Andrew Johnson and His Ghost Writers: An Analysis of the Freedmen's Bureau and Civil Rights Veto Messages

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No other decisions of Andrew Johnson's political career held such momentous consequences for himself and for the nation as did his first two presidential vetoes. His rejection of the Freedmen's Bureau bill on February 19, 1866, and of the Civil Rights bill on March 27, marked the beginning of a conflict between President and Congress that was to prove irreconcilable. The bitter consequences did not end with the spectacle of impeachment nor even with the tragic years of struggle over Reconstruction and Restoration in the defeated South. One of the central issues, the question of the Negro's civil rights, was to pass unresolved to twentieth-century America. In the 1860's the nation lost an opportunity to establish a firm foundation for equal citizenship with moderation and a minimum of rancor. The manner in which Johnson took action against the two bills—the advice he accepted and the advice he rejected—is of paramount importance in understanding the conflict which ensued and the failure to achieve an early solution of the civil rights problem.

Johnson had the help of a number of counselors. In the manuscript messages of the Johnson Papers, deposited with the Library of Congress more than half a century ago, there are five draft papers for the first veto message, four for the second veto. No analysis of these working papers, no attempt to identify their origins, has hitherto been made; this is true despite the startling discovery by

William A. Dunning long ago that Johnson's first annual message was written by the eminent scholar and Democrat, George Bancroft.[1]

Knowledge of Bancroft's role, however, was not the impetus that led us to trace the authorship of the several drafts of the veto messages. The point of departure was a disturbing sense of the familiar about some of the manuscripts. The familiarity lay not in the script, for the writing was obviously in the hand of a copyist, and more than one; it was rather in the type of paper and the distinctive manner of its use. One of the drafts for each of the two veto messages—and for Johnson's annual messages as well—was written on long, lined, legal-type paper, often with a small hole in the upper left corner as for a file or ring. The copyists had used the sheets with lavish extravagance, leaving wide margins and skipping every other line, apparently with a view to facilitating emendations. The corrections were in a different handwriting; indeed, in more than one variant from the copyists' script.

These were characteristics seen before—at the University of Rochester Library, in the collection of manuscripts of William H. Seward. A check of other evidence corroborated Seward's authorship. At least some of the changes written between the copyists' lines were unquestionably made by Seward's own hand. Interestingly, these particular drafts were filed first or second among the working papers for each message, a not unnatural priority for the suggestions of the Secretary of State. Furthermore, the substance of the December, 1865, draft in the Johnson Papers at the Library of Congress corresponded with that of a less finished draft in the Seward manuscripts at Rochester. A final confirmation of Seward's authorship was the emphasis upon foreign affairs in his versions of the 1865 and 1866 annual messages.

This discovery quickened our curiosity with respect to the other working papers for Johnson's first two veto messages. Would it be possible to identify the men other than Seward whose counsel Johnson had welcomed during the critical period of the President's break with Congress? The search for handwriting specimens that would

[1] William A. Dunning, "A Little More Light on Andrew Johnson," Massachusetts Historical Society, *Proceedings* (Boston), Second Series, Vol. XIX (1905), 395-405. Dunning was going through the Johnson Papers, then but recently acquired by the Library of Congress. All material from the draft messages used in this paper is from Vols. 1 and 2 of Johnson's Messages in the Johnson Papers.

correspond with each of the seven unidentified veto papers was exciting, and exhausting. In the end, all but one were identified. The identifications were made on the basis of handwriting, but in a number of instances additional evidence supported the findings.

For the nine papers, there proved to have been seven authors. Secretary of the Navy Gideon Welles, like Secretary Seward, had furnished a draft for each of the vetoes.[2] Two of the drafts, both for the Freedmen's Bureau message, had come from loyal Republican supporters of President Johnson in the Senate: James R. Doolittle of Wisconsin and Edgar Cowan of Pennsylvania.[3] Another of the papers, a digest of the Civil Rights bill rather than an argument for its veto, came from Senator Lyman Trumbull of Illinois, the author of both bills. These identifications are not surprising in view of the position of each man, though it was curious to find Senator Doolittle supplying arguments for the veto of a bill which he had supported in the Senate.[4] More surprising was the identification of Henry Stanbery as the author of a draft message for the second veto. An able Ohio attorney and former Whig conservative, Stanbery at the time of the Civil Rights veto had not yet become identified with Johnson's administration. He had been called to Washington, however, to help represent the government in the famous Milligan case which was argued before the Supreme Court during the second week of March, and by mid-March he was being recommended confidentially for the cabinet post of Attorney General by Johnson's close political adviser, Thomas Ewing, with whom Stanbery as a young man had begun the practice of law.[5]

With the papers identified, except for one draft of the Freedmen's Bureau veto, we began a comparison of the drafts with the final versions of the two messages. For the Freedmen's Bureau veto there were the drafts written by Secretary Seward, Secretary Welles,

[2] In his diary, Welles noted his objections to both bills and stated that the President had asked him to study the Freedmen's Bureau bill and that he had given the President his views on the Civil Rights bill. Howard K. Beale (ed.), *Diary of Gideon Welles, Secretary of the Navy under Lincoln and Johnson* (3 vols., New York, 1960), II, 431-33, 460.

[3] An undated note from Senator Cowan, filed in the Johnson Papers under date of February 19, 1866, reads: "Herewith you will find a paper from which you may glean an idea or two—I think it is well considered—and I would not fear to stand on any position assumed."

[4] Senator Cowan did not vote on the original measure; both he and Senator Doolittle supported the President's veto.

[5] Thomas Ewing to Johnson, March 15, 1866, Johnson Papers; also copy in Ewing Papers (Manuscript Division, Library of Congress).

Senator Doolittle, Senator Cowan, and the unidentified draftsman. In addition to these five, we considered another statement of objections to the bill, filed not in the volume of messages but with the President's incoming mail. It had been sent by young General Joseph S. Fullerton of the Freedmen's Bureau, as his accompanying note makes clear, in reply to the President's "verbal request."[6]

Secretary Seward's draft for the Freedmen's Bureau veto is written in the first person, as if it were meant to be used verbatim for the official message. Although seventy-four pages long, it is relatively brief in substance. Much of its length is accounted for by the widely spaced lines of the writing and the extended summary of both the original act establishing the Bureau and the proposed law to continue and extend it. Seward's objections to the content of the bill are limited, and much of his argument is devoted to the point that the new legislation is unnecessary. Secretary Welles's paper is headed "Objections," and in four pages it enumerates and expounds six arguments against the bill. For the most part, it is a criticism of the bill's provisions for trials before Bureau officers. Senator Doolittle's contribution, "Suggestions of Objections to the Freedmen's Bureau Bill," fills fourteen pages with a lengthy exposition of numerous objections. Several printed clippings are inserted, particularly to buttress its legal arguments. Senator Cowan's objections, nine in all, are more succinctly stated in three pages of small, neat writing. The unidentified draftsman, as Seward had done, used the first person pronoun, and, like Seward, incorporated lengthy extracts from the bill. But the arguments he proposed against the measure in his fifteen-page exposition are more numerous and varied than those proposed by the Secretary of State. Unlike the other papers, this draft deals extensively with the status of the Negro under freedom and with the rights of the states.

A careful textual comparison of each of the six papers with Johnson's veto message on the Freedmen's Bureau bill shows that sentences and passages have been lifted virtually intact from two of the drafts, those of Seward and Welles.[7] The borrowings from Secretary Welles appear in the first part of the message and condemn trials before Freedmen's Bureau officials as lacking in regular

[6] Joseph S. Fullerton to Johnson, February 9, 1866, Johnson Papers.

[7] For the comparative study of the official messages we have used the texts as published in Edward McPherson, *A Political Manual for 1866* (Washington, 1866), 68-72 and 74-78. The quotations, however, are from the official version of the messages as published in *Senate Journal*, 39 Cong., 1 Sess., 168-73 and 279-85.

judicial procedure and constitutional safeguards for the protection of the innocent. Selections from Seward's draft, some limited to a few phrases and others consisting of extensive passages, appear in various parts of the message. In the two longest, Seward argued that there was no need for new legislation since the existing Freedmen's Bureau law was still in effect and gave the Bureau powers adequate for the protection of freedmen and refugees. About twice as much wording was taken from Seward as from Welles.

These verbal borrowings, though noteworthy, constitute only a small part, roughly a fifth, of the substance of the message. A quite different proportion of borrowing, however, is evident in the argument, as distinguished from the wording, of the official message. Most of the basic ideas can be found in one or more of the working papers, although the elaboration of the ideas in the final message often varies considerably. In fact, there is not one of the papers which might not have been used to fashion some part of the official version.

Specific examples of parallel arguments in the working papers are numerous. The argument that trials by other than the regularly constituted judiciary are unconstitutional in time of peace appears not only in Welles's draft but also in those of Senator Cowan, Senator Doolittle, and the unidentified draftsman. Interestingly, the constitutional aspect was not raised by Seward, though he did question the policy of using military tribunals "except on occasions of imperative and absolute necessity" raised by present or imminent war, invasion, or rebellion. The argument that the bill provided for a permanent or indefinite special agency to protect the freedmen, an objection technically correct but misleading, appears in four of the drafts. Senator Cowan and the unidentified draftsman held that there existed in the federal government no power to purchase or rent lands for the benefit of freedmen. The latter, together with General Fullerton, emphasized the class nature of the legislation. Fullerton, Doolittle, and Seward all called attention to the great expense which the bill would impose upon the national government. The first two also pointed with alarm to the immense patronage which the bill allegedly would place in the hands of the President. The unidentified draftsman also used the argument that the freedman would find protection in his value as a laborer and in his right to change residence freely. Five of the writers, Seward only excepted, made a spe-

cial attack against Section 5 of the bill, which extended for three years the right of freedmen to occupy land on the coast and adjacent islands of South Carolina and Georgia, which they held under a wartime order of General William T. Sherman. All these points were incorporated into the President's message; they do not exhaust the parallels between the drafts and the official message, but they are sufficient to indicate Johnson's indebtedness.

The official message did not, of course, include all the suggested arguments, and the omission of some is of particular interest. Johnson did not adopt the argument by the unidentified draftsman, denying unequivocally the power of the national government and asserting the exclusive authority of the states in the area of natural rights, civil rights, race relations, education, and relief. Except to prohibit slavery and insure freedom to change residence, according to this argument, the federal government had no right to extend special protection to the freedmen; it could not compel states "to give to all people equal rights either over the law or under it"; it could not provide relief, schools, or asylums. Senator Doolittle's exposition was more restrained, but he argued similarly that by the Thirteenth Amendment the states had not granted to Congress any power over "their cherished and sacred right of exclusive government over their own citizens in all matters of domestic concern." Senator Cowan objected to the bill's placing the "negroes upon the same footing precisely as the whites as to all *civil rights and immunities*," and to this end overriding all state laws. There is good reason to assume that President Johnson privately shared the opposition to federal enforcement of civil rights and the solicitude for the reserved powers of the states. These arguments, however, were not used in the message.

One explanation is suggested by the fact that there are no similar arguments in the Seward draft. In fact, the Secretary of State recognized a responsibility on the part of the federal government. It was his opinion that "Freedmen who were emancipated by the nation as a means of suppressing the civil war are entitled to national protection until the country shall have resumed its normal and habitual condition of repose." Indeed, his draft would have the President promise to support in the future a new bill to continue the Freedmen's Bureau beyond the time limit set by existing law if its extension should prove necessary for the protection of the freedmen,

an objective which Seward referred to as a "proper" one. The Secretary's attitude was a very mild version of the opinion which predominated at that time among moderate as well as Radical Republicans. We can only speculate that the influence of this cautious and conciliatory Republican helped to restrain Johnson from embodying in the official message statements that would have been offensive to the Republican congressional majority.

References in the President's message to the subject of federal enforcement of civil rights appear to have been carefully worded. The President shared "with Congress the strongest desire to secure to the freedmen the full enjoyment of their freedom and property, and their entire independence and equality in making contracts for their labor." But he expressed no desire to share the congressional intent to establish a federal guarantee for these rights, or to interpret them as including *all* rights, exclusive of suffrage, belonging to white persons. He observed that the bill would subject white persons who violated its civil rights provisions to punishment "without, however, defining the 'civil rights and immunities' which are thus to be secured to the freedmen." Although the bill had not attempted to make a definitive statement of civil rights, it had specified a long list of rights as included within the phrase "civil rights or immunities belonging to white persons." Those named were:

> the right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to have full and equal benefit of all laws and proceedings for the security of person and estate, including the constitutional right of bearing arms [and of not being] subjected to any other or different punishment, pains, or penalties, for the commission of any act or offence than are prescribed for white persons.[8]

The President did not comment on this impressive listing. As for the respective power of the states and of the nation, the message stated that "Undoubtedly the freedman should be protected, but he should be protected by the civil authorities, especially by the exercise of all the constitutional powers of the courts of the United States and of the States." There was no clarification of what President Johnson considered "the constitutional powers" of the federal courts. His later argument that the southern states had a right to participate in legislation affecting them, and that with southern representatives

[8] McPherson, *Political Manual*, 74.

present Congress would still have "full power to decide according to its judgment," may imply that the President believed that federal authority was adequate to legislate concerning civil rights for Negroes. On this point, however, the message was conveniently indefinite.

Another significant feature of the message was the omission of any statement that might be considered a commendation of the past services of the Freedmen's Bureau. Secretary Seward's draft was explicit in recognizing the "usefulness" of the Bureau, that it had been "administered with becoming care and fidelity," and that the original act establishing the Bureau had been "just, wise and conformable to public law." His draft included a promise to accept and even recommend a new Freedmen's Bureau bill if circumstances should necessitate the continuance of its functions. Seward expressly interpreted the wording of the original law, which stated that the Bureau was to function during the war "and for one year thereafter," as meaning that the Bureau would be in operation for a full year after the war had been terminated legally by formal announcement. Since neither Congress nor the President had yet issued such a proclamation, Seward's draft insured to the Bureau at least twelve more months of operation. Johnson's message merely stated that the act establishing the Bureau "has not yet expired." The omission of this part of the Seward draft was probably a concession to the Democracy and the South, since the President's Democratic supporters, North and South, viewed the Bureau as an odious agency and were demanding its swift and irrevocable termination.

Decisions to omit, like decisions to include, specific material from the drafts reveal an awareness of political expediency, as well as considerable political astuteness. Clearly a very competent hand other than that of the authors of these drafts had a large measure of responsibility for the organization, elaboration, and phrasing of the veto. The message was no mere scissors-and-paste montage of the six papers. To know with certainty Johnson's own role in the final formulation of the message is not possible, but there is substantial basis for speculation. During his presidency, Johnson seldom used pen or pencil; in the vast collection of manuscripts he preserved there is little more than a few brief endorsements in his own hand. This reticence has been attributed to a broken arm that Johnson suffered in an accident in 1857; it may also have arisen from a sense

of inadequacy due to his late and labored mastery of the skill of writing.

Whatever the explanation, there is nothing to suggest that Johnson sat down with paper and pen to compose this or other messages, and there is considerable evidence to the contrary. He had intrusted to George Bancroft the writing of the critically important first annual message to Congress. Some other evidence exists, also, about presidential papers prepared subsequent to the first two veto messages. According to the shorthand diary of his private secretary, Major William G. Moore, the veto of the District of Columbia Negro suffrage bill of January, 1867, "was entirely prepared in the office." The final paragraph, which "the President had prepared," was replaced by one written by Henry Stanbery, then Attorney General, and "revised by the President." The veto of the first Reconstruction act was the work partly of Jeremiah S. Black, the influential Pennsylvania Democratic politician, partly of the Attorney General. According to the same source, Johnson asked Secretary of State Seward to prepare a general amnesty proclamation in July, 1868, then carefully scrutinized Seward's draft with his private secretary, asked the advice of the prominent Democratic Senator Reverdy Johnson, of Secretary of the Navy Welles, and of Attorney General Orville H. Browning, consulted again with Seward and with his private secretary, and finally directed Moore to make certain changes.[9]

As all this suggests, Johnson did not personally write his official papers but they were very much his own. That he took particular care in preparing the Freedmen's Bureau message is quite evident. It was his first veto, and he delayed the message until almost the end of the period constitutionally permitted for presidential consideration. In the interval he had obviously invited opinions from a number of sources. A second seven-page letter from General Fullerton answering a request for additional information with respect to Bureau costs is evidence of Johnson's special interest in that aspect of the argument.[10] Shorthand notations on the draft by Secretary Welles indicate that Johnson went over at least that paper with his private secretary, but there is no evidence to suggest that he actually dictated the content of the final version. The most likely

[9] Entries for January 6, March 2, 1867, and July 1, 3, 1868, shorthand Diary of William G. Moore, Johnson Papers.

[10] Fullerton to Johnson, February 12, 1866, *ibid.*

assumption is that he turned over the six drafts to his office staff, or to some trusted intimate of more stature, with oral instructions for deletions, modifications, and additional objections. We can be reasonably certain that not only the major arguments but even the most oblique passages received his scrutiny and approval.

Some significant passages in the message appear in no one of the six drafts, and they may reflect in a special sense Johnson's own attitudes and position. One such passage is the argument against those sections of the proposed law which authorized grants to the freedmen for the relief of suffering, the rental and purchase of land for their benefit, and the building of schools and asylums. Johnson's opposition to the proposal is less revealing than are some parts of his argument, particularly the phrases we have italicized:

> It [Congress] has never deemed itself authorized to expend the public money for the rent or purchase of homes for *the thousands, not to say millions of the white race, who are honestly toiling from day to day for their subsistence.* A system for the support of indigent persons in the United States was never contemplated by the authors of the Constitution; nor can any good reason be advanced why, as a permanent establishment, it should be founded for one class or color of our people more than another.

Here is either a deliberate appeal to race prejudice and to the self-interest of whites against the grant of special federal assistance to Negroes, or an unwitting reflection of racial antipathy on the part of the President. Subsequent passages argue not only that the freedmen are capable of taking care of themselves because of the demand for their labor, but that the provisions of the bill would keep them "in a state of uncertain expectation and restlessness," and that such treatment for the freed Negroes would be "a source of constant and vague apprehension" to "those among whom he lives." Johnson also expressed the opinion that freedmen should establish and maintain "their own asylums and schools." That is to say, not the entire population of local southern communities but the Negroes themselves were expected to pay for the education of their children and the support of their aged and poor. Thus the friendly interest in protecting the freed Negro and insuring his future, which the President explicitly stated in the message, was delimited in a manner that reflected the prejudice of race and the self-interest of whites. In the unborrowed passages of the final version, the turn of a phrase here and there significantly affected the generally restrained tone and

unemotional arguments of the message. Such changes, either in phrasing or in the elaboration of the argument, may have reflected both the inner tension with which Johnson faced the race problem and an acute sensitivity to the political implications of racial attitudes. Without directly challenging those who believed in equal civil status for the Negro and national responsibility for its attainment, the message seems designed to allay the fears of friendly southerners and northern Democrats to whom racial equality or national guardianship of the freedmen was anathema.

The one major objection to the Freedmen's Bureau bill which was distinctively the President's own contribution is found at the end of the message. The essential argument was that under the Constitution all states are entitled to a voice in legislation, that southern states were not represented in Congress at the time of discussion of the bill, and—an obiter dictum—that the authority of Congress to judge the qualifications of its members "cannot be construed as including the right to shut out, in time of peace, any State from the representation to which it is entitled by the Constitution." The obiter dictum constituted a challenge to the Congress, a virtual declaration of war. Secretary Seward's draft, it is true, had raised the issue of restoration and many of Seward's phrases and sentences are incorporated in this part of the text. Seward undoubtedly favored the speedy restoration of the South, but his draft did not challenge the constitutional authority of Congress to "shut out" southern representation. Johnson's own imprint can be seen here in his use of the phrase "no taxation without representation," a principle he had explicitly stated a few days earlier during an interview with a delegation from the Virginia legislature.[11] In other words, Johnson rather than any of the six advisers was directly responsible for the most explosive part of the veto message. But this is not to say that the denial to Congress of any right to set conditions preliminary to the readmission of the southern states was at all original with the President. This view had for months been the position of Democratic spokesmen and their party press. In the Freedmen's Bureau veto, however, Johnson officially adopted it, expounded it at length, and in effect held it to be the only tenable principle with respect to Reconstruction.

[11] Speech in reply to the Virginia Delegation, February 10, 1866, newspaper clipping, *ibid.*; also printed in McPherson, *Political Manual*, 56-58.

It is significant that no one of the President's major Republican consultants in the group of identified draftsmen, nor even the unidentified draftsman (whose party affiliation is unknown, although he was clearly a strong supporter of state rights) had suggested for inclusion in the veto so sweeping a challenge to congressional authority. It is even possible that Seward's version indicated an effort on the part of the Secretary of State to modify Johnson's intentions. The relationship between the two was of so constant and intimate a nature that it is altogether likely that Johnson had discussed his ideas for the message with Seward before the Secretary began his writing. Seward's draft presented the President's view of the right of the seceded states to be represented in Congress, but presented it without denying to Congress the right to a differing opinion. The bombshell which Johnson exploded in the concluding paragraphs of his veto, and which precipitated a disastrous war between Congress and the Executive, was not designed in accordance with the principles and desires of the party in power but followed instead those of the government's "loyal opposition."

Johnson also added a strong statement about presidential responsibilities and an implied challenge to Congress to take the issues raised by the veto to the voters of the country for decision. He described the President's role in the following passage:

> The President of the United States stands towards the country in a somewhat different attitude from that of any member of Congress. Each member of Congress is chosen from a single district or State; the President is chosen by the people of all the States. As eleven States are not at this time represented in either branch of Congress, it would seem to be his duty, on all proper occasions, to present their just claims to Congress.

This is a curious statement to come from a chief executive who had been elected not to the presidency but to the vice-presidency, and at a time when the eleven southern states had no political voice in the national government because of their own decision to reject its authority. The statement suggests not the role which history had cast for the Tennessee President but the position of national leadership to which he aspired. The implied challengee to Congress appeared in the conclusion of the message: "I return the bill to the Senate, in the earnest hope that a measure involving questions and interests so important to the country will not become a law, *unless upon deliberate consideration by the people it shall receive the sanc-*

tion of an enlightened public judgment."[12] The italicized passage again suggests Johnson's desire to supplant the Republican Congress in the role of spokesman for the national interest.

One of the most important conclusions that emerges from the identification and examination of the drafts for the Freedmen's Bureau veto is that, despite a loyal personal and political relationship and agreement upon a general policy of conciliation, a marked difference of political approach existed between Secretary of State Seward and President Johnson. In his draft of the presidential message, Seward ignored or minimized constitutional issues; he included nothing which suggested an acceptance of or an appeal to race prejudice and refrained from criticizing provisions of the bill intended to aid the former slave in adjusting to his new economic status. He had an appreciative word for the Freedmen's Bureau, assured to it a further year of existence, and left open its possible continuance thereafter. With respect to Congress and its role in Reconstruction, Seward offered conciliation; Johnson demanded surrender. Although he used what Seward had written in this connection, Johnson shifted the order and emphasis, creating a message of a very different tone from that of the Seward draft. A comparison of the following passages illustrates the difference.

Seward

I am pleased to see that the bill contemplates a full restoration of the several states which heretofore were in rebellion in all their constitutional relations to the United States but is vague and uncertain in defining the conditions which will be accepted as evidence of that full restoration. It is hardly necessary for me to inform the Congress that in my own judgment most of those states so far at least as depends upon themselves have already been thus fully restored and are to be deemed as entitled to enjoy their constitutional rights as members of the Union. Since Congress now proposes to make so important a proceeding as the prolongation of the Freedmens Bureau dependent upon a restoration in some sense which differs from the one entertained by the Executive Department it would seem to be important that Congress and the President should first agree upon what actually constitutes such restoration. . . .

Without trenching upon the province of Congress I may be permitted in explaining my own course on the present occasion to say that when a state however insubordinate insurgent or rebellious its people may have been at some previous time comes not only in an attitude of loyalty and harmony but in the persons of representatives whose loyalty cannot be questioned under any existing constitutional or legal test that in this case they have a claim to be heard in Congress especially in regard to projected laws which bear especially upon themselves.

Johnson

I would not interfere with the unquestionable right of Congress to judge, each house for itself, "of the elections, returns and qualifications of its own members." But that authority cannot be construed as including the right to shut out, in time of peace, any State from the representation to which it is entitled by the Constitution. . . .

I hold it my duty to recommend to you, in the interests of peace and the interests of union, the admission of every State to its share in public legislation, when, however insubordinate, insurgent, or rebellious its people may have been, it presents itself not only in an attitude of loyalty and harmony, but in the persons of representatives whose loyalty cannot be questioned under any existing constitutional or legal test. . . .

The bill under consideration refers to certain of the States as though they had not "been fully restored in all their constitutional relations to the United States." If they have not, let us at once act together to secure that desirable end at the earliest possible moment. It is hardly necessary for me to inform Congress that in my own judgment most of those States, so far at least as depends upon their own action, have already been fully restored, and are to be deemed as entitled to enjoy their constitutional rights as members of the Union.

[12] Italics ours.

Seward loyally supported the President in the veto; but had the President adopted his draft, the message would have been a document of considerably greater political finesse.

Congress was not sufficiently united against Johnson in February, 1866, to override his veto. The next month, however, Congress passed a new measure, the Civil Rights bill, which he vetoed and thereby consolidated Republican opposition. Once again Johnson had advice in the preparation of his veto message. The working papers for this message are easier to collate and compare with the final message than in the case of the earlier veto. There are but four such papers, and the one written by Senator Lyman Trumbull contains no material in support of a veto but presents merely a digest and explanation of the bill. It is significant chiefly as an authoritative statement of the intent of Congress to protect all citizens, especially Negroes, against hostile local legislation, but not to bestow the right of voting or of officeholding. It also corroborates the generally recognized fact that Senator Trumbull in sponsoring the measure sought the co-operation of the President. The other three papers

are arguments against the bill. They are the work of Secretary Seward, of Secretary Welles, and of Henry Stanbery. The Ohio attorney, not at the time a member of the President's official family, was four months later to replace James Speed as Attorney General. Unlike the Freedmen's Bureau veto, most of the Civil Rights message—something more than 80 per cent of the writing—was lifted verbatim from the working papers with only minor editing. About 12 lines were taken from Secretary Welles's paper, approximately 135 from Seward's, and some 240 from that of Stanbery. Only two passages of any length and consequence in the final version were newly prepared.

The extant drafts by Seward and Stanbery, both written in the presidential first person, contain numerous penciled markings on the margins and the body, as well as minor changes in phraseology inserted above the lines. These markings are easy guides to the manner in which the two papers were edited and pieced together to form the finished message. Much more of Stanbery's contribution was incorporated than of Seward's—roughly, 60 per cent of the former and somewhat better than a third of the latter. Interestingly, shorthand notations appear between the lines of Seward's draft in the midst of passages that were not included in the presidential veto. They indicate that even those parts of Seward's paper which the President finally rejected had received his close scrutiny and consideration.

As with the earlier veto, the most significant conclusion reached from a comparison of the drafts with the official message is that Secretary Seward and President Johnson differed notably in their approach toward the proposed legislation. Indeed, the difference is considerably greater than on the earlier measure. Despite his extensive borrowings from the Secretary, Johnson rejected the essence of Seward's recommendations with respect to civil rights legislation. Unlike Seward's draft, the whole tone of the President's message was not conciliatory, but hostile, as were the drafts prepared by Welles and Stanbery.

Seward's draft explicitly approved the general policy or object of the bill, "to secure all persons in their civil rights without regard to race or color." He made clear his opposition to the discriminations which the bill sought to make illegal. Objecting to certain aspects of the enforcement provisions, Seward in effect invited Congress to

reframe those sections, but in a manner that would still provide effective review by the federal judiciary to enforce, within the states, civil equality for the Negro. He tried to put at rest the apprehension that the bill would jeopardize state control over suffrage and officeholding qualifications; these matters would be "left precisely as if the bill were not enacted into law." In support of congressional action on civil rights, exclusive of suffrage, Seward found a firm constitutional basis in the privileges and immunities clause of the original Constitution and in the enforcement clause of the Thirteenth Amendment. He approved of the passage which declared all native-born Americans to be citizens of the United States, although he found no express power vested in Congress for such a declaration. The courts, Seward confidently anticipated, would sustain this definition of citizenship for the Negro either by upholding the congressional declaration or by finding it to have been unnecessary. If the latter, "no harm will have been done"; if the former, the declaration would prove both "wise and useful."

In contrast, President Johnson raised a "grave question" as to the desirability of bestowing citizenship upon the emancipated slaves. In a long passage which appears in none of the drafts, he questioned whether the newly emancipated freedmen possessed "the requisite qualifications to entitle them" to citizenship and stated, in effect, that a bestowal of citizenship upon the Negro would constitute a discrimination in favor of black men as against "large numbers of intelligent, worthy and patriotic [presumably, white] foreigners."

With respect to equal civil rights, Johnson's message followed Stanbery's draft. Without directly repudiating the goal of civil equality, the passage upholds the practice and the right of states to pass discriminatory legislation and interjects the emotion-laden question of mixed marriages. It raises the politically explosive subject of Negro voting, by arguing that if Congress had authority, as assumed in the bill, to override local and state legislation it also had the power to declare who should be juror, judge, and voter. Again using Stanbery's words, Johnson declared that "the distinction of race and color is, by the bill, made to operate in favor of the colored and against the white race."

In short, Johnson, unlike Seward, expressed an attitude on racial issues in conflict with that embodied in the bill, one congenial to the feeling of northern Democrats and southerners. A brief shorthand

notation beside a passage in Seward's draft suggests that the President's attitude was in part a conscious propitiation of racial prejudice. Seward had written that it belonged to Congress "to provide by legislation proper measures, when necessary, to secure to citizens of the United States anywhere, the rights which the Constitution guarantees." The shorthand, apparently a jotting down of Johnson's comment, reads "inexpedient."[13]

The message, again following Stanbery's draft, stated that the President did "not propose to consider the policy of this bill." The whole tenor of the veto, however, belied the assertion and offered strong evidence of Johnson's lack of sympathy for the basic objectives of the bill. Although he did not directly analyze the question of constitutional authority for congressional civil rights legislation, Johnson interpolated near the end of the veto an incisive passage from Secretary Welles's draft, one completely at variance with Seward's position. It condemned the bill's provisions as contrary to state rights and the nature of the federal Union. According to Johnson the bill meant "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, towards centralization, and the concentration of all legislative powers in the national government."

In the closing paragraphs of his veto, Johnson also incorporated a passage from Seward's draft, somewhat edited, that pledged cooperation with Congress in any measure to protect the civil rights of freedmen through judicial process and impartial laws in conformity with the Constitution. The passage is obviously inconsistent with the general tone of the message. Its presence is perhaps explained by an urgent note, unsigned and undated, but in Seward's handwriting, preserved among the Presidential papers. It reads: "If you can find a way to intimate that *you are not opposed to the policy of the bill* but *only to its detailed* provisions, it will be a great improvement and make the support of the veto easier to our friends in Congress. I think a passage to this effect can be found in my notes heretofore sent."[14] Thus Johnson's Civil Rights veto was not a straightforward, consistent argument against the bill. It was a contradictory

[13] We are indebted to Mr. Nathan Behrin, Pittman expert, for transcribing the shorthand notation.

[14] Filed under March 27, 1866, Johnson Papers.

composite designed to attract political support among both Republicans and Democrats.

The identification of the drafts for Johnson's first two vetoes, together with a comparative study of the official messages, is revealing of much more than the process of message writing and the President's indebtedness to others. It provides new insights for an understanding of Johnson and his advisers. The generally accepted picture of Johnson as courageous, stubborn, forthright, and correct in his dealings with Congress needs qualification in view of the evidence of evasive contradictions, racist attitudes, and concessions to political expediency.

Secretary Welles emerges as an influential adviser, despite the fact that the President borrowed much less from his draft than from those of Seward and Stanbery. Welles's relatively brief opinions were sharply unequivocal in opposition to both the Freedmen's Bureau and the Civil Rights bills; Johnson's messages were less incisive but in substantial agreement with the Secretary's position.

The significance of Henry Stanbery's large role in formulating the second veto is not clear. It may have indicated either the ascendancy of a new influence with the President or simply Johnson's discovery of a skilled advocate to whom he could intrust the exposition of his own views. The latter assumption is the more likely one. Stanbery's reputation was that of an attorney interested primarily in his profession rather than in office-seeking. In acknowledging his nomination to the Supreme Court in April, 1866, he characterized the honor as one "conferred spontaneously, and without the pressure of political or personal influence."[15] With the Ewings he had close ties, and they were urging that he be appointed Attorney General; yet his first large service to the President in connection with the Civil Rights veto was apparently undertaken without their foreknowledge or counsel.[16] His later acceptance of the office of attorney general was thought to have been given with some hesitation and reluctance as a response to an unsolicited call to public duty.[17] We know that Johnson, at least by the close of his administration, was of the firm conviction that the office of attorney

[15] Stanbery to Johnson, April 20, 1866, *ibid.*

[16] Thomas Ewing, Jr., wrote his father, March 25, 1866, that "it is reported" that Stanbery was preparing the message. At first, the son considered the contents of the bill unobjectionable. See also his letter of March 26, 1866, Ewing Papers.

[17] George Reed (ed.), *Bench and Bar of Ohio* (2 vols., Chicago, 1897), I, 84-87.

general had never been filled "by any one who was so smart as a man or a lawyer" as Stanbery.[18] This evidence, though inconclusive, suggests that Stanbery was an instrument rather than an originator of policy.

Stanbery's part in the formulation of the Civil Rights veto had another aspect of considerable historical interest. It may have cost Stanbery a place upon the Supreme Court and possibly was a decisive factor in the Senate's action in July, 1866, to reduce the number of Supreme Court justices. Three weeks after the veto message went to Congress, on April 16, Johnson nominated Stanbery, who was not then a member of the cabinet, for a vacancy on the Court. A bill to reduce the number of justices by one had already passed the House but had not been acted on in the Senate. The vacancy thus existed in April when Johnson made the nomination. But in July the Senate proposed to reduce the number of justices by two. When the House agreed to the Senate version of the measure, the *Independent*'s Washington news column reported that it "defeats the nomination of Mr. Henry Salisbury [*sic*] of Ohio, to the bench as a reward for his *ex parte* opinion against the Civil Rights act."[19]

At the time of the veto, a report had circulated, and had also been denied, that Stanbery had prepared that part of the message embracing the legal objections to the Civil Rights bill.[20] A month later, while Stanbery's nomination was still before the Senate, the New York *Times* reported that Radical senators who believed that he had either prepared or approved the legal objections to the bill viewed his act as a "heinous offence." According to this report, Stanbery's "fate would seem to be sealed," though the Senate would probably "avoid the question by passing the House bill" to reduce the number of judges.[21] About the same time, Thomas Ewing, Jr., wrote to his father from Washington that it was "very doubtful whether Stanbery will be suffered to become Sup Judge—though it is conceded he can not be directly rejected. The plan proposed, as you have doubtless seen, is to pass the House bill now pending in the Senate abolishing Judge Catron's circuit."[22] Thus it is quite possible that the *Independent* was correct in linking the passage of the Court bill

[18] Entry of August 15, 1868, transcript of Moore Diary, Johnson Papers.
[19] *Independent* (New York), July 19, 1866.
[20] New York *Times*, March 28, 1866.
[21] *Ibid.*, April 23, 1866.
[22] Letter of April 25, 1866, Ewing Papers.

with congressional hostility toward the veto message and its suspected draftsman. Even before final House action on the Court bill the President sent Stanbery an offer of the position of Attorney General.[23] The Senate's ready confirmation of Stanbery for the cabinet post suggests that the opposition to the Ohio attorney was not so much a personal matter as a concern to protect congressional civil rights legislation against adverse Supreme Court decision. Conversely, Johnson desired to appoint a man who, from the Presidential view, was "right on fundamental constitutional questions." Stanbery, the President told Welles, was such a man and "is with us thoroughly, earnestly."[24]

Finally, a comparative study of the drafts and the official messages suggests a new perspective upon the relationship existing between Seward and the President, and upon the post-Civil War failure to resolve the nation's racial dilemma. Johnson appears to have given to the Secretary of State, his most intimate and eminent link with Lincoln's administration and with the Whig wing of the Republican party, a measure of deference and respect while at the same time rejecting critical parts of his Secretary's advice. The President's decision to discard Seward's explicit and unequivocal approval of national protection for the Negro's civil rights, and to substitute an ambiguity more pleasing to numerous southerners and northern Democrats, destroyed a unique opportunity to initiate a firm national policy. In such a policy the South might then have acquiesced. The vetoes nurtured a hope and a determination to settle the Negro's new status not with a view to preponderant opinion in the North but in accordance with local sentiment in the South. The course which Johnson chose alienated large numbers of moderate Union men and proved politically disastrous to himself, to Seward, and to the nation. It is just possible that a greater deference to Seward's political acumen and his sensitivity to Republican racial attitudes might have spared the President, the Secretary, and the country a tragic experience.

[23] New York *Daily Tribune*, July 18, 1866.
[24] Beale (ed.), *Diary of Gideon Welles*, II, 487.