From the Managing Editor:

In This Issue . . .

MICHAEL LES BENEDICT's interpretation of the impeachment of President Andrew Johnson destroys the conventional textbook wisdom which portrays Johnson as a martyred president unjustifiably pilloried by a vindictive Congress. Benedict shows that the decision to impeach was made reluctantly after a series of presidential actions over the years convinced even the most conservative members of Congress that impeachment was the only means left for defending their constitutional prerogatives.

KENNETH THOMPSON reminds us that political conflicts are typically between groups with different values rather than between one that is morally pure and the other morally vacuous. Recognizing that our opponents may also be acting on their conception of moral principle can keep us from turning our own values into absolutes that must be pursued by any means.

JAMES GAZELL explores the contributions of Senator Arthur H. Vandenberg in developing bipartisan support for America's joining the United Nations. Gazell explains Vandenberg's transformation from an extreme isolationist who opposed United States membership in the League of Nations to a major force in shaping an internationalist foreign policy.

FRANK DINKA and MAX SKIDMORE argue that elections in one-party Communist nations are more than empty rituals. Their detailed analysis of the Czechoslovak elections of 1971 describes the Communist leadership's elaborate efforts to assure a big turnout that would be considered a popular endorsement of the new regime.

DAVID COLBURN illuminates a little known aspect of Alfred E. Smith's public career. During the height of the Red Scare of 1919-20, the governor of New York took a strong civil-libertarian and social-reformist position, helping to dampen public fears about a Bolshevik revolution in America.

LEONARD STAVISKY calls attention to the emergence of firms that sell term papers on a large scale. He analyzes the attitudes of students and college officials toward this new form of plagiarism and documents how one state government has dealt with the problem.

MICHAEL LEVIN discusses why certain books in political theory have become "classics" while others are forgotten. Examining John Locke's *Two Treatises of Government*, Levin concludes that, ironically, lack of originality and ambiguity may help a theorist's work to become a "classic."

An Invitation . . .

An invitation is extended to our readers to send comments on articles and book reviews appearing in the journal. A selected number of letters will be published beginning in the March, 1974, issue.

DEMETRIOS CARALEY

A New Look at the Impeachment of Andrew Johnson

MICHAEL LES BENEDICT

With the suddenly reawakened interest in presidential impeachment, many Americans naturally have turned for insight to the case of President Andrew Johnson. Johnson, Lincoln's successor, was the only president ever charged by the House of Representatives with "high crimes and misdemeanors." But the version of the Johnson impeachment that Americans have found in textbooks, studies of the presidency, and histories of the Reconstruction Era is hardly one to reassure them of the efficacy of impeachment proceedings—the only constitutional method outside of defeat for reelection to remove a president from office.

Traditionally, the Johnson impeachment has been portrayed as "the most insidious assault on constitutional government in the nation's history," "the culmination of a sustained effort to make [the president] . . . subservient to Congress, to alter the place of a coordinate branch in the constitutional scheme."[1] Recent studies of Re-

[1] Irving Brant, *Impeachment: Trials and Errors* (New York, 1972), 4; Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge, Mass., 1973), 295. For similar assessments, see Claude Bowers, *The Tragic Era: The Revolution*

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construction, less sympathetic to Johnson's policies and more sympathetic to the congressional Republicans, suggest the impeachment "was a great act of ill-directed passion." The leading book-length study of the Johnson impeachment has been David Miller DeWitt's *Impeachment and Trial of Andrew Johnson*, and it paralleled the pro-Johnson, anti-Republican historical orthodoxy of the times.

But all these interpretations do injustice to history and—more important—have impelled Americans to fear the great Anglo-Saxon "remedy" for official wrongdoing more than the wrongdoing itself. If we are to comprehend the real nature of that remedy, a better understanding of the origins and causes of the Johnson impeachment is necessary. Because of limited space, this article will deal only with the events leading to the Johnson impeachment. In my book, *The Impeachment and Trial of Andrew Johnson*, I argue that the long-held conviction that the trial itself was a travesty of justice—most recently articulated in Berger's book on *Impeachment*—has also been exaggerated.[2]

Most Americans are at least somewhat familiar with the background of the single impeachment of a president of the United States: Andrew Johnson became president after Lincoln's assassination in April, 1865, and immediately faced the intimidating task of restoring the shattered Union. Like Lincoln, he assumed complete authority over the question himself, and denied Congress's power to participate even more firmly than his predecessor. Johnson embarked on a policy designed to restore the former Confederate states to civil government with maximum speed and a minimum disturbance of Southern institutions beyond the abolition of slavery itself. But his policy placed former rebels in political control of nearly every Southern state and left Southern blacks to the mercies of the men

After Lincoln (Boston, 1929); Lloyd Paul Stryker, *Andrew Johnson: Profile in Courage* (New York, 19291; John Fort Milton, *The Age of Hate: Andrew Johnson and the Radicals* (New York, 1930); Milton Lomask, *Andrew Johnson: President on Trial* (New York, 1960).

[2] Eric L. McKitrick, *Andrew Johnson and Reconstruction* (Chicago, 1960), 506; David Donald, "Why They Impeached Andrew Johnson," *American Heritage*, VIII (December, 1956), 21-25, 102-103; Hans L. Trefousse, *The Radical Republicans: Lincoln's Vanguard for Racial Justice* (New York, 1969); David Miller DeWitt, *Impeachment and Trial of Andrew Johnson, Seventeenth President of the United States: A History* (New York and London, 1903); Michael Les Benedict, *The Impeachment and Trial of Andrew Johnson* (New York, 1973); Berger, *Impeachment*.

who had fought so desperately to keep them in bondage.

Faced with returning Southern congressmen-elect, who so recently had tried to rend the nation, and with state "black codes" which reduced the freedmen to virtual peonage, Republicans in Congress felt the fruits of victory slipping from their grasp. They reacted by refusing to recognize the finality of Johnson's policy of Reconstruction and by legislating to protect the civil rights of the former slaves. Unsympathetic—if not antipathetic—to black aspirations, Johnson broke with his party and began a bitter conflict with its congressional majority, the so-called "Radical Republicans."

This account of the genesis of the confrontation between the president and Congress after the Civil War may be new to those unfamiliar with the conclusions of historians who have restudied the Reconstruction Era during the past decade and a half, but it has been generally accepted by the profession.[3] The Johnson impeachment was engendered by the partisan passions the conflict over Johnson's Reconstruction policies kindled among the Radical Republicans, Americans have been told. Still, Republicans approached impeachment reluctantly, unwillingly, and only voted for impeachment after they were convinced that the president had violated the law and intended to abort congressional authority over Reconstruction by any means necessary. Impeachment was, thus, the defensive response of a Congress faced by an aggressive executive using his presidential powers in a way that appeared to subvert the Constitution of the United States.

I

For almost a year after Johnson's final break with the party that elected him to vice-presidential office, many of the more conservative Republicans hoped for reconciliation. As late as February, 1867, when Congress fashioned the Military Reconstruction bill, these conservative Republican congressmen were still trying to negotiate a compromise with their powerful adversary, President Andrew

[3] See W. R. Brock, *An American Crisis: Congress and Reconstruction, 1865-1867* (New York, 1963); La Wanda and John H. Cox, *Politics, Principle, and Prejudice, 1865-1866: Dilemma of Reconstruction America* (New York, 1963); McKitrick, *Andrew Johnson and Reconstruction*; Kenneth M. Stampp, *The Era of Reconstruction, 1865-1877* (New York, 1965); and Hans L. Trefousse, *The Radical Republicans*.

Johnson.[4] When, at the same time, more radical Republicans announced their intentions to propose impeachment in the House, the Republican caucus, led by the influential John A. Bingham—author of the first section of the Fourteenth Amendment—and Elihu B. Washburne, forbade any Republican from bringing impeachment resolutions to the floor without first getting caucus approval. Moreover, the caucus required that any actual impeachment have the sanction of the House Judiciary Committee.[5] The radicals refused to obey the caucus dictate and proposed impeachment resolutions anyway, but the Republican majority, trying to stifle debate, hurriedly referred them to various committees.[6] To conform to one of these impeachment resolutions, the House Judiciary Committee began slowly to investigate the president's conduct. In March, 1867, dismayed by the committee's slow progress and evident coolness to their project, radicals tried to bypass it and win caucus approval for impeachment. Again Bingham, now aided by Judiciary Committee Chairman James F. Wilson, thwarted his restive Republican colleagues.[7]

Defeated in their attempts to institute impeachment proceedings against Johnson, radicals, led by Representatives Thaddeus Stevens, Benjamin F. Butler, and George S. Boutwell, and Senators Charles Sumner and Charles Drake, hoped to keep Congress in session over

[4] *New York Tribune*, Feb. 15, 1867, p. 1; Feb. 17, 1867, p. 1; Feb. 18, 1867, p. 1. Unpublished testimony before the Select Committee . . . on a Corrupt Bargain with the President, Papers of that committee, 39 Congress, Record Group 233, National Archives, Washington, D.C.

[5] *New York Times*, Jan. 6, 1867, p. 1; Jan. 7, 1867, p. 5. Bingham was the second-ranking House Republican member of the Joint Committee on Reconstruction and author of the civil rights section of the Fourteenth Amendment; Washburne was the senior Republican in the House and also a member of the Reconstruction Committee.

[6] *Congressional Globe*, 39 Congress, 2 session, 319-21 (Jan. 7, 1867), 443-46 (Jan. 14, 1867), 807-808 (Jan. 28, 1867), 991 (Feb. 4, 1867).

[7] *New York Times*, Mar. 7, 1867, p. 4; Boston *Evening Journal*, Mar. 6, 1867, p. 4; Mar. 7, 1867, p. 4; Senator James W. Grimes to Mrs. Grimes, Mar. 12, 1867, quoted in William Salter, *The Life of James W. Grimes, Governor of Iowa, 1854-1858; Senator of the United States, 1859-1869* (New York, 1876), 323; Senator John Sherman to William T. Sherman, Mar. 7, 1867, quoted in Rachel S. Thorndike (ed.), *The Sherman Letters: Correspondence Between General Sherman and Senator Sherman from 1837 to 1891* (New York, 1894), 289-90; Francis Fessenden, *Life and Public Service of William Pitt Fessenden*, 2 vols. (Boston & New York, 1907), II, 128.

the summer of 1867, both to guard against presidential intrigue and to maintain pressure for Johnson's removal. But here again more conservative Republicans, led by Bingham and James G. Blaine in the House, and Lyman Trumbull and William Pitt Fessenden in the Senate, checked the enthusiasm of their more radical colleagues.[8] When Johnson's provocative activities forced the 1867 summer meeting that conservative Republicans had sought to avoid, they limited business to amendments to the Reconstruction act and then squelched a radical effort to call an October session to deal with impeachment.[9] So the majority of Republican congressmen hardly displayed that eagerness for revenge upon the president that subsequent generations of Americans ascribed to them.

II

That reluctance to impeach President Johnson becomes even more apparent when one analyzes the dispute between radical and nonradical Republicans over the nature of impeachable offenses—a controversy still of importance. This controversy turned upon opposing interpretations of the terms "high crimes and misdemeanors," which provide, along with outright treason and bribery, the sole grounds for impeachment under the Constitution.[10] Conservatives, fearful of

[8] After a hard-fought struggle, Congress adjourned over the summer of 1867 with a provision allowing it to reconvene if a quorum was present on the first Wednesday in July. Behind the scenes, Representative Robert C. Schenck, generally allied with the more radical Republicans, and Senator Edmund D. Morgan, a conservative Republican, cochairmen of the Republican Congressional Campaign Committee, were delegated the responsibility of deciding whether Congress need meet. All had agreed that a July meeting was unlikely. *Cong. Globe*, 40 Cong., 1 Sess., 16 (Mar. 7, 1867), 303-308, 315-20 (Mar. 23, 1867), 321-22, 331, 334 (Mar. 25, 1867), 352-60 (Mar. 26, 1867), 387-91 (Mar. 27, 1867), 401-408, 419-20, 425-27 (Mar. 28, 1967), 438-41, 446-54 (Mar. 29, 1867); Zachariah Chandler, speaking at Ashtabula, Ohio, in McPherson scrapbook: Campaign of 1867, II, 135-36, in the Edward McPherson Mss., Library of Congress, Washington, D.C.

[9] Boston *Daily Advertiser*, July 4, 1867, p. 1; *Cong. Globe*, 40 Cong., 1 Sess., 480 (July 3, 1867), 481-99 (July 5, 1867), 565-67 (July 10, 1867), 587-90 (July 11, 1867), 732-35 (July 19, 1867).

[10] These differing concepts were developed in three major exchanges during the critical year preceding the great trial. The first was an indirect exchange in the *American Law Register* in March and September, 1867, between Professor Theodore W. Dwight of Columbia College Law School and Representative (for-

the institutional and political effects of impeachment on the stability of the country, turned to the theory propounded by the defense in several earlier nonpresidential impeachments, i.e., that government officers could be impeached only for indictable violations of criminal statute or common law. Many historians studying impeachment have accepted this position, accusing the more radical Republicans, who insisted on a broader interpretation of "high crimes and misdemeanors," of perverting the impeachment process in a purely political vendetta. But those who espoused the narrow view had a very difficult task in sustaining it against the weight of precedent and authority that contravened it, and it has been rejected by modern scholars who have investigated the question.

There had been innumerable English impeachments based on nonindictable offenses on the part of royal officials before the framing of the American Constitution. Every impeachment brought by the House before the Senate in 1868 had similarly alleged nonindictable but wrongful conduct, and in two cases the Senate convicted the defendants and removed them from office. Brant, who tries valiantly to limit the impeachment power which he feels is so liable to abuse, concedes that liability for criminal conduct alone would restrict the power too narrowly. He adds as grounds for removal "violations of the oath of office," a rather nebulous term in light of the vagueness of such oaths.[11]

merly Judge) William Lawrence of Ohio, a member of the House Judiciary Committee: the second clash came in the Judiciary Committee's majority and minority reports on the impeachment resolution of November-December 1867; and the third was embodied in the speeches that Representative George S. Boutwell and Judiciary Committee Chairman Wilson, as ranking signers respectively of the majority and minority reports, delivered on the floor of the House in defense of their positions. Dwight, "Trial by Impeachment," *American Law Register*, XV, old series (Mar., 1867), 257-83; Lawrence, "The Law of Impeachment," ibid. (Sept., 1867), 641-80; *House Report No. 7*, 40 Cong., 1 Sess., 1-59 (Majority), 59-105 (Republican minority), 105-11 (Democratic minority); *Cong. Globe*, 40 Cong., 2 Sess., appendix 54-62 (Dec. 5, 6, 1867: Boutwell), 62-65 (Dec. 6, 1867: Wilson). Charles Mayo Ellis wrote a less influential article, endorsing what would become the radical position, "The Causes for Which a President Can Be Impeached," *Atlantic Monthly*, XIX (Jan. 1867), 88-92. The arguments echoed those forwarded in earlier impeachments, precedents upon which participants on both sides drew, described in Brant, *Impeachment*, 46-83, 122-32; Lynn W. Turner, "The Impeachment of John Pickering," *American Historical Review*, LIV (Apr., 1949), 485-507; and Richard B. Lillich, "The Chase Impeachment," *American Journal of Legal History*, IV (Jan., 1960), 49-72.

[11] See Benedict, *Impeachment and Trial*, 26-36; Berger, *Impeachment*, 53-102,

As has been noted, radicals endorsed a much broader interpretation of impeachable offenses. Turning to the English precedents, examples of earlier American impeachments, and the almost unanimous agreement of the great American constitutional commentators of the early nineteenth century, the radicals argued that "our forefathers adopted a Constitution under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment."[12] They repeated the logic which preeminent legal scholars of the early Republic—Joseph Story, William Duer, James Kent, William Rawle, and the authors of the *Federalist*—felt compelled a broad construction of the impeachment power. The radicals recognized that the framers of the Constitution had defined the roles of the president, Congress, and the judiciary so loosely that in practice the maintainance of proper governmental checks and balances, which they believed guaranteed liberty, depended upon the good faith and mutual self-restraint of those entrusted with power. They felt that the danger lay not so much in the possibility that the president or lesser executive officers might abuse powers which the Constitution *had* delegated to them by acting in violation of explicit provisions of law. Although earlier constitutional analysts had arrived at the same conclusion, this consideration was stated most succinctly by the great nationalist legal scholar John Norton Pomeroy, writing at the very time the Johnson impeachment became a topic of popular discussion:

> The importance of the impeaching power consists . . . in the check which it places upon the President and the judges. They must be clothed with ample discretion; the danger to be apprehended is from an abuse of this discretion. But at this very point where the danger exists, and where the protection should be certain, the President and the judiciary are beyond the reach of Congressional legislation. Congress cannot . . . inter-

and especially 305-306, where Berger challenges the citations of Theodore Dwight, the leading legal spokesman for the conservative position; David Y. Thomas, "The Law of Impeachment in the United States," *American Political Science Review*, II (May, 1908), 378-95; Alexander Simpson, Jr., *A Treatise of Federal Impeachments* (Philadelphia, 1916), 30-50; C. X. Potts, "Impeachment as a Remedy," *St. Louis Law Review*, XII (1927), 23-25; Andrew C. McLaughlin, *A Constitutional History of the United States* (New York, 1935), 320-24; Samuel P. Weaver, *Constitutional Law and Its Administration* (Chicago, 1946), 167; Edward S. Corwin, *The Constitution of the United States of America: Analysis and Interpretation* (Washington, 1952), 502-504; Brant, *Impeachment*, 23.

[12] Lawrence, "The Law of Impeachment," 647.

> fere with the exercise of a discretion conferred by the Constitution . . . If the offence for which the proceeding may be instituted must be made indictable by statute, impeachment thus becomes absolutely nugatory . . . in those cases where it is most needed as a restraint upon violations of public duty.[13]

For that reason, this school of analysts agreed, impeachment should be "of a liberal and comprehensive character, confined as little as possible to strict forms."[14]

Radicals complained of precisely the type of offenses these legal authorities believed were impeachable. There can be little doubt that Johnson had provided ample grounds for impeachment under this doctrine, by exercising his discretionary power in a manner that was strongly opposed by Congress. It was through this discretionary power under the Constitution that he had pardoned nearly all those who had rebelled, specifically requiring the return to them of all of their previously abandoned land. Thus President Johnson foreclosed the possibility of land reform in the South based on confiscation, in effect nullifying Congress's cautious legislative approach in that area.

The congressionally inspired Freedmen's Bureau act of 1865 had altered fundamentally the concept of confiscation. Under its terms, Southern lands abandoned by owners, which were subject to confiscation, were put under the administration of the bureau to be used to aid black men in the transition from slavery to freedom. The commissioner of the bureau was empowered, under the direction of the president, to set aside for the use of the freedmen and refugees the abandoned land and land to which the government had acquired title

[13] Pomeroy, *An Introduction to the Constitution of the United States* (New York, 1870), 491-92. Although first published in 1870, Pomeroy had completed the text by 1868, when he had it copyrighted.

[14] William Rawle, *A View of the Constitution of the United States of America*, 2nd ed. (Philadelphia, 1829), 211-12; Alexander Hamilton, *The Federalist, No. 81*, in Hamilton, James Madison, and John Jay, *The Federalist on the New Constitution, Written in the Year 1788* . . . (Washington, D.C., 1818), 501-11, especially 505; William Alexander Duer, *Outlines of Constitutional Jurisprudence of the United States* (New York, 1833), 89-91, and *A Course of Lectures on Constitutional Jurisprudence*, 76-78; Joseph Story, *Commentaries on the Constitution*, 2 vols. (Boston, 1851), I, 553-58; James Kent, *Commentaries on American Law*, ed. George F. Comstock, 11th ed., 3 vols. (Boston, 1867), I, 302, 367n; Timothy Farrar, *The Manual of the Constitution of the United States* (Boston, 1867), 436-37.

through confiscation proceedings. The land was to be divided into forty-acre plots or less and rented to individual freedmen and refugees for three years. At the end of the three years, or any time earlier, the occupants could purchase the land they were working, receiving from the government "such title thereto as the United States can convey."

The peculiar wording of the Freedmen's Bureau act referred to the provision of the Confiscation act which limited confiscation of Southern property to the lifetime of the rebel owner. This provision had been added at the insistence of President Lincoln in 1862, but in 1865 congressional Republicans evidenced their intentions to proceed with land reform when each house passed a bill which repealed the lifetime limitation. However, since no single bill passed both houses, the repeal did not go into effect. A large literature accumulated indicating how close Republicans came during the war to inaugurating a real land reform in the South.[15]

The president's land-return policy wreaked havoc upon the newly created Freedmen's Bureau, annuling its congressional mandate to rent land to freedmen at low rates or to rent to lessees who would deal fairly with black laborers. Within a year of the close of Civil War hostilities, the bureau had been forced by Johnson's policy to return to Southern white owners over one-half of the land that it had held at war's end.[16]

[15] *United States Statutes at Large*, XIII, 507-509; LaWanda Cox, "The Promise of Land to the Freedmen," *Mississippi Vally Historical Review*, XLV (Dec., 1958), 413-40; Paul W. Gates, "Federal Land Policy in the South, 1866-1888," *Journal of Southern History*, VI (Aug., 1940), 303-30; John A. Carpenter, *The Sword and the Olive Branch: Oliver Otis Howard* (Pittsburgh, 1964), 106-107. For experimental land reforms and the pressure leading to creation of the Freedmen's Bureau with its land-reform potential, see John G. Sproat, "Blueprint for Radical Reconstruction," *Journal of Southern History*, XXIII (Feb., 1957), 25-44; Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (New York, 1964); George R. Bentley, *A History of the Freedmen's Bureau* (Philadelphia, 1955), 16-49; William S. McFeely, *Yankee Stepfather: General O. O. Howard and the Freedmen* (New Haven, 1968), 45-64.

[16] Message from the President Relative to Pardons and Abandoned Property, *House Executive Document No. 99*, 39 Cong., 1 Sess.; *House Report No. 30*, 40 Cong., 2 Sess.; William S. McFeely, *Yankee Stepfather*, 111-17; Oliver Otis Howard, *Autobiography of Oliver Otis Howard*, 2 vols. (New York, 1908), II, 234-36; Jonathan T. Dorris, *Pardon and Amnesty Under Lincoln and Johnson: The Restoration of the Confederates to Their Right and Privileges* (Chapel Hill, 1953), 227-33; Carpenter, *The Sword and the Olive Branch*, 106-109.

Moreover, when Johnson proceeded, without congressional authority, to begin the process of Reconstruction in the South, he ignored the Test Oath law in appointing certain provisional governors. The law required federal appointees to swear that they had never aided the rebellion. If strictly enforced, it would have effectively barred former Confederate military or civic officers from receiving appointments. Johnson also permitted the secretary of the treasury to ignore it in the appointment of Southern treasury officials, thereby placing control of an immense patronage system in the hands of men Congress clearly had proscribed.[17] By his encouragement of former Confederates, his blatant antipathy toward racial equality before the law, his inflammatory speeches—none of which violated law—Johnson succeeded in creating a spirit of determined resistance in the South to concessions on great war issues of importance to Northerners. The consequences for Southern loyalists, especially blacks, were disastrous.

III

Of course, Johnson had perpetrated these "offenses" (in the eyes of the radicals) before Congress had clearly manifested its hostility to his lenient Reconstruction policy. Congress overrode his program with the Reconstruction act of March, 1867, which, while not dispersing outright the governments created under Johnson's authority, made these governments provisional only. That law placed them under the ultimate control of five military commanders until each state framed a constitution guaranteeing equal legal and political rights to its citizens. Throughout 1867, Johnson used his discretionary powers as chief executive and commander-in-chief of the armed

[17] Hugh McCulloch, *Men and Measures of Half a Century* (New York, 1888), 227, 386; Gideon Welles, *Diary of Gideon Welles—Secretary of the Navy Under Lincoln and Johnson*, 3 vols., (Boston and New York, 1911), II, 318-19 (June 20, 1865), 357-58 (Aug. 11, 1865); *Senate Executive Document No. 3*, 39 Cong., 1 Sess. (Dec. 18, 1865); Testimony on Impeachment, *House Report No. 7*, 40 Cong., 1 Sess., appendix, 604-11, 661-63; Message from the President Relative to the Oath of Office, *House Executive Document No. 81*, 39 Cong., 1 Sess. (Apr. 6, 1866); Letter of the Secretary of the Treasury, *Senate Executive Document No. 38*, 39 Cong., 1 Sess. (Apr. 6, 1866). Of the seven provisional governors Johnson appointed, only two clearly could have taken the test oath had he required it of them.

forces in a systematic effort to defeat the Republican legislative program. Within four months of the passage of the Reconstruction act and the first supplement to it, Johnson's attorney general, Henry Stanbery, appeared with a formal opinion which virtually emasculated Congress's program, forcing Republicans to return to Washington to patch the torn netting of the law. Stanbery's interpretation minimized the power of the military authorities to which Congress had entrusted administration of the unreconstructed states. According to the attorney general, the military could not remove recalcitrant officials of the Johnsonian provisional governments, enforce national laws in military courts, take cognizance of crimes committed before Congress passed the Reconstruction act, or prohibit activities not in violation of state or national statute law. His interpretation also provided that registration boards authorized under the Reconstruction law had to accept Southerners' oaths that they were not disqualified from voting and denied the boards power to investigate whether the oath-taker had perjured himself.

General Daniel Sickles, whose acts as military commander in the Carolinas Stanbery had specifically denounced as illegal, angrily requested to be relieved from duty so he could defend his conduct before a court of inquiry. "[T]he declaration of the Attorney General that Military authority has not superceded [the provisional governments] . . . prevents the execution of the Reconstruction acts, disarms me of means to protect life, property, or the rights of citizens and menaces all interests in these States with ruin."[18]

When Congress again adjourned, Johnson acted to gain more direct control of the military authorities to which Congress had entrusted enforcement of the Reconstruction law. In August, 1867, he suspended Secretary of War Edwin M. Stanton and he followed this act by ordering the removal of one of the five commanders in the South, General Philip Sheridan, who had come into conflict with the former rebels in Louisiana's provisional government. On August 27, the president removed a second commander, Daniel E. Sickles, again because of differences between the military authorities and the John-

[18] United States Department of Justice, *Opinions of the Attorneys General of the United States*, XII, 182-206; Sickles to the Adjutant General, June 19, 1867, Edwin M. Stanton Mss., Library of Congress.

sonian officials in Georgia.[19]

In none of these actions had Johnson violated a law and he had ample formal constitutional authority for each of his acts. But taken as a whole, it was plain by winter, 1867-68, that the president of the United States was consciously and determinedly following a program designed to nullify congressional legislation through the power of executive implementation. Yet in the last week of November, 1867, when the House Judiciary Committee finally reported its conclusion that Johnson's conduct justified impeachment, only five of the seven Republican members signed its statement. Chairman Wilson and another congressman on the committee joined the two Democratic members in opposition. With their colleagues on the committee divided, with their chairman in opposition, the majority of Republicans on December 7, 1867, influenced by Bingham, Wilson, Blaine, and Washburne, voted with Democrats to table the impeachment resolution on the floor of the House.[20] Naturally, the radical minority was outraged. "If the great culprit had robbed a till; if he fired a barn; if he had forged a check; he would have been indicted, prosecuted, condemned, sentences, and punished," the radical editor of the New York *Independent*, Theodore Tilton, fumed. "But the evidence shows that he only oppressed the Negro; that he only conspired with the rebel; that he only betrayed the Union party; that he only attempted to overthrow the Republic—of course, he goes unwhipped of justice."[21]

Radical anger was so great at this final failure that an outright party schism threatened. Voicing the feelings of the defeated Republicans, Tilton mourned, "[A] Republican majority of cowards gagged a Republican minority of statesmen." Two days after the

[19] General Ulysses S. Grant to Pope, Sept. 9, 1867. Headquarters of the Army, letters sent. Record Group 108, National Archives, Washington, D.C.

[20] *Congressional Globe*, 40 Cong., 1 Sess., 791-92 (Nov. 25, 1867), 2 Sess., 61-62 (Dec. 5, 1867), 65-67 (Dec. 6, 1867), 67-69 (Dec. 7, 1867), appendix, 54-56 (Dec. 5-6, 1867); James A. Garfield to Burke A. Hinsdale, Dec. 5, 1867, quoted in Mary L. Hinsdale (ed.), *Garfield-Hinsdale Letters: Correspondence Between James Abram Garfield and Burke Aaron Hinsdale* (Ann Arbor, Mich., 1949), 117-18; Fessenden to Francis Fessenden, Dec. 1, 1867. William P. Fessenden Mss., Bowdoin College Library, Brunswick, Maine; New York *National Anti-Slavery Standard*, Dec. 14, 1867, p. 2.

[21] New York *Independent*, Dec. 12, 1867, p. 4.

vote, radicals met at Thaddeus Stevens' residence to discuss the prospects for creating a separate radical congressional party organization.[22]

IV

But Johnson, freed, he thought, from the threat of impeachment, embarked on an even more aggressive course. On December 28, 1867, he removed General John Pope from his command over Georgia and Alabama, and General Edward O. C. Ord from his command over Arkansas and Mississippi. He replaced them with the more conservative George Meade and the archconservative Alvan C. Gillem. At the same time President Johnson replaced Meade's subordinate, General Wager Swayne, who had been delegated immediate authority over Alabama. With these shifts of military personnel by the president, control of the military in every reconstructed state passed to officers more sympathetic to former rebels than to Southern loyalists.[23]

As Johnson continued his offensive, Freedmen's Bureau Commissioner Oliver Otis Howard expressed deep concern to one of his friends that "The President . . . musters out all my officers. . . . Measures are on foot . . . which are doubtless intended to utterly defeat reconstruction."[24] With the military "influence" in the hands of conservatives, Southern loyalists despaired of winning their states' compliance with the Reconstruction acts. From throughout the

[22] *New York Times* quoting the New York *National Anti-Slavery Standard*, Dec. 13, 1867, p. 8; New York *Independent*, Dec. 12, 1867, p. 4. Blaine recalled that the failure of the impeachment resolution "led to no little recrimination inside the ranks of the party" in his *Twenty Years of Congress . . .* 2 vols. (Norwich, Conn., 1884-86), II, 347; likewise, radical George W. Julian in *Political Recollections, 1840-1872* (Chicago, 1884), 312-13, and his report in the Centreville *Indiana True Republican*, Dec. 19, 1867, p. 93, published by his brother, Issac.

[23] General John Schofield, commander of the district embracing Virginia, remained in place. He had little sympathy for Republican policy, executing it, he later wrote, in such a way as to 'save that State from the great evils suffered by sister States." Schofield, *Forty-Six Years in the Army* (New York, 1897), 397. See also James L. McDonough, "John Schofield as Military Dictator of Reconstruction in Virginia," *Civil War History*, XV (Sept., 1969), 237-56.

[24] Howard to Edgar Ketchum, Dec. 30, 1867. Howard Mss., Bowdoin College Library, Brunswick, Maine.

South came warnings of the disastrous effects on Congressional reconstruction policies of Johnson's offensive.[25] ". . . Johnson defeats Congress at every point," the Boston *Commonwealth* lamented. "The work of reconstruction, at very short intervals, receives from him a staggering blow. . . . While Congress is passing acts to reconstruct the South, the President is driving a carriage and six through them."[26]

The success of the president's policy was made manifest when pro-Reconstruction forces were defeated in the first state to vote on its new constitution, framed under the terms of the Reconstruction act. In fact Republican forces would prove unable to bring about compliance with the Reconstruction law in four of the ten states that it covered.[27]

Johnson's course appeared to congressional Republicans to be fraught with danger. It seemed, at a minimum, that the president hoped to delay Reconstruction until an anti-Republican reaction developed in the North, born of frustration and weariness with constant crises. Of course, if voters in the states which had not left the Union elected a Democratic Congress before Southern states were reconstructed along Republican lines, it would be a simple matter to repeal the Reconstruction act and recognize the Johnsonian civil

[25] Foster Blodgett to John Sherman, Dec. 30, 1867, Sherman Mss., Library of Congress, Washington, D.C. [This was a circular letter sent to many congressmen.] John C. Underwood to Elihu B. Washburne, Dec. 9, 16, 1868; George Ely to Washburne, Feb. 9, 1868; W. H. Gibbs to Washburne, Jan. 18, 1868, Washburne Mss., L. C.; B. W. Norris to [the Republican congressional Campaign Committee], Jan. 4, 1868; Ed. J. Costello to T. L. Tullock, Jan. 17, 1868, files of the Select Committee on Reconstruction, 40-41 Congresses, R. G. 233, National Archives, Washington, D.C. (file 40A-F29.8 and 40A-F29.23, respectively). *House Miscellaneous Documents Numbers 43, 54, and 57*, 40 Cong., 2 Sess. McKitrick cites several of these letters in his *Johnson and Reconstruction*, 500n. I cannot explain why they carry so little weight in his analysis.

[26] Boston *Commonwealth*, Jan. 4, 1867, p. 2. See also *Chicago Tribune*, Dec. 30, 1867, p. 2; Horace White to Elihu B. Washburne, Jan. 16, 1868, Washburne Mss.

[27] The four were Alabama, Virginia, Mississippi, and Texas, although Republicans repealed part of the Reconstruction law to facilitate Alabama's restoration. Moreover, in the second state to vote upon a new constitution, Arkansas, pro-Reconstruction forces won by a margin of only 1400 out of 55,000 votes. Not until impeachment discouraged white Southerners and forced Johnson to cease interference did Republican margins of victory become comfortable in those states which finally complied with the law. Edward McPherson (ed.), *The Political History of the United States of America During the Period of Reconstruction . . .* 2nd ed. (Washington, D.C., 1875).

governments as legitimate, admitting, then, their representatives to Congress. But this was extremely unlikely. The real danger was that a Democratic presidential candidate might win enough Northern and border-state electoral votes in 1868 to win a majority of the whole, if Democratic votes from unreconstructed Southern states were counted.[28] A second anticipated peril was that Johnson might use the military to interfere with presidential balloting in those states which were yet to comply with the Reconstruction law and be restored by Congress. "Do you not suppose that next November a single soldier at each polling place in the southern country, aided by the whites, could prevent the entire negro [sic] population from voting?" the radical Boutwell asked. Again there was the danger that Democratic electoral votes from Northern and border-states combined with Southern votes won through such illicit tactics might constitute a majority. If the Republican-controlled Congress refused to count Southern votes in either case, as they undoubtedly would, President Johnson might view the refusal as a denial of the democratic process. As Boutwell grimly prophesized: "[T]he next inauguration of a President . . . [would] be the occasion of renewal of fratricidal strife."[29]

Many Republicans believed the president capable of such audacity. During the summer and fall of 1866, Johnson supporters had hinted darkly that if enough Democrats were elected to Congress from the North, they might withdraw from the Capitol and join Southern congressmen-elect in a counter-Congress, arguing that it represented more congressional districts than its Republican-dominated counterpart. Many Republicans believed the scheme had been abandoned only because Northerners had returned an overwhelming Republican majority.[30] Again, in the fall of 1867, rumors of a John-

[28] See Boutwell's prophecy, *Cong. Globe*, 40 Cong., 2 Sess., 595 (Jan. 17, 1868).

[29] *Ibid.*

[30] Justin S. Morrill to Jewett, May 4, 1866, quoted in William B. Parker, *The Life and Public Services of Justin Smith Morrill* (Boston and New York, 1924), 229-30; George S. Boutwell, *Reminiscences of Sixty Years in Public Affairs*, 2 vols. (New York, 1902), II, 79, 107-12; Charles Sumner to John Bright, Sept. 3, 1866, quoted in Edward L. Pierce, *Memoir and Letters of Charles Sumner*, 4 vols. (Boston, 1893), IV, 298-99; Samuel F. Miller to David Davis, Oct. 12, 1866, Davis Mss., L.C.; Testimony on impeachment, *House Report No. 7*, 40 Cong., 1 Sess., appendix, 45-51, 833-34; Adam Badeau, *Grant in Peace: From Appomattox to Mount McGregor—A Personal Memoir* (Hartford, Conn., 1887), 51. John

sonian *coup d'état* swept the country.[31] By 1868, Carl Schurz recalled, "The air . . . throughout the country was buzzing with rumors of iniquities which Johnson was meditating and would surely attempt if he were not disarmed. . . . There was a widespread feeling among well-meaning and sober people that the country was really in some sort of peril. . . ."[32]

V

Republicans knew that the success of such schemes depended upon control of the army, and it was Johnson's apparent efforts to gain control of the military in February, 1868, which convinced even the doubters that a real danger existed. On January 11, the Senate refused to acquiesce in President Johnson's suspension of Secretary of War Stanton as appeared to be required by terms of the Tenure of Office Act, and the next day Stanton resumed his place at the War Office. When General William T. Sherman, who sympathized with the president's position, suggested that Republican conservatives

A. Krout (ed.), "Henry J. Raymond on the Republican Caucuses of July, 1866," *American Historical Review*, XXXIII (July, 1928), 835-42; *New York Times*, July 16, 1866, pp. 4-5; *Chicago Tribune*, July 16, 1866, p. 1; July 17, 1866, p. 2; Aug. 28, 1866, p. 2; Sept. 1, 1866, p. 2; Sept. 14, 1866, p. 2; Sept. 15, 1866, p. 2; Oct. 10, 1866, p. 2; Oct. 11, 1866, p. 2; *New York Tribune*, Sept. 12, 1866, p. 4; Sept. 13, 1866, p. 4; Sept. 18, 1866, p. 4; Sept. 20, 1866, p. 4; Boston *Right Way*, Aug. 18, 1866, p. 1; Sept. 22, 1866, p. 1; New York *Independent*, Oct. 25, 1866, p. 4.

[31] John Sherman, speech at Cincinnati, quoted in Ms. of Edward McPherson scrapbook, Elections of 1867, II, 111, McPherson Mss., L.C.; Carl Schurz to Mrs. Margarethe Meyer Schu-z, Aug. 31, Nov. 9, 1867, quoted in Joseph Schafer (ed.), *Intimate Letters of Carl Schurz, 1841-1869* (Madison, Wis., 1928), 392-93, 412-416; John Binny to William P. Fessenden, Sept. 10, 1867, Fessenden Ms., L.C.; Boston *Daily Advertiser*, Aug. 29, 1867, p. 2; Sept. 2, 1867, p. 2; *New York Times*, Sept. 17, 1867, p. 4; Oct. 1, 1867, p. 4; *Chicago Tribune*, Sept. 27, 1867, p. 2; Oct. 1, 1867, p. 1; Oct. 3, 1867, p. 1; Oct. 11, 1867, p. 2; Boston *Evening Traveller*, Oct. 5, 1867, p. 1; New York *National Anti-Slavery Standard*, Oct. 27, 1866, p. 2; "The Conspiracy at Washington," *Atlantic Monthly*, XX (Nov., 1867), 633-38. William A. Russ, Jr., indicates that these rumors were produced by Republicans for political effect, although he himself points out that the "statements of rebel and Copperhead papers which called upon the President to use force are legion"; Russ, "Was There Danger of a Second Civil War During Reconstruction?" *American Historical Review*, XXV (June, 1938), 39-58 (quoted at 43). The entire subject needs restudying.

[32] Schurz, *Reminiscences of Carl Schurz*, 3 vols. (New York, 1908), III, 252. It is clear by Schurz' bemused tone that by the time he wrote of these fears he no longer remembered how real they then appeared.

and moderates would be willing to dump Stanton in favor of the archconservative, but independent-minded, Jacob D. Cox, he found Johnson uninterested in compromise. Johnson wanted his own man in the office. Sherman abandoned his efforts, realizing, as he wrote home, that "there must be something behind the scenes."[33] Instead of compromising, Johnson determined to take the ominous step—at least to Republicans—of creating a new army department, the Army of the Atlantic, with headquarters in Washington. The sympathetic Sherman would be placed in command. Sherman resisted the appointment, but nonetheless on February 6, 1868, Johnson ordered General Grant to promulgate an order creating the department and giving command to Sherman. At the same time he acted to promote Sherman to General of the Army—Grant's rank—sending the nomination to the Senate on February 13, 1868. Johnson himself knew the effect his action would have on congressional Republicans: "This would set some of them thinking," his secretary quoted the president as saying.[34]

Sherman refused the command and telegraphed his brother, Senator John Sherman of Ohio, to oppose confirmation of his new rank in the Senate. "The President would make use of me to beget violence. . . ." he wrote, "He has no right to use us for such purposes, though he is Commander-in-Chief." On February 19, Johnson acceded to Sherman's pleas and rescinded his transfer to the new command.[35]

Two days later Johnson again removed Stanton, this time without complying with the provision of the Tenure of Office law. To

[33] W. T. Sherman to Ellen Ewing Sherman, Jan. 13, 1868. W. T. Sherman Mss., Notre Dame Archives, South Bend, Ind. The letter is excerpted in M. A. deWolfe Howe (ed.), *Home Letters of General Sherman* (New York, 1909), 364-65.

[34] Notes of Col. William G. Moore, Feb. 17, 1868, in the Andrew Johnson Mss., L.C.

[35] W. T. Sherman to Johnson, Jan. 31, Feb. 14, 1868, quoted in Rachel Sherman Thorndike (ed.), *The Sherman Letters: Correspondence Between General and Senator Sherman from 1837 to 1891* (New York 1894), 300-304; W. T. Sherman Mss., Notre Dame Archives (excerpts quoted in Howe [ed.], *Home Letters of General Sherman*, 369-70); Sherman to Thomas Ewing, Sr., Feb. 13, 1868, quoted *ibid.*, 370-74; Johnson to Grant, Feb. 6, 1868; Johnson to Sherman, Feb. 19, 1868. Headquarters of the Army, Letters Received, Record Group 108, N.A.; W. T. Sherman to John Sherman (letter), Feb. 14, 1868; W. T. Sherman to Grant, Feb. 14, 1868; W. T. Sherman to John Sherman (telegram), Feb. 14, 1868, quoted in Thorndike (ed.), *The Sherman Letters*, 305-306.

Republicans it appeared to be another step in a course which threatened incalculable disaster to their program and to the country. But this time all Republicans agreed that Johnson had crossed the bounds of legality, that he had, as even Bingham conceded, "deliberately . . . violated . . . the laws of the country."[36] Conservative Republicans, sadly and bitterly but feeling they were left no choice, joined the radicals in presenting articles of impeachment to the Senate.[37]

So the impeachment of President Andrew Johnson was no hasty, passionate decision by vindictive Radicals. That long-time opponent of impeachment, Judiciary Committee Chairman Wilson, perhaps best expressed the spirit of his nonradical colleagues when he explained: "Guided by a sincere desire to pass this cup from our lips, determined to drink it if escape were not cut off by the presence of a palpable duty, we at last find ourselves compelled to take its very dregs."[38] The Johnson impeachment was the reluctant decision of men who felt that they had been pushed to the wall and forced to

[36] *Congressional Globe*, 40 Cong., 2 Sess., 1340 (Feb. 22, 1868).

[37] During the trial, Johnson's counsel argued that Stanton was not protected under the general provisions of the Tenure of Office act. The House and Senate had originally disagreed over whether the tenure of department heads should be protected under the bill—the House insisting upon protection, the Senate insisting that the president's power to replace Cabinet members should remain unhammeled. As often happens in such cases, the conference committee on the bill decided to obfuscate rather than compromise the issue, providing that the terms of department heads would run one month beyond the term of the president who appointed them, during which time they could be removed only with the consent of the Senate. The House conferees confidently announced that this language was "in fact an acceptance by the Senate of the position of the House." *Congressional Globe*, 39 Cong., 2 Sess., 1349 (Feb. 19, 1867). Representatives did not know that the Senate conferees had told their colleagues the opposite. *Ibid.*, 1512-18 (Feb. 18, 1867). Moreover, the president appeared to acknowledge the necessity for Senatorial approval of a removal when he suspended Stanton in August 1867, naming Grant his replacement, secretary of war *ad interim*, as the act required. In December, Johnson had sent a message to the Senate, once more as the law required, offering justifications for Stanton's removal. When the Senate rejected Johnson's presentation, Stanton retook possession of the War office, again in conformity with the law. All this seemed to have settled the question of whether Stanton was covered by the act.

[38] *Congressional Globe*, 40 Cong., 2 Sess., 1356 (Feb. 24, 1868). See also the remarks of Representatives Rufus P. Spalding, *ibid.*, 1340 (Feb. 22, 1868); Ebon C. Ingersoll, *ibid.*, 1358 (Feb. 22); Austin Blair, *ibid.*, 1367-68 (Feb. 22); James K. Moorhead, *ibid.*, appendix, 157 (Feb. 24); Frederick E. Woodbridge, *ibid.*, 1387-88; and Luke P. Poland, *ibid.*, 1394 (Feb. 24).

take a stand defending the constitutional prerogatives of Congress against presidential aggression. For as even the most conservative of Republicans (in this case Representative Austin Blair of Michigan) finally saw it, President Johnson had "thrown the gauntlet to Congress, and says to us as plainly as words can speak it: 'Try this issue now betwixt me and you; either you go to the wall or I do.' "[39]

[39] *Ibid.*, 1368 (Feb. 22, 1868).