

Harold Hyman, A More Perfect Union: Impact of the Civil War and Reconstruction on the Constitution [1973]

This is the theme that Hyman sees emergent from the Civil War and Reconstruction period. . . .

1. Quarrels that the Constitution Shaped

Hyman deals in the first several chapters with the development of the constitutional issues and the slavery question. . . He demonstrates how the sectional differences developed over slavery on the territories. The South's position on states' rights.

Then deals with the crisis of 1860. How Buchanan's flabby reading of the Constitution left the North in a virtual impasse and turned the Constitution into a paper tiger. . . Then Lincoln came to presidency. Hyman sees Lincoln as a constitutional nationalist. The man to save the credibility of the document in a time of the nation's most fearsome crisis.

The war and how Lincoln turned the Constitution into or read the powers inherent in the Constitution to fight a civil war. . . Many were beginning to feel that the central govt was built on a spring of weakness. He deals with Lincoln's new found wartime powers--building an army and navy. The arbitrary suspension of individual rights; the mass arrests of disloyalists, etc. . . All this was carried out by federal troops. . . All this was new to a generation that believed that the nation was virtually governmentless. . .

17. Reconstruction: On Every Putrid Spot?

With Appomattox and the assassination of Lincoln, Hyman details how far the nation had come under its constitution. The govt coped with the assassination and the transition of power to A. Johnson and the demobilization of a massive European-sized army without threat of coup d'etat. . . In addition the preceding chpts detail how the Union continued throughout the war years with unfettered elections. . . with the expansion of civil liberties, etc. . . The nation that was too puny in 1861 to succor Ft. Sumter had rolled back the Confederacy's European-sized armies; the society that would freeze southern states slaves in servitude in 1861 was now author of the 13th amendment. . .

Hyman admits that the 13th amendment was a conservative measure. . . All that was changed was the old tie of master-slave in terms of property. It was expected that the recent Confederate states would set up their houses--legal codes concerning residents' rough equality in ordinary civil relationships--in order, and the nation need take no further steps. . .

The war then had done two massive things (1) ended the legality of the idea of secession (2) ended chattel slavery in the US. . .

Hyman makes the point that after Appomatox the general concern of the north was to end all unevenness in the states. . . To bring about complete inequalities. . . This was a desire to smooth off the results of the war which ended secession threat and slavery--the two greatest obstructions to a smoothly functioning Union under the Constitution. . . The keen desire to get back to relationships as they existed prior to the war years. . .

Hymen argues that there has been asserted by recent scholars the assumption that the War and Reconstruction transformed the relationship between states and central govt. Rather he sees more of a continuum instead of a dramatic break . . .

The Republicans generally held that states' centered federalism was adequate to continue with freedoms intact. . . They were not intent or saw the constitutional legitimacy in pushing forward a centralization scheme for the federal power . . . Except for those responsibilities that the federal power already wielded prior to the war--tariff, revenues, national defense, that there need be no readjustment. . . No centralized leviathan developed in Washington to replace state-centered federalism; no huge national coercive bureaucracy substituted for local discion-making. The overall War and Reconstruction result was not, as frequently intimated, an absolute increase in positive national powers and functions, but a decrease in state and local autonomy. . .

23. Reconstruction: Its Hour Come Round at Last

Hyman's thesis, contrary to the usual attribution of national power to the central govt growing out of the civil war, etc. . . see the transition as slow and resisted but made inevitable by the course of politics in the post war period.

Hyman's argument contains in the chapters that deal with the states' efforts to continue along with federalism after the war as though nothing had happened. . . State efforts to license professional, contain cholera, regulate railroad rates, suppress pornography, etc. . . All reveal the national sentiment that the constitutional arrangements as they existed prior to the war were still satisfactory.

What began to change the shape of national sentiment in the North was the issue of civil rights. The issue arose by the end of 1865--the relationship of American's civil liberties against the action of the states. Hyman notes that in border states like Missouri under control of Republicans barred ex-Confederates and sympathizers from voting, office holding. Lawyers for the deprived argued that these oath prerequisites were unconstitutional ex post facto legislation that deprived citizens of their national civil rights and liberties. . . Andrew Johnson's amnesties and pardons removed the restrictions from former white confederate personell

The question spilled over to blacks with the passage of the black codes.

The black codes prevented freedman from all legal rights, . . . the basic right of litigation in the state courts (where the case was involving whites). . . blacks could not bear witness. This was all set forth in the newly reconciled Johnson govts as an outgrowth of slavery. . . The freedmen had to be prevented from contracting out his own services, or hazarding them in marriage, debt accruals, or litigation. . . He was denied these rights after the 13th amendment. . . Unable to enter into contracts and barred from litigation meant that the black man was not responsible. . . He was not free. While the north was not ready to extend political freedom. . . The general feeling was that freedom from the master class should mean more than the striking off of the chattel status. . . He should have equality in rights and responsibilities. . . so that each American was equal to all fellow citizens of his state in the law's benefits and burdens. . . The inability of the freeman to function within the southern states' legal-judicial system because of the black codes struck to the root of the 13th amendment. The black codes raised against the spectre of the Dred Scott decision--that blacks were noncitizens.

This raising of civil rights to national rights was one of the great breakthroughs during Reconstruction. . . Prior to the war civil rights and their violation was seen as strictly residing with the several states/ Of course these were no white codes. . . Voting was a right all white males enjoyed except for state-imposed qualifications. . .

Before the war only abolitionists insisted that all Americans, white and black possessed civil rights which took precedence over state disabilities, especially slavery. These "national" rights derived from 18th century natural rights, the Declaration of Independence, and the Constitution, especially the equal protection of the laws and comity. . .With the civil war this interpretation became the majority interpretation . . .But before this it was expected that the 13th Amendment would provide this protection . . .When the southern states revealed that they interpreted the amendment as meaning only the end of ownership, the end of the states' rights in slaves and not his civil rights. . .then the Civil Rights Act of 1866, the 14th Amendment was necessary

24. Republicans' Reconstruction Dilemmas and Solutions

The issue with Johnson was in part the interpretation of strict vs national constitutionalism . . .Johnson regarded the 13th Amendment as ending the states' right in ownership, over the blacks and that was all. . .

Johnson's programs for the south were regarded as "executive domination" by the Republicans in Congress. . . .They believed that the enforcement clause in the 13th Amendment and the prevailing Constitutional powers were in combined operation . . .That the voter and Congress should have a say on Reconstruction. They did not believe they were stretching the document beyond the shaping of the founding fathers. . . It was not necessary to adopt the "radical" versions of Sumner and Stevens--state suicide and reversion to a territorial condition. The moderates simply argued that abolition created a larger national citizenry whose disabilities under the states' laws required national attention because the interests of all citizens and of the federal system of states were involved.

Hyman's point in the argument (the argument being that the Republicans did bend the Constitution all out of shape to achieve what they thought were one of the war's aims) is that sometime between Sumter and Appomattox, American govts, which had long possessed certain powers to do certain things, had begun doing them. But at the same time the Republicans did not throw out the idea of federalism . . .

He cites evidence of the Republicans devotion to Constitutionalism:

(1) separation of powers structure. Notes that impeachment lessened the separation while preserving it; preservation was Congress' purpose and triumph. The Reconstruction Congress obeyed loyally the Constitution throughout the impeachment. As for the Supreme Court, there was little that placed them at odds. The Reconstruction Congresses continued to augment the power of the Court. Even when the Court contradicted the congressional republicans, despite popular support they acquiesced grudgingly. (see Kelly in Hyman, Frontiers in Reconstruction History).

(2) they respected constitutional barriers as far as state-national power relationships.

They refused to carry out a social revolution. . . in terms of meeting the demands of radicals--black and white--as far as land was concerned. . .

They did manage to limit what States could do about diminishing citizens' civil and, later, political rights because of race or former slavery. Essentially this is Hyman's argument--that the constitutionally correct Republicans worked to restrain the states and not to extend federal power into the states and deprive them of their sovereignty. . .

In short, Republicans concentrated on restoring states to harmony with the Constitution and reached out only rarely ~~to~~ and incompletely to individuals. Only in the Thirteenth Amendment did the restriction reach out to all state officials, and private persons, and customary relationships. This would not be the case with the 14 and 15th Amendments. . . where it was interpreted that denial of rights were prohibited only to the states and state officials. . . and nothing about private persons, etc. . .

(3) respect for civil liberties. . . Hyman argues that in employing national power the Republicans tried to prevent this power from denying the civil rights and liberties of southern whites. . . They respected as much as possible these rights of southern whites. Disenfranchisements were few. . . under military reconstruction. Whites who felt their civil rights violated enjoyed appeals to the nation's courts. . . The S Court's rulings in the Milligan case, the Missouri test-oath case, the Yerger military commission verdict appeal, buttressed certain Bill of Rights guarantees. But these rulings increased the ~~odds~~ odds against effective realization of the 13-15th amendments' civil and political rights purpose for blacks. . . .

25. The Right Way?

Deals with the dilemmas and the delicate balancing of the national constitutionalists--the GOP. . . On the one hand, the Republicans were sensitive to the Bill of Rights and not expanding state power to interfere with the personal liberties and civil rights of the citizens of the several southern states. But, the role of the Congress was to eliminate inequitable state interference with the pursuits of private citizens. . . Hyman notes that Negrophobia tended to hold even the sparse Reconstruction institutions that the nation created to low throttle, and played a part in Reconstruction brevity and incompleteness. But Republican constitutionalism and constraints were the more potent seeds of failure. Republicans were too bound by constitutional restraints on the nation to allow it to restrain states any more than was absolutely necessary for national survival and social stability.

He elaborates with the Freedman's Bureau. . . It fell under the control of Lyman Trumbull. . . Trumbull took the measure out of the hands of Henry Wilson, Radical chairman of the Military Affairs Committee. . .

Hyman, A More Perfect Union
Re: Additional notes

(b)

In sum, by 1864 court's appellate jurisdictions had become a matter of party concern tied to racial attitudes. Republicans were pioneering a new frontier of nationally applied equality-before-the-law concepts. . . States' habits of barring Negro testimony, limiting Negroes' rights to sue, and excluding Negroes from juries among many other demeaning disabilities, substantially prevented equality as a right, and diminished blacks responsibilities as free men under law.

The quickest way was to adopt the ancient writ of habeus corpus into freedom's service and, by adapting it belatedly to the federal system.

It was specter of emancipation's revocability, the sluggish process of an emancipation amendment, the unsavory development in Army-dominated La. and the possibility of Democratic success in the fall elections that urged Wade-Davis legislation on the Congress. . .

The W-D bill provided for the right of freedmen to the course of writ of habeus corpus and take their cases to federal courts. The provision that allowed blacks if denied freedom or restrained in their liberties under pretense of any claim to such labor or service, that the federal courts would free them on habeus corpus. . . W-D included a new reading of the ancient writ of habeus corpus leading to a more democratic republican state governments. . .

Hymen argues that Lincoln's pocket-veto was not in opposition to this idea. . . Lincoln waited until the 1864 election gave the party mandate to proceed with politics, legislation, and litigation as the way to win goals. . .

Reconstruction on Every Putrid Spot

After Appomatox the nation regarded the job of ending secession and slavery as the major tasks undertaken and achieved. . . The 13 Amendment required no positive national actions, no innovations or thrusts from Washington, and, presumably, no coercive bureaucratic enforcement apparatus supported by taxes. It merely prohibited slavery. . . It was up to the states to take responsive action. It was expected that each state would set their houses in order--legal codes concerning resident's equality in civil relationships--in order, the nation needed take no further action. The enforcement clause was the trigger that a state might pull, but Congress hoped and expected that none would. The amendment gave to the slave the privilege of habeus corpus. . . no other actions intended, , , , no revolutionizing of the property and civil relationships were required. . .

The same respect for states' rights can be seen in the establishment of the Freedmen's Bureau. . . The bureau's existence based on the war making power. . . It was established and financed to be a one-year agency . . . The funds were to come from surplus Army monies. . . The Bureau personnel followed in the Army pattern of using most of the states' codes and criminal laws and employed southern officials and institutions on local level. The Bureau rarely interfered with private properties. . . Rarely introduced new institutions except in education . . . The Bureau was to see that blacks received equal treatment before the states' laws with a minimum interfere in the legal, social, and institutional relationships inside each state. The Bureau like the restored circuit courts were to mix harmoniously with the states. . . Soon after Appomatox civil government had resumed almost everywhere in the southern states. Under Johnson Army occupation commanders

Hyman, A More Perfect Union
Re: Additional Notes

(c)

assigned private litigation, except in cases involving blacks treated unfairly to their detriment, to renascent civil courts. FB agents cooperated with state and local authorities or private philanthropic associations to arrange matters concerning freedmen . . .

Stressing Republican concern for constitutional federalism--states rights not state sovereignty. . . Hyman notes the continuum emphasized by 1865 rather than the shock of change. . . In mid-1865 odds were heavy against further improvements of the black status. In Constitutional terms the Republican centrists who became the architects of Reconstruction were constrained conformists. They were deeply committed to returning the nation and all states as quickly and thoroughly as possible to prewar arrangements, except for slavery and secession.

Almost no one foresaw the need for additional amendments in 1865. For Republicans it appeared as though the Constitution had served their purposes correctly and adequately in repressing rebellion and ending slavery. . . The Constitution was adequate. . . .

It was Johnson who was dramatically using the national power during the nine months of his Presidency prior to Congress convening. . . Johnson who was creating governments in the South; mocking the equality-before the law in the black codes; returning rebels to top posts in these new governments; restoring the South to political power with the abolition of the three/fifths clause. . . His pardoning power was returning the rebels to elective and appointed positions. . . It was the Republican party in the South and organizations that were holding on for dear life.

President Johnson was using national war powers and executive pardon powers in ways Lincoln never dared employ during the war to resurrect wholly white, overwhelmingly Democratic state govts and parties southward. Then Johnson shifted his constitutional position to state autonomy, denying that the nation had any rights to require decent standards in civil, political and racial relations

26. Wise Restraints to Make Men Free

Deals with the relatedness of the 14th Amendment to the Civil Rights Act, Habeus corpus, etc. . . And the weaknesses of this states-federalism concept. . .

The 14th Amendment was couched in the negative terminology of the Bill of Rights. . . The triggering mechanism was really placed in the hands of the states themselves. . . They could avoid national intervention by equalizing all treatment before the law. In the absence of a national monitoring system over the states behavior, it was left up to the individuals to secure their rights through private case-by-case litigation, alleging each time state denial of a claimed federal right. In 1875 the Congress passed a Civil Rights act that outlawed private discrimination based on race. . . This was declared unconstitutional by the Court in the Civil Rights Cases 1883. . .

The 14th A plus the Civil Rights Act of 1866 and the Freedmen's Bureau⁴ and the Habeus corpus acts were regarded by the centrists Republicans in 1866 as a package interlinked arrangement to do the job in the South. . . And to do it without throwing out of kilter state-nation relationships any more than necessary. . .

Hyman calls the 14 Amendment a machless machine. . .

It was the minority Radicals who wanted to push further and hindsight enshrines their insights. They criticised the procedure of a case-by-case litigation bases. . . They wanted the national govt. to set down minima of a citizens nationally-protected civil rights. . .

They wanted to set positive standards by the national government. . .

The Republican moderates were true to their course--to provide national citizens with equity in their states' legal ~~protections~~ protections, privileges, and immunities. . . without coercive features.

Almost all workaday aspects of the law in the south remained factors of state law, procedures, and remedies. Unless a litigant could prove that his national rights were involved in them, a no removal route opened by reason of the Civil War and Reconstruction laws. Even the well documented southern white contumacy of the late 1860s never forced abandonment of the Republicans commitment to prior litigation concern state denials of federal rights before national intercession occurred. Potentialities in section one of the 14th A for positive national guarantees of intrastate due process and equality in legal privileges immunities, and protections remained dormant for one hundred years (except where the corporations were concerned). . .

Hyman places this on the Republicans conditioning to the rule of law and state-centered federalism excluded more coercive national thrusts. . .

They could not foresee that justices would fear to tread where the law allowed.

He cites the inadequacy of the machinery itself. . . In pointing to the US Attorney's General Office. . . Attorney General Speed was overwhelmed with litigation growing out of litigates taking their cases from state and local to the federal circuit courts. . . In 1866 the AT General had only two persons in the legal section of the office. . . To take up the slack to handle the removal cases he asked for one more.

One proposal from the Office was that the Congress create full-time civil-rights surveillance officers. . . This was rejected.

O.O. Howard pointed out the difficulties of the case-by-case approach. . . . He notes in 1867 that national courts could not intervene unless the appellant could prove that state tribunals discriminated racially. Discrimination was not easy to prove. Litigation was slow, expensive, and unsure. Violence was a factor. But violence aside, even states that provided nominal equality retained prejudiced juries, prosecuting attorneys, and police. . . . Blacks everywhere faced the dual standards. . . . harsher penalties and flagrant crimes against their person and property.

Hyman, A More Perfect Union
Re: Some additional notes

(a)

Notes on Republican attitudes toward confiscation:

The Confiscation Acts of 1861 and 1862 proved to be duds. Once enacted these laws received little enforcement. The reverence toward property even in a war. . . Federal attorneys did little to enforce these acts. . . Lincoln's attorney General Bates did all he could to discourage their enforcement. . .

15. Habeus Corpus Law, March 1863

Holds in it the ideal of equality before the law. . .

16. Litigation: The Great Moral Substitute for Force

The reasons behind the Republicans transforming the Emancipation Proclamation into an amendment. . . making it national law. . .

There was always uncertainty before 1864 election that Lincoln might be replaced by a Democratic candidate who would withdraw the emancipation action. Or that the Court might overturn the EP by declaring it unconstitutional. He cites CJ Taney's undelivered opinions about conscription, and the emancipation proclamation. . . Taney regarded them as all unconstitutional. . . along with the legal tender issue. Taney sitting on these decisions waiting for the opportunity to come forward with another Dred Scott decision. . .

The President's reconstruction policy assumed continuation of the existing state law codes, except for slavery, in order to encourage defection from the Confederacy and to stabilize property relationships, and because American lawyers knew no other kind of Union save one where each state's laws governed even national courts operating in that state, except as Congress specifically excluded for a national statute. To leave the law in the hands of the returning southerners even under the Lincoln plan was not satisfactory in terms of protecting the equal rights of blacks. . . See the northern reaction to the deceit and easy obstruction of the loyalty oaths among southerners. These southern whites would staff state and local courts as judges and jurors. It was for this reason that the Republicans resorted to the federal courts in the 1863 habeus corpus act. . .

This was a concern that manifested itself in the Wade-Davis bill. . . Lincoln's 10% plan was vague in structure, too military in its instruments, and too inadequately democratic in its requirements that voter-participation number only 10%. . . The result could be only para-military hybrids infringing upon state rights. Worse, the possibility existed that courts, including those in Lincoln's Reconstruction states, might declare null and void the abolition requirement. . . To protect against this the Republicans moved to a national amendment for the EP. . . and in the W-D bill to protect the equal rights of freedmen in the newly occupied southern states, the writ of habeus corpus and right to refer cases to the federal courts if denied their rights by state and local courts. Davis' reasoning was to place the protection of the civil rights of blacks in the hands of the national courts rather than in periodic intervention by the military, etc. . . The habeus corpus writs were to replace any trust in the untrustworthy loyalty oaths of the Lincoln plan. . .

The bill aimed temporarily to protect the black man's civil rights until state ~~measures~~ denying them abandoned the unhappy course and until the Civil Rights bill could set more permanent bulwarks interdependent with the Army-FB's presence in the southern states.

Grant and the Army supported the measure. . . Grant particularly because he wanted protection for the Army against the deluge of class and civil suits being brought against his officers and men by the southern court system. These damage suits brought against the Army originated in the state and local courts that were staffed by ex-Confederates, pardoned and redeemed by the President's pardoning policies. . .

By extending the FB, Congress intended to translate the 13^A into machinery responsive to what states were doing and conformable to the Republicans' constitutional views. That all men should be free. . . The bureau bill reflected also Republicans' assumptions about dual federalism in the laws and courts of states and nation. Republicans as the national consensus also, agreed that interstate diversity in laws and procedures should be allowed, subject only to the Constitution's sparse contranits on states' actions. . . When a state's laws were as patently inequitable as the black codes, they fell outside the broad categories of mere diversity. When prejudiced state justices failed to apply equitably their own state standards of civil and criminal statutes, precedents, and customs to "strangers" in the state, especially freedmen and Bureau-Army personnel, the nation must open its courts the better to protect its citizens. . .

What the Republicans were trying to achieve with the FB bill and the 1866 Civil Rights bill was a delicate balance between the Constitutional mandate and charge that each citizen enjoy privileges and immunities in each state as defined in the Constitution. . . the dual citizenship provision . . . And the provision or interpretation of the Bill of Rights wherein the Bill was held to restrain the nation and not the states. . . Trumbull employed a negative interpretation of national civil rights. . . not a positive and assertive role. . . It denied certain inequities in state legal procedure based on race, and employing for enforcement the national courts and the Army as a sort of magnified posse. . . The point being that the FB and the Civil Rights Act had no "conspiratorial" or long range intent of saddling military courts on the south. . . . (Hyman ~~refutes~~ McFelly on this) . . .

The Bureau policy was to see that state courts if they performed imperfectly or inequitably, that the cases would have the opportunity to go to Army commissions and civil litigation to Bureau courts. Both Bureau and army officials insisted that all cases be swiftly returned to state or national courts were conditions warranted. . . Except in matters of black codes, the Bureau courts employed the former of pleading, rules of decision, and criteria for evidence, testimony and standing of litigants prescribed by the state where the Bureau unit was located. Bureau courts used army officers as judges only when the local civil officers were unavailable or refused to serve; martial law did not replace civil laws of state or nation. The Bureau stressed civilian rather than military justice; required in Reconstruction courts traditional respect for such sacrosanct matters as state-defined property titles, statutes of limitations, inheritances, and master-servant relationships.

Looking backward, not forward, the moderate Republicans that each expedient finally would stabilize state-based federalism. . . They had no need in 1866 for martial-minded expedients and conspiracies. . .

The 1866 Civil Rights Act spelled out what was meant by national civil rights and liberties that were invulnerable to actions of the states. These applied to all citizens (except untaxed Indians) and were the assertion of or attempt at national uniformity. . . .

Every citizen had to 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 the full and equal benefit of all laws and procedures for the security of the person and property, as is enjoyed by white citizens, and shall be subject to like punishments, pains, and penalties, and to none other, any law, statute, ordinance, . . . etc. . .

The act also provided that any suit begun in a state court against a person enforcing the Civil Rights Act or the FB's bill, or against a person refusing to enforce state law inconsistent with the CR Bill was removable on defendants' option to the appropriate national district or circuit court. Removal procedures were those specified for national-officer-defendants. . .

26. Wise Restraints to Make Men Free

27. How to Set the Law in Motion

The preceding ~~chpt~~ ^{chpt} deals with the fourteenth amendment. . . The next stage was the Congressional Reconstruction program dealt with in this chapter. . .

~~It~~ In the 1867 Military Reconstruction Act the provision for black suffrage was included. This was precedent to readmission. . . Hyman explains the decision on the basis once again of the moderate Republicans sensitivity to a balanced approach. . . The Capitol Hill hope was that by exercising the ballot in the new states blacks would protect themselves thereafter against the local and state inequities, quickly relieving the national power of responsibility. Those not receiving adequate remedies by voting had recourse to the national court system. . .

The Centrist Republicans aimed at swift state restorations conducted by biracial majorities, minimum disenfranchisements, and maximum stability in property and social relationships. They remained fixed on equality before the state law goals. . . .

Johnson's veto. . . Hyman points out that the Congressional program had one great anomaly. . . The initiative in too many matters was left in the hands of the southern states, and more directly, the Commander-in-Chief of the military districts was the President of the US. . . who had vetoed the legislation as unconstitutional. Apparently Johnson based his veto on the constitutional grounds of the Milligan ruling. . . This was no basis at all. . . See Kutler on the Milligan case. . .

Hyman claims that the presidential role was intent of the Congress to bring the President into a sharing responsibility with Reconstruction. . . .

In Military Reconstruction Congress was sharing with the President and Court in exercise of national power that looked to the swift exitation. It was hoped the whole experiment would be brief. . . The Army would assure that citizens in the southern states would have protection against inequities by assuring citizens the ballot and protection in litigation.

Johnson's continued obstructionism . . . His hassling of Union Generals who removed southern officials for not enforcing the laws. This led to animus between Johnson and these "radical" generals. . . Then the Court's rulings in Mississippi vs. Johnson and Georgia vs. Stanton The Court refused to take these under consideration . . .

McCardle case intervened. . . Indicated the Republicans determination . . .

Johnson's continuing feud with Sickles and other Union Generals. This ultimately ended in his efforts to take over one of the key instruments of Congressional Reconstruction--the Army. Unable to reverse Reconstruction through appeals to voters, to standpat congressman, or to the courts, the President reached out for control over the Army. This precipitated the moderate or centrists Republicans to join the radicals in impeachment.

Hyman borrows heavily on the impeachment crisis from Benedict's thesis. "The Right Way: Congressional republicans and Reconstruction," Ph.D. Rice University, 1971. . .

28. Untying the Reconstruction Knot

The origins of the 15 Amendment. The violations of voters rights in the 1868 elections despite the provisions of the Reconstruction acts forced the Republicans to take a logical and additional step. Actions by the states of Alabama, Georgia, and Florida in denying the blacks the right to vote and hold office made action imperative. But centrists Republicans did not want to open old sores. . . they wanted to proceed with rapid reconstruction, hence they prejected Radicals' suggestions like Stevens who wanted to revert Alabama back to a state on constitutional limbo. Stevens wanted the voting right to be a national right protected by the federal govt directly. . . He wanted to drop the suit-by-suit approach of having the abused black take his case to court against the state. . . The same claim was made in the case of Georgia. But moderates argued that Congress or national power could not reduce a state to a constitutional limbo. . . They pointed to the S Court ruling about the indestructibility of states. . . In short, Congress wanted to avoid extending the process of Reconstruction and get on about the business of reuniting the nation especially since the impeachment ordeal was over. . . They did not want to return to harsh methods that would destroy the balance of state and federal power. . . federalism was still their ideal. . . They were being consistent with their constitutional principles. It was out of this seed bed that the fifteenth Amendment originated. The creation of a new amendment seemed to be the right way to carry on in the spirit of the 13 and 14th amendments.

The Amendment was couched in negative terms . . .What the state cannot do. There was no attempt to follow Radical demands that a more positive and assertive enforcement be included. Such as: to forbid predictable state subterfuges such as literacy, property, and residential tests. Their argument that state-supported common schools were essential to republican forms of govt fell flat. The party steered away from all suggestions that all elections should come under national regulations. The Amendment's chief purpose was to maintain minimally decent levels of political democracy in the face of southern states' positive discriminatory activity.

He discusses the Republican responses in the Enforcement laws aimed at indifferent enforcement by state and local officials and the conspiracy efforts of the Klan. . . These provisions were adequate to do the job when the states failed. . .providing they were enforced.

Hyman examines the declining interest in the North and within the GOP to carryout strict enforcement of these acts. The wanning of support for Reconstruction that was characteristic of the Grant administration.