AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 6: Secession, Civil War and Reconstruction—Federalism: The Status of Southern States During Reconstruction

**The Wade-Davis Bill** (1864)**[[1]](#footnote-1)**

*Senator Benjamin Wade of Ohio and Representative Henry Davis Winger of Maryland were two of the leading radical Republicans in Congress. Congressional Radicals believed President Abraham Lincoln far too accommodating of slavery and the South. After Lincoln proposed his ten percent plan that permitted former confederate states to form a state government if ten percent of the male population took a loyalty oath, Wade and Winter devised a more radical plan for Reconstruction. The Wade-Davis Bill passed both Houses of Congress after considerable debate, but was pocketed by President Lincoln. In response to Lincoln’s proclamation explaining why he would not sign the measure, Wade and Davis issued a manifesto justifying their bill and condemning the Lincoln pocket veto and reconstruction policy as an abuse of presidential power.*

 *The Wade-Davis bill reflected what congressional Republicans believed was appropriate Reconstruction policy. The bill required half of the male citizens of the state to take loyalty oaths and that any state constitution ban certain confederates from holding office, prohibit slavery and foreswear paying the confederate debt. What are the other differences between the Lincoln and congressional plans? What are the differences in principle underlying those plans? Wade and Davis charge Lincoln with abuses of executive authority. What are those abuses? How do they allocate institutional authority during Reconstruction? How would Lincoln allocate institutional authority? What is the proper allocation of institutional authority? Radical Republicans and Lincoln had a very tense relationship during the Civil War. Why were Republicans in 1864 more willing to condemn a Republican president than most members of Congress in the twentieth and twenty-first centuries were willing to condemn a president of their party? Lincoln is now an American deity, while most commentary on the Wade-Davis Bill is negative. Why is this so? Would you allocate praise in the same way?*

 *Events moved swiftly. In 1864 neither Lincoln nor Republican radicals talked much about black suffrage. Within two years, whether persons of color should have voting rights became the central issue that divided Republicans.*

*A Bill to guarantee to certain States whose Governments have been usurped or overthrown a Republican Form of Government*[[2]](#footnote-2)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the states declared in rebellion against the United States, the President shall, by and with the advice and consent of the Senate, appoint for each a provision government, . . . who shall be charged with the civil administration of such state until a state government therein shall be recognized or hereinafter provided.

 SEC. 2, *And be it further enacted*, That so soon as the military resistance to the United States shall have been suppressed in any such state, and the people thereof shall have sufficiently returned to their obedience to the constitution and laws of the United States, the provisional governor shall direct the marshal of the United States, as speedily as may be, to name a sufficient number of deputies, and to enroll all white male citizens of the United States, resident in the state in their respective counties, and to request each one to take the oath to support the constitution of the United States, . . . and if the persons taking that oath shall amount to a majority of the persons enrolled in the state, he shall, by proclamation, invite the loyal people of the state to elect delegates to a convention charged to declare the will of the state relative to the reestablishment of a state government subject to, and in conformity with, the constitution of the United States.

 SEC. 3. *And be it further enacted*, That the convention shall consist of as many members as both houses of the last constitutional state legislature, apportioned by the provisional governor among the counties, parishes, or districts of the state, in proportion to the white population, returned as electors, by the marshall, in compliance with the provisions of this act. The provisional government shall, by proclamation, . . . name of day of election not less than thirty days thereafter; designate the places of voting, . . . and provide an adequate force to keep the peace during the election.

SEC. 4. *And be it further enacted*, That the delegates shall be elected by the loyal white male citizens of the United States of the age of twenty-one years, and resident at the time in the country, parish, or district in which they shall offer to vote, and enrolled as aforesaid, or absent in the military service of to the United States in the form contained in the act of congress of July two, eighteen hundred and sixty-two; and all such citizens of the United States who are in the military service of the United States shall vote at the head-quarters of their respective commands . . ., but no person who has held or exercised any office, civil or military, state or confederate, under the rebel usurpation, or who has voluntarily borne arms against the United States shall vote, or be eligible to be elected as delegate, at such election.”

SEC. 5. *And be it further enacted*, That the said commissions, or wither of them, shall hold the election in conformity with this act, and, so far as may be consistent therewith, shall proceed in the manner used in the state priority to the rebellion. The oath of allegiance shall be taken, and subscribed on the poll-book by every voter in the form above prescribed, but every person known, by, or proved to, the commissions to have hold or exercised any office, civil or military, state of confederation, under the rebel usurpation, or to have voluntarily borne arms against the United States, shall be excluded, though he offer to take the oath; and in case any person shall have borne arms against the United States offer to vote, he shall be deemed to have borne arms voluntarily unless he shall prove the contrary by the testimony of a qualified voter.

SEC. 6. *And be it further enacted*, That the provisional government shall, by proclamation, convene the delegates elected as aforesaid, at the capital of the state, on a day not more than three months after the election, giving at least thirty days’ notice of such day. In case the said capital shall in his judgment be unfit, he shall in his proclamation appoint another place. He shall preside over the deliberations of the convention, and administer to each delegate, before taking his seat in the convention, the oath of allegiance to the United States in the form prescribed.

SEC. 7. *And be it further enacted*, That the convention shall declare, on behalf of the people of the state, their submission to the constitution and laws of the United States, and shall adopt the following provisions, hereby prescribed by the United States in the execution of the constitutional duty to guarantee a republican form of government to every state, and incorporate them in the constitution of the state, that is to say;

First. No person who has held or exercised any office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, state or confederate, under the usurping power, shall vote for or be a member of the legislature, or governor.

Second. Involuntary servitude is forever prohibited, and the freedom of all persons is guaranteed in said state.

Third, No debt, state or confederate, created by or under the sanction of the usurping power, shall be recognized or paid by the state.

 SEC. 8. *And be it further enacted*, That when the convention shall have adopted those provisions, it shall proceed to reestablish a republican form of government, and ordain a constitution containing those provisions, which, when adopted, the convention shall be ordinance provide for submitting to the people of the state, entitled to vote under this law, at an election to be held in the manner prescribed by the act for the election of delegates . . .. at which election the said electors, and none others, shall vote directly for or against such constitution and form of state government, . . . and if a majority of the votes case shall be for the constitution and form of government, [the provisional governor] shall certify the same . . . to the President of the United States, who, after obtaining the assent of congress, shall, by proclamation, recognize the government so established, and none other, as the constitutional government of the state, and from the date of such recognition, and not before, Senators and Representatives, and electors for President and Vice-President may be elected in such state, according to the laws of the state and of the United States.”

 SEC. 9. *And be it further enacted*, That if the convention shall refuse to establish the state government on the conditions aforesaid, the provisional government shall declare it dissolved; but it shall be the duty of the President, whenever he shall have reason to believe that a sufficient number of the people of the state entitled to vote under this act, in number not less than a majority of those enrolled, as aforesaid, are will to reestablish a state government on the conditions aforesaid, to direct the provisional government to order another election of delegates to a convention for the purpose and in the manner prescribed by this act, and to proceed in all respects as hereinbefore provided, either to dissolve the convention, or to certify the state government reestablished by it to the President.

SEC. 10. *And be it further enacted*, That, until the United States shall have recognized a republican form of state government, the provisional governor in each of said states shall see that this act, an the laws of the United States, and the laws of the state in force when the state government was overthrown by the rebellion, and faithfully executed within the state; but no law or usage whereby any person was heretofore held in involuntary servitude shall be recognized or enforce by any court of officer in such state, and the laws for the trial and punishment of white persons shall extend to all persons, and jurors shall have the qualifications of voters under this law for delegates to the convention. . . .

SEC. 11. *And be it further enacted,* That until the recognition of a state government as aforesaid, the provision governor shall, under such regulations as he may prescribe, cause to be assessed, levied, and collected, for the year eighteen hundred and sixty-four, and every year thereafter, the taxes provided by the laws of such state to be levied during the fiscal year preceding by the overthrow of the state government thereof, in the manner prescribed by the laws of the state, as nearly as may be. . . . The proceeds of such taxes shall be accounted for to the provisional governor, and be by him applied to the expenses of the administration of the laws in such state, subject to the direction of the President, and the surplus shall be deposited in the treasury of the United States to the credit of such state, to be paid to the state upon an appropriation therefor, to be made when a republican form of government shall be recognized by the United States.

 SEC. 12. *And be it further enacted*, That all persons held to involuntary servitude or labor in the states aforesaid are hereby emancipated and discharged therefrom, and they and their posterity shall be forever free. And if any such persons or their posterity shall be restrained of liberty, under pretence of any claim to such service or labor, the courts of the United States shall, on habeas corpus, discharge them.

 SEC. 13. *And be it further enacted*, That if any person declared free by this act, or any law of the United States, or any proclamation of the President, be restrained of liberty, with intent to be held in or reduced to involuntary servitude or labor, the person convicted before a court of competent jurisdiction of such act shall be punished by fine of not less than fifteenth hundred dollars, and be imprisoned not less than five nor more than twenty years.

 SEC. 14. *And be it further enacted*, That every person who shall hereafter hold or exercise any office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, in the rebel service, state or confederate, is hereby declared not to be a citizen of the United States.”

Abraham Lincoln, “Proclamation Concerning Reconstruction,” July 8, 1864[[3]](#footnote-3)

Whereas, at the late Session, Congress passed a Bill, ``To guarantee to certain States, whose governments have been usurped or overthrown, a republican form of Government,'' . . .

And whereas, thesaid Bill was presented to the President of the United States, for his approval, less than one hour before the *sine die* adjournment of said Session, and was not signed by him:

And whereas, thesaid Bill contains, among other things, a plan for restoring the States in rebellion to their proper practical relation in the Union, which plan expresses the sense of Congress upon that subject, and which plan it is now thought fit to lay before the people for their consideration:

Now, therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known, that, while I am, (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared, by a formal approval of this Bill, to be inflexibly committed to any single plan of restoration; and, while I am also unprepared to declare, that the free-state constitutions and governments, already adopted and installed in Arkansas and Louisiana, shall be set aside and held for nought, thereby repelling and discouraging the loyal citizens who have set up the same, as to further effort; or to declare a constitutional competency in Congress to abolish slavery in States, but am at the same time sincerely hoping and expecting thata constitutional amendment, abolishing slavery throughout the nation, may be adopted, nevertheless, Iam fully satisfied with the system for restoration contained in the Bill, as one very proper plan for the loyal people of any State choosing to adopt it; and that I am, and at all times shall be, prepared to give the Executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suppressed in any such State, and the people thereof shall have sufficiently returned to their obedience to the Constitution and the laws of the United States,---in which cases, military Governors will be appointed, with directions to proceed according to the Bill.

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B.F. Wade and H. Winter Davis, “To the Supporters of the Government,”[[4]](#footnote-4)

We have read without surprise, but not without indignation, the proclamation of the President of the 18th of July, 1864. The supporters of the Administration are responsible to the country for its conduct, and it is their right and duty to check the encroachments of the Executive on the authority of Congress, and to require it to confine itself to its proper sphere. It is impossible to pass in silence this proclamation without neglecting that duty; and having taken as much responsibility as many others in supporting the Administration, we are not disposed to fail in the other duty of supporting the rights of Congress.

 The President did not sign the bill to “guarantee to certain States whose governments have been usurped a republican form of government,” passed by the supporters of his Administration in both Houses of Congress, after mature deliberation. The bill did not therefore become a law, and it is therefore nothing. The proclamation is neither an approval nor a veto of the bill; it is, therefore, a document unknown to the laws and Constitution of the United States. So far as it contains an apology for not signing the bill, it is a political manifesto against the friends of the Government. So far as it proposes to execute the bill which is not a law, it is a grave Executive usurpation. It is fitting that the facts necessary to enable the friends of the Administration to appreciate the apology and the usurpation be spread before them. . . .

 . . . .

 . . . [T]his bill was presented with other bills that were signed. Within that hour the time for the *sine die* adjournment was three times postponed by the votes of both Houses; and the least intimation of a desire for more time by the President to consider this bill would have secured a further postponement. Yet the Committee sent to ascertain if the President had any further communication for the House of Representatives reported that he had none; and the friends of the bill who had anxiously waited upon him to ascertain its fate, had already been informed that the President had resolved not to sign it. The time of presentation, therefore, had nothing to do with his failure to approve it.

 The bill had been discussed and considered for more than a month in the House of Representatives, which it passed on the 4th of May; it was reported to the Senate on the 27th of May without material amendment, and passed the Senate absolutely as it came from the House on the 2d of July. Ignorance of its contents is out of the question. Indeed, at his request, a draft of a bill, substantially the same in all material points objected to by the proclamation, had been laid before him for his consideration in the Winter of 1862-3. There is, therefore, no reason to suppose the provisions of the bill took the President by surprise. On the contrary, we have reason to believe them to have been so well known that this method of preventing the bill from becoming a law without the constitutional responsibility of a veto had been resolved on long before the bill passed the Senate. . . .

 Had the proclamation stopped there it would have been only one other defeat of the will of the people by an Executive perversion of the constitution. But it goes further. The President says:

And whereas, thesaid Bill contains, among other things, a plan for restoring the States in rebellion to their proper practical relation in the Union, which plan expresses the sense of Congress upon that subject, and which plan it is now thought fit to lay before the people for their consideration.

By what authority of the Constitution? In what forms? The result to be declared by whom? With what effect when ascertained? Is it to be a law by the approval of the people without the approval of Congress at the will of the President? Will the President, on his opinion of the popular approval, execute it as law? Or is this merely a device to avoid the serious responsibility of defeating a law on which so many loyal hearts reposed for security. But the reason now assigned for not approving the bill are full of ominous significance. The President proceeds:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, do proclaim, declare,\ and make known, that, while I am, (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared, by a formal approval of this Bill, to be inflexibly committed to any single plan of restoration—

That is to say, the President is resolved that the people shall not by law take any securities from the rebel States against a renewal of the rebellion, before restoring their power to govern us. His wisdom and prudence are to be our sufficient guarantees. He further says:

And, while I am also unprepared to declare that the Free State constitutions and governments, already adopted and installed in Arkansas and Louisiana, shall be set aside and held for nought, thereby repelling and discouraging the loyal citizens who have set up the same as to further effort”—

That is to say, the President persists in recognizing those shadows of governments in Arkansas and Louisiana, which Congress formally declared should not be recognized; whose Representatives and Senators were repelled by formal votes of both Houses of Congress; which it was declared formally should have no electoral vote for President and Vice-President. They are mere creatures of his will. They cannot live a day without his support. They are mere oligarchies imposed on the people by military orders under the forms of election, at which Generals, Provost-Marshals, soldiers and camp followers were the chief actors, assisted by a handful of resident citizens, and urged on to premature action by private letters from the President. In neither Louisiana nor Arkansas, before BANKS’s defeat, did the

United States control half the territory or half the population. In Louisiana GEN. BANKS’ proclamation candidate declared, “The fundamental law of the State is martial law.” On that foundation of freedom he erected what the President calls “the free constitution and government of Louisiana.” But of this State, whose fundamental law is martial law, only sixteen parishes out of forty-eight parishes; and in five of the sixteen we held only our camps. The eleven parishes we substantially held had 233,185 inhabitants; the residue of the State not held by us, 575, 617. At the farce called an election the officers of GEN. BANKS’ returned that 11,346 ballots were cast, but whether any or by whom the people of the United States have no legal assurance; but it is probable that 4,000 were cast by soldiers or employees of the United States, military or municipal, but none according to any law, State or national, and 7,000 ballots represent the State of Louisiana. Such is the free constitution and government of Louisiana; and like it is that of Arkansas. Nothing but the failure of a military expedition deprived us of a like one in the swamps of Florida; and before the Presidential election like ones may be organized in every rebel State where the United States have a camp.

The President, by preventing this bill from becoming a law, holds the electoral votes of the Rebel States at the dictation of his personal ambition. If those votes turn the balance in his favor, is it to be supposed that his competitor, defeated by such means will acquiesce? If the Rebel majority assert their supremacy in those States, and send votes which elect an `enemy of the Government, will we not repel his claims? And is not that civil war for the Presidency, inaugurated by the votes of Rebel States? Seriously impressed with these dangers, Congress, "the proper constitutional authority," formally declared that there are no State Governments in the Rebel States, and provided for their erection at a proper time; and both the Senate and the House of Representatives rejected the Senators and Representatives chosen under the authority of what the President calls the Free Constitution and Government of Arkansas. The President's proclamation "holds for naught*"* this judgment, and discards the authority of the Supreme Court, and strides headlong toward the anarchy his Proclamation of the 8th of December inaugurated. If electors for President be allowed to be chosen in either of those States, a sinister light will be cast on the motives which induced the President to *"hold for naught"* the will of Congress rather than his Government in Louisiana and Arkansas. That judgment of Congress which the President defies was the exercise of an authority exclusively vested in Congress by the Constitution to determine what is the established Government in a State, and in its own nature and by the highest judicial authority binding on all other departments of the Government.

The Supreme Court has formally declared that, under the fourth section of the fourth article of the Constitution, requiring the United States to guarantee to every State a republican form of government “it rests with Congress to decide what Government is the established one in a State;” and “when Senators and Representatives of a State are admitted into the councils of the Union the authority of the Government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority, and its decision is binding on every other department of the Government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no Senators or Representatives were elected under the authority of the Government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there.” Even the President’s proclamation of the 8th December, formally declares that “Whether members sent to Congress from any State shall be admitted to seats, constitutionally rests exclusively with the respective Houses, and not to any extent with the Executive.” And that is not the less true because wholly inconsistent with the President’s assumption in that proclamation of a right to institute and recognize State Governments in the rebel States, nor because the President is unable to perceive that his recognition is a nullity if it be not conclusive on Congress.

Under the Constitution, the right to Senators and Representations is inseparable from a State Government. If there be a State Government, the right is absolute. If there be no State Government, there can be no Senators or Representatives chosen. The two Houses of Congress are expressly declared to be the sole judges of their own members. When, therefore, Senators and Representatives are admitted, the State Government, under whose authority they were chosen, is conclusively established; when they are rejected, its existence is as conclusively rejected and denied. And to this judgment the President is bound to submit. The President proceeds to express his unwillingness “to declare a constitutional competency in Congress to abolish Slavery in the States” as another reason for not signing the bill. But the bill nowhere proposes to abolish Slavery in States. The bill did provide that all slaves in the rebel States should be manumitted. But as the President had already signed three bills manumitting several classes of slaves in States, it is not conceived possible that he entertained any scruples touching that provision of the bill respect which he is silent. He has already himself assume a right by proclamation to free much the larger number of slaves in the rebel States, under the authority given him by Congress to use military power to suppress the rebellion; and it is quite inconceivable that the President should think Congress could vest in him a discretion it could not exercise itself.

It is the more unintelligible from the fact that, except in respect to a small part of Virginia and Louisiana, the bill covered only what the Proclamation covered—added a Congressional title and judicial remedies by law to the disputed title under the Proclamation, and perfected the work the President professed to be so anxious to accomplish. Slavery as an institution can be abolished only by a change of the Constitution of the United States or of the law of the State; and this is the principle of the bill. It required the new constitution of the State to provide for that prohibition; and the President, in the face of his own Proclamation, does not venture to object to insisting on that condition. Nor will the country tolerate its abandonment, yet he defeated the only provision imposing it. But when he describes himself, in spite of this great blow at emancipation, as “sincerely hoping and expecting that a constitutional amendment abolishing Slavery throughout the nation may be adopted,” we curiously inquire on what his expectation rests, after the vote of the House of Representatives at the recent session, and in the fact of the political complexion of more than enough of the States to prevent the possibility of its adoption within any reasonable time; and why he did not indulge his sincere hopes with so large an installment of the blessing as his approval of the bill would have secured.

After this assignment of his reasons for preventing the bill from the bill from becoming a law, the President proceeds to declare his purpose to execute it as a law by his plenary dictatorial power. He says:

Nevertheless, Iam fully satisfied with the system for restoration contained in the Bill, as one very proper plan for the loyal people of any State choosing to adopt it; and that I am, and at all times shall be, prepared to give the executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suppressed in any such State, and the people thereof shall have sufficiently returned to their obedience to the Constitution and the laws of the United States, in which cases, Military Governors will be appointed, with directions to proceed according to the bill.

A more studied outrage on the legislative authority of the people has never been perpetrated. Congress passed a bill; the President refused to approve it, and then by proclamation puts as much of it in force as he sees fit, and proposes to execute those parts by officers unknown to the laws of the United States and not subject to the confirmation of the Senate! The bill directed the appointment of Provisional Governors by and with the advice and consent of the Senate. The President, after defeating the law, proposes to appoint without law, and without the advice and consent of the Senate, *Military* Governors for the Rebel States. He has already exercised this dictatorial usurpation in Louisiana, and he defeated the bill to prevent its limitation. Henceforth we must regard the following precedent as the Presidential law of the rebel States:

EXECUTIVE MANION, WASHINGTON, March 15, 1864.

*His Excellency Michael Hahn, Governor of Louisiana:*

Until further orders, you are hereby invested with the powers exercised hitherto by the Military Governor of Louisiana. Yours, ABRAHAM LINCOLN

 This MICHAEL HAHN is no officer of the United States; the President, without law, without the advice and consent of the Senate, by a private note not even countersigned by the Secretary of State, makes him Dictator of Louisiana. The bill provides for the civil administration of the laws of the State till it should be in a fit temper to govern itself, repealing all laws recognizing Slavery, and making all men equal before the law. These beneficent provisions the President has annulled. People will die, and marry, and transfer property, and buy and sell, and to these acts of civil life courts and officers of the law are necessary. Congress legislated for these necessary things, and the President deprives them of the protection of the law. The President’s purpose to instruct his Military Governors to “proceed according to the bill,” a makeshift to clam the disappointment its defeat has occasioned—is not merely a grave usurpation, but a transparent delusion. He cannot “proceed according to the bill,” after preventing it from becoming a law. Whatever is done will be at his will and pleasure, by persons responsible to no law, and more interested to secure the interests and execute the will of the President than of the people; and the will of Congress is to be “held for naught,” “unless the loyal people of the rebel States choose to adopt it.” If they should graciously prefer the stringent bill to the easy proclamation, still the registration will be made under no legal sanction’ it will give no assurance that a majority of the people of the States have taken the oath; if administered, it will be without legal authority, and void; no indictment will lie for false swearing at the election, or for admitting bad or rejecting good votes; it will be the farce of Louisiana and Arkansas acted over again, under the forms of this bill, but not by authority of law.

 But when we come to the guarantees of future peace which Congress meant to exact, the forms, as well as the substance of the bill, must yield to the President’s will that none should be imposed. It was the solemn resolve of Congress to protect the loyal men of the nation against three great dangers, (1,) the return to power of the guilty leaders of the rebellion, (2,) the continuance of Slavery, and (3,) the burden of the rebel debt. Congress required assent to those provisions by the convention of the State, and if refused, it was to be dissolved. The President “holds for naught” that resolve of Congress, because he is unwilling “to be inflexibly committed to any one plan of restoration, and the people of the United States are not to be allowed to protect themselves, unless their enemies agree to it. The order to proceed according to this bill is therefore merely at the will of the rebel States; and they have the option to reject it, accept the proclamation of the 8th of December, and demand the President’s recognition. Mark the contrast. The bill requires a majority, the proclamation is satisfied with one-tenth; the bill requires one oath, the proclamation another; the bill ascertains voters by registering, the proclamation by guess; the bill exacts adherence to existing territorial limits, the proclamation admits of others; the bill governs the rebel States by law, equalizing all before it, the proclamation commits them to the lawless discretion of Military Governors and Provost Marshals; the bill forbids electors for President, the proclamation and defeat of the bill threaten us with civil war for the admission or exclusion of such votes; the bill exacted exclusion of dangerous enemies from power and the relief of the nation from the rebel debt, and the prohibition of Slavery forever, so that the suppression of the rebellion will double our resources to bear or pay the national debt, free the masses from the old domination of the rebel leaders, and eradicate the cause of the war; the proclamation secures neither of these guarantees.

 It is silent respecting the rebel debt and the political exclusion of rebel leaders; leaving Slavery exactly where it was by law at the outbreak of the rebellion, and adds no guarantee even of the freedom of the slaves he undertook to manumit. It is summed up in an illegal oath, without a sanction, and therefore void. The oath is to support all proclamations of the President, during the rebellion, having reference to slaves. Any government is to be accepted at the hands of one-tenth of the people not contravening that oath. Now that oath neither secures the abolition of Slavery nor adds security to the freedom of the slaves the President declared free. It does not secure the abolition of Slavery; for the proclamation of freedom merely professed to free certain slaves, while it recognized the institution. Every constitution of the rebel States at the outbreak of the rebellion may be adopted without the change of a letter, for none of them contravene the proclamation—none of them establish Slavery. It adds no security to the freedom of the slaves. For their title is the proclamation of freedom. If it be unconstitutional, an oath to support it is void. Whether constitutional or not, the oath is without authority of law, and therefore void. If it be valid and observed, it exacts no enactment by the State, either in law or Constitution, to add a State guaranty to the proclamation title, and the right of a slave to freedom is an open question before the State courts on the relative authority of the State law and the proclamation. If the oath binds the one-tenth who take it, it is not exacted of the other nine-tenths who succeed to the control of the State Government; so that it is annulled instantly by the act of recognition. What the State courts would say of the proclamation, who can doubt? But the master would not go into court—he would seize the slave. What the Supreme Court would say, who can tell? When and how is the question to get there? No habeas corpus lies for him in a United States court, and the President defeated with this bill its extension of that write to this case. Such are the fruits of this rash and fatal act of the President—a blow at the friends of his administration, at the rights of humanity, and at the principles of republican government.

The President has greatly presumed on the forbearance which the supporters of his Administration have so long practiced, in view of the arduous conflict in which we are engaged, and the reckless ferocity of our political opponents. But he must understand that our support is of a cause and not of a man; that the authority of Congress is paramount and must be respected; that the whole body of the Union men of Congress will not submit to be impeached by him of rash and unconstitutional legislation; and if he wishes our support, he must confine himself to his executive duties-to obey and execute, not make the laws-to suppress by arms armed Rebellion, and leave political reorganization to Congress.

If the supporters of the Government fail to insist on this, they become responsible for the usurpations which they fail to rebuke, and are justly liable to the indignation of the people whose rights and security, committed to their keeping, they sacrifice.

Let them consider the remedy for these usurpations, and, having found it, fearlessly execute it.

1. Abraham Lincoln, “Last Public Address,” *Collected Works of Abraham Lincoln* (Vol. 8) (edited by Roy P. Basler) (New Brunswick, NJ: Rutgers University Press, 1953), pp. 400-05. [↑](#footnote-ref-1)
2. 8 *Stat.* 745 (1866). [↑](#footnote-ref-2)
3. *Collected Works of Abraham Lincoln* (Vol. 7) (edited by Roy P. Basler) (New Brunswick, NJ: Rutgers University Press, 1953), pp. 433-34. [↑](#footnote-ref-3)
4. *The New York Times*, August 9, 1864, p. 2. [↑](#footnote-ref-4)