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The Nomination of L.Q.C. Lamar to the Supreme Court: Popular Constitutionalism, the Reconstruction Amendments, and the End of Reconstruction

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Abstract

The Nomination of L.Q.C. Lamar to the Supreme Court: Popular Constitutionalism, the Reconstruction Amendments, and the End of Reconstruction

By

Joseph C. Angelillo II

The common narratives of the Reconstruction era address its end by emphasizing either political actions or Supreme Court opinions, resulting in well-known potential ending points such as the "Compromise of 1877" and *Plessy v. Ferguson* (1896). This thesis uses a different approach known as popular constitutionalism, which downplays political actions and legal opinions, and holds that the Supreme Court takes public opinion into account when interpreting the Constitution. "The Nomination of L.Q.C. Lamar" uses this conceptual framework to view the 1888 confirmation of former secessionist Lucius Quintus Cincinnatus Lamar to the Supreme Court. Scholars have approached this historical episode as a moment of national reunion yet have largely ignored the extensive public discussion of Lamar's disbelief in the validity of the Thirteenth, Fourteenth, and Fifteenth Amendments, also known as the Reconstruction Amendments. Despite substantial press coverage of this constitutional stance, the Northern public still joined Democrats in supporting the nominee, seen in mainstream Republican publications like the *New York Times* advocating confirmation. Within the framework of popular constitutionalism, this Republican assent sent a signal to the Supreme Court that the public no longer supported federal enforcement of black rights through the Reconstruction Amendments, thus making the battle over Lamar a new way to approach Reconstruction's end.

Introduction

"Is the war to be fought over again, and shall everything already accomplished go for naught?"

– *Cleveland Gazette*, January 7, 1888

The above question, posed by the black-owned *Cleveland Gazette* in January of 1888, emphasized the vast implications raised President Grover Cleveland's nomination of Lucius Quintus Cincinnatus Lamar (L.Q.C.) to the Supreme Court of the United States. In opposing Lamar, the *Gazette* combatted a nominee who had voted against the legality of the Reconstruction Amendments, and whose confirmation threatened to undermine the enforcement of black rights. However, the *Gazette*, other black newspapers like it, and their Radical allies were fighting a losing battle, as the public's largely favorable response to Lamar's nomination signaled a profound reversal of Northern public opinion. By 1888, Northern interest proved willing to abandon post-war enforcement of black rights, evidenced by extensive newspaper support for Lamar's nomination to the Court. Viewed through the lens of popular constitutionalism, this episode marked the end of the Reconstruction Era.

The historiography of Reconstruction originally conceptualized the end of the era by emphasizing political actions, seen especially in the labeling of the "Compromise of 1877" as the definitive end. This conclusion looks to the political bargain that decided the Election of 1876, which hung in limbo between Republican Rutherford B. Hayes and Democrat Samuel J. Tilden. In classic works like *Reconstruction: America's Unfinished Revolution* and *The Strange Career of Jim Crow*, historians such as Eric Foner and C. Vann Woodward argued that the deal struck by the commission called to resolve the election – which awarded presidency to Hayes in

exchange for his removal of troops from the federally-occupied South – enabled Democrats unfriendly to black rights to take over state governments. The end date of 1877 is not universally held by political historians, and even Foner has made reference to a "long Reconstruction" which lasted into the 1880s. Further, though historians in this camp do address some actions of the Supreme Court, they place much higher emphasis on political actions. In this light, a bargain which seemed to mark the end of federal presence in the South emerged as a fitting end to Reconstruction.[1]

Another way of conceptualizing the end of Reconstruction emerges in emphasis on Supreme Court opinions. This perspective is mainly used by constitutional historians, who identify and emphasize legal opinions which could stand as the end of the era. One of the first constitutional historians to do so was Michael Les Benedict, who in the 1970s argued that the Supreme Court under Morrison Waite deserves praise for its attempts at empowering rights enforcement while still preserving antebellum notions of dual federalism. Benedict concluded that the Supreme Court did not squander enforcement authority until the Court under Melville Fuller allowed legal segregation with *Plessy v. Ferguson* (1896).[2] Constitutional historians such as Michael Ross, Pamela Brandwein, and Timothy Huebner share these conclusions.[3] Not all constitutional historians agree with a positive view of the Waite Court, however, as historians

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[1] See Eric Foner, *Reconstruction: America's Unfinished Revolution* (New York: Harper & Row, 1988), C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1974), and Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W.W. Norton and Company, 2019), xx.

[2] Michael Les Benedict, "Preserving Federalism: Reconstruction and the Waite Court," *Supreme Court Review* 1978 (1978). See also, *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[3] See Michael A. Ross, *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court During the Civil War Era* (Baton Rouge: Louisiana State University Press, 2003), Pamela Brandwein, *Rethinking the Judicial Settlement of Reconstruction* (New York: University of Cambridge Press, 2011), and Timothy S. Huebner, *Liberty and Union: The Civil War Era and American Constitutionalism* (Topeka: University of Kansas Press).

such as Robert J. Kaczorowski decry it for opinions like the *Slaughterhouse Cases* (1873) and *U.S. v. Cruikshank* (1876), which he argues signified judicial abandonment of black Americans.[4] Though constitutional historians may claim different decisions as bringing the end of Reconstruction, they all share a common thread in that they mainly engage with legal opinions.

"The Nomination of L.Q.C. Lamar" does not intend to complicate or refute the conclusions reached through the aforementioned conceptual lenses, as these conclusions may stand as perfectly legitimate through their own framework. Rather, this paper seeks to use another framework to contribute to the discussion on the end of Reconstruction. Instead of emphasizing political actions or constitutional opinions, this conceptual framework emphasizes different factors, especially public opinion on the Reconstruction Amendments.

This third way for conceptualizing the end of Reconstruction is popular constitutionalism. This perspective emphasizes public opinion, while downplaying political actions and Supreme Court opinions. As articulated by Larry Kramer, popular constitutionalism holds that the opinions of the people held interpretive power over the Supreme Court during the early years of American constitutional history.[5] This does not mean that public opinion directly overturned Supreme Court decisions by issuing judicial decrees. Rather, popular constitutionalism, especially as used in this paper, holds that "public opinion can, does, and should play a role in a complex, interactive process of determining constitutional meaning."[6] This approach is used

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[4] Robert J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866-1876* (New York: Fordham University Press, 2005). See also, Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. See also, *Slaughterhouse Cases*, 83 U.S. 36 (1873), and *United States v. Cruikshank*, 92 U.S. 542 (1876).
[5] See Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2005).
[6] Larry Alexander and Lawrence B. Solum, "Popular? Constitutionalism? *The People Themselves: Popular Constitutionalism and Judicial Review* by Larry D. Kramer," *Harvard Law Review* 118, no. 5 (March 2005): 1626.

here, as in 1879, a Senate resolution affirming the legality, validity, and federal power of the Reconstruction Amendments gained much press nationwide. One of the Senators who voted against this resolution, L.Q.C. Lamar, was nominated to the Supreme Court within the next decade. While Radical Republicans and black Americans disapproved of Lamar's nomination for his stance on this constitutional issue, their fears were overruled by the general public – including moderate Republicans – assenting to the nominee. This debate over the nomination occurred throughout the nation, and the press' extensive discussion of Lamar's constitutional views makes his confirmation battle unique in the framework of popular constitutionalism, as it provides a window into public opinion unlike other nominations. The wide breadth of coverage of the nomination and subsequent popular assent signaled to the Supreme Court an indifference to enforcement of black rights.

This paper's intent to view the Lamar confirmation battle through the lens of public opinion begs the question of what constitutes espousal of public opinion in 1887 and 1888. "The Nomination of L.Q.C. Lamar" turns to the practices of popular constitutionalism and uses newspaper coverage of the nomination to gauge public opinion, as several scholars have counted newspapers as a valid medium to do so.[7] Though newspapers are not perfect for this purpose, they emerge as the best proxy available, especially when considering the lack of alternatives such as modern polls and surveys. The use of newspapers also raises the issue of whether they reflect or influence public opinion. Scholars in the framework of popular constitutionalism have approached newspapers as reflecting popular sentiment in order to "advance partisan-based

[7] See Kramer, *The People Themselves*, Melvin C. Laracey, "Jeffersonian Democracy and Newspaper Popular Constitutionalism" (paper presented at the American Political Science Association Annual Meeting, Toronto, September 5, 2009), and Bertrall L. Ross, "Administrative Constitutionalism as Popular Constitutionalism," *University of Pennsylvania Law Review* 167, no. 7 (May 2019): 1783-1821.

interpretations of the Constitution."[8] This paper joins that scholarship, using partisan newspapers – though certainly political in nature – as petitions to higher interpretive powers. In the case of the Lamar nomination, this means that newspapers, rather than trying to marshal public support, attempted to reflect public stances onto the Senate. Article titles such as "A Word to Republican Senators" and "Why Not Open Sessions" support this interpretation. However, no matter whether one believes newspapers impact or reflect public opinion, the sentiments written in newspapers would have made their way into the public mind. After all, consumption of newspapers played a much larger role in informing citizens of political and legal matters in the nineteenth century than today, as newspapers constituted the primary method through which citizens received the news. Whether or not these newspapers informed or reflected opinion, in the framework of popular constitutionalism, the Supreme Court kept a watchful eye.

This paper is not a biography of L.Q.C. Lamar, as his individual political and judicial actions can best be described as inconsequential. Rather, it is the battle over Lamar that bore drastic implications. Thus, understanding the details of Lamar's life is necessary to understanding how his nomination provoked a consequential response. Lucius Quintus Cincinnatus Lamar II was the first Democrat and only former Confederate appointed to the Supreme Court after the Civil War. He is the subject of at least three biographies and several academic articles published throughout the twentieth century. These works mostly hold Lamar in high regard, praising him as the foremost statesman of the post-War South, and recognizing him as one of the men who forged national reunion.[9]

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[8] Laracey, "Jeffersonian Democracy and Newspaper Popular Constitutionalism," Abstract.
[9] For biographies, see Wirt Armistead Cate, *Lucius Q.C. Lamar: Secession and Reunion* (Chapel Hill: University of North Carolina Press, 1935), and James B. Murphy, *L.Q.C. Lamar, Pragmatic Patriot* (Baton Rouge: Louisiana State University Press, 1973). See also, Leon Friedman and Fred Israel, *The Justices of the United States Supreme Court, 1789-1969: Their Lives and Major Opinions,* vol. 2 (New York: Chelsea House, 1969).

Born in Georgia in 1825, the son of a judge, Lamar studied at Emory College in Atlanta. While he did not receive an extensive legal education, he followed his father-in-law to the University of Mississippi to teach law. There he took up politics and developed a friendship with Jefferson Davis, both winning election to Congress in 1857 as Democrats. Both Lamar and Davis resigned their seats in the wake of secessionist fervor growing in Mississippi, with Lamar resigning to participate in the 1861 Mississippi secession convention. There, he personally drafted the Mississippi Ordinance of Secession and the resolution supporting South Carolina's secession from the Union. The Mississippi Secession Ordinance included the annulment of all oaths taken in support of the United States Constitution, displaying Lamar's place as one of the state's foremost secessionists. He next enrolled in the Confederate Army and joined Davis – now President of the Confederacy – in Richmond.[10]

During the War, Lamar served in several positions of Confederate leadership. As a soldier, he fought at the 1862 Battle of Williamsburg, and Davis subsequently appointed him to the post of commissioner to Russia to earn foreign recognition of the Confederacy. However, he never made it to Russia, and failed to convince audiences in London and Paris to recognize the South's independence. After his return, he spent the remaining years of the War working with the Confederate War Department and speaking on behalf of Davis.[11]

Following Appomattox, Lamar rose beyond his pre-war prominence and emerged as one of the most recognized men in the South. With the Confederacy's defeat, he returned to private law practice and regained his position at the University of Mississippi. After Mississippi's readmission to the Union in 1870, Lamar won election to the House of Representatives in 1872.

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[10] Friedman and Israel, *The Justices of the United States Supreme Court*, 1432, Willie D. Halsell, "The Friendship of L.Q.C. Lamar and Jefferson Davis," *Journal of Mississippi History* 6 (July 1944), 132-33, Murphy, *L.Q.C. Lamar*, 59-60, and Mississippi Secession Ordinance, January 9, 1861.
[11] Friedman and Israel, *The Justices of the United States Supreme Court*, 1436.

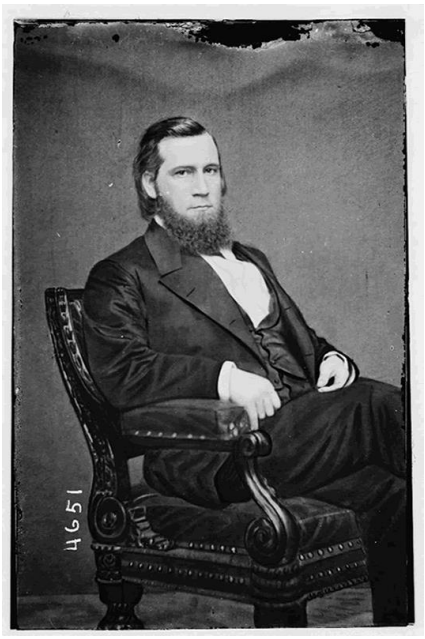

Figure 1. Lamar between 1850 and 1865.

While serving as a Congressman, he established a reputation as a leader of national reconciliation efforts. This was especially apparent in his eulogy of Radical Republican Charles Sumner, Lamar's most prominent moment of House service and perhaps his career. In this noted speech, described in John F. Kennedy's *Profiles in Courage* as "a turning point in relations between the North and South," Lamar called on his colleagues to mend sectional tensions. He reinforced such guises of a "reconstructed" proponent of national reunion in arguing that "There are many honest, intelligent, and independent men among the Negroes in every Southern State" in an article published in the *North American Review.* Such a reputation boosted Lamar to election to the Senate in 1876.[12]

[12] Murphy, *L.Q.C. Lamar*, 88-89, Friedman and Israel, *The Justices of the United States Supreme Court,* 1437, John F. Kennedy, *Profiles in Courage* (London: Hamish Hamilton, 1964), 174. James G. Blaine, L.Q.C. Lamar, et. All, "Ought the Negro to Be Disenfranchised? Ought He to Have Been Enfranchised?" *North American Review* 128, no. 268 (March 1879), 225-283.Kennedy, *Profiles in Courage*, 190.

While Lamar appeared a celebrated proponent of burying the post-war hatchet in the House and Senate, a much different Lamar existed back in Mississippi. This Lamar led the political efforts to "redeem" Mississippi to Democratic rule, a bloody campaign of white supremacist terrorism between 1874 – 1875 designed to keep black people away from the ballot box. Though he spoke of reconciliation, this period saw Lamar argue against Northern efforts to enforce black rights. He lamented what he saw as the horrors of government provided by black voters, while opposing efforts to investigate the atrocities of "Redemption." Further, Lamar benefitted from such atrocities, as "Redemption" led to his appointment to the U.S. Senate by the Democratic-majority Mississippi state legislature. Traces of this anti-Reconstruction Lamar appeared in his Senate service as well, as even his most recent biographer admits that Lamar opposed any measure to support federal enforcement of black rights. Such actions paint a picture of a bitter secessionist who sought to revive the antebellum social order.[13]

Despite such a checkered past, President Grover Cleveland – the first Democrat elected president since James Buchanan in 1856 – appointed Lamar to serve as Secretary of the Interior in 1884. When a Supreme Court vacancy occurred in 1887, Cleveland nominated Lamar to fill it. Following debate in both the national press and the Senate, Lamar was confirmed by a two-vote margin, making him only the fifth justice to be confirmed by a margin of less than five votes.[14] Some literature has emerged on this confirmation battle, with the most recent piece published in 1986 by Daniel J. Meador. Meador followed the standard formula of scholarship surrounding Lamar, calling confirmation the "last step to national reunion" and praising Lamar as central to

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[13] On "Redemption," see Nicholas Lemann, *Redemption: The Last Battle of the Civil War* (New York: Farrar, Straus and Giroux, 2006). L.Q.C. Lamar, letter to Edward Clark, October 16, 1873, L.Q.C Lamar Collection, Department of Archives and Special Collections, University of Mississippi, Oxford, MS. Murphy, *L.Q.C. Lamar,* 204.

[14] See "Supreme Court Nominations," Nominations, United States Senate, https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm.

healing the divide between North and South.[15] Though his and similar studies provide valuable details, no scholarship on the Lamar confirmation has approached the topic through the lens of constitutional history. Despite debate over constitutional issues emerging in most of the press on the nomination, no scholarship has stepped beyond examining the confirmation battle as a political action in the context of national reunion and addressed the episode as a moment of constitutional interpretation that influenced subsequent constitutional interpretation. "The Nomination of L.Q.C. Lamar" intends to do so.

"The Nomination of L.Q.C. Lamar" is split into two chapters. The first chapter establishes the context in which Lamar found himself nominated to the Court, drawing on prior scholarship to display a national environment steadily growing more hostile to rights enforcement. Further, the first chapter examines a key moment in Lamar's Senate tenure and the constitutional history of Reconstruction, the Edmunds Resolution, where Lamar expressed antagonistic views of the Reconstruction Amendments. The second chapter examines the debate which emerged over Lamar's nomination from the viewpoint of public opinion, using opposing sentiments published in partisan newspapers to observe how a confirmation battle morphed into a referendum on the interpretation of the Reconstruction Amendments. Within the conceptual framework of popular constitutionalism, this battle emerges as another way of approaching the end of the Reconstruction Era, as discussed in the conclusion of this paper.

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[15] Daniel J. Meador, "Lamar to the Court: Last Step to National Reunion," *Supreme Court Historical Society Yearbook* 1986 (1986): 27-47. See also, Willie D. Halsell, "The Appointment of L.Q.C. Lamar to the Supreme Court," *Mississippi Valley Historical Review* 28, no. 3 (December 1941): 399-412, Charles Warren, *The Supreme Court in United States History*, vol. 2, *1836-1918* (Boston: Little, Brown, and Company: 1928), 624, and Charles Fairman, *History of the Supreme Court of the United States*, vol. 5, *Reconstruction and Reunion, 1864-88* (New York: The Macmillan Company, 1971), 732.

Chapter One: Origins of the Lamar Nomination

On December 6, 1887, President Grover Cleveland sent a stack of papers over to the United States Senate. The pile contained nominations, as Congress had resumed session the day prior, and the twenty-second president had several posts within his Cabinet to fill.[1] These included Secretary of the Interior, Postmaster General, Secretary of the Treasury, two assistant cabinet secretaries, and – though it lay outside of his cabinet, perhaps most important – an associate justiceship of the Supreme Court. About to enter the final year of his first term as president, Cleveland was not inexperienced in sending nominations over for the Senate's "advice and consent." However, the first Democrat elected president since the Civil War, Cleveland entered into his toughest confirmation battle yet by including a note reading "I nominate Lucius Q.C. Lamar of Mississippi, to be Associate Justice of the Supreme Court of the United States, in place of William B. Woods, deceased."[2] The president had nominated Lamar, his sixty-two year old Secretary of the Interior, to sit on the Supreme Court.

More than a prominent member of Cleveland's cabinet, Lamar was a Southerner, unseen in the ranks of the Supreme Court since the onset of the Civil War. He was also a former secessionist, having drafted the Mississippi Ordinance of Secession. Scholarship throughout the twentieth century labeled Lamar as one of the men who paved the way for national reconciliation, noted for such actions as his eulogy of arch-Republican Charles Sumner.[3] For someone who advised his law partner to leave Mississippi because of an influx of black people

[1] "Congress in Session," *New York Tribune*, December 6, 1887.
[2] Grover Cleveland, message to U.S. Senate, December 6, 1887.
[3] The scholarship labeling Lamar as a pathbreaker for national reunion is rather extensive. Two examples include Daniel J. Meador, "Lamar to the Court: Last Step to National Reunion," *Supreme Court Historical Society Yearbook* 1986 (1986): 27-47, and, quite prominently, John F. Kennedy, *Profiles in Courage* (London: Hamish Hamilton, 1964), 165-188.

he described as "an inundation more terrible than floods," however, one should not lose sight of Lamar as a white supremacist and a shrewd politician.[4]

Lamar's nomination did not shock the nation. On December 7, the *New York Times* wrote, "It has been understood for some months that it was the President's intention to appoint Secretary Lamar to the place on the Supreme Bench."[5] However, in the month between the submission of the nomination and the moment that the Senate voted on whether to accept the first Southerner and former Confederate appointed to the Court since the War, intense debate broke out over Lamar's nomination. This debate came at the conclusion of a summer of speculation into the identity of the replacement for Woods and occurred at a critical juncture in the long aftermath of the American Civil War. This aftermath, which saw an environment emerge in which a former Confederate could rise to the highest court in the land, serves as the primary subject of this chapter. The attitudes of the victors of the Civil War had slowly transformed during this period, shifting from fighting to ratify three constitutional amendments empowering black rights to questioning the very validity of these efforts. The attitudes of former Confederates, however, did not waver from the denial of black rights and embracing of national reunion. These former Confederates, and the Democratic Party which they occupied, gradually worked their way into power over the succeeding decades. This provided the opportunity for a Democratic president to nominate Lamar to the Court, an event which stirred debate that signaled a deeper abandonment of Reconstruction. Summer speculation foreshadowed the debate, setting up a climactic final clash of the Reconstruction Era.

[4] L.Q.C. Lamar, letter to Edward Clark, 1884.
[5] "The Cabinet Changes," *New York Times*, December 7, 1887.

Context for Reconstruction I: To 1879

The nomination indeed occurred at a pivotal moment in the aftermath of the Civil War.[6] The years immediately following the war witness a constitutional revolution in the ratification of the Reconstruction Amendments, and though Republicans encountered severe opposition in the form of President Andrew Johnson, these amendments gave way to substantial enforcement of black rights in the South. Despite such progress, the Supreme Court subsequently interpreted the Amendments with ambiguity and indecision, leaving rights enforcement in uncertain territory at the turn of the 1880s.

Federal enforcement of black civil and political rights emerged from the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments.[7] The Thirteenth Amendment delivered emancipation, which constituted perhaps the most important result of the American Civil War. Following four years of bloodshed and debate, the attitudes of mainstream Republicans shifted from opposing interfering with slavery to viewing an abolition amendment as necessary. Congress approved the Amendment in 1865, and its subsequent ratification ended American slavery once and for all.[8] This action was made further revolutionary by the Amendment's second clause, which empowered Congress to enforce the prohibition of slavery with "appropriate legislation."

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[6] The literature on the American Civil War covers a vast array of topics and perspectives. The best single volume study of the conflict is James McPherson, *Battle Cry of Freedom: The Civil War Era* (Oxford: Oxford University Press, 2003). For a study which focusses on the constitutional history of the conflict, see Timothy S. Huebner, *Liberty and Union: The Civil War Era and American Constitutionalism*.

[7] Several scholars have discussed federal efforts to enforce black rights in the South. For an extensive evaluation of such efforts, see Robert J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866-1876* (New York: Fordham University Press, 2005).

[8] Huebner, *Liberty and Union,* 329.

Congress found reason to act on this grant of power due to the Reconstruction policies of President Andrew Johnson, a Tennessee Democrat who succeeded Abraham Lincoln. Johnson's grants of clemency to former Confederates and quick readmittance of the former Confederate states to the Union allowed southern state legislatures to pass the infamous Black Codes, which greatly restricted the liberty of freedpeople.[9] In response, Congress used the Thirteenth Amendment's Enforcement Clause to pass a Civil Rights Act in 1866. This act defined the terms of American citizenship, as well as a number of civil rights federal courts were now bound to secure.[10] Johnson surprisingly vetoed this legislation, and Congress overrode the veto. Further, Johnson vetoed the continuation of the Freedmen's Bureau, which aided freedpeople in their transition to freedom and employed agents that exercised legal authority to enforce their newfound rights.[11] Though the president's actions established an adversarial relationship with Congress over rights enforcement, Radicals had still managed to use the Thirteenth Amendment to pass landmark legislation benefiting black rights

Despite the Civil Rights Act, violence against freedpeople endured in the South, and massacres in Memphis and New Orleans galvanized lawmakers to ratify an additional amendment clarifying the rights of black Americans.[12] This resulted in a Fourteenth Amendment, which guaranteed birthright citizenship and forbade states from denying freedpeople "the

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[9] On Black Codes, see Foner, *Reconstruction*, 199-205.
[10] Kaczorowski, *The Politics of Judicial Interpretation*, 3-4. These rights included the rights to testify, sue, be sued, enter into contracts, and own property.
[11] Kaczorowski, *The Politics of Judicial Interpretation*, 37. On Johnson's Reconstruction policy, see Foner, *Reconstruction*, 176-227.
[12] Huebner, *Liberty and Union*, 360. On the 1866 Memphis Massacre, see Stephen V. Ash, *A Massacre in Memphis: The Race Riot That Shook the Nation One Year After the Civil War* (New York: Hill and Wang, 2013), and Joseph Patrick Doyle, "The Worst Behaved City in the Union" The Impact of the Memphis Riots on Reconstruction Politics" (BA Thesis, Rhodes College, 2008). For information on the New Orleans Race Riot of 1866, see *An Absolute Massacre: The New Orleans Race Riot of July 30, 1866* (Baton Rouge: Louisiana State University Press, 2004).

privileges and immunities of citizens of the United States," "due process of law," and "equal protection of the law." For the first time, the Constitution explicitly granted citizenship and rights to black people, while making clear that the federal government would protect these rights from state interference. Thought this constituted a major achievement for black rights, Johnson continued to meet such progress with resistance. He vetoed three Military Reconstruction Acts, passed in 1867 and 1868, which divided the former rebel states into five military districts and provided a framework for the readmission of the states into the Union. Conditions for readmission included ratification of the Fourteenth Amendment by a new state legislature created under a new state constitution.[13] Though Congress overrode these vetoes, Johnson's actions frustrated Republicans to the point of the first use of Congressional impeachment of the president, which Johnson survived by a one-vote margin.[14]

With Democrats in the South standing against black rights, and Johnson seemingly on their side, Republicans took a step which symbolized the peak of the revolution: ratification of the Fifteenth Amendment. This new amendment forbade the federal government or any state from abridging individual voting rights based on race. Black Americans were "significant agents of change" here, concentrating into an equal rights movement to urge ratification.[15] These activities represented the pinnacle of a concept Timothy Huebner refers to as "black constitutionalism," or efforts of black people to interpret the Declaration of Independence and Constitution to support the cause of freedom and civil rights.[16] With the Amendment's proposal, black Americans spoke in favor of ratification, mainly using two arguments. One held that black

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[13] Huebner, *Liberty and Union,* 371.
[14] Ibid., 379.
[15] Hugh Davis, *"We Will Be Satisfied With Noting Less:" The African American Struggle for Equal Rights in the North during Reconstruction* (Ithaca and London: Cornell University Press, 2011), 2-3.
[16] Huebner, *Liberty and Union*, 424-425.

Americans deserved voting rights because they had proven themselves worthy through the courageous participation of hundreds of thousands of black soldiers in the Civil War.[17] The other held that black Americans unquestionably deserved voting rights because of their status as American citizens, without any qualifiers of intelligence or military service. This tapped into an equal rights argument, with activists reasoning that if white people held voting rights without preconditions of intelligence, black people should as well. The second argument saw more use, and black activists presented these arguments through the press and through petitions to state legislatures and constitutional conventions.[18] Thanks to such activism, the Fifteenth Amendment did see ratification, a testament to black efforts to create a Constitution suited for equality.

The Fifteenth Amendment's ratification in 1870 completed an overhaul of the U.S. Constitution. Three amendments passed the strenuous test of ratification within a five-year span, growth unseen in American Constitutional history (the Bill of Rights being the exception, with ten amendments ratified at the same time). All three Amendments contained enforcement clauses, empowering Congress to legislate in favor of black rights. This allowed for unprecedented enforcement power, as the antebellum relations between the states and federal government held that states remained in charge of their own affairs and terms of citizenship.[19]

With the Reconstruction Amendments ratified, Republican enforcement efforts found a much easier route through Johnson's successor and supporter of the Fifteenth Amendment, Ulysses S. Grant. Taking office in 1870, Grant oversaw policies which greatly expanded the federal protection of black rights. This began with the Enforcement Act of 1870, which increased

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[17] Davis, *"We Will Be Satisfied With Noting Less,"* 41-42
[18] Ibid., 43 and 48, respectively.
[19] For more on the dynamics of federalism before and after the War, see Michael Les Benedict, "Preserving Federalism: Reconstruction and the Waite Court." See also, Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution.*

the number of rights violations the federal government bore power to prosecute. Following continued white supremacist terrorism in the South, Congress supplemented the original Act with an additional Enforcement Act in 1871, also known as the Ku Klux Klan Act.[20] This legislation saw wide use in prosecuting rights violations, with the federal government securing over one thousand convictions between 1871 and 1873.[21] Congress accompanied the Acts with the creation of the Department of Justice, establishing a staff of federal attorneys to prosecute violations of black civil and political rights.[22] These efforts used the Fourteenth and Fifteenth Amendments as justification, and saw much success.

Strenuous federal enforcement did not endure, and many scholars trace the genesis of its decline to the actions of the Supreme Court under Chief Justice Morrison Waite. This occurred despite the Court increasingly filling with Republican appointees as the years following the War passed. Abraham Lincoln successfully nominated five individuals to sit on the Court, Grant enjoyed four successful confirmations, and Presidents Hayes, Garfield, and Arthur together contributed a total of five Republican-appointed justices. By the time Lamar faced a confirmation battle, the Court consisted entirely of Republican appointees. One looked back nearly thirty years to James Buchanan to find the last Democrat to nominate a Supreme Court justice.[23]

Despite Republican dominance of its ranks, the Supreme Court interpreted the Reconstruction Amendments with indecision and ambiguity. The Court's first interpretation of the Fourteenth Amendment came in the 1873 *Slaughterhouse Cases*, where a divided Court

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[20] Kaczorowski, *The Politics of Judicial Interpretation,* 42.
[21] Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860–1910* (Athens: University of Georgia Press, 1997), appendix 7, 300-01.
[22] Kaczorowski, *The Politics of Judicial Interpretation,* 62.
[23] "Justices of the Supreme Court," in *Major Problems in American Constitutional History*, ed. Kermit L. Hall and Timothy S. Huebner (Boston: Cengage, 2009), appendix 11, 576-577.

decided against New Orleans butchers attempting to challenge the legality of a state-created monopoly on the basis of the Privileges and Immunities Clause. To arrive at this ruling, the five-person majority, through Justice Miller, ruled that the Clause only protected against infringements of the privileges and immunities of national citizenship (creating a distinction between national and state citizenship).[24] This narrowing of the Clause's reach has led historians such as Eric Foner and Robert J. Kaczorowski to criticize Miller's opinion.[25] However, these historians frequently critique the opinion in light of subsequent application of the case. Viewing *Slaughterhouse* through the lens of 1873, as Michael Ross does, provides more nuance to the historiographical debate. While Miller indeed narrowed the Privileges and Immunities Clause, he did so in an effort to uphold regulatory legislation passed by a reconstructed biracial state legislature. Further, Miller filled his opinion with language lauding the enforcement of black civil rights, complicating notions of a white supremacist justice bent on limiting black rights.[26] Thus, one cannot view *Slaughterhouse* as a definitive attempt to harm the cause of federal enforcement.

The next interpretation of the Reconstruction Amendments, *United States v. Cruikshank* (1876), resulted in further ambiguity and indecision. The case started as the appeal of the perpetrators of the 1873 Colfax Massacre. This tragedy, described by Eric Foner as the "bloodiest single instance of racial carnage in the Reconstruction era," saw a white militia murder over sixty black people assembling at a courthouse in Colfax, Louisiana.[27] Federal attorneys charged the perpetrators under the Enforcement Act of 1870. On appeal to the federal

[24] *Slaughterhouse Cases*, 83 U.S. 36 (1873).
[25] See, for example, Kaczorowski, *The Politics of Judicial Interpretation,* 108 – 188, and Foner, *Reconstruction,* 530.
[26] Ross, *Justice of Shattered Dreams*, 210.
[27] Foner, *Reconstruction*, 437.

circuit, Bradley overturned Section Six of the section of the Enforcement Act (used to charge the perpetrators), thus setting them free. A unanimous Supreme Court sustained this action in an opinion written by Chief Justice Waite, which redeployed the reasoning provided by Bradley's circuit opinion. These opinions held that the federal government, in creating a law which directly punished state-level offences, exceeded their power under the Fourteenth Amendment.[28] This result has led historians to criticize Bradley and the Court, with Kaczorowski labeling this case as the definitive "emasculation of national civil rights enforcement authority."[29] However, recent scholarship, led by historians such as Pamela Brandwein, has complicated these conclusions. Such historians show that the opinions of Bradley and Waite specifically found fault with the indictments of the Colfax perpetrators, as these indictments did not enumerate the violation of a federally enforceable right. Because Section Six did not specify that indictments must define the violated rights as federally enforceable, Bradley and the Court overturned it.[30] However, they left the remaining twenty-two sections of the Enforcement Act intact.

These historical revisions show that *Cruikshank*, rather than a sweeping invalidation of the federal government's enforcement authority, in reality constituted a narrow ruling. If anything, it provided federal attorneys with a guide to write indictments. However, given that the opinion freed men guilty of an atrocity as severe as the Colfax Massacre, scholars should also not view it as benefiting black rights. Additionally, Timothy Huebner points out the disparity between the Court's tight reading of the provisions of the Enforcement Act and their rather

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[28] *United States v. Cruikshank*, 92 U.S. 542 (1876).
[29] Kaczorowski, *The Politics of Judicial Interpretation,* 179.
[30] Huebner, *Liberty and Union,* 404-405. See also, Brandwein, *Rethinking the Judicial Settlement of Reconstruction,* 87-128. Brandwein provides a thorough examination of *Cruikshank*, exploring Bradley's circuit opinion, the Supreme Court oral arguments, the briefs of both parties, and the result. See also, Kaczorowski, *The Politics of Judicial Interpretation,* 161-188. Kaczorowski provides a similarly thorough examination of *Cruikshank,* albeit through a more critical lens.

expansive antebellum rulings in favor of slave power, further demonstrating the condition of enforcement jurisprudence to this point.[31] The Court's interpretations of the Reconstruction Amendments, while not entirely hostile to black rights, did not provide much help.

Through another narrow opinion in *Cruikshank's* companion case, *United States v. Reese* (1876), the Court provided some benefit to black Americans. The Court ruled 8-1 to overturn Sections Three and Four of the Enforcement Act of 1870, due to their overbroad nature. In an opinion written by Chief Justice Waite, the majority reasoned that the Fifteenth Amendment, rather than granting the right to vote, merely prohibited denying the right to vote based on racial discrimination. Sections Three and Four of the Enforcement Act did not specify the need for racial discrimination in prosecuting violations of voting rights, causing their invalidation.[32] While not necessarily a broad ruling, the opinion bore consequence for rights enforcement in two areas: Waite's reference to the potential use of Article I Section 4 of the U.S. Constitution in enforcing voting rights in federal elections, and his clarification that Congress could directly enforce voting rights through the Fifteenth Amendment.[33] As pointed out by Brandwein, federal officials seized on this, using Article I Section 4 and the Fifteenth Amendment to secure polling places during the 1876 federal elections.[34] Given the contentious nature of the presidential election of that year – with an electoral commission having to decide the outcome of the race between Rutherford B. Hayes and Samuel Tilden – any assistance in enforcing black voting rights proved instrumental to securing a fair election.[35] Without such enforcement, Democrats hostile to black rights could have suppressed black voters and retaken the federal government.

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[31] Huebner, *Liberty and Union*, 405. For these readings of slave power, see *Dred Scott v. Sandford*, 60 U.S. 393 (1857).
[32] *United States v. Reese*, 92 U.S. 214 (1876).
[33] Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 125.
[34] Ibid., 128.
[35] For information on the Electoral Commission of 1877, see Ross, *Justice of Shattered Dreams*, 228-29.

Despite the positive effects of *Reese*, one could not call the Supreme Court a champion of black rights at the turn of the 1880s. The peculiar stance of the Court, perhaps showing indifference to interpretations of the Reconstruction Amendments favoring black rights, reflected throughout the country. Indeed, a decade after the conclusion of the Civil War, Northern Republicans grew wary of rights enforcement and started embracing national reconciliation.

In April 1877, President Hayes ordered federal troops in South Carolina and Louisiana to stand down, an action often seen as the definitive political abandonment of black people in the South. Known as the "Compromise of 1877," this order concluded a tumultuous presidential election of 1876. Though Democrat Samuel Tilden won a clear victory in the popular vote – the first Democrat to do so since James Buchanan in 1856 – the count of the Electoral College remained disputed. This spurred Congress to create a commission to decide the election, staffed by Justices Miller, Davis, Field, Clifford, and Bradley, as well five Congressmen and five Senators. With an apparent eight-seven split between Republicans and Democrats, respectively, the fifteen-member Commission handed the Election of 1876 to Rutherford B. Hayes, with the agreement that Hayes would alter his Southern policy in favor of allowing Democratic home rule.[36] With no troops to secure Southern voting rights, Democrats retook the House and Senate amid violence-filled elections in 1878.[37] But even without considering a Democratic takeover in the South, the balance of interpretation of the Reconstruction Amendments tipped closer to abandonment, as revealed in an 1879 vote in the United States Senate.

The Edmunds Resolution

On January 7, 1879, the Senate reconvened after the holiday recess. That morning, Chairman of the Senate Judiciary Committee George Edmunds of Vermont took the floor.

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[36] On Reconstruction ending with the Compromise of 1877, see Foner, *Reconstruction*, 575-601.
[37] Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 141.

Entering his thirteenth year of service, Edmunds had built a reputation as a Radical, taking an active role in Andrew Johnson's impeachment and serving on the Electoral Commission of 1877.[38] He walked onto the floor of a Republican Senate, with Edmunds one of the thin 38-36 majority (two independents also served). However, the Forty-Fifth Congress was approaching its conclusion, and the disastrous 1878 election saw Republicans lose seven seats, while the Democrats gained the same number. Come March, Democrats would hold a nine-vote advantage over their Republican counterparts.[39] This drove Edmunds, anticipating Democratic attempts to "nullify the legislation based on the last amendments to the Constitution," and surely aware that he would soon belong to the minority, to propose a resolution supporting the Reconstruction Amendments and the federal government's power under them.[40]

"Mr. President," Edmunds began, "I think [it] is the best time possible to offer [the] resolutions that I hold in my hand." He next expressed high hopes for acceptance, saying "if they be unanimously adopted," his resolution might "cement more perfectly the good-will and concord and unity of sentiment that are supposed to exist all over the country."[41] He then announced the text of his resolution, offering a defense of the Reconstruction Amendments: "*Resolved as the judgement of the Senate,* That the thirteenth, fourteenth, and fifteenth amendments to the Constitution of the United States have been legally ratified and are as valid and of the same paramount authority as any other part of the Constitution;" that each state bore common interest in enforcing the Constitution, the Reconstruction Amendments, and the rights secured by such; and that the executive branch carried a duty to carry out the laws with

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[38] For biographical information on Edmunds, see "Edmunds, George Franklin," Retro member details, Biographical Directory of the U.S. Congress, https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=E000056.
[39] "Party Division," History, United States Senate, https://www.senate.gov/history/partydiv.htm.
[40] "The Protection of Voters," *New York Times*, February 3, 1879.
[41] *Cong. Rec.*, 45th Cong., 3rd sess., 1879, vol. 9, pt 3: 342.

"impartial execution." Further, with the violent 1878 elections surely on his mind, Edmunds included in his resolution a charge of Congressional duty to provide for the protection of voters in federal elections.[42] Thus, Edmunds offered a simple affirmation of three issues: that the Amendments were indeed legally ratified, that they remained valid, and that they empowered Congress to protect voting rights.

Viewed in any context, this did not constitute a strong pronouncement of the reach of the Amendments. Edmunds did not seek to affirm the ability of the Federal Government to punish private wrongs or directly prosecute state-level rights violations under the Fourteenth Amendment, as this power remained largely unclarified. He simply provided a resolution that would provide a firmer backing to the legislation passed under the Reconstruction Amendments. With such a thin Republican majority, and only two months remaining before Democrats took over, such a minimalist resolution stood fair chance for passing.

The legality and validity of the Reconstruction Amendments did bear a history of contention. While the Thirteenth Amendment and emancipation saw broad acceptance as valid, some viewed the Fourteenth and Fifteenth Amendments as nothing more than biproducts of vindictive Radical Republicans, who forced the Amendments onto the South through military Reconstruction.[43] However, this opposition primarily came from southern whites, such as Confederate Vice President Alexander Stephens.[44] At one time, these fringes represented the breadth of the argument. However, by the time of the proposal of the Edmunds Resolution, opinions refuting the Amendments had emerged from obscurity and trickled into the

[42] Ibid.
[43] Huebner, *Liberty and Union*, 408.
[44] Ibid.

mainstream.[45] Democrats would use these opinions in their attempts to hinder enforcement of black voting rights.

As seen in weeks of debate following the proposition of the Resolution, Edmund's hopes for unanimous consent would fall flat. Following a caucus, Senate Democrats announced a substitute resolution to Edmunds' on January 20. Proposed by Democrat John Morgan of Alabama, the Democratic substitute upheld the Reconstruction Amendments as binding, without conceding them as legally ratified. It further diverged from the Edmunds Resolution by denying the federal government's power to enforce the Fifteenth Amendment and punish any voting rights violations, holding instead that only individual states could prevent such crimes.[46] These dueling resolutions sparked two weeks of Senate debate, with Edmunds opposing Morgan's resolution and refuting Democratic claims. Edmunds specifically referenced Supreme Court opinions to make his case, perhaps relying on holdings such as *Cruikshank* and *Reese* to affirm Congressional power to enforce the Fifteenth Amendment.[47] Morgan himself made several speeches in defense of the Democratic substitute, while Democratic senators such as Thomas Bayard of Delaware and William Whythe of Maryland decried the Edmunds Resolution as an unnecessary centralization of power and revival of sectional politics.[48]

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[45] The issue of the constitutionality of the Fourteenth Amendment's ratification received some scholarly attention in the years following Reconstruction. See Forrest McDonald, "Was the Fourteenth Amendment Constitutionally Adopted?" *Georgia Journal of Southern Legal History* 1, no. 1 (Spring/Summer 1991).
[46] "Forty-Fifth Congress," *New York Times*, January 21, 1879.
[47] "Senate," *New York Times*, February 4, 1879.
[48] *New York Times*, February 5, 1879.

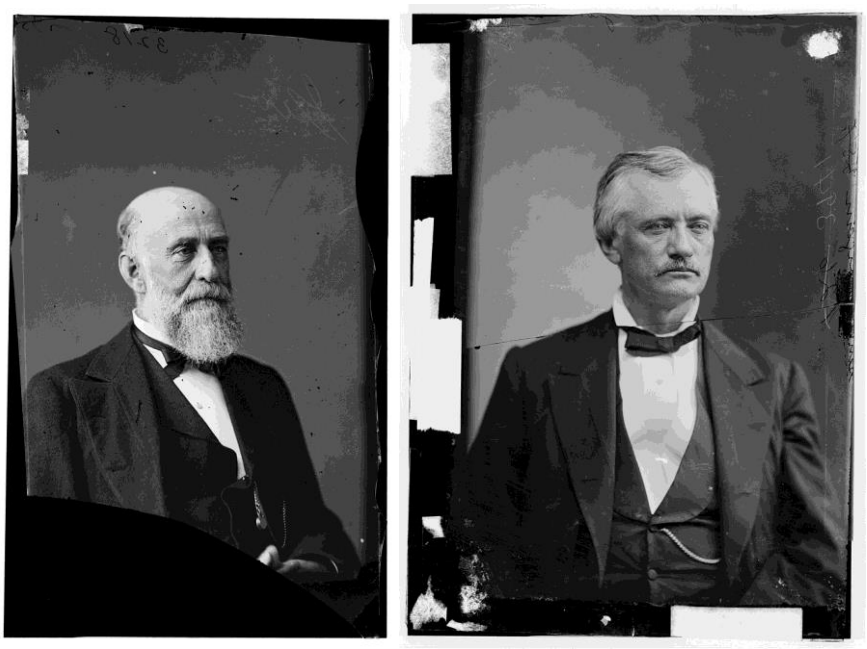

Figure 2.George Edmunds (L) and John Morgan (R) proposed the dueling resolutions concerning the legality and validity of the Reconstruction Amendments.

The high volume of Republican press coverage surrounding the dueling resolutions fell squarely behind Edmunds. The *New York Times* ran several pieces criticizing Democratic senators who supported Morgan's resolution, calling the substitute "dangerous" and labeling reasons to oppose the Edmunds Resolution "pure twaddle."[49] This coverage joined with numerous articles from other Republican newspapers such as the *New York Tribune* and *Chicago Tribune*, while press supporting the Senate Democrats was found in Democratic newspapers such as the *Memphis Daily Appeal*. Black newspapers also contributed their views, with the New Orleans *Weekly Louisianan* noting that the resolutions "have excited considerable comment in the newspapers as well as lively and interesting discussions on the floor of the Senate." The

[49] *New York Times*, February 5, 1879, and "The Protection of Voters," *New York Times*.

paper also observed Morgan's resolution as a "re-assertion of State rights in the old Calhoun style."[50] Thus, the resolutions emerged as a widely covered and hotly debated topic nationwide.

The peak of the Senate debate occurred on February 5, when Edmunds clashed with his Democratic adversaries for over ten hours. In that time, several Democrats rehashed their reasons to oppose Edmund's resolution, including fears of centralization and the belief that Congress could not protect voting rights. In an interesting development, Senator Augustus Garland of Arkansas proposed an amendment to Morgan's resolution, which declared the Reconstruction Amendments not legally ratified yet still binding. The Senate rejected this amendment with thirty-four "nay" votes against five "yeas." When Morgan's Resolution came to a vote, the Senate rejected it by a margin of thirteen. The votes in favor of the Democratic substitute mainly came from Southern Democrats, including L.Q.C. Lamar.[51]

At around 11 P.M., the Edmunds Resolution finally came to a vote. It passed by a slim margin, with twenty-three senators in favor, sixteen against, and thirty-seven "absent." Despite descriptions of the Resolution's victory as "brilliant," the absentees reveal the extent to which Republicans and Northerners approached abandoning the Amendments.[52] Twenty abstentions came from Democrats, not surprising given that party's history of indifference to enforcement. However, sixteen abstentions came from Republican senators, representing states as far north as New Hampshire and as far west as California. These Republicans refused to take a stand on the issue of the legality of the ratification of the Reconstruction Amendments, their continued validity, and the federal power to protect voters. These Republicans did so despite having campaigned to ratify these Amendments and protect voters as little as a decade earlier.

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[50] "Washington Letter," *Weekly Louisianan*, February 15, 1879.
[51] For the debate, see *Cong. Rec.*, 45th Cong., 3rd sess., 1879, vol. 9, pt 3: 997-1029.
[52] "Equal Rights in the Senate," *New York Tribune*, February 6, 1879.

Table 1. Senate Vote on the Edmunds Resolution

Party	Yea	Nay	Abstain
Democrat		16	20
Republican	22		16
Independent	1		1
Total	23	16	37

Abstaining Republicans included former Supreme Court Justice David Davis, and future Justice Stanley Matthews. Further, eight of the Republican abstentions came from lame duck senators, departing office one month after voting on the Edmunds Resolution. Though these lame ducks no longer needed to appease constituencies that might oppose their support for the Amendments and federal enforcement power, they still refused to take a stand.[53]

One of the "Nay" votes came from L.Q.C. Lamar, who joined fifteen Democratic senators in voting against the Resolution. This demonstrates the difference between the Republicans and Democrats at the time – many Republicans expressed indifference to the Reconstruction Amendments, while the Democrats made their opposition known with votes refuting their legality and validity. Three of the opposing Democrats came from northern states, showing the wariness of Northerners towards rights enforcement. The remaining thirteen votes against came from Southern Democrats, with senators from Deep South states such as Georgia, Mississippi, and Alabama opposing the Resolution.

Thanks to his votes on the Edmunds Resolution and its Democratic substitute, Lamar's stance on the validity of the Reconstruction Amendments remains hard to discern. He first

[53] *Cong. Rec.*, 45th Cong., 3rd sess., 1879, vol. 9, pt 3: 1029. For the parties and years of service of the Senators, see "Senators of the United States," Art and History, United States Senate, https://www.senate.gov/artandhistory/history/resources/pdf/chronlist.pdf.

seemed to admit their binding nature by voting for Morgan's resolution – which stipulated them as valid, without addressing them as legally ratified – then seemed to recant this by voting against the Edmunds Resolution. However, his stances on the power of the federal government to enforce voting rights and the legal ratification of the Reconstruction Amendments emerge as clear. He stood against federal enforcement power by voting for the Morgan Resolution and against the Edmunds Resolution, and discredited the Amendments as illegally ratified with the same votes. He shared such votes with his southern white allies, who also refuted the legality of the Thirteenth, Fourteenth, and Fifteenth Amendments while appearing mixed on the Amendments' continued validity.[54] Lamar did so a mere five years after his eulogy of Sumner, providing a stark example of the anti-Reconstruction Lamar. While this vote remained obscure in the annals of Senate history, it would reemerge in the debate over his confirmation.[55]

Context for Reconstruction II: To 1887

With Republicans and Northerners wavering in their defense of the Amendments, the Supreme Court followed. In 1883, the Court issued one of the more infamous decisions in its history with the *Civil Rights Cases* (1883). In an opinion written by Justice Bradley, the eight-justice majority overturned the Civil Rights Act of 1875, ruling that Congress did not bear authority under the Thirteenth and Fourteenth Amendments to protect black Americans against the actions of private individuals. Only Justice Harlan dissented.[56] Recent scholarship has added

[54] Daniel Meador attempted to address Lamar's position in his article on the Lamar confirmation. Due to Lamar's vote on the Morgan resolution, Meador seems to regard Lamar as unwavering in supporting the Reconstruction Amendments' binding nature, while simply doubting their legal ratification. However, Meador fails to address that the Edmunds Resolution also included a charge of the continued validity of the Amendments, and completely ignores the implications the dueling resolutions bore for federal enforcement of voting rights. See Meador, "Lamar to the Court," 39.
[55] Aside from Meador, no Lamar biographer has examined the Edmunds Resolution and Lamar's votes on such in depth. Murphy provides a glancing reference to the episode. See Murphy, *L.Q.C. Lamar*, 262.
[56] *Civil Rights Cases*, 109 U.S. 3 (1883).

more nuance to the otherwise infamous nature of this opinion, with Brandwein emphasizing its consistency with *Cruikshank*.[57] Both opinions seized on the idea of "state neglect," a phrase Brandwein uses to describe the concept that the actions of private individuals on the state level remain beyond the reach of the federal government *unless the state fails to address them* (emphasis added).[58] This explains the Court's actions in the *Civil Rights Cases*, as the Civil Rights Act enabled direct federal prosecution without prior state inaction. This shows that the *Civil Rights Cases* did not leave black rights completely to the mercy of the states. Rather, the outcome accorded with the Court's established interpretations of federalism.[59] However, Bradley's language stating that "there must be some stage in the progress of [black American's] elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the laws," did no favors for black rights.[60] By proclaiming that the time had arrived for the federal government to treat black people as integrated citizens, while white supremacy still festered throughout the country, Bradley expressed a blindness to the realities of discrimination and furthered the mainstream progression towards abandoning black rights.

While the Supreme Court slowly moved against enforcement, they did not abandon rights enforcement wholesale. In 1884, they issued a unanimous defense of black voting rights in *Ex parte Yarbrough* (1884). In an opinion written by Justice Miller, the Court held that Congress bore broad authority under Article I, Section 4 and the Fifteenth Amendment to protect federal elections from violence.[61] This upheld one of the core points of the Edmunds Resolution –

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[57] For examples of scholars critical of the Court's decision, see Woodward, *The Strange Career of Jim Crow*, 71, and Rayford W. Logan, *The Betrayal of the Negro* (New York: Collier Books), 105.
[58] For a more thorough explanation of "state neglect," see Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 29-59.
[59] Ibid., 164-165. See also, Benedict, "Preserving Federalism".
[60] *Civil Rights Cases*, 109 U.S. 3, 25 (1883).
[61] *Ex parte Yarbrough*, 110 U.S. 651 (1884). For more information on the case, see Ross, *Justice of Shattered Dreams*, 247-249, and Timothy S. Huebner, "Emory Speer and Federal Enforcement of the

federal authority to directly enforce voting rights – and showed that the Justices still retained some interest in enforcing black rights.[62] Further, even after the controversial Election of 1876, the public remained interested in preventing national reconciliation. Republicans retook the House in 1880 and affirmed their hold on the presidency by electing James A. Garfield that same year.[63] The Garfield and Arthur administrations reinvigorated rights enforcement in the South, prosecuting more individuals under the Enforcement Act than President Grant in his final years in office.[64] Support of black rights had indeed drifted from the enthusiasm Republicans expressed in their passage of the Reconstruction Amendments and Military Reconstruction. However, the Supreme Court and the Republican Party held out.

The general public, however, distanced themselves from black rights, evidenced by the vanishing of black members of Congress. Between Hiram Revels taking his seat in the Senate in 1869, and the conclusion of the Forty-Sixth Congress in 1881, black senators served in all but two Congresses. By the time Cleveland sent Lamar's name to the Senate in 1887, no black Americans had been elected to it in over six years. Further, attacks on voting rights left no black representatives in the House for the first time since 1869. This made the Fiftieth Congress the first all-white edition in nearly two decades.[65] No black Congressmen served in the Congress which considered Lamar's nomination, a nomination submitted by the first Democrat elected to

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Rights of African Americans, 1880-1910," *American Journal of Legal History* 55, no. 1 (January 2015), 42-48. Huebner's article provides an account of Emory Speer, the federal attorney responsible for initiating *Yarbrough*, and covers the events and lower court proceedings that led to the Supreme Court.

[62] The Supreme Court issued another decision affirming black voting rights in *Ex parte Siebold*, 100 U.S. 371 (1879). Chief Justice Waite issued a pro-voting rights circuit opinion in *U.S. v. Butler*, 25 Fed. Cas. 213 (1877).

[63] Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 141-42.

[64] Huebner, *Liberty and Union*, 444.

[65] "Black-American Representatives and Senators by Congress, 1870–Present," History, United States House of Representatives, https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-Congress/.

the Presidency since James Buchanan. Grover Cleveland won that position in 1884, with the unanimous support of the states of the former Confederacy.[66] His election, coupled with the Democratic takeover of the House, gave his party significant power.[67] The Supreme Court still consisted entirely of Republican appointees, and Republicans still held a thin majority in the Senate.[68] However, with the Court inching away from rights enforcement, Democrats coming back into power, and black people removed from government, abandonment of black rights appeared closer than ever.

Why Lamar?

In this context, Cleveland nominated L.Q.C. Lamar to the Supreme Court. He made this nomination upon the death of Republican-nominated Justice William Burnham Woods. Woods could be described as a carpetbagger of sorts. Originally an anti-slavery Democrat from Ohio, Woods remained loyal to the Union and saw its victory as a necessity. As a lieutenant colonel in the Union Army, he fought at Shiloh, spurring his promotion to Brigadier General. Following the War, Woods switched to the Republican Party and settled in Alabama. In 1869, President Grant nominated him to sit on the Fifth Circuit Court of Appeals. There, he issued the circuit opinion of the *Slaughterhouse Cases*, using a broad reading of the Privileges and Immunities Clause to find in favor of the butchers and overturn Louisiana's state-created monopoly. Woods served on the circuit bench until 1880, when President Hayes nominated him to fill William Strong's vacancy on the Supreme Court. His confirmation made Woods the first Supreme Court Justice from a former-Confederate state since the Civil War. A relatively insignificant justice, Woods

[66] For the Election of 1884, see "Presidential Election of 1884: A Resource Guide," Presidential Elections, Library of Congress, https://www.loc.gov/rr/program/bib/elections/election1884.html.
[67] For the Democrat's majority in the House, see "Party Division," History, United States House of Representatives, https://history.house.gov/Institution/Party-Divisions/Party-Divisions/.
[68] U.S. Senate, "Party Division."

died at age sixty-two on May 14, 1887, after seven years on the Court.[69] Though Woods represented the Fifth Circuit, which included southern states such as Alabama and Mississippi, one could not call Woods a true Southern justice. He hailed from Ohio, settled in the South, and owed his judicial appointments to Republican presidents. However, Woods' death gave a Democratic president the opportunity to nominate a Supreme Court justice for the first time since Buchanan.

Cleveland had to choose a nominee from the Fifth Circuit, as before the Judiciary Act of 1891, serving on the Court still included the duty of deciding cases as a judge on Federal Circuit Courts. The number of federal circuits equaled the number of seats on the Supreme Court, and each justice "rode circuit" in the federal circuit from which he hailed. This limited Cleveland to picking from individuals from the same circuit as Woods, meaning a nominee hailing from Florida, Georgia, Alabama, Mississippi, or Texas. But why a true Southerner, like Lamar, rather than a carpetbagger like Woods? Charles Calhoun argues that Cleveland found his motivation in Lamar's southern origins, nominating him in order to invigorate his southern base. Lamar's hailing from Mississippi proved such an important factor, Calhoun reasons, that it outweighed detractions such as Lamar's "advanced age" of sixty-two (the same age as Woods), "uncertain health," and lack of legal expertise.[70] Calhoun's arguments appear valid when considering what Cleveland stood to gain in the coming election by nominating a southern justice. Though he emerged victorious in the 1884 Presidential Election, Cleveland's margin of victory amounted to

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[69] For biographical information on Woods, see Leon Friedman and Fred Israel, *The Justices of the United States Supreme Court, 1789-1969: Their Lives and Major Opinions,* vol. 2 (New York: Chelsea House, 1969), 1327-1362.

[70] Charles W. Calhoun, *From Bloody Shirt to Full Dinner Pail: The Transformation of Politics and Governance in the Gilded Age* (New York: Hill and Wang, 2010), 102. See also, Charles W. Calhoun, *Conceiving a New Republic: The Republican Party and the Southern Question* (Topeka: University Press of Kansas, 2006), 216-217.

less than forty electoral votes, and neither Cleveland nor James G. Blaine had commanded a majority of popular votes.[71] Such slim margins meant that Cleveland needed to affirm the states he carried come 1888, especially in the South. Without a solid bloc of southern states voting in his favor, he would not win the next election. Thus, Cleveland surely assumed that nominating a justice hailing from the South, especially entering the election year of 1888, would work in his favor.

But of all southern candidates, why Lamar? In addition to Lamar's reputation as a leader of national reconciliation, Cleveland likely decided to nominate his Secretary of the Interior due to his familiarity with him over the last three years of collaboration in the Cabinet. Evidence for such familiarity emerges in a letter sent to Lamar during the confirmation struggle, where Cleveland praised the former's "valuable aid and advice in Cabinet counsel, which for nearly three years I have so much enjoyed and appreciated."[72] This close work during Lamar's stint in the Executive Branch created a strong friendship between the two, evidenced in the same letter, with Cleveland describing their relationship as "the close confidence and the relation of positive affection which have grown up between us."[73]

Cleveland and Lamar sharing a close working bond does not necessarily mean that the president knew of and supported the nominee's constitutional views or white supremacy. Lamar's most aggressive espousals of white supremacy came in his private correspondence, and while Cleveland likely discovered Lamar's views over their three years in the Cabinet together, no evidence exists to prove or disprove such revelation. Sources do point to a strong and positive relationship between the two, perhaps the clearest reason for Cleveland to nominate Lamar.

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[71] "Presidential Election of 1884: A Resource Guide," Library of Congress.
[72] Grover Cleveland, "To Secretary L.Q.C. Lamar," in *Letters of Grover Cleveland, 1850-1908*, ed. Allan Nevins (Boston: Houghton Mifflin Company, 1933), 169.
[73] Ibid., 170.

However, Cleveland understood the importance of the South to his reelection hopes and had surely confronted Lamar's roots as a secessionist when considering him for the Cabinet and the Court. Such secessionists still held great popularity throughout the South, and the belief that the Reconstruction Amendments were invalid (and white supremacy) never stopped pervading that region after the war. Cleveland surely reasoned that placing a former Confederate on an otherwise entirely Republican-nominated Supreme Court could help him secure reelection. Whatever his motivations, he went forward with this nomination.

Summer Speculation

Though Cleveland made no public pronouncement before officially submitting the nomination in December, word of the President's desire to nominate Lamar to the justiceship leaked to the press in June of 1887.[74] While Lamar carried on at the Department of the Interior, newspapers covering an array of viewpoints began considering Lamar's merits and speculating whether or not he would receive the nomination. This early discussion revealed the partisan nature of the debate, and while early coverage did not discuss issues of constitutional interpretation, it did foreshadow the battle to come.

The Democratic press unsurprisingly responded favorably to the nomination, especially in light of Lamar's Confederate service. A prime example of a Democratic publication emerges in the *Memphis Appeal*, a daily newspaper published in Tennessee. Self-described as a "Democratic paper," which "teaches Democratic doctrines, supports Democratic measures," and devotes its influence to "the maintenance of the supremacy of the Democratic party," the *Appeal* quickly supported the confirmation of the possible nominee.[75] "One fact is known, and that is

[74] Meador, "Lamar to the Court," 30.
[75] *Memphis Appeal*, December 1887 - 1888.

that the new Justice will be a Southern man," the *Appeal* wrote on June 23.[76] "Since Justice Campbell of Louisiana," it continued, "no Southern man distinctive in character, birth and opinion has represented this section in the highest judicial tribunal of this country." The *Appeal* here spoke of John Archibald Campbell, a member of the *Dred Scott* majority who resigned his Supreme Court justiceship in 1861 to serve as an official in the Confederacy. With such praise of Campbell, the *Appeal* further demonstrated its loyalty to the Southern cause.[77] It next turned to the identity of Cleveland's nominee, stating that "the public mind has instinctively centered upon Secretary Lamar."[78] On Lamar, the *Appeal* wrote that "No man in the South is more popular, none more honored." Further, it directed its attention at Lamar's Confederate service, praising him as "A participator with her sons in the late war," who "shared the perils that enveloped them on the fields," and who "gave to his countrymen…the benefit of a wise and conservative mind."[79] Such prose accurately depicts the motives behind the Democratic support of Lamar. Formerly the party of secession and slavery, and still the party of white supremacy, the Democrats celebrated Lamar's ties to such ideals.

The Radical Republican press responded much less favorably to rumors of Lamar's nomination, with the *New York Tribune* emerging as a leading example of anti-Lamar sentiment. Founded in 1841 by Liberal Republican and future presidential candidate Horace Greeley, the *Tribune* had exercised political influence since it joined with the Republican Party in the 1850s, impacting both voters and those in power.[80] It published several pieces questioning the praise heaped onto Lamar by Democratic papers and attempted to shine a light on episodes of Lamar's

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[76] "Mr. Lamar's Chances," *Memphis Appeal*, June 23, 1887.
[77] Friedman and Israel, *The Justices of the United States Supreme Court,* 927-962.
[78] "Mr. Lamar's Chances."
[79] Ibid.
[80] See Frank Luther Mott, *American Journalism, A History: 1690-1960* (New York: MacMillan Company, 1962), 271-272.

life not mentioned in initial press. It used these episodes, in one case, to complicate notions of Lamar's loyalty to the Union by mentioning his continued allegiance to the Confederate cause. In particular, the *Tribune* noted that "His eulogy on Sumner is recalled and applauded," while Lamar's "eulogy on Jefferson Davis in the Senate has become obscure."[81] In another case, the *Tribune* used a forgotten 1871 event to call Lamar's "judicial temperament" into question. This event saw Lamar, in a federal court hearing, representing several Klansmen charged with violently depriving black Americans of their rights. At this hearing, the *Tribune* alleged, Lamar struck a United States Marshall, "breaking a small bone at the cap of the [Marshall's] eye," and inciting the Klansmen to cheer him on.[82] This assault, the *Tribune* claimed, "cannot be explained away" by Lamar's boosters.[83] The paper linked this episode with the potential for Lamar's nomination, saying that "If Mr. Lamar should be promoted to the Supreme Bench, he would be the first member of that tribunal that who had violated the peace, dignity and decency of a United States Court."[84] The *Tribune* ran six articles in late June about this event, basing the vast majority of their opposition on this lack of "judicial temperament."[85] While the *Tribune* neither placed Lamar's loyalty under severe scrutiny nor responded to the *Appeal's* praise of his Confederate service, it still opposed the potential for his nomination early on.

Black people contributed their opposition to the conversation, and – unlike their Radical Republican allies at the *Tribune* – questioned Lamar's loyalty. The *Cleveland Gazette*, a weekly black newspaper in Cleveland, Ohio, displayed their wariness of Lamar even before speculation of his nomination emerged in June. In May, they ran a piece criticizing the policies of President

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[81] "A Bit of Obscure History," *New York Tribune*, June 27, 1887.
[82] Ibid. For more information on this episode, see David M. Hargrove, *Mississippi's Federal Courts: A History* (Jackson: University Press of Mississippi, 2019), 97.
[83] *New York Tribune*, June 28, 1887.
[84] "Mr. Lamar's Friends Unhappy," *New York Tribune*, June 28, 1887.
[85] See *New York Tribune*, June 27, 28, 29.

Cleveland, beginning the article by labeling the Civil War a "Democratic rebellion," which saw the defeat of the theories of state sovereignty and secession.[86] The *Gazette* found, however, that Cleveland desired to re-entrench these theories into American society by speaking in favor of John C. Calhoun, noted proponent of state sovereignty. The *Gazette* next brought Lamar into the fold, criticizing Cleveland for sending Lamar to make a speech at the dedication of a monument to Calhoun. By sending Lamar to speak the praises of Calhoun, the newspaper opined, Cleveland revealed "unmistakable signs that the whole plan of the Democratic Party to-day is to put itself back on the footing that it occupied before the war."[87] This hammered home the central message of the piece: Cleveland, Lamar, and the Democratic Party did not stand for black interests. Rather, they adhered to the principles they espoused before the Civil War. This central message was seemingly affirmed by the *Appeal's* praising of Lamar's Confederate service. Thus, even before the press considered Lamar as a candidate for the justiceship, black people stood opposed to him and the president who nominated him.

The black press continued their opposition once speculation broke out. In July, the *Washington Bee*, a black newspaper in Washington D.C., printed their weekly "They Say That" column. The column featured the words "They Say That," with a few items listed below describing gossip or political opinions. This particular column, published on July 19, read, "They say that…When Lamar is transferred to the Supreme Court bench a few Negro pimps will be transferred with him."[88] While this did not constitute an overt denunciation of the speculated nomination, the piece still portrays Lamar in a starkly negative light. Perhaps the authors meant to criticize Lamar by equating him to a "pimp," or perhaps the author intended to emphasize

[86] "Dangerous Heresies," *Cleveland Gazette*, May 14, 1887.
[87] Ibid.
[88] "They Say That," *Washington Bee*, July 19, 1887.

Lamar's spotty record with black rights with the specific mention of "Negro" pimps. The paper issued no follow-up article or editorial to explain it. However, the column certainly complicates any possibility that black Americans responded favorably to the potential for Secretary Lamar to become Justice Lamar.

Instead of opposing the nomination, Republicans at the *New York Times* did not reveal their position during the summer. Founded in 1851, the *Times* had always spoken for the mainstream elements of the Republican Party. Neither as liberal as the Radicals nor as conservative as the Democratic Press, it represented the sentiments of the majority of Republican voters.[89] Mirroring the shifting political ground, the *Times* had begun to grow more conservative in the 1880s, evidenced by its support for Cleveland's 1884 presidential campaign.[90] As such, it refrained from endorsing or denouncing Lamar's rumored nomination, only publishing a single article on June 28, attempting to explain the 1871 episode in which Lamar struck a federal marshal. While the *Times* clarified that Lamar did not deny the event, the paper did add facts to the story. According to the *Times*, Lamar, still not "thoroughly reconstructed" and feeling that "there was a determination to disgrace every white man in the eyes of the negroes," initially rose during the federal hearing in fear of one of the defendants rising to assault him.[91] Given that Lamar had risen and brandished a chair to defend himself, the federal marshal rushed towards him and "lay his hands on him," after which Lamar struck him "severely."[92] Whether the *Times* intended to go beyond clarifying facts remains unclear, as they published no other articles regarding Lamar during the summer. Perhaps they intended to redeem Lamar's "judicial

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[89] For examples of the conservatism of the *Times*, see Foner, *Reconstruction*, 220 and 254. On 254, Foner notedly referred to the Times as a "pro-Johnson" Republican newspaper, evidencing its position as a mainstream publication.
[90] See "The Man for the Time," *New York Times*, October 23, 1884.
[91] "Affairs at the Capital," *New York Times*, June 28, 1887.
[92] Ibid.

temperament" with a more detailed account than that provided by the *Tribune*. However, the *Times* and other mainstream Republican publications certainly did not express opposition to Lamar during the summer months.

It remains unknown how much Lamar knew about his potential appointment. According to Daniel Meador's article on Lamar's confirmation, Cleveland did not speak to him regarding the nomination during the summer. Lamar surely heard rumors, but later informed the press that he had "no knowledge" of Cleveland's wishes.[93] Further, it remains unknown whether Lamar desired a seat on the Supreme Court, though Meador presents a nuanced evaluation of his rumored dissatisfaction at the Department of Interior.[94] No matter what Lamar knew or desired, however, his nomination seemed a foregone conclusion. The *Tribune* displayed such in writing "It seems to be taken for granted by nearly everybody that Secretary Lamar is to be appointed to the vacancy caused by the death of Associate Justice Woods," on June 27.[95]

The eventual confirmation of the potential nominee did not carry such certainty. Much press coverage cast Lamar's nomination in a positive light, perhaps making confirmation appear likely. However, Radical Republicans and black Americans held out in their opposition to a former Confederate on the Supreme Court, setting up the confirmation battle to come. Summer speculation did not endure after the smattering of articles published in late June, and the press largely refrained from speculating further before Cleveland submitted the nomination in December. However, rather than accept a forgone conclusion, Radical Republicans and black Americans prepared for a clash over Lamar's nomination. The last stand of black rights and continuing politics of national separation was to come.

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[93] "Secretary L.Q.C. Lamar," *Memphis Appeal*, June 27, 1887.
[94] Meador, "Lamar to the Court," 30.
[95] "A Bit of Obscure History."

Chapter Two: The Nomination and Constitutional Interpretation

On January 16, 1888, Senator George Edmunds took the floor of the Senate and spoke for thirty minutes against the confirmation of L.Q.C. Lamar. Having proposed the resolution affirming the validity of the Reconstruction Amendments nearly a decade earlier, Edmunds bore much experience in speaking on matters of black rights. However, on this occasion Edmunds was fighting a losing battle. Though he engaged in the debate over Lamar, the public and press had already accepted the nominee during a month of fierce debate. During the debate, the primary subject of this chapter, Republicans and Democrats clashed over issues of constitutional interpretation raised by the nomination. Though the Radical Republican view that Lamar held the Thirteenth, Fourteenth, and Fifteenth Amendments as void occupied much press coverage, no scholar on the Lamar has approached this debate over constitutional issues. Not yet prepared to abandon the rights of black Americans, these radicals opposed Lamar's confirmation. Black Americans saw a similar danger, vocalizing their opposition to Lamar in newspapers. However, these opinions somewhat represented the fringes of the debate. Mainstream Republicans put their radical counterparts in such a position, refuting the dangers of confirming a person who possibly did not believe in the validity of the Reconstruction Amendments while joining Democrats in support of the nominee. This mainstream acceptance, seen in noted Republican sources such as the *New York Times*, symbolized the northern public's willingness to abandon federal enforcement of black rights through the Reconstruction Amendments. With the Senate confronting the same question and reaching the same conclusion, confirmation completed acceptance of Lamar to the Court, symbolizing the end of Reconstruction.

Nomination: Debate

With the nomination submitted on December 6, 1887, debate over confirmation broke out in the national press. This debate saw the same newspapers clashing over Lamar's nomination and exchanging multiple reasons for opposition and support during the month of December. The debate had constitutional implications, as the opposition to Lamar criticized his disloyalty to the Reconstruction Amendments. However, such concerns represented the minority view. The debate saw the press mostly support the candidate, setting up the final blow to rights enforcement.

Radical Republicans expressed immediate hostility to Lamar's nomination, initially based on issues of judicial temperament and the nominee's Confederate service. On December 7, the first day of press coverage of the nomination, an article titled "Secretary Lamar's Unfitness" appeared on the *Tribune's* front page. The Republican newspaper here claimed that Lamar's ineligibility "seems to be conceded by every one (sic), except those that are thoroughly blinded by prejudice and partisanship." Those individuals failing to confront Lamar's detractions, the *Tribune* alleged, overlooked the nominee's issues of judicial temperament, an issue addressed at length during the summer. Further, the *Tribune* used Lamar's Confederate service against him, labeling him a hypocrite for claiming to support the Constitution while having seceded from the Union, which displayed an inability "to distinguish between treason and loyalty."[1] Such opposition shows that more radical elements of the Republican Party still desired to maintain sectional politics and keep former rebels out of government.

The *Tribune* enumerated additional yet more superficial reasons to oppose Lamar. The newspaper criticized his "advanced" age, a detraction which appears plainly frivolous when

[1] "Secretary Lamar's Unfitness," *New York Tribune*, December 7, 1887.

considering the ages at which the other justices of the Reconstruction-Era Court took their seats.[2] Most saw confirmation in their middle or late fifties, while at least two (Hunt and Blatchford) assumed their places at the exact age of sixty-two.[3] Rather than "advanced" for a nominee, Lamar's age fit in with the norm at the time. The *Tribune* also attacked Lamar for his lack of "eminence" in the legal profession, "which, indeed, he appears not to have practiced at all since 1854."[4] This claim bore some truth, as Lamar's time in private law practice usually came during short stints between elected offices.[5] However, other justices also came to the Court from a more political, rather than legal, background. For example, both Strong and Matthews served in Congress before their nominations, and only Miller and Bradley came directly from private law practice to the Court.[6] So while Lamar perhaps did lack a distinct legal background, paramount for consideration to serve on today's Supreme Court, this issue likely did not mean much to Republican opposition. Lamar was neither too old nor too inexperienced, and while the *Tribune* later reiterated these supposed detractions, they did so sparingly. They saved their most vigorous attacks for Lamar's past disloyalty to the Union, and for an episode in Lamar's life which was about to resurface.

The *Tribune* introduced constitutional implications into the debate on December 15. That day, the newspaper published an article which carried an ominous subhead: "He holds the Constitutional Amendments invalid. His votes on Mr. Edmund's Resolutions in the Senate in 1879 recalled ."[7] The *Tribune* briefly retold the history of the Edmunds Resolutions of 1879,

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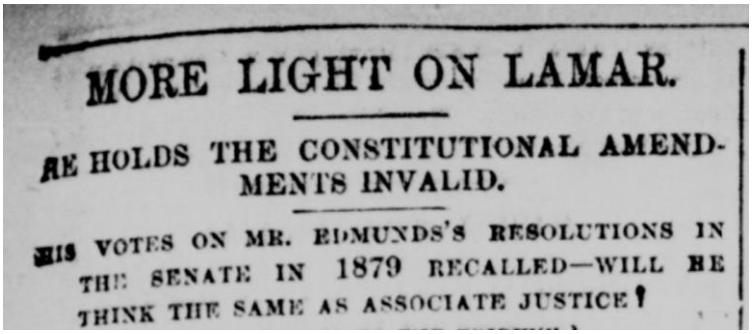
[2] "Dickinson and Lamar," *New York Tribune,* December 8, 1887.
[3] For general biographical information on Reconstruction-Era Supreme Court Justices, see Friedman and Israel, *The Justices of the United States Supreme Court,* vol. 2.
[4] "Dickinson and Lamar."
[5] Friedman and Israel, *The Justices of the United States Supreme Court,* vol. 2, 1436.
[6] Friedman and Israel, *The Justices of the United States Supreme Court,* vol. 2.
[7] "More Light on Lamar," *New York Tribune,* December 15, 1887.



MORE LIGHT ON LAMAR.

HE HOLDS THE CONSTITUTIONAL AMENDMENTS INVALID.

HIS VOTES ON MR. EDMUNDS'S RESOLUTIONS IN THE SENATE IN 1879 RECALLED—WILL HE THINK THE SAME AS ASSOCIATE JUSTICE?

Figure 3. "More Light on Lamar," the **Tribune** *article which introduced issues of constitutional interpretation.*

which saw Lamar join twelve of his Southern Democrat colleagues (and three Northern Democrats) in voting "Nay" to a resolution affirming the legality, validity, and federal enforcement power of the Reconstruction Amendments.[8] The *Tribune* levied fierce attacks against him for the vote, claiming that it expressed Lamar's opinion that "the last three amendments to the Constitution are not valid and binding in the sense that the remainder of that instrument is."[9] The *Tribune* considered the consequences of such views, querying "If the amendments are not valid in the opinion of Mr. Lamar, what of laws enacted under them?"[10] This alluded to the distinct possibility that Lamar, if confirmed, would likely have to rule on such legislation. Given his vote on the Edmunds Resolution, a lack of certainty surrounded his potential fairness and impartiality towards Reconstruction statutes. With these attacks, Radical Republicans began laying bare the issues for constitutional interpretation of Lamar's confirmation. Confirmation now represented more than embracing national reunion. It represented an effort to refute enforcement power under the Reconstruction Amendments.

[8] *Cong. Rec.*, 45th Cong., 3rd sess., 1879, vol. 9, pt 3: 1029.
[9] "More Light on Lamar."
[10] Ibid.

Radical opposition to Lamar perhaps appeared most evident in the *Tribune's* labeling of the nomination as "an announcement of the Democratic programme (sic) to reconstruct that Court on a Confederate basis."[11] With their strong opposition, Radicals hoped to keep the nominee off the Court. Perhaps they wanted to turn the confirmation battle into a referendum on the issue of interpretation of the Reconstruction Amendments. Whether or not they wanted to do so, their portrayal of the implications of Lamar's confirmation started to turn the battle into such a referendum.

As throughout Reconstruction, black Americans did not simply hope for white institutions to work on their behalf. Rather, they deployed the practices of "black constitutionalism" to actively oppose Lamar's confirmation, as seen in the Chattanooga-based black newspaper *Justice*. Its contribution to the discussion, published on December 24, made clear that Lamar's nomination was "one of great importance to colored people" and addressed many reasons to oppose Lamar. These included Lamar's insults of President Lincoln, his regard for Jefferson Davis, and his efforts "by force of arms to destroy the government and the constitution." However, *Justice* seemingly pardoned the nominee for such offences, stating their intention to "forget" and "pass over" them. This proved a tactic to magnify the issue of Lamar's vote on the Edmunds Resolution, for in addressing this offense, *Justice* forgave Lamar no further. The newspaper drew the line by writing "a man who voted 'no' to the validity of the [Reconstruction] amendments is not the man to sit on the bench of the Supreme Court." In this vein, *Justice* addressed the implications Lamar's "nay" vote bore for black people, recognizing that "the rights of 7,000,000 people are peculiarly bound up in the three amendments." The newspaper captured the essence of the black argument against Lamar by asking "If you were a

[11] "A Confederate Supreme Court," *New York Tribune*, December 30, 1887.

colored man, would you not doubt Mr. Lamar's friendliness?"[12] Given that the nominee cast a vote opposing the legality and enforcement power of the amendments that ended slavery and established their citizenship, black Americans doubted the nominee's ability to uphold their rights.

Other black newspapers, such as the *Nicodemus Cyclone*, framed Lamar's nomination in the context of his prior disloyalty and the actions of President Cleveland. On December 30, the *Cyclone* called the nomination "a bitter pill for loyal citizens to swallow," imagery which captured the emotions of the black community. For two decades, despite the loyalty of black Americans during the Civil War and their continued efforts to increase their own rights, enforcement waned as the party of the rebellion worked its way back into government. Now loyal black Americans had to watch as an all-white Senate considered the nomination of a former Confederate, who perhaps held the Reconstruction Amendments invalid, to the nation's highest court. However, the *Cyclone* acknowledged that black Americans "have taken some terrible doses since Cleveland mounted the throne."[13] Perhaps this alluded to black Americans not expecting any assistance from a Democratic president, especially in the face of Cleveland's controversial returning of Confederate battle flags to the Southern States.[14] However, no matter the expectations of the President, Lamar's nomination surely alarmed black Americans. Though they did not expect much from Cleveland, they continued to voice their opposition to Lamar's nomination.

Black Americans had good reason to oppose Lamar, as he had demonstrated strong white supremacy in an 1873 letter to his partner Edward Clark. In this letter, he lamented living in a

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[12] "Mr. Lamar and the Colored People," *Justice,* December 24, 1887.
[13] *Nicodemus Cyclone,* December 30, 1887.
[14] For coverage of Cleveland's returning of Confederate flags, see "Angry Grand Army Men," *New York Times*, June 16, 1887, and "Jeff Davis on the Flags," *New York Times*, July 1, 1887.

state where "strangers" held political rights. "I say strangers," Lamar clarified, because "Northern men and enfranchised Negroes were new to the political interests and institutions of the state."[15] Lamar seemed to abhor black voters, calling Republican rule "irresponsible," and asking "Where is the constituency to which these men will be responsible?" He answered this question, "Negroes!" an answer he seemed quite upset with, as he went on to claim that black voters could not measure up to the moral code of an "enlightened" constituency. This constituency, Lamar clarified, meant white people.[16] This letter showed Lamar's opposition to black political rights in 1873, attitudes he held a decade later in advising Clark to move to Washington. In 1884, President Cleveland offered Lamar the position of Secretary of the Interior. In need of an Assistant Secretary, Lamar encouraging Clark to join him in Washington in this role. To make the decision easier for the Vicksburg-based Clark, Lamar added that "Vicksburg is cut off and the negroes are threatening Miss. with an inundation more terrible than floods."[17] Such language, comparing an influx of black citizens to a natural disaster, placed Lamar's white supremacy on full display.

Thus, black Americans did not see opposition to Lamar as a petty refusal to let the dust settle after the Civil War. Democrats referred to such refusal as "waving the bloody shirt," which they defined as unnecessarily rehashing the memory of the Civil War. Used as a pejorative, Democrats used the "bloody shirt" to dismiss concerns of black people and Republicans.[18] However, especially for black people, the delay of national reunion meant more than using the memory of the War against Democrats. It meant preventing the "suppression of the Negro vote

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[15] L.Q.C. Lamar, letter to Edward Clark, October 16, 1873.
[16] Ibid. See also, Lemann, *Redemption*, 68-70.
[17] L.Q.C. Lamar, letter to Edward Clark, 1884.
[18] On the "bloody shirt," see Stanley P. Hirshson, *Farewell to the Bloody Shirt: Northern Republicans and the Southern Negro, 1877 – 1893* (Gloucester: Peter Smith Publisher, 1962).

in the South" by supporting the Reconstruction Amendments.[19] They saw preventing confirmation of Lamar as falling in line with such policy. For them, these efforts meant the difference between preserving and losing their rights.

For Democrats, resistance to Lamar constituted a prime example of "waving the bloody shirt." The *Appeal* specifically targeted the *Tribune*, writing on December 17 that the New York newspaper "is wasting a great deal of time" attempting to oppose Lamar.[20] They criticized the continued references to the War, while praising senators that "do not believe in the bloody shirt as a fitting political issue in these days," as the South "is as loyal and as true to the Union as any other section of the country."[21] The *Appeal* further discounted attacks on the nominee, writing that the opponents of Lamar's confirmation "seized the opportunity for developing a partisan fight over the matter in hope of forcing every Republican senator to vote against his confirmation"[22] This encapsulated the Democratic counter-attack against Radicals. Democrats saw the opposition as an unnecessary partisan effort to punish the South further for their rebellion, which they saw as behind them.

On the nomination itself, Democrats urged a quick and easy confirmation process, fully believing that the nomination would prevail in the Senate. The *Appeal* published at least two articles throughout December supporting such speedy action, stating on December 26 that Lamar "should have been confirmed on the day his name was sent to [the Senate] by the President."[23] While this complaint came from an editorial and not from the Democratic Party in its corporate capacity (even the *Appeal* acknowledging that confirmation onto the Supreme Court without

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[19] *New York Freeman*, June 11, 1887.
[20] "Lamar," *Memphis Appeal*, December 17, 1887.
[21] *Memphis Appeal*, December 18, 1887.
[22] "Lamar's Confirmation," *Memphis Appeal*, December 29, 1887.
[23] *Memphis Appeal*, December 26, 1887.

committee consideration "has never prevailed."[24]), a general pro-Lamar message emerged. Democrats saw their nominee as deserving confirmation in a timely manner, and in writing "There is a feeling here that the opposition manifested against Mr. Lamar's nomination will have practically died out when the Senate reconvenes," expressed optimism that opposition would vanish.[25] This summarized the general sentiment of initial Democratic coverage of the Lamar nomination. While the *Appeal* did not initially rebut specific charges made against Lamar by Radicals and black Americans, they criticized opponents for making these charges. In doing so, they framed the issue in terms of national reconciliation, discounting attacks against Lamar as partisan while assuring the South's loyalty. That the nominee had fought for the Slave Power and voted against the validity of the Reconstruction Amendments made no difference to them.

Strikingly, Mainstream Republicans joined Democrats in their support of the nominee. The *New York Times* expressed confidence in an easy confirmation as early as December 11, writing that "When the nomination of Secretary Lamar to be an Associate Justice of the Supreme Court is taken up by the Senate…the negatives will be very few." The *Times* also downplayed issues of the nominee's Confederate service, speculating that the primary objections "will be mainly on account of Mr. Lamar's age," and not on the fact that Lamar fought for the Confederacy.[26] On that issue, the *Times* expected, at most, a few Senators to raise concerns. Unlike their radical counterparts at the *Tribune*, those at the *Times* did not express disproval of Lamar, choosing instead to predict a quick, uncontroversial confirmation. That the *Times* did not see a Supreme Court nominee's Confederate service as controversial speaks to their normalizing

[24] "Senatorial Courtesy," *Memphis Appeal*, December 7, 1887.
[25] "Lamar's Conformation," *Memphis Appeal*, December 25, 1887.
[26] "Mr. Fairchild's Critics," *New York Times*, December 11, 1887.

of such experience within the federal government, showing the Republican march towards national reunion.

In perhaps the most telling sign of mainstream Republican abandonment of the Reconstruction Amendments, the *Times* argued that Lamar earned constitutional distinction for his Senate tenure. According to the *Times*, Lamar's service "made him familiar with constitutional questions and the legislation with which the Supreme Court has to deal."[27] Such praise seems rather ironic, as Lamar's Senate tenure did grant him exposure to a constitutional question: the validity and legality of the Reconstruction Amendments. Irony turns to shock when considering the stance adopted by the *Times* during the debate over the Edmunds Resolution, which saw the Republican newspaper call opposition to the Edmunds Resolution "pure twaddle" and the Democratic substitute "dangerous."[28] Though then-Senator Lamar had voted for the Democratic substitute and voted against the Edmunds Resolution, the *Times* in 1888 displayed no qualms with praising Lamar's time in the Senate. Mainstream Republicans did not go so far as to explicitly praise Lamar for voting "Nay" to the validity and legality of the Reconstruction Amendments, but they did not take issue with it. This displayed a dramatic indifference to the Amendments and a stark mainstream Republican reversal, further evidenced by a glowing pro-Lamar endorsement issued in the same *Times* article. The paper rebutted claims that Cleveland bore duty to appoint a Republican to the vacancy, writing that "Everyone expected a Southern Democrat to be placed on the bench, and nobody saw any objection to it." The *Times* further expressed their true colors by heaping praise onto Lamar. Of the nominee, the paper said, "He is known to be an able, studious, and scholarly man, of sufficient dignity, fair-minded and upright beyond question." In this vein, the *Times* saw "no reason to doubt that he would make a good

[27] "Mr. Lamar as an Issue," *New York Times*, December 23, 1887.
[28] *New York Times*, February 5, 1879, and "The Protection of Voters."

judge." Further, the paper joined the Democratic *Appeal* in discounting opposition to the nomination as "based solely on the fact that Mr. Lamar is an ex-Confederate."[29] Short of praising Lamar for voting against the Edmunds Resolution and rebelling against the Union, as Democratic newspapers had done since June, the *Times* here minimized the nominee's disloyalty. It recognized Lamar's Confederate service and Senate tenure, but instead of using these experiences against him, dismissed it as nothing more than a reason spiteful Radicals refused to acquiesce to confirmation. If anything, this minimization showed mainstream Republicans joining the Democrats in criticizing Radicals for "waving the bloody shirt," without going as far as to actually say those words.

The position of mainstream Republicans represents the definitive turn away from enforcement of black rights. Throughout the month of December, the *Times* provided no opposition to Lamar's confirmation. Rather, they praised the nominee while skirting around the more prominent issues raised by Radicals and black Americans: Lamar's vote on the Edmunds Resolution and his Confederate service. This symbolized the popular turn towards accepting reunification and abandonment, for mainstream Republicans now joined Democrats in embracing a former secessionist who perhaps held constitutional opinions which harmed black Americans. Confirmation still remained uncertain, as Radicals and black Americans refused to acquiesce to the nomination. However, these holdouts truly represented the fringes of the argument. Democrats, back in power, now enjoyed the concurrence of mainstream Republicans on the issue.

As the Senate adjourned for the holiday recess, the issue of Lamar's nomination hung in the still air. The Judiciary Committee had postponed consideration of the nomination until after

[29]"Mr. Lamar as an Issue," *New York Times*, December 23, 1887.

the new year, leaving the rather contentious issue unresolved for weeks to come.[30] Lamar's nomination was hotly debated nationwide, with the *Tribune, Appeal, and Times* combining for at least forty-nine pieces published between December 7 and December 30. This joined with the smattering of articles published in black newspapers to result in a month where every day meant a new contribution to the Lamar debate. This debate evidences the controversy of the Lamar nomination, especially when compared against other justices. For example, Stanley Matthews remains the only justice confirmed to the Supreme Court by a one-vote margin. However, despite the controversy surrounding the Matthews nomination, newspapers such as the *Tribune* did not run front page articles on the matter in the days leading up to confirmation.[31] In contrast, newspapers across the nation ran front page coverage of Lamar for over a month before the nomination came to a vote. Further, the debate over Lamar did not slow down throughout the recess. While the Senate remained adjourned, bitter disagreements still festered across nation.

The new year saw the debate still aflame for Radicals, with the *Tribune* cementing their opposition to Lamar. On January 2, the paper published "A Word to Republican Senators," in which the *Tribune* first accused Lamar of voter suppression. They stated that Lamar "owes all the prominence he has had for ten years to this crime, to which he is a knowing accessory." Expanding upon this accusation, the paper referenced voting rights incidents where "men were lashed and butchered, and ballot-boxes were stuffed to make Mississippi a Democratic State." Given Lamar's status as Mississippi's most prominent politician, the *Tribune* found no reason to believe the nominee ignorant of these crimes, making him an accessory in their eyes. Summing up their arguments, the newspaper "urged Republican Senators to maintain Republican principles

[30] "Nominations," *Memphis Appeal*, December 20, 1887.
[31] See *New York Tribune,* May 15, 16, 17, 1881.

by voting against a man who represents the wickedest crimes ever known in American politics."[32]

Given Lamar's position as a major player during the "redemption" of Mississippi to Democratic rule, the *Tribune's* charges certainly held some validity. As described by Nicholas Lemann, the Democratic Party in 1870s Mississippi effectively consisted of two wings: a military wing, responsible for carrying out violence against black citizens to intimidate them into not voting, and a political wing, headed by Lamar.[33] In the position, Congressman Lamar expressed opposition to Reconstruction during "Redemption," which saw paramilitary groups of white supremacists engage in a campaign of violence and intimidation to prevent black citizens from exercising their voting rights. They undertook these efforts with the goal of "redeeming" Mississippi – restoring it to white Democratic rule.[34] Hundreds of black Americans were killed in the 1874 Vicksburg Riots, after which President Grant deployed troops to end the violence. Lamar had hoped the federal investigation into the riots would vindicate Democrats and display that the true issue rested on the continued presence of federal troops in the South. Further, he hoped that the investigation would hold black citizens responsible for the violence, rather than white people. He displayed such hopes in a letter to his partner Clark, where Lamar stated that "the number of negroes killed and wounded by negroes far exceeds that of negroes killed and wounded by white men."[35] Further, Lamar labeled federal occupation of the South a "terrible

[32] "A Word to Republican Senators," *New York Tribune*, January 2, 1888.
[33] Lemann, *Redemption,* 119-120.
[34] Nicholas Lemann provides one of the few accounts of political violence in the Reconstruction Era with his survey of the Mississippi violence in 1875. See Lemann, *Redemption: The Last Battle of the Civil War*.
[35] L.Q.C. Lamar, letter to Edward Clark, February 1, 1875. Also, see Lemann, *Redemption,* 96-98.

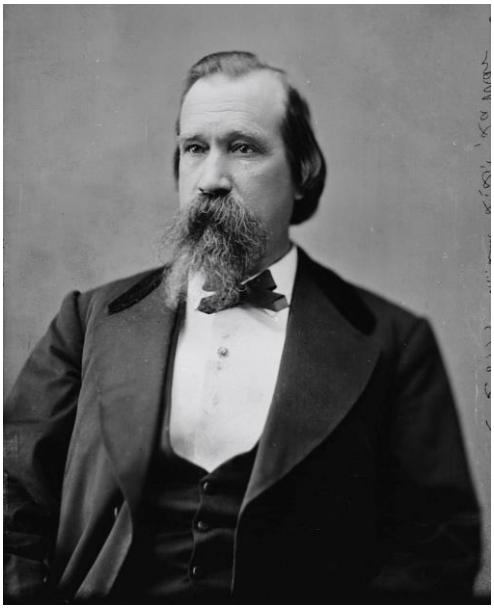

Figure 4. Lamar during the 1870s, during which time he served in the House of Representatives and the Senate.

ordeal of plunder and oppression," for white Southerners.[36] This dodging of white violence against black voters, in favor of refuting that the issue existed, displays a stark level of indifference to black citizens.

Though the federal report on the Vicksburg Riots did not vindicate Democrats, Lamar still benefited from voter suppression, as "Redemption" did achieve its goal. Democrats retook the state government in the 1876 Elections, and the new Democratic State Legislature voted Lamar to the United States Senate. Lamar not only failed to condemn white violence, but also denied its existence and benefitted from it, vindicating the *Tribune's* charges of voter suppression.

The *Tribune* published their most extensive anti-Lamar piece, an article called "Dead Against Lamar," two days after making the charge of voter suppression. This piece occupied the entire right column of the paper's front page, as well as most of the left column on the second

[36] L.Q.C. Lamar, letter to Edward Clark, February 1, 1875.

page. “If Republicans are practically unanimous on any question,” the paper began, “it is that the appointment of Mr. Lamar for Justice of the Supreme Court should not be confirmed by the Senate.” While such mentions of unanimity within the party perhaps represented a ginger hope rather than a concrete truth, the *Tribune* began to quote from anti-Lamar resolutions adopted by the New York Republicans Club, using them to launch into a scathing anti-Lamar manifesto. They addressed issues of national reunion, reminding their readers that “Mr. Lamar was once an avowed enemy of the United States and sought the dissolution of the Union.” Further, they addressed issues of constitutional interpretation, stating that “In 1868 the Democratic party proclaimed as part of its political faith that the Constitutional amendments and reconstruction acts were unconstitutional, revolutionary, and void…Mr. Lamar, as a member of that party, adopted it as part of his political faith.” To reinforce such notions, the *Tribune* returned to the Edmunds Resolution. In sum, the *Tribune* declared absolute opposition to the nominee, closing by harkening to the memory of the great Chief Justice John Marshall and advising that “no man go upon the same court now that is not equally loyal to the Constitution of the United States with all its provisions.”[37] With this bold statement, the *Tribune* made their most complete statement of anti-Lamar sentiment, enforcing the transformation of the confirmation battle into a referendum on the interpretation of the Reconstruction Amendments.

Black Americans also maintained their opposition to Lamar by using his Confederate service and vote on the Edmunds Resolution against him. “The Senate should never confirm Secretary Lamar as a member of the Supreme Court,” the *Cleveland Gazette* declared on January 7. The newspaper proceeded to launch into their own anti-Lamar manifesto, addressing national reconciliation by labeling Lamar “an unrepentant secessionist who still magnifies the lost cause.”

[37] “Dead Against Lamar,” *New York Tribune*, January 4, 1888.

Like most opposition to confirmation, the *Gazette* placed heavy emphasis on constitutional issues by discussing the 1879 Edmunds Resolution. With Lamar's record on secession and the Reconstruction Amendments in mind, the *Gazette* brilliantly captured the frustrations of the black community by asking "Is the war to be fought over again, and shall everything already accomplished go for naught? Shall the rebels come to the front and take the government again?" Though the resolution of the Civil War saw black Americans gain rights and keep secessionists out of government, an individual who represented all they opposed stood poised to gain a seat on the nation's highest court, a position he could use to rule against their rights. Black Americans had themselves fought for these rights, recognized by the *Gazette* in writing "Is it that we wish blood of the hundreds and thousands who fell in the war to destroy the Southern Confederacy, to rise up against us to condemn us?" [38] Black Americans wanted to ensure those who fell had not done so in vain. Keeping Lamar off the Supreme Court accorded with this objective.

Coming into the new year, Democrats perhaps felt on the defensive. Radicals at the *Tribune* and black newspapers around the country were publishing extensive pieces against Lamar, and Democrats stood to lose confirmation of the first Democrat-nominated justice in thirty years. Faced with these attacks, the *Appeal* stuck close to Lamar. The Democratic paper published the statements of Senator Philetus Sawyer of Wisconsin, which assured Lamar's loyalty to the Union, seen especially in the nominee's 1873 eulogy of Charles Sumner.[39] The *Appeal* also attacked the *Tribune* by name, stating that the newspaper's opposition amounted to nothing more than Radicals taking advantage "of the opportunity to wave the bloody shirt for all it was worth." [40] Such critiques echoed those made against Lamar's opposition throughout the

[38] "Lamar and the Supreme Court," *Cleveland Gazette*, January 7, 1888.
[39] "Lamar All Right," *Memphis Appeal*, January 3, 1888.
[40] "A Wrong Done Lamar," *Memphis Appeal*, January 7, 1888.

debate, but the *Appeal* went beyond these to impeach the *Tribune's* credibility. It called the Radical paper's accusation of voter suppression "bogus," and implored Democrats to "make haste to relieve Mr. Lamar from the embarrassing position in which *The Tribune* and its newspaper abettors have placed him."[41] Thus, the *Appeal* maintained its methods for supporting Lamar. It attacked the opposition and assured the candidate's loyalty, all with the goal of placing their man on the Supreme Court.

The *New York Times* continued to concur with Democrats on the issue, further displaying their move away from the Reconstruction Amendments. Like the *Appeal*, the *Times* assured Lamar's loyalty, calling Lamar on January 4 a "fully 'reconstructed' citizen" and claiming that "Not one of the Senators who proposes to vote against him has any honest doubt about either his honesty or his loyalty."[42] The paper followed this with a noticeably nuanced evaluation of Lamar's nomination two days later. The *Times* observed that "The nomination of Mr. Secretary Lamar to the Supreme Court is one that could be fairly criticized," perhaps the most anti-Lamar statement printed by that newspaper.[43] However, it claimed that Lamar remained the superior candidate for the Supreme Court vacancy, thanks to "the reputation he has richly earned for probity, integrity, and independence." Though the nominee did bear a number of detractions (the *Times* cited age and lack of legal experience), no evidence convinced the *Times* of Lamar's continued disloyalty. That the *Times* did not consider Lamar's career as reinforcing claims against his loyalty shows how far mainstream Republicans had fallen from their position twenty years prior. Once the party that joined black Americans in passing the Fourteenth and Fifteenth

[41] Ibid.
[42] "Why Lamar is Opposed," *New York Times*, January 4, 1888.
[43] "Mr. Lamar for the Supreme Court," *New York Times*, January 6, 1888.

Amendments, Republicans now joined with Democrats to support the confirmation of an individual who did not believe in the validity of these efforts.

The position of Democrats, at the reins of the federal government, and mainstream Republicans, the main element of the second half of the political dichotomy, combined to keep Lamar's opposition on the fringes. This dueling of newspapers such as the *Tribune* and *Appeal* turned the confirmation battle into a referendum of sorts. At issue: whether a former Confederate, who perhaps held the Reconstruction Amendments as invalid, would join the nation's highest court. However, the implications of such referendum tease at much larger issues. Perhaps the largest of these: whether the public accepted the work of the Supreme Court in interpreting the Reconstruction Amendments. These interpretations had grown stricter as Reconstruction passed, and if the Republicans truly cared to see this trend reversed, one would expect them to unflinchingly deny a seat to an individual who voted against the legality, validity, and federal enforcement power of the Amendments. They did not. Further, they assented to Lamar despite his service with the Confederacy, making the press' general acceptance of the nominee a sign of Reconstruction hastening to an end.

Nomination: Acceptance

Acceptance first saw a shift in newspaper speculation. Speculation emerged as newspapers devoted more space to whether or not the nomination would actually succeed. This constituted a shift from the lengthy discourses on the merits of the nomination found throughout December and early January. This speculation gave way to confirmation of Lamar, when a Republican-majority Senate finally came to a vote on whether to confirm the nominee to the Supreme Court. These actions signaled a development more meaningful than the "last step to

national reunion."[44] They enforced the result for the referendum which the nomination symbolized. The result signaled the end of popular support for enforcement of black rights and the end of Reconstruction.

The national press shifted to speculation in the wake of developments in the nomination. On January 7, Lamar resigned from his position as Secretary of the Interior, citing his fear of embarrassing the Cleveland administration if he remained at his post.[45] This move resulted in widespread praise from the press. Democrats predictably supported the decision, with the *Appeal* printing the entirety of Lamar's resignation on the front page of its January 9 edition.[46] The editorial section of the same issue carried more praise, stating that no senator "can fail to cast a vote today for [Lamar's] confirmation."[47] The *Times* also responded warmly, calling the resignation "dignified, manly, and honorable."[48] Not even the *Tribune* could deny that this move benefited Lamar, calling the resignation "evidence that he is certain of favorable treatment at the hands of the Senate."[49] Though the radical paper maintained that the confirmation "is far from decided," the fact that the *Tribune* broke from their criticisms of the nomination to admit that Lamar's resignation had helped him demonstrated the hefty praise the nominee received.[50]

With confirmation inching closer, both the *Tribune* and *Appeal* shifted to the positions of senators on the issue and eagerly reporting statements which benefitted their stances. The *Tribune* reported on January 9 that "several Republican Senators who had been inclined to vote for Mr. Lamar have," since the holiday recess, "either changed their minds, or have been much in

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[44] Meador, "Lamar to the Court."
[45] James B. Murphy, *L.Q.C. Lamar, Pragmatic Patriot* (Baton Rouge: Louisiana State University Press, 1973), 263.
[46] "Lamar Resigns," *Memphis Appeal*, January 9, 1888.
[47] *Memphis Appeal*, January 9, 1888.
[48] *New York Times*, January 9, 1888.
[49] *New York Tribune*, January 9, 1888.
[50] Ibid.

doubt as to what they shall do."[51] The *Tribune* clung to such reports and refused to acknowledge confirmation as certain.[52] In contrast, the *Appeal* happily reported the pro-Lamar statements of Senator John P. Jones, a Republican from Nevada. "Secretary Lamar accepted the amendments to the Constitution years ago… and I shall vote for his confirmation," the *Appeal* quoted Jones as saying.[53] The Democratic paper joined this apparent Republican defection with speculation of as many as three others, enough to overcome the one-vote Republican majority in the Senate.[54]

The Republican-majority Senate Judiciary Committee – still chaired by George Edmunds – reinforced this limbo with a majority report advising against confirmation.[55] The *Times* gave little thought to the report, labeling it as "the petty policy of the Republicans," while calling a pro-Lamar letter written by Republican senator William M. Stewart of Nevada "a hard blow" to continued opposition.[56] These sentiments further displayed the mainstream Republican shift towards abandonment of black rights.

Speculation essentially ended following reports of Republican defections in the Senate. Though the *Appeal* reported four Republicans joining the pro-Lamar side on January 9, as of January 12 only one Republican defection seemed certain. The reported defection of Senator William Stewart, assumed genuine given Stewart's letter supporting Lamar, would equalize the Senate on the question of Lamar's confirmation. This assumed that all other Republicans and independents would vote against confirmation, and that all Democrats would vote in favor. Any further defections would break the stalemate and give Lamar a majority.[57]

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[51] "A Change of Heart," *New York Tribune*, January 8, 1888.
[52] Ibid.
[53] *Memphis Appeal*, January 10, 1888.
[54] Ibid.
[55] *New York Times*, January 10, 1888.
[56] "Lamar Sure of Success," *New York Times*, January 10, 1888.
[57] On the Senate composition of the Fiftieth Congress, see U.S. Senate, "Party Division."

Such a defection occurred on January 12. That day, President Pro Tempore John J. Ingalls brought a resolution proposed by New Hampshire Senator William E. Chandler to the floor for discussion. The resolution pertained to possible suppression of black voters in Jackson, Mississippi, with Chandler requesting that the Judiciary Committee investigate such claims.[58] He also connected the issue with the Lamar nomination, criticizing the "policy" of voter suppression adopted by Mississippi, "which State seeks to-day to furnish an associate justice of the Supreme Court of the United States to aid in passing upon the validity of the constitutional amendments."[59] Chandler's reference to the validity of the Reconstruction Amendments, and Lamar's potential place in interpreting them, surely harkened to the language of the Edmunds Resolution and the opposition expressed by Radicals and black Americans. By joining this reference with his resolution regarding Jackson, he also incorporated the *Tribune's* accusations of voter suppression in Mississippi, directly questioning the nominee's ability to fairly interpret the Reconstruction Amendments.[60] This provides an explanation as to why Ingalls brought this resolution for discussion while the press and Senate debated Lamar's confirmation. After all, Ingalls was "vehemently against confirmation" and had called Lamar a dangerous candidate.[61] While no evidence confirms that Ingalls and Chandler conspired to sink Lamar with the resolution, that the two Republicans planned to muddy the water does not seem hard to believe. However, whatever damage the Republicans intended to do quickly evaporated.

As Chandler concluded his remarks, Senator Harrison Riddleberger of Virginia stood to respond. Like Lamar, Riddleberger had fought for the Confederacy and quickly rose to post-war

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[58] *Cong. Rec.*, 50th Cong., 1st sess., 1888, vol. 19, pt 1: 402.
[59] Ibid.
[60] See "A Word to Republican Senators," and Lemann, *Redemption*.
[61] Meador, "Lamar to the Court," 43.

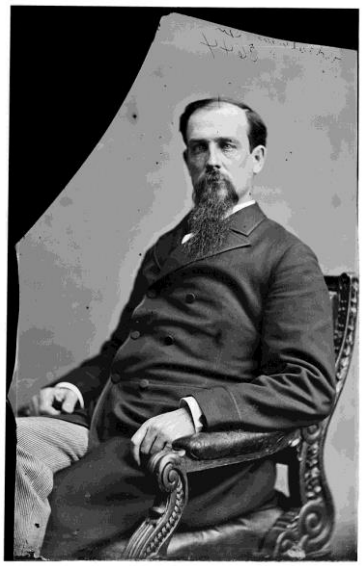

Figure 5. Harrison Riddleberger of Virginia, whose declaration gave Lamar a majority.

prominence in a former rebel state. Rather than identify as a Republican or Democrat, he represented a third party known as the Readjusters, described by Eric Foner as a Virginia-based pro-education, pro-social services, and pro-black civil and political rights party.[62] With Lamar's nomination seemingly deadlocked due to the defection of Senator Stewart, Republicans needed to prevent Riddleberger from voting for confirmation. Otherwise, assuming all Democrats voted solidly in favor of Lamar, the confirmation would overcome the Republican majority and succeed. However, Chandler's statements enraged Riddleberger, who derided Ingalls for allowing discussion of a Supreme Court nomination to occur in open session. "If it be allowable to have this kind of debate in open session," Riddleberger declared, "then it becomes me, sir, to say that I will vote for Lamar."[63] With that, as well as a few statements condemning Chandler's belief that "there is a universal purpose to suppress the negro vote in the South," Riddleberger

[62] On Riddelberger, see "Riddleberger, Harrison Holt," Biography, Biographical Directory of the United States Congress, http://bioguide.congress.gov/scripts/biodisplay.pl?index=R000241. On the Readjusters, see Foner, *Reconstruction,* 592.
[63] *Cong. Rec.*, 50th Cong.: 404.

gave the Democrats the majority they needed.[64] They now had two defections in favor of confirmation, overcoming the Republican majority in the Senate.

Virtually all press, including Radicals at the *Tribune*, accepted confirmation as certain in the wake of Riddleberger's declaration. The radical newspaper, somewhat signifying defeat, did not publish a front-page story covering the statements made in the Senate. Rather, on January 13, they published a short editorial addressing the development. Because of Riddleberger's announcement, the *Tribune* stated, "Of Mr. Lamar's ultimate confirmation there appears to be no doubt."[65] Following this piece, the *Tribune* ceased publishing substantive pieces about Lamar's nomination. For them, no avenue remained to advocate for his defeat, as Riddleberger's declaration forced the *Tribune* into an unwilling acceptance of what they now deemed certain: a former Confederate would see confirmation onto the Supreme Court. The *Appeal* responded in a most antithetical manner, publishing as much as possible on January 13. The Democratic paper published at least five Lamar-related pieces that day, seemingly rubbing their opponent's noses in pro-confirmation coverage. These pieces included the full text of Senator Stewart's letter endorsing Lamar, which attempted to downplay Lamar's vote on the Edmunds Resolution and his eulogy of John Calhoun.[66] The *Appeal* also published a piece criticizing Senator Chandler for raising the issue of voter suppression, labeling him a "bloody shirt waver."[67] The *Times* joined the *Appeal* in celebrating the recent developments, calling Chandler's remarks "The bloody-shirt speech," and stating that Chandler "must have been rudely shocked," upon Riddleberger's announcement.[68] Like the Democratic *Appeal*, the Republican *Times* displayed a desire to see

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[64] Ibid.
[65] *New York Tribune*, January 13, 1888.
[66] "Lamar," *Memphis Appeal*, January 13, 1888.
[67] "The Trouble Begins," *Memphis Appeal*, January 13, 1888.
[68] "Chandler's Plans Spoiled," *New York Times*, January 13, 1888.

Lamar on the Supreme Court. With the events in the Senate unfolding in their favor, they breathed a sigh of relief and made their approval known. Though the *Tribune* did not join in this approval, it could do nothing but acquiesce. The Radical Republicans simply did not represent the mainstream. They represented the fringes, with the mainstream Republicans joining with Democrats to usher a former Confederate onto the Supreme Court.

Despite the revelation of Riddleberger's declaration, some Black Americans still held out in their opposition to Lamar. On January 14, the *Cleveland Gazette* printed an article which opened by admitting that "All that was obnoxious in [Lamar's] appointment was not at first apparent."[69] However, as the press uncovered and dissected Lamar's record over the last month, it revealed the nominee "to be an unregenerated and malignant rebel still."[70] The *Gazette* cited Lamar's vote on the Edmunds Resolution, his regard for Jefferson Davis, and his Confederate service as evidence here. Though the *Gazette* and black Americans still attacked Lamar, demonstrating the advocacy which they practiced throughout Reconstruction, it made little difference. Republicans and Democrats both accepted confirmation as certain, making continued resistance futile. A former rebel would sit on the Supreme Court. All that remained was the final vote.

Confirmation finally occurred on January 16, 1888. Because the confirmation occurred in executive session, *Congressional Record* simply noted that the Senate did confirm Lamar and does not include a breakdown of the vote.[71] However, word of the vote invariably reached the press, and on the seventeenth the major newspapers reported that a majority had supported Lamar. According to the *Tribune*, Lamar's Democratic proponents remained silent during the

[69] "Cleveland's Policies," *Cleveland Gazette*, January 14, 1888.
[70] Ibid.
[71] *Cong. Rec.*, 50th Cong.: 475.

entire three-hour session, listening with "sullen and insolent indifference" while Republicans made several speeches against confirmation.[72] The *Times* reported a different scene, stating that several senators spoke in favor of Lamar, including Riddleberger, James Z. George of Mississippi, Richard Coke of Texas, and Henry B. Payne of Ohio.[73] Of these, only Riddleberger did not belong to the Democratic Party.

Republicans speaking against Lamar included George F. Hoar of Massachusetts and William M. Evarts of New York. Hoar returned to the charges of voter suppression, emphasizing Lamar's implicit silencing of black voters. Evarts first made short remarks about Lamar's lack of legal experience and his poor judicial temperament. He followed these with critiques of Lamar's vote on the Edmunds Resolution, posing the question how "a man declaring certain amendments not to have been ratified legally could logistically give them his support." Edmunds, being Chair of the Senate Judiciary Committee, also made comments during the session, speaking for over thirty minutes against Lamar. By the *Tribune's* description, Edmunds led the Senate opposition against Lamar's confirmation. Curiously, Edmunds did not reference his 1879 Resolution so often referred to by Lamar's opponents. Rather, he mainly discussed Lamar's lack of legal experience and lack of "industry, application, and perseverance."[74] However, these statements could not prevent confirmation.

According to the *Tribune*, every Democrat in the Senate either voted for confirmation or abstained. Those Democrats who abstained did so in pairs with Republicans, an arrangement known as being "paired in the negative" or "paired in the affirmative." Eight Democrats entered into such arrangement, abstaining while ensuring an opposing senator would join them. All told,

[72] "Mr. Lamar Confirmed," *New York Tribune*, January 17, 1888.
[73] "A Majority for Lamar," *New York Times*, January 17, 1888.
[74] "Mr. Lamar Confirmed."

no Democrats voted against confirmation, and twenty-nine voted in favor. These Democrats largely represented Deep South states such as Georgia, South Carolina, Mississippi, and Alabama. Each senator from these states voted in favor of Lamar.[75] As with the Edmunds Resolution, these Democrats displayed a negative view towards the Reconstruction Amendments with their votes, using them to endorse Lamar to the nation's highest court.

Only Republicans opposed Lamar. Twenty-eight Republicans voted against confirmation, including President Pro-Tempore Ingalls, Senator Hoar, and Senator Edmunds. Unlike mainstream Republicans, these Republicans demonstrated a commitment to the Reconstruction Amendments. However, this did not prevent confirmation, as two Republicans joined Riddleberger in voting in favor of Lamar. As expected, Stewart voted to confirm Lamar, while an unexpected defection came from Leland Stanford of California. Never mentioned in press speculation, Stanford nevertheless constituted one of two official Republicans to vote in favor of confirming a former secessionist to the Supreme Court. As promised, the independent Riddleberger voted to confirm Lamar. He, Stewart, and Stanford added three affirmative votes to the twenty-nine Democrats supporting Lamar, giving the nomination thirty-two "Yeas." With these votes trumping the twenty-eight "Nays," Lamar became nominee no more. The Senate accepted the nomination.[76]

Democrats celebrated confirmation, holding Lamar's elevation to the Supreme Court as a victory against unnecessary Republican obstructionism. On January 17, the *Appeal* called Lamar's confirmation the "triumph of reason over rancor," while faulting the *Tribune* for levying accusations against "a man whose tongue was tied, and therefore could not utter a word of self-

[75] Ibid.
[76] Ibid.

Table 2. Senate Vote on the Confirmation of L.Q.C. Lamar to the Supreme Court

Party	Aye	Nay	Paired Affirmative	Paired Negative
Democrats	29		8	
Republicans	2	28		8
Independent	1			
Total	32	28	8	8

defense."[77] Democrats also emphasized Lamar himself, celebrating his ascension to "the bench made illustrious by Marshall, Taney, and Campbell." In this position, the *Appeal* wrote, Lamar "will always…be found on the side of justice," as "no man knows better or is more competent" in interpreting the Constitution.[78] With that nominee now confirmed, Democrats rejoiced. They finally had a former Confederate on the Supreme Court.

Both ends of the Republican Party – mainstream and Radical – responded with minimal commentary. Reflecting their relative silence following Riddleberger's declaration, the *Tribune's* front page story merely described the Senate debate and final vote, adding neither further criticisms nor expressions of disappointment.[79] A page four editorial provided final Radical thoughts on the subject, criticizing Lamar's confirmation as a "mistake" which Riddleberger, Stewart, and Stanford would "live to see." In speaking of these defecting Republicans, the *Tribune* stated that they "have virtually allowed the Democrats to dictate the Republican party."[80] Such a statement captures the shift which Lamar's confirmation symbolized, as

[77] "Justice Lamar," *Memphis Appeal*, January 17, 1888, and "Mr. Justice Lamar," *Memphis Appeal*, January 17, 1888, respectively for the two quotes cited.
[78] "Mr. Justice Lamar," *Memphis Appeal*, January 17, 1888.
[79] "Mr. Lamar Confirmed."
[80] "Mr. Justice Lamar," New York Tribune, January 17, 1888.

Republicans embraced a secessionist who voted against the validity and federal power of the Reconstruction Amendments.

The *Times* surprisingly also wrote relatively little, publishing only some details of the Senate debate and not publishing the final vote. The only substantial difference appeared in the emphasis the *Times* placed on speeches supporting confirmation, on which the *Tribune* did not report.[81] However, based on the stances espoused by the *Times* during the debate, their ultimate satisfaction with confirmation should not be doubted. As with the Democrats, the *Times* had spent the debate refuting Republican opposition and testifying to Lamar's qualifications for a seat on the Supreme Court. The *Times* – and the mainstream Republicans who it represented – likely celebrated confirmation with the same vigor as Democrats.

The Meaning of Acceptance

Acceptance represented popular abandonment of black Americans. The abandonment did not rest on Radicals, as they had opposed Lamar as they had supported black Americans. Rather, the Lamar confirmation battle saw a departure for mainstream Republicans. As recently as the early 1870s, the party of Lincoln had banded together to enhance black rights and prosecute those who infringed upon them with broad interpretations of the Reconstruction Amendments. Though the decades following the War saw these Republicans waver in their defense of the Amendments, they did not entirely abandon black rights.

This all changed with the debate over Lamar. Rather than defend black Americans, mainstream Republicans joined Democrats and endorsed a former secessionist. Instead of sticking to their criticisms of those voting against the legality and validity of the Reconstruction Amendments as "pure twaddle" and "dangerous," Republicans joined Democrats in simply

[81] See "A Majority for Lamar," and "Mr. Lamar Confirmed."

calling attention to the "bloody shirt." This did not mean that Republicans now accorded with Democrats on all issues. However, it did mean that they endorsed Democrat's narrow view of black rights under the Reconstruction Amendments.

Senate confirmation represented the final stage of acceptance, and perhaps the political abandonment of black Americans. Senate Republicans bear less responsibility here, as the vast majority of this faction opposed Lamar's confirmation. No matter what the political action of confirmation represented, however, in the framework of this paper, the debate is what matters. It saw mainstream Republicans join Democrats in advocating confirmation. This meant that the urge to protect black rights no longer constituted a common objective. It represented the fringes. With the Republican-backed confirmation of a man who represented everything the Party once opposed, Reconstruction came to a close.

Justice Lamar

As with many nineteenth-century justices, Lamar's judicial career can best be described as unremarkable. He served on the Court for five years, dissenting from the opinion of the Court a mere thirteen times. His opinions did not carry as much controversy as those written by justices such as Joseph Bradley or Samuel Miller, evidenced by Lamar's ninety-six opinions only generating four dissents.[82] His opinions mostly addressed internal improvements, of which the former Secretary of the Interior bore great knowledge. Only once did Lamar address issues of race while on the Court, and only tangentially. This occurred in *Logan v. United States* (1892), which saw the Court affirm the right of an American citizen in custody of Federal Marshalls to

[82] Murphy, *L.Q.C. Lamar*, 264. Bradley authored such controversial opinions as the circuit opinion of *U.S. v. Cruikshank* and the *Civil Rights Cases*. See 92 U.S. 542 (1876) and 109 U.S. 3 (1883), respectively. Miller authored the opinion in the *Slaughterhouse Cases* and *Bradwell v. Illinois*. See 83 U.S. 36 (1873) and 83 U.S. 130 (1873), respectively.

"be protected by the United States against unlawful violence."[83] The Court found that this right stemmed from a federal statute which forbade conspiracy against civil rights. Lamar dissented alone, without an opinion, citing lack of jurisdiction of federal courts over attacks against federal prisoners.[84] Lamar wrote no opinion in this case, leaving his exact motivations for dissenting unclear. Whether this dissent symbolized Lamar laying the groundwork for removing federal purview over civil rights remains purely speculative. However, the Court essentially did that just four years after *Logan*, ruling in *Plessy v. Ferguson* (1896) that state statutes providing for "separate but equal" accommodations for black citizens did not violate the Equal Protection Clause.[85] Though Lamar did not live to see this case, his dissent in *Logan* and his pre-judicial record make a convincing case that he would have joined his colleagues in placing segregation beyond the purview of federal courts. Lamar died on January 23, 1893 at age sixty-seven.

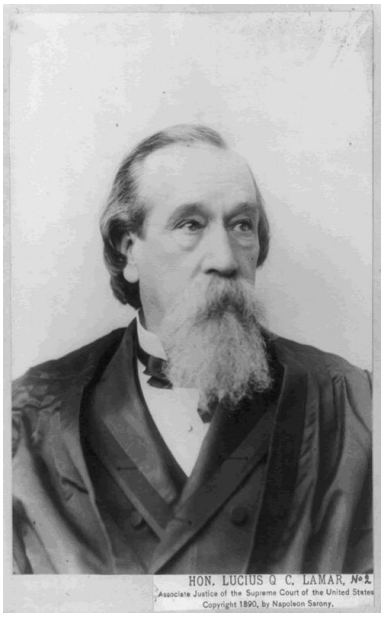

Figure 6. Justice Lamar.

[83] *Logan v. United States*, 144 U.S. 263, 263 (1892).
[84] 144 U.S. 263, 310 (1892).
[85] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Conclusion: The End of Reconstruction

The literature attempting to identify the end of the Reconstruction era generally falls into two conceptual frameworks: political actions and Supreme Court opinions. These frameworks remain legitimate means for addressing the end of the period, and "The Nomination of L.Q.C. Lamar" does not mean to label the conclusions reached through these and other frameworks obsolete or incorrect. Rather, it has used another framework to find the end of Reconstruction and dissects a historical episode where emphasis on public opinion emerges as appropriate.

The first framework – political actions – has seen the classical end date of Reconstruction emerge from the works of Eric Foner and C. Vann Woodward, who argue the Election of 1876 and subsequent "Compromise of 1877" ended the period. This group makes such conclusion based on Republican assent to the federal troops in the South standing down in exchange for Rutherford B. Hayes taking the presidency.[1] Though a strict end date of 1877 has lately been called into question, emphasis on political actions still emerges as a fitting way to address this historiographical question.[2] Other historians, using frameworks that emphasize Supreme Court opinions, see the opinions in the "State Action" cases of 1876, the *Civil Rights Cases* (1883) or *Plessy v. Ferguson* (1893) as the proper end dates for Reconstruction. Of these, *Plessy* features most prominently in the public mind, as it abandoned social rights for black Americans. The decision upheld the Louisiana Separate Cars Act under the Fourteenth Amendment's Equal Protection Clause, crafting the legal doctrine of "separate but equal."[3] The fact that this doctrine paved the way for six decades of segregation makes it – through a framework that emphasizes Supreme Court opinions – a worthy candidate for Reconstruction's ending point. Indeed,

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[1] See Foner, *Reconstruction*, 581-82, and Woodward, *The Strange Career of Jim Crow*, 33.
[2] Foner, *The Second Founding*, xx.
[3] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

constitutional historians like Michael Les Benedict and Pamela Brandwein point to this case as the point at which the nation turned away from black Americans.[4]

When using a different framework to conceptualize the end of Reconstruction, the battle over L.Q.C. Lamar emerges as a fitting end to the period. This framework is "popular constitutionalism," which emphasizes public opinion rather than political and judicial actions. Notedly espoused by legal scholar Larry Kramer in his book *The People Themselves*, this concept challenges notions of judicial supremacy by claiming that the people (and not the courts) held interpretive power during the early years of constitutional history.[5] In distinguishing this concept from normal political participation, Kramer notes that popular constitutionalism "supposes that an equally valid process of interpretation can be undertaken in the political branches and by the community at large."[6] Kramer does not hold this to mean that individual citizens or the citizenry at large holds direct power over the decisions of the Supreme Court. Rather, he proposes that the opinions of the American populace sent signals of sorts to the Supreme Court, which watched closely and made decisions based on the public opinion. In this way, "popular constitutionalism" sees an informed populace demonstrating legal opinions which stood as valid in the eyes of the Supreme Court.

In the framework of popular constitutionalism, the battle over L.Q.C. Lamar emerges as the end of Reconstruction, as the Supreme Court could receive no better signal than the confirmation of Lamar in the context of 1888. By this time, the Court's work of interpreting the Reconstruction Amendments amounted to several ambiguous and indecisive rulings, such as

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[4] See Benedict, "Preserving Federalism," 78, and Brandwein, *Rethinking the Judicial Settlement of Reconstruction,* 186-188.
[5] See Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2005).
[6] Larry D. Kramer, "'The Interest of the Man': James Madison, Popular Constitutionalism, and the Theory of Deliberative Democracy," *Valparaiso University Law Review* 41, no. 2 (Winter 2007): 700.

Slaughterhouse (1873), *Cruikshank*, and the *Civil Rights Cases*. Further, by 1888 the American populace and political branches had demonstrated a willingness to retreat from strenuous rights enforcement, evidenced by the 1879 Edmunds Resolution and by the return of Democrats to power in 1884. In this context, the confirmation battle of L.Q.C. Lamar stood as the ultimate test. If the public truly wished to see this trend of ambiguity and retreat reversed – and instead see the Supreme Court begin issuing strong pronouncements of black rights through the Reconstruction Amendments – they bore quite the opportunity with the nomination. For their consideration: a candidate which in many ways represented the human embodiment of abandonment of black rights; a former Confederate officer, author of the Mississippi ordinance of secession, accused perpetrator of voter suppression, and former senator who voted "nay" on a resolution affirming the legality, validity, and enforcement power of the Reconstruction Amendments. The implications of constitutional interpretation did not escape from the populace, as Radicals and black Americans based strong opposition on the nominee's constitutional views. However, this view was largely overruled in the press and ultimately overcome by a thin majority in the Senate. This sent a clear signal to the Supreme Court: the public no longer wishes to see neither the enforcement of the Reconstruction Amendments. Therefore – through the framework of popular constitutionalism – it stands as the end of Reconstruction.

Abandonment followed for black Americans by the Supreme Court. This first occurred in *Plessy*, and following the decision, "redeemed" Southern state legislatures provided for segregation with the infamous Jim Crow laws.[7] The Court continued to sanction state attempts to suppress black people in *Giles v. Harris* (1903), which upheld provisions of the Constitution of Alabama which created stringent requirements for black voters. In an opinion written by Justice

[7] For a history of Jim Crow laws, see Woodward, *The Strange Career of Jim Crow*.

Oliver Wendell Holmes, the Court upheld a lower court's dismissal of the case, effectively abandoning such issues to state control.[8] Though the Court never went as far as to declare black people inferior to whites (they even ruled that statutory schemes which only served to inhibit black voting rights violated the Fifteenth Amendment), the nation's highest court moved away from protecting black rights and fell into indifference.[9]

With the Court and the populace no longer concerned with using the Reconstruction Amendments to protect black rights, these Amendments saw use in upholding different forms of liberty. First suggested in dissents in *Slaughterhouse* and *Munn v. Illinois* (1876), notions that the word "liberty" in the Fourteenth Amendment meant economic liberty worked their way into American law with *Allgeyer v. Louisiana* (1897) and *Lochner v. New York* (1905).[10] The next thirty years saw the Court operate under these doctrines and use the Fourteenth Amendment to protect economic rights, rather than the rights of black Americans.[11] This implicitly rejected Justice Miller's opinion in *Slaughterhouse*, which maintained that the framers of the Fourteenth Amendment drafted it specifically to protect black liberty.[12] The Court would not depart from economic liberty until 1937, and would not begin to use the Fourteenth Amendment to deconstruct legal segregation until 1954 with *Brown v. Board of Education* (1954).[13] With Chief Justice Earl Warren's declaration that "Separate educational facilities are inherently unequal," the Supreme Court finally began to interpret the Reconstruction Amendments in a way which protected black rights.[14] The Warren Court went on to issue numerous rulings protecting

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[8] *Giles v. Harris*, 189 U.S. 475 (1903).
[9] See *Guinn v. United States*, 238 U.S. 347 (1915).
[10] See *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) and *Lochner v. New York*, 198 U.S. 45 (1905).
[11] For the Lochner Era, see Paul Kens, *Lochner v. New York: Economic Regulation on Trial* (Lawrence: University Press of Kansas, 1998).
[12] 83 U.S. 36 (1876).
[13] For the end of the Lochner Era, see *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).
[14] *Brown v. Board of Education of Topeka*, 347 U.S. 483, 495 (1954).

minority rights, finally living up to Justice Harlan's legendary dissent in *Plessy*, which held that "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."[15] However, this did not come until nearly a century after the ratification of the Fifteenth Amendment, as the American public did not desire to see the Supreme Court protect black rights during this time. The Court had first received this message with the nomination of L.Q.C. Lamar.

Though essentially relegated to second class citizens by *Plessy* and subsequent segregation, black Americans never surrendered the fight against segregation. Indeed, *Plessy* came to the Court thanks to the black activism of Homer Plessy, and *Giles* reached the Court thanks to funding from Booker T. Washington. During the same period, activism from NAACP-founder W.E.B. DuBois – authoring notable volumes which defied white legitimizations of segregation – worked to shift white attitudes of black Americans.[16] Further, black lawyers including NAACP Legal Defense Fund founder Thurgood Marshall eventually returned issues of equality to the Supreme Court, seeing the work of delegitimizing segregation through legal means. These efforts stand as a testament to the work of black Americans, never surrendering in their attempts to rectify their abandonment and correct the end of Reconstruction. However, they had to wait decades for their efforts to result in strong interpretations of the Reconstruction Amendments, as the nation had abandoned these with the confirmation of L.Q.C. Lamar.

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[15] 163 U.S. 537, 559 (1896).

[16] See W.E.B. DuBois, *The Souls of Black Folk* (Chicago: A.C. McClurg, 1903) and *Black Reconstruction in America* (New York: Simon and Schuster, 1999). *Black Reconstruction in America* was originally published in 1935 as a response to works of the "Dunning School."

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