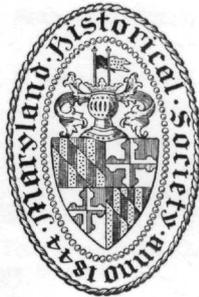


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HENRY WINTER DAVIS AND THE ORIGINS OF CONGRESSIONAL RECONSTRUCTION

BY HERMAN BELZ

THE Wade-Davis bill of 1864 was the first of two comprehensive plans of reconstruction that Congress was able to agree upon in the long period from December 1860, when disruption of the Union became an accomplished fact, until the last Confederate states were readmitted in June 1870. Although by no means a complete expression of radical antislavery views on reconstruction, the bill was an important sign of political disagreement between the congressional and presidential wings of the Republican party. Prevented from becoming law by the executive pocket-veto, the Wade-Davis bill in large part rested on and expressed dissatisfaction with Lincoln's policy of reconstruction in Louisiana, though when first introduced it was also a vehicle for anti-administration tendencies, having the election of 1864 as their focus. Yet of greater significance than the evidence it offered of internal party conflict were the conception and application of national and congressional power that it contained and provided for. Based on a constitutional theory which regarded the rebellious states as disorganized political units lacking authentic republican governments, though still in the Union, the Wade-Davis plan insisted on the direct federal control over southern state reorganization that would finally be necessary in order to reconstruct the Union. And it proposed to effect the needed reorganization of secessia through the agency of state constitutional conventions, the method also utilized in the Military Reconstruction Act of March, 1867.

In retrospect, recourse to federally imposed conditions of reconstruction seems to have been obvious and necessary: how other than by direct application of coercive power could the Union be reestablished, in the face of southern recalcitrance and resistance? At the start of the war, however, and for several months thereafter, forced restoration to the Union did not seem the only, nor indeed the likely, course that reconstruction policy would take. On the contrary, Union men at the North hoped and for a considerable period expected that southern Unionism, belief in which had been a prominent feature of Republican thinking during the secession crisis,¹ would assert itself and restore the seceded states to the Union spontaneously and voluntarily once the military power of the rebellion was broken. Even radical plans to impose territorial governments on the South for the purpose

¹ David M. Potter, *Lincoln and His Party in the Secession Crisis* (New Haven, 1962), pp. 219-248.

of abolishing slavery, shared this assumption concerning the reorganization of loyal state governments. Reinforcing it was the weight of traditional federalism, the constitutional theory and practice of seven decades emphasizing the inability of the general government to interfere in the political organization and domestic or municipal affairs of the states.

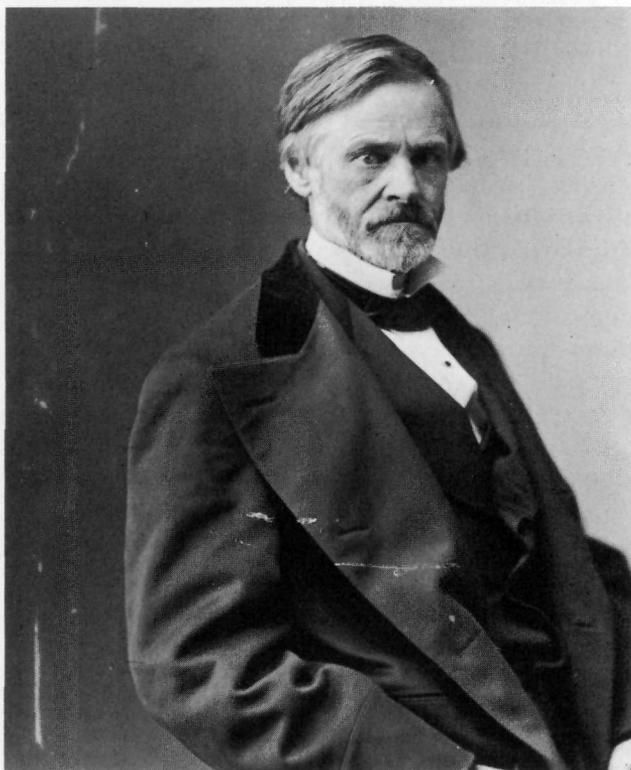
By the end of the war, as they entered upon the work of redefining the relationship between the states and the national government, Republicans were disabused of the illusion of southern Unionism. But awareness of this interrelated development had come much earlier, in 1863. It is this earlier moment, when the need for new constitutional relationships and the futility of southern Unionism were simultaneously recognized, that is our principal concern in this article. To examine the sources of the first congressional plan of reconstruction then is to explore the growing Republican belief in the need for direct national supervision of the reorganization of state governments in the South. Consideration of Wade-Davis origins affords an insight into Republican constitutionalism at the moment when those responsible for shaping its central tendencies were coming to accept the necessity of effective albeit temporary obliteration of traditional federalism, and unqualified national supremacy.

In one sense the origins of the Wade and Davis plan of reconstruction may be sought in the authorship of the bill. Henry Winter Davis, the brilliant and irascible Baltimore lawyer renowned for his oratorical abilities, is usually regarded as the architect of the measure. Davis had served in the Thirty-fourth and Thirty-fifth Congresses as a Whig before winning reelection in 1859 on the American party ticket. Defeated in 1861, he returned to Congress as a Unionist in 1863 and was instrumental in getting the House to create the Select Committee on the Rebellious States, of which he was appointed chairman.² It was from this committee, charged by the House with the duty of reporting legislation carrying into execution the constitutional guarantee to each state of a republican form of government, that Davis in February 1864 introduced the reconstruction bill that later came to bear his name. He subsequently managed the legislation through the House, and after Lincoln's pocket-veto killed the measure, he issued a very forceful attack on the President's action in the famous paper known as the Wade-Davis Manifesto.

Although the bill introduced by Davis was reported from the Select Committee on the Rebellious States and thus presumably reflected the ideas of at least the Republican members of the committee,³ Davis has been

² Gerald S. Henig, "Henry Winter Davis: A Biography" (unpublished Ph.D. dissertation, City University of New York, 1971), is an excellent account which fills the need for a modern study of Davis. It supersedes Bernard C. Steiner, *Life of Henry Winter Davis* (Baltimore, 1916).

³ They were Nathaniel Smithers of Delaware, Daniel Gooch of Massachusetts, James M. Ashley of Ohio, Henry T. Blow of Missouri, and Reuben Fenton of New York.



John Sherman of Ohio. Brady-Handy Collection. *Library of Congress*

credited with authorship of the reconstruction plan.⁴ In February 1866, at a time when the failure of the 1864 plan to become law was beginning to seem very regrettable, Ben Wade stated that "Mr. Davis framed a bill in the House and he had influence enough to get it through that body."⁵ But Davis's connection with the congressional plan of 1864 is usually thought to go back to the winter of 1862-63, when the Maryland Unionist drew up a reconstruction bill supposed to be identical to the Wade-Davis bill. At least this was the contention of Republican Senator John Sherman of Ohio. In February 1866 Sherman stated that during the Thirty-seventh Congress Henry Winter Davis prepared a reconstruction proposal which he brought to Sherman, and which the Ohio lawmaker introduced into the Senate. Referred to the Judiciary Committee but not acted on, this bill, according

⁴ The manuscript copy of the bill, H.R. 244, is in the hand of a clerk; the preamble, added at a time subsequent to the introduction of the bill and deleted by the House before passage, is in Davis's hand, National Archives, RG 233, HR 38A-B1.

⁵ *Congressional Globe*, 39 Cong., 1 sess., p. 1028 (Feb. 26, 1866).

to Sherman, was the same one that Davis reported to the House of Representatives in the Thirty-eighth Congress, the Wade and Davis bill.⁶

Despite being nearly contemporaneous with the events it describes, Sherman's explanation of the origins of the Wade-Davis bill contains certain errors of fact which raise doubts about its reliability. Sherman said, for example, that Davis introduced the reconstruction bill on December 15, 1863. In fact he introduced it on February 15, 1864; on the earlier date the House approved Davis's resolution proposing the creation of a select committee on reconstruction.⁷ Sherman also stated that after Lincoln's pocket-veto of the congressional plan of 1864 no further efforts were undertaken nor any bill submitted in the second session of the Thirty-eighth Congress seeking to harmonize the conflicting views of President and Congress on reconstruction. Yet a serious effort was undertaken by Republican lawmakers in December 1864 to arrive at a compromise with Lincoln on the reconstruction question.⁸ Even more perplexing is the fact that the records of the Senate contain no evidence of a reconstruction bill introduced by John Sherman in the Thirty-seventh Congress.⁹ Sherman's account of the origins of the Wade-Davis bill is also contradicted by testimony of James M. Ashley. Ashley, a radical Republican from Ohio, early in the war drafted reconstruction legislation imposing territorial governments on the seceded states. In the Thirty-eighth Congress, he recalled in May 1866, he introduced his earlier bill, much modified; it was this measure which passed both houses but failed to receive the executive approval.¹⁰ Tending to support Ashley's account is evidence provided by Montgomery Blair, Lincoln's Postmaster General, who was a bitter foe of radicals and especially of Winter Davis. Reviewing the conflict over reconstruction between President and Congress, Blair in December 1864 wrote that it was Ashley who introduced the congressional plan, though Davis managed its passage through the House.¹¹

Yet Sherman's account of the history of the Wade and Davis bill is not entirely inaccurate. Correspondence of Henry Winter Davis indicates that he did draft a reconstruction bill in the winter of 1862-63 which he discussed

⁶ *Ibid.*, Appendix, p. 125 (Feb. 26, 1866). Sherman repeated the account in his *Reflections of Forty Years in the House, Senate, and Cabinet* (2 vols.; Chicago, 1895), I, pp. 359-360. His view has been accepted in secondary works, for example, Bernard C. Steiner, *Life of Henry Winter Davis* (Batlimore, 1916), and Jeannette P. Nichols, "John Sherman," in K. W. Wheeler, ed., *For the Union: Ohio Leaders in the Civil War* (Columbus, O., 1968), p. 420.

⁷ *Congressional Globe*, 38 Cong., 1 sess., pp. 33-34 (Dec. 15, 1863).

⁸ Herman Belz, *Reconstructing the Union: Theory and Policy during the Civil War* (Ithaca, 1969), pp. 244-276.

⁹ Neither the *Senate Journal*, the *Congressional Globe*, nor the file of original bills, including unnumbered bills, in the National Archives shows any reconstruction legislation submitted by Sherman.

¹⁰ *Congressional Globe*, 39 Cong., 1 sess., p. 2879 (May 29, 1866).

¹¹ Montgomery Blair to Abraham Lincoln, Dec. 6, 1864, Robert Todd Lincoln Collection, Library of Congress.

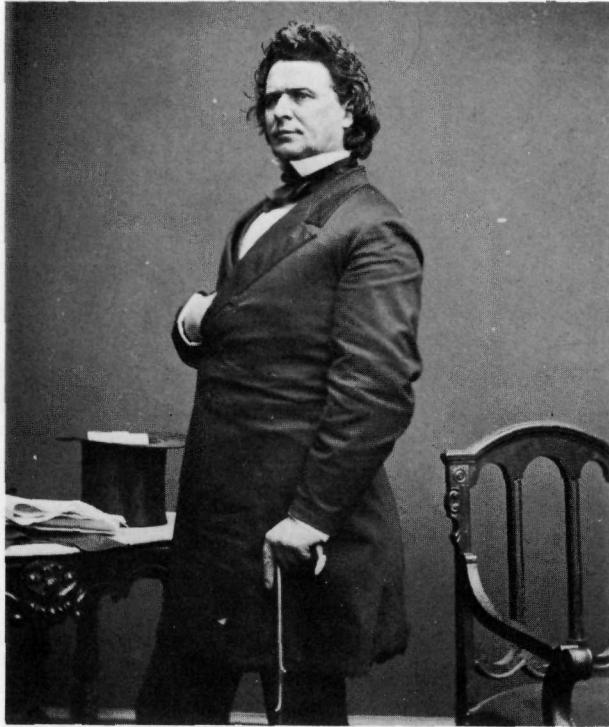
with Republican policy makers, and which may have been introduced into Congress, though not by Sherman. In the Wade-Davis Manifesto, moreover, Davis stated that over a year earlier, at the President's request, he showed Lincoln a copy of a reconstruction measure substantially the same as that which Congress passed in July 1864.¹² A review of the evidence concerning this proposal, along with a consideration of reconstruction legislation introduced into the Thirty-seventh Congress, should throw light on the origins of the Wade and Davis plan.

During the first two years of the war, Republicans in Congress ceased to think of reconstruction as a mere matter of restoring the pre-existing Union and instead began to consider the need for provisional civil governments that could maintain security and order while effecting antislavery reforms in the seceded states. Underlying both of these approaches to reconstruction, however, was the assumption that upon the suppression of the rebellion southern Unionists would emerge in sufficient force to reorganize loyal state governments and carry their states back into the Union. For a while in the summer of 1861 the admission to Congress of representatives from the loyal government of Virginia seemed to augur a policy of restoration, with slavery untouched. Henry Winter Davis at this time held that as the states were subdued, the Union party ought to be allowed to "rise & rejoin the Union & the federal power be reestablished where it does not now exist—this to be done without conventions."¹³

Six months later Republican ideas on reconstruction had taken a more radical turn, as several proposals to create territorial governments in occupied Dixie made unmistakably clear. In the House attention focused on James M. Ashley's bill, reported from the Committee on Territories in March 1862, to establish territorial governments with the power to abolish slavery in the rebellious states. After the House tabled this too radical measure, a more moderate territorial proposal was considered in the Senate, whose Republican members were seeking an alternative to Lincoln's policy of appointing military governors in Union-controlled states. Though this bill, introduced by Senator Ira Harris of New York, was further amended by the Judiciary Committee so as to restrict the power of the proposed territorial government, it nevertheless contained an antislavery potentially

¹² Henry Winter Davis, *Speeches and Addresses* (New York, 1867), p. 417. This is corroborated by the statement of the Washington correspondent of the *Cincinnati Gazette*, that "Over a year ago Mr. Winter Davis drew up the substance of the present bill [The Wade-Davis bill] and in a protracted interview with the President read it to him and elaborately urged its main points" (*Cincinnati Gazette*, April 12, 1864). In March 1863 Davis had an interview with Lincoln in which he discussed the organization of the House in the ensuing Thirty-eighth Congress, and in course of which he may also have brought up the question of reconstruction. Lincoln to Henry W. Davis, March 18, 1863, Roy P. Basler, *et al.* eds., *The Collected Works of Abraham Lincoln* (9 vols.; New Brunswick, 1953-55), VI, pp. 140-41.

¹³ S. F. Du Pont to Mrs. S. F. Du Pont, June 30, 1861, Du Pont Papers, Eleutherian Mills Historical Library.



James Mitchell Ashley of Ohio. Brady-Handy Collection. *Library of Congress*

controversial enough to force its postponement in the final days of the session in July 1862. The long session of the Thirty-seventh Congress ended with Lincoln in command of reconstruction policy, seeking through his military governors in Tennessee, Arkansas, Louisiana, and North Carolina to encourage the Unionism which congressional reconstruction planners themselves seemed to assume would follow the military defeat of the Confederate armies.¹⁴

Outside of Congress, meanwhile, the ideas of Henry Winter Davis, the man who would be most prominently identified with reconstruction in the Thirty-eighth Congress, were beginning to assume forms that would find expression in the Wade and Davis bill of 1864. His reputation for radicalism notwithstanding, the element in Davis's Civil War thinking that stands out most conspicuously is his insistence that the government adhere to constitutional standards and procedures in meeting the extraordinary demands placed upon it. At the first broaching of plans to territorialize the

¹⁴ Belz, *Reconstructing the Union*, pp. 40-99.

states for abolition purposes, the Marylander revealed his dislike for radical governmental methods. The "abolition onslaught in Congress," he observed in December 1861, "assails the Prest. for leniency in the war & looks to a freeing of *all* the negroes—& holding the country merely by military power governed by the U.S. under Territorial forms!!" The openness of this attack on the administration, however, led Davis to think that those who shared his aversion to radicalism would have "the benefit of the veto if a majority are bent on making a new revolution to suppress the old insurrection."¹⁵ Though opposing "mischievous bills" to territorialize the states, Davis came to recognize the justice and necessity of emancipation. But he insisted that it proceed under legal authority.¹⁶ Slavery must not be allowed to continue; but to accomplish its destruction by the desolation of the southern states would mean "a radical change of our institutions of government—a substitution of revolutionary violence for legal methods in the suppression of the rebellion which will survive its overthrow." Under military law and within the limits of the constitution slaves could be employed for Union purposes, and even armed. The President, however, Davis argued, could not by mere decree change the legal relations of master and slave.¹⁷

Anticipating the central idea of the congressional reconstruction plan of 1864, Davis suggested that municipal laws on slavery be changed by state constitutional conventions. "If a convention could be called pending the rebellion or before the rebellious states are reorganized by the U.S.," he wrote to Rear Admiral S. F. Du Pont in July 1862, "& that should forbid slavery in any state, it would be *right*." Slaves might be set free through military contingencies, but the way finally to destroy slavery was through state conventions. Whether Davis thought, however, that the national government must by its own legislation initiate and direct the process of altering state law is not altogether clear. Again adumbrating ideas that informed the Wade-Davis bill, he explained that in the rebellious states there were no state governments; accordingly, they were subject to the legislative control of Congress, which could determine the laws to be enforced. Yet "It would be *unfair* & *impolitic*," he told Du Pont, "*hastily*, before the loyal people have an opportunity of showing their willingness to assume the responsibilities of governing the State under the constitution, to make so radical a blow at their social condition." The radical blow to which Davis referred was presumably the forced abolition of slavery through national legislation. If the people of a state chose not to govern themselves, then Congress could certainly provide government for them. But the preeminent

¹⁵ Henry Winter Davis to S. F. Du Pont, Dec. 11, 1861, Du Pont Papers.

¹⁶ Henry Winter Davis to Mrs. S. F. Du Pont, May 20, 1862, *ibid*.

¹⁷ Davis to S. F. Du Pont, July 11, 1862, *ibid*.

duty of Congress was to guarantee to each state a republican form of government, and this duty could not be said to be properly fulfilled unless the loyal citizens of a state were "invited & aided to reestablish" such a government.¹⁸ Davis's principal idea, then, seems to have been that the people of a state ought to be given a chance to organize their own government, acting in their constituent power. That he had in mind at this time federal legislation governing the state and directing the process of constitutional reform, as in the Wade-Davis bill, seems doubtful.

Further remarks on reconstruction by the Maryland Unionist in the fall of 1862 strengthen this conclusion. Writing to Mrs. Du Pont, Davis scored the idea of holding the South as a subjugated people after the war. To entertain such a notion was "insane," not only because northerners would not submit to the burdens that subjugation would entail, but because southerners' "sense of freedom" would revolt against it. In an uncharacteristically sanguine mood Davis concluded that "if all that is required after their overthrow is a frank & cordial acceptance of the Constitution & a fair participation in the Government, there is no reason to apprehend any crazy or sullen refusal of such for the remote prospect of independence."¹⁹

A little over two months after Davis offered this optimistic assessment, however, he was busy drafting reconstruction legislation that he sought to have introduced by Republican friends in the Thirty-seventh Congress. The principal fact which made this new step necessary was the President's accelerated antislavery policy, outlined in the preliminary proclamation of September 1862 and implemented by the final emancipation order of January 1, 1863.

In the short session that lasted from December 1862 until March 1863, the attention of Congress was focussed on conscription, the suspension of the writ of habeas corpus, and the generally discouraging Union military situation. At the start of the session occurred the cabinet crisis which saw Republican senators try to force Seward's removal as Secretary of State. Successful in finessing this constitutional and political challenge, Lincoln experienced a further triumph, less dramatic but potentially of greater significance, when the House voted to admit representatives from Louisiana elected under the authority of Lincoln's military governor. Overshadowing these developments, however, was the Emancipation Proclamation. For this injected a new element not only into considerations of war aims, but also of reconstruction. Public debate throughout 1863 and legislative deliberation on the increasingly timely question of reconstruction in the Thirty-eighth Congress, convening in December 1863, made clear the impact of the proclamation.

¹⁸ Davis to S. F. Du Pont, July 11, 1862, *ibid.*

¹⁹ Davis to Mrs. S. F. Du Pont, Oct. 20, 1862, *ibid.*

As Lincoln's order of military emancipation elevated the destruction of slavery to the level of official war aims, so it stimulated reconstruction planners to adopt the idea of changing municipal state law by constitutional convention. Perceived by Henry Winter Davis in the summer of 1862, the link between emancipation and state constitutional reform was more widely recognized in 1863. Lincoln himself went far toward explaining the reason for the connection when he commented in September 1861 on the emancipation order of General John C. Fremont which he had just repudiated. The use of property, including slave property, was warranted for military purposes. But the "permanent future condition" of slaves, Lincoln pointed out, was not a matter for a military commander, nor even for the chief executive of the government, to determine. It was rather a problem to be "settled according to laws made by law-makers . . .," he affirmed.²⁰ The Emancipation Proclamation did more than authorize the use of slaves; in districts in rebellion it declared them to be free and pledged the support of the "executive government" in maintaining that freedom. All the more therefore did its permanent legal effect remain uncertain. Based on the war power, the emancipation order did not alter the municipal laws of the states. In the course of military events it might effectively set free certain slaves, but it could not abolish the institution of slavery, as even William Whiting, solicitor in the War Department and champion of expansive war powers, admitted.²¹ Lawmakers, in Lincoln's phrase, must settle the question.

Although the thirteenth amendment to the federal constitution stands as the historic culmination of the antislavery movement, the earliest efforts to prohibit slavery were directed at constitutional reform at the state level. Amending the United States constitution was of course proposed in December 1863 and pursued through the first session of the Thirty-eighth Congress. It encountered difficulties, however, in the increased strength of conservative forces in the new Congress and in the fact that four Union states were slave states. A more direct and effective solution, and sooner or later necessary in any case, was to make prohibition of slavery a requirement of readmission to the Union, to be imposed on citizens seeking to reorganize state government through a constitutional convention. Representative George S. Boutwell, radical Republican of Massachusetts, explained the matter thus: "The return of a State with a new constitution, and by readmission into the Union, puts the question of slavery beyond the hazards of politics, and the vagaries of judges." To allow rebel states to return with their old constitutions, as conservatives urged, would mean leaving to courts for final action

²⁰ Lincoln to Orville H. Browning, Sept. 22, 1861, Basler, ed., *Collected Works of Lincoln*, IV, pp. 531-532.

²¹ William Whiting, *War Powers under the Constitution of the United States* (Boston, 1871), iv.



Ira Harris of New York. Brady-Handy Collection. *Library of Congress*

questions arising out of the Emancipation Proclamation.²² Accordingly, throughout 1863 Republican thinking on reconstruction, including that of President Lincoln, underscored the need for constitutional reform as the first step in reorganizing loyal state governments.²³ The degree of acceptance which this view received was at the same time evidence that the prospect of self-generating Unionist movements was no longer to be taken seriously as a means of returning the seceded states to the Union.

Prohibition of slavery in new state constitutions, in fulfillment of the

²² George S. Boutwell to Nathaniel Banks, May 26, 1863, Nathaniel Banks Papers, Library of Congress.

²³ Lincoln to Nathaniel Banks, Aug. 5, 1863, Basler, *Collected Works of Lincoln*, VI, pp. 364-365.

federal guarantee of republican government to every state in the Union, distinguished the reconstruction plan adopted by Congress in 1864. This was the essence of the Wade-Davis bill, which in addition to providing for the civil administration of the states in rebellion specified the exact process by which loyal citizens could hold constitutional conventions to purge their organic laws of the institution of slavery. It was also the heart, however, of a reconstruction bill introduced into the House by James M. Ashley in December 1863. Referred to the newly created Select Committee on the Rebellious States, Ashley's proposal may thus be viewed as the model for the bill reported from the committee by Henry Winter Davis in February 1864 and approved by Congress in July. It was this fundamental similarity, both in regard to the constitutional theory of guaranteeing republican government and the actual method of constitutional revision, which no doubt led Ashley to claim credit for originating the congressional plan which Lincoln vetoed.²⁴ But the origins of the Wade and Davis plan are to be found in even earlier legislative formulations, antedating Ashley's of December 1863.

One possibility is that the source of the first congressional plan of reconstruction was the bill drafted by Winter Davis which John Sherman said he introduced into the Thirty-seventh Congress. Although no copy of this bill has come to light, Davis's letters of 1862, as we have seen, suggest an approach to reconstruction similar to that of the Wade-Davis plan. The Maryland Unionist referred to the desirability of prohibiting slavery by state convention and invoked the federal guarantee of republican government as the constitutional basis on which such a policy would rest. When at the end of 1862, upon the proclaiming of military emancipation by the President, it seemed necessary to shape legislation imposing national control on the process of state reorganization, Davis may have incorporated these ideas in a reconstruction proposal.

In the Sherman papers there is a note from Davis, assigned a date of December 1862, in which he writes: "I send you the draft of a Bill embodying the principles we were discussing the other evening."²⁵ Unfortunately no copy of the bill is to be found in the collection of Sherman papers. One supposes this to be the reconstruction measure Sherman claimed to have submitted, although it could also have been an emancipation bill drafted by Davis and eventually introduced into the House by Ohio Representative John Bingham.²⁶ More revealing is a letter written on January 2, 1863, in

²⁴ See Belz, *Reconstructing the Union*, pp. 200-203, for a detailed comparison of Ashley's bill with that of the committee. Ashley, it will be recalled, was a member of the select committee on reconstruction.

²⁵ Henry Winter Davis to John Sherman, Dec. 1862, Sherman Papers, Library of Congress.

²⁶ *Congressional Globe*, 37 Cong., 3 sess., 381 (January 19, 1863); *Baltimore American*, Oct. 9, 1863, speech by Davis.

which Davis explains that he has consulted with friends in Congress and "urged such legislation as I thought necessary to holding the Government of the rebel States by Congress till such local governments as it may approve shall be established by its guidance & to make legal & effectual the President's proclamation." Though admitting that his views were received hardly, Davis adds: "still I got a hearing & drew a bill which they are considering."²⁷ While there is no express reference to state constitutional conventions, the idea might be considered implicit in the establishment of local government by loyal citizens. Again in a letter of January 28, 1863 Davis expresses the hope that "Congress will pass the Bill I prepared for governing the rebel States & freeing by law the negroes."²⁸ This too might be regarded as an implicit reference to prohibiting slavery by state constitutional reform. Finally, evaluating the legislative situation late in February 1863, Davis predicted that several measures would be lost by postponement, including "the bill for Provisional Govts in the rebel States. . . ."²⁹ The evidence is fragmentary and incomplete, but it seems clear that Davis sought to prohibit slavery in the process of organizing state governments under congressional supervision.

It is possible that a reconstruction bill presented to the House in early January 1863 by James M. Ashley was the measure which Davis said he drew up after consultation with friends in Congress. Because of procedural objections Ashley was unable to introduce the bill, and no manuscript copy of it exists. According to newspaper reports, however, it authorized the President to take military possession of rebellious states and established temporary governments, to be maintained until the loyal citizens should cooperate in reorganizing state governments. The bill furthermore provided for the appointment of a governor, judicial officers, and a provisional council with legislative powers. And it specified that "no law shall be passed by the Council establishing or recognizing the existence of slavery, or declaring the right of one man in the property of another."³⁰ The provision for temporary government until loyal citizens should cooperate to form new state organizations accords with Davis's belief that the people should be given an opportunity to reconstruct their states. Also congruent with Davis's outlook of course was the proposal to give effect to the Emancipation Proclamation by legislating against slavery. Still another clue suggesting a link between Davis's draft plan and Ashley's bill is John Sherman's later statement that the measure which Davis gave him included a legislature. Establishment of a provisional legislature, however, was not a feature of the Wade and Davis

²⁷ Davis to S. F. Du Pont, Jan. 2, 1863, Du Pont Papers.

²⁸ Davis to S. F. Du Pont, Jan. 28, 1863, *ibid.*

²⁹ Davis to S. F. Du Pont, Feb. 1863, *ibid.*

³⁰ New York *Times*, Jan. 6, 1863; Baltimore *Sun*, Jan. 6, 1863; Philadelphia *Inquirer*, Jan. 6, 1863.



John A. Bingham of Ohio. Brady-Handy Collection. *Library of Congress*

bill. While Ashley's proposal of January 1863 may be seen as a variation of his earlier territorial scheme, yet the apparent suddenness of his decision to introduce it—he was prevented from doing so because he had not given notice—suggests that he might have been acting on Davis's behalf.

Of extant reconstruction proposals the one which most nearly resembles the Wade and Davis plan is a bill introduced into the Senate in February 1863, not by John Sherman, but by Ira Harris of New York. Harris was a conservative Republican, a jurist and former New York Supreme Court judge, who in February 1862 submitted a bill creating territorial governments in the seceded states, with legislative powers capable of prohibiting slavery. It was this bill, revised in more moderate form by the Judiciary Committee, which the Senate debated and postponed in July 1862. In January 1863 Harris got the Judiciary Committee, of which he was a member, to amend it further by providing that the temporary officers charged with governing the state should exercise only those powers vested in state officers according to existing law, and striking out all references to territorial government. After brief debate the Senate postponed the bill on the final day of the session.

Meanwhile, however, Harris on February 17, 1863 brought in a true reconstruction bill which specified the complete process by which loyal citizens could form a new state government. Here for the first time in Congress appeared the requirement of a state convention charged with forming a new constitution that would prohibit slavery. The new constitutions insisted on in Senate bill no. 538, the number assigned to Harris's proposal, must furthermore exclude Confederate civil and military officers from voting or holding state office, and must repudiate the Confederate debt. Both of these provisions also found their way into the Wade-Davis bill. There are other striking similarities between Harris's bill, which was referred to the Judiciary Committee, and the congressional plan of 1864. According to S. 538 the provisional governor was charged with the civil administration of the state until a new government was formed; he was authorized to appoint officers whose appointment was provided for in state law before the rebellion; no provisional legislature was to be created; and state laws in force before secession were to be enforced. All of these provisions, which expressed the idea of maintaining the existing order with the exception of slavery, were incorporated into the Wade-Davis bill. The election of a convention, moreover, was to be entrusted to white male citizens only. And the constitutional basis of Harris's bill and the congressional plan of 1864 were the same: both rested on the guarantee to every state in the Union of a republican form of government.³¹

On the basis of existing documentary evidence the origins of the Wade and Davis plan of reconstruction would seem to lie in the bill introduced by Ira Harris in February 1863. Possibly it was this bill to which Sherman referred in reviewing the history of the congressional plan in 1866; possibly Harris introduced it at Sherman's bidding and Davis was its source.³² Certainly the bill was the same in its material points as the Wade-Davis bill, and it was referred to the Judiciary Committee, as Sherman averred. No further inference is possible, for there is no evidence linking Davis or Sherman with Harris on reconstruction matters.

While the ideas in Senate bill no. 538 to guarantee republican government are consistent with Winter Davis's thinking on reconstruction, they also form part of a consistent pattern in the outlook of Ira Harris. In July 1862 the New York Republican clearly set forth the view that federal authority should establish interim governments charged with the civil administration of the states in accordance with existing law, except laws ancillary to slavery, until the people could reorganize a government. Further-

³¹ Harris's bill was entitled: "A Bill to guarantee in certain States a republican form of government," while the title of Wade-Davis was "A Bill to guarantee to certain States whose governments have been usurped or overthrown, a republican form of government."

³² The original copy of S. no. 538 in the National Archives, however, is in Harris's hand.

more he held that the guarantee to every state of a republican form of government provided the constitutional basis for such an approach to reconstruction.³³ It is true that the bill of Harris's under consideration at this time was drawn on the territorial model. Nevertheless, in discussing it Harris showed a very different tendency to regard the states as still states in the Union, in need of temporary civil administration until they could return to their accustomed places in the nation under reformed state constitutions. To provide an opportunity for this kind of reorganization Harris considered a proper exercise of the national power to guarantee republican government. From this point he advanced in early 1863 to the position, made necessary by the Emancipation Proclamation, of requiring a state constitutional convention to prohibit slavery.

It would seem, then, contrary to the usual view which credits Henry Winter Davis with designing the first congressional plan of reconstruction, that Senator Ira Harris of New York should more accurately be regarded as its chief architect. Davis was clearly moving in the same direction in regard to policy toward the seceded states, however, as indeed were most Republicans in 1863. They were coming to recognize the need for state constitutional reform to secure and legitimize the antislavery results of the war. The hope that southern Unionism might provide a political basis for these changes having dissipated, it was necessary to direct the process of state reorganization and reform by federal law. This was the burden of the Wade and Davis bill.

And yet, though it signified the growing ascendancy of national power and augured changes in the contours of traditional federalism, the congressional plan of reconstruction also revealed a commitment on the part of Republicans to that federal system. Even in this supposedly extreme expression of radical policy, the Wade-Davis scheme, the states were very much alive. Indeed the plan was a repudiation of the state suicide theory of reconstruction.³⁴ Changes were necessary and the nation must now supervise the work of constitutional and political reform. Nevertheless, as in the past Republicans looked to the states—even the disorganized and rebellious ones—as fundamental elements in the constitutional system. Like the first American Revolution, the second that occurred in Civil War and Reconstruction was characterized by conservative tendencies. Policies shaped by law-minded Unionists, as the congressional reconstruction plan of 1864, would not depart radically from traditional constitutional bearings.

³³ *Congressional Globe*, 37 Cong., 2 sess., pp. 3141-3142 (July 7, 1862).

³⁴ See the analysis in Belz, *Reconstructing the Union*, pp. 198-243.