

SELECTED SYMPOSIUM REMARKS

New Tennessee

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At the same time that the Civil Rights Bill and the proposed constitutional amendments dealing with the basis of representation and the expansion of federal power were being debated on the floor of the House of Representatives and the Senate, the Joint Committee on Reconstruction was focusing its attention on a different aspect of the dispute over Reconstruction policy. The constitutional amendments that had been initially reported by the committee addressed only the structure and powers of the federal government. However, the committee itself had been created for the purpose of “inquir[ing] into the condition of the [ex-Confederate states] and report[ing] whether they, or any of them, are entitled to be represented in . . . Congress.”¹ Thus, on January 12, 1866—the same day that the subcommittee dealing with the proposed constitutional amendments was created—the committee also voted to establish four subcommittees that were charged with the task of evaluating the situation in the former Confederate states individually.² Three days later, the members of each of the subcommittees were appointed by William Pitt Fessenden.³

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¹ BENJAMIN B. KENDRICK, *THE JOURNAL OF THE COMMITTEE OF FIFTEEN ON RECONSTRUCTION, 39TH CONGRESS 1865-1867*, 38 (Negro Univs. Press 1969).

² *Id.* at 47.

³ *Id.* at 38-39, 48.

The situation in Tennessee was the first to be discussed by the committee as a whole. Because that situation was viewed as being unique,⁴ by February, 1866, some mainstream Republicans had come to the conclusion that, unlike the other former Confederate states, Tennessee should immediately be allowed to regain its position as an equal partner in the Union. By contrast, other Republicans insisted that Tennessee should not be given the opportunity to have its chosen representatives seated in Congress unless certain conditions were met. The proceedings of the Joint Committee reflected this divide.

Initially, on February 15, 1866, speaking on behalf of himself, James Grimes, and Henry Grider, John Bingham delivered the report of the subcommittee that had been charged with the responsibility of dealing with the status of Tennessee.⁵ The report included a proposal that would have essentially readmitted Tennessee without imposing any further conditions. However, after some discussion, rather than adopting this proposal, on February 17 the committee as a whole voted to refer the matter to a different subcommittee that included George Williams, Roscoe Conkling and George Boutwell.⁶

Two days later, Conkling proposed a measure that would have allowed Tennessee to regain its status only after the state had renounced the Confederate war debt, disenfranchised those who had supported the rebellion for at least five years, and barred members of that group from holding government office for the same period of time.⁷ Boutwell then quickly moved to add a requirement that the state eliminate race-based restrictions on access to the right to vote, but this amendment was rejected the following day on a vote of 6-5.⁸ Immediately thereafter, Bingham moved to eliminate the requirements imposed by the Conkling plan in favor of a simple declaration that the state of Tennessee was “one of the United States of America, on an equal footing with the other states in all respects whatsoever.”⁹

⁴ See *Miscellaneous Items*, BANGOR DAILY WHIG & COURIER, Feb. 9, 1866, at 1.

⁵ KENDRICK, *supra* note 1, at 63-64.

⁶ *Id.* at 67.

⁷ *Id.* at 68-69.

⁸ *Id.*

⁹ *Id.* at 71.

However, February 19 was also the day on which Andrew Johnson vetoed the Freedmen's Bureau Bill, and, in the uproar that followed, the committee did not resume its consideration of the status of Tennessee until March 3. On that day, by a vote of 8-4, the committee voted to report a measure with a preamble which asserted that Tennessee "can only exercise [the functions of a state] by the consent of the law-making power of the United States" but also declared that the state had already met the requisite standards for readmission.¹⁰ By contrast, two days later, the Republicans who had taken this position changed course and united with their fellow party members in voting to report a resolution that included requirements that were very similar to those which had been included in the proposal that had emerged from the Conkling subcommittee on February 19.¹¹

The joint resolution that had been approved by the committee was reported by John Bingham on March 5¹² and quickly became a leading topic of conversation in Washington, D.C.¹³ The proposal drew fire from both sides of the political spectrum. Concerned that any decision to seat the representatives from Tennessee might lead quickly to the readmission of the other ex-Confederate states, some Republicans were flatly opposed to the idea that Tennessee should be readmitted in 1866 under any circumstances.¹⁴ While not embracing that position, George Boutwell and Elihu Washburne produced a report which argued that the representatives from Tennessee should not be seated unless the state government extended the right to vote to its Black population.¹⁵ By contrast, none of the Republican committee members ever suggested that Tennessee should be required to adopt legislation that protected the civil rights of the former slaves.

¹⁰ *Id.* at 75-77.

¹¹ *Id.* at 81.

¹² CONG. GLOBE, 39th Cong., 1st Sess. 1189 (1866).

¹³ *E.g.*, DAILY EVENING BULL. (S.F.), Mar. 10, 1866, at 5; SALT LAKE DAILY TEL., Mar. 10, 1866, at 2.

¹⁴ BANGOR DAILY WHIG AND COURIER, Mar. 7, 1866, at 3; CONGREGATIONALIST (Boston), Mar. 9, 1866, at 3.

¹⁵ *E.g.*, LOWELL DAILY CITIZEN, Mar. 19, 1866, at 2; PHILA. INQUIRER, Mar. 9, 1866, at 1.

Not surprisingly, the Democrats who criticized the committee proposal took a different tack. Speaking for himself and Henry Grider, Andrew Rogers delivered a minority report that reiterated the basic position of the Democratic party on Reconstruction generally.¹⁶ Basing his argument on the premise that Tennessee and the other ex-Confederate states had not had the right to leave the Union, Rogers asserted that “there is no such thing as a State being in the Union and possessing the right of local and domestic legislation without the right to demand representation in Congress.”¹⁷ Observing that none of the members of the committee questioned the loyalty of the people who had been chosen to represent the state of Tennessee, he argued that the resolution should simply have called for those representatives to be immediately seated in the House of Representatives.¹⁸

Andrew Johnson was also reported to have objected to the implicit assumption that Tennessee was currently outside the Union.¹⁹ In addition, describing the committee proposal as “a hollow mockery intended to delude the people of the country, while in fact it is the avowed intention of the leading Radicals not to allow a representative from any of the late rebel States,” the *National Intelligencer* asserted that a vote for the resolution would be “an endorsement of nearly all the ideas of the radical destructive policy” because the proposal “clogs the question of admission with conditions that will put it off to a day that is not probably ever to come with a Congress like the present one.”²⁰ Against this backdrop, one commentator observed that the committee proposal was expected to be the subject of “discussions of the most animated and exhaustive character” on the floor of the House of Representatives.²¹

¹⁶ N.Y. TIMES, Mar. 6, 1866, at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See, e.g., CLEV. DAILY HERALD, Mar. 7, 1866, at 4.

²⁰ NAT'L INTELLIGENCER (Washington D.C.), Mar. 7, 1866, at 2.

²¹ MILWAUKEE DAILY SENTINEL, March 19, 1866, at 2.

In fact, however, no such discussions ever took place. Although at one point the floor debate was apparently expected to begin on March 16,²² on March 20, Bingham stated that he had chosen not to bring the resolution to the floor on that day because he believed that it was more important for the House to deal with appropriations bills and other urgent matters.²³ When pressed, he suggested that the debate over the Tennessee resolution might begin during the week of March 26.²⁴ However, by that time, the political context of the dispute over Reconstruction policy had been radically changed by Andrew Johnson's veto of the Civil Rights Bill. As a result, the committee bill was never debated on the floor of either the House of Representatives or the Senate. Instead, the issues that had divided the committee would be discussed more fully and openly during the proceedings that culminated in passage of the Fourteenth Amendment. But despite this lack of final action, one point should be clear—the creation of new protection for the civil rights of the newly-freed slaves was not a high priority of the Joint Committee on Reconstruction.

²² *Id.*

²³ CONG. GLOBE, 39th Cong., 1st Sess. 1533 (1866).

²⁴ *Id.*

