

Herman Belz, Reconstructing the Union: Theory and Policy During the Civil War  
[1969]

Belz takes a look at Congressional reconstruction proposals during the war. . . A shift in focus away from Lincoln and the executive role is needed. Important to see that Congress had its own ideas and own set of priorities so that congressional opposition to Johnson can be placed in better and more precise and accurate historic perspective. . . .

## 1. Reconstructing the Union

Describes reconstruction as both a political and constitutional issue, . . .

What did the Constitution provide in terms of a partial blueprint for the healing of the nation after the war.

The basic law of the land provided areas of responsibility for both the President and the Legislature.

The pardoning power was invested in the President and no other authority, Also while the war was on the powers of commander-in-chief gave the Executive the most direct responsibilities in the seceded states.

But Congress also had authorized powers. . . When the South was ready to apply for representation in the national Congress it was the sole role of the Congress to readmit or not the new representatives. . .

Reading of the Constitution ~~could~~ would mean that Reconstruction would be a joint endeavor of both executive and legislative. . . It could mean harmony or disharmony also. . .

He notes that the "guarantee clause" of the Constitution resided in ~~the~~ the federal Govt. the power to assure a republican form of govt. Did this fall upon the legislature or the Executive or both or what? Henry W. Davis interpreted this clause as further exegesis in the Taney decision in Luther vs. Borden as residing in the Congress. . . Giving that branch the supremacy over the issue of reconstructing the southern states.

Finally, there grew up during the course of the war two distinctly separate views as to the condition of the state-vis-a-vis--the federal govt. The Executive position was that the Union was permanent and therefore the states were indestructible. . . The requirements for reconstruction was only that loyal officers be selected by loyal citizens as a precondition for full restitution of states' rights, etc. . . The other view that developed as the war lengthened was found in the Congress. This was the theory of territorialization, regarding states as having lapsed into the condition of territories, making it necessary for Congress to assume direct control over them.

## 2. War Aims and Reconstruction

In this and the succeeding chpts Belz deals with the evolution of support for territorialization. . . It took many forms--state suicide and other variants. . . But as the war turned into the second year there were a significant number of congressional Republicans who were moving in this direction.

Lincoln had insisted upon the position that reconstruction should be

carried out as swiftly as possible. . . ~~he/cp/provisional~~ The Presidential ideal was the way he handled the Virginia session . . . West Virginians set up their own Govt. . . These Virginians were loyal to the Union . . . They decided to wait rather than secede at first and sent loyal representative to Washington . . . They were seated immediately. . . Ultimately the Virginia loyalists would form their own state of West Virginia. . .

But Lincoln's hope was that all the southern states could be reconciled and brought back into full relationship with the Union without the alteration of changing of the state institutions, etc. . .

In 1862 Lincoln sent Andrew Johnson off to Tennessee as the new Military Governor. . . Military rule was to serve as an interim arrangement until Johnson could win the state to the Union and see to it that enough loyal Tennesseans could be brought into public office. . .

Lincoln's approach to restoration or reconstruction was thru a military governor and the galvanizing of those southerners in the states occupied to go to the polls and elect representatives to Congress. . . After the enunciation of the Emancipation Proclamation this was the Lincoln approach . . . It had some success in Tennessee and later in Louisiana. . . the only occupied former confederate state were 50% of the electorate voted for their new representatives. . . The point being, that Lincoln was in the drivers seat. . . His successes were able at least to block out the congressional Republicans who were urging territorialization . . .

By 1863 though congress was mounting a consensus that reconstruction should be legislative in nature. . . That Lincoln's actions were usurping the constitutional powers of the congress to handle reconstruction . . .

Correction: by 1863 prior to Lincoln's announcement of his Amnesty and Reconstruction Proclamation . . . Louisiana had elected state and local officials. . . They had not tried to send any representatives to the national Congress. . . Only West Virginia had managed this step . . . because her situation was entirely different. . . . But with Union victories coming in it appeared as though the momentum was with the President. . .

By the end of the year 1863 Lincoln and the Radicals found themselves in close accord.

Belz deals with Lincoln's unsuccessful efforts to get the Union forces in Louisiana to accept the emancipation provisions in the state constitution. The Free forces battled against the conservatives. . . both groups had affirmed their loyalty to the Union . . . but they divided over the question of the freedman. . . The conservatives in the state wanted to rejoin the Union without making any concessions toward the blacks. . . They did not want to include emancipation in any new state constitution . . . Lincoln ultimately dropped the idea of allowing the Louisianans to decide. . . despite the fact that the Louisiana situation was his more hopeful experiment in restoration . . . It was the only southern state to turn out the number of voters in 1862 . . . But Lincoln's decision that reconstruction must also include emancipation was too extreme for the conservative forces in the state.

He analyzes the December 1863 Amnesty and Emancipation Proclamation. Belz argues that at the time it was closer to the Radical position . . . Radicalism as defined then had shifted from territorialization . . . Lincoln had never agreed to this extreme. But the inclusion of the emancipation doctrine in any reconstructed state was a radical position by the end of 1863. . . In terms of the Lincoln reconstruction program all other aspects of the state would remain intact. The boundaries, subdivisions, the constitution, and the general code of laws would pertain as before the war if this was the choice of Lincoln's 10% . . .

But that reunion was predicated upon emancipation was to move in the direction of the radical demands. . . .

Belz notes that Lincoln's plan of reconstruction gave the Executive the controlling hand in reunion . . . Lincoln noted that his plan was not inflexible. . . That readmittance of the states to full acceptance still rested with the Congress. . . He recognized this. That the plan was not the last word. . . But by the end of 1863 the radicals in Congress generally agreed with the Lincoln approach.

It must be remembered that the conservative congressional opinion on reconstruction was that the south could return to the Union without making any concessions that would "infringe" upon the social, political arrangements of the state. . . Under no conditions at all . . .

By the end of 1863 it looked as though the executive and legislative branches were moving along in harmony. But by July of 1864 with the Wade-Davis bill presented in the Congress the legislative branch was moving to assert its own authority over reconstruction. Belz points out that this confrontation was in the cards from the beginning. V The Republican congress from the first had assumed that the major role in reconstruction rested with the Congress and not the President. . .

The crisis between the executive and the legislative branches did not come until 1864 in the form of the Wade-Davis bill.

The chpt on the W-D bill is perhaps the best in the book . . .

The reaction against Lincoln's reconstruction policy by the radicals and the party in part was the President's policy in Louisiana. The turning point came in Louisiana. . . Lincoln ordered General Banks to proceed ahead with an election . . . The political climate of the state was such that the conservatives were bound to win . . . The Free Union people who supported black suffrage were now shunted aside by Lincoln in his haste to proceed with reconstruction . . . Lincoln was relying on haste and a minimum of conditions so that reconstruction and the war would move ahead simultaneously. . . With Louisiana back in the Union this would provoke political pressure that might bring Mississippi, Arkansas, etc to make her peace with the Union also. . . But under the Banks administration

the former confederates not excluded under the 10% would be back in power and Lincoln made no provisions for the slave once he became a freedman. . . This was an issue he was not prepared to deal with while he was concentrating on a policy that would hasten reconstruction . .

The reaction to the Lincoln plan was the Wade-Davis bill which was charged with an antiadministration purpose. It was not as radical as the Ashley bill defeated in the House in the past December. . . Ashley's measure was strictly territorialization in orientation . . He notes that one of the provisions of the W-D Bill--that is, the 50% figure was to prevent the southern states from entering back into normal relations with the Union until after the war. It was clear that after Louisiana, Florida, Arkansas, etc. . . that while the war was ongoing no confederate state could come up with 50% willing to vote in "Yankee supervised" or authorized elections. . . The bill also prohibited any of the states formerly in insurrection could not vote for Lincoln in the 1864 election . .

But narrow political motivations aside, Belz sees in the W-D bill Congress' objection to the Executive domination of reconstruction, a responsibility that the legislature held to be its own and not the President's. . .

Once again important to see that the W-D bill was not as radical as other congressional proposals. . . It did not include provisions for Negro suffrage or for confiscation (as Stevens wanted) nor did it originate from a territorialization frame of reference as Ashley's. . .

In many ways the W-D bill and the President's policy was not dissimilar: Both placed the execution of policy in the hands of a federal officer in carrying out the administration of the state and enforcing the existing laws (except for slavery) until a loyal govt was formed and seated. Lincoln placed his authority in a military governor and congress in the hands of a civil governor.

Both plans were committed to emancipation as a minimum requirement for reconstruction. And both would deny the suffrage right to the freedman.

{ But there were marked differences in regard to how each would treat the former rebels, and guarantee the rights of the freedmen. In Lincoln's plan was the more conciliatory. . . allowing all former rebels except those in the excluded categories to take an oath to support the Constitution and the emancipation of the blacks. The congressional plan permitted only those who could pass the test of the "iron clad" oath--a test of past loyalty--to rebuild a state govt. More than 50% was required. . This plan was more restrictive, providing greater guarantees against the former rebels returning to power. Lincoln's plan excluded certain categories of former ministerial and military leaders of the Confederacy. . . The W-D bill excluded these. . . and also permanently bar from UB citizenship every person, who after the passage of the W-D bill, continued to hold military or civil office at these ranks in either the state or Confederate service. . . This was an extreme form that was later dropped by the Republicans in Congress.

Lincoln Plan sought the guarantee of the emancipation clause. . . and he emphasized the necessity of education and freedom of the black after peace, but the achievement of these goals was left to the states. Congress proposed to support by legislation the EP and make it apply to those parts of the rebel states exempted from the President's original edict. Congress also intended that blacks should be tried under the same laws as whites, extent the privilege of habeus corpus to freedmen deprived of their liberty, and impose heavy penalties on persons convicted of kidnapping blacks.

Note: A majority of Republicans in both houses supported the Wade-Davis bill. . .

Belz next deals with the efforts of compromise between the the White House of the Congressional Republicans. But the compromise failed. . . and one of the casualties of this compromise effort was Lincoln's reconstruction policy in Louisiana. . . It was defeated by enough Republicans in the House. . .

#### Conclusion

State of the Congressional-Executive divisions at time of Lincoln's death ..

View from the White House: AL's 10% plan was a wartime measure. These govts were predicated on wartime conditions. In view of their limited actual jurisdictions, practical dependence upon the Union army, and small proportion of the population that was genuinely Unionist in sentiment. In short, the Lincoln plan was hardly the arrangement that would be workable when peace broke out. . .

B points out that during the war the congress and president moved toward a middle position--or more compatible position in terms of the state of the rebel states. The congress after a flirtation with territorialization came to the W-D positon. The constitutional status of the rebel states according to the congressional republicans was one of still in the Union but where the republican form of govt had been disrupted. They differed in the sense that the congressional Republicans argued that it was the obligation and constitutional duty of the Congress to/ under the guarantee cluse to impose that republican form of govt. So the rebels were not in a suspended or state's suicide position . . . Territorialization was seen as an indirect recognition that secession had taken place. . . So it was argued that the states were still in the Union but without full-fledged possession of their usual powers. By 1864 Lincoln arrived at a similar position . . . He differed in that he did not want to get cornered in "abstaractions" about this knotty constitutional issue. . . But he moved from the absolute position of indestructibility of states to the point where he recognized that the states were in a kind of limbo and would need federal intervention to bring them to full possession of powers. . .

Belz suggests that once the war was over some of the stark differences between the two branches might have dissolved as peace would bring new conditions and demand new requirements:

Lincoln's 10% plan would have been most likely overturned by the end of the fighting. It is unlikely that govts resting upon only 10% of the populace would have had sound legitimacy to the returning confederate soldiers, etc. . . It was simply too narrow a base to operate from . . . A similar argument for needed revision can be made about the W-D bill with its "iron-clad" oath. . . The conditions of the oath were such that a mere handful of the population would be left to maintain a state govt. . . The logical step for the radicals was to extend the franchise to blacks (qualified) or not . . . to balance the numbers of former rebels who would enter state politics. . .

There was still a wide chasm bwt Lincoln and the Congressional majority on the question of which branch had the constitutional prerogative in reconstructing the southern states. Lincoln moved with the idea that he had the momentum with him . . . He pushed for the acceptance of his 10% plan with hopes that this would give the initiative to the President, etc. He did not deny that Congress had a legitimate role to play. . . He understood their concerns fully in this question. . . Was this difference unbridgeable?

As to fundamental aims. Here the congressional republicans were divided. The majority of the party (moderates) wanted guarantees to the future. They wanted to ratify the antislavery amendment, protect the freedom of the former slaves to the extent necessary to make freedom meaningful and prevent a resurgence of southern power threatening to the GOP. Lincoln supported these aims. . . And most of the party supported his object of a rapid reconstruction with as little social, and economic disruption as possible.

But the radical minority in the Congress wanted more. They wanted to reshape the institutions of the south. To break the planter system, distribute land to the freedmen, exclude former rebels from politics, and enfranchise the former slaves.

Belz concludes that at and of war there were differences between L and his party. Differences over constitutional power, as well as conflicts between L and the radicals. . . But he does not feel that these differences were beyond reconciliation. Lincoln's partisan and political sensitivities would have gone a long way to prevent the breaking up of the party. . . It is hard to believe he would have permitted such things as the promulgation of black codes and violent intimidation and injury to blacks and Unionists dedicated as he was to the welfare of the blacks, unity of the RP, and maintenance of national power. Lincoln and the party had arrived at certain like-mindedness as to these matters upon which a solution could have emerged. . .

Belz, Reconstructing the Union

Re: Extended Notes on Wade-Davis Bill

He notes that the bill was a break from support of Lincoln's reconstruction policy. . . Davis was in disagreement over La.'s reconstruction under general Banks. Davis was politically angry at Lincoln for supporting the Blair faction in the Maryland political arena. . .

In many respects the David bill was more conservative than the Ashley bill. . . One in one important particular, illustrating the concerns of Republicans with black protection, Davis included the proposition that slaves deprived of their freedom under any claim of service should be free by virtue of the federal courts on the writ of habeus corpus. . .

The bill exercised the idea of continuity. . . State laws (exclusion of slavery) were to be upheld, codes, taxes, etc. . . There was no provision for black suffrage in the bill. . .

Constitutionally the bill rested on the same basis as Ashley's . . . instead of territorialization, the clause in the Constitution guaranteeing every state a republican form of government. Because the guarantee applies only to states, Davis bill asserted that the Confederate entities were still states and still in the Union. The reliance upon pre-~~existing~~ existing laws and the provisional Governor's charge to enforce the laws and conduct the civil administration of the state were significant. Such provisions conveyed the idea of the continued existence of the states. . .

The best description of the constitutional status of the states was that they were in suspended animation. They were still in the Union but the Rebellion had damaged the political and constitutional relations with the Republic. It was up to congress to right this rupture. . . So despite the growth of federal power, northerners were ~~willing~~ not willing to give up states' rights concepts altogether.

That the Davis bill recognized the continuum of states rights earned him and his legislation attacks from radicals like Stevenes and Kelly. . . But at the same time the bill, like Lincoln's military reconstruction, reflected a sweeping expression of federal power. . .

To support their assertion of congressional power based upon the guarantee clause, the radicals referred to Taney's ruling in Luther vs. Borden (1849) in which the Chief Justice interpreted the article as placing the responsibility on Congress in establishing a govt in a state. . . .

The Wade-Davis bill was supported by the majority of the party and many of the moderates. Belz reasons that it was more moderate than the Ashley bill of 1862 and the dissatisfaction with Lincoln's plans in La. and Arkansas. . .

Belz, Reconstructing the Union  
Re: Wade-Davis bill--extended notes

(2)

The Lincoln pocket veto of the bill . . . Belz gives the impression that Lincoln acted this manner because he did not want to do anything to jeopardize his own plans working in La. and Arkansas.

Wade-Davis, or rather, Davis responded with the Wade-Davis Manifesto. Despite its political origins and purpose, the Manifesto gave an accurate summary of the congressional position on reconstruction in 1864.

Wade, Davis and other radicals wanted to deny Lincoln the nomination in 1864 and replace him with Chase. . . .

Belz points to the case of reconstruction in La as the initiating resentment against the President's policy. . . The particular point of conflict was the way General Banks was carrying out restoration. Radicals were concerned with the denial of rights to the blacks and the return to power of the former rebels. Initially Lincoln had agreed in 1863 to the enrollment of blacks as candidates to the constitutional convention . . . But he dropped this idea (maybe because of fear of backlash in the 1864 election). In any case General Banks was carrying out Reconstruction after 1863 with the support of the white conservatives in the state. . . abandoning with Lincoln's consent the former Union Free State people who supported black enfranchisement on some qualified basis. . .

So the Wade-Davis bill and Manifesto were antiadministration . . . The specific contention was La. . . But the at the root of it too was jurisdictional question of the right to reorganize these former rebel states. Congressmen who did not agree with all the ideas of Wade and Davis, nevertheless supported the bill because they considered reconstruction a subject of legislative action and because they objected to the application of military power to a matter that was political.