

An End to the Era of Compromise: Amending the Constitution in Civil War America

The Constitution of the United States of America was created in 1787, a mere five years following independence. The Constitution's framers, although slave-owners themselves, denounced the practice: Thomas Jefferson referred to it as a "hideous blot" on American society, George Washington referred to it as "repugnant", and James Madison referred to it as "evil".¹ Compromise permitted the government of "the free" to accommodate bondage with a series of tacit regulations in the Constitution. Although the issue of slavery was temporarily resolved, it resurfaced during the United States's first period of rapid economic growth—the Market Revolution of the 1800s. As the northern economy became dependent on industry, and the southern economy on agriculture, sectional tensions rose. Numerous attempts to quell the issue were made, resulting in the Missouri Compromise, the Compromise of 1850, and the Kansas-Nebraska Act of 1854; all failed to divert the mounting conflict over slavery, national expansion, and the fate of fugitives. Confronting the secession crisis of 1860 and 1861, leaders looked for common ground in a series of compromise proposals. The spirit of compromise failed, and after the war, its trajectory changed to black empowerment.

In 1860, in an effort to prevent the disintegration of the country, Senator John J. Crittenden of Kentucky proposed a series of compromise amendments. Crittenden, a slave-owner, believed in any solution that would restore sectional peace. Therefore, he proposed a series of six amendments to the United States Constitution. Article I of

¹ "The Constitution and Slavery," Constitutional Rights Foundation, accessed September 8, 2013, <http://www.crf-usa.org/black-history-month/the-constitution-and-slavery>.

Crittenden's Compromise reaffirmed the Missouri Compromise. Article II barred Congress from passing any legislature against slavery in the areas where it was protected, and Article VI made the Crittenden Amendments irrevocable.²

Whereas in both the Senate and the House Republicans vehemently opposed the compromise, some politicians believed that it was for the people to decide. In early 1861, Senator William Bigler of Pennsylvania suggested that the question of whether the compromise should be adopted, should be left to the people. In order to do so, copies of the proposal would have had to have been distributed. In a letter to Sen. Crittenden, Horace Greeley, a Democrat from New York, asked for copies of the amendments to be submitted to the people:

The Republican leaders at Washington, with their present surroundings, and the influences of an incoming administration, entirely lack courage. But could the people have an opportunity to speak on this subject, those gentlemen would here a voice which would not be misunderstood. I feel perfect confidence that New York would give one hundred and fifty thousand majority for this measure.³

Despite the antislavery fervor of the north, Greeley believed that even if Republicans were not willing to settle, "*popular vote* would insure the triumphant adoption of [Crittenden's] proposition".⁴ He thought that northerners could easily be persuaded to save the Union. On January 15th Representative James Morrison Harris of Maryland "presented a memorial signed by 12,000 citizens of Baltimore, irrespective of party,

² John J. Crittenden, "Amendments Proposed in Congress by Senator John J. Crittenden : December 18, 1860," Yale Law School Lillian Goldman Law Library, accessed August 1, 2013, http://avalon.law.yale.edu/19th_century/critten.asp.

³ Chapman Coleman, *The Life of John J. Crittenden, with Selections from His Correspondence and Speeches* (Philadelphia, PA: J.P. Lippincott, 1871), 254-255.

⁴ *Ibid*, 255.

praying for the adoption of the Crittenden Compromise” to the House.⁵ However, despite the headlines professing “A Flood of Petitions in Favor of the Crittenden Compromise”, the Compromise was tabled in the Senate in a vote of 25 for and 23 against.⁶ However, the compromise undermined the premise of the Republican party—to curb the expansion of slavery in the territories.

The Washington Peace Conference of 1861 was the one of the final attempts by politicians to subdue the imminent conflict through constitutional amendment. On February 4, representatives of fourteen free states and seven slave states convened in order to discuss a possible end to hostilities. No delegations from the deep-southern states were present at the Conference, as many of them had already seceded from the Union. The Conference ended with an agreed seven amendments proposed to the Constitution, modified and adapted from Crittenden’s Compromise. Article I of the Amendment was synonymous with that of the Crittenden Compromise, the reaffirmation of the Missouri Compromise. Article II stated that no new territory could be acquired without the majority vote of the free and slave states. Article III, although less abruptly, correlated with Article II of Crittenden’s Compromise—it prevented Congress from creating legislation against slavery. Article V prohibited the foreign slave trade. Article VII of the Peace Conference resolutions, as the Crittenden Compromise stated, required the federal government to pay indemnities to those who were prevented from retrieving their fugitive

⁵ "House of Representatives," The New York Times (New York City, NY), January 16, 1861.

⁶ "Crittenden Compromise is killed in Senate," History Channel, accessed August 18, 2013, <http://www.history.com/this-day-in-history/crittenden-compromise-is-killed-in-senate>.

slaves. The revised set of amendments was brought to the Senate and was struck down in a vote of 28 to 7.⁷

In the spring of 1861, compromise seemed to be nearly impossible. However, a special House committee of 33 members, led by Representative Thomas Corwin of Ohio, convened in yet another attempt to prevent war by constitutional amendment. Seven southern states had already seceded from the Union. The committee drafted the Corwin Amendment, which stated 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 the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.⁸

The amendment did not address the power of Congress to regulate slavery in newly acquired territories like the Crittenden Compromise did. It was passed by Congress because it satisfied the Republican agenda—the conclusion of the expansion of slavery. The amendment was fairly redundant, it did not change the government’s policy on slavery—it merely reaffirmed an existing sentiment.⁹ In a vote of 133 to 65, the Corwin Amendment passed the House, and on March 2, it passed the Senate in a vote of 24 to 12.¹⁰ Senators Benjamin F. Wade of Ohio and Lyman Trumbull of Illinois both challenged the constitutionality of the amendment. Senator Wade argued that two-thirds

⁷ Sean Wilentz, *The Rise of America Democracy: Jefferson to Lincoln* (New York, NY: W.W. Norton, 2005), 980.

⁸ "The Failed Amendments," US Constitution, accessed August 8, 2013, <http://www.usconstitution.net/constamfail.html>.

⁹ James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York, NY: W.W. Norton, 2013), 74.

¹⁰ John R. Vile, "Corwin Amendment," in *Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2002*, 2nd ed. (n.p.: ABC-CLIO, 2003), 118.

of the members were not present during the vote, and therefore it could not become an amendment. However, he lost his argument in a vote of 32 to 1.¹¹ Ohio, Maryland, and Illinois were the first states to ratify the amendment; however, the Battle of Fort Sumter on April 12, interfered with ratification in the rest of the nation. Had it been ratified, the Corwin Amendment would have been the 13th Amendment to the Constitution of the United States.

As it became clear that the Union would win the war, groups such as the Loyal Publication Society of New York began to advocate for the integration of blacks into society. As the war progressed, in 1863, the Loyal Publication Society of New York was formed in an effort to boost support for the Union army's efforts. Through various publications and editorials, the Society provided a good platform for civilians to support the Union. Its President, Francis Lieber, was a German-born American jurist and philosopher, teaching at Columbia University. He was one of the founders of the Loyal Publication Society, and was revered for the production of the Lieber Code, which laid the foundations for wartime regulation during and after the war. In one publication, outlining a series of possible amendments to the Constitution, Lieber, stated that:

When those cathedrals were building, which the Middle Ages have bequeathed to modern times, every inhabitant of the surrounding country used to be called upon to contribute his share...rearing... the great fabric intended for the service of all—high or humble.¹²

¹¹ A. Bailey, "March 2, 1861 - Senate Passes Corwin Resolution," Seven Score and Ten Years Ago, accessed August 24, 2013, <http://www.7score10years.com/index.php/national/71-nation/183-march-2-senate-passes-corwin-resolution>.

¹² Loyal Publication Society, *Amendments of the Constitution, Submitted to the Consideration of the American People* (New York, NY: Loyal Publication Society, 1865), 3.

Lieber was alluding to the reconstruction of the United States; his call to arms was followed by a set of amendments, proposed by the Society, to the Constitution, which represented the opposite side of the political spectrum.

The amendments proposed by the society went far beyond the Republican agenda. The first amendment, Amendment A, reserved the right to citizenship for all natives of the United States, except for “aliens whom the law may exempt, and Indians not taxed”. Amendment E abolished slavery in the United States, and Amendment G stated that:

The free inhabitants of the States... either born free within the same or born in slavery within the same and since made or declared free... shall be deemed citizens of the United States, and without any exception of color, race, or origin, shall be entitled to the privileges of citizens, as well in Courts of Jurisdiction as elsewhere.¹³

The Society’s amendments demanded far more than most politicians were willing to give. Even after the Emancipation Proclamation the abolition of slavery remained incomplete; however, for many Republicans, the integration of blacks into American society was a different question. Although radical for its time, the set of amendments proposed by the Loyal Publication Society might have made the difference between a century of segregation and racial equality.

In Congress, a group of radical Republicans took steps to try and secure the liberty of blacks. In 1864, Senator Charles Sumner of Massachusetts and other Republican leaders such as Representative Thaddeus Stevens of Pennsylvania, held discussions with Lincoln. Sumner believed that they had reached an agreement which would force Confederate states to give all citizens equality before the law and the right to

¹³ Loyal Publication Society, "Amendments of the Constitution," 36.

vote before they could be readmitted to the Union. However, Lincoln believed that voting rights did not concern the federal government, only the state government. One draft of the Radicals' ideal amendment stated that:

All persons are equal before the law, so that no person can hold another as a slave; and the Congress shall have power to make all laws necessary and proper to carry this declaration into effect everywhere in the United States.¹⁴

The Radicals' amendment would have abolished slavery and secured equality for the freed slaves. Lincoln's ambitions did not align with that of the Radicals. He simply was searching for an end to slavery, not racial equality.

Lincoln's wish would soon be fulfilled as Republicans began merging the amendment proposals of Representative James Mitchell Ashley of Ohio, Representative James Falconer Wilson of Iowa, Senator Charles Sumner of Massachusetts, and Senator John Brooks Henderson of Missouri. On April 8, 1864 the Senate passed the amendment in a vote of 38 to 6, however, the House failed to reach the two-thirds majority in a vote of 93 for and 65 against. Despite the amendment's failure to pass the House, the Congressional debate continued with Republicans arguing that slavery was a breach in the fundamental rights allotted to the American people, while northern Democrats argued that the issue of slavery was up to the states and not the federal government. However, on January 31, 1865, the House voted yet again on the passage of the amendment, and in vote of 119 for and 56 against, the Thirteenth Amendment was passed.

Although the Thirteenth Amendment maintained that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been

¹⁴ Herman Belz, *A New Birth of Freedom: The Republican Party and Freedmen's Rights, 1861 to 1866* (New York, NY: Fordham University Press, 2000), 140.

duly convicted, shall exist within the United States, or any place subject to their jurisdiction”, it was not nearly enough to secure the rights of blacks in the United States.¹⁵ Following the ratification of the Thirteenth Amendment, the United States underwent rigorous social reform through legislation such as the Civil Rights Act of 1866, which tried to secure the civil rights of blacks. However, in 1865, the act had been vetoed by Lincoln’s successor, Andrew Johnson. Johnson was a staunch supporter of states’ rights and yeoman farmers. He believed that emancipation had been the goal of the war and that the integration of blacks into American society was not necessary. Johnson felt that the yeoman farmer would suffer from the integration of blacks into American society because as freedmen flowed into the agricultural market, the price of agricultural products would drop. Despite Johnson’s veto, Radicals proceeded to pass the act. For fear of its repeal, Radicals introduced and ratified the Fourteenth Amendment; which, among many provisions, tried to secure voting rights for blacks through pressuring states to allow all male citizens to vote. Thaddeus Stevens remarked that: “[w]hatever law protects the white man shall afford ‘equal’ protection to the black man”.¹⁶

The Fifteenth Amendment soon followed; however, it was not ratified without opposition. Democratic Senator Thomas A. Hendricks of Illinois insisted that: “the power of amendment is limited to the correction of defects that might appear in the practical operations of the Government, but the power of amendment does not carry with it the

¹⁵ 13th Amendment," Cornell University Law School, accessed September 6, 2013, <http://www.law.cornell.edu/constitution/amendmentxiii>.

¹⁶ David P. Currie, "The Reconstruction Congress," *The University of Chicago Law Review* 75, no. 1 (2008): 403.

power to destroy one form of government and establish another”.¹⁷ Regardless of Democrats’ persistence, the Fifteenth Amendment was ratified. It stated that: “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude”.¹⁸ Although the Fifteenth Amendment prevented the denial of the vote, it did not specifically guarantee the right to vote. Despite an influx of amendment proposals, none of the ratified legislation explicitly secured an equal footing for blacks in American society.

The most radical of Reconstruction civil rights legislation, created by Sumner, was the Civil Rights Act of 1875. It guaranteed blacks equal treatment in public areas and the right to be on a jury. However, in 1883, the Supreme Court deemed the act unconstitutional. Joseph P. Bradley, an Associate Justice of the Supreme Court, wrote that blacks must cease “to be the special favorite of the laws”.¹⁹ With the deaths of Stevens in 1868 and Sumner in 1874, and the repeal of the Civil Rights Act of 1875, Reconstruction had come to an end. Despite the unequal status of blacks in American society, the Radicals’ pleas for racial equality were not heeded.

Following Reconstruction, the United States entered a period of immense racial inequality guided by the principle of “separate but equal” which came out of the *Plessy v. Ferguson* Case of 1896. State governments began issuing legislation that

¹⁷ Currie, "The Reconstruction Congress," 454.

¹⁸ "15th Amendment," Cornell University Law School, accessed September 6, 2013, <http://www.law.cornell.edu/constitution/amendmentxv>.

¹⁹ Eric Foner, *A Short History of Reconstruction 1863-1877* (New York, NY: Harper Perennial, 1990), 247.

disenfranchised black voters through poll taxes, grandfather clauses, and literacy tests. The Radicals' progress had seemingly been reversed. Congress turned its attention away from the integration of blacks and focused on what they considered to be a more pressing matter—the development of America's post-war economy. Although they were free, blacks were forced into a century of inequality. Once again, compromise had left the African-Americans in the dark.

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