THE ORIGINS OF THE THIRTEENTH AMENDMENT: EMANCIPATION IN THE SENATE AND HOUSE OF REPRESENTATIVES, 1863-1865

THESIS

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PREFACE

The Thirteenth Amendment to the Federal Constitution has been largely ignored by historians, partially, at least, because the Fourteenth and Fifteenth Amendments have seemed more relevant to contemporary affairs. Yet the Thirteenth Amendment stands as a living monument to the distinguished American reform. It was this amendment which in 1865 invigorated the North with a needed moral weapon to win the war; it was this amendment which was considered as the crowning victory of the abolitionist crusade; and it was this amendment which paved the way for the ultimate adoption of the Fourteenth and Fifteenth Amendments. This thesis is an attempt to remedy past neglect, at least in part, by sketching the amendment from inception through final passage in Congress. The work does not encompass ratification; that would make a separate thesis of equal length. The emphasis here is solely upon the issues in the congressional chambers, although the author has attempted to focus on those outside factors that had significant influence on congressional action.

I owe a special debt of gratitude to my advisor, Professor Everette Swinney, whose counsel proved valuable at every stage of the work. It was at his suggestion that the work was initiated. I am also grateful to the other members

of my committee, Professor Emmie Craddock and Professor David Stevens, who read the manuscript and made helpful suggestions.

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CHAPTER I

PRELIMINARY STEPS TO EMANCIPATION

By 1861 compromise between the North and South on the slavery issue was out of the question. The South had embraced the defense of the institution. At the same time, an increasing number of individuals in the free states demanded immediate Federal emancipation by legislative decree or executive order based upon recent international precedents.[1] Following the initiation of hostilities in April, 1861, Union leaders evaded the issue for several months, but public as well as military pressure soon required a definitive solution to the slavery problem.

In his first inaugural address, President Abraham Lincoln stated that he had no intention, "directly or indirectly, to interfere with the institution of slavery where it exists."[2] Consequently, in the early stages of the rebellion the administration was committed to a policy of non-interference. Congress concurred in this policy when it

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[1]John Hope Franklin, The Emancipation Proclamation, Anchor Books (Garden City, N.Y.: Doubleday and Company, 1963), p. 12.

[2]Abraham Lincoln, The Collected Works of Abraham Lincoln, ed. by Roy P. Basler (9 vols.; New Brunswick, N. J.: Rutgers University Press, 1953), IV, 263. Hereafter cited as Collected Works.

adopted the Crittenden resolution of July 22, 1861, which stated:

> That the present deplorable civil war has been forced upon the country by the disunionists of the southern states, now in arms against the constitutional Government . . .; that in this national emergency, Congress banishing all feelings of mere passion or resentment, will recollect only its duty to the whole country; that this war is not waged on their part in any spirit of oppression, or for any purpose of conquest or subjugation, or . . . of overthrowing or interfering with the rights of established institutions of those States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease.[3]

Although this declaration undoubtedly reflected the prevailing sentiment of the nation at that point in time, such an attitude would soon be swept aside by a reversal of popular feeling.

Military confrontations with slavery promptly forced the issue upon the President. In August, 1861, Major General John C. Frémont, an avowed abolitionist, manumitted slaves belonging to persons in Missouri who were resisting United States authority. Lincoln, upset by this interference with his border-state policy, overruled Frémont and ordered that the proclamation be modified to conform with

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[3]Congressional Globe, 37th Congress, 1st Session, pp. 222-23.

the Confiscation Act of 1861.[4] In March, 1862, Major General David Hunter, Commander of the Department of the South, began issuing certificates of emancipation to slaves who had been in the service of the Confederacy. Two months later, Hunter announced that "slavery and martial law in a free country are altogether incompatible." In addition, he proclaimed that "the persons in . . . Georgia, Florida, and South Carolina heretofore held as slaves are therefore declared forever free."[5] This pronouncement was immediately heralded by abolitionists who assumed that the President had approved it. Writing to William Lloyd Garrison, Francis George Shaw exclaimed: "Has not the President used a very sharp knife, in Genl. Hunter's hands, to cut the knot?"[6] But Lincoln had not authorized the proclamation: in fact, the President was not aware of it until he read about the action in the press.[7] In deference to the wishes of conservative and border-state congressmen, Lincoln issued a

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[4]James G. Randall, Constitutional Problems Under Lincoln (New York: D. Appleton and Company, 1926), p. 354.

[5]Lincoln, Collected Works, V, 222.

[6]James M. McPherson, The Struggle for Equality: Abolitionists and the Negro in the Civil War and Reconstruction (Princeton, New Jersey: Princeton University Press, 1964), p. 107. Hereafter cited as The Struggle for Equality.

[7]Ibid.

formal statement on March 19, 1862, which declared "that neither General Hunter, nor any other Commander, or person, has been authorized by the Government of the United States, to make proclamations declaring the slaves of any State free."[8] At the same time the President tried to comfort the Radicals by hinting that he might eventually find it necessary to proclaim military emancipation.[9]

From their first meeting in July, 1861, the Thirty-seventh Congress gave notice to the President that they would assert themselves by enacting "appropriate legislation" on the subject of slavery. The issue of emancipation was definitely a factor in the passage of the First Confiscation Act on August 6, 1861. This act provided that "whenever . . . any person claimed to be held to labor or service . . . shall be required or permitted . . . to take up arms against the United States or . . . to work in any military or naval service whatsoever against the Government . . . the person to whom such labor or service is claimed to be due shall forfeit his claim to such labor."[10] Despite the

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[8]Lincoln, Collected Works, IV, 263.

[9]T. Harry Williams, Lincoln and the Radicals (Madison, Wis.: University of Wisconsin Press, 1965), p. 138.

[10]U.S., Statutes at Large, Vol. XII, "An Act to Confiscate Property Used for Insurrectionary Purposes," August 6, 1861, ch. LX, section 4, p. 319.

vagueness of the measure, together with the fact that few if any slaves were to be freed by it, the First Confiscation Act left no doubt that congressional emancipation had begun.[11]

Striking at slavery within its unquestioned national jurisdiction, Congress on April 11, 1862, passed a bill emancipating all slaves in the District of Columbia. At the President's insistence, an appropriation of one million dollars was added for compensation to slaveholders.[12] On June 19, 1862, Congress abolished slavery in the territories of the United States, with no provision for remuneration. Lincoln reluctantly signed the bill, rationalizing that there were too few slaves in the territories to make an issue out of this omission.[13]

As the war progressed, Congress moved forward with broader schemes of emancipation, an indication that the legislative branch had yielded to the logic that slaves were weapons of war that must not be in the hands of the enemy. A major step toward emancipation came with the passage of the Second Confiscation Act on July 17, 1862. Section nine of the measure read:

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[11]Randall, Constitutional Problems Under Lincoln, p. 357.

[12]Franklin, The Emancipation Proclamation, p. 18.

[13]Ibid., p. 19.

> And be it further enacted, That all slaves of persons who shall hereafter be engaged in rebellion against the Government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them and coming into the control of the Government of the United States; and all slaves of such persons found on or being within any place occupied by rebel forces and afterwards occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.[14]

The President believed the provision that declared as "forever free" the slaves of all persons engaged in rebellion to be unconstitutional because slave ownership had never been transferred to the nation. However, a joint resolution stating that the measure was to be in effect for the duration of the war only restrained him from vetoing the bill.[15] The President would later confirm his apprehension regarding the Second Confiscation Act: "I cannot learn that that law has caused a single slave to come over to us."[16] On this same occasion, President Lincoln signed the Militia Act of July 17, 1862, which manumitted any slave, along with his

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[14]U.S., Statutes at Large, Vol. XII, "An Act to Suppress Insurrection, to Punish Treason and Rebellion, to Seize and Confiscate the Property of Rebels, and for other Purposes," July 17, 1862, ch. CXCV, p. 591.

[15]Franklin, The Emancipation Proclamation, p. 19.

[16]Lincoln, Collected Works, V, 420.

mother, wife, and children, who rendered military service for the Union.[17]

The reluctance on the part of the administration to take positive and immediate action against slavery was due to the President's preference for gradual emancipation voluntarily executed by the states with Federal compensation to slaveholders. In recommending that Congress provide financial aid for remuneration, Lincoln pointed out on March 6, 1862, that the matter was one of perfectly free choice with the states and that his proposal involved "no claim of a right by Federal authority to interfere with slavery within State limits, referring as it does, the absolute control of the subject . . . to the State and its people."[18]

In the same message, the President endorsed the following proposition:

> Be it resolved . . . That the United States ought to cooperate with any State which may adopt gradual abolishment of slavery, giving to such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconveniences, public and private, produced by such a change of system.[19]

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[17]U.S., Statutes at Large, Vol. XII, "An Act to Amend the Act Calling Forth the Militia to Execute the Laws of the Union, Suppress Insurrections, and Repel Invasions, Approved February Twenty-eighth, Seventeen Hundred and Ninety-five, and the Acts Amendatory thereof, and for other Purposes," July 17, 1862, ch. CCI, section 13, p. 599.

[18]Congressional Globe, 37th Congress, 2nd Session, p. 1102.

[19]Congressional Globe, 37th Congress, 2nd Session, Appendix, p. 420.

Although approved by Congress one month later, this proposal was never enacted into law due to unfavorable reaction on the part of border-state congressional delegations.

After the border states declined to accept the administration's offer, Lincoln was driven to the "alternative of either surrendering the Union, and with it the Constitution, or laying a strong hand upon the colored element."[20] He had talked of abandoning the policy of *laissez faire* as early as March, 1862,[21] but most observers believe that the President made his momentous decision to issue a proclamation freeing the slaves in the late spring of 1862.[22] Regarding this decision, Lincoln commented: "Things had gone on from bad to worse until I felt that we had reached the end of our rope on the plan of operations we had been

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[20]Lincoln, *Collected Works*, VII, 282.

[21]John G. Nicolay and John Hay, *Abraham Lincoln: A History* (10 vols.; New York: The Century Company, 1890), V, 209-10. Lincoln's statement as to possible alteration of the policy of noninterference read: "In the annual message last December, I thought fit to say, 'The Union must be preserved; and hence all indispensable means must be employed.' I said this, not hastily, but deliberately. War has been made, and continues to be, an indispensable means to this end. A practical reacknowledgement of the national authority would render war unnecessary, and it would at once cease. If, however, resistance continues, the war must also continue; and it is impossible to foresee all the incidents which may attend and all the ruin which may follow it. Such as may seem indispensable, or may obviously promise great efficiency towards ending the struggle, must and will come."

[22]Franklin, *The Emancipation Proclamation*, p. 32.

pursuing; that we had played our last card, and must change our tactics, or lose the game!" It was at this juncture that, in his words, he "determined on the adoption of the emancipation policy; and without consultation with, or knowledge of the Cabinet, . . . prepared the original draft of the proclamation . . . ."[23]

Though the preliminary Emancipation Proclamation was initially composed in June, Lincoln postponed issuing it until Union military fortunes improved, because he did not want it to seem an act of desperation. Finally, on September 22, 1862, five days after Lee's march into Maryland had been checked at Sharpsburg by McClellan, the President delivered his proclamation to the assembled Cabinet. The measure emancipated all slaves "within any State, or designated part of a state [where] the people . . . shall be in rebellion against the United States . . . ."[24] Lincoln based his proclamation solely upon the "war power" granted to the Commander-in-Chief of the Army and Navy by the Constitution. In his view, the edict had "no constitutional or

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[23]Francis B. Carpenter, The Inner Life of Abraham Lincoln: Six Months At the White House (New York: Hurd and Houghton, 1867), pp. 20-21.

[24]John G. Nicolay and John Hay, Complete Works of Abraham Lincoln (12 Vols.; New York: The Lamb Publishing Company, 1905), VIII, 36-41.

legal justification except as a military measure."[25] In other words, he considered emancipation of enemy slaves as an appropriate and necessary act within the laws of war to expedite the restoration of the Union. Although the declaration implied that the former policy of noninterference was now abandoned, the President granted a one-hundred-day period of grace before the law became effective and pledged monetary assistance to any state that would adopt emancipation by its own laws.[26]

Most abolitionists were jubilant over the proclamation. Theodore Tilton wrote William Lloyd Garrison that "I have been in a bewilderment of joy ever since yesterday morning. I am half crazy with enthusiasm: I would like to have seen whether you laughed or cried on reading it: I did both."[27] However, there was concern on the part of some antislavery advocates that, between September and the effective date of January 1, 1863, the President would yield to

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[25]Lincoln, Collected Works, VII, 428.

[26]Franklin, The Emancipation Proclamation, p. 45.

[27]McPherson, The Struggle for Equality, p. 118. It is doubtful that a majority of the citizens of the North would have supported the preliminary proclamation. See James G. Blaine, Twenty Years in Congress: From Lincoln to Garfield (2 vols.; Norwich, Conn.: The Henry Bill Publishing Company, 1884), I, 504.

conservative pressure to modify the pronouncement. Lincoln's annual message of December 1, 1862, convinced many that the measure had been discarded, because he argued eloquently for a scheme of compensated emancipation through constitutional amendments that would provide for the delivery of United States bonds to every state that abolished slavery before 1900.[28] Moncure Monroe, editor of the Boston Commonwealth, exclaimed: "If the President means to carry out his edict of freedom on the New Year, what is all this stuff about gradual emancipation?"[29] But Lincoln kept his word and issued the definitive proclamation on January 1, which in part read:

> And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.[30]

As a practical measure, the proclamation was significant in that it affected the course of the war. It served to enhance the diplomatic position of the North abroad and clarified war aims at home. The edict also weakened the enemy

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[28]Lincoln, Collected Works, V, 518-37.

[29]McPherson, The Struggle for Equality, p. 120.

[30]Lincoln, Collected Works, VI, 29-30.

materially by encouraging slaves to come into Union lines, where they were often utilized as soldiers and laborers.[31]

Yet the proclamation was not the final answer to the slavery question, since it applied only to states and parts of states outside the immediate jurisdiction of the Union. Furthermore, the legal effect of the Emancipation Proclamation was in question. One competent lawyer, R. H. Dana, Jr., made the following observation:

> That an army may free the slaves is a settled right of law . . . . But if any man fears or hopes that the proclamation did as a matter of law by its own force, alter the legal status of one slave in America . . . he builds his fears or hopes on the sand. It is a military act and not a decree of a legislator. It has no legal effect by its own force on the status of the slave . . . . If you sustain the war you must expect to see the war work out emancipation.[32]

Among those who feared that the presidential proclamation might not be sufficient were two leaders in the women's suffrage movement, Elizabeth Cady Stanton and Susan B. Anthony. In the spring of 1863, they issued a call for a meeting of the "Loyal Women of the Nation" to convene in New York City on May 14. At this convention, the Women's National Loyal League was formally organized with the stated purpose of securing signatures to petition the Senate and House of Representatives for a comprehensive act manumitting all

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[31]Randall, Constitutional Problems Under Lincoln, p. 381.

[32]Ibid., pp. 383-84.

persons of African descent.[33] The work of the League began that summer under the direction of Susan B. Anthony. The first few thousand petitions distributed were accompanied by the following letter:

> The Women's National Loyal League to the Women of the Republic: We ask you to sign and circulate this petition for the entire abolition of slavery. Remember the President's proclamation reaches only the slaves of rebels. The jails of loyal Kentucky are today filled with Georgia, Mississippi, and Alabama slaves, advertised to be sold for their jail fees "according to law," precisely as before the war! While slavery exists anywhere there can be freedom nowhere. There must be a law abolishing slavery. We have undertaken to canvass the nation for freedom. Women, you can not vote or fight for your country. Your only way to be a power in the government is through the exercise of this one, sacred, constitutional "right of petition;" and we ask you to use it now to the utmost. Go to the rich, the poor, the high, the low, the soldier, the civilian, the white, the black--gather up the names of all who hate slavery, all who love liberty, and would have it the law of the land, and lay them at the feet of Congress, your silent but potent vote for human freedom guarded by law . . . .[34]

The petition campaign was significantly advanced in the fall of 1863 when the American Anti-slavery Society lent its assistance to the drive. A growing number of abolitionists became concerned that the wartime measures of emancipation might not be operative when peace arrived, or that a successor to the presidency might nullify the

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[33]Ida H. Harper, The Life and Work of Susan B. Anthony (2 vols.; Indianapolis, Ind.: Bowen Merrill Company, 1899), I, 226-30.

[34]Ibid., p. 230.

antislavery measures. Convinced that permanent emancipation had to be written into the Constitution, abolitionists in December, 1863, began agitating for a constitutional amendment that would forever abolish slavery throughout the United States. This request would soon be the object of all petitions of the antislavery societies after December, and by the Women's National Loyal League after February, 1864.[35]

Response to these appeals for a permanent settlement of the slavery question came early in the Thirty-eighth Congress when Representative James M. Ashley of Ohio proposed a constitutional amendment providing an end to "slavery or involuntary servitude . . . in all of the states and Territories now owned or which may hereafter be acquired by the United States."[36] Later, a second resolution of amendment was introduced by Congressman James E. Wilson of Iowa:

> Section 1. Slavery being incompatible with free government is forever prohibited in the United States; and involuntary servitude shall be permitted only as a punishment for crime.
>
> Section 2. Congress shall have power to enforce the foregoing by appropriate legislation.[37]

Although House consideration of these two proposals was delayed for months, the first steps on the long road toward lasting and complete emancipation had been taken.

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[35]McPherson, The Struggle for Equality, pp. 125-26.

[36]Congressional Globe, 38th Congress, 1st Session, p. 19.

[37]Ibid., p. 21.

CHAPTER II

SENATE INCEPTION AND PASSAGE OF THE JOINT AMENDMENT TO ABOLISH SLAVERY

On January 11, 1864, Samuel C. Pomeroy of Kansas presented the Senate with four hundred petitions from Douglas County, Kansas, urging congressional action on an amendment to the Constitution abolishing slavery throughout the United States. Pomeroy concluded his statement with the following appeal:

> This petition has peculiar significance to my mind from the fact that twelve of the men who signed it on the 18th day of August last were massacred on the 21st day of August, at the time of the destruction of Lawrence, and this is their last effort and prayer in this direction. I take up the sentiment where they left off, and hope and pray that the prayer of the petition may in some way be granted.[1]

Paradoxically, the first step in the direction of answering these prayers was fashioned by a slaveholder, Republican

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[1] Congressional Globe, 38th Congress, 1st Session, p. 144. Numerous petitions calling for the total abolition of slavery were presented in the Senate beginning in the spring of 1862 and concluding in April, 1864. Petitions were read from almost every northern state, as well as Louisiana. Charles Sumner of Massachusetts was the Senate coordinator of this effort. See Congressional Globe: 37th Congress, 2nd Session, March - July (1862); 37th Congress, 3rd Session, January (1863); 38th Congress, 1st Session, December (1863) - April (1864). During this time span, only two resolutions requesting an end to legislation on the subject of slavery were presented. See Congressional Globe, 37th Congress, 2nd Session, March 17 and May 14 (1862).

Senator John B. Henderson of Missouri, who later in the day offered a resolution of amendment which read:

> Article 1. Slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States.
>
> Article 2. The Congress, whenever a majority of the members elected to each House shall deem it necessary, may propose amendments to the Constitution, or, on the application of the Legislatures of a majority of the several states, shall call a convention for proposing amendments, which in either case shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the Legislatures of two-thirds of the several States, or by the conventions in two-thirds thereof, as the one or the other mode of ratification may be proposed by Congress.[2]

Apparently treated as a matter of minor importance, the proposal was referred without objection to the Committee on the Judiciary.[3]

Nearly a month later, Senator Charles Sumner introduced a resolution of amendment proposing that "everywhere within the limits of the United States, and of each State or Territory thereof, all persons are equal before the law, so that no person can hold another as slave."[4] Immediately after this presentation, the Massachusetts Senator requested that it be directed to the select Committee on

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[2]Congressional Globe, 38th Congress, 1st Session, p. 145.

[3]Nicolay and Hay, Abraham Lincoln: A History, X, 75.

[4]Congressional Globe, 38th Congress, 1st Session, p. 521.

Slavery and Freedmen, of which he was chairman. Sumner asserted that "the language under which the committee has been raised is broad enough to cover every proposition relating to slavery."[5] But a majority of his colleagues, holding that such an amendment demanded reference to the judiciary committee, forced Sumner to yield.[6] It is reasonable to assume that this discussion, pitting Radicals against Moderates, effected earlier action on the amendment than would have otherwise occurred.[7] Two days hence, the Committee on the Judiciary modified the Henderson proposal to create a substitute joint resolution:

Article XIII

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.[8]

The phraseology of the proposal was deliberately similar to that of Article VI of the Northwest Ordinance of 1787--which read in part that "there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in

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[5]Congressional Globe, 38th Congress, 1st Session, p. 521.

[6]Ibid.

[7]Nicolay and Hay, Abraham Lincoln: A History, X, 75.

[8]Congressional Globe, 38th Congress, 1st Session, p. 1313.

the punishment of crimes, whereof the party shall have been duly convicted"[9]--in expectation that familiar wording would increase chances for its successful passage.[10] It should be emphasized that Article VI was universally acknowledged as having conferred no political privileges on Negroes.[11]

After the committee reported back the proposition, officially designated Joint Resolution Sixteen, more than six weeks elapsed before the Senate acted upon it. Senator Lyman Trumbull of Illinois, chairman of the Committee on the Judiciary and sponsor of the resolution, opened debate by asserting that the rebellion had its origin in the institution of slavery. To those who accused abolitionists of initiating the strife, Trumbull pointed out that there would have been no "fanatics" without slavery. In urging the legal necessity for an amendment, he noted that executive and congressional action heretofore had been ineffectual in that it had failed to "free the slaves of loyal men."[12] In his

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[9]Henry S. Commager, Documents of American History (New York: F. S. Crofts and Company, 1934), p. 132.

[10]Mark M. Krug, Lyman Trumbull: Conservative Radical (New York: A. S. Barnes and Company, 1965), p. 218.

[11]Howard D. Hamilton, "The Legislative and Judicial History of the Thirteenth Amendment" (unpublished Ph. D. dissertation, University of Illinois, 1950), p. 41.

[12]Congressional Globe, 38th Congress, 1st Session, p. 1313. It should be noted that although the border states of Maryland and Missouri were initiating procedures of manumission, Delaware and Kentucky were still firmly tied to the institution of slavery.

opinion, "only slavery prohibited by an amendment to the Constitution will make sure that no state or Congress could ever restore slavery."[13] Following Trumbull's brief statement, Senator Henry Wilson, a Massachusetts abolitionist, delivered a passionate speech entitled "The Death of Slavery is the Life of the Nation" in which he assailed slavery as "the conspirator, the traitor, the criminal that is reddening the sods of Christian America with the blood of fathers and husbands, sons and brothers, and bathing them with the bitter tears of mothers, wives, and sisters."[14] He sought to strengthen his argument by an analogy:

> Take the maddening cup from the trembling hand of the drunkard, who, in his wild delirium, hates the mother who bore him, the wife of his bosom, and the children of his love, and that drunkard will be a man again, and love, cherish, and protect the mother, wife, and children he would smite down in his madness. Smite down slavery, strike the fetters from the limbs of its hapless victims, and slave-masters will become loyal again, ready to pour out their blood for the Government they now hate and the country they now assail. They will recur to the recollections at the early days of the Republic with gratitude and patriotic pride, they will look forward with undoubting confidence in the future of their country. Their hearts will again throb with kindly regard for their countrymen of the North, and they will hail once more the beneficent institutions of a united country.[15]

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[13] Congressional Globe, 38th Congress, 1st Session, p. 1314.

[14] Ibid., pp. 1319-20.

[15] Ibid., p. 1322.

Although focusing upon the crimes of the "slavocracy" against the nation, Wilson's address was marked by its sympathy for the "toiling millions, bound and sold."[16]

Senator Garrett Davis of Kentucky took the floor on March 30, 1864, and argued that Trumbull's position was unsound and fallacious. Davis declared that "if my honorable friend [Trumbull] should devote himself to the general policy of abolishing all causes that directly or indirectly lead us to wars, with the purpose of hope to prevent them, I think he will adopt one of the most utopian and impracticable notions that has ever engaged the mind of a statesman and a legislator."[17] As a parody of Trumbull's logic, the Kentucky Senator suggested abolition of the states of Massachusetts and South Carolina in order to conclude the war.[18] Davis' chief argument, however, was based upon his concept of the sovereignty of the state in domestic matters; he contended that "the retention by the States of their exclusive rights, and the right to ordain, manage, and control them, independent of all control or interference by the United States Government any more than a Foreign Power is a great and essential feature of our system, and it cannot be

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[16]Congressional Globe, 38th Congress, 1st Session, p. 1323.

[17]Ibid., Appendix, p. 104.

[18]Ibid.

revolutionized, destroyed by this power of amendment."[19] He also asserted that it was an inopportune time to amend the Constitution due to the "unsettled condition" of the nation and the "mind and passions of the people, nationally, sectionally, and individually."[20] Using the curious line of argument that only provisions and principles of secondary importance could be amended, he maintained that such a revolutionary change as the abolition of slavery would be outside of the domain of amendment. Davis then proceeded to attack Lincoln as a "mere political charlatan, a consummate dissembler, and an adroit sagacious demagogue," and proclaimed that the only way to save the nation from "bloody anarchy" was to bring the Democrats back to power.[21]

The next day, Senator Davis proposed a sardonic amendment to the committee substitute which read:

> (Two-thirds of both Houses concurring,) That: The State of Maine, New Hampshire, and Vermont are formed into and shall constitute one State of the United States, to be called North New England; and the States of Massachusetts, Connecticut, and Rhode Island, including the Providence Plantations, are formed into and constitute one State of the United States, to be called South New England; and Congress shall pass all laws necessary and proper to give full effect to this amendment of the Constitution.[22]

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[19] Congressional Globe, 38th Congress, 1st Session, Appendix, p. 106.

[20] Ibid.

[21] Ibid., pp. 107-108.

[22] Congressional Globe, 38th Congress, 1st Session, p. 1364.

After a vote on the Davis amendment was postponed, Willard Saulsbury, Delaware Senator, asserted that whenever the Government undertakes to regulate property by amending the Federal Constitution, "they violate the purposes and objects for which the Constitution was formed, and do that which, if they had proclaimed had been their object in the beginning, would have prevented the formation of that Constitution and of the Union."[23] A firm believer in the theory that the Constitution was a contract among sovereign states, Saulsbury likened the situation to one in which several persons form a contract for stated purposes and then three-fourths of them add another item telling the others that they are bound because they entered into the original. Using this logic he concluded that the objects and purposes of the formation of the Union restrict revolutionary changes in the Constitution. Moreover, Saulsbury reminded his colleagues that powers neither specifically delegated to the Federal Government, nor prohibited to the states were reserved to the states. He opined that the amendment under consideration would lead to the eventual destruction of general property rights:

> Sir, if you can go into the States and attempt to regulate the relation of master and slave, you can go into a State and attempt to regulate the

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[23] Congressional Globe, 38th Congress, 1st Session, p. 1365.

> relation between parent and child or husband and wife. If you have a right to go into a State and say that one particular species of property which has heretofore been property shall not in the future be property, you have the right to say that any other subject of property heretofore shall not be property in the future; and you have a right to say in that case, by way of amendment, that there shall be no such thing as property at all.[24]

Saulsbury also opposed the amendment on scriptural grounds, stating that if the Almighty allowed the institution of slavery, it was presumptuous for mere mortals to interfere. Further, he pointed out that an amendment must be proposed to all the states, not just a selected number; consequently, such an amendment could not be adopted under present conditions. In this regard, the Delaware Senator reiterated the sentiments of Senator Davis by declaring that it was not the proper time to amend the Constitution even if the proposed change was desirable. Addressing his remarks to Senator Trumbull, Saulsbury argued that "the very food which man eats is often the agency which destroys life; and the reasoning would be just as sound to say that food must be destroyed because it has killed men as to say that slavery must be abolished because intermeddlers with it have brought about the present state of affairs."[25] In another statement, he asserted that "abolitionists . . . are the real disunionists,

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[24]Congressional Globe, 38th Congress, 1st Session, p. 1366.

[25]Ibid., p. 1367.

and primarily responsible for our present troubles."[26] Reversing an argument of the proponents, Saulsbury concluded by charging that without antislavery advocates there would have been no secessionists.

In a passionate speech, Daniel Clark of New Hampshire asserted that "slavery is the ward if not the child of the Constitution."[27] The Constitution, according to Clark, was imperfect because it enabled slavery to assume "monstrous functions and powers." He assailed the Founding Fathers for perpetrating the "barbaric institution" and declared that Madison had "chased away the shadow [that is, deleted the word "slave" from the Constitution] but left the substance [slavery], with the same fatuity that would induce a parent to call an asp or a scorpion a pretty bird, and leave it to sting his offspring to death."[28] Yet, Clark defended the provision of amendment within the instrument, contending that there was nothing in the Constitution to prevent the proposed change. In answer to the Davis and Salsbury argument that it was an inopportune time to consider a constitutional change, Senator Clark responded dramatically:

> Pray when, sir, will it come? Will it be when the President has issued more and more calls for

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[26] Congressional Globe, 38th Congress, 1st Session, p. 1367.

[27] Ibid., p. 1369.

[28] Ibid., p. 1368.

> two or three hundred thousand men of the country's bravest and best? Will it be when more fathers and husbands and sons have fallen, and their graves are thicker by the banks of rivers and streamlets and hillsides? Will it be when there are more scenes like this I hold in my hand--an artist's picture, a photograph of an actuality--of a quiet spot by the side of a river, with the moon shining upon the water, and a lonely sentinel keeping guard, and here in the open space the head boards marking the burial places of many a soldier boy, and an open grave to receive another inmate, and underneath the words "All Quiet on the Potomac?" [exhibiting a photograph to the Senate]. Will it be when such scenes of quiet are more numerous, not only along the Potomac but by the Rapidan, the Chickahominy, the Stone, the Tennessee, the Cumberland, the Big Black, and the Red?[29]

After the Clark speech, Senator Davis withdrew his earlier amendment to the committee substitute and submitted the following proposition: "No negro, or person whose mother or grandmother is or was a negro, shall be a citizen of the United States, or be eligible to any civil or military office, or to any place of trust or profit under the United States."[30] He immediately called for the yeas and nays, but as a quorum was absent, the Senate adjourned.

The next action on the amendment came on Monday, April 4, when Senator Timothy Howe of Wisconsin argued that Congress "ought to take the sense of the American people upon the question whether they will or will not have slavery any longer within the limits of the Union; and whatever

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[29] Congressional Globe, 38th Congress, 1st Session, p. 1369.

[30] Ibid., p. 1370.

might be my opinion upon its merits, I think I should vote to submit the question to them."[31] Howe addressed the following question to Senator Saulsbury, who had spoken about the universal nature of slavery: "And is the universality of wrong a reason for continuing it, for persisting in it when you see how wrong it is?"[32] As for the cause of the rebellion, he emphasized that "it was not to secure toleration of slavery within the seceding States, but to compel the adoption of slavery by the nation."[33] In his closing remarks, Howe joined Wilson and Clark by asserting that those states in rebellion against Union authority should not be entitled to vote on the measure.

On April 5 Senator Reverdy Johnson of Maryland, a noted legalist, delivered a most impressive speech in support of Joint Resolution Sixteen. Johnson attempted to reveal the fallacies in the positions of Davis and Saulsbury. In answer to Davis' contention that state sovereignty was supreme, he pointed out that the people of the states, rather than the states proper, adopted the Constitution; he added that the Supreme Court of the United States had decided the question of state sovereignty years before in the

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[31] Congressional Globe, 38th Congress, 1st Session, Appendix, p. 111.

[32] Ibid., p. 113.

[33] Ibid., p. 117.

case of McCulloch v. Maryland. As for Saulsbury's argument that the slaves were property by state law and therefore not subject to federal interference, he maintained that the principles incorporated in the Constitution were supreme over such laws.[34] At the end of this brief, but effectual, address, the Maryland Senator declared that after passage of this measure, "We shall be able to say to the world, 'However late we were in carrying out the principles of our institutions [The Declaration of Independence and the Constitution], we have at last accomplished it.'"[35]

Since a quorum was in attendance, the Senate spent the afternoon of the fifth voting on a series of amendments to the committee substitute. The Davis amendment, which proposed that "no negro . . . shall be a citizen . . ." etc., was rejected by a count of 32 to 5; all five yeas were from Democrats.[36] Then Davis offered the same amendment as an appendage to the committee resolution, but this also was rejected.[37] After this defeat, the persistent Davis proposed another amendment which read: "But no slave shall be

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[34]Congressional Globe, 38th Congress, 1st Session, p. 1422-23.

[35]Ibid., p. 1424.

[36]Ibid., p. 1424.

[37]Ibid.

entitled to his or her freedom under this amendment if resident at the time it takes effect in any State the laws of which forbid free negroes to reside therin, until removal from such State by the Government of the United States."[38] This proposition also failed by an overwhelming margin. At this point, Senator Lazarus Powell, Davis' colleague from Kentucky, recommended an amendment to be added at the end of the first section of the resolution: "No slave shall be emancipated by this article unless the owner thereof shall be first paid the value of the slave or slaves so emancipated."[39] Only the votes of the two Kentucky Senators, Davis and Powell, were cast in favor of this suggestion. The defeat of this proposal demonstrated the vast change in public opinion within one year on the subject of compensation to slaveholders. Davis persevered in his attempt to modify the joint resolution by introducing yet another amendment to be added at the end of section two of the proposed article:

> And when this amendment of the Constitution shall have taken effect by freeing the slaves, Congress shall provide for the distribution and settlement of all the population of African descent in the United States among the several States and Territories thereof, in proportion to the white population

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[38] Congressional Globe, 38th Congress, 1st Session, p. 1425.

[39] Ibid.

> of each State and Territory to the aggregate population of those of African descent.[40]

Senator Saulsbury, expressing his support for the proposal, stated: "I would be very glad myself to adopt this proposition that would enable us to get rid of some of this class of population."[41] In subsequent action, this proposition was also rejected.

On the following day, Senator James Harlan of Iowa presented a legalistic argument endeavoring to show that the slaveholder had no legitimate title to the offspring of a slavemother:

> Just as soon as the child shall have returned to the mother an equivalent for the care and labor applied by her in the support of the child during the years of its helplessness, her title ceases. Then if the owner of a slave mother takes the same title, and no more, the slavery of the children of a slave mother cannot justly extend beyond the period of the child's minority. Then I inquire whence the claim of title to the services of the child of a slave mother after the period of its minority; after it shall have paid the cost of its keeping during the years of its helpless infancy?[42]

Moreover, Harland asserted that there was no basis for the institution of slavery in natural, common, municipal, statute, or divine law. He summarized his position in these words:

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[40] Congressional Globe, 38th Congress, 1st Session, p. 1425.

[41] Ibid.

[42] Ibid., p. 1438.

> If I am right in my conclusions that slavery as it exists in this country cannot be justified by human reason, has no foundations at common law, and is not supported by the divine law, and that none of its incidents are desirable, and that its abolition would injure no one and will do no wrong, but will secure the unity of purpose, unity of action, and military strength here at home, and the support of the strong nations of the world, as it seems to me the Senate of the United States ought not to hesitate to take the action necessary to enable the people of the States to terminate its existence forever, and I shall thus vote.[43]

Senator Saulsbury challenged Harlan's argument that there can be no title to slave property, contending that such a proposition was in conflict with the "command of the Almighty." He quoted Senator Harlan's minister to the effect that "The slave being the absolute property of the mistress, not only her person, but the fruits of her labor, with all her children, were her owner's property too."[44] Maintaining that under the law of God it was no sin to hold slaves, the Delaware Senator again quoted from the minister, "A slave, on being converted, and becoming a freeman of Christ, has no claim on that ground to emancipation from the service of his master."[45] Saulsbury declared that ratification by three-fourths of the states of the proposed

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[43] Congressional Globe, 38th Congress, 1st Session, p. 1440.

[44] Ibid.

[45] Ibid.

amendment would be invalid "because it was in fraud and violation of the purposes and objects for which the Constitution was framed and the Union formed."[46] He further argued:

> I know of no rules of interpretation which arise out of the nature of a contract. In interpreting the Constitution, the terms of the instrument, the circumstances surrounding the parties to it and common purposes and objects which they had in view and its formation must all be taken into consideration in order to arrive at a just conclusion in reference to the powers it confers upon the Federal Government and which it denies to the States, or which it confers upon a convention called under its own provisions.[47]

As for Senator Johnson's contention that the people rather than the states created the Union, Saulsbury stated that the preamble to the Constitution "can have no more effect upon the legal interpretation of the instrument than a preamble of a statute in controlling the express, unequivocal language of the statute itself, where the language is clear and unequivocal."[48] Summarizing concisely his objections to the resolution, he concluded that, first, ratification by three-fourths of the states would not be binding on the one-fourth whose interests were affected, because the amendment could

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[46] Congressional Globe, 38th Congress, 1st Session, p. 1441.

[47] Ibid.

[48] Ibid., p. 1442.

not be submitted to them; second, that the time was unpropitious, and the matter should be postponed until peace was restored; and third, passage of the proposed amendment would prolong the war to such a degree that "you and I will molder in the dust before the Union of these States is reëstablished."[49]

Senator Powell dragged a "red-herring" into the debate by offering an amendment to the joint resolution as an independent proposition to be added at the end of the proposed article: "Article 14. The President and Vice-President shall hold their offices for the term of four years. The person who has filled the office of President shall not be reëligible."[50] Senator Trumbull immediately objected to the Powell proposal, contending that by attaching one amendment to another the issues become clouded. Trumbull's logic was given substantial support as the proposition was rejected 32 to 12. Powell proceeded to introduce an additional proposition to be appended to the committee amendment as a separate article:

> Article 14. The principal officer in each of the Executive Departments, and all persons connected with the diplomatic service, may be removed from

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[49]Congressional Globe, 38th Congress, 1st Session, p. 1442.

[50]Ibid., p. 1444.

> office at the pleasure of the President. All other officers of the Executive Departments may be removed at any time by the President or other appointing power when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty, and when so removed the removal shall be reported to the Senate together with the reasons therefor.[51]

Trumbull's earlier opposition to this procedure prevailed once more, as the amendment was defeated by a vote of 38 to 6. Pertinaciously adhering to his point of view, Senator Powell again presented a resolution to be added to the end of Joint Resolution Sixteen: "Article 14. Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title."[52] This proposition failed by a margin of 37 to 6. At this point, Senator Davis persisted in his frivolous attempt to delay action on the committee substitute by offering another proposition as an additional article. His resolution, calling for a revision in presidential election procedures beginning in 1864, instructed each state to nominate one candidate who would be selected by an unanimous vote of both the Senate and the House of Representatives. One phase of the operation within the Davis proposition read:

> In all cases where the balloting shall have continued in this mode through five days, and no

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[51] Congressional Globe, 38th Congress, 1st Session, p. 1446.

[52] Ibid., p. 1447.

> election shall have been effected, on the sixth day it shall be resumed, and after each ballot the officers presiding shall drop the candidate who has received the smallest number of votes . . . and the balloting shall be so continued among the remaining candidates until one shall receive the majority aforesaid.[53]

According to another portion of the election procedure, in the case of a deadlock, the Supreme Court was to select the President. Although very entertaining as a diversionary device, this proposal also was rejected by the Senate.

On Thursday, April 7, Senator Thomas Hendricks, Indiana Democrat, asserted that Negroes "never will associate with the white people of this country upon terms of equality. It may be preached; it may be legislated for; it may be prayed for, but there is that difference between the two races that renders it impossible."[54] Seemingly repeating the sentiments of Saulsbury, Hendricks argued that the inability of the Negro race "to go upward and onward" was the "pleasure of God." He maintained that the intellectual and moral qualities of the Negro had been elevated to their limits by contact with the white race. Hendricks also reiterated the argument that the time was not auspicious for a fundamental alteration of the Constitution in that many states, because of the war, were not in a position to

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[53] Congressional Globe, 38th Congress, 1st Session, p. 1447.

[54] Ibid., p. 1457.

consider such changes. He said that the committee substitute told the South: "You cannot come back upon the basis of the Constitution as it was, you cannot come back and enjoy your institutions as they were. If you do not come back, we leave in your midst in many localities of the South a majority of the population black; we make it impossible for you to reside there."[55] The Indiana Senator concluded his remarks by predicting that the Southern response would be: "Fight on; give up never; never hear a proposition of adjustment; but resist until you can resist no longer."[56]

Senator Henderson, author of the proposed amendment, took the floor and attempted to persuade the opposition that the power to amend "was designed to let deliberate and mature convictions of public policy take a place in the organic law." In other words, the power of amendment was the "safety valve of our institutions."[57] He then applied the principle to the issue at hand:

> First, slavery being detrimental to public and private interests, antirepublican in its tendencies, and subversive of good government, should now be abolished; second, the Constitution as it now stands confers upon Congress no power to abolish it; and third, to attain the ends which are essential to the establishment and maintenance of peace, a change

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[55] Congressional Globe, 38th Congress, 1st Session, p. 1458.

[56] Ibid.

[57] Ibid., p. 1460.

> in the Constitution, the peaceful and effective mode of governmental reform wisely provided by our ancestors for throwing off such evils that now afflict us and for utilizing the experiences of history as developed in the national progress, should at once be made.[58]

Henderson believed that only two alternatives existed--a Union without slavery or the unconditional recognition of the Confederacy. Directing his remarks at the Democratic side, he declared that the manumission of the slaves was the "logic of events," and observed that no party could withstand the force of freedom. In the last part of his statement, Senator Henderson answered charges that the slave was inferior to the white man by reasoning that "the Negro may possess mental qualities entitling him to a position beyond our present belief," and he urged that no obstacle should retard his elevation.[59]

On the next day, April 8, Senator Sumner took issue with the arguments advanced by both Trumbull and Henderson that Congress had no power to abolish slavery. He emphasized that the key to understanding the Constitution was found within the Preamble, and demonstrated, to his own satisfaction at least, that, when read in the light of the Preamble, the Constitution granted unlimited congressional

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[58] Congressional Globe, 38th Congress, 1st Session, p. 1461.

[59] Ibid., p. 1465.

control over slavery. The phrases "to provide for the common defense" and "promote the general welfare" were alone sufficient to give the necessary power to Congress. If skeptics wanted additional authority, Sumner was ready with citations: he argued that the power to declare war, the power to guarantee the states a republican form of government, and the implied power to guarantee life, liberty, and property derived from the Declaration of Independence all gave Congress the authority to abolish slavery by a simple statute. Suddenly departing from the question of congressional power, Sumner assailed Kentucky and other loyal border states by remarking that "slavery throughout the country, everywhere in the national limits, is a living unit, one and indivisible--so that even outside the rebel States it is the same public enemy and traitor lending succor to the rebellion, and holding out 'blue lights' to encourage and direct its operations."[60] After this interlude, he suggested three practical ways in which slavery could be abolished: "first, by the courts, declaring and applying the true principles of the Constitution; secondly, by Congress in the powers that belong to it; and thirdly,

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[60] Congressional Globe, 38th Congress, 1st Session, p. 1481. The italics are those of Senator Sumner.

by the people, through an amendment to the Constitution."[61] Inasmuch as the courts were uninspired and Congress was absorbed by a multiplicity of problems, Sumner concluded that the answer lay in an amendment which would give permanence to emancipation and would serve to bring the Constitution into harmony with the Declaration of Independence.

Regarding such an amendment, Sumner favored his earlier proposition that "all persons are equal before the law, so that no person can hold another as a slave; and the Congress shall have the power to make all laws necessary and proper to carry out this declaration into effect everywhere within the United States and the jurisdiction thereof."[62] He then offered another suggestion, in the event that his colleagues should not prefer the above: "Slavery shall not exist anywhere within the United States or the jurisdiction thereof; and the Congress shall have the power to make all laws necessary and proper to carry this proposition into effect."[63] Even though Sumner had previously argued that the phrase "neither slavery nor involuntary servitude" had outlived its usefulness, he nevertheless introduced, as a third option, a resolution in the classic Jeffersonian form:

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[61] Congressional Globe, 38th Congress, 1st Session, p. 1481.

[62] Ibid., p. 1482.

[63] Ibid., p. 1483.

"There shall be neither slavery nor involuntary servitude anywhere in the United States, or within the jurisdiction thereof, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; and the Congress may make all laws which shall be necessary and proper to enforce this proposition."[64] After making these suggestions, the Massachusetts Senator moved to amend the committee substitute by striking out the entire article and inserting his first choice. The phrase "all persons are equal before the law" incorporated the essence of the Declaration of Independence and the French Declaration of Rights.[65] Sumner argued that by adopting his proposition the Senate would remove the last remnants of the "sophistries of Calhoun."[66]

Senator Powell spoke in opposition to the Sumner amendment, contending that the resolution would set a precedent which would lead to government control of all domestic matters. He declared that if the government had "the right to strike down property in slaves, it certainly would have the right to strike down property in horses, to make a partition of the land, and to say that no one shall hold

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[64]Congressional Globe, 38th Congress, 1st Session, pp. 1482-83.

[65]Hamilton, "The Legislative and Judicial History of the Thirteenth Amendment," p. 7.

[66]Congressional Globe, 38th Congress, 1st Session, p. 1488.

land in any State in the Union in fee simple."[67] Maintaining once more that slavery was not the source of the nation's ills, Powell reiterated the thesis that abolitionists were responsible for the nation's problems:

> In my judgment the want of faith exhibited toward the border and adhering slave States and the bad faith in not exhibiting and carrying out the laws of the country is the source of our ills. If those who now act with that Senator [Sumner] had carried out in good faith the Constitution and the laws made in pursuance thereof on this subject, we never should have been engaged in the most unfortunate and cruel and disastrous civil war. The bad faith of the abolitionists has done more to bring this war about than all the efforts of the fire-eaters of the South.--Historians in aftertimes will give that as the cause of our troubles. It was the eternal intermeddling with this institution that aroused the spirits of the southern men, and they in turn committed the greatest indiscretion and follies. Had there been no abolitionists North there never would have been a fire-eater South.[68]

He went on to state that adoption of this amendment would "destroy everything that is grand, beautiful, lovely, and great in the world."[69] Turning his attention to the benevolent features of the "peculiar institution," Powell repeated an argument that had been used by proslavery advocates for more than fifty years:

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[67] Congressional Globe, 38th Congress, 1st Session, p. 1483.

[68] Ibid.

[69] Ibid.

> He [the Negro] has existed, I suppose, as long as the other peoples of the earth; but if you were here to-day to strike from the existence everything that the wooly-headed negro has given to art, to science, to the mechanical arts, to literature, or to any of the industrial pursuits, the world would not miss it. He is an inferior man in his capacity, and no fanaticism can raise him to the level of the Caucasian race. The white man is his superior and will be so whether you call him a slave or an equal. It has ever been so, and I can see no reason why the history of all the past should be reversed.[70]

After likening Abraham Lincoln to Charles I of England, he dismissed Sumner's speech with a quotation from Shakespeare: "It is a tale, told by an idiot, full of sound and fury, signifying nothing."[71]

At this point a member of the committee on the judiciary, Senator Jacob M. Howard of Michigan, expressing his displeasure at the Sumner proposal, stated that he preferred to "dismiss all references to French constitutions or French codes, and go back to the good old Anglo-Saxon language employed by our fathers in the Ordinance of 1787, an expression which has been adjudicated upon repeatedly, which is perfectly well understood both by the public and by judicial tribunals . . . ."[72] Opposition to the Sumner proposal

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[70] Congressional Globe, 38th Congress, 1st Session, p. 1484.

[71] Ibid., p. 1486.

[72] Ibid., pp. 1488-89.

was intensified when Senator Trumbull objected to both the unhistorical character of the amendment and to its French phraseology.[73] Senator Sumner, discerning the fruitlessness of his argument, withdrew the motion.

Senator Davis then pleaded for some form of compensation, either to the state or to the slaveholder, in the event that the judiciary committee substitute was adopted; but by this time the matter of remuneration was a dead issue.[74] Davis, recognizing that fact, yielded to Senator Saulsbury, who introduced an article comprised of twenty sections as a replacement for the committee resolution. This hodgepodge included provisions for the protection of civil liberties, the regulation of the recovery of fugitives from justice, and the encouragement of free-Negro emigration and colonization of Africa.[75] The Saulsbury proposal was speedily rejected; thus ended the attempt by opponents of emancipation to frustrate Senate action on the committee proposition.

Ultimately, the Senate passed Joint Resolution Sixteen by a vote of 38 to 6, which was far in excess of the required two-thirds margin.[76] Senators voting against the

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[73] Congressional Globe, 38th Congress, 1st Session, p. 1489.

[74] Ibid.

[75] Ibid.

[76] Ibid., p. 1490.

measure included Davis and Powell of Kentucky, Saulsbury and Riddle of Delaware, Hendricks of Indiana, and McDougall of California. Every Republican voted for the measure and surprisingly two renegade Democrats--Reverdy Johnson of Maryland and James Nesmith of Ohio--also supported it. In retrospect, it is clear that passage of the joint resolution was virtually assured after Sumner withdrew his proposition. At that point only a break within the Republican leadership could have possibly prevented adoption, since the Senate was composed of thirty-six Republicans, five Constitutional Unionists, and nine Democrats.[77]

The Democrats, soundly beaten, made a final attempt to block passage by raising a Parliamentary question. They contended that since several states were not represented on the floor, the vote was not binding on those states. The Vice-President, however, ruled that "a majority of all the Senators is a quorum, and two-thirds of the number voting, provided a quorum votes, is sufficient to pass any resolution proposing an amendment to the Constitution."[78] Thus, the proposed amendment had cleared the first hurdle. The next step would be its consideration by the House of Representatives.

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[77]Nicolay and Hay, Abraham Lincoln: A History, X, 76.

[78]Congressional Globe, 38th Congress, 1st Session, p. 1490.

CHAPTER III

HOUSE REJECTION OF THE JOINT AMENDMENT TO ABOLISH SLAVERY

On February 15, 1864, at the request of Senator Trumbull, Congressman Isaac Arnold of Illinois undertook to ascertain the amount of support within the House of Representatives for a resolution proposing an amendment abolishing slavery.[1] Although endorsed in the House by a vote of 78 to 62, the proposition obviously did not have the needed two-thirds majority. Since the lower chamber was composed of 102 Republicans, 75 Democrats, and 9 border-state representatives, this straw ballot indicated two important facts: (1) there was considerable apathy, and (2) passage of an emancipation amendment would require the active support of a number of Democrats.

The question formally came before the House six weeks later when Thaddeus Stevens introduced a proposition which had a general likeness to the Ashley and Wilson resolutions:

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[1] Congressional Globe, 38th Congress, 1st Session, pp. 659-60.

> Article I. Slavery and involuntary servitude, except for the punishment of crimes whereof the party shall have been duly convicted, is forever prohibited in the United States and all its Territories.
>
> Article II. So much of article four, section two, as refers to the delivery up of persons held to service or labor escaping into another State is annulled.[2]

Stevens subsequently deleted Article II, and at his request, House consideration of the issue of constitutional change was delayed for two months, affording the Senate adequate time to complete action on its resolution. On May 31 the Senate's Joint Amendment Sixteen was read to the lower chamber, and by a vote of 76 to 55, proponents of the amendment secured approval of the House to discuss it.

The debate, which occupied the House for only three days, was largely a recapitulation of Senate arguments. Unifying behind the slogan "the Constitution as it is and the Union as it was," the Democrats asserted that the time was inexpedient for effecting a constitutional change and reiterated the old state-sovereignty argument. They also argued that the amending process was restrictive and could not be used to enlarge the powers of the general government. The Democrats further charged that the proposed change would create greater disunity because it would give rebel leaders

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[2]Congressional Globe, 38th Congress, 1st Session, p. 1325.

a new pretext for staying in arms. Border-state members bitterly attacked the emancipation amendment as an unconstitutional usurpation of civil liberties and property rights. On the other hand, the Republicans maintained that "our prosperity as a people, our progress in civilization, and our duty to mankind" demanded passage of the resolution.[3] Isolating slavery as the sole cause of the nation's ills, they asserted that the failure to adopt the proposition would be tantamount to "treason to human liberty and human rights."[4] House Radicals added that passage of the resolution would elevate the condition of the poor white people in the slave states "who have ever been deprived of the blessings of manhood by reason of the thrice-accursed institution of slavery."[5]

In the most distinguished address of the session, M. Russell Thayer of Pennsylvania took exception to the Democratic contention that the right to amend the Constitution was restrictive. In Thayer's opinion, it made no sense to amend in only one direction--to restrain and contract the original powers--and not to amend in the other, which would enhance the powers and character of the instrument. He

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[3] Congressional Globe, 38th Congress, 1st Session, p. 2954.

[4] Ibid.

[5] Ibid., p. 2990.

believed that "the people have . . . reserved to themselves a right of amendment unlimited, except in the particulars they have chosen, in the fifth article, to restrain themselves from amendment . . . ."[6] In reply to the Democratic argument that the time was inopportune for effecting a constitutional change, he asked, "What hour is more proper for the punishment of a great State criminal than the hour in which he is found engaged in the commission of his crime?"[7] Thayer dismissed the objection that adoption of the amendment would drive the South to ever fiercer resistance with the comment that "the atrocities committed by the traitors in arms have been so many and so great that it is mere folly to speak of increasing their hatred or exasperation."[8] In his conclusion, he made the following appeal to the House membership:

> Let the institution of human slavery, which has set on foot this diabolical war and filled the land with desolation and sorrow, perish from the earth. It alone stands between our country and its future greatness, prosperity, and glory. Let us so act to-day that its injustice, its cruelties, and its bloody footprints shall speedily and forever disappear from the Soil of America.[9]

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[6] Congressional Globe, 38th Congress, 1st Session, p. 2980.

[7] Ibid.

[8] Ibid.

[9] Ibid., pp. 2980-81.

Thayer's remarks failed to cripple the solid Democratic front. Joseph Edgerton of Indiana stressed that the fact that a majority of the people in the free states were opposed to slavery did not entitle the House of Representatives to violate the explicit rights granted to slaveholding states by the Constitution. As Edgerton viewed it, three separate propositions were embodied in the proposed amendment: "First, the negro a citizen of the United States; secondly, the negro a free citizen of the United States, protected everywhere, in defiance of existing State constitutions and laws, as such citizens; and thirdly, the negro a voting citizen of the United States . . . ."[10] He asserted that adoption of the amendment would have disastrous economic consequences for the slave states because it would increase their direct taxation, but diminish their wealth and ability to pay. Edgerton went on to state that passage of the resolution would indicate to the world, and especially to the Confederacy, that the war was initiated "to accomplish the very purpose with which they charged us in the beginning, namely the abolition of slavery in the United States."[11]

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[10] Congressional Globe, 38th Congress, 1st Session, p. 2987.

[11] Ibid.

Opposition to the amendment was further intensified by the comments of George H. Pendleton, the Democratic leader of the House of Representatives. Pendleton protested against the resolution on the ground "that it is impossible that the amendment should be ratified without a fradulent use of the military power of the Federal Government in the seceded States."[12] He carefully explained his point:

> There are thirty-five States. Twenty-seven are necessary to ratify this amendment. There are nineteen free states. Suppose you get them all, where do you get the others? Count also Maryland, Missouri, West Virginia, even Delaware, if you please, and you have but twenty-three. Where are the other four? Gentlemen tell me they have provided for the admission of Colorado, Montana, and Nevada. This addition to the number of States increases to the same extent the number necessary for ratification. If you get them all, four are still wanting. If you intend to make up this number by the addition of new States you will have to add sixteen; three-fourths of which, twelve, will be the proper proportion for the number added, and the remaining four to make up the deficiency among the old States. Are you gentlemen prepared to carve sixteen new States out of this territory in the West for this purpose.[13]

Citing the Federalist papers, Pendleton further argued that the powers of the states were undelegated and inherent; that the Federal Government "is their agent, derives all its powers from them, exercises its powers in their name; that

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[12]Congressional Globe, 38th Congress, 1st Session, p. 2992.

[13]Ibid., p. 2992.

its duties are few and defined, and its powers few and simple, sometimes exclusive and far-reaching, but always limited to the grants declared in the Constitution."[14] In sum, he maintained that the Government "was designed to be a confederation of States, not a consolidated empire."[15]

The most severe attack upon the measure during the session was lodged by Robert Mallory of Kentucky. Defending the institution of slavery in his state, Mallory stated that Kentucky would not "hold herself bound to a Constitution that you change in spite of her protest and in the absence of those States which would aid her in preventing that amendment."[16] He asserted that Lincoln and the Republican party had attempted to "crush out" Union sentiment in the South, and were seeking "to wipe out the white people of the country, and supplant them by black freemen, whom they are going to make American citizens, to be controlled and governed by the northern emigrants whom they may think proper to send there from New England."[17] Mallory firmly believed "that the condition of slavery existing in my State and the other slave States is the best condition in which the African has ever been placed in the continent of America;

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[14] Congressional Globe, 38th Congress, 1st Session, p. 2994.

[15] Ibid.

[16] Ibid., p. 2981.

[17] Ibid., p. 2982.

I mean the best for the negro as it safeguards his physical, moral, and intellectual wants."[18]

In an effort to resolve the controversy by giving the border states more time to abolish slavery gradually, Ezra Wheeler of Wisconsin moved that Joint Amendment Sixteen "shall not apply to the States of Kentucky, Missouri, Delaware, and Maryland until after the expiration of ten years from the time the same shall be ratified."[19] Although he conceded that the proposed amendment was constitutional, Wheeler stated that "injustice should not be passed out to any part of the Union as the border states have remained loyal and true, and have faithfully, earnestly, and effectively helped sustain the government in its greatest trial and its greatest peril."[20] He pleaded that it was the "duty of every man [and] of every party . . . to aid in changing our Constitution . . . so as to take from the radicals all motives and excuses for the violation of and breaking up of the foundations of our Government . . . in their frantic efforts to hasten the emancipation of the black race . . . ."[21]

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[18]Congressional Globe, 38th Congress, 1st Session, p. 2983.

[19]Ibid., p. 2947.

[20]Ibid., Appendix, p. 125.

[21]Ibid.

After the hammer fell terminating debate on June 15, the voting began. Wheeler's amendment and Pendleton's substitute (ratification by state conventions, rather than state legislature) were rejected. The vote on the main motion, Joint Amendment Sixteen, was 93 yeas, 65 nays, and 23 not voting; hence the proposition failed to receive the necessary two-thirds vote.[22] In addition to the eighty-seven Republicans who supported the measure, Democrats Moses P. Odell and John A. Griswold of New York, Joseph Baily of Pennsylvania, and Ezra Wheeler of Wisconsin voted for its adoption. Those voting in opposition to the amendment were all Democrats. The Democratic New York World was jubilant: "The sober second-thought of the people will endorse the action of the Democratic members. Without feeling themselves judges of the Constitutional metaphysics that entered into the debate, the people will sanction the rejection on the broad and solid principles of common sense."[23]

Republican James M. Ashley of Ohio, who had been in charge of the measure in the House, changed his vote from the affirmative to the negative in order to lay on the table a motion to reconsider. Two weeks later, Ashley stated that

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[22]Congressional Globe, 38th Congress, 1st Session, p. 2995.

[23]Editorial, New York World, June 17, 1864, p. 4.

he did not plan to bring up a motion for reconsideration during the current session, and he added:

> Those who ought to have been the champions of this great proposition are unfortunately its strongest opponents. They have permitted the golden opportunity to pass. The record is made up, and we must go to the country on this issue thus presented. When the verdict of the people is rendered next November I trust this Congress will return determined to ingraft that verdict into the national Constitution. I therefore give notice to the House and the country that I will call up this proposition at the earliest possible moment after our meeting in December next.[24]

A review of the course of the House debate indicates that the rejection of the resolution was a result of the "election-fever" which possessed the membership in the summer of 1864. Every attempt to evaluate the merits of the proposed amendment quickly deteriorated into an exercise in name-calling between the parties. The Democrats assailed the Republican party for the imposition of "four years of dreadful misrule, four years in the fiery furnace, four years groping in the valley and shadow of death, four years of the blind leading the blind, and four years amid the sulphurous flames of the pit that is bottomless."[25] They further charged that the "latter-day Unionists" were "from the old Federal stock, lineal descendants from the Tories of the Revolution, enemies to the Union, the Constitution, and

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[24] Congressional Globe, 38th Congress, 1st Session, p. 3357.

[25] Ibid., p. 2951.

our form of government from the beginning."[26] In the most vehement attack on the opposition, Joseph Edgerton declared:

> You desire no peace, and you do not intend, if you can help it, to accept peace until you have abolished slavery; deprived if not robbed by confiscation the property-holders of the South of their rightful inheritance; made negroes socially and politically the equals of white men: and remodeled the Constitution to suit your own political purposes.--You openly scoff at the Constitution, and the ablest among you denounce it as "an atrocious idea."--Your policy is subjugation, not restoration. The instruments by which you work are the instruments of vengeance and despotism, not of humanity and justice and constitutional freedom.[27]

Louis Ross of Illinois added that "the national councils" were "filled, with but few exceptions, (which, of course, includes the Congress) with men woefully dwarfed in intellect and patriotism, the scum that rises and floats to the surface during the simmering blubbering of the political caldron."[28]

Conversely, the Republicans attacked the "traitors" of the Democratic party, suggesting that they leave the House of Representatives and go South.[29] E. C. Ingersoll of Illinois accused the Democratic party of political corruption flowing from "an undue desire to regain that power which

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[26]Congressional Globe, 38th Congress, 1st Session, p. 2956.

[27]Ibid., p. 2988.

[28]Ibid., p. 2959.

[29]Ibid., p. 2619.

they ingloriously lost . . . ."[30] When the rebellion was over and slavery gone, he maintained that the nation should "petrify the pro-slavery Democracy" as "a becoming and fitting tombstone . . . to mark the place of their burial."[31] Ingersoll asserted that the opposition party denounced Lincoln's war policy only because of its interference with the institution of slavery. And he found much evidence of the debasement of the Democratic party:

> The eloquent and scholarly Sumner may be knocked down in the United States Senate by a southern ruffian and blackguard: northern doughfaces say, "Served him right."--The incorruptible Parker, Coding, and Garrison may be sublime and eternal principles of truth, and liberty, and justice, and these same northern doughfaces rise up and cry out, "Served them right."--To crown all this record of infamy, the martyr, Elijah P. Lovejoy, is mobbed and murdered on the free, broad prairies of Illinois, simply for the crime of publishing a paper dedicated to the advocacy of the rights of mankind; and again these northern doughfaces cry out, "Away with him," "Served him right."[32]

The emphasis upon politics, which united the Democratic party against the resolution, may have been the strategy of the Republican leadership, rather than a product of the debate. Since the majority party was vulnerable to war critics, the Republicans needed a new issue in the

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[30] Congressional Globe, 38th Congress, 1st Session, p. 2889.

[31] Ibid.

[32] Ibid., p. 2990.

upcoming election to divert attention from the military failures. The obvious choice was the question of emancipation which had inflamed the North for more than fifty years. By raising the question prior to the election, the Republicans would profit from either the passage or the rejection of the proposed amendment. Further support for the possibility of a Republican scheme came from the fact that the full resources of the Administration were not employed against the opposition.

CHAPTER IV

THE ELECTION OF 1864, PRESIDENTIAL PATRONAGE, AND HOUSE PASSAGE OF THE JOINT AMENDMENT TO ABOLISH SLAVERY

Before the Republican National Convention met in June, 1864, Lincoln urged Senator Edwin D. Morgan of New York, chairman of the Republican National Committee, to mention the abolition amendment in his keynote address, and to see that a statement supporting the passage of such an amendment was placed in the platform. Morgan responded by telling the delegates that the party which they represented "will fall short of accomplishing its great mission, unless among its other resolves it shall declare for such an amendment of the Constitution as will positively prohibit African slavery in the United States."[1] This theme was soon reiterated by other speakers. For example, Robert J. Breckinridge of Kentucky, temporary chairman of the convention, endorsed the amendment, not on the ground of party, but on the genuine principles of government and Christianity.[2] And the platform committee adopted a straightforward plank:

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[1]Rheinhard H. Luthin, The Real Abraham Lincoln (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1960), p. 571.

[2]Nicolay and Hay, Abraham Lincoln: A History, X, 79.

> Resolved, That as slavery was the cause, and now constitutes the strength of this Rebellion, and as it must be, always and everywhere, hostile to the principles of Republican Government, justice and the National Safety demand its utter and complete extirpation from the soil of the Republic; and that, while we uphold and maintain the acts and proclamations by which the Government, in its own defense, has aimed a death blow at this gigantic evil, we are in favor, furthermore, of such an amendment to the Constitution, to be made by the people in conformity with its provisions, as shall terminate and forever prohibit the existence of Slavery within the limits of the jurisdiction of the United States.[3]

Lincoln was satisfied, and he emphasized his support for the amendment following his renomination:

> I approve of the declaration of so amending the Constitution as to prohibit slavery throughout the nation. When the people in revolt, with the hundred days of explicit notice, that they could, within those days, resume their allegiance, without the overthrow of their institution, and that could not so resume it afterwards, elected to stand out, such an amendment of the Constitution as is now proposed, became a fitting, and necessary conclusion to the final success of the Union cause. Such alone can meet and cover all cavils.[4]

Union reverses during the summer of 1864 gave the Democratic party an excellent opportunity to win the upcoming election. In fact, Lincoln practically acknowledged his defeat in late August:

> This morning, as for some days past, it seems exceedingly probable that this Administration will not be re-elected. Then it will be my duty to so

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[3]Kirk H. Porter and Donald B. Johnson, eds., National Party Platforms, 1840-1964 (Urbana, Ill.: University of Illinois Press, 1966), p. 35.

[4]Luthin, The Real Abraham Lincoln, pp. 571-72.

> cooperate with the President-elect as to save the Union between the election and the inauguration, as he will have secured his election on such grounds that he cannot possibly save it afterwards.[5]

When the Democratic convention met at Chicago on August 29, it nominated McClellan and adopted a platform which stressed the failure of the war and the necessity for peace. Although the platform did not specifically comment on the amendment, it did refer to it obliquely:

> Resolved, That the aim and object of the Democratic party is to preserve the Federal Union and the rights of the States unimpaired, and they hereby declare that they consider that the administrative usurpation of extraordinary and dangerous powers not granted by the Constitution . . . .[6]

The political horizon abruptly changed following the fall of Atlanta on September 2. Sherman's success revitalized the Republican party and set the stage for the reelection of Lincoln. The Democrats had gambled on continued military failure, and they had lost. Not only was Lincoln reelected, but also the Republicans markedly increased their strength in the House of Representatives. This development virtually assured passage of the antislavery amendment. The New York Herald appraised the situation thus:

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[5]Arthur C. Cole, "Lincoln and the Presidential Election of 1864," Transactions of the Illinois State Historical Society (May, 1917), p. 135.

[6]Porter and Johnson, National Party Platforms, p. 34.

> The Democratic party has been totally demolished because it did not follow the advice we gave it in 1862. The few democrats who have escaped the wreck and are safe in the next Congress will do well to take a sensible hint, and vote for the amendment to the Constitution abolishing slavery. We have had trouble enough about slavery, and the democrats have been beaten often enough in their attempts to uphold this doomed institution. Now let us all unite to get it out of the way, and so clear the field for new issues in 1868. If the democrats in Congress persist in fighting the proslavery battle over again they can only expect another defeat. It will be better for them and the party to acquiesce cheerfully in what is inevitable.[7]

Lincoln was quick to push his advantage, using his annual message of December 6 to encourage the lame-duck session of the Thirty-eighth Congress to approve the amendment:

> At the last session of Congress a proposed amendment of the Constitution abolishing slavery throughout the United States passed the Senate, but failed for lack of the requisite two-thirds vote in the House of Representatives. Although the present is the same Congress and nearly the same numbers, and without questioning the wisdom or patriotism of those who stood in opposition, I venture to recommend the reconsideration and passage at the present session. Of course the abstract question is not changed; but an intervening election shows almost certainly that the next Congress will pass the measure if this does not. Hence there is only a question of <u>time</u> as to when the proposed amendment will go to the States for their action. And as it is to go at all events, may we not agree that the sooner the better? It is not claimed that the election has imposed a duty on members to change their views or their votes any further than, as an additional element to be considered, their judgement may be affected by it. It is the voice of the people now for the first time heard upon the question. In a great national crisis

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[7]Editorial, <u>New York Herald</u>, November 29, 1864.

> like ours unanimity of action among those seeking a common end is very desirable--almost indispensable. And yet no approach to such unanimity is attainable unless some deference shall be paid to the will of the majority simply because it is the will of the majority. In this case the common end is the maintenance of the Union, and among the means to secure that end such will, through the election, is most clearly declared in favor of such constitutional amendment.[8]

Two weeks later, proponents of the amendment heartily greeted an editorial in the Democratic New York World which read:

> Before another Presidential election the abolition question, for example, will probably be in such a state that past ideas will not apply. As the problem advances toward its predetermined solution, we shall see public opinion more and more disposed to acquiesce in the manifest tendency of events. Before the expiration of its new lease of power, the Republican party will have secured a constitutional amendment for the entire extirpation of slavery in the United States . . . . Why should the [Democratic] party bind itself to a dead corpse?[9]

Interestingly, this editorial position was short-lived, for two days later the World urged Democratic members to vote against the proposition.[10]

House reconsideration of the proposed amendment commenced on January 6. The debate, which occupied the lower chamber for eight days, was essentially a repetition

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[8]Lincoln, Collected Works, VIII, p. 149.

[9]Editorial, New York World, December 19, 1864, p. 4.

[10]Ibid., December 21, 1864, p. 4.

of past arguments. There was, however, noteworthy argumentation on both sides. One of the best speeches of the second session was delivered by John A. Kasson, an Iowa Republican. Kasson argued that if the Democratic party was universally opposed to the measure, as some members of the opposition had claimed, the Democratic Convention would have labeled the proposed amendment as "unconstitutional"; however, the Chicago convention had refused even to take up the issue.[11] Countering the charge that the question had not been fully discussed in the nation, he stated that the proposition was debated "on the stump" throughout his district and considered in some manner in every other district within the Union. Thus, in his opinion, an informed electorate had "pronounced in favor of the progress of events, as indicated by . . . [the] amendment."[12] Kasson also maintained that the Republican Convention of 1860, which had resolved that the Federal Government did not have the "constitutional right to legislate upon or interfere with slavery" in any state, laid the foundation to act upon this issue by amending the Constitution.[13] He subsequently attacked the doctrine that the

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[11] Congressional Globe, 38th Congress, 2nd Session, p. 189.

[12] Ibid., p. 189.

[13] Ibid., p. 191.

South had the right to reenter the Union under the same Constitution which existed when it left, declaring that there had never been a more dangerous principle enunciated upon the floor of the House of Representatives. In his final remarks, Kasson sought to challenge the Democracy:

> If you desire peace and harmony, you will give the people of the North and of the South an opportunity to establish harmonious relations by the expression of legitimate majorities upon this question. If you desire perpetual discord and war, then you will refuse them the opportunity, and compel the perpetuation of this institution, with bloodshed without end in the future, and disunion without end in the present.[14]

Godlove S. Orth of Indiana emphasized the point that Congress really had no power to amend the Constitution; all it could do was refer propositions to the people of the states for action. He said that his colleagues should vote to submit the proposed amendment to the people if the House accepted the principle that citizens are capable of self-government. Finally, Orth opined that "this Congress may not heed the public voice; it may refuse to respond to the known sentiment of our constituents; but before the close of the year . . . another Congress . . . will obey their voice . . . , and be remembered with gratitude by untold millions who are hereafter to enjoy its blessings."[15]

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[14]Congressional Globe, 38th Congress, 2nd session, p. 193.

[15]Ibid., p. 142.

Arguing in favor of the amendment, Austin King of Missouri told his colleagues that the rebels themselves were now contemplating the abolition of slavery. He warned that such an act would enable the South "to replenish their armies and at the same time secure the fealty of their slaves, as well as reassure their discouraged friends at home and abroad . . . ."[16] According to King, Southern leaders were counting upon the Democratic party to defeat the amendment so they could say to their slaves: "The yankees have pretended to desire your freedom, but when the pinch came . . . they voted it down. They dislike you as much as they do us. Help us to whip the deceitful wretches, and we will give you freedom; you can get it of [sic] nobody else . . . ."[17] In order to forestall this development, he urged the House membership to adopt the joint resolution promptly.

Green Clay Smith of Kentucky protested against the statement that most of the citizens of the border states desired retention of the institution of slavery. Maintaining that only one in eight persons within Kentucky were advocates of the domestic system, he charged that of this number, two-thirds were "the meanest, the most designing die of

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[16] Congressional Globe, 38th Congress, 2nd Session, p. 199.

[17] Ibid.

secessionists and rebels."[18] Smith subsequently suggested that passage of the amendment would enable the United States to drive the French out of Mexico with the aid of one hundred and fifty or two hundred thousand Negro soldiers. "We can do it and we will do it," he said. "And Napoleon better look well to his interests in Mexico, and Maximilian had better beware of the fate that awaits him."[19]

William Higby, a California Republican, thought that his colleagues should concern themselves with what had transpired between the last session of Congress and the present, rather than indulge in the reiteration of old arguments on this question. First, he emphasized that a four-hundred-thousand-vote majority had sustained administration policy; secondly, he noted that the action of Congress was endorsed by the people in the reelection of every Republican member of the present session who was put in nomination.

Opposition to the amendment was voiced by Andrew J. Rogers of New Jersey, who maintained that the Supreme Court in the Dred Scott decision had clearly established that the Federal Government had no jurisdiction over the domestic affairs of the states. He also argued that the

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[18]Congressional Globe, 38th Congress, 2nd Session, p. 235.

[19]Ibid., pp. 236-37.

proposed amendment, if adopted, would necessitate another amendment to alter that portion of the Constitution which provided for taxation and representation based upon the number of slaves within a state. Since the proponents of the proposition had no intention to further amend the instrument, he declared that the Constitution would be a "strange anomaly," providing that Negroes should be fully represented when, in fact, only three-fifths could be represented.[20]

Reverting to a dogma of the past, Fernando Wood of New York protested against the resolution on scriptural grounds, asserting that the Almighty had intended the Negro to be inferior. He revived the old cliché that "the condition of domestic servitude as existing in the southern States is the highest condition of which the African race is capable, and when compared with their original condition on the continent from which they came is superior to all elements of civilization, philantropy, and humanity."[21] To support his position, Wood asked the Clerk of the House of Representatives to read a description of the condition of the African Negro written by a Captain Carnot:

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[20]Congressional Globe, 38th Congress, 2nd Session, p. 154.

[21]Ibid., p. 194.

> In my wanderings in African forests, I have often seen the tiger pounce upon its prey, and with instinctive thirst satiate its appetite for blood, and abandon the drained corpse; but these African negresses were neither as decent nor as merciful as the beast of the wilderness. Their malignant pleasure seemed to consist in the invention of tortures that would agonize, but not slay. There was a devilish spell in the tragic scene that fascinated my eyes to the spot. A slow, lingering, tormenting mutilation was practiced on the living as well as on the dead; and, in every instance, the brutality of the women exceeded that of the men. I cannot picture the hellish joy with which they passed from body to body, digging out eyes, wrenching off lips, tearing the ears, and slicing the flesh from the quivering bones; while the queen of the harpies crept amid the butchery, gathering the brains from each several skull as a bonne bouche for the approaching feast![22]

He summarized his objections to the resolution as follows:

> I shall vote against it because it is not within the power of Congress to pass it. I shall vote against it because it is unwise, impolitic at this time, if we could pass it legally. I shall vote against it because it is another step toward the eternal separation of the two sections. I shall vote against it because it would be no advantage to the negro if successful. I shall vote against it because it is an improper intermeddling with the domestic affairs of others. I shall vote against it because I want to remove every obstacle to the peaceful solution of this great question; I want to alleviate the condition of the South as well as the North; I want to discontinue these controversies and struggles now pending between men who but yesterday were fellow citizens of the same great country, with the constitutional rights and privileges. I shall vote against it because I would leave to every State and every political community the entire control of their own domestic affairs. I shall vote against it because I want to preserve the essence of our constitutional liberties.[23]

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[22] Congressional Globe, 38th Congress, 2nd Session, p. 194.

[23] Ibid., p. 195.

While acknowledging the right of Congress to adopt the proposed amendment, Samuel Cox of Ohio nevertheless asserted that it would bring about an untoward consolidation of Federal power. According to Cox, other demerits of the resolution included its inexpedient and anarchical character. The Ohio Congressman believed that slavery was the "most repugnant of all human institutions."; however, this fact did not entitle Congress to deprive the South of "home freedom in home affairs."[24] Cox was influenced to a large degree by the report that Francis P. Blair, Sr., had left on a peace mission to Richmond. This dispatch gave several members hope that a settlement was imminent which would eliminate the need for a constitutional amendment.[25] Apparently alluding to the Blair mission, Cox stated that so long as there was a faint hope that the South would return to the Union, he would not jeopardize the rehabilitation of the states. He further charged that some members of the majority party, by threatening to abolish slavery, were impeding the negotiations for the return of the Southern states.

The first major break in the Democratic ranks appeared when James Rollins of Missouri announced that he was

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[24]Congressional Globe, 38th Congress, 2nd Session, p. 242.

[25]New York Times, January 9, 1865, p. 1.

reversing his position of the last session and that he now endorsed the measure. Although a slaveowner, Rollins declared that he had entertained abolitionist views for more than twenty years. After maintaining that his first vote was cast "on the ground of expediency alone," he said that the decidedly antislavery sentiment within the nation was the primary consideration in his change.[26] However, political expediency might have been the prevailing factor for his conversion in that, three days earlier, the Missouri legislature had passed an emancipation resolution by a vote of 60 to 4.

Two weeks later, Francis P. Blair returned from Richmond, bringing "neither olive branch in his hand, nor a treaty in his pocket."[27] For many representatives, the failure of this mission ended all hopes of reconciliation. This development produced another fracture in the Democratic front. Archibald McAllister of Pennsylvania declared that as a result of the failure of the mission, he was changing his stand of the last session and would vote in favor of the proposed amendment. Alexander Coffroth, also of Pennsylvania, altered his position on the ground that his objection of last summer, that of opposing the confiscation of the property of

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[26]Congressional Globe, 38th Congress, 2nd Session, p. 258.

[27]New York Times, January 28, 1865, p. 1.

loyal citizens, was no longer valid since Maryland and Missouri had already abolished slavery, and Kentucky was presently taking like action. Directing his remarks at those on his own side of the hall, Cofforth said:

> Many of the honorable gentlemen of this House with whom I am politically associated may condemn me for my action to-day. I assure them I do that only which my conscience sanctions and my sense of duty to my country demands. If by action to-day I dig my political grave, I will descend into it without a murmur, knowing that I am justified in my action by a conscientious belief I am doing what will ultimately prove to be a service to my country, and knowing there is one dear, devoted and loved being in this wide world who will not bring tears to bitterness to that grave, but will strew it with beautiful flowers, for it returns me to that domestic circle from whence I have been taken for the greater part of the last two years.[28]

Another opponent of the proposition during the preceding session, Anson Herrick of New York, maintained that the question had been decided by a popular verdict--a decision he would no longer resist. Herrick asserted that the defeat of the measure would serve no possible political advantage, since the new Congress would pass the resolution at an extra session convening in March. He charged that his party's "seeming adherence to slavery . . . has . . . depleted . . . party ranks . . . in nearly every state of the Union; and every year and every day we are growing weaker

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[28]Congressional Globe, 38th Congress, 2nd Session, p. 524.

. . . in popular favor . . . , because we will not venture to cut loose from the dead carcass of negro slavery."[29]

On the afternoon of January 31, James Ashley's motion to call the previous question was endorsed by a vote of 112 to 57. Robert Mallory requested a one-day postponement of the vote on the main question, but Ashley, who had earlier been reprimanded by Thaddeus Stevens for being behind schedule, reminded Mallory that a prior understanding had existed to close the debate that afternoon. Several of Mallory's own associates immediately confirmed this fact. James Brown of Wisconsin asked Ashley to yield so Brown could offer the following conciliatory amendment:

> Section 1. Hereafter every sale, transfer, or assignment of the right of one person to the service of labor or another, shall be void; and by the mere fact of the consent of the owner to such sale, assignment, or transfer, the person owing service or labor shall be released from all such obligation and become free.
>
> Section 2. All females, such as are usually termed slaves, owing service or labor to others, are hereby released from such obligation, and are and shall be wholly free.
>
> Section 3. From and after the 1st day of January, A.D. 1880, slavery, and all involuntary service, except that arising from the relations of parent and child, master and apprentice, guardian and ward, or that imposed as a punishment for crime, are and shall be abolished.

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[29]Congressional Globe, 38th Congress, 2nd Session, p. 526.

> Section 4. Congress shall by law provide compensation for the actual and direct damage or loss sustained through the operation of this law, by loyal citizens of the United States.[30]

However, Speaker Schuyler Colfax of Indiana ruled that a motion to amend was not in order. By this time, the New York World reported that "the spacious galleries were literally overrun with people, while on the floor of the House there was hardly standing room."[31] Finally, the main question was ordered, and the vote was taken: 119 yeas, 56 nays, and 8 not voting. Speaker Colfax then made the following announcement: "The constitutional majority of two-thirds having voted in the affirmative, the joint amendment is passed."[32] The Congressional Globe described the scene:

> The announcement was received by the House and by the spectators with an outburst of enthusiasm. The members on the Republican side of the House instantly sprung to their feet, and, regardless of parliamentary rules, applauded with cheers and clapping of the hands. The example was followed by spectators in the galleries . . . who waved their hats and cheered loud and long, while the ladies . . . rose in their seats and waved their handkerchiefs . . . .[33]

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[30] Congressional Globe, 38th Congress, 2nd Session, p. 528.

[31] New York World, February 1, 1865, p. 1.

[32] Congressional Globe, 38th Congress, 2nd Session, p. 531.

[33] Ibid.

George W. Julian wrote in his diary that "Members joined in shouting and kept it up for some minutes. Some embraced one another, others wept like children . . . ."[34] By a vote of 121 to 24, the House adjourned "in honor of this immortal and sublime event."[35] The press generally rejoiced in the triumph. For instance, the New York Times declared: "With the passage of this amendment the Republic enters upon a new stage of its public career. It is hereafter to be, what [it] has never been hitherto, thoroughly democratic--resting on human rights as its basis, and aiming at the greatest good and the highest happiness of all its people."[36] One of the few dissenters, the New York World, said that the vote "shuts the door on the hopes of peace until the South is brought to acquiesce in the abolition of slavery."[37]

It was a close victory for the Republican leadership--only three votes more than the necessary two-thirds. Party lines had momentarily broken down as seventeen Democrats voted for the measure.[38] The result was principally

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[34]"George W. Julian's Journal," Indiana Magazine of History, XI (December, 1915), p. 327.

[35]Congressional Globe, 38th Congress, 2nd Session, p. 521.

[36]Editorial, New York Times, February 1, 1865, p. 4.

[37]Editorial, New York World, February 4, 1865, p. 4.

[38]The four Democrats who voted in the affirmative in June--Odell, Baily, Wheeler, and Griswold--were joined by

due to two factors: (1) the postponement of the vote on the main question until the two-thirds majority was secured, and (2) the pressure exerted on Democratic Congressmen by a lobby organized by Secretary of State William H. Seward. As House sponsor of the amendment, James Ashley had informed his colleagues as early as December 15, 1864, that the vote would be taken on Monday, January 9. But the Republican leadership, lacking the necessary votes to carry the resolution on the ninth, postponed the vote with an announcement that the subject required further discussion.[39] On January 13, the House passed a motion offered by Ashley to postpone further debate on the question until the end of the month. This procedure gave the Republican leadership more time to coax opposition members.

The importance of the Seward lobby cannot be underestimated. As early as January 10, speakers in the House alluded to "much coaxing outside and inside of this Hall" to induce Democrats to vote in favor of the amendment.[40]

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thirteen others, namely: Augustus C. Baldwin of Michigan; Alexander H. Coffroth and Archibald McAllister of Pennsylvania; James E. English of Connecticut; John Ganson, Anson Herrick, Homer A. Nelson, William Radford, and John B. Steele of New York; Wells A. Hutchins of Ohio; Austin A. King and James E. Rollins of Missouri; and George H. Yeaman of Kentucky.

[39] New York Herald, January 10, 1865, p. 1.

[40] Congressional Globe, 38th Congress, 2nd Session, p. 200.

Aaron Harding of Kentucky may have been referring to the Seward lobby when he said on the closing day of debate: "But there are influences urging this change in the Constitution that no argument can meet--that can not be reasoned away." [41] The central figures in the lobby, W. N. Bilbo of Tennessee and Robert W. Latham and Richard Schell of New York, were under the direction of the Secretary of State.[42] Operating chiefly within the state of New York, they were able to secure a commitment from Governor Horatio Seymour that he would not advise New York Democrats to vote against the amendment.[43] The fact that two of Bilbo's aides were attached to the New York Herald may have made it possible for the lobby to obtain editorial support from that Democratic organ.[44] It is quite evident that "personal friendships and 'patriotism,' including all manner of political argument . . . constituted the lobby's first form of persuasion."[45] But they also promised favors to those who supported the

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[41] Congressional Globe, 38th Congress, 2nd Session, p. 54.

[42] Lawanda C. Cox and John H. Cox, Politics, Principle, and Prejudice, 1865-1866 (London: The Free Press of Glencoe, 1963), p. 15.

[43] Ibid., p. 16.

[44] Ibid., p. 25.

[45] Ibid., p. 28.

amendment. According to several accounts, Anson Herrick was promised that an appointment as internal revenue assessor in New York would go to his brother.[46] A lame-duck Congressman from New York, Moses F. Odell, who supported the resolution in both the first and second sessions, was later appointed as a Navy agent in New York.[47] George Yeaman of Kentucky, who was converted through the direct efforts of Lincoln, later became the United States Minister to Denmark.[48]

This kind of arm-twisting did not escape criticism. Samuel S. Cox charged that an "active Radical Republican" would have received ten thousand dollars from a New York party if he had been successful in persuading Cox to vote in favor of the amendment.[49] Senator Henry Wilson of Massachusetts observed that Democrats generally voted against the resolution "unless they had their pay for it."[50] Thaddeus Stevens complained that "the greatest measure of the

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[46]Lawanda C. Cox and John H. Cox, Politics, Principle, and Prejudice, 1865-1866 (London: The Free Press of Glencoe, 1963), pp. 28-29.

[47]Ibid., p. 29.

[48]Ibid.

[49]Samuel S. Cox, Three Decades of Federal Legislation, 1855 to 1885 (Providence, R. I.: J. A. and R. A. Reid, 1886), p. 329.

[50]Cox and Cox, Politics, Principle, and Prejudice, p. 27.

nineteenth century was passed by corruption, aided and abetted by the purest man in America."[51] This sentiment was echoed by "Sunset" Cox who asked: "Can anything be conceived more monstrous than this attempt to amend the Constitution upon such a humane and glorious theme, by the aid of the lucre of office-holders?"[52] Despite their questionable tactics, the Seward lobby obtained the essential votes to insure passage of the amendment.

Legislative action resumed on February 1, when Joint Amendment Sixteen, having been enrolled and signed by the Speaker of the House and the Vice-President, was submitted to the President and signed by him. The presidential signature created a constitutional question in that earlier amendments had not been presented to the President for his approval. Ultimately the problem was resolved when Senator Lyman Trumbull proposed the following resolution, which was adopted on February 7:

> Resolved, That the article of amendment proposed by Congress to be added to the Constitution of the United States, respecting the extinction of slavery therein, having been inadvertently presented to the President for his approval, it is hereby declared that such approval was unnecessary to give effect to the action of Congress in proposing said amendment,

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[51]James M. Scovel, "Thaddeus Stevens," Lippincott's Monthly Magazine, April, 1898, p. 550.

[52]Cox, Three Decades of Federal Legislation, p. 329.

> inconsistent with the former practice in reference to all amendments to the Constitution heretofore adopted, and being inadvertently done, should not constitute a precedent for the future; and the Secretary is hereby instructed not to communicate the approval of the said proposed amendment by the President to the House of Representatives.[53]

On Friday, March 3, the House concurred in the Senate resolution, thus concluding congressional action on the joint resolution to abolish slavery.

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[53]Congressional Globe, 38th Congress, 2nd Session, p. 629.

CHAPTER V

CONCLUSION

Antislavery societies in December, 1863, began petitioning Congress for a constitutional amendment that would emancipate slaves throughout the United States. In response to these appeals, the Senate Committee on the Judiciary in February, 1864, reported out a resolution abolishing slavery. Two months later, a Republican-controlled Senate adopted the proposed amendment by an overwhelming majority. But in the House of Representatives, the resolution met formidable opposition. Democratic unity and Republican preelection maneuvering led to the rejection of the proposition in June, 1864. The fall of Atlanta in September revitalized the North and helped produce a Republican landslide in the election of 1864. When the House reconsidered the resolution in January, 1865, administration pressure on Democratic congressmen, coupled with the realization that the next Congress would easily pass the amendment, prevailed, and the amendment was adopted by a three-vote margin on January 31, 1865.

Although marked by a profusion of political rhetoric, the congressional debate was essentially a struggle

between legalism and humanitarianism. The Democratic opposition, let by Saulsbury and Pendleton, argued that the proposed change was unconstitutional because domestic institutions, according to the American system, belonged under state control. On the other hand, Trumbull and Ashley maintained that the principle of human liberty as embodied in the Constitution was supreme over state law. Yet against the background of a bloody civil war, emotion was a more profound influence upon the representatives than any one argument. Another significant aspect of the debate was the role of party lines. Until the election of 1864, both parties were solidly committed to uncompromising positions on the slavery question. It was only after the humiliation of the Democratic election defeat that the administration effectively broke the minority party front and resolved the lengthy dispute.

In retrospect, the passage of the Thirteenth Amendment signaled the culmination of the abolitionist movement. By settling the debate as to how slavery should be obliterated, the amendment brought to an end one of the greatest reform movements in American history.

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