

## Andrew Johnson, Unreconstructed

Library of Congress

President Andrew Johnson steadfastly upheld the Constitution and the rule of law as he opposed those who sought to rule the defeated Confederate states with an iron fist.

by John J. Dwyer

**W**in or lose, successful in worldly terms or not, American heroes have stood for constitutional principles advocated by our Founding Fathers in every social and political battle since our nation's birth. But if such men

*John J. Dwyer, Adjunct Professor of History at Southern Nazarene University and Oklahoma City Community College, is the author of The War Between the States: America's Uncivil War.*

and women still appear in “mainstream” modern histories, they are typically presented as reactionaries, fools, or villains. Few people provide a better example than America's 17th president, Andrew Johnson.

If your recollection proves hazy of this president — not to be confused with the earlier Andrew Jackson or the much-later Lyndon Johnson — you are not alone.

If Andrew Johnson is recalled in modern history books, it is typically to point out that he was impeached, or that he dog-

gedly opposed the supposed blessings of Reconstruction — without providing any explanation as to why he opposed the Reconstruction policy that was fastened on the defeated South after the War Between the States. The histories that mention him may also fault him for having a bad temper and allegedly drinking too much on occasion. But the true story of his character and deeds proves much different.

Johnson was a stalwart Southern conservative from Tennessee who *opposed* the Confederacy during the war and served as Abraham Lincoln's vice president on a national Republican-Democrat unity ticket in 1864. He acceded to the White House upon Lincoln's assassination in April 1865. That's when his efforts to amicably reunite the North and South and to uphold constitutional principles of a limited federal government engendered the wrath of the Radical Republicans who controlled Congress.

Like Lincoln, Johnson believed that states had no right to secede from the Union, and that during the war those states that formed the Confederacy were still technically part of the United States. He therefore wanted to treat the defeated South as part of the United States during the post-war period. The Radical Republicans, on the other hand, viewed the Southern states as conquered provinces, or as errant states who must earn their way back into the Union.

The Republican Party was the *liberal* party, and the Democratic Party was the *conservative* party, during this time period and well into the 20th century. The Radical Republicans were animated by their belief in big government — even Marxism — and they supported whatever degree of rancor or even further bloodshed necessary to centralize power in Washington and impose their ideology on North and South alike. And they wanted to punish the South, to keep it under military occupation, and to bleed it of whatever economic resources it still possessed. They also wanted to deny the right to vote to those who had supported the Confeder-

**The Radical Republicans viewed the Southern states as conquered provinces. They wanted to punish the South with military occupation. Standing in their way was Andrew Johnson, who opposed their attempts to employ extraconstitutional federal powers to enslave the South.**

acy, to mobilize the recently emancipated slaves on behalf of Radical Republican candidates and causes by promising them property that would be then confiscated from the former Confederates, to deny the Southern states congressional representation in Washington, and to install puppet state governments subservient to the Radical Republicans.

Standing in their way was Andrew Johnson, who steadfastly opposed the Radical Republicans' attempt to employ extraconstitutional federal powers to enslave the South — even if his principled opposition meant the loss of the presidency. Johnson never wavered, and despite the fact that he was unfairly impeached by a majority of the members of the Radical Republican-controlled House, the Radical Republicans in the Senate fell one vote shy of the two-thirds majority needed to convict him and throw him out of office.

Today, Johnson would be known as an advocate of strict constructionism. That is, he was a proponent of applying the original intent of the Constitution, including the Ninth and Tenth Amendments protecting the states from national government encroachments. Siding with him were the Democrats and a significant minority of Republicans. It might fairly be said that the fight thus unfolding was one front in the larger conflict to determine what would be the character of the United States of

America, as the Radicals attempted to punish the South and rewrite the Constitution to suit their ends.

### **Freedmen's Bureau**

The Radicals pushed through their first big Reconstruction bill in early February, 1866. It continued, broadened, and strengthened the Freedmen's Bureau. The name "freedmen" referred to former slaves who were now free. Ostensibly designed with the laudable goal to aid blacks with food, supplies, land, and employment, the bill regrettably ignored existing American law in that pursuit.

The new Freedmen's Bureau bill declared up to three million acres of Southern land eligible to be given to freedmen, with no remuneration to anyone. It divided the South into hundreds of districts, to be administered by thousands of new government bureaucrats. These bureaucrats had no oversight from Congress, because the Freedmen's Bureau was an extra-governmental entity. Required to fend for itself financially, it found inge-

nious methods of doing so, including selling off Southern land to wealthy Northern merchants and politicians.

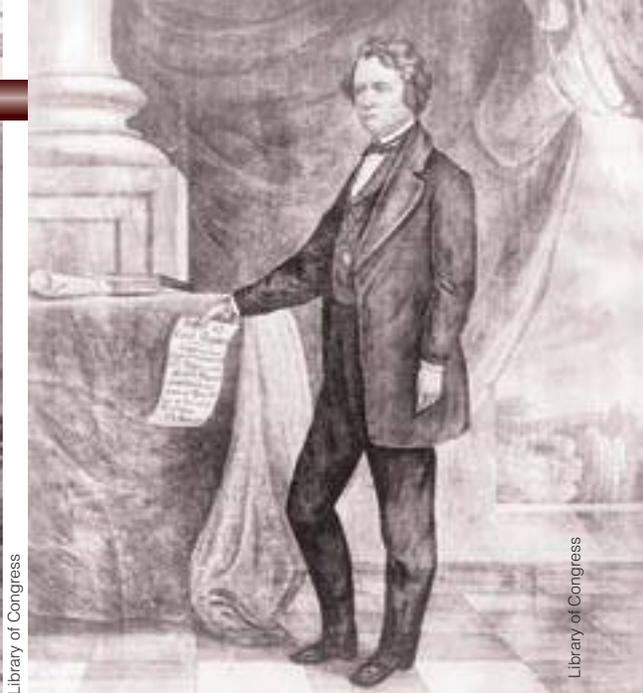
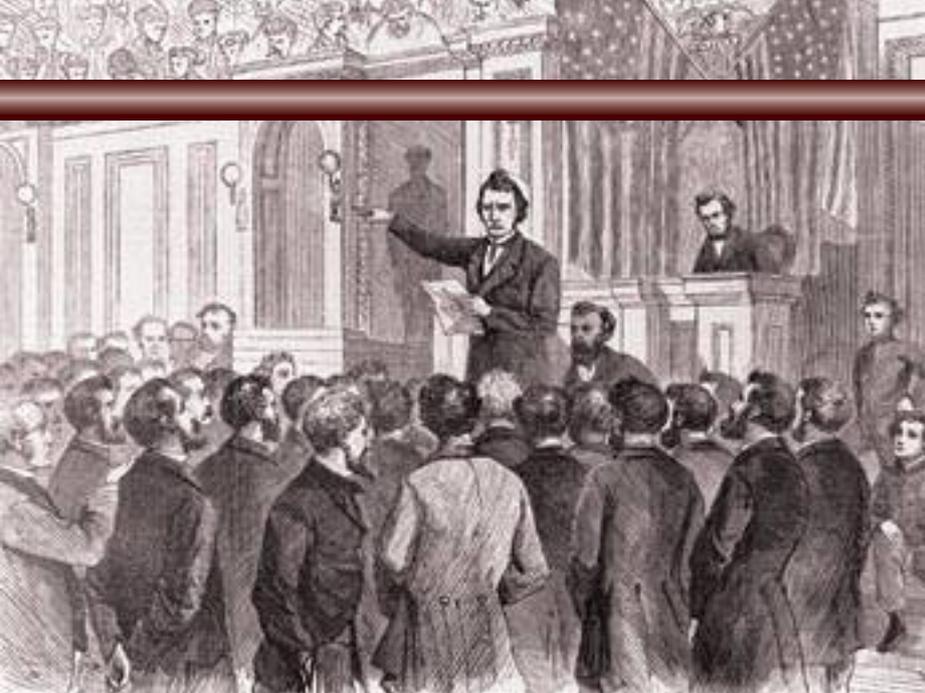
It is difficult to grasp the magnitude of this situation in the post-war South. Freedmen's Bureau agents possessed the authority to arrest virtually anyone they wished. They required no indictment. Those they charged had no right to a jury trial. No law constrained members of a Freedmen's Bureau court-martial from exacting any penalty they decided, and no appeal to their sentence was allowed, no writ of error in any court of law. All this, and Southern states had no voice at all in any of it, because the Radicals considered them, variously, as "territories" (Senator Charles Sumner) or "conquered provinces" (Congressman Thaddeus Stevens).

President Johnson thundered forth his opposition: "I cannot reconcile a system of military jurisdiction of this kind with the Constitution. Where in the Constitution is authority to expend public funds to aid indigent people? Where the right to take the white man's land and give it to others without 'due process of law'?" Johnson's veto at first stymied the bill. House and Senate alike, however, passed a second



**Impeachment trial:** Though the Radical Republicans were able to win sufficient support to impeach President Andrew Johnson in the House, they failed to convict him and remove him from office by a single vote in the Senate. The above illustration, showing the impeachment trial in the Senate, appeared in *Harper's Weekly* in 1868.

Library of Congress



**The Radical Republicans** were led by Thaddeus Stevens in the House (**illustration on left**) and Charles Sumner in the Senate (**right**). Both wanted to remove President Johnson from office because he opposed the harsh Reconstruction policies they wanted to impose on the post-war South. The illustration of Stevens, which depicts him delivering the last speech for impeachment in the House, appeared in *Harper's Weekly* in 1868.

Freedmen's Bureau Bill over his veto in June, and it thus became law.

The Freedmen's Bureau sent out waves of agents across the South to confiscate the property of former Confederates, which it then sold — mostly to non-Southerners — to pay the agents' hefty commissions and fund its own operations.

### Civil Rights Bill

In April 1866, the Radicals rammed through the Civil Rights Bill, a companion measure to the bill creating the Freedmen's Bureau. Once again, it was freighted with honorable objectives. For instance, it pronounced full-citizenship benefits for blacks. But as before, the methods the Radicals employed to advance the bill were extraordinary and unconstitutional. For one, it authorized (mostly Radical) Federal court-appointed "commissioners" to be paid incentive fees for every civil rights violation they booked. The more violations, the more commissions paid.

Again, Johnson boomed forth to the nation his opposition to the provisions: "They interfere with the municipal regulations of the states, with the relations existing exclusively between a State and its citizens, or between inhabitants of the same State — an absorption and assumption of power by the General Government which, if acquiesced in, must sap and destroy our federative system of limited powers, and break down the barriers which preserve the rights of the States. It is another

step, or rather stride, to centralization and the concentration of all legislative power in the National Government."

Johnson cited numerous reasons for vetoing the Civil Rights Bill:

- Eleven of the 36 states had no congressional representation (Southern delegates had been refused readmission to Congress in December 1865) and thus no voice in the matter, though it primarily concerned them, and they would have to live under its provisions.

- The bill transferred long-held legislative rights from the state governments to federal — though, again, 11 of those states had no say in the change.

- It created "numerous ... sort of police ... agents irresponsible to the Government and to the people ... in whose hands such authority might be made a terrible engine of wrong, oppression, and fraud," agents who could arrest at their pleasure.

- The fees that were paid to the commissioners for arrests and hearings "might convert any law, however beneficent, into an instrument of persecution and fraud." In other words, Johnson recognized that the financial lure of getting paid bonuses to report infractions — real or supposed — of newly implemented Reconstruction laws would tempt federal agents to apply these often well-intentioned strictures to situations where their application could prove inappropriate or even illegal.

- He recognized that the agents responsible possessed a vested interest in

fomenting discord between the two races, for "as the breach widens their employment will continue."

The Radicals, led by Stevens in the House, and by Sumner, Benjamin Wade, and others in the Senate, exerted party pressure against their fellow Republicans until they managed to override Johnson's veto. The tragic evolution of relations between the general black and white communities in the South during the federal government's post-war occupation paints a sad but typical portrait of human nature on many levels. For instance, the brightest prospect for the newly emancipated black freedmen to acquire property was often through the loss of the same property by landowning whites. The political party willing to exploit that possibility was the Republican, which — along with the sprawling, often-violent and -vigilante-style Union League — recruited freedmen to wrest civil power, and often property, from the same whites. The whites, meanwhile, often viewed the economic and political restraint of black freedmen as crucial to retaining ownership of their possessions.

### Fourteenth Amendment

Next came perhaps the most egregious action: the adoption of the 14th Amendment. This Thaddeus Stevens-spearheaded bill proved one of the most contentious in American history. It was a years-long battle that opened in May 1866.

**The Reconstruction Acts provided no date of termination for Federal military rule in the South, and empowered the army to supervise conventions to draw up new constitutions for the Southern states. Most of the people ruled by these new laws would have no say in their composition.**

Most positive about the amendment was its granting of full citizenship and legal rights to “all persons born or naturalized in the United States.” The bill clearly had the interests of blacks — who had been disallowed from voting not only in the South, but in many Northern states as well — in mind here. But as originally proposed, the 14th Amendment also, in its third section, outlawed anyone who supported the Confederacy from voting (much less holding office) in any election until July 4, 1870, and, viewed in its totality, the amendment wrested almost complete control of the lives and communities of Southerners and placed them into the hands of the Radical-controlled U.S. government.

Even many Republicans shrank back from supporting this amendment. Con-

gressman and *New York Times* publisher Henry Raymond accused Stevens of designing the amendment so that Southern states could not adopt it. It would make the South another Ireland, Raymond declared, in reference to that then-unhappy subject of Britain. The British ruled the Irish, against the latter’s will, throughout this period, by the force of

a sometimes-brutal military occupation, though the Irish possessed no say in the governmental policy that controlled them. So disastrous was British policy that Irish immigration to America during the 19th century formed one of the great migrations in history.

Anyone who questions whether the Radical Republicans really intended to impose dictatorial controls over the post-war South need only consult their own words. In condemning the harshness of Stevens’ original version of the 14th Amendment, a colleague asked him if he could build a penitentiary large enough for the millions of people living in the South. “Yes,” Stevens thundered, “a penitentiary which is built at the point of the bayonet down below, and if they undertake to come here

we will shoot them down.” Those were the legislative leaders of the country speaking — about people they forced to remain members of that country.

The House passed the resolution to make the 14th Amendment part of the Constitution, and the Senate did too, though the latter made revisions, cutting some of Stevens’ more extreme planks. One prominent Reconstruction historian described the Senate’s actions as, “A tragic blow to Stevens, who was stricken and confined to his house, feverish with disappointment and rage.” Still, the proposed amendment remained sufficiently devastating that voices howled in disbelief across the South — most of which still lay in ruins. Johnson howled as well. All that now stood between the South and this watershed amendment becoming a part of the Constitution was ratification by three-fourths of the state legislatures.

The Southern “former” states could not do much about the situation, but what they could do, they did. With the exception of Radical-ruled Tennessee, the Radical Republicans did not yet possess sufficient control in any of the other former Confederate states to ratify the 14th Amendment. The Kentucky and Delaware state legislatures also voted against ratification — and thus the amendment failed for lack of

the constitutionally required three-fourths majority.

Radical fury erupted. Stoking that fury was the *Ex parte Milligan* Supreme Court decision of 1866. The court ruled unconstitutional the Federal military’s capture, imprisonment, trial, and conviction of any American citizen — as happened with Northerner L. P. Milligan, whom the army sentenced to death — unless the case had direct involvement with military operations.

Stevens and his brigades rolled up their sleeves. They had had their fill of the Supreme Court, the Constitution, Andrew Johnson, and the Southern state governments that Johnson sanctioned. Real Reconstruction was about to begin.

**Chattel slavery** in America ended with ratification of the 13th Amendment in 1865. This illustration appeared in *Harper’s Weekly* in 1861, the year the war started.



Library of Congress

## Reconstruction Acts

Dealing first with what he considered Supreme Court encroachment on the Radical agenda, Stevens hammered home the First Reconstruction Act — passed on March 2, 1867 — which grouped the former Confederate states into five military districts. This, nearly two years after the war ended. Some of the states converted into military districts had existed longer than the American Union itself.

Each of these military districts had its own commanding general, whose range of authority included discretion to remove elected officials as he pleased and replace them with men of his choice, and to replace (peacetime) juries and courts with military tribunals. “The power thus given to the commanding officer ... is that of an absolute monarch,” President Johnson told the nation. “His mere will is to take the place of law.”

The Reconstruction Acts, also known as the Military Reconstruction Acts, provided no date of termination for Federal military rule in the South. They also empowered the U.S. army to supervise conventions in each military district that would draw up new constitutions for the people of the South. They aimed for this supervision to be quite particular. The Federals disfranchised — or disqualified from voting — tens of thousands of Southerners who had supported the Confederacy, and who were now allowed no voice in the constitutional conventions, or in subsequent elections.

The Reconstruction Acts also eliminated the president’s right to pardon or return voting rights to ex-Confederates. With *Ex parte Milligan* in view, the acts also disallowed the Supreme Court from hearing appeals by citizens invoking their rights to *habeas corpus*. In other words, they had no appeal beyond U.S. military tribunals to civilian courts.

And the acts required approval of the new “military district” constitutions by Congress, passage of the lingering 14th Amendment by the new Southern “governments,” and cooperation by the Southern people in all these processes. Then, and only then, would military rule possibly end, and congressional representation resume.

With the Military Reconstruction Acts in place, Stevens and the Republican Congress set in motion a series of other actions



Library of Congress

**Shattered South:** The South was devastated by the War Between the States. One-fourth of the white male population between the ages of 16 and 60 died in the war. And many of its cities lay in rubble. The above photo shows ruins in Richmond, the Confederate capital, in 1865.

that led to the impeachment, or charging, of President Johnson with misdeeds, in order to remove him from office. Most of the Radical-controlled Senate agreed, and voted for his removal, but the hated Constitution required a two-thirds majority vote in the Senate. The Radicals failed to attain that by one vote, and Johnson remained in office for the duration of his term.

Whatever Reconstruction program President Johnson had for the nation was sunk. His influence was torpedoed for the remainder of his term, and he failed even to win his own party’s renomination in 1868. That same year, perhaps the greatest of all Reconstruction Era examples of breaking the law with the intent to improve it occurred.

Though the U.S. House and Senate approved the 14th Amendment, it still had to be ratified by three-fourths of the state legislatures to be added to the Constitution. The Radical Republican leadership held varying views regarding whether the Southern states — or military districts — were indeed American states, but Congress consistently considered them as such dur-

ing the post-war constitutional amendment battles. Thus, 29 of the 36 state legislatures had to vote in favor of the amendment.

Despite Secretary of State William Seward’s announcement that 29 states ratified the Fourteenth, two Northern states had actually rescinded their ratifications. Plus, two more (Southern) states’ names had disappeared from the resolution of states’ passage by the time the House approved it. Unable to gain the constitutionally mandated approval of three-fourths of the state legislatures for passage of the 14th Amendment, Congress simply *decreed* a resolution declaring it so, and the amendment was added to the Constitution. To this day, no other state has signed on.

## Later Reconstruction

As the 1870s rolled past, rampant governmental corruption and unconstitutionalism ravaged both public and private sector America. With increasing ferocity, the Radicals discarded the legal jurisdiction guaranteed to states by the Constitution; deprived hundreds, perhaps thousands, of people of their constitutionally protected

**Andrew Johnson and his difficult journey matter to us only if it is important whether we abide by the will of the majority, as in a democracy, or whether we follow the rule of law, as in a republic. Whether we are, in the end, constitutionalists or revolutionaries.**

right to trial by a jury of their peers for crimes ranging from assault to murder; filled juries with Radical sympathizers and supporters; and gave compliant President Ulysses S. Grant the unilateral right both to unleash martial law and suspend the writ of *habeas corpus*. No afflicted citizen, especially in the former Confederate states, had any right to redress in any of these situations.

So went the era of American history that spawned the carpetbaggers, scalawags, robber barons, Ku Klux Klan, the Black Friday Stock Market Crash, the most cor-

rupt presidential administration in U.S. history, the Gilded Age, lasting enmity between the black and white races in the South, and the apparently permanent recasting of the American Constitution.

Thomas Jefferson, James Madison, and the other Founders had reasons for establishing our founding documents as they did. They had watched and studied how the great nations of Eu-

rope tore themselves and others apart for centuries. The Founders factored what the Europeans and others did wrong — and right — into everything they believed and wrote into law.

Though other men, in the 19th century and since, have had their own reasons for attempting to dismantle these laws and beliefs, we should draw great consolation and inspiration that an Andrew Johnson has always risen up to confront and contest them. Johnson himself again won election to the U.S. Senate in 1875. He mounted tenacious opposition to the Radical Re-

publicans, and mocked their crumbling Reconstruction colossus.

The Johnsons of our heritage remind us who and what we are supposed to be. They encourage us that the dream of America and that shining “City on a Hill” has never died, even when its heirs are outnumbered and even when they cannot be found in the history books. They remind us, too, that the cost or even success of a thing should not be our primary consideration as we consider whether to stand for it.

Andrew Johnson and his difficult journey matter to us only if it is important whether we are a people who abide by the rule of law as we say we do, or whether we believe we are our own law. Whether we abide by the will of the majority, as in a democracy (a system many of our Founding Fathers detested), or whether we follow the rule of law and encoded written principles that apply to everyone, including those in the majority, as in a republic. Whether we are, in the end, constitutionalists or revolutionaries.

You know by now what Andrew Johnson was. ■