigation of conditions

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42 R. King Butler to Lyman Trumbull, New Orleans, August 29, 1865; Trumbull Papers.
43 Sumner to Schurz, July 11, 1865; Schurz, Speeches, II, 267.
in the South for the purpose of establishing the presidential reconstruction policy. He had a long record of Republicanism, and tended to be strongly Radical in his racial views.

Schurz's trip became a vital propaganda instrument for the Radicals, and his report became a most important document, used later to convince the more conservative Congressmen of the need for extreme measures against the South and in favor of the Negro. Schurz was more than happy to have the opportunity to make his views public. "The convictions with which I came here are becoming strengthened every day," he admitted in a letter to Sumner from Savannah in August. From Jackson, Mississippi, he wrote to Mrs. Schurz that "all of my preconceived opinions" have been "verified most fully, no more than that. The real state of affairs leaves my expectations far behind." Southern society, he was convinced, was in a state of "complete dissolution," and could be held together only by "iron force."  

The only bright spot in the South, he believed, was in the behavior of the Negroes. He praised the "laudable zeal" of the freedmen, and felt that they were the only group which was attempting to improve conditions in the South.  

The report which Schurz made to President Johnson at the conclusion of his tour bore out the most extreme of the Radical contentions. The Southern whites, he contended, were determined to treat the Negroes "just as their profit, caprice or passion may dictate." He

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44 Schurz to Sumner, August 2, 1865; Ibid., 267-68; Schurz to Mrs. Schurz, August 27, 1865; Ibid., 268.
feared that so long as relations between whites and Negroes remained under the regulation of laws enacted by the states, the Negroes would suffer, for even if the whites enacted laws securing equal rights, they would fail to enforce them. On the question of Negro suffrage, he was convinced that it was the only solution to the problem. Furthermore, he assured Johnson, the feelings of the freedmen were "naturally in sympathy with the views and aims of the National Government" on the basic questions of both national and sectional interest. The divergent interests of Southern Negroes and whites would force the former to ally with his protectors in the North, while the latter would be kept in an emasculated minority political status. He discounted Southern arguments that Negroes were unfit to vote, and was confident there would be no danger that the whites would force the freedmen to vote as they directed. None of the Southern whites, he concluded, would allow Negro suffrage, except for the few Southern Unionists, who themselves were ostracized and scorned because of their loyalty. The only way that the South would be forced to grant the ballot to the Negro, he predicted, was to make such a grant a condition for readmission to the Union. 46

Johnson greeted the report coolly, and refused to accept it as a valid indication of Southern conditions. The Radicals hailed it as gospel, and considered its author a hero. They vilified Johnson for not accepting the report at face value. Schurz himself was hurt

by Johnson's attitude. "He received me ... with great coldness," he wrote to Summer, adding that he was "at a loss to understand" why he was being so treated.\(^7\)

The New York Herald had another answer. Schurz was in disfavor, the paper contended, because he spent much of his time on his tour attempting to organize the Republican party in the South, and even trying to convince the Southerners that a strong Republican organization would be one requirement for their readmission to the Union.\(^8\)

Summer attempted to console the frustrated Schurz. "I do not think the President in earnest when he invited you to make your tour," he wrote in October. He assured Schurz that Congress meant to "assume jurisdiction of the whole subject" and give his report the attention it deserved. Again, on Christmas Day, 1865, he assured Schurz that "the evidence" would undoubtedly be used to show the need for "intervention by Congress" in the Reconstruction process.\(^9\) The Radicals at last were beginning to launch their concerted attack on the President's Reconstruction program.

Thaddeus Stevens was in complete sympathy with Schurz's views toward the South and his demands for basic social reforms in that section. Speaking before his constituents at Lancaster, Pennsylvania, on September 6, 1865, he threatened, if necessary, to force into exile the "70,000 proud, bloated and defiant rebels" who controlled

\(^7\)Schurz, Speeches, II, 275.

\(^8\)Ibid., 273; New York Herald, October 17, 1865.

\(^9\)Schurz, Speeches, II, 276, 373.
most of the land of the South, and to confiscate it for the benefit of the freedmen. He demanded that "the foundation of their institutions - political, municipal and social -" be "broken up and relaid." This, he assured his listeners, was the duty of Congress, not the President.50

Some Radicals feared that the President's course would result in the ruin of the Republican party. Benjamin F. Wade wrote Sumner in July, 1865: "The President is pursuing and I believe is resolved to pursue a course in regard to reconstruction that can result in nothing but consigning the great union, or Republican party, bound, hand and foot, to the tender mercies of the rebels we have so lately conquered ... and their copperhead allies in the north."51

Other Radicals feared that a restored South in white hands would threaten Northern investments. John Covode, soon to become a Radical Congressman, wrote to Wade in July, 1865, shortly after he had returned from New Orleans. He feared that the "Slave holders" were determined to retain slavery "in some form" and would defy the Thirteenth Amendment. Further, if they gained political power, they would "organize against the payment of the Nat. [sic.] Debt unless they be paid for their slaves or their debt."52

Southern whites were neither repentant nor loyal, it was apparent

50 New York Tribune, September 11, 1865.
51 Letter to Summer, July 29, 1865, Wade Papers. This letter is unsigned, but is in Wade's handwriting, and is written from Jefferson, Ohio, which was Wade's home. As Congress was not in session at the time, Wade undoubtedly had returned to his home in Ohio. It, therefore, seems safe to assume that the letter is from Wade.
52 John Covode to B. F. Wade, July 11, 1865, Wade Papers.
to Radical observers. A group of North Carolina loyalists wrote
to Thaddeus Stevens, testifying that "... as far as North Carolina
is concerned her people in a large proportion are still bitter
enemies to the Union and the Government." A Mississippian wrote to
Trumbull to "assure you that there is almost no such thing as loyalty
here, as that word is understood in the North." 53

Many Republicans were hopeful of making political capital out
of the situation in the conquered South. Benjamin F. Butler, the
Massachusetts Radical, wrote to Wade that the "most vivid hope I
have is that the rebels will behave so outrageously as to awaken
the Government and the North once more..." 54 General William T.
Sherman assured his brother, the Senator, that the Southerners, if
left alone, would "cut their own throats." "Their mistakes will
work to the interests of the great Union party," he predicted. 55

Some men urged moderation. "I trust that firm but moderate
Counsels may prevail..." one of Trumbull's constituents wrote.
Others feared the excesses of Radicalism. They were concerned lest
Sumner and the extremists "carry the country on the Massachusetts
idea of negro suffrage, female suffrage, confiscation and hanging." 56

53 J. D. Rea and others to Stevens, March 14, 1866, Justin S.
Morrill Papers, (Division of Manuscripts, Library of Congress); C. E.
Lippincott to Trumbull, August 29, 1865, Trumbull Papers.

54 Butler to Wade, July 26, 1865, Wade Papers.

55 W. T. Sherman to John Sherman, February 23, 1866. Thorndyke,
Sherman Letters, 264.

56 Allen C. Fuller to Trumbull, December 27, 1865; C. H. Ray
to Trumbull, September 29, 1865; Trumbull Papers.
These opinions were becoming those of a minority of the Republicans of the North, however, for Radicalism was soon to triumph, and carry all before its sweeping legislation.

In December, 1865, the first session of the Thirty-ninth Congress met in Washington. This was to be one of the most momentous and critical sessions in Congressional history, one which was designed to produce the legislation which was to give to the Negro his most basic rights, and which was to give to the Radicals complete ascendency over the president.

The racial ideas of the Radicals were soon to be forged into law, and the extremists were to triumph; and a majority of the country was going to support them in their efforts. This was to be the moment of victory.
CHAPTER IX

"...A GREAT SOCIAL REVOLUTION..."

The Republican party was firmly in control of the Thirty-ninth Congress, and the Radical faction was in the majority of the party. The Radicals were determined that they must secure the equal civil and political rights of the Negro and thus guarantee the "ascendancy of loyalty." On December 2 a caucus of the Republican leaders was held, and Thaddeus Stevens submitted his plan for attaining these goals. He proposed a four-point program, which included the following provisions: The entire question of Reconstruction should be made the exclusive jurisdiction of Congress; Johnson's Reconstruction measures should be considered only provisional; admission of members of Congress from Southern states should be postponed; and a Joint Committee of Fifteen should be appointed to investigate conditions in the South.1

Stevens was determined that a large percentage of the white population of the former Confederate states should be disfranchised and their property confiscated. Loyal whites and freedmen should be given absolute guarantees of civil and political rights. To accomplish these ends, the seceded states should be kept in a territorial status until laws providing the necessary guarantees could be passed. Speaking to the House, he warned that admission of members from the

South, together with the Northern Democratic members, would give the Democratic party control of Congress and Southern votes could control the electoral college. This would result, he warned, in "assumption of the rebel debt or repudiation of the Federal debt..., oppression of the freedmen... and the re-establishment of slavery."2

"Our fathers repudiated the whole doctrine of the legal superiority of families or races, and proclaimed the equality of men before the law," he continued. He warned against the idea that white men alone should have political rights. "This is not a white man's government," he declared. He insisted that nothing less than "equal rights to all the privileges of the Government" would be acceptable in the eyes of the Radicals; anything less would be "atrocious."3

One of the first tangible steps taken by the Radicals to accomplish this program of equal rights was made by Henry Wilson of Massachusetts, who on the first day of the session introduced a bill into the Senate to abolish the Black Codes of the South. This bill would have declared null and void any law which recognized "any inequality of civil rights" among the inhabitants of the Southern states, and provided for fines and imprisonment for violators.4

\[\text{Congressional Globe, 39 Cong., 1 Sess., } 74.\]

\[\text{Ibid., } 74-75. \text{ Theodore Tilton, editor of The Independent, praised Stevens's stand. } \text{"The way in which you have opened Congress & thrown down the gauntlet to the President's policy has pleased our Radical friends hereabouts ... thoroughly..." Tilton to Stevens, Dec. 6, 1865. Stevens Papers.}\]

\[\text{Congressional Globe, 39 Cong., 1 Sess., 1-2.}\]
Wilson eloquently urged the passage of his bill, warning that at that moment the South Carolina legislature was considering a bill to turn the freedmen into "servants." He claimed that the bill was designed to turn the Negroes of the State into "serfs, a degraded class, the slaves of society." "A few months ago," he continued, "these freedmen were joyous, hopeful, confident. Today they are distrustful, silent and sad, and this condition has grown out of the wrongs and cruelties and oppressions that have been perpetrated upon them."

Sherman supported the proposal, but he urged postponement. He felt the language of the bill was not "definite and distinct" enough, that it did not specifically outline the character of the rights intended to be secured. He assured his colleagues, however, that he was entirely in sympathy with the need for some sort of federal protection for all the "natural rights" of the freedmen.

Trumbull agreed with Sherman's argument. He gave notice that he intended to introduce a bill which would guarantee to the freedmen the rights to "go and come when they please, to buy and sell when they please, to make contracts and enforce contracts..." These rights, he felt, had been obtained by the Negroes by the first section of the Thirteenth Amendment, and any attempt to deprive them of these rights was unconstitutional.

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5 Ibd., 39, 41.
6 Ibd., 41-42.
7 Ibd., 43.
Sumner defended Wilson's measure. "The argument for it is irresistible," he declared. He insisted that without some statement guaranteeing the rights of the freedmen, "emancipation will be only half done." The abolition of the Black Codes would succeed in ending slavery not only "in form," but "in substance." Only then could all men be "equal before the law." "Pass the bill now under consideration," he demanded, "pass any bill; but do not let this crying injustice rage any longer." Turning to the Democratic side of the Senate, he demanded: "If you are not ready to be the Moses of an oppressed people, do not become its Pharaoh."\(^8\)

The Southerners, he contended, were treating their former slaves harshly, were even killing or mutilating them by having their ears and noses cut off. He warned that if left to their own devices the Southerners would repudiate the national debt and would reduce the freedmen to debt slavery, a "Mexican system of Peonage." Further, if allowed representation in Congress, the ex-rebels would ally themselves with the Northern Democracy. He read from a letter written by a traveller in the South, who claimed that a Southerner had threatened that as soon as the South was restored to Congress they would "strike hands with the Democratic party of the North, and manage them as we always have."\(^9\)

Sumner's severe condemnation of the South drew rebuttals from some members of his own party. If the Southerners were as bad as

\(^8\)Ibid., 91, 95.
\(^9\)Ibid., 92-93.
Summer pictured, said Republican Senator William M. Stewart of Nevada, then "a union of these States is impossible..." Stewart assured the Senate that he personally favored the securing of the rights of the freedmen; but he felt this could be done without holding the South in "territorial subjugation."

The opposition to Wilson's bill proved too great. The plan was never reported from committee. The bill represented the first attempt on the part of the extremists to secure complete federal control over the internal affairs of the Southern states. It failed partly because its vague wording left too many loopholes. Many persons who would have supported a more specific measure felt this proposal could be interpreted too broadly by the extremists who wanted to keep the South continually subjected to federal domination.

Many Republicans who opposed the Wilson bill were very anxious to protect the freedmen. The Republican party had no definite program to offer; its solution to the racial problem up to this time had been pragmatic. Gurowski noted in 1864 that the Radicals did not seem to concern themselves with what would happen to the Negroes after they were freed. "Most of them rely upon the hour which will give its own solution," he felt. The most tangible aid given thus far to the freedmen had been the Freedmen's Bureau. This agency, however, was to cease functioning one year after the end of the war, according to the provisions of the act creating it. The Radicals were convinced

10 Ibid., 109, 111.
11 Gurowski, Diary, III, 372.
On January 5, 1866, Trumbull introduced a measure "to enlarge the powers of the Freedmen's Bureau." This bill greatly expanded the provisions of the first Freedmen's Bureau bill. It specifically gave the President, through the commissioner of the Bureau, power to extend military protection to Negroes in any case where their basic rights were denied. Specific rights listed were those to make and enforce contracts, to sue, be parties to suits, give evidence, inherit, purchase, lease, sell, hold and convey real and personal property, and to have full and equal benefit of the laws. The federal government could also intervene when Negroes and mulattoes were subjected to Judicial punishments differing from those received by whites.  

The bill also contained a provision which allowed the commissioner to purchase or rent land in order to provide support for indigent refugees and freedmen, and also a provision to purchase sites and buildings for schools and asylums for their use. These facilities were to be held and administered as federal government property until disposed of by the commissioner.

Significantly, the Trumbull proposal did not include any provisions protecting political rights for the freedmen, and did not mention the franchise. In this respect it followed the precedent set by Wilson's bill. At this time the Radicals were working toward civil

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12 *Congressional Globe*, 39 Cong., 1 Sess., 129.
13 Ibid., 129, 184.
rights, and were willing to ignore political equality.

Opposition immediately arose. Senator Thomas A. Hendricks, Democrat of Indiana claimed that the law would void state provisions against miscegenation. "Suppose," he asked, "a minister, when called upon, should refuse to solemnize a marriage between a colored man and a white woman because the law of the State forbade it, would he then, refusing to recognize a civil right which is enjoyed by white persons, be liable to ... punishment" under the provisions of this bill?\(^{14}\)

Trumbull's answer was an example of mental gymnastics. The proposal would not alter laws of this type, Trumbull assured Hendricks, because both races were treated equally under the state law. So long as the law operated alike on both races, it would be valid. "If the negro is denied the right to marry a white person, the white person is equally denied the right to marry the negro," he explained. "I see no discrimination against either in this respect that does not apply to both. Make the penalty the same on all classes of people for the same offense, and then no one can complain."\(^{15}\)

Trumbull admitted that his bill did nothing about the freedmen's political rights. "On that subject it is known that there are differences of opinion," he admitted. "I trust," he added, "there are no differences of opinion among the friends of the constitutional amendment, among those who are for real freedom to the black man, as

\(^{14}\)Ibid., 318.
\(^{15}\)Ibid., 322.
to his being entitled to equality in civil rights."^{16}

Trumbull's proposal was approved by the Senate and sent to the House, where an amendment was added limiting jurisdiction to those states wherein the writ of habeas corpus was suspended as of February 1, 1866. This made the bill apply only to the former Confederate states, plus Kentucky, rather than to the entire country, as Trumbull's bill had done.

The leading advocate of the bill in the House was Thaddeus Stevens. He spoke of the inability of the Negroes to get along without federal protection. They were without any training in society, he claimed, having been unable to gain an education, having no knowledge of the commonest contract law, and being unable to manage "the ordinary business of life." He spoke of the government's obligation to "hedge them around with protective laws," to prevent their being returned to slavery by their "late masters."^{17}

Another able plea for the passage of the bill was made by a young Congressman from Ohio, James A. Garfield. He felt the Black Codes posed a greater danger to the government than to the Negroes, and called for complete enfranchisement of the Negro as the best way to guarantee his rights. He cited statistics to show that a large percentage of the Southern population was being "ostracized" because of their lack of the ballot. He felt that the right to vote would be the only valid protection for the Negro's civil rights, which he listed

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^{16}Ibid.

^{17}Ibid., 74.
as the rights "to hold property, to enjoy the benefits of education, to enforce contracts, to have access to the courts of justice, in short, to enjoy any of those rights which give vitality and value to freedom." 18

Trumbull reported the amended bill back to the Senate for approval. The Republicans closed ranks to pass it, with Senator Sherman making a plea for its approval. While he saw the need for the Bureau as only temporary, he admitted that there was great need to protect the freedmen from the "rebels." "We must maintain their freedom," he declared, "and with it all the incidents and all the rights of freedom." He did not, however, define what those rights were to be. 19

Wilson defended the bill as protection for the most oppressed group of "toiling men" in the nation. He sought to gain approval for the bill from the urban masses in the North by contending that those people in the South who oppressed the freedmen were the enemies of the "white laboring man the world over." "The same influences that go to keep down and crush down the rights of the poor black man bear down and oppress the poor white laboring man," he said. 20

While the Radical extremists supported Trumbull's plan with vigor, it was not intended by its author to be extreme measure. Trumbull at this time was not classed among the more violently

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18 Ibid., Appendix, 67-68.
19 Ibid., 39 Cong., 1 Sess., 744.
20 Ibid., 343.
radical members of his party; indeed, he still maintained many state-
rights ideas. He was being "stimulated and courted" by the extremists, 
however, who were anxious to gain recruits for their faction. Because 
of his concern over the rights of the Negro in the South, Trumbull was 
being rapidly led into the extremist camp.

The Freedmen's Bureau bill was approved by the Senate, as amended, 
and sent to President Johnson, who vetoed it. Immediately Northern 
opinion reacted against Johnson - Radical propaganda about the evils 
of the Black Codes was having its effect. Harper's Weekly, generally 
conservative in tone on the racial question, damned the President's 
position. Johnson was accused of desiring to "abandon the freedmen 
to civil authorities created exclusively by those who think that the 
colored race should be eternally enslaved," and who "deny the constitu­
tionality of emancipation..." 

Reaction among the Republican membership in the Northern states 
was generally against the President. A Vermont correspondent of 
Justin S. Morrill reported: "The veto has made quite a stir here. 
The best informed of our party condemn it in toto, while some care 
not much for the negro anyway. It was a very unfortunate affair 
taking him up." Others felt the bill entirely justified under the 
enforcement section of the Thirteenth Amendment. "That amendment 
must mean unrestricted freedom & nothing else," another of Morrill's 

21Welles, Diary, II, 322, 435. 
constituents had written to him shortly after the opening of the session. 23

The Radicals immediately sought to pass the bill over the President's veto. They failed in the first attempt, but finally the bill was passed, on the second try, by a two-thirds majority, and thus became a law. By this time, however, the Radicals had already passed beyond the provision of the Freedmen's Bureau bill, and were attempting to guarantee Negro rights by means of a much more sweeping measure, the Civil Rights bill.

On January 5, 1866, Trumbull introduced a bill "to protect all persons in the United States in their civil rights, and furnish the means of their vindication." This bill was referred to the Judiciary Committee, of which Trumbull himself was chairman. On January 29 Trumbull reported the bill and recommended its passage. It was designed, he said, to protect the rights granted to the freedmen by the Thirteenth Amendment, just as the Freedmen's Bureau bill was designed to do. The Civil Rights bill, like its predecessor, was limited exclusively to the protection of civil rights, making no mention of political rights. These rights were outlined by the bill's author as the same as those protected by the Freedmen's Bureau bill. It conferred no new rights, being merely designed to assure "equality among all classes of citizens." Each state could grant or withhold rights as it pleased, Trumbull claimed; all that was demanded by the

The bill was that in civil rights, the laws should be impartial, affecting black and white alike.24

The bill provided fines and jail sentences for violators of its provisions, and made it illegal to deprive any person unfairly of his rights or enact differing punishments under state laws. Its most important provision was the seventh section, which gave the President the right to extend military protection and jurisdiction to all cases where civil rights granted to white persons were denied to Negroes by state courts. Specifically listed were the rights to participate in proceedings of courts, to own property, and to have the "full and equal benefit of all laws and proceedings for the security of person and estate."25

The bill made no mention of political rights in any form, and did not mention the question of voting. It also contained no provisions regarding segregation of the races, merely demanding equality of condition. Because of the vagueness in wording of the first section, which listed the rights to be protected, the bill was subject to varying interpretations.

In answer to a demand for a more specific definition of the rights to be protected by the measure, Trumbull listed denials of rights covered by the bill as including those which prohibited Negroes

24 Congressional Globe, 39 Cong., 1 Sess., 129, 474, 475, 1760; Horace S. Flack, The Adoption of the Fourteenth Amendment (Baltimore, 1908), 21; Woodburn, Stevens, 573-75.

25 Congressional Globe, 39 Cong., 1 Sess., 475.
from teaching, preaching, holding property, and moving about freely. These first two, particularly, were his own interpretation, and were not included specifically in the body of the proposal.

Most Radicals were in agreement on three basic categories of rights to be protected by the bill. These included the recognition of the freedmen's rights to marriage and its resultant obligations, his rights to labor and to own property and dispose of it, and his right to an education for his children. Most Republicans at this time did not demand suffrage, and did not feel that it was right to demand it while the Negro was still denied the ballot in the majority of the Northern states. In listing civil rights which were to be guaranteed, the Radicals customarily named educational rights specifically as education for "colored children," not specifying the same educational facilities for all children.27

The Civil Rights bill had nothing to do with "social equality." This was the opinion of almost all Republicans, even as extreme a Radical as Carl Schurz. It was intended, as Henry Wilson said, to guarantee only that the freedmen should be "as free as their late masters."28 It had loopholes, however, such as the fifth section,

26Ibid. Trumbull's bill was praised in a letter from one of his constituents as "noble, just and glorious." The writer was especially interested as he was "one of the race suffering from the persecution and disabilities that the national laws ... imposes." G. Morgan Smith to Trumbull, Jan. 30, 1866. Trumbull Papers.

27Blaine, Twenty Years of Congress, II, 92-93.

28Schurz, Reminiscences, III, 229; Congressional Globe, 39 Cong., 1 Sess., 603.
which gave Congress the power to determine the "privileges and immunities" of citizens and to take action to secure their equal protection. This was later to be construed as giving Negroes equal privileges and immunities in hotels, theaters, schools and other facilities, but at this time such a possibility was not voiced by the author of the bill or by its most vigorous supporters.  

As the Radicals admitted, the Civil Rights bill was made purposely vague, to cover any possible interpretation by the Supreme Court. The word "inhabitant" was substituted for "citizen" in the body of the bill to circumvent any possible court decision nullifying the application of the law in relation to Negroes, who were still not officially citizens according to the precedent of the Dred Scott decision. By doing this, the Radicals felt, they were making the law so all-inclusive that it would be "impossible to defeat the full intent of the law by any technical evasion."  

Not all Republicans were convinced that the bill was a good idea. Conservatives felt, with Senator Peter G. Van Winkle of West Virginia, that it would bring about "mingling" of the races, which would be "detrimental to our interests." "I do not believe," he said, "that a superior race is bound to receive among it those of an inferior race, if the mingling of them can only tend to the detriment of the mass." He was not only opposed to miscegenation, he contended, but to the

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29 Flack, Fourteenth Amendment, 97. "It is a mistake to suppose that a white horse can be made of any number of black rabbits. It is equally a mistake to suppose that complete social equality exists by the aggregation of any number of political rights." This opinion is from an unidentified Republican newspaper clipping in the Garfield Papers.  

30 Blaine, Twenty Years of Congress, II, 173.
"mingling of two races in society, associating from time to time with each other."31

The conservative interpretation of the bill was ignored by the Radicals, who did not feel that the securing of civil rights would pose any social threat. They continued to argue for the bill in generalities, not directly refuting Van Winkle's argument, but attempting to override it by claiming that the "liberty-loving people" of the country demanded the law. Jacob M. Howard of Michigan, speaking in rebuttal to the West Virginian, spoke of the "legal obligations" faced by the nation as a result of the Thirteenth Amendment, but did not touch upon Van Winkle's implied threat of social integration.32

The Democrats were unanimously opposed to the measure. Senator Willard Saulsbury of Delaware attempted to amend the bill to include, after the words "civil rights," the provision "except the right to vote in the States." Although the Radicals had never specifically mentioned suffrage as one of the rights to be guaranteed, they overwhelmingly defeated the proposed amendment, thirty-nine to seven.33

In the House of Representatives the opposition to the measure was more concerted, and the debate was vigorous. There the question of Negro suffrage entered the debate at an early state, and was a significant part of the discussions. On January 18 Representative George S. Boutwell of Massachusetts spoke in favor of the bill, calling for

31Congressional Globe, 39 Cong., 1 Sess., 498.
32Ibid., 503.
33Ibid., 606.
suffrage for the Negro as well as guarantees of other rights. He declared: "The negro has everywhere the same right to vote as the white man, and I maintain still further, that, when you proceed one step from this line, you admit that your government is a failure."

He believed it would be "impracticable" to secure the freedmen civil rights unless they were also "fortified by the political right of voting." With the ballot, he concluded, "everything that a man ought to have or enjoy of civil rights comes to him." 34

Republican Timothy O. Howe of Wisconsin adopted the same line of argument. He pointed out the great inequalities of the Negro, declaring: "they are not equal in social estimation, ... they are not equal in mental culture, ... they are not equal in physical stature." Because of this inequality, he insisted, they were all the more in need of governmental assistance. "If Government be designed for the protection of the weak," he contended, "certainly the weaker men are the more they need its protection." 35

The Democrats were vehement in their opposition. Andrew J. Rogers of New Jersey felt the bill might lead ultimately to a Negro President. He felt the tacit recognition of the Negroes as citizens would automatically open to them all the political rights guaranteed to any other citizen by the Constitution. Republican Representative Burton C. Cook of Illinois disagreed with Rogers, but said that even if his contentions were true, the proposal still did not deny to any

34 Ibid., 308, 310.
35 Ibid., 438.
man any right protected by the Constitution. Could the condition of
the entire race, he asked, be any different even if the Negro were
elevated to political equality?36

Republican William Windom of Minnesota agreed with Cook. He
felt that only upon a basis of absolute equality could the government
function correctly. He urged Congress to guarantee the "absolute
equality of rights of the whole people, high and low, rich and poor,
white and black."37 This statement, coming after Rogers's accusation,
marks a tacit acceptance by Windom of the idea of complete political
equality for the Negro, although he did not specifically cite it.

Benjamin F. Loan, Missouri Republican, agreed with this argu­
ment. He foresaw the possibility of race war if the Negro was denied
suffrage. "The bullet," he declared, "is the freeman's only safety
in this country, when he is deprived of the ballot; the ballot and
peace, or the bullet and war, are the alternatives between which the
Republic must choose."38

Representative John M. Broomall of Pennsylvania felt the bill
was charitable in its provisions because it granted equality of rights
to Southern whites. He demonstrated that the bill did not discriminate
against the former rebels, but granted them the same rights of citizen­
ship and civil liberties as it secured for the Negroes. He praised the
"spirit of forgiveness" exemplified by the measure. He assured the

36Ibid., 1122, 1123.
37Ibid., 1159.
38Ibid., Appendix, 144-45.
South that the victorious North justifiably could have denied citizenship to "those who have once betrayed us," and warned them that they should be happy that their rights were to be returned.\textsuperscript{39}

He demanded passage of the bill as protection for the loyalists of the South. Their "rights and interests" should be secured against the "enemy," he declared, regardless of their "caste or color." No racial distinction whatsoever should be drawn, "either among friends or foes," he concluded.\textsuperscript{40}

A surprising opponent of the bill was Representative John A. Bingham of Ohio. He was considered a Radical, and occupied a high position in the ranks of the Republican party in the House. He opposed the bill on constitutional grounds. Bingham began his attack on the bill with a sweeping definition of civil rights. The bill, he contended, was designed to incorporate a complete guarantee of the political rights of the freedmen, as well as the civil rights claimed by its author. He cited Blackstone's use of the terms "civil liberty" and "political liberty" as synonymous.\textsuperscript{41}

He felt that the bill intended a complete reform of the entire civil and criminal code of every Southern state, and questioned the power of Congress to enact such a plan. He cited the provisions of the bill which would make it a penal offense for state judges to obey the laws of their states. This, he contended, would make an official

\textsuperscript{39}Ibid., 39 Cong., 1 Sess., 1263.
\textsuperscript{40}Ibid., 1265.
\textsuperscript{41}Ibid., 1291.
Most Republicans failed to accept Bingham's interpretation, however, and preferred to see the law according to the idea of Representative Roswell Hart, New York Republican. "We have inaugurated a great social revolution in the southern States," Hart declared, "a fundamental change in the social order." Hart's position, to the Radicals, was a much more pleasant prospect than the legalistic reasoning of Bingham. They were in no mood to worry about the constitutionality of the bill, for, if necessary, the Constitution could be amended to fit the new situations arising from Reconstruction. The Civil Rights bill was approved by both houses of Congress on March 14, 1866, after the Senate agreed to amendments proposed by the House, and the Radicals began preparing for their next move.

There was still a great degree of uncertainty about what they had actually accomplished, and interpretations still varied as to the real meaning of the bill. Senator Sherman contended in a speech at Bridgeport, Connecticut, on March 17, that the bill provided for only those rights specifically outlined in the first section. He ignored Trumbull's interpretation protecting the right to preach and teach, and did not mention any protection whatsoever for political rights. If Johnson signed the bill, he said, it would be a "solemn pledge" to the Negroes that these "natural and inalienable rights" would be secured.

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42 Ibid., 1293.
43 Ibid., 1628.
"I believe the President will sign it," he added.

Newspaper opinions in the North were much more broad in their interpretation of the measure. It was felt that laws against miscegenation would be nullified and that schools, churches, and theaters would be opened to Negroes. The Cincinnati Commercial, a conservative Republican organ, felt that Negroes would have the same rights in all public places as whites, and that to refuse them access to schools, theaters, hotels and other public places would be a crime, Ohio's laws to the contrary notwithstanding.

Many people felt that if Johnson approved the bill the Radical demands for political rights for the Negroes would end. Trumbull received a letter from a constituent containing such an idea. Approval of the bill would eliminate any need to "go to the extent of Negro suffrage," the author declared. The freedmen would be content with the rights guaranteed by the bill, and would view the franchise as "something to be earned by giving evidence of his fitness therefore."

Others favored the bill because they felt it was the best that could be obtained at the time. This was the opinion of Governor J. D. Cox of Ohio. He had advised Johnson to approve the measure, he wrote to Garfield, because "I thought its operation need not be injurious to the country, and as a compromise of views I looked upon it as being tolerable if not acceptable." He felt that the bill would give the

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\[44\] Sherman, Recollections, I, 369.
\[45\] Flack, Fourteenth Amendment, 41.

\[46\] Dr. C. H. Ray to Trumbull, Feb. 7, 1866; Trumbull Papers.

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freedmen only "general rights of person & property." His main criticism was that the "means taken to secure these rights ... are ... objectionable."^47

Johnson, however, vetoed the bill. He disapproved of it, he said, because it would grant citizenship to Chinese, Indians, and gypsies; because citizens of the United States might not be considered as citizens of the separate states; because it was unwise to act on citizenship for the Negroes with eleven states unrepresented in Congress; and because the law might tend to void state laws dealing with miscegenation, segregation, and other social relationships.48

The veto caused a considerable reaction, both among the Radicals and throughout the North. Sumner exemplified the feelings of the extremists. The veto was a "terrible calamity," he wrote to the Duchess of Argyll, because it left the Black Codes in "full force," and gave the "old masters a new letter of license to do anything with the freedman." He reiterated his fear of a "new serfdom" in the South. "But after most careful consideration," he continued, "I see no substantial protection for the freedman except in the franchise."^49

While some predicted that "there will be a good many" who would sustain the President's veto, many persons in the North agreed with a constituent of John Sherman, who wrote:50

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47 Cox to Garfield, April 10, 1866; Garfield Papers.
48 Richardson, Messages and Papers, VIII, 3603.
49 Quoted in Pierce, Sumner, IV, 275.
50 Herman Barrett to J. S. Morrill, March 4, 1866; Morrill Papers. J. M. Workman to Sherman, April 4, 1866; Sherman Papers.
... its said he has vetoed the "civil rights Bill." now I don't know what that bill is but if it gives the Blacks the right of suferage in disregard of state rights I don't blame him for his vetoe; But if its simply giving them all other rights such as holding property, making contracts, suing and being sued; and the right of testifying in courts, etc, etc, I think he has done very wrong in vetoing the Bill; and I hope Congress will pass it over his head...

Others realized that, because of Johnson's action, "all hope of harmony between him and Congress is dissipated." They felt that Johnson had allied himself with the opponents of the Union, and that "he was only anxious to set the rebellion on its legs again."51

After the veto there were few members of the House and Senate, elected as Republicans, who supported Johnson against the extremists. Conservative Republicans and those who had only half-heartedly supported the Radical leadership were now whipped into line, and a concerted effort was launched to override the veto and carry the bill by a two-thirds majority.

Trumbull, as author of the bill, was called upon to answer Johnson's objections. He contended the bill not only granted federal citizenship to the Negro, but by so doing made him automatically a citizen of the state in which he resided. He denied that there was any distinction in the bill between citizens and aliens. There was no discrimination intended, he said, in favor of the Negro and against any group. The only purpose of the bill was to preserve equality of rights for all persons.52

51James Wadsworth to Trumbull, March 28, 1866; Thomas Drummond to Trumbull, March 4, 1866; Smith Nichols to Trumbull, April 2, 1866; all in Trumbull Papers.

52Congressional Globe, 39 Cong., 1 Sess., 1756-57.
Benjamin F. Wade of Ohio was more vehement in his denunciation of the veto. He urged an immediate vote, but Democrats urged delay because of the illness of Senator William Wright of New Jersey. "I will not yield," Wade replied. He declared that "if God Almighty has stricken one member so that he can not be here to uphold the dictation of a despot, I thank him for his interposition, and I will take advantage of it if I can."53

Republican Senator Lane of Kansas attacked Wade's stand. He spoke against the implication of political equality which he felt the bill contained. He predicted that "outside of New England" there was not a single state which would not vote to approve the President's action. Lane berated Wade for branding Johnson a "despot." He contended that had Wade been in the same position, he too would have vetoed the bill.54

Undaunted, Wade continued to press for immediate consideration. He attacked the "treachery" of the veto, and contended that the Radicals alone were standing "between this nation and anarchy and despotism." He called on all who would "defend the rights of the people" to support an immediate vote to override.55 In Wade's speeches in favor of the bill there was no appeal for equal rights for the Negroes as such and no contention that the bill would grant to them either political equality or equal social rights. His demands were based solely on the emotional

53Ibid., 1786.
54Ibid., 1799.
55Ibid., 1802.
appeal to preserve the Union against the tyranny of the President. As a leader of the Radicals, Wade apparently was unwilling to acknowledge any political or social equality inherent in the measure, viewing it only as a political expedient to block the power of the executive in the Reconstruction process.

Wade finally succeeded, by cajoling and bullying, in forcing the vote. The Republican ranks closed in favor of the bill. Stewart of Nevada and Edwin D. Morgan of New York, both conservatives, switched sides to approve the measure, while Democrat John P. Stockton of New Jersey was expelled from his seat on a technicality in order to eliminate one of the opposition votes. Many of the conservatives voted for the bill out of "calculation, not of conviction" observed Gideon Welles, himself an opponent of the measure. He noted that the main credit for the bill's passage should go to the smoothly-functioning Radical machine. Even Bingham, he noted, who had been so opposed to the bill, contented himself with not voting, being paired off with a Democratic member. The only Republican who voted to sustain the veto in the House was Henry J. Raymond of New York, editor of the New York Times. 56

The acquiescence of many of the more conservative Republicans was seen in the attitude of John Sherman. In a letter to his brother, the general, he outlined his reasons for approving the bill. He felt to do otherwise would have been "outrageous," and an admission that the central government was not strong enough to secure the Negro's rights

56 Welles, Diary, II, 475, 477, 479-80.
to property. He hoped that the bill would prove to be the basis for compromise between the sections. "If fairly enforced in the South," he predicted, "the public mind will be satisfied for the negro to take his chances for political privileges." Clearly Sherman did not believe that any political privileges had been accorded by the bill itself.

Trumbull agreed with this interpretation. In an interesting dialogue recorded by Secretary Welles, the author of the bill outlined his own position on political rights. Welles asked Trumbull if the anti-Negro laws of Illinois and Connecticut would be abrogated by the provisions of the new law. Trumbull denied there were ten men in Congress who believed in that view, then admitted that there were eight in the Senate, and about "double that number" in the House, although he did not identify them. "But," he added, "suffrage is a privilege, not a right."

Welles agreed, but contended that Sumner and the other extremists took a different view.

"Well, then," replied Trumbull, "in what other respects are the civil rights of the negro affected?"

"He is not," Welles replied, "by our laws put on terms of equality. He is not permitted to get into the jury box; he is not allowed to act as an appraiser of property under any circumstances, and there are other matters wherein distinctions are made."

"These are all matters of privilege," Trumbull replied.

57 J. Sherman to W. T. Sherman, April 23, 1866; Thorndyke, Sherman Letters, 270.
"What, then," Welles asked, "do you mean by civil rights?"

"The rights to his liberty," Trumbull answered, "to go and come as he pleases, have the avails of his own labor, not to be restricted in that respect."58

In spite of the confusion of interpretation regarding the bill, two things were clear. The Civil Rights Bill had now become a law, over the President's veto; and the Radical Republicans had mustered enough strength to control a two-thirds majority of both houses of Congress. Johnson had lost the few supporters, such as Trumbull and Chandler, who had upheld his actions in the past. From this time on the Radicals were to be in control of the government; a period which the historian Mrs. Fawn Brodie has called the "three-year interregnum," in which the executive was "practically impotent."59 The Radicals hardly paused to celebrate their victory, however, for already they had other plans, the formulation of which had been begun the previous December.

On December 12, 1865, the Senate approved a resolution based upon Stevens's recommendation in the Republican caucus. This proposal created a Joint Committee of Fifteen on Reconstruction. Only three Republicans, Edgar Cowen of Pennsylvania, James Dixon of Connecticut, and James R. Doolittle of Wisconsin, voted against the measure, which passed the Senate by a two-thirds majority. This was the first test of Radical strength, and assured the extremists that they would be in

58 Welles, Diary, II, 489-90.
59 Brodie, Stevens, 258; Harris, Chandler, 87.
the position to override a potential veto, as they were to do in April on the Civil Rights bill.  

The selection of the members for this new committee was especially important, for it was foreseen that these men would be charged to a great extent with the "fortunes of the Republican party." Senator Lafayette S. Foster, president pro tem of the Senate, appointed as members of the group the following men: William Pitt Fessenden of Maine, Jacob M. Howard of Michigan, James W. Grimes of Iowa, Ira Harris of New York, and George H. Williams of Oregon, all Republicans, and Reverdy Johnson of Maryland, a Democrat. Members from the House, named by Speaker Schuyler Colfax, were: Thaddeus Stevens of Pennsylvania, Elihu B. Washburne of Illinois, Justin S. Morrill of Vermont, Henry Grider of Kentucky, John A. Bingham of Ohio, Roscoe Conkling of New York, George S. Boutwell of Massachusetts, Henry T. Blow of Missouri, and Andrew J. Rogers of New Jersey. All of the House members were Republicans except Grider and Rogers.

Charles Sumner, recognized spokesman of the extremists in the Senate, was not appointed. "Standing as he does before the country, and committed to the most ultra views, even his friends declined to support him," Fessenden noted in a letter to his family on Christmas Eve, 1865. Fessenden remarked that he had been named chairman of the group. "I think I can see my way through," he wrote, "if Sumner and Stevens and a few other such men do not embroil us with the President..."

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60 Fessenden, Fessenden, II, 17-18.
61 Ibid., 19; Congressional Globe, 39 Cong., 1 Sess., 30.
Fessenden's selection as chairman was generally popular throughout the North. Harper's Weekly felt that: "Among the living statesmen of the country there is none who commands profounder popular confidence" than the Senator from Maine, and none who surpassed him in "practicability." Even as confirmed a Radical as Gurowski approved of Fessenden's abilities. He felt that "no abler, more conscientious, and laborious man could be found."63

While Fessenden was categorized as a conservative Republican, he had generally voted for the main Radical measures. He had opposed the extremism of Sumner on several occasions, primarily because he felt it slowed Senate business. He was on record as opposing any immediate restoration of constitutional rights to the seceded states, and was from a part of the nation which was liberal in its racial views.64 Because of these qualifications and because he was not committed to the extreme fanaticism of Wade or the ultra racism of Sumner, he was a natural choice for chairman.

The views of the other members of the committee varied from the extreme radicalism of Stevens to the conservatism of the Democratic members. Among the other members from the Senate probably the best known and most influential was Grimes. Grimes had a great hatred of both Sumner and Stevens. Sumner he characterized as a "cold-blooded, selfish, dangerous man." He saw Stevens as "a pretty unscrupulous old fellow, unfit to lead any party ... a debauchee in

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63 Harper's Weekly, April 7, 1866; Gurowski, Diary, III, 56.
64 Fessenden, Fessenden, II, 9.
morals and politics." Grimes had a long record of free-soil and abolitionist activities, but did not always follow the lead of the extreme Radicals on the question of racial equality. He was known to have great "rancor" toward the South, and had bitterly opposed appropriations for the naval yards at Norfolk and Pensacola because they were located in that section. 65

Howard, originally from Vermont, had been in the Senate since 1862. He was a lawyer, and had formerly been a schoolteacher in Massachusetts. He was considered an extreme Radical. Harris and Williams were journeyman Senators who were not outstanding as legislators or politicians. They supported the Radical position on Reconstruction, and had voted in accordance with Sumner and the other extremists on the Negro legislation of the Thirty-eighth Congress.

The House delegation was headed by and dominated by Thaddeus Stevens, who was considered, along with Sumner, the most extreme of all the Radicals in Congress. Stevens was the most outspoken of all the extremist leaders on the question of social equality for the freedmen, a subject which most of the other Radicals assiduously avoided.

Another extreme Radical was Boutwell. "I was counted as a radical and in favor of securing to the negro race every right to which the white race was entitled," he admitted. He was already on record as favoring full political rights for the Negro. In a speech to his constituents at Weymouth, Massachusetts, on July 4, 1865, he urged

65. Welles, Diary, II, 444, 447.
the recognition of the "political rights of the black men of the South." This, he felt, would bring "security to the country," and would eliminate any chance for "civil and social feuds and wars" in areas where whites and Negroes were nearly equal in number. Boutwell disliked Stevens, however, calling him a "tyrant." He felt that Stevens put the "State of Pennsylvania and the Republican Party" above any other interest. 66

Bingham and Washburne were less radical than either Stevens or Boutwell. Bingham had opposed the Civil Rights bill on constitutional grounds, but approved of its aims; while Washburne, although generally voting with the Radicals, was suspicious of Stevens's motives, and disapproved of his fanaticism. The other Republican members of the Committee could be relied upon to follow Stevens's orders. 67

The appointment of the committee was generally approved by Republicans. The deliberations of the committee on the problem of Reconstruction were termed "perfectly reasonable," "able" and "conclusive." 68 Its functions were to expand greatly during the ensuing few months, climaxing with the passage of the Fourteenth Amendment and the beginnings of the movement to secure complete political equality for the freedmen.

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67 Brodie, Stevens, 242-43; Korngold, Stevens, 325; Beale, Critical Year, 220; Miller, Stevens, 234.

68 Harper's Weekly, May 12, 1866, June 23, 1866.
CHAPTER X

THE AMENDMENT BECOMES A REALITY

The Radicals were determined to make the District of Columbia an example of the effectiveness of Negro rights. They had already succeeded in emancipating the Negroes of the District and in eliminating many forms of segregation and other restrictions on the freedmen. They were now determined to give the Negroes what they considered to be the ultimate of all privileges, the suffrage. Enfranchisement of the freedmen of the District, they felt, would be an example of the efficacy of their movement for granting to this race the rights for which they had been campaigning. It was felt, too, that effective suffrage for the Negroes of the District would be a precedent for later action giving this privilege to the freedmen of the rebel states.

To accomplish these purposes, two bills were introduced into Congress early in December, 1865. On the first day of the session Senator Wade introduced a bill into the Senate; and the next day Representative William D. Kelley of Pennsylvania introduced a similar measure in the House. Both bills provided that the word "white" should be removed from all laws prescribing the qualifications for electors in the District. On December 21, Sumner introduced a petition from citizens of the District calling for Negro suffrage, and urging that Wade's bill be considered. "The whites of the District of Columbia, in respect to the colored people, are no better than
squatters," he declared.¹

Immediately after the Christmas recess the Kelley bill came up for consideration in the House. Despite the fact that in a recent plebiscite in the District, the question of Negro suffrage had been beaten by a vote of 7,369 to thirty-six, the Radicals vigorously supported the proposal. Their reasons for so doing were varied.

Representative James F. Wilson of Iowa, chairman of the House Judiciary Committee, felt the bill was the logical reward for the loyalty of the Negroes during the war. He pointed out that many whites had fled the District southward at the beginning of the war, while many Negroes had come North, fleeing from the Confederacy. He did not want to legislate against the white man, he claimed, and he opposed "class legislation and class privileges." His only desire, he contended, was for "just and uniform" laws.²

Glenm W. Scofield of Pennsylvania also urged that the bill be approved. He felt that by granting the District Negroes the ballot the Radicals would "awaken the hope and ambition of the whole race throughout the country." Besides, he added, "the colored race is too small in numbers here to endanger the supremacy of the white people, but large and loyal enough to counteract to some extent disloyal proclivities."³

¹Congressional Globe, 39 Cong., 1 Sess., 1, 10, 107; Summer, Works, X, 98; Barnes, Thirty-Ninth Congress, 50-51.
²Congressional Globe, 39 Cong., 1 Sess., 174.
³Ibid., 179-80.
John F. Farnsworth of Illinois cited the Negro's military service as justification for approval of the bill. He attacked Representative Andrew J. Rogers, New Jersey Democrat, for contending that the Negro should have no political participation in a "white man's government." "Shame!" Farnsworth replied, "eternal shame upon such a doctrine, and upon the men who advocate it." He did not give any arguments in favor of the Negro's qualification for voting, however, except to portray the "maimed, ... bleeding, crushed, wounded" Negro veteran who was to be deprived of the ballot.4

Democratic Representative John W. Chanler of New York also supported the idea of white supremacy in politics. He demonstrated that Negro suffrage would endanger the white laborer. Negro suffrage in the District would lower the white laborer "to the level of the negro just set free from slavery," he alleged.5

This argument was discounted by Julian. "I demand the ballot for the colored man in this District on the broad ground of absolute right," he said. The real trouble with the opponents of the bill was that they "hate the negro." It was not the Negro's ignorance or lack of political experience which offended the opponents of the measure, he said, but "his color." He scorned the implication that Negro suffrage would lead to "the amalgamation of the races or social equality." "I have never understood that in all this experience of Negro suffrage" in the New England states "the amalgamation of the races was the

4Ibid., 204.
5Ibid., 221.
result." He did not in any way link the ballot with any type of social equality. If it was felt that an anti-miscegenation law was necessary, he said, he would recommend that one be passed, although he felt the only persons that might need its protection would be "Copperheads and rebels." 6

A more serious argument against the bill which Julian attempted to refute was that the Northern states did not grant the ballot to the Negro, and therefore their representatives were not qualified to force Negro suffrage on others. In those states, Julian pointed out, the Negro population was small, and "Society will not be endangered by the temporary postponement of the right of negro suffrage till public opinion shall render it practicable." He described an appealing prospect of what might happen if the Negroes in the entire South were given the ballot: they might leave the North to "return to their native land..." 7

Republican Robert S. Hale of New York did not agree with Julian. He felt the ballot should be limited to certain classes of Negroes. He attempted to amend the bill so it would be applicable only to those who were literate, who paid taxes, or who had been honorably discharged from the military service. This attempt failed, beaten down by Radical votes. 8

Another Radical position was voiced by Boutwell. He felt that suffrage was but a logical recognition of the "manhood" of the freedman

6Ibid., 255-58.
7Ibid., 258-59.
8Ibid., 279.
and a natural concomitant of emancipation. He followed the typical Radical line by advocating the ballot as a necessary means of protecting civil rights. To deny the suffrage to the Negroes of the District, Boutwell felt, would be to admit that the entire principle of emancipation had been wrong.⁹

On January 20, 1866, the Radicals called for a vote on the proposal, which was approved, 114 to fifty-four, on an almost completely party-line division. A young French journalist, Georges Clemenceau, described the scene at the passage of the measure: "An anxious crowd, of whites and blacks mixed, filled the galleries of the House and all the approaches to the Capitol, and the passage of the bill was hailed with a great outburst of frenzied applause."¹⁰

In the Senate, the course of the arguments for and against the measure followed a similar pattern. Wade introduced the debate with a plea for political rights for "him who is weak and uninfluential." "What I claim for myself or my children, politically," he said, "I will award to every member of this government."¹¹ Under the lash of Wade's party whip, the Radicals forced the measure through the Senate with much less argument than accompanied the bill in the House.

Republicans throughout the North were in much less agreement on the efficacy of the measure than were their representatives in Congress. Many Northerners were not sure that the time was ripe for Negro suffrage.

⁹Ibid., 310.
¹⁰Dispatch to Paris Temps quoted in Georges Clemenceau American Reconstruction, 1865-1870 (New York, 1928), 65.
¹¹Congressional Globe, 39 Cong., 1 Sess., 296-97.
Particularly was this feeling true of the people of the western states, where the Negro's political rights were curtailed by state laws. Letters received by Senator John Sherman reflected the ideas of many persons, not only of Ohio, but of throughout the Northwest. "I am afraid of this negro phobia," one constituent wrote. He saw the bill as "simply to benefit one class." "The negro does not want suffrage," he contended. "He is like a child, he wants education and training..." 12

Others disagreed with this argument. Some, like C. G. Trimble of Gainsville, Ohio, felt that "now is the time to begin the work" of educating the Negro politically by giving him the right to vote. Others felt that a compromise measure would have been more acceptable, particularly one which demanded literacy as one requirement for voting. Still others were more dogmatic in their opposition. "The sentiment here is decidedly averse to our Congressman on negro suffrage," one Ohioan wrote. Another felt that the idea of Negro suffrage was "fanatical" and predicted that: "If the Senate is as silly and fanatical as the hour comes in enfranchising the negro of the District ... you may expect before your senatorial term expires to have Senator Sambo at your side, with his white wife and pumpkin and milk children." 13

Although the Radicals had spoken a great deal about the rights of the Negro residents of the District of Columbia to the ballot, they

12 Simeon Nash to Sherman, January 27, 1866; Sherman Papers.

13 C. G. Trimble to Sherman, December 21, 1865; Samuel Haight to Sherman, January 19, 1866; Jos. H. Geiger to Sherman, February 5, 1866; J. R. Grant to Sherman, February 1, 1866; all in Sherman Papers.
had assiduously avoided incorporating the right of suffrage into the Civil Rights Act. They realized that public opinion in the North would not allow such a bill to become law at this time. As Senator Fessenden wrote early in 1866: "At this time no one contends that the mass of the population of the recent slave States is fit to be admitted to the exercise of the right of suffrage." They were anxious, however, to make the political climate such that the Southern states would be placed in the position of having to grant the ballot to the Negro or find themselves placed in an inferior position because of their inaction.

As early as December, 1865, the Radicals had resolved upon some type of amendment to the Constitution. Gideon Welles noted on December 6 that the Radical caucus had met, and that "Stevens, Williams, Boutwell, Kelley, and others like them do not like the Constitution and are satisfied that they ... could make a much better instrument." In the first meeting of the Committee of Fifteen, on January 9, it was agreed that ballot reform was a primary issue. The Radicals on the committee recognized the necessity of disfranchising the former rebels and blocking the threatened increase in Southern representation.

Shortly thereafter three propositions were introduced into the committee regarding representation. Morrill proposed that representation be based upon population; but that if Negroes were disfranchised,

14Appleton's Annual Cyclopedia, 1866, 150.

they should not be counted in the apportionment. Senator Williams wanted all "colored persons," including Negroes, Indians, and Chinese, enumerated as population but not counted for representation if disfranchised. Conkling demanded a more extreme measure. He proposed that if any law was passed by any state limiting the "civil or political rights or privileges" of any person "on account of race or color" that all such persons should be excluded not only from the basis of representation, but also from the basis of taxation.16

On January 12, Bingham introduced another proposal guaranteeing civil rights, a plan which he had already proposed in the House. It said: "The Congress shall have the power to make all laws necessary and proper, to secure to all persons in every state within this Union, equal protection in their rights of life, liberty and property."17

Bingham's proposal was to broaden the provisions of the Civil Rights Act to apply to the entire country, both North and South. He was opposed to the Civil Rights Act because he felt it had no constitutional justification, and he proposed to remedy the weaknesses of that measure with the proposed amendment. According to his interpretation, it would affect not only the Black Codes of the Southern states, but also the anti-Negro laws still in effect in the North.

Stevens agreed in principle with Bingham's plan, but offered a series of amendments to it, which were adopted. Bingham then withdrew

16 Kendrick, Committee of Fifteen, 43-44.
17 Ibid., 46.
his original proposal and offered instead the following plan, which
was adopted as section one of the proposed amendment:18

No State shall make or enforce any law which shall
abridge the privileges and immunities of the citizens
of the United States, nor shall any State deprive any
person of life, liberty, or property without due pro-
cess of law, nor deny to any person within its juris-
diction the equal protection of the laws.

This was a considerable change from Bingham's original idea,
for his first plan would have given Congress the power to legislate
directly on internal affairs within the states, whereas the second
plan merely prohibited the states from taking discriminatory action
against their citizens. There was no definition of "citizens" in
this proposal, the committee apparently relying upon the Civil Rights
Act to provide the definition. Later, when the bill was before the
Senate, Jacob M. Howard of Michigan moved to affix a preliminary
sentence as follows: "All persons born or naturalized in the United
States, and subject to the jurisdiction thereof, are citizens of the
United States and of the State wherein they reside."19

This move assured that no state would be able to act against the
Negro by contending that he was not a citizen, and ended forever the
question of national citizenship for the freedmen. This was the only
effort by the Radicals to make the first section of the Fourteenth
Amendment more concrete through precise definitions of terms.

The committee was not prepared to go beyond the guarantees

18Ibid., 37. He proposed it as section five of the planned amend-
ment; it first appears as section 1 on page 116 of the Journal.

19Congressional Globe, 39 Cong., 1 Sess., 2890.
found in their approved amendment. They failed to pass Conkling's proposal designed to assure "human rights" by adopting laws against "barbarism, disorder and oppression." Conkling hoped his suggested change would eliminate the need of "standing guard" over any section to protect the population from "domestic violence and outrage." Also defeated was a proposal to grant Negroes "full" suffrage.

In February the question of the admission of Tennessee came before the committee, and it was moved to include a passage in the act of admission as follows: "Said State shall make no distinction in the exercise of the elective franchise on account of race or color."

The motion was defeated by a vote of six to five. Favoring it were Howard, Stevens, Washburne, Morrill and Boutwell; while those opposed were Harris, Williams, Bingham, Conkling, Grider and Rogers. Fessenden, Grimes, Johnson and Blow were absent.

Fessenden would probably have favored such an inclusion. He supported a firm demand for Negro suffrage in the Fourteenth Amendment.

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20 Conkling, Conkling, 251; by "full" suffrage, the Radicals meant a positive guarantee of the right of the Negro to the ballot, rather than the negative means later adopted of denying the states representation if they did not act in favor of Negro suffrage. This allowed the Radicals to talk in favor of Negro voting, but saved them from having to vote for it.

21 Boutwell, Reminiscences, II, 37. Kendrick, Committee of Fifteen, 69-70. Opinion at home, as reflected in the letters received by Congressmen, varied on the issue of Negro voting. Some favored it for Negroes, and even demanded that the whites of the South be restricted completely from the franchise while the Negroes be allowed to vote. See H. Humphrey to Thaddeus Stevens, Jan. 21, 1865, Stevens, Jan. 21, 1865, Stevens Papers; Jason Marsh to Lyman Trumbull, Jan. 8, 1866, Trumbull Papers. Others felt that an education qualification was necessary, although one felt it should be applied not only to Negroes but also to Irishmen. See James A. Briggs to John Sherman, Jan. 19, 1866, E. J. Petree to Mr. & Mrs. Hopley, both in Sherman Papers.
debates in the committee, although the more extreme Radicals opposed it. He felt that such a statement would be better than attempting to gain the same end by the indirect method of reducing the basis of representation in cases of denial of civil and political rights.\textsuperscript{22} Fessenden, in this case, was perhaps more radical than the Radicals, although the latter were more realistic. They realized that such an outspoken endorsement of Negro suffrage would probably not be approved by the necessary number of state legislatures. They were willing to accept a less satisfactory law which had a reasonable chance of being approved.

On January 22 the proposed amendment was reported to the House by Stevens. Wilson of Iowa, chairman of the Judiciary Committee, reported that that group had planned to present a nearly-identical measure, which indicated a considerable amount of agreement among the Radicals on the basic need for an alteration of the Constitution. It was hoped that the bill could be passed quickly, as the Radical leadership wanted to get the measure to the state legislatures before the spring adjournment. The floor leaders in the House and Senate hoped to be able to limit debate, but such was not to be the case.\textsuperscript{23}

The proposed amendment as reported by Stevens consisted of two sections. The first part was Bingham's second proposal barring state action against civil rights. The second section dealt with representation, eliminating from the basis of apportionment all male citizens.

\textsuperscript{22}Fessenden, Fessenden, II, 23-24.

\textsuperscript{23}Congressional Globe, 39 Cong., 1 Sess., 351; Barnes, Thirty-Ninth Congress, 325.
above the age of twenty-one whose franchisal rights were denied or abridged by the states. The second section was directly inspired by Stevens. On December 18 Stevens had proposed a bill in the House designed to accomplish the same ends. He eloquently pictured the results if "the eighty-three Southern members, with the Democrats that will in the best of times be elected from the North" gained control of Congress. The results, he believed, would be repudiation of the national debt, assumption of the rebel debt, and the re-establishment of slavery. Negro suffrage in the South would produce different results. The Negro vote, combined with the "Union white men" of the South, would be able to "divide the representation" and thus "continue the Republican ascendance." If the South refused to allow the freedmen the ballot, their representation would be reduced to "about forty-five" and they would be rendered "powerless forever."

The Stevens bill was passed by the House on December 15 by a vote of 116 to 54, in Stevens's original form, despite the efforts of some Republicans to take on literacy qualifications for the Negro electorate. This plan was sidetracked in Senate committees, however, and was not brought up for a vote. With the incorporation of a similar provision in the proposed amendment, there was no further

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24 Congressional Globe, 39 Cong., 1 Sess., 72, 75.

25 Ibid., 75. One vigorous supporter of the Stevens bill was Governor J. D. Cox of Ohio, who wrote to Garfield on January 1, 1866: "Under it we should have safety, and the recognition of such principles as would insure the ultimate solution of the negro problem justly and fairly." Garfield Papers.
need to enact the Stevens bill.

Bingham, author of the first section, began the debate on the proposed amendment. "The Republic ... is in the hands of its friends," he declared, and the amendment would serve to keep it there. The Republicans, he said, had abandoned all hope for "indemnity for the past," but they still desired "security for the future." By this amendment such security was to be obtained. He demanded that the House approve his plan for "equal personal rights" for all citizens.²⁶

Roscoe Conkling demanded the approval of the plan as a means of guaranteeing Negro political rights. Their only protection, he contended, was the Emancipation laws, which did not deal in any way with political privileges. He warned that unless the Negroes were given the ballot the former "masters" would gain full political power. He praised the proposed amendment. "This proposition," he said, "rests upon a principle already imbedded in the Constitution." It would not interfere with state rights, because each state would have the privilege of enfranchising whomever it wished. If, however, there was "a race so vile or worthless that to belong to it is alone cause of exclusion from political action, the race is not to be counted here in the Congress."

Conkling's main argument was not centered on the concept of Negro fitness for the ballot or the technical equality of all states under the provisions of the amendment. His main fear was the twenty-eight additional representatives who otherwise would be unrepentant

²⁶Ibid., 157-58.
Southerners. These votes, he was convinced, would be controlled by "those who once betrayed the Government" unless the Negroes were given the ballot. Only then could free elections be held. He felt that under the amendment the Negroes would be free to progress toward more responsible citizenship. "Let them build churches and school-houses, and found newspapers," he declared, "and educate their people till they are fit to vote." Obviously Conkling foresaw these institutions as segregated, since they were going to be built by Negroes for the use of Negroes.27

Ignatius Donnelly of Minnesota saw the amendment as a protection for the North. The defeat of the proposal would be an "injustice to his section," he contended, because it would increase the power of the Southern states.28

Democratic Representative James Brooks presented a petition from certain women of New York asking an amendment to the Constitution prohibiting disfranchisement because of sex. He then moved to amend the proposed resolution by inserting the words "or sex" after the word "color" in the second section.

"Is the gentleman in favor of that amendment?" Stevens asked.

"I am," Brooks replied, "if negroes are allowed to vote."

"That does not answer my question," said Stevens.

"I suggested that I would move it at a convenient time," Brooks replied.

27Ibid., 356-59.
28Ibid., 378.
"Is the gentleman in favor of his own amendment?" Stevens insisted.

"I am in favor of my own color in preference to any other color," Brooks said, "and I prefer the white women of my country to the negro." Republican Robert C. Schenck of Ohio objected to the proposal because it failed to offer inducements for a gradual enfranchisement of the freedmen. He contended that he did not have "Utopian ideas" regarding Negro suffrage, and felt that Negro voting would have to be "gradual." He doubted if the passage of the amendment would result in immediate enfranchisement of the Southern freedmen. He would have preferred to eliminate the provision basing representation on voters rather than population, because he felt the provision was unrealistic. On January 30 he made a motion to alter the section on representation, which was defeated.  

The House approved the proposed amendment on January 31, following an appeal by Stevens urging the blocking of any Southern representation until after the "great work of regenerating the Constitution and

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29 Ibid., 380. The last statement was followed by applause in the galleries.

30 Barnes, Thirty-Ninth Congress, 353-54. During this debate Congressmen received many letters from their constituents containing opinions on the proposal. Some favored disfranchising the Southerners; others favored voting by all men who could read, black or white. Others felt that the introduction of the Negro issue would mean the "destruction of the power of the Union party." See F. Cooley to Thaddeus Stevens, February 21, 1866, and; Thomas J. Rayner to Stevens, January 30, 1866, Stevens Papers; Andrew Spalding to John Sherman, January 31, 1866; J. D. Cox to Sherman, January 27, 1866, and R. P. L. Baber to Sherman, January 27, 1866, all in Sherman Papers.
laws of this country" had been completed.\(^{31}\)

Two days later in the Senate, Charles Sumner gave notice that he intended to move a joint resolution as a counter-proposal to the amendment. His amendment called for an abolition of "oligarchy, aristocracy, caste, or monopoly," and demanded a denial of rights "civil or political" because of race. It further declared that all persons should be equal before the law, "whether in the court-room, or at the ballot-box."\(^{32}\)

Sumner addressed the Senate for five hours on February 5 and 6 in opposition to the House amendment, which he contended would mean "defilement" of the Constitution. He demanded that Congress act immediately to guarantee positively the political rights of the Negro along with his civil rights. He demanded the ballot as the "only sufficient guarantee - being in itself peacemaker, reconciler, schoolmaster, and protector."\(^{33}\)

Republican Senator John B. Henderson of Missouri also opposed the amendment. He moved to strike out the entire amendment and substitute a statement forbidding any state to discriminate against any person

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\(^{31}\) *Congressional Globe*, 39 Cong., 1 Sess., 536. Prominent abolitionists approved this stand by Stevens. William Lloyd Garrison, in a letter to Julian on February 11, claimed the Southern states were "still full of the spirit of revolt." William C. Child, president of the American Tract Society, wrote Elihu Washburne on February 1, hoping that Congress could "amend the Constitution so as to take the whole suffrage question away from the states altogether." Garrison to Julian in Giddings-Julian Correspondence, Child to Washburne in Washburne Papers (Division of Manuscripts, Library of Congress).

\(^{32}\) *Congressional Globe*, 39 Cong., 1 Sess., 592.

\(^{33}\) Ibid., Sumner's speech is printed in the Globe for Feb. 6.
because of color or race in prescribing the qualifications for voting. This suggestion was almost ignored, however, in the dispute which arose over Sumner's proposal. 34

Fessenden attacked Sumner for attempting to "re-enact the Constitution." Sumner in turn accused Fessenden of being like Pilate, who crucified the Savior, while freeing Barabbas. Fessenden replied that he felt that the Committee of Fifteen and the House of Representatives were not comparable to Pilate and the Negro was certainly not to be considered as the "Savior of the world." "Why, sir," he continued, "I expected to hear him ... say that with the Constitution of the United States and the ... States the negro had been crucified, and that now, by the amendment ... the stone had been rolled away from the door of the sepulcher, and he had ascended to sit on the throne of the Almighty and judge the world." 35 Fessenden praised the House amendment as leading eventually to the enlargement of the franchise in the South. That, in turn, would lead to an increased realization of the needs of the Negro, which would mean education, and the "bringing up" of "an oppressed and downtrodden race to an equality, if capable of an equality ... with their white brethren." 36

Henry S. Lane, the conservative Republican Senator from Indiana, also supported the House plan. "We are not ready yet for a restoration upon rebel votes; we are not ready yet for a restoration upon

34Ibid., 702.
35Ibid., 705.
36Ibid., 708.
colored votes; but, Thank God! we are willing and able to wait," he declared. He sought a restoration of the South on such terms and at such a time as to be accomplished "with safety to them and safety to us." 37

Henderson, of Missouri, spoke against the plan, which he called "useless." The freedmen would be safeguarded, he said, for they had been "endowed with all the rights that belong to other men." "Give them the ballot," he concluded, "and then they are protected." 38

Lyman Trumbull disagreed with Henderson's position. The ballot alone was not enough, he said. The freedmen needed to be educated, they needed to be fed, they needed to be protected, "and the Senator from Missouri tells you 'This is all nonsense; give them the right of suffrage and that is all they want.'" Trumbull advocated a much fuller program of government welfare for the freedmen along with the political guarantees. 39

Sumner then proposed to amend the House plan by adding to the provision excluding discriminated persons from the basis of representation the words "and they shall be exempt from taxation of all kinds." Henderson again opposed the entire plan, contending that it still meant, in fact, that the Negroes would be excluded from the suffrage. He praised the provision calling for equal qualifications for black and white alike, pointing out that New York's anti-Negro

37 Ibid., 741.
38 Ibid., 745.
39 Ibid., 746.
law would have to be changed if the measure was approved.\(^{40}\)

Daniel Clark, New Hampshire Republican, supported the measure. He felt it would enfranchise the Negro "through all the country." This, he felt, was the "height of the hill" in the struggle for Negro rights.\(^{41}\)

Summer still opposed the plan. On February 15 he presented a petition from a number of well-known Negroes opposing the amendment as "introducing, for the first time, into the Constitution a grant to disfranchise men on the ground of race or color." Summer praised the "character" of the petitioners, and urged the Senate to give the petition its "respectful consideration."\(^{42}\)

Williams of Oregon gave the Committee of Fifteen's views of the amendment. He demonstrated that Connecticut and Wisconsin, both "Northern, loyal and Republican," had just defeated Negro suffrage. It was probable, he suggested, that of the thirty-six states, not more than six, "at the most," would ratify Sumner's proposed amendment "at this time."\(^{43}\)

Howard of Michigan offered an amendment which would have given the ballot to three groups of Negroes; those who had been in the United States military forces; those who were literate; and those who possessed property valued at $250. This proposal also was defeated, both because it would have set a bad precedent and because it would

\(^{40}\) Ibid., 811, Appendix, 105-124 for Sumner's full speech.

\(^{41}\) Ibid., 831.

\(^{42}\) Ibid., 848-49.

\(^{43}\) Ibid., Appendix, 95.
have made the amendment's passage more precarious.\textsuperscript{44}

Republican Senator Richard Yates of Illinois supported Sumner's plan. On January 29 he had proposed a bill designed to protect the full civil and political rights of all citizens in all states and territories, including the right of suffrage. He felt that the ballot alone would guarantee a "peaceful and harmonious South." To do less, he said, would be to attempt to "change the tide of human progress." "God, not man, created men equal," he exclaimed. "Deep laid in the solid foundations of God's eternal throne, the principle of equality is established, indestructible and immortal."\textsuperscript{45}

Pomeroy was not swayed by such a fundamental authority. Being a practical politician, he realized that the country was not yet ready to accept the type of amendment "such as the necessities of the country required." "Three-fourths of the states are not ready," he claimed, to go beyond the "patchwork" offered by the committee. He was convinced that anything less than a positive guarantee of suffrage for the Negro would be tragic, for Congress might not have another chance to give the Negro his full rights.\textsuperscript{46}

Sumner again opposed it as meaning "excommunication" for the freedmen. The amendment would mean that Negroes would have "no political rights 'which white men are bound to respect,'" and would probably mean a "war of race upon race." Henry Wilson disagreed with this reasoning. "My heart, my conscience, and my judgment approve of this amendment," he announced, "and I support it without qualifications.

\textsuperscript{44}Ibid., 915. \\
\textsuperscript{45}Ibid., Appendix, 98-105. \\
\textsuperscript{46}Ibid., 1182.
or reservations." Wilson felt it would "sweep the loyal states by an immense majority," and that no politician could successfully oppose it. He predicted that if the measure were approved, "every black man in America, before five years could pass, would be enfranchised and weaponed with the ballot for the protection of life, liberty and property."^47

Fessenden made a final appeal on behalf of the committee against the opposition of the Sumner-led extremists. He berated Sumner for his opposition to the measure after it had been approved by the Committee of Fifteen, the House of Representatives, and a "large majority" of the Senate. In effect, he said, Sumner was accusing the friends of the amendment of attempting a "compromise of human rights the most immoral, indecent, and shameful in our history!" Such, he assured the Senate, was not the case. Compromise had never been "dreamed of" by the authors of the amendment.^48

On March 9 the Senate voted on the amendment as originally proposed by the Committee of Fifteen. Twenty-five Senators voted for the proposal, including such Republican leaders as Chandler, Clark, Fessenden, Grimes, Harris, Sherman, Trumbull, Wade, Williams and Henry Wilson. Opposed to it were twenty-two strangely-aligned Senators. Together with the reactionary Democrats such as Saulsbury and Garrett Davis, and the extreme conservative Republicans like Edgar Cowan of Pennsylvania and Peter G. Van Winkle of West Virginia, were

47 Ibid., 1225, 1254.
48 Ibid., 1281.
the Radical extremists. Voting against the measure were Henderson of Missouri, Lane of Kansas, Pomeroy, Sumner, Willey of West Virginia, and Yates.\footnote{Ibid., 1289.} The proposed amendment had failed by a decisive margin to obtain the two-thirds majority necessary for passage.

The main responsibility for the failure of the amendment was Sumner's. If he and his fellow extremists had accepted the idea of compromise, the amendment would have been approved. He felt that he could not legitimately accept the amendment as it was, however, because of its racist taints. His objections were outlined in a letter to the Boston Advertiser, March 15. He was opposed to the plan, he wrote, because it "carried into the Constitution by express words the idea of inequality of rights," and because it "lent the sanction of the Constitution to a wholesale disfranchisement on account of race or color."\footnote{Quoted in Sumner, Works, X, 375.}

Sumner had summed up the difficulties involved over the plan - it was all a question of interpretation. "The Senator from Maine Fessenden affixes one meaning; I affix another. The Senator sees nothing bad; I see nothing good, - or rather, all that it proposes is absorbed, merged, and lost in the evil."\footnote{Congressional Globe, 39 Cong., 1 Sess., 1281.}

Fessenden's reaction to Sumner's defeat of the amendment was one of regret. He felt that Sumner's objections to the plan were "atrocious" and his speech "disgusted even those who voted with him, and particularly his colleagues." He felt no other plan that could
be adopted would be as useful as the defeated amendment. "If we carry any other through Congress it will not be adopted by the States," he predicted, "and the blacks are left without hope."\(^{52}\)

Ohio's young representative, James A. Garfield, derided Sumner's position, which he satirically contrasted with that of the "common mortals." A year later he was still bitter at Sumner's blocking of a law which he felt would have been a "great gain to liberty" but which the Massachusetts idealist had felt was only "law and mean."\(^{53}\)

The defeat of the amendment proposed by the Committee of Fifteen forced the Radicals to examine their position thoroughly. The extremists had foiled the first attempt at an amendment, and the second proposal must not meet with a similar fate. They were determined to modify their original plans enough to make them palatable to the Sumner faction, while still accomplishing the main purpose of the first plan, to stimulate the enfranchisement of the freedom by penalizing states which denied them the ballot and protecting the Republican majority in Congress against the possible inroads of non-Republican Southern members.

Stevens, furious at Sumner for blocking the first amendment, opened debate on the second version on May 8. Referring to the defeated plan, he claimed that "its death has postponed the protection of the colored race perhaps for ages." He confessed "mortification"

\(^{52}\)Fessenden, Fessenden, II, 56, quoting a letter from Fessenden to his family.

at its defeat, and trusted that the second, and "less efficient," plan would be approved. Otherwise, he felt, the "door of hope" would be closed to the freedmen. "Let us again try and see whether we can not devise some way to overcome the united forces of self-righteous Republicans and unrighteous Copper-heads," he urged.

The new plan proposed by the Committee was not fully satisfactory, Stevens admitted. "It falls far short of my wishes, but it fulfills my hopes," he declared. Stevens felt it was all that could be obtained "in the present state of public opinion." He admitted that "upon a careful survey of the whole ground, we did not believe that nineteen of the loyal states could be induced to ratify any proposition more stringent than this."\(^5\)

Such a statement was no doubt painful for Stevens, who was convinced that the Negroes should enjoy full and complete equality.

Garfield defended the first section of the plan, which incorporated the guarantees of due process and equal protection found in the Civil Rights Act, which, by this time, had become law. He warned that this was necessary in order to block any attempt by Democrats,

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\(^5\)\textit{Congressional Globe, 39 Cong., 1 Sess., 2459.} For a survey of the feelings of the North on the matter of Negro voting see the following letters: "Nemo" to Thaddeus Stevens, February 16, 1866, who contended that "a poor white man is a mere nobody;" Thompson Powell to Stevens, February 22, 1866, who accused him of "hatred of the white man;" and "a boy 16\frac{1}{2} years old" to Stevens, April 18, 1866, who urged the disfranchisement of traitors; all in Stevens Papers. See also R. P. Baber to Sherman, March 12, 1866; Silas Reed to Sherman, February 28, 1866, C. J. Albright to Sherman, February 27, 1866, and Zadob Street to Sherman, March 30, 1866; all in Sherman Papers; E. M. Person to Washburne, March 19, 1866 and S. H. McEathron to Washburne, May 12, 1866, in Washburne Papers.
if they ever regained power, to nullify the Civil Rights Act through non-enforcement or repeal. He assured the House that the inclusion of the Civil Rights Act's provisions in the amendment was not done because of any belief that they were unconstitutional, but only in order to place the law "in the eternal firmament of the Constitution," where it could not be altered or ignored.\textsuperscript{55}

Rogers of New Jersey, speaking for the Democratic minority, called the scheme a "programme of disunion," and particularly deplored the first section. It would, he feared, create an "imperial despotism." Stevens denied these charges. He defended with vigor the third section of the amendment, which denied to those who had participated in the rebellion the right to hold any civil or military office under the federal government or the government of any state. The blocking of the Confederate leaders from office-holding, he felt, was the most important part of the amendment. "Without that, it amounts to nothing," he claimed.\textsuperscript{56}

Under the leadership of Stevens the House passed the revised amendment on May 10, 1866, by a vote of 128 to thirty-seven. The amendment gained two votes which had been cast against the Civil Rights bill, while it lost no votes which that bill had received. Many Republicans were dissatisfied with the part of the third section which disfranchised rebels until 1870, but under the pressure of Stevens's parliamentary tactics they were prevented from voting on

\textsuperscript{55}\textit{Ibid.}, 2462.

\textsuperscript{56}\textit{Ibid.}, 2538, 2544.
that section as a separate issue. 57

The amendment was not considered by the Senate until May 23. Sumner immediately moved that the amendment be postponed until July. He felt it should be approached "carefully and solemnly," but gave no concrete reasons for postponement. 58 Perhaps he was waiting until he had more tangible assurances of a developing Republican party in the South; perhaps he was desirous of giving the Southerners time to commit more "outrages" against the Negroes, thus losing the few friends which they still had in Congress.

Howard of Michigan opened the debate in the Senate for the advocates of the amendment. He was a member of the Committee of Fifteen, and spoke with authority on what the committee intended. He declared that the object of the amendment was to give Congress the power to enforce the guarantees of the first eight amendments to the Constitution. Such an interpretation would secure to the Negro the rights of procedural due process already allegedly guaranteed to him by the Civil Rights Act. 59

Many Senators were more concerned with the deprivation of rights of former rebels under the third section than they seemed to be with the rights of the Negro as outlined in the first section. Daniel Clark of New Hampshire moved to amend the third section and substitute a clause as follows: "That no person shall be a Senator or Representative in Congress, or permitted to hold any office under the Government of the United States, who having previously taken an oath to support

57Ibid., 2545.
58Ibid., 2763.
59Ibid., 2765.
the Constitution thereof, shall have voluntarily engaged in any
insurrection or rebellion against the United States, or given aid
or comfort thereto." 60

Wade offered a substitute for the entire bill. He wanted to
eliminate all persons denied the suffrage from the basis of represen­
tation except those excluded on the grounds of intelligence,
property, or rebellion. Wade followed his traditional pattern of
not speaking directly for the Negro. By his plan the Northern state
laws against Negro suffrage would stand, only the South would be
penalized. He opposed the third section, not because he disagreed
with its spirit, but because he feared it would "effect nothing at
all." 61

The Republicans realized that such bickering could lead only to
defeat or delay of the measure; therefore they met in caucus in an
attempt to work out their differences. Sumner was persuaded to ac­
cept the revised version, with some changes in wording, on the ground
that it was all that could be approved at that time. The extremists
were not happy with this situation, but grudgingly went along. Richard
Yates of Illinois summed up the extreme view. "I fear from timid and
cowardly conservatism which will not risk a great people to take their
destiny in their own hands," he declared, "and to settle this great

60 Ibid., 2768.
61 Ibid.

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question upon the principles of equality, justice, and liberality. 62

On June 8 the Senate approved the revised version of the amendment by a vote of thirty-three to eleven. Only Edgar Cowen of Pennsylvania, James R. Doolittle of Wisconsin, James A. McDougall of California, Daniel Norton of Minnesota, and Van Winkle among the Republicans joined with the six Democratic Senators to oppose the bill. 63

Stevens was unhappy about the Senate version, which the House received on June 13. He was particularly depressed over the elimination of the clause in the third section which disfranchised all rebels only until 1870. He was philosophical, however, and willing to accept half a loaf. "I live among men, and not among angels; among men as intelligent, as determined, and as independent as myself, who, not agreeing with me, do not choose to yield their opinions to mine."

But Stevens was not too concerned. The Senate changes were minor, and the body of the amendment remained much as the committee had approved it earlier. Its major purpose was achieved. The vote was

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62 Ibid., 3037-38. Yates was vehement in his support of the third section. "Let us suppose a case," he said. "Here is a man—Winder, or Dick Turner, or some other notorious character. He has been the cause of the death of that boy of yours. He has shot at him from behind an ambuscade, or he has starved him to death in the Andersonville prison, or he has made him lie at Belle Isle, subject to disease and death from the miasma by which he was surrounded. When he is upon trial and the question is, 'Sir, are you guilty, or are you not guilty?' and he raises his blood-stained hands, deep-dyed in innocent and patriotic blood, the Senator from Pennsylvania (Cowen) rises and says, 'For God's sake! do not deprive him of the right to go to the legislature.' The idea is that if a man has forfeited his life, it is too great a punishment to deprive him of the privilege of holding office."

63 Ibid., 3042.
taken immediately, and the measure was approved by a vote of 120 to 32.

An analysis of the debates on the Fourteenth Amendment clarifies the position of the Radicals. They were determined to supply to all citizens, regardless of race, the equal protection of the laws. The only agency capable of securing this protection was the federal government. The equal protection of the laws meant to them not only the Constitution and statutory laws, but the concept of "natural rights" which gave to the amendment a "sweeping substantive meaning." Specific definitions of these rights were not attempted.

The ideas of the Radicals as incorporated in the amendment were based upon their concept of the Civil Rights Act. Bingham's definition of due process and protection in "life, liberty, and property," and Trumbull's concept of civil rights as outlined in his arguments for the Civil Rights bill were the closest attempts made at definition of specific rights.

It was generally agreed that the amendment did not alter basically the concept of state rights in many phases of civil rights. It still give the states full rights in relation to their suffrage laws, school laws, road laws, police laws, land-tenure laws, contract, tort and marriage laws, and other civil matters. These areas of power, the Radicals believed, were left undisturbed. Only in cases where dis-

64 Ibid., 311:8-49.
65 tenBroek, Fourteenth Amendment, 28-29.
66 Woodburn, Stevens, 326.
elimination because of race existed was the federal government to act, and then only indirectly.

While conservatives of both parties agreed with Gideon Welles that the passage of the amendment proved that with the Radicals "All is for the party, regardless of right or of honest principle," there was much popular support in the North for the amendment. The Nation, as early as September, 1865, had urged full Negro suffrage and civil rights, but had opposed the idea of exclusion of white rebel leaders from office. While this view was ahead of most Northern opinion, it was generally agreed that the need for some protection for Negro rights other than the Civil Rights bill was necessary.67

The Radicals felt the amendment was "magnanimous" toward the South. They required only that the South give "liberty and justice" to the "outraged" race, and make it safe for "free and loyal men" to live peacefully in that section. Garfield felt that "so merciful a proposition has never been submitted ... to rebels since the day when God offered forgiveness to the fallen sons of men."68

Northern newspapers during the summer of 1866 were generally agreed that the amendment had re-enacted the Civil Rights Act and nullified the Dred Scott decision's ban on Negro citizenship. While there was some question if the amendment would be ratified, there was little discussion as to the actual meaning of the amendment beyond the generalities used by its authors. There was no general

67 Welles, Diary, II, 526-27; The Nation, September 28, 1865; Dubois, Black Reconstruction, 319.
68 Smith, Garfield, I, 248-49.
speculation on the question of whether the amendment had included the basic rights of the first eight amendments, probably because it was generally recognized that the authors intended that it would. The Radicals had been talking for years about the rights of the Declaration of Independence but had not dwelled upon the Constitution in their pro-Negro arguments.69

The views expressed by the newspapers were sustained by the Radicals themselves. Trumbull, speaking in Chicago on August 1, stated that the Civil Rights Act had been written into the first section. Speaker Schuyler Colfax of the House agreed a week later in a speech at Indianapolis. Others who made similar statements included Senator Sherman, Carl Schurz, Henry S. Lane and Robert C. Schenck, men who represented the entire range of the amendment's supporters, from extremist to conservative.70

Opinion of the people of the North varied as to the effectiveness of the amendment. Letters received by the Republican leaders in Congress reflected the attitude of the people toward the amendment. "Neither side is satisfied," one Illinois Republican noted, "Republicans don't like it, democrats [sic.] don't like it. The North don't like it, the South don't like it." "The reconstruction propositions are neither fish nor flesh," another wrote, "but perhaps they will answer for the next fall's election."71

69Flack, Fourteenth Amendment, 145-46.

70Ibid., 148-49.

71Thomas Richmond to Trumbull, May 12, 1866; M. B. Judd to Trumbull, May 20, 1866; Trumbull Papers.
Others in the North were more pleased. "The amendment... will no doubt thoroughly unite all the Union element in the country and give us victory over all the rebels and 'conservative' hosts," it was predicted. It was felt that the amendment would prevent the Union victory from being lost to "its enemies." To one correspondent who criticized the amendment, Trumbull wrote a scathing reply. In it he defended the "rights, of person and property," granted by the proposal. "Is there anything unreasonable in this?" he asked.72

Southern opinions, as expressed in letters to Radical leaders, also varied. A resident of Florida, writing to Washburne, feared that the provision for reducing Southern representation if the Negroes were denied the ballot would not be sufficient to force Southerners to allow the freedmen to vote. What the ex-rebels wanted, he claimed, was to "retain the entire control of the State government," and for this they would forsake representation in Congress. Another Floridian, however, wrote Stevens congratulating him on his support of the amendment.73

Most people in the North probably agreed with the Illinois Republican who wrote to Trumbull urging that he support the Reconstruction laws, and "let that accidental Southern renegade go to h -- l." In December, 1866, Boutwell jubilantly wrote to Sumner: "our views of reconstruction are going grand among the people." The feeling of the extreme Radicals in the North was summed up by a constituent of

72C. F. Noetting to Trumbull, June 22, 1866; Trumbull Papers; R. A. Alger to Chandler, June 25, 1866; Chandler Papers; Trumbull to Mrs. Gary (copy), June 27, 1866; Trumbull Papers.

73R. Richards to Washburne, May 7, 1866; Washburne Papers; Samuel Walker to Stevens, August 21, 1866; Stevens Papers.
Chandler, who wrote: "The passage of the Reconstruction bill has given the Rebs the lockjaw at one end and the Dyrhea [sic.] at the other." 74

Perhaps the clearest indication of the importance of the Amendment in the eyes of the Radicals was in the steadfastness with which Thaddeus Stevens fought for it. Stevens was recognized by 1866 as the most sincere friend of Negro rights in Congress, even above Sumner in this respect. His concept of the scope of the amendment is therefore of extreme value in any attempt to determine the intent of its authors.

Stevens outlined his theory of the meaning of the amendment in a speech at Bedford, Pennsylvania, on September 4, 1866. "Congress met and calmly proceeded to reconstruct the Government," he declared. "It proposed amendments to the Constitution not only abolishing slavery, but placing all men on a perfect equality before the law." This was not unqualified equality, however, as he explained. "Every human being is declared to have equal Civil Rights and Congress is invested with a power to enforce a remedy. This does not touch social or political rights. They are left to the future action of the people of the States, and ultimately of Congress." 75

Stevens warned his constituents about the tactics the Democrats would probably use in the fall election. "We shall hear repeated ten

74 E. M. Beardsley to Trumbull, March 8, 1866; Trumbull Papers; Boutwell to Sumner, December 28, 1866, endorsed, Sumner to Chandler; John Seage Chaplain to Chandler, May 16, 1866; both in Chandler Papers.

75 "The Pending Canvass," speech delivered at Bedford, Pa., by Thaddeus Stevens. Pamphlet in Stevens Papers.
"thousand times," he said, "the cry of Negro Equality! The Radicals would thrust the negro into your parlors, your bedrooms, and the bosoms of your wives and daughters..." These he called "unanswerable arguments" of the "unprincipled, howling demagogue." Stevens was determined that the people of Pennsylvania would see the amendment not as a means toward social equality and miscegenation but as a device for protecting the Union victory, won at the cost of so much blood and treasure.

Stevens at this time personified the triumph of Radicalism. His party was in command of a two-thirds majority of both houses of Congress. The Radicals were in firm control of the Republican caucus machinery and were able to exact firm discipline on the majority of members, even those who did not fully agree with them. They had set up the Committee of Fifteen, which they controlled, and which was a sounding board for their policies and an efficient instrument for the dissemination of their party propaganda. They had behind them a growing body of public opinion in the North, which, by 1866, was not yet ready to go as far as they wished, but which was moving steadily toward a more extreme position on the question of Negro rights.

By the time of the election campaign of 1866 the Radicals had accomplished much. The Negro was free, and the government was pledged to supervise his interests with the Freedmen's Bureau. His civil rights had been guaranteed in the Civil Rights Act and had been

\[76\text{Ibid.}\]
restated in the Fourteenth Amendment. His citizenship had been affirmed, and his political rights at least tacitly recognized.

The Radicals were determined to go one step further. They had realized that the North, in 1866, would not accept a positive guarantee of Negro suffrage. Now the Radicals were ready to prepare the public mind for this final move. Their weapons were speeches in Congress and on the stump; and reports from the Committee of Fifteen dealing with outrages in the South. The victory in the election of 1866 was to open the door to this final triumph and to the ultimate climax of the Negro rights struggle on the part of the Radical Republicans.
CHAPTER XI

"A QUESTION OF SALVATION, NOT OF MORALS"

For many Radicals Negro suffrage was becoming a panacea. As the war progressed the more extreme Radicals had been urging Negro voting as a means of protecting the rights which the freedmen slowly were gaining. After the end of the war and the passage of the Black Codes by the Southern states, more and more men began to feel that Negro suffrage was necessary. The motives for this were as varied as the men who advocated it. Many at first felt that Negro voting should be rigidly controlled by means of some type of qualification. Gradually, however, in the heat of the struggle between Johnson and Congress over Reconstruction, these ideas were eliminated, and the Radicals became pledged to full Negro suffrage.

The prospect of Negro suffrage was not widely supported in the North during the period before 1866. Most Northerners, including most Republicans, felt the Negro unqualified and unfit for the ballot. They refused to let the Negro vote in their own states, and even declined to give him limited suffrage in the South. In December, 1864, Representative William D. Kelley of Pennsylvania had moved an amendment to a bill recognizing the reconstructed state governments of Louisiana and Arkansas which would have allowed Negroes able to read the Constitution to vote. This move was defeated in the conservative Thirty-eighth Congress.
The Radical position during this period, contained in the Wade-Davis plan, had specifically called for "White" voting. The Wade-Davis bill, like the Fourteenth Amendment, was not intended as a statement of Radical views, but an objective appraisal of what the people of the North would probably accept. The authors of the plan would have preferred to eliminate the restrictive qualification. Both Wade and Davis hated the South and were determined to end forever the "hostile oligarchy" which they felt threatened their nation and their party. Davis, by 1865, was demanding Negro votes not as a "question of justice, but of political dynamics." He saw the problem as a power struggle — "a question of salvation, not of morals." Negro votes were the only way to secure a "republican friendly government" in the South.¹

The desire to enfranchise all Negroes in the United States was one of the motives which inspired Sumner, on February 1, 1865, to move the admission of a Negro lawyer to practice before the Supreme Court. He had carefully cleared the matter with Chief Justice Chase beforehand, and was assured that his nominee would be approved. The acceptance of a Negro lawyer by the Court, he felt, would be an important step toward enfranchisement because it would help pave the way for the full recognition of the Negro's rights as a citizen. This move was followed a few days later by a sermon in the House of Representatives by a Negro minister. "Evidently," noted George W. Julian,

¹Speech by Davis at a Republican meeting in Chicago, July 4, 1865. Davis, Speeches, 580-81.
"the negro was coming to the front."  

The assassination of Lincoln gave the Radicals their first opening in the Negro suffrage battle. The wave of rage and bitterness which swept the North following this deed encouraged Stevens and other Radical leaders to propose that the South should be made into a conquered territory, with Congress completely in charge of all legislation, including those powers traditionally guaranteed to the states, such as fixing the right of suffrage. The Radical plan appealed not only to those who saw Negro suffrage as an altruistic goal, an impersonal question of right and morality, but to those whose main concern was not the welfare and rights of the Negro but the punishment of the South and the securing of advantages for themselves in the conquered area.

In spite of a growing number of recruits to the cause of Negro suffrage, opinion in the Republican party was by no means unified on the question. Many felt that the entire subject was "premature," while others believed that any laws passed to grant suffrage in the South would be considered threats to the anti-Negro laws of their own states. Governor O. P. Morton of Indiana declared that "negro suffrage must be put down." Radicals charged that anti-suffrage conservatives were attempting to stir the army against the idea of Negro votes, and declared that the opponents of the idea sought to split the Republican party and return the Democrats to power.

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2 Pierce, Sumner, IV, 209; Julian, Recollections, 252.
3 Julian, Recollections, 263-64; Welles, Diary, II, 302, 324.
Throughout the summer of 1865, while Congress was in recess, the Radicals campaigned for Negro suffrage. Wade and Sumner, after a conference with the new President in May, declared that Johnson was in favor of the idea of Negro voting. The problem, declared Leslie's Weekly, "is the next which the nation will be called upon to solve." It amounted to this: "Whether the Loyal men of the South, white and black, shall have the control in the reorganization of those states, or whether the problem shall be remitted to the traitors who have, 'from the force of circumstances,' just laid down their arms."

During the summer of 1865 the Radicals took advantage of the Congressional recess to stump their constituencies in favor of the ballot for the freedmen. Their oratorical efforts were typified by the speech of the young and ambitious James A. Garfield before an Independence Day audience at Ravenna, Ohio. He declared that the nation had made a "covenant" with the Negro at his emancipation, which guaranteed that he should share in the "glories and ... blessings" of citizenship. Instead, he declared, the Negro had received a "mere negation," a "cruel delusion."

No man can be free, Garfield continued, until he has the "right to be heard on all matters relating to himself." He admitted that it would be wise to demand some restriction on the right of suffrage, such as the ability to read and write. "Make any such wise restric-

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4 Julian, Recollections, 263; Leslie's Weekly, June 24, 1865. On July 1 the journal asked: "How long before allying themselves with some doughface or traitorous Northern minority," would Southerners find themselves "in the ascendent in the nation, and planning another rebellion?"
tion," he agreed, "but let it apply to all alike. Let us not commit ourselves to the absurd and senseless dogma that the color of the skin shall be the basis of suffrage, the talisman of liberty." He admitted that unrestricted suffrage would be "perilous," but he demanded that, if an effective educational test could not be established, the ballot be given to all men "of proper age, regardless of color." The ballot would be necessary for the freedmen for two reasons. It would protect them from their former masters, who would naturally be vindictive toward them, and it would aid in the protection of Negro civil rights which Garfield listed as the rights to hold property, be educated, enforce contracts, and have access to the courts.5

It was a difficult problem for the Radicals to rationalize the opposition to Negro suffrage in their home states while demanding it for the South. Henry Winter Davis attempted to remove the entire stigma of race from the question. "It is an accident," he wrote to the editor of the Nation in October, 1865, "that the line of disfranchisement and color are the same." To him it was "not a question of race, but of republicanism." This view was seconded by Harper's Weekly. The defeating of Negro suffrage amendments by Connecticut and Wisconsin, it was felt, was not anomalous, because these states were "indisputably faithful to the Government." It was not "directly essential" that a few thousand Negroes in these states should have

5 The speech, entitled "Suffrage and Safety," is reprinted in Smith, Garfield, I, 86-89. Garfield's definition of civil rights here is significant because he was later to become one of the champions of the Civil Rights bill in the House. Ohio, at this time, did not allow any form of Negro suffrage.
the ballot. In the South, however, the question of Negro votes involved the "national welfare" and was of the most vital concern. Sumner put the problem much more succinctly in a letter to Wade on August 30, 1865. In the South "the rebels are all springing into their old life," he wrote, "& the copperheads also. This is the President's work."^6

Summer refused to accept the view that suffrage could be applied only to the Southern states. In his first speech in the Senate in opposition to the first draft of the Fourteenth Amendment, he called for "impartial suffrage," which he felt would mean "universal suffrage." He was willing to accept restrictions only if they would be "applicable to all." He called for approval of a bill guaranteeing "political rights" in the same fashion as done by the Civil Rights bill, which had been passed the week before. He appealed for "Equality" as well as "Liberty" for the freedmen, calling them "inseparable organs" necessary to "national life." "They are the two vital principles of republican government," he concluded, "without which government, although republican in name, cannot be republican in fact."^7

Although the New York Herald called Summer's ideas "utterly impracticable and visionary" many Radicals applauded his stand. Israel Washburn, former member of Congress and brother of Illinois Representative Elihu B. Washburne, a member of the Committee of Fifteen, wrote Summer his encouragement. "Your positions are impreg-

^6Davis, Speeches, 590; Harper's Weekly, December 2, 1865; Sumner to Wade, August 30, 1865, Wade Papers.

^7Congressional Globe, 39 Cong., 1 Sess., 673-87; Summer, Works, X, 220-36.
nable, and your speech, I think, the greatest of your life." On
the question of Negro suffrage Washburn was convinced. "We must
stand there, or not at all."8

Northern opinion was not great enough to include a positive
grant of Negro suffrage in the Fourteenth Amendment, but the Rad­i­
cals were working diligently to influence public opinion in that
direction. Only a minority of men in the Republican party in 1865
and 1866 believed that the Negro should be given the ballot, but
that minority, in the words of Blaine, "was composed of very earnest
men of the same type as those who originally created and combined
the anti-slavery sentiment of the country, and who now espoused the
right of the negro to equality before the law."9

The views of their constituents back home were important to the
Radicals, for they indicated the degree of rights which the people of
the states were liable to accord the Negro. So long as popular
opinion opposed full Negro suffrage it would be impossible to pass
an amendment containing this provision. When the majority in the
North were willing to accept the Negro as a political equal, no
matter what the motivation, then the Radicals could hope for an

8 New York Herald, February 7, 1866; Sumner, Works, X, 252-53,
258-59.

9 Blaine, Twenty Years of Congress, II, 92. Typical of the
division in Republican ranks on the issue are three letters received
by Radical leaders. "Suffrage is a State affair" argued B. J. Lossing
in a letter to Henry Wilson, June 19, 1865; Wilson Papers (Division
of Manuscripts, Library of Congress). If the white class alone were
allowed to rule the Negro would remain "practically... a slave" con­
tended E. M. McCook in a letter to Wade, September 25, 1865; Wade
Papers. A constituent of Chandler's, F. M. Kellogg, felt that Con­
gress should "dictate laws to the South..." Kellogg to Chandler,
June 19, 1865, Chandler Papers.
amendment guaranteeing political rights.

Many people in the North, of all shades of political opinion, were willing, at the end of the war, to wait and see what the Negro's position in the South would be before committing themselves. They agreed with Horace Greeley's advice to the South. Greeley urged the Southerners to give the ballot to the Negro, who would remain "just about the most docile, valuable peasantry upon earth." Greeley did not insist upon absolute suffrage; he advocated a property qualification, as in New York, a poll tax, and tests, such as literacy tests, taxpayers tests, "honest workman" tests, and "no-criminal" tests. His main insistence was that such tests be applied impartially to both races. 10

Harper's Weekly demanded the ballot for the Negroes in order that their "self-respect be aroused, and their willing industry encouraged." Suffrage was necessary to keep them content in the South, and to make their presence there "valuable" by increasing production of agricultural staples. The ballot, the journal declared, was the "one way" of securing this result. It did not matter that the Negroes were illiterate, so were the "mass" of whites, both North and South. "Education," it declared, "is a good thing, but it appears that some of the staunchest patriots in the land cannot read, and that some of the basest traitors are highly educated." If the Negro were not enfranchised, the article continued, laws might be passed in the South which would prevent the freedmen from being educated, would deprive

10 Van Deusen, Greeley, 325-26.
them of the rights to testify in courts, and would deprive them of
the protection of the laws. In effect, Harper's Weekly predicted
the passage of the Black Codes.

A similar view was taken by Leslie's Weekly, which felt that
"nine-tenths" of the population of the North would vote against
Negro suffrage as "inexpedient if not dangerous" if the matter could
be considered as a "pure and simple" question of right. The "mental
and moral condition" of the freedmen was sufficient to disqualify
them from the ballot. The actual situation in the South, however,
precluded an objective canvass, it was contended. If the Southern
states were to be reconstructed, it would have to be done by the
votes of loyal men, which would be impossible "unless the colored
men, who are loyal, are called in." Leslie's decried the main psychological argument of the ex­
treme conservatives. It called for an end to the use of the threat
of "amalgamation." It cited the example of India, where unions be­
tween "whites" and "natives" were rare, and where the two races
possessed "absolutely equal privileges." By "equal privileges" was
meant equal protection of the laws. If a native had the opportunity
to rise politically, the way was open to him, and "the native member
of council takes precedence of the highest white in the empire not
belonging to that body."

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11 Harper's Weekly, May 20, 1865; May 27, 1865.
12 Leslie's Weekly, July 1, 1865.
13 Ibid., July 15, 1865.
The Radical propaganda campaign was given a setback by the refusal of Connecticut and other Northern states to eliminate their anti-Negro voting laws in the summer of 1865. Clemenceau felt that if Radical plans were to be successful, the North would have to eliminate its own Black Codes. If this was not done it would be "difficult" to require similar actions of the South.\(^\text{14}\)

One of the most able defenders of Negro suffrage was George W. Julian. He reaffirmed his stand on the question in a speech to the Indiana House of Representatives in November, 1865, shortly after the Connecticut and Wisconsin elections. He warned that there was a threat that the freedmen of the South would be abandoned to a system of serfdom if their rights were not protected. The "leading rebels" who owned the land would sell out to "rich yankees" who "would wade into the mouth of hell after a bale of cotton." These people would set up a system of "wages-slavery" over the Negroes that would be "as intolerable as the old system of servitude.\(^\text{15}\)

To prevent this exploitation he demanded the ballot. He assured the members of the House that "I won't preach in favor of black suffrage ... nor white suffrage. All that I want is loyal suffrage, without regard to color." He further assured them that "I won't preach any of my 'radicalism' ..., I won't urge any of my fanatical notions." He advocated only the "conservative" ideas of the "founders and framers of the Republic.\(^\text{16}\)

\(^{14}\)Clemenceau, American Reconstruction, 36.

\(^{15}\)The speech, entitled "Dangers and Duties of the Hour," is contained in Julian, Speeches, 268-77. See especially 268-69.

\(^{16}\)Ibid., 270.
He warned against giving the ballot to the "white rebels" of the South while denying it to the "loyal negro." He felt that to do so would deprive the Negro of the use of the courts, the right to own property, and the right to peacefully assemble. Finally, if the ballot were denied to the freedmen, there would be "an insurrection such as the world perhaps had never seen." The only way to prevent this, he was certain, was to "unite with us in giving the ballot to the loyal negro in the South."17

Julian discounted the argument that Negroes were not qualified to vote. Some people, he admitted, felt that Negroes should be given a probationary period in which they could become educated and could acquire property before being given the franchise. This, he was certain, was not necessary. "If want to prepare the negro for suffrage," he declared, "take off his chains, and give him equal advantages with white men in fighting the battle of life." He refused, however, to endorse suffrage for the Negroes of Indiana.18

Sumner agreed completely with Julian's evaluation of the conditions in the South. He had fought continually for Negro suffrage, and was determined to triumph. He encouraged the Negroes of the South to petition Congress demanding the ballot, and introduced such petitions into the Senate. In one case, in July, 1865, he received

17Ibid., 275.
18Ibid., 276-77.
a petition signed by 300 Georgia Negroes which he forwarded to President Johnson. 19

Sumner was convinced that Negro suffrage would ultimately be approved. In April, 1865, shortly after his successful fight against the first draft of the Fourteenth Amendment, he wrote a letter to a Negro committee in the District of Columbia outlining his views on the Negro suffrage question. "The freedman," he wrote, was only "half a man" so long as he was "despoiled of the elective franchise." The only way he could be made "whole" was by "investing him with all the rights of an American citizen." He denied the contention, admitted by many other Radicals, that the Negro "did not know how to vote." The Civil Rights bill, recently approved, was "not enough," he contended, for it provided for only "semi-equality." Anything less than full Negro suffrage would be a "denial of justice." 20

Because of the considerable opposition to their ideas still extant in the North in the beginning of 1866, many Radicals felt they were being persecuted. Representative Timothy O. Howe of Wisconsin was convinced that the "hottest fires" of the "American auto-da-fe" were kindled to "roast some reckless radical who dares to assert the political equality of men." 21

19 Leslie's Weekly, July 22, 1865. The attitude of white Southerners was reflected in a letter received by Thaddeus Stevens from Texas. "I implore you... not to put on us the humiliation, the degradation of negro suffrage," the writer begged. He described the Negroes as "very little mentally above the baboon." Thomas P. Collins to Stevens, February 19, 1866. Stevens Papers.

20 Letter to a committee on the celebration of Emancipation in the District of Columbia, April 14, 1866, Sumner, Works, X, 117-18.

21 Congressional Globe, 39 Cong., 1 Sess., 163.
Despite their increasing clamor for Negro suffrage the Radicals voted approval of Colorado's admission to the Union in May, 1866. The constitution of the new state restricted the suffrage to whites, but the Radicals nonetheless approved it. Welles felt this was hypocrisy on their party because he felt they wanted suffrage only "where the blacks are numerous" and where "Congress had no right to intervene." The real reasons for the Radical acceptance of the Colorado statehood bill were twofold. First, Colorado had an insignificant number of Negroes, so that the denial of suffrage to that race would not work a hardship on a large number of people, and the restriction was no different than that in force in many of their home states. The more important reason was that the Radicals desperately wanted additional representatives in Congress who would vote according to the directions issued by the Radical leadership. The dispute between President Johnson and Congress was becoming increasingly more bitter and the Radicals were searching vigorously for recruits to strengthen their majorities in Congress.

Johnson's attempts to reconstruct the South by executive fiat had alienated the Radicals, and his vetoes of racial legislation such as the Freedmen's Bureau bill and the Civil Rights bill had convinced the extremists that Johnson was a threat to the nation and the Republican

22Welles, Diary, II, 502. Ben Wade supported the admission of Colorado, and derided Sumner's opposition to the proposed constitution because of its suffrage limitation a "technicality." He was more interested in strengthening the Republican majority in the Senate. See T. Harry Williams, "Benjamin F. Wade, 1861 to 1869," unpublished Ph. M. thesis, University of Wisconsin, 1932, 72.
party. Opposition to Johnson's policy of placing the governments of the Southern states in the hands of whites increased greatly with the enactment of the Black Codes and the undiplomatic threats of Southerners to ally with the Northern Democrats and overthrow the Republican ascendancy.

The Radicals were further irritated at Johnson because they felt he had deserted his former position in favor of Negro suffrage and taken up a more reactionary stand. In April, 1865, shortly after he had succeeded to the Presidency, Johnson had granted an interview to Summer, Kelley, and Schurz, who were reported to be "entirely satisfied" with Johnson's position on Negro suffrage. In a conversation in October Johnson supported the idea of "gradual" Negro suffrage in Tennessee, his home state. He suggested some type of property qualification be established to limit the potential Negro electorate.23

By summer of 1866 the Radicals were no longer willing to accept Johnson's restricted views. The failure of the South to accept the Fourteenth Amendment and Johnson's continued opposition to Radical policies led the extremists to an increased effort directed toward influencing Northern public opinion. The Radicals saw the election of 1866 as most crucial in their power struggle against the President and in their fight for Negro suffrage. If they could win a clear two-thirds majority of both Houses of Congress in November it would be a mandate for their most extreme policies, particularly the dual concepts of Negro suffrage and Congressional Reconstruction.

The question of Negro suffrage figured importantly in the pre-election campaigning. The state Republican conventions of Massachusetts, Vermont, Iowa, and Minnesota demanded Negro voting as a condition of Reconstruction, while other states made less stringent demands. Throughout the North the idea became more accepted by the electorate that some form of Negro voting would be necessary to curb the political power of former rebels and insure the rights of Negroes as outlined by the Civil Rights bill debates. The Radical stimulated this trend by a vigorous propaganda offensive aimed at influencing the voters of the North to accept Negro suffrage. Speeches by such outspoken Negro-rights advocates as Sumner, Kelley, Wendell Phillips, and Frederick Douglass were reprinted and distributed widely, as was the Schurz report on conditions in the South and his newspaper accounts of his trip.

In spite of these efforts the Radicals attempted to make the Negro suffrage campaign appear as a "grass-roots" movement, rather than one inspired by the party leadership. Blaine wrote that the movement for Negro suffrage in the summer of 1866 was an "unmistakable manifestation" coming "from the people rather than from the political leaders." The latter group, he felt, "shunned the issue," preferring to wait "until public sentiment should become more pronounced in favor of so radical a movement." There was no doubt that by the summer of 1866 the Radicals had

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24 Dubois, Black Reconstruction, 257-59.

25 Blaine, Twenty Years of Congress, II, 243-44.
a great measure of popular support. In the crucial state of New York they broke the power of the conservative, Thurlow Weed, and gained control of the state convention. According to one historian their victory indicated a vast amount of popular approval of Radical Reconstruction and Negro suffrage.\(^{26}\)

The campaign of 1866 was not based upon an objective analysis of the question of Negro rights as such, but was a fear campaign, with the Radicals using the freedmen as pathetic examples of what would happen to that race if their politics were not approved by the electorate. Although Negro suffrage as such was not the foremost issue of the canvass, it played a significant part, for the Radical concept of Reconstruction had by this time become centered in the need for Negro ballots to give the Republicans ascendancy in the states of the South.

Julian outlined the strategy of the Radicals in a speech in the House of Representatives in June: "Conservatism," he declared, was the real enemy of the nation and of the Republican party. It was conservatism which demanded pardons for rebels, which declared the Southern states were still a part of the Union, and which opposed the Fourteenth Amendment. He cited instances where the Civil Rights Act, although a law, was being voided in the South. He read a long list of offenses by Southerners against the provisions of the act, offenses which he declared rendered the law ineffective. Even if the

\(^{26}\)Van Deusen, Weed, 312. This work contains an enlightening discussion of the split in Republican ranks in New York over the Reconstruction question, and illustrates the growth of Radicalism in that state.
bill were enforced, however, it would be but a "pallative, and not a cure." 27

The only guarantee for Negro rights was the ballot. "This is the sure refuge and help of the freedman," he said. Congress had full power to accomplish the enfranchisement of the Negro, he asserted, and to withhold suffrage from the rebels. 28

Carl Schurz, speaking in Philadelphia in September, also called for the ballot. He argued that it was necessary as a deterrent to the threatened political resurgence of the former Confederates. In the days immediately after the surrender of the Confederacy, he contended, the nation assumed that the defeated rebels would be denied the right to participate in politics and that all the functions of government should be in the hands of "loyal men." Negro suffrage would have been accepted at that time by the Southerners, he declared, even on a "universal" and "unrestricted" basis, as one of the "bitter but irresistible consequences of the war." 29 This attitude on the part of the Southerners had been superceded by a "reactionary movement," he said, which made "fidelity to the South" the key to public office, and which eliminated loyal men from control of the Southern states. In order to block this movement it would be necessary to enfranchise "all the loyal men, black as well

27 Congressional Globe, 39 Cong., 1 Sess., 3209.

28 Ibid., 3210.

29 Speech, "The Logical Results of the War," Schurz, Speeches, 380-89. For a similar view see L. Maria Child to Julian, January 22, 1866, Julian-Giddings Correspondence.
as white." The Negro must have the ballot for his protection and the government owed it to him. It was essential for the "development of free labor and the cause of democratic government." 30

These typical speeches reflect the Radical contentions throughout the 1866 congressional campaign. The Radicals demanded suffrage for the freedmen not because of any basic concept of equity or right, but because the ballot in black hands was a pragmatic necessity to block rebel politicians and retain loyal (i.e., Republican) control. True, some Radicals of the Stevens-Sumner extremist group felt that the suffrage was the right of the Negro by virtue of their concept of an absolute equality of races under the theoretical justification of the Declaration of Independence. The majority of Radicals were content, however, to appeal to the electorate on the more easily justifiable grounds of national and party necessity. They saw nothing inconsistent in urging Negro suffrage for the South and rationalizing the lack of it in their home states.

The vigor of the Radical campaign of 1866 and the express demands of state party platforms for Negro suffrage laws indicate that the vast majority of persons in the North, including the Radical leaders, felt that the Fourteenth Amendment did not provide for any sort of positive political equality. It is obvious that they did not consider political rights as covered by the privileges and immunities clause or the equal protection clause of the amendment any more than they did social rights or the rights of states to control their own

30 Ibid., 403.
internal affairs. If so, there would have been no need for the entire
campaign, for under the fifth section of the amendment the Radical-
dominated Thirty-ninth Congress could have easily passed an enabling
act voiding Southern voting restrictions based upon race.

Political rights were not to be considered as residuary "civil
rights" under the concept of the Civil Rights Act or Section 1 of
the Fourteenth Amendment. The Radicals were in basic, although frus­
trated, agreement upon this point. Political rights were separate
and distinct, a category in themselves, to be granted positively at
a later date, when and if Northern public sentiment would agree to
such a change. Until that time the Negro would have no positive
political rights under the amendment except those negatively granted
by Section 2.

The Radicals made no commitment whatsoever on the question of
social rights for the Negroes; that is, rights dealing with the re­
lationship between individuals or relating to individual rights to
their own property. Certain Radicals were convinced that the Negro
should be the social equal of the white; not that he should partici­
pate equally in society, but that he should not be restrained for the
sole reason of his color. Stevens actively and Sumner theoretically
supported this view, but they lacked support from their Radical asso­
ciates, and were considered visionaries even by many of those most
vocal in support of Negro civil rights.

Social rights, such as the right to equality in hotels, theaters,
restaurants, schools, and transportation facilities, was almost uni­
versally unknown in the North. Only in the most extreme states of
New England, where the Negro population was infinitesimal, were color­ed people granted any semblance of equality, and even there it was not universal. At no place in the North was the Negro recognized as the social equal of the white. As well-known and educated a Negro as Frederick Douglass bitterly recognized the social inequalities of his position, even after he took a white wife.

Social rights did not figure in the campaign. There was a flurry of excitement over the old question of miscegenation, partly because some persons feared the Fourteenth Amendment would void state laws against such practices and partly because it made good newspaper copy and was a sure means of getting political publicity. Johnson had mentioned the problem of the validity of state anti­miscegenation laws in his veto of the Civil Rights bill; and it remained an issue throughout the year, although avoided by the Radicals, who felt either that the laws should be voided or that the amendment would not affect them, depending upon their individual stand on the question.

For most people the election of 1866 was not a referendum for Negro rights or Negro suffrage, but a bitter campaign between the forces of the Union and the resurgent Rebels and their Copperhead allies. The fear of a union between Democrats and Southerners was a sure means of gaining attention at any political rally, and the rift between the President and Congress heightened contentions by the Radicals that the Democrats were the party of disunion. James A.

Richardson, Messages and Papers, VIII, 3605.
Garfield, campaigning in Ohio, did not trouble the voters with theoretical problems of Negro rights. He gave them in vivid campaign rhetoric his reasons why they should support the Radicals: Who were the Democrats? he asked, and his answer was:

Every Rebel guerilla and jayhawker, every man who ran to Canada to avoid the draft, every bounty-jumper, every deserter, every cowardly sneak that ran from danger and disgraced his flag, every man who loves slavery and hates liberty, every man who helped massacre loyal Negroes at Fort Pillow, or loyal whites at New Orleans, every Knight of the Golden Circle, every incendiary who helped burn Northern steamboats and Northern hotels, and every villain, of whatever name or crime, who loves power more than justice, slavery more than freedom, is a Democrat and an endorser of Andrew Johnson.

Those Republicans who did advocate Negro suffrage before their constituencies found themselves in difficulty. George S. Boutwell, for example, encountered considerable opposition to the idea among a Faneuil Hall audience in May, 1866, in Massachusetts. A growing opposition to Negro rights was making itself heard, comprised mostly of Irish immigrants, who feared Negro labor competition. These men were becoming an increasingly important factor in many legislative districts, including Boutwell's, and they demanded to know why he continued to support Negro rights.

Boutwell replied in language which the Irishmen could understand. In reply to a question from the audience demanding to know why he supported Negro suffrage Boutwell replied:

32 Speech, "National Politics," reprinted in Smith, Garfield, I, 241-42. Welles disagreed with this idea, particularly in regard to the New Orleans massacre, which he felt was a "deliberate conspiracy" in which leading Radicals palyed conspicuous parts. Welles, Diary, II, 569-70.

33 Boutwell, Speeches, 472. The Speech was entitled "Equality of the Negro."
Now, my friend from Ireland, you who believe it is the worst of things that the negro should vote lest he should be your equal, I have this to say to you. If you think it more pernicious to your welfare that the negro should vote for Mayor and Aldermen in Charleston, S. C., than that he should come upon the wharves and streets in this city, and compete with you for that labor with which you maintain your families, take your choice, and deprive him of the right to vote in Charleston, and he will come here; but, if you give him his rights where he is, you will retain whatever rights and privileges you now enjoy.

This was reminiscent of Julian's earlier argument for the Civil Rights bill: Give the Negroes all their rights in the South and they will not move North. Both Julian and Boutwell had a long history of abolition and anti-slavery activity, and had been fighters for Negro freedom for years when that cause had been less than popular in the North. Both, however, had constituencies which contained strong anti-Negro elements. If these pronouncements were made for the benefit of the voters or if they reflected the personal opinions of the speakers cannot be determined. If the former they cast doubts upon the professed motives of other Radicals, if the latter they brand the speakers as hypocrites. These men were both politicians, however, and their first concern was re-election. Therefore they were probably speaking not their own convictions but what they thought would appeal to those who would have the power to remove them from office.

No matter what the motives which inspired the Radicals, no matter what appeals they made to the voters, their efforts were overwhelmingly successful. The election of 1866 was a Radical triumph in the states of the North. As a result of the election the Fortieth Congress was to contain 143 Republicans to 49 Democrats in the House of Representatives, thus guaranteeing the Radicals a two-thirds majority
in the Senate and nearly a three-fourths majority in the House, providing that the Southern representatives were excluded. The North had been unanimously Republican except for the border states of Maryland, Delaware, and Kentucky, and a few isolated districts in other states. The electorate had overwhelmingly endorsed Radical reconstruction; this was the view of the victors.\textsuperscript{34}

Johnson and his policy of executive Reconstruction and white control of the South had been decisively defeated. No longer would Johnson be capable of effectively opposing the Radicals in any effort they wished to make on the Negro question. Although Georges Clemenceau predicted that 1867 would be marked by a "struggle" between Johnson and Congress,\textsuperscript{35} the real struggle was over. Congress was victorious.

The endorsement of Radical Reconstruction, with its concomitant demand for Negro suffrage tacitly implied, which characterized the 1866 election, was not a true indication of the feelings of the people in many areas of the North on the question of Negro political rights. In Ohio, which went enthusiastically Republican in 1866, an attempt to remove the word "white" from the suffrage qualifications was defeated in 1867 by more than 50,000 votes. In 1868 a similar attempt in Michigan, the home of Chandler and Howard, was beaten by nearly 39,000 votes. In the new state of Nebraska, whose constitution was drafted in 1866, the suffrage was limited to whites.\textsuperscript{36} The country, while willing to elect men to office who spoke of the need for Negro

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34 Dubois, \textit{Black Reconstruction}, 320-21.
35 Dispatch to Paris Temps, January 5, 1867, quoted in Clemenceau, \textit{American Reconstruction}, 75-76.
36 Dubois, \textit{Black Reconstruction}, 293.
\end{flushright}
suffrage, was not willing to accept the idea as reality.

By 1867 Negro suffrage for the South was a foregone conclusion. The Radicals admitted, with Schurz, that it would never be "popular with the masses" of either North or South, but was accepted by the Radicals as a necessity. Two classes of politicians favored the idea, according to Schurz. They were either "doctrinaires" like Sumner, who insisted on Negro suffrage "as a matter of right," as a corollary of the Negro's manhood and citizenship; or those who "after a faithful and somewhat perplexed wrestle with the complicated problem of reconstruction, finally landed - or, it might almost be said, were stranded - at the conclusion" that Negro suffrage was necessary. 37

Typifying the latter attitude was John Sherman. Never a Radical on the racial issue, Sherman, by 1865, had become convinced that Negro voting was necessary to keep "the rebels" out of political office. "I admit the negroes are not intelligent enough to vote," he wrote to his brother, the general, "but some one must vote their political representation in the States where they live..."38

The more Radical Republicans agreed that the Negro was unqualified. They insisted, however, that any limitation on the Negro vote would have reduced the total number of Negro ballots to "so small a

37 Schurz, Reminiscences, III, 246. The conservative Republican view, seldom heard after 1866, was that of Gideon Welles, who wrote to Grimes that Negro suffrage would be "the cause of everlasting sectional animosity." Welles to Grimes, October 19, 1866, Welles Papers (Division of Manuscripts, Library of Congress).

figure as to render it insufficient to counteract or neutralize the power of the reactionary element." Julian declared the problem of qualifications for prospective Negro voters to be a "subordinate question." The great "national emergency" required "imperative" action for Negro suffrage to guarantee the "safety of society." 39

Zachariah Chandler summed up his position succinctly. Speaking before a Republican rally at Ashtabula, Ohio, in October, 1866, he declared that he believed the Fourteenth Amendment a "base surrender" to the loyal Union men of the South. "Rebels must take back seats and of course loyal men must govern this country," he declared. "I care not whether they be black or white." 40

Boutwell, in spite of his personal insistence on Negro suffrage, recognized that as late as 1867 there was a majority of his party opposed to it without some type of qualification. He felt that the party was handicapped by these "serious differences in regard to the question." 41 These differences were lessened during the course of the year, however, with the increased Radical attack upon Johnson. As the movement for Johnson's impeachment grew stronger, the pressure on moderate Republicans to adopt a more Radical point of view on Negro suffrage became more intense. As the feeling against Johnson on the part of the Northern people and press became more pronounced, more pressure was put upon recalcitrant Congressmen by the Radical leaders to approve Negro voting as a deterrent to the President's

40 Harris, Chandler, 98.
41 Boutwell, Reminiscences, II, 42-43; Hunt, Washburn, 236.
friends in the South.

With the passage of the Fifteenth Amendment the Radicals felt they had eliminated the major deficiency of the Fourteenth. The Negro was secure, they thought, in his political rights as well as in his civil rights. No longer need they worry about second-class citizenship, and, so long as they could control the Negro votes of the South, no longer need they worry about their majority in Congress.

Thus the Negro, within a decade, had been catapulted from abject slavery to full civil and legal equality, at least in theory. This convulsive revolution had been accomplished by a group of politicians who had been inspired by motives diverse and assorted, yet who were able to make their views the will of the majority of Congress and acceptable to the majority of the states. These men, the Radical Republicans, brought forth the Negro from his position of bondage and wrote the laws which today are being used to bring forth the Negro from his position of second-class citizenship.

The objectives of the Radicals regarding civil and political rights for the freedmen were plain from the debates surrounding the passage of the legislation of the Thirty-ninth Congress and the campaign of 1866. They were for full civil equality as they defined the term, and they wanted fully-implemented Negro suffrage. These points are beyond questioning today.

Remaining is the problem of what the Radicals implied in the Fourteenth Amendment regarding the so-called social rights, such as the rights of Negroes to associate with whites on terms of equality in hotels, restaurants, theaters, transportation facilities, and
schools; and the accompanying question of whether individuals had the right to segregate such persons from their establishments on the sole ground of race. The answers to these questions, together with the opinions of individual Radical leaders on the question of social mingling with Negroes, may give further meaning to the first section of the Fourteenth Amendment and a better understanding of our contemporary problems of race relations.
CHAPTER XII

"... A HIGHER AND HOLIER ORDER OF THINGS..."

The racial views of the men who were the authors of the Fourteenth Amendment developed slowly and erratically. There was no unity of purpose within the ranks of the Republican party during the war years except the unity inspired by the common causes of battle and abolitionism. Beyond this the party was split into two main groups. The Radical extremists of the type of Stevens, Sumner, Wilson, and Boutwell wanted full rights and equality for the Negro in all civil and political affairs. It was these men who inspired and motivated the Negro-rights legislation of the early post-war period. Greatly aiding this group were the numerous party-men, who voted according to the directions of the party whips. These men voted on the side of the Radicals with little thought or concept as to what they were really voting for. They were typified by Henry Blow of Missouri and George Williams of Oregon on the Committee of Fifteen.

The second major group of Republicans was the old free-soil element, men who vigorously opposed slavery and who were anxious to keep the South in a subservient position, but who were not actively pro-Negro. Benjamin F. Wade of Ohio and Samuel C. Pomeroy of Kansas led this faction, which almost invariably voted with the Radicals on Negro legislation. This group actively supported the Fourteenth Amendment because they felt it would increase the strength of the Republican party in the South and would gain the permanent
ascendancy of the North in national politics. They did not worry too much about the idea of Negro rights - and they favored segregation and racial restrictions in their home states.

Associated with this latter group were the moderates. These men were far more conservative than either of the major factions. They were willing to support Negro rights legislation if they felt it would work a positive good, but they were opposed to extreme egalitarian laws. This group, led by Grimes, Fessenden, and Trumbull, actively supported the Fourteenth Amendment against extremist attacks. They saw in the enactment a measure which would secure to the freedman his basic civil rights but which would not place him in a position of full equality. These men, while coming from anti-slavery backgrounds, were not pro-Negro in the Sumner-Stevens sense.

Another group of Republicans, actually a very small faction, were the reactionaries. Cowen of Pennsylvania and Van Winkle of West Virginia characterize this group, which was opposed to any extension of rights to the Negro, feeling that governmental responsibility for their welfare had ended with emancipation. This group ceased to exist, for all practical purposes, after the election of 1866.

From the beginning of the war the extremists had stood for Negro rights. They had supported the use of Negro troops, the confiscation of "rebel" property, civil and later political equality for the Negroes of the District of Columbia, and, later, for the freedmen of the South. Their motives for this were twofold. Many of them were sincerely and unselfishly interested in the rights of the Negroes because of the principle of justice. They believed in
the statement of the Declaration of Independence that all men were created equal, and they felt that the Negro should be secured in this right. Others supported the idea of Negro rights in order to secure additional recruits to the Republican standard. Negro rights was to be a device whereby Republican political control and Republican economic policies were to be fastened upon the South.

Republican policy during the early war years was uncertain in regard to the Negro. The various factions had not yet determined upon a policy to follow which would meet with the approval of enough Republican Congressmen to gain approval, yet be stringent enough to secure for the party what it desired. The early plans of Pomeroy and later, Lane, for colonization of the freedmen demonstrated one extreme position, while the confiscation acts, designed to settle the freedmen permanently on the lands of the South, pointed out an equally extreme stand.

But whatever the position taken by the Republicans on these suggestions, they were doomed to defeat. By 1864 the party had realized that the Negro must be kept in the South, and that he must be kept there in the status of a peasant. By 1864 Northern journals and newspapers were inaugurating a great propaganda campaign throughout the North designed to prepare the electorate for the idea that the South and the Negro were to be exploited for the benefit of Northern investment capital.

Newspaper and magazine articles began portraying the benefits of free Negro labor on Southern plantations seized from their rebel owners and operated by freedmen under the supervision of Northern
managers and overseers. Settlements of freed Negroes, such as that at Port Royal, South Carolina, were praised as showing the diligence of the freedmen. This picture was made more appealing by the promises of "the large profits which the next few years must yield to all cultivators of cotton." This was a foretaste, it was declared, of what the entire South "shall surely be a few years hence," with the freedmen working industriously to produce the fleecy staple, their families economically self-sufficient, able to afford fabrics of "New England manufacture" and happily associating with the poor whites, who would no longer be repelled by the institution of slavery and forced to "spread over Southern Illinois and Indiana..."\(^1\)

One journal was even forced to warn that the main danger facing the freedmen was that their wages might become too great. Wages would have to be kept low in the South, it was felt, or else the income of the former slaves might "increase faster than their wants, and thereby they may be led into habits of idleness." The article urged Congress, in 1864, to avoid "over-legislation" on behalf of the Negro. "Too much guardianship, too much taking care," would only tend to make the Negro less efficient. The only rights which the Negro needed were the rights to make contracts, to be protected from "injustice and abuse," and to be paid "fair wages for a fair day's work."\(^2\)


\(^2\) Ibid., 496-97.
Another publication called the Negroes employed on a Mississippi plantation "in every respect superior as a working class to the 'mean whites' of the South." They were described as "faithful, industrious, and comparatively provident." They were also eager to acquire "useful information," and they were completely loyal to the Union and "solicitous for its success."  

Such descriptions were enough to stimulate the enthusiasm of many persons in the North, who looked more and more to the South as a field of investment. The plans of the Radical leaders for confiscation of the property of Confederate leaders and its distribution to the freedmen in small plots did not fit in with their ideas of exploitation. Although Thaddeus Stevens could declare that the economic self-sufficiency of the freedmen was more important than theoretical freedoms or political rights and George W. Julian could damn the "capitalist" monopolization of Southern lands, they could not effectively confiscate them.  

Already by 1862 the parts of the South occupied by Union troops were "swarming" with Northern speculators. "They see how much behind the times the country is, and they see that here is money to be made," noted Charles Francis Adams, Jr. These men utilized the freed slaves as a free labor force, and paid them money wages, rather than accept

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Julian, Recollections, 220-21; Dubois, Black Reconstruction, 197.

L. Maria Child noted in 1864 that "large tracts of Southern ... land" were being bought by "Northern capitalists." She felt these lands should be distributed to the "emancipated slaves and the poor whites..." L. Maria Child to Julian, March 27, 1864, Giddings-Julian Correspondence.

C. F. Adams, Jr., to Henry Adams, April 6, 1862; Ford, Adams Letters, 1, 130.
the obligations toward them which the slaveowner had borne. William D. Kelley of Pennsylvania recognized the important difference between the two labor systems when he introduced a measure into the House in 1862 to abolish slavery in the territories. The plan, he said, proposed to tell the slave-owner to: "Keep your slaves out of these places as employees: do not interfere with the system of free labor, and attempt to force the free mechanic into companionship with your slaves..."

Even the most theoretical of all the pro-Negro Radicals, Charles Sumner, was infected with the possibilities of commercial gain in the South. Speaking before a Republican meeting at Cooper Institute in New York, in November, 1864, he described the "new commerce" which would soon be flowing into the South. The only things needed to produce this stimulus to trade, he felt, would be "if a whole race is lifted to manhood and womanhood, if roads are extended, - if schools are planted ..." The advantages of abolition and the extension of basic rights to the freedmen, he declared, would be twofold: "first, it will raise the fee-simple of the whole South; and, secondly, it will enlarge the commerce of the whole North."

These pressures were too great for even as dedicated a man as Thaddeus Stevens. He had not changed his mind on the confiscation question, but he realized that he was beaten. In 1864 he had urged confiscation rather than the ethereal right of suffrage for the Negro.

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6 Congressional Globe, 37 Cong., 2 Sess., 2050.
7 Sumner, Works, IX, 132.
"In my country there are fifteen hundred escaped slaves," he said. "If they are specimens of the negroes of the South, they are not qualified to vote." He would have given them first land, then schools, and finally the ballot. "Seek ye first for the negro a little land," he insisted, "and all other things will be added unto him."^8

The land did not go to the Negroes but went to Northern capitalists. By 1865 the abuses of these landholders had become so great that the government was prompted to act to eliminate Northern speculation in Southern lands, by including provisions in the first Freedmen's Bureau bill against such practices. This did not mean, however, that the legislation was designed to interfere with Northern exploitation of the Southern cotton crop - rather it was intended to encourage it.^9

By the end of the war Republican racial policies had been prostituted for the benefit of Northern capital interests. Confiscation had been abandoned, and many Northern commercial interests were attempting to force the readmission of the Southern states to the Union. There was a growing feeling, recognized by the Radicals, that "the financial interests of the Government and the commercial interests of the people called for the speediest settlement of all political questions." Blaine believed that the "necessities of trade" would "overcome all obstacles" to immediate restoration and that Southerners

^8Kendrick, Committee of Fifteen, 370.
would be admitted to the Thirty-ninth Congress. 10

The prospect of the South gaining increased political power as a result of the nullification of the three-fifths compromise influenced the capitalist elements to support the Radical program for Negro rights. The prospect of Southern representatives in Congress allying with the Northern Democrats to lower the tariff, invalidate the federal debt, force state regulation of corporations, and dis-establish the national banking system was sufficient to end whatever hopes the investors may have had for an immediate restoration of the states of the former Confederacy. 11

Thus the Thirty-ninth Congress was freed from any threat of Southern-Democratic coalitions, and approval of the climactic Fourteenth Amendment was guaranteed. Unfortunately the Radicals were forced to leave the provisions of this significant act vague and ill-defined. As a result, after it was passed, none of them really knew what they had accomplished. There was no attempt at definition of "privileges and immunities" or "equal protection of the laws" - these phrases were left to the interpretation of each individual, and, later, the courts.

It was significant that as extreme a Radical as Thaddeus Stevens accepted the limited interpretation of the amendment as expounded by Fessenden and Trumbull. This narrow definition caused Stevens to remark bitterly that it fell far short of his wishes and that only the

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10 Blaine, Twenty Years of Congress, II, 85-86.
11 Dubois, Black Reconstruction, 185.

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future could bring further guarantees of Negro rights. Trumbull contended that the amendment "changed nothing," "added nothing," to the original Constitution. Bingham was convinced that the amendment left intact the police power of the states in "every particular," according to what the original Constitution "rightfully meant."  

This confusion led directly into the discussion of Negro suffrage. Some Radicals favored immediate suffrage for the freedmen. Summer and Wilson were spokesmen for this group. Others, like Wade and Pomeroy, favored it for party reasons, to assure Republican supremacy over the "haughty Southerners." Others felt the ballot was necessary to protect Negro rights, as Stevens and Julian contended. The great fear of a union of Democrats and Southerners solidified the party in 1866, and with it the commercial interests active in the South. The Democratic party was still seen, as late as 1868, as the party of slavery. "The Democratic party!" declared Stevens on July 1, 1868, shortly before his death, "Why, sir, it is the slave party. It is nothing but a slave party, and it will be a slave party until we grind them to powder under our heels."  

Although Stevens could still insist that "forty acres of land..."  

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13 Congressional Globe, 40 Cong., 2 Sess., 3661; Beale, Critical Year, 173-74.
and a hut would be of more value to him [the Negro] than the immediate right to vote," the Radicals pressed relentlessly onward toward Negro suffrage. They agreed with Garfield's declaration that "suffrage and Safety, like liberty and union, are one and inseparable," and they were vitally concerned for the safety of their political power, and their investments.  

Many Radicals agreed with Horace Greeley that Negro suffrage was necessary to maintain "Republican principles," and protect the freedmen from gravitating to the "Sham Democracy." A strong, black, Republican party in the South would at least counteract the evil effects, he argued, of the Democratic votes of the white Southerners. Harper's Weekly felt that Negro suffrage was necessary to protect the "industrial destiny of the disturbed States." A stable South was necessary before a "sensible man" could "set out upon his journey to fresh fields and pastures new." The only way to insure that stability was to force the Southerners to "heartily accept the situation..." The Nation worried about the possible effects of increased Southern representation. "It would hardly be a safe thing for the national credit to have such a body of men in Congress," it contended.  

Sumner used these arguments to oppose the first draft of the Fourteenth Amendment. "Do you wish to save the national credit?" he asked. "Do you wish labor to smile and cotton to grow?" "Then sow the land with Human Rights, and encircle it round with Justice.

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14 Congressional Globe, 39 Cong., 1 Sess., 2459; Garfield, speech at Ravenna, Ohio, July 4, 1865, in Smith, Garfield, I, 93.

15 Van Deusen, Greeley, 325-26; Harper's Weekly, November 18, 1865; The Nation, January 11, 1866.
The freedman will not, cannot work, while you deny his rights. Cotton will not, cannot grow in such an atmosphere." The "duties to the national freedman," he declared, were indissolubly linked with "obligations to the national creditor." It would be impossible to "repudiate the former without impairing the latter." These arguments forced Northern capital to side with the extremists for Negro suffrage, and this, in turn, brought pressure on moderates and conservatives to support the suffrage proposals advocated by the commercial interests in their districts. Industry was in control of the government during this period, and if industry demanded votes for Negroes, than the Negroes must have the vote!

By this time one of the strongest anti-Negro arguments of earlier years had been talked to death. During the early war period many conservatives had opposed the granting of rights to Negroes because they feared that freedmen from the South would swarm into the Northern states, thus disrupting the economic and social pattern of that area. The New York riots of 1863 were largely caused by the fear of black labor competition, particularly among the Irish. This group believed that abolitionism was a threat to "manacle the white man," and called it a "conspiracy against the Irish." To counteract this feeling in the North, abolitionists and Radicals began to argue that the Negro would stay in the South if that region were made compatible to him. At first they argued that the removal of slavery would stop the north-

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16 Congressional Globe, 39 Cong., 1 Sess., 685; Sumner, Works, X, 226.

17 Sumner, Works, X, 226.

ward migrations; later they demanded other rights to secure the Negroes in their homeland.

William D. Kelley felt that, given rights in the "glowing South," the Negroes would gladly stay in "the land of the tropics, genial to them." Julian believed that the "uncongenial climate" of the North would prevent Negro migrations to that area. The North American Review pointed out that the Negroes had a strong "attachment" to the "place of their birth," which "will prevent their ever becoming vagrants" and wandering Northward. Leslie's Weekly argued that the freedmen wanted "to live and lie in the land, and as near as possible the spot, where he was born..." Julian summed up the argument by declaring that, if the Negroes were given the ballot, it would persuade those who had already moved North to "return to their sunny home." Thus, he contended, "the question of negro suffrage might never come in Indiana."¹⁹

With all these arguments to rationalize their stand, Radicals and moderates alike were united in the eventual demand for Negro suffrage. Those who could not agree with Sumner's contention that suffrage was a matter of right could find solace in Julian's promise that it would help in keeping the Negro out of the North. Such an argument was also a panacea for the Northern public, most of which were in no mood to change their own Black Codes.

Political rights, then, became a part of Radicalism, and, with

the Fifteenth Amendment, became part of the Constitution. One problem which had faced Stevens in 1866 had been eliminated. There was no longer any question of the political status of the Negro after the ratification of the suffrage amendment. There still remained the question of other rights vested by the Fourteenth Amendment, however, and there was still no attempt at definition of those rights.

In order to gain some understanding of the ideas of the Radicals on social rights, such as today are guaranteed by stare decisis through court decisions on the Fourteenth Amendment based on the equal protection and privileges and immunities clauses, one must go to the ideas and actions of the Radicals on social relations with Negroes. There was no specific mention of the so-called social rights during the drafting of the amendment, or the debates on it in Congress. The ideas of the Radicals on social meanings in the amendment can only be determined by their own opinions on the matter. If they were willing to freely associate with Negroes and if they accepted as a matter of course participation with Negroes in politics on a plane of full equality, in business on a level of complete integration, and in social affairs with no concept of race, then they probably assumed that such practices would be legitimately included in the guarantees of the first section of the amendment.

There is no doubt that the supporters of the amendment, including such racial moderates as Trumbull, Grimes, Julian, and Fessenden, fully agreed with the theoretical extremists on one interpretation of the amendment. All recognized that it guaranteed the rights outlined by the Civil Rights Act, including the rights to testify, to sue, to hold property, and to negotiate contracts. The significance of the racial
views of these men is to be found in their opinions on the broader question of whether the amendment would eliminate, in all circumstances, any laws making distinctions based upon race or color. On this more basic question there is little direct evidence, but a possible answer can be obtained by examining the views of representative individuals. 20

Of the leading Radicals in Congress, certainly Sumner and Stevens could testify with authority on this question, while Wade's opinions were representative of the second extreme group. Among the moderates, Fessenden, Trumbull, and Grimes held representative views.

A basic problem of interpretation of the amendment revolves around the question of whether the abolitionists and anti-slavery men of the pre-war and early war years were determined to institute full racial equality, or whether they were concerned primarily with the extinction of the institution of slavery as an end in itself. Professor ten Broek has shown the anti-slavery background of the amendment; there is no doubt that the abolitionist movement exerted a great influence on the thinking of the men who were later to draft the law.

But did these men exert their energies primarily for the eradication of the evil of slavery, or were they determined to eliminate all legalized class distinctions based upon race or color? If the latter then they probably intended for the amendment to enact such ideas; if not, then the amendment must justifiably be interpreted much

more conservatively.

It has been contended that the "strongest advocates" of racial equality in Congress hoped to place the freedmen "at a level substantially equivalent and undistinguished from that of the white population." This, say some writers, was to be done through the first section of the Fourteenth Amendment and the suffrage.\(^2^1\) If this is true, others argue, why did conservative Republicans such as Cowen of Pennsylvania and Doolittle of Wisconsin, and Democrats such as Reverdy Johnson of Maryland and Garrett Davis of Kentucky not attack the amendment on these grounds? No mention of such a basic alteration in the traditional powers of states was made in the debates, and these men, if such an intent was conceived, would have opposed it vigorously.\(^2^2\)

As to the motives of the authors of the amendment, opinions varied at the time of its passage and still vary. The Detroit Free Press, shortly after the enactment of the law, was cynical about its motivation. "Not a single emotion of solicitude for the welfare of the black race animated the feelings or actions of the Radicals..." it declared. Their motives were "dictated by what they thought was policy, in their anxiety to perpetuate the rule of their party."\(^2^3\)

Perhaps the only way to really determine the motives of the authors is to examine their own ideas, particularly the ideas of those

\(^{2^1}\)Ibid., 169.

\(^{2^2}\)Alexander M. Bickel, "The Original Understanding and the Segregation Decision," loc. cit., gives a discussion of this issue from the point of view of the conservative side.

\(^{2^3}\)Quoted in Beale, Critical Year, 313.

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Radical leaders who held the most advanced views on the amendment, and who were most outspoken in favor of Radical racial legislation.

Charles Sumner was the most vocal advocate of Negro rights in the Senate. His name was associated with more bills and proposals favoring the Negroes than any other man, and he occupied more time on the floor arguing for Negro rights than any other person in Congress. As early as 1864 he was demanding that the freedmen "shall be put upon an equality." He did not, however, define what he meant by this term. He was willing to qualify his concept of equality according to the area of the country concerned. He branded the anti-Negro laws of the North as "low and mean" but declared that "it is on so small a scale that it is not perilous to the Republic." He was willing to distinguish between "justice to a few individuals only" and "justice to multitudes," but he condemned such concepts. He admitted that men were not created equal "in form or capacity, bodily or mental," but declared that all men have a "natural right to impartial laws, without which justice, being the end and aim of government, must fail."24

Sumner was for full equality in theory. He supported full rights for the Negro, and would oppose any attempt to legislate according to race in any way. His natural feelings on the matter were something else again. His associates noted that "his sympathies were for races—too lofty to descend to persons." He advocated Negro equality as a theoretical right, but was unwilling to heed "appeals by needy colored

24*Congressional Globe, 38 Cong., 1 Sess., 564; 39 Cong., 1 Sess., 675, 680.*

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people to his charity, or even his sympathy." He was willing to make a pretense of social mingling with Negroes, such as demanding a colored clergyman on the platform when he delivered a eulogy for Lincoln, but he was not willing to "fellowship with them, though he thinks he is." His "love for the negroes" was strictly "in the abstract." 

Stevens was much more honest in his relations with the black race. He recognized that most of the Negroes he met were inferior to the whites in intelligence: "I do not know," he declared in Congress, "that I shall ever come across men of dark color of the same intelligence as white men." He never admitted that he held to the doctrine of absolute equality as Sumner would have demanded. He insisted on "not equality in all things - simply before the laws, nothing else." 

Stevens reacted violently when, in September, 1866, Frederick Douglass, a leading Negro journalist, and Theodore Tilton, white editor of The Independent, walked "arm-in-arm" together at the Southern Unionist Convention at Philadelphia. He wrote to Kelley on September 5:

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25 McCullough, Men and Measures of Half a Century, 233-34.
26 Pierce, Sumner, IV, 246.
27 Welles, Diary, I, 502. Welles, like McCullough, is not entirely impartial in his opinion of Sumner.
28 Congressional Globe, 38 Cong., 1 Sess., 133; 38 Cong., 2 Sess., 125.
29 Stevens to Kelley, September 5, 1866; Stevens Papers.
A good many people here are disturbed by the practical exhibition of social equality in the arm-in-arm performance of Douglass and Tilton. It does not become radicals like us particularly to object. But it was certainly unfortunate at this time. The old prejudice, once revived, will lose us some votes. Why it was done I cannot see except as a foolish bravado.

Stevens was not in favor of separation of the races in public meetings, but felt that an unnecessary display such as Tilton's was bad for politics in an election year. He did not himself make the mistake of making his opinions on such controversial questions as school segregation public. He was, however, opposed in theory to all such segregation. In his will he left money for an orphanage with the strict provision that it should be open to children of all races and that the children should eat at the same table. He was not so dogmatic on the question that he would press the issue, being content, apparently, to leave the question to local discretion.

Of all the Radicals he alone truly sought full social equality for the Negroes. "On no subject were his opinions more firmly fixed" said Representative George W. Woodward of Pennsylvania. His own burial and epitaph give sufficient evidence of his beliefs on this subject. He was buried in a small Negro cemetery outside his home town of Lancaster, Pennsylvania, because, as his epitaph said, he found other cemeteries "limited by charter rules as to race." By being buried there, he wrote, he sought to "illustrate in my death the principles which I have advocated through a long life - equality of man before his Creator."

30 Brodie, Stevens, 320.

31 Stevens Memorial, 9, 72.
A third Radical opinion on the Negro was that of Benjamin Wade. Wade, a long-time Free-Soiler and abolitionist, as leader of the Republican forces in the Senate, was responsible for mustering Republican majorities for many crucial votes, including the overriding of the vetoes of the Freedmen's Bureau and Civil Rights bills. He was from the Western Reserve, and had gained fame in the Republican party in his denunciations of the slaveholders and their Copperhead allies. He had made frequent bitter threats to confiscate Southern land and destroy forever Southern power, but he had not openly advocated the Reconstruction legislation on the grounds of positive benefits to the Negro race.

Wade was personally violently prejudiced against black men. Throughout his entire career in Washington he was appalled by the Negroes there, and wrote bitterly of them to Mrs. Wade. In 1851 he complained of their odor "in and about everything." He complained that the food was "all cooked by niggers until I can smell and taste the nigger." In 1873 he wrote that he was "sick and tired of niggers" and wished that he could get a "white woman of the English or Northern European breed" for a servant rather than a ubiquitous Negro.32

Wade did endorse Negro suffrage, and campaigned in 1867 for universal suffrage in Ohio, which probably contributed to his defeat in 1867. He did declare that he would "protect" the Negroes "in their

32Wade to Mrs. Wade, Dec. 29, 1851; Feb. 1, 1871; March 9, 1873; Wade Papers. Hans L. Trefousse, "Ben Wade and the Negro," The Ohio Historical Quarterly, LXVIII (April, 1959), 161-76, sees Wade as "one of the outstanding champions of racial equality in America."
freedom," and in "whatever else may come," but he did not make any attempt to define "protection" as other than political rights. 33

Wade would not have interpreted the granting of political rights to the Negro as guaranteeing any other type of privileges for that race, and did not make any indication that he felt the Fourteenth Amendment went beyond the guarantees of the Civil Rights bill. He would certainly have opposed such plans if his private views, as expressed to Mrs. Wade, were representative of his feelings for Negroes.

George W. Julian, like Wade, came from a state with stringent anti-Negro laws. He fought for civil and political rights for the Negroes as outlined in the Civil Rights bill debates and the Fourteenth and Fifteenth Amendments, but did not conceive that this legislation implied any other type of equality. He was certain that Congress could pass laws allowing for social distinctions based upon race or color. Defending his stand for Negro suffrage before the Indiana legislature, he argued that "negro voting" had never "led to social equality" and scoffed at Democratic charges that it might foster miscegenation. "If my Democratic friends," he remarked sarcastically, "feel in danger of marrying negro women, I am in favor of a law for their protection." This remark, facetious as it was, demonstrated Julian's basic concept that such laws could be

33 On his defeat, Wade wrote to Chandler on October 10, 1867: "I have been on the stump and labored as I never did before, but all to no purpose. Our State has gone to the d--l and endorsed Johnson, Jeff Davis and the Confederacy..." Chandler Papers. Congressional Globe, 39 Cong., 1 Sess., 294. Wade campaigned on a platform calling for "Exact and equal justice to all men without reference to color, conditions, or race." Williams, "Wade," 100.
enacted, and with no other basis than that of class distinctions based upon race or color.\textsuperscript{34}

George S. Boutwell of Massachusetts, outspoken in his demands for Negro civil and political equality, also conceived of the Negroes as a decidedly inferior group. In 1864, arguing for Negro troops, he opposed a move to amend the bill to provide specifically that the black regiments would be commanded by white officers. "It is an imputation on the white people of the country to say, that, in a fair contest, they are not able to maintain, socially, intellectually, and morally, the ascendency..." he proclaimed.\textsuperscript{35}

Another representative Republican, John A. Bingham of Ohio, supported the ideas incorporated in the Civil Rights bill, even though he felt the bill unconstitutional. He favored the rights intended to be guaranteed in that measure, and his draft of the first section of the Fourteenth Amendment, he felt, incorporated these concepts. He did not attempt, however, any definition of rights beyond the scope of their common definition during the debates.

The difficulty inherent in attempting an analysis of the views of any group of men on a given issue at a certain time is colored by the later interpretations of the event historically, and the altered opinions of the men themselves. As Jacob M. Howard pointed out during the debate on the Fourteenth Amendment in the Senate, only the future would be able to determine the application of the vaguely-worded privileges and immunities clause.

\textsuperscript{34} Julian, Speeches, 282.

\textsuperscript{35} Congressional Globe., 38 Cong., 1 Sess., 604.
It is a pronounced characteristic of many of the published attempts to determine what the Radicals thought about social rights, and specifically school segregation, that writers look to the entire period of Reconstruction, particularly the decade following the drafting of the Fourteenth Amendment, in an attempt to find some justification for their position. The opinions of the Radicals in 1875 are interesting in that they reflect the continuity of vagarity of the ideas of individuals, but they, in themselves, do not demonstrate any tangible relationship to the climate of opinion which tacitly interpreted the Fourteenth Amendment as it was being drafted and being approved. To determine the meaning of the law, as the authors saw it, one must see it from the perspective of 1866, not 1875.  

The mere fact that individual Radicals, who had been active in the Fourteenth Amendment fight, later voted against segregated schools in 1872 does not mean that in 1866 they felt the Fourteenth Amendment made such schools illegal, or that such segregation practices were banned by the amendment. If this were so, no bill would have been needed in 1872.  

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36 For three attempts to rationalize the Court's position in Brown v. Board of Education by means of the post-1866 racial opinions see Alfred H. Kelly, "The Fourteenth Amendment Reconsidered; the Segregation Question," Michigan Law Review LIV (June, 1956), 1049-86; Graham, "Our 'Declaratory' Fourteenth Amendment," loc. cit.; and Frank and Monro, "The Original Understanding of Equal Protection of the Laws," loc. cit. Frank and Monro even admit that the picture from 1865 to 1875 is "confused," thus making analysis difficult.

37 Congressional Globe, 42 Cong., 2 Sess., 882. A bill, introduced by Representative Hereford, (Rep., W. Va.), providing for segregation in the schools of all states and territories, was defeated. Bingham and Kelley both voted against the measure.
The North obviously felt that the amendment did not invalidate segregation laws. The Negroes in the North were still strictly segregated during the years following the ratification of the amendment. Even Boston, the center of Radical activity for decades, refused to accept Negroes in hotels and restaurants, even when they were "tastefully dressed" and "refined."\textsuperscript{38}

When the Supreme Court, in the case of \textit{Plessy v. Ferguson}, ruled that the Constitution validated facilities which were "separate, but equal," it reflected the traditional racial pattern of the North as well as the South. This decision illustrated a situation which had been prevalent in both sections for the generation since the war, except where specifically forbidden by state statute. This decision, according to one analyst, "reflected accurately the dominant American public opinion ... of the day."\textsuperscript{39}

Many of the men who had consistently sided with the extremists or who had been generally favorable to the more advanced racial measures, had long before become sick of the entire business. By 1870 James W. Grimes, long-time Free-Soiler and abolitionist, and later lukewarm Radical, was convinced that the Republican party was "going to the dogs." "I have made up my mind," he wrote to his Senatorial colleague Lyman Trumbull, "that when I return home I will no longer vote the Republican ticket, whatever else I may do." The party, he felt, had

\textsuperscript{38}Foner, Douglass, IV, 292, quoting \textit{New National Era}, May 9, 1872.

\textsuperscript{39}Kelley, "The Fourteenth Amendment Reconsidered; the Segregation Question," \textit{loc. cit.}, 1063.
become "the most corrupt and debauched political party that has ever existed."^40

By 1870 the Radicals were more content to let the Negro question ride. They had passed the three great amendments which incorporated their racial views into the Constitution, and they felt their task toward the freedmen was done. Their attempts to forbid all discrimination and segregation in later years were half-hearted at best - Radicalism had been converted from the ascetic fanaticism of the abolitionist crusade to the pragmatic feasting of the "Great Barbecue."

They had contributed much. They had been the force which had pushed constantly for an end to slavery and a successful winning of the war. They had refused surrender during the dark days of Union defeats, and they had molded the victory of Union arms and Union principles. Their campaign promises of civil and political rights for the freedmen were fulfilled through Constitutional guarantees, while at the same time they served the forces of American industrial expansion and business consolidation. Theirs was a full political contribution.

If they refused to commit themselves fully for complete equality for the Negro, is this to be held against them? Many of them had gone far beyond the wishes of their constituents with the Fourteenth and Fifteenth Amendments, they realized; and to do more would have been political suicide, even if they had wished it. They were, perhaps, great men, but if anything they were not quite as great as their time

^Grimes to Trumbull, July 1, 1870; White, Trumbull, 311.
and not quite fully conscious of the many forces which they were putting into motion. They realized, however, that they were in the midst of a revolution and that they were the revolutionaries. If this revolution was conservative, and if they wanted it to remain closely in check, so as not to get out of hand, this is a tribute to their political astuteness. If in so doing, they refused to make the Negro a fully first-class citizen, some of them realized perhaps that this state of affairs would not exist forever.

Their was an age characterized by rebellion and by violent changes in the status quo: The rebellion of the Southern slaveholders against the abolitionists, the rebellion of industrial capitalism against an agrarian tradition, the rebellion of the United States against its adolescence. These were great times, and a modern, industrial America was emerging from the confusion and frustration. And through it all, from the strains of "John Brown's Body," through the image of "Father Abraham," to the evangelical abolitionist concept of the equality of man, there was a strain of religious ardor, which the Radicals utilized to the full.

An obscure Republican, Reader W. Clarke of Ohio, summarized the views of many when, in February, 1866, he surveyed the many changes which were taking place:

"Old things are passing away, and new ones are taking their places; old ideas, old errors, are fading out in the sunlight of truth, and old customs and practices, based on exploded dogmas, are everywhere crumbling into ruins, and a higher and holier order of things succeeds, keeping pace

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\[Congressional Globe, 39 Cong., 1 Sess., 1006.\]
with the moralizing and Christianizing influences which mark with special significance the ruling spirit of the times.

If this evaluation of Radicalism could only have been correct, then Reconstruction would not have been a bitter failure, and the great dispute over the meaning of the Fourteenth Amendment would never have been necessary. Unfortunately the Radicals were, as Stevens admitted, "lower than the angels," and their motivations were less than holy. For most of them the rights of the Negro were not a sacred altar, but a fetish, to be employed for the moment but to be discarded when no longer expedient.

If all the Radicals had been like Stevens, the Negro would have been made fully equal; but most of them were lesser men for whom the Negro was either a convenient stepping stone to power or an obnoxious being for whom an opiated asylum was to be prepared in the South so that he would not affect the sacred soil of the Northern states. In the eyes of these men the Fourteenth Amendment was but a mockery.
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