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ATLANTIC MONTHLY:

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THE RECONSTRUCTION OF THE SOUTHERN STATES.

IT is now full thirty years, and more, since the processes of Reconstruction were finished, and the southern states restored to their place in the Union. Those thirty years have counted for more than any other thirty in our history, so great have been the speed and range of our development, so comprehensive and irresistible has been the sweep of change amongst us. We have come out of the atmosphere of the sixties. The time seems remote, historic, not of our day. We have dropped its thinking, lost its passion, forgot its anxieties, and should be ready to speak of it, not as partisans, but as historians.

Most troublesome questions are thus handed over, sooner or later, to the historian. It is his vexation that they do not cease to be troublesome because they have been finished with by statesmen, and laid aside as practically settled. To him are left all the intellectual and moral difficulties, and the subtle, hazardous, responsible business of determining what was well done, what ill done; where motive ran clear and just, where clouded by passion, poisoned by personal ambition, or darkened by malevolence. More of the elements of every policy are visible to him than can have been visible to the actors on the scene itself; but he cannot always be certain which they saw, which they did not see. He is deciding old questions in a new light. He is dangerously cool in dealing with questions of passion; too much informed about questions which had, in fact, to be settled

upon a momentary and first impression; scrupulous in view of things which happened afterward, as well as of things which happened before the acts upon which he is sitting in judgment. It is a wonder that historians who take their business seriously can sleep at night.

Reconstruction is still revolutionary matter. Those who delve in it find it like a banked fire, still hot and fiery within, for all it has lain under the ashes a whole generation; and a thing to take fire from. It is hard to construct an argument here which shall not be heated, a source of passion no less than of light. And then the test of the stuff must be so various. The American historian must be both constitutional lawyer and statesman in the judgments he utters; and the American constitutional lawyer must always apply, not a single, but a double standard. He must insist on the plain, explicit command and letter of the law, and yet he must not be impracticable. Institutions must live and take their growth, and the laws which clothe them must be no strait-jacket, but rather living tissue, themselves containing the power of normal growth and healthful expansion. The powers of government must make shift to live and adapt themselves to circumstances: it would be the very negation of wise conservatism to throttle them with definitions too precise and rigid.

Such difficulties, however, are happily more formidable in the mass than in detail; and even the period of Reconstruction can now be judged fairly enough,

with but a little tolerance, breadth, and moderation added to the just modicum of knowledge. Some things about it are very plain, — among the rest, that it is a period too little studied as yet, and of capital importance in our constitutional history. Indeed, it is not too much to say that there crosses it, in full sight of every one who will look, a great rift, which breaks, and must always break, the continuity and harmony of our constitutional development. The national government which came out of Reconstruction was not the national government which went into it. The civil war had given leave to one set of revolutionary forces; Reconstruction gave leave to another still more formidable. The effects of the first were temporary, the inevitable accompaniments of civil war and armed violence; the effects of the second were permanent, and struck to the very centre of our forms of government. Any narrative of the facts, however brief, carries that conclusion upon its surface.

The war had been fought to preserve the Union, to dislodge and drive out by force the doctrine of the right of secession. The southern states *could* not legally leave the Union, — such had been the doctrine of the victorious states whose armies won under Grant and Sherman, — and the federal government had been able to prevent their leaving, in fact. In strict theory, though their people had been in revolt, under organizations which called themselves states, and which had thrown off all allegiance to the older Union and formed a new confederation of their own, Virginia, North Carolina, South Carolina, Florida, Georgia, Mississippi, Alabama, Louisiana, Texas, Arkansas, and Tennessee, the historic states once solemnly embodied in the Union, had never gone out of it, could never go out of it and remain states. In fact, nevertheless, their representatives had withdrawn from the federal House and Senate; their several

governments, without change of form or personnel, had declared themselves no longer joined with the rest of the states in purpose or allegiance, had arranged a new and separate partnership, and had for four years maintained an organized resistance to the armies of the Union which they had renounced. Now that their resistance had been overcome and their confederacy destroyed, how were they to be treated? As if they had been all the while in the Union, whether they would or no, and were now at last simply brought to their senses again, to take up their old-time rights and duties intact, resume their familiar functions within the Union as if nothing had happened? The theory of the case was tolerably clear; and the Supreme Court of the United States presently supplied lawyers, if not statesmen, with a clear enough formulation of it. The Constitution, it said (for example, in the celebrated case of *Texas vs. White*, decided in 1868), had created an indestructible Union of indestructible states. The eleven states which had attempted to secede had not been destroyed by their secession. Everything that they had done to bring about secession or maintain resistance to the Union was absolutely null and void, and without legal effect; but their laws passed for other purposes, even those passed while they were in fact maintaining their resolution of secession and defying the authority of the national government, were valid, and must be given effect to in respect of all the ordinary concerns of business, property, and personal obligation, just as if they had been passed in ordinary times and under ordinary circumstances. The states had lost no legitimate authority; their acts were invalid only in respect of what they had never had the right to do.

But it was infinitely hard to translate such principles into a practicable rule of statesmanship. It was as difficult and hazardous a matter to reinstate the states as it would have been had their

legal right to secede been first admitted, and then destroyed by the revolutionary force of arms. It became, whatever the theory, in fact a process of reconstruction. Had Mr. Lincoln lived, perhaps the whole of the delicate business might have been carried through with dignity, good temper, and simplicity of method; with all necessary concessions to passion, with no pedantic insistence upon consistent and uniform rules, with sensible irregularities and compromises, and yet with a straightforward, frank, and open way of management which would have assisted to find for every influence its natural and legitimate and quieting effect. It was of the nature of Mr. Lincoln's mind to reduce complex situations to their simples, to guide men without irritating them, to go forward and be practical without being radical, — to serve as a genial force which supplied heat enough to keep action warm, and yet minimized the friction and eased the whole progress of affairs.

It was characteristic of him that he had kept his own theory clear and unconfused throughout the whole struggle to bring the southern people back to their allegiance to the Union. He had never recognized any man who spoke or acted for the southern people in the matter of secession as the representative of any government whatever. It was, in his view, not the southern states which had taken up arms against the Union, but merely the people dwelling within them. State lines defined the territory within which rebellion had spread and men had organized under arms to destroy the Union; but their organization had been effected without color of law; that could not be a state, in any legal meaning of the term, which denied what was the indispensable prerequisite of its every exercise of political functions, its membership in the Union. He was not fighting states, therefore, or a confederacy of states, but only a body of people who refused to act as states,

and could not, if they would, form another Union. What he wished and strove for, without passion save for the accomplishment of his purpose, without enmity against persons, and yet with burning hostility against what the southerners meant to do, was to bring the people of the southern states once more to submission and allegiance; to assist them, when subdued, to rehabilitate the states whose territory and resources, whose very organization, they had used to effect a revolution; to do whatever the circumstances and his own powers, whether as President or merely as an influential man and earnest friend of peace, might render possible to put them back, defeated, but not conquered or degraded, into the old-time hierarchy of the Union.

There were difficulties and passions in the way which possibly even Mr. Lincoln could not have forced within any plan of good will and simple restoration; but he had made a hopeful beginning before he died. He had issued a proclamation of amnesty so early as 1863, offering pardon and restoration to civil rights to all who would abandon resistance to the authority of the Union, and take the oath of unreserved loyalty and submission which he prescribed; and as the war drew to an end, and he saw the power of the Union steadily prevail, now here, now there, throughout an ever increasing area, he earnestly begged that those who had taken the oath and returned to their allegiance would unite in positive and concerted action, organize their states upon the old footing, and make ready for a full restoration of the old conditions. Let those who had taken the oath, and were ready to bind themselves in all good faith to accept the acts and proclamations of the federal government in the matter of slavery, — let all, in short, who were willing to accept the actual results of the war, organize themselves and set up governments made conformable to the new order of things, and he would recognize them as the people

of the states within which they acted, ask Congress to admit their representatives, and aid them to gain in all respects full acknowledgment and enjoyment of statehood, even though the persons who thus acted were but a tenth part of the original voters of their states. He would not insist upon even so many as a tenth, if only he could get *some* body of loyal citizens to deal and cooperate with in this all-important matter upon which he had set his heart; that the roster of the states might be complete again, and some healing process follow the bitter anguish of the war.

Andrew Johnson promptly made up his mind, when summoned to the presidency, to carry out Mr. Lincoln's plan, practically without modification; and he knew clearly what Mr. Lincoln's plan had been, for he himself had restored Tennessee upon that plan, as the President's agent and representative. As military governor of the state, he had successfully organized a new government out of abundant material, for Tennessee was full of men who had had no sympathy with secession; and the government which he had organized had gone into full and vigorous operation during that very spring which saw him become first Vice President, and then President. In Louisiana and Arkansas similar governments had been set up even before Mr. Lincoln's death. Congress had not recognized them, indeed; and it did not, until a year had gone by, recognize even Tennessee, though her case was the simplest of all. Within her borders the southern revolt had been, not solid and of a piece, but a thing of frayed edges and a very doubtful texture of opinion. But, though Congress doubted, the plan had at least proved practicable, and Mr. Johnson thought it also safe and direct.

Mr. Johnson himself, unhappily, was not safe. He had been put on the same ticket with Mr. Lincoln upon grounds of expediency such as have too often created Vice Presidents of the United

States. Like a great many other Tennesseans, he had been staunch and unwavering in his adherence to the Union, even after his state had cast the Union off; but he was in all other respects a Democrat of the old order rather than a Republican of the new, and when he became President the rank and file of the Republicans in Congress looked upon him askance, as was natural. He himself saw to it, besides, that nobody should relish or trust him whom bad temper could alienate. He was self-willed, imperious, implacable; as headstrong and tempestuous as Jackson, without Jackson's power of attracting men, and making and holding parties. At first, knowing him a radical by nature, some of the radical leaders in Congress had been inclined to trust him; had even hailed his accession to the presidency with open satisfaction, having chafed under Lincoln's power to restrain them. "Johnson, we have faith in you!" Senator Wade had exclaimed. "By the gods, there will be no trouble now in running the government!" But Johnson was careful that there should be trouble. He was determined to lead as Lincoln had led, but without Lincoln's insight, skill, or sweetness of temper,—by power and self-assertion rather than by persuasion and the slow arts of management and patient accommodation; and the houses came to an open breach with him almost at once.

Moreover, there was one very serious and radical objection to Mr. Lincoln's plan for restoring the states, which would in all likelihood have forced even him to modify it in many essential particulars, if not to abandon it altogether. He had foreseen difficulties, himself, and had told Congress that his plan was meant to serve only as a suggestion, around which opinion might have an opportunity to form, and out of which some practicable method might be drawn. He had not meant to insist upon it, but only to try it. The main difficulty was that it did not meet the wishes of the congressional

leaders with regard to the protection of the negroes in their new rights as free-men. The men whom Mr. Lincoln had called upon to reorganize the state governments of the South were, indeed, those who were readiest to accept the results of the war, in respect of the abolition of slavery as well as in all other matters. No doubt they were in the beginning men who had never felt any strong belief in the right of secession, — men who had even withstood the purpose of secession as long as they could, and had wished all along to see the old Union restored. They were a minority now, and it might be pretty safely assumed that they had been a minority from the outset in all this fatal business. But they were white men, bred to all the opinions which necessarily went along with the existence and practice of slavery. They would certainly not wish to give the negroes political rights. They might be counted on, on the contrary, to keep them still as much as possible under restraint and tutelage. They would probably accept nothing but the form of freedom for the one-time slaves, and their rule would be doubly unpalatable to the men in the North who had gone all these weary years through, either in person or in heart, with the northern armies upon their mission of emancipation.

The actual course of events speedily afforded means for justifying these apprehensions. Throughout 1865 Mr. Johnson pushed the presidential process of reconstruction successfully and rapidly forward. Provisional governors of his own appointment in the South saw to it that conventions were elected by the voters who had taken the oath prescribed in the amnesty proclamation, which Mr. Johnson had reissued, with little change either of form or of substance; those conventions proceeded at once to revise the state constitutions under the supervision of the provisional governors, who in their turn acted now

and again under direct telegraphic instructions from the President in Washington; the several ordinances of secession were repealed, the war debts of the states were repudiated, and the legislatures set up under the new constitutions hastened to accept and ratify the Thirteenth Amendment, abolishing slavery, as the President demanded. By December of the very year of his inauguration, every southern state except Florida and Texas had gone through the required process, and was once more, so far as the President was concerned, in its normal relations with the federal government. The federal courts resumed their sessions in the restored states, and the Supreme Court called up the southern cases from its docket. On December 18, 1865, the Secretary of State formally proclaimed the Thirteenth Amendment ratified by the vote of twenty-seven states, and thereby legally embodied in the Constitution, though eight of the twenty-seven were states which the President had thus of his own motion reconstructed. Without their votes the amendment would have lacked the constitutional three-fourths majority.

The President had required nothing of the new states with regard to the suffrage; that was a matter, as he truly said, in respect of which the several states had "rightfully exercised" their free and independent choice "from the origin of the government to the present day;" and of course they had no thought of admitting the negroes to the suffrage. Moreover, the new governments, once organized, fell more and more entirely into the hands of the very persons who had actively participated in secession. The President's proclamation of amnesty had, indeed, excepted certain classes of persons from the privilege of taking the oath which would make them voters again, under his arrangements for reconstruction: those who had taken a prominent official part in secession, or who had left the service of the United States for

the service of the Confederate government. But a majority of the southerners were still at liberty to avail themselves of the privilege of accepting the new order of things ; and it was to their interest to do so, in order that the new arrangements might be shaped as nearly as possible to their own liking. What was to their liking, however, proved as distasteful to Congress as had been expected. The use they made of their restored power brought absolute shipwreck upon the President's plans, and radically altered the whole process of reconstruction.

An extraordinary and very perilous state of affairs had been created in the South by the sudden and absolute emancipation of the negroes, and it was not strange that the southern legislatures should deem it necessary to take extraordinary steps to guard against the manifest and pressing dangers which it entailed. Here was a vast "laboring, landless, homeless class," once slaves, now free; unpracticed in liberty, unschooled in self-control; never sobered by the discipline of self-support, never established in any habit of prudence; excited by a freedom they did not understand, exalted by false hopes; bewildered and without leaders, and yet insolent and aggressive; sick of work, covetous of pleasure, — a host of dusky children untimely put out of school. In some of the states they outnumbered the whites,— notably in Mississippi and South Carolina. They were a danger to themselves as well as to those whom they had once served, and now feared and suspected; and the very legislatures which had accepted the Thirteenth Amendment hastened to pass laws which should put them under new restraints. Stringent regulations were adopted with regard to contracts for labor, and with regard to the prevention of vagrancy. Penalties were denounced against those who refused to work at the current rates of wages. Fines were imposed upon a great num-

ber and variety of petty offenses, such as the new freemen were most likely to commit; and it was provided that, in the (extremely probable) event of the non-payment of these fines, the culprits should be hired out to labor by judicial process. In some instances an elaborate system of compulsory apprenticeship was established for negroes under age, providing that they should be bound out to labor. In certain states the negroes were required to sign written contracts of labor, and were forbidden to do job work without first obtaining licenses from the police authorities of their places of residence. Those who failed to obtain licenses were liable to the charge of vagrancy, and upon that charge could be arrested, fined, and put to compulsory labor. There was not everywhere the same rigor; but there was everywhere the same determination to hold the negroes very watchfully, and, if need were, very sternly, within bounds in the exercise of their unaccustomed freedom; and in many cases the restraints imposed went the length of a veritable "involuntary servitude."

Congress had not waited to see these things done before attempting to help the negroes to make use of their freedom, — and self-defensive use of it, at that. By an act of March 3, 1865, it established, as a branch of the War Department, a Bureau of Refugees, Freedmen, and Abandoned Lands, which was authorized and empowered to assist the one-time slaves in finding means of subsistence, and in making good their new privileges and immunities as citizens. The officials of this bureau, with the War Department behind them, had gone the whole length of their extensive authority; putting away from the outset all ideas of accommodation, and preferring the interests of their wards to the interests of peaceable, wholesome, and healing progress. No doubt that was inevitable. What they did was but the final and direct application of the rigorous,

unsentimental logic of events. The negroes, at any rate, had the full advantage of the federal power. A very active and officious branch of the War Department saw to it that the new disabilities which the southern legislatures sought to put upon them should as far as possible be rendered inoperative.

That, however, did not suffice to sweeten the temper of Congress. The fact remained that Mr. Johnson had rehabilitated the governments of the southern states without asking the leave of the houses; that the legislatures which he had authorized them to call together had sought, in the very same sessions in which they gave their assent to the emancipating amendment, virtually to undo the work of emancipation, substituting a slavery of legal restraints and disabilities for a slavery of private ownership; and that these same legislatures had sent men to Washington, to seek admission to the Senate, who were known, many of them, still openly to avow their unshaken belief in the right of secession. The southern voters, too, who had qualified by taking the oath prescribed by the President's proclamation, had in most instances sent men similarly unconvinced to ask admission to the House of Representatives. Here was indeed a surrender of all the advantages of the contest of arms, as it seemed to the radicals, — very generous, no doubt, but done by a Tennessean and a Democrat, who was evidently a little more than generous; done, too, to exalt the Executive above Congress; in any light, perilous and not to be tolerated. Even those who were not radicals wished that the restoration of the states, which all admitted to be necessary, had been effected in some other way, and safeguarded against this manifest error, as all deemed it, of putting the negroes back into the hands of those who had been their masters, and would not now willingly consent to be their fellow citizens.

Congress, accordingly, determined to take matters into its own hands. With

the southern representatives excluded, there was a Republican majority in both houses strong enough to do what it pleased, even to the overriding, if necessary, of the President's vetoes. Upon assembling for their regular session in December, 1865, therefore, the House and Senate at once set up, by concurrent resolution, a joint committee of nine Representatives and six Senators, which was instructed to inquire into all the conditions obtaining in the southern states, and, after sufficient inquiry, advise the houses upon the question whether, under the governments which Mr. Johnson had given them, those states were entitled to representation. To this committee, in other words, was intrusted the whole guidance of Congress in the all-important and delicate business of the full rehabilitation of the southern states as members of the Union. By February, 1866, it had virtually been settled that the admission of their representatives to Congress should await the action of the reconstruction committee; and that purpose was very consistently adhered to. An exception was made in the case of Tennessee, but in her case only. The houses presently agreed to be satisfied with her "reconstruction," and admitted her representatives to their seats in both House and Senate by an act of the 24th of July, 1865. But the other states were put off until the joint committee had forced them through a process of "Thorough," which began their reconstruction at the very beginning, again, and executed at every stage the methods preferred by the houses. The leader throughout the drastic business was Mr. Thaddeus Stevens, of Pennsylvania, the chairman of the committee, the leader of the House. He was foremost among the radicals, and drew a following about him, much as Stephen Douglas had attached thoroughgoing Democrats to himself, in the old days when the legislative battles were being fought over the extension of slavery into the territories, —

by audacity, plain speaking, and the straightforward energy of unhesitating opinion. He gave directness and speed to all he proposed. He understood better than Douglas did the coarse work of hewing out practicable paths of action in the midst of opinions and interests at odds. He had no timidity, no scruples about keeping to constitutional lines of policy, no regard or thought for the sensibilities of the minority, — being rough-hewn and without embarrassing sensibilities himself, — an ideal radical for the service of the moment.

Careful men, trained in the older ways of statesmanship and accustomed to reading the Constitution into all that they did, tried to form some consistent theory of constitutional right with regard to the way in which Congress ought to deal with this new and unprecedented situation. The southern states were still "states" within the meaning of the Constitution as the Supreme Court had interpreted it. They were communities of free citizens; each had kept its territorial boundaries unchanged, unmistakable; in each there was an organized government, "sanctioned and limited by a written constitution, and established by the consent of the governed." Their officers of government, like their people, had for a time, indeed, repudiated the authority of the federal government; but they were now ready to acknowledge that authority again, and could resume their normal relations with the other states at a moment's notice, with all proper submission. Both Mr. Lincoln and Mr. Johnson had acted in part upon these assumptions. They had objected only that the governments actually in existence at the close of the war had been chosen by persons who were in fact insurgents, and that their officers had served to organize rebellion. Let those citizens of the South who had made submission, and who had been pardoned under the President's proclamation, reconstitute their governments, repudiating

their old leaders, and the only taint upon their statehood would be removed: the Executive would recognize them as again normally constituted members of the Union.

Not many members of Congress, however, accepted this view. The Republican party, it was true, had entered upon the war emphatically disavowing either wish or purpose to interfere with the constitutional rights of the states; declaring its sole object to be the preservation of the Union, — the denial of a single particular right which it could not but view as revolutionary. But war had brought many things in its train. The heat and struggle of those four tremendous years had burned and scarred the body of affairs with many an ineffaceable fact, which could not now be overlooked. Legally or illegally, as states or as bodies of individuals merely, the southern people had been at war with the Union; the slaves had been freed by force of arms; their freedom had now been incorporated in the supreme law of the land, and must be made good to them; there was manifest danger that too liberal a theory of restoration would bring about an impossible tangle of principles, an intolerable contradiction between fact and fact. Mr. Sumner held that, by resisting the authority of the Union, of which they were members, the southern states had simply committed suicide, destroying their own institutions along with their allegiance to the federal government. They ceased to be states, he said, when they ceased to fulfill the duties imposed upon them by the fundamental law of the land. Others declined any such doctrine. They adhered, with an instinct almost of affection, to the idea of a veritable federal Union; rejected Mr. Sumner's presupposition that the states were only subordinate parts of a consolidated national government; and insisted that, whatever rights they had for a time forfeited, the southern states were at least not destroyed, but only stopped from ex-

exercising their ordinary functions within the Union, pending a readjustment.

Theories made Mr. Stevens very impatient. It made little difference with him whether the southern states had forfeited their rights by suicide, or temporary disorganization, or individual rebellion. As a matter of fact, every department of the federal government, the courts included, had declared the citizens of those states public enemies; the Constitution itself had been for four years practically laid aside, so far as they were concerned, as a document of peace; they had been overwhelmed by force, and were now held in subjection under military rule, like conquered provinces. It was just as well, he thought, to act upon the facts, and let theories alone. It was enough that all Congressmen were agreed — at any rate, all who were allowed a voice in the matter — that it was properly the part of Congress, and not of the Executive, to bring order out of the chaos: to see that federal supremacy and federal law were made good in the South; the legal changes brought about by the war forced upon its acceptance; and the negroes secured in the enjoyment of the equality and even the privileges of citizens, in accordance with the federal guarantee that there should be a republican form of government in every state, — a government founded upon the consent of a majority of its adult subjects. The essential point was that Congress, the lawmaking power, should be in control. The President had been too easy to satisfy, too prompt, and too lenient. Mr. Stevens consented once and again that the language of fine-drawn theories of constitutional right should be used in the reports of the joint Committee on Reconstruction, in which he managed to be master; but the motto of the committee in all practical matters was his motto of "Thorough," and its policy made Congress supreme.

The year 1866 passed, with all things

at sixes and sevens. So far as the President was concerned, most of the southern states were already reconstructed, and had resumed their places in the Union. Their assent had made the Thirteenth Amendment a part of the Constitution. And yet Congress forbade the withdrawal of the troops, refused admittance to the southern representatives, and set aside southern laws through the action of the Freedmen's Bureau and the military authorities. By 1867 it had made up its mind what to do to bring the business to a conclusion. 1866 had at least cleared its mind and denned its purposes. Congress had still further tested and made proof of the temper of the South. In June it had adopted a Fourteenth Amendment, which secured to the blacks the status of citizens, both of the United States and of the several states of their residence, authorized a reduction in the representation in Congress of states which refused them the suffrage, excluded the more prominent servants of the Confederacy from federal office until Congress should pardon them, and invalidated all debts or obligations "incurred in aid of insurrection or rebellion against the United States;" and this amendment had been submitted to the vote of the states which Congress had refused to recognize as well as to the vote of those represented in the houses. Tennessee had promptly adopted it, and had been as promptly admitted to representation. But the other southern states, as promptly as they could, had begun, one by one, to reject it. Their action confirmed the houses in their attitude toward Reconstruction.

Congressional views and purposes were cleared the while with regard to the President, also. He had not been firm; he had been stubborn and bitter. He would yield nothing; vetoed the measures upon which Congress was most steadfastly minded to insist; alienated his very friends by attacking Congress in public with gross insult and abuse;

and lost credit with everybody. It came to a direct issue, the President against Congress: they went to the country with their quarrel in the congressional elections, which fell opportunely in the autumn of 1866, and the President lost utterly. Until then some had hesitated to override his vetoes, but after that no one hesitated. 1867 saw Congress go triumphantly forward with its policy of reconstruction *ab initio*.

In July, 1866, it had overridden a veto to continue and enlarge the powers of the Freedmen's Bureau, in a bill which directed that public lands should be sold to the negroes upon easy terms, that the property of the Confederate government should be appropriated for their education, and that their new-made rights should be protected by military authority. In March, 1867, two acts, passed over the President's vetoes, instituted the new process of reconstruction, followed and completed by another act in July of the same year. The southern states, with the exception, of course, of Tennessee, were grouped in five military districts, each of which was put under the command of a general of the United States. These commanders were made practically absolute rulers, until the task of reconstruction should be ended. It was declared by the Reconstruction Acts that no other legal state governments existed in the ten states concerned. It was made the business of the district commanders to erect such governments as Congress prescribed. They were to enroll in each state, upon oath, all male citizens of one year's residence, not disqualified by reason of felony or excluded under the terms of the proposed Fourteenth Amendment, "of whatever race, color, or previous condition" they might be; the persons thus registered were to choose constitutional conventions, confining their choice of delegates to registered voters like themselves; these conventions were to be directed to frame

state constitutions, which should extend the suffrage to all who had been permitted by the military authorities to enroll for the purpose of taking part in the election of delegates; and the constitutions were to be submitted to the same body of voters for ratification. When Congress had approved the constitutions thus framed and accepted, and when the legislatures constituted under them had adopted the Fourteenth Amendment, the states thus reorganized were to be readmitted to representation in Congress, and in all respects fully reinstated as members of the Union; but not before. Meanwhile, the civil governments already existing within them, though illegal, were to be permitted to stand; but as "provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, control, or supersede the same."

Such was the process which was rigorously and consistently carried through during the memorable years 1867-70; and upon the states which proved most difficult and recalcitrant Congress did not hesitate from time to time to impose new conditions of recognition and reinstatement before an end was made. By the close of July, 1868, the reconstruction and reinstatement of Arkansas, the two Carolinas, Florida, Alabama, and Louisiana had been completed. Virginia, Mississippi, and Texas were obliged to wait until the opening of 1870, because their voters would not adopt the constitutions offered them by their reconstructing conventions; and Georgia was held off a few months longer, because she persisted in attempting to exclude negroes from the right to hold office. These four states, as a consequence, were obliged to accept, as a condition precedent to their reinstatement, not only the Fourteenth Amendment, but a Fifteenth also, which Congress had passed in February, 1869, and which forbade either the United States

or any state to withhold from any citizen the right to vote "on account of race, color, or previous condition of servitude." The military commanders, meanwhile, used or withheld their hand of power according to their several temperaments. They could deal with the provisional civil governments as they pleased, — could remove officials, annul laws, regulate administration, at will. Some were dictatorial and petty; some were temperate and guarded in their use of authority, with a creditable instinct of statesmanship; almost all were straightforward and executive, as might have been expected of soldiers.

Whatever their mistakes or weaknesses of temper or of judgment, what followed the reconstruction they effected was in almost every instance much worse than what had had to be endured under military rule. The first practical result of reconstruction under the acts of 1867 was the disfranchisement, for several weary years, of the better whites, and the consequent giving over of the southern governments into the hands of the negroes. And yet not into their hands, after all. They were but children still; and unscrupulous men, "carpetbaggers," — men not come to be citizens, but come upon an expedition of profit, come to make the name of Republican forever hateful in the South, — came out of the North to use the negroes as tools for their own selfish ends; and succeeded, to the utmost fulfillment of their dreams. Negro majorities for a little while filled the southern legislatures; but they won no power or profit for themselves, beyond a pittance here and there for a bribe. Their leaders, strangers and adventurers, got the lucrative offices, the handling of the state moneys raised by loan, and of the taxes spent no one knew how. Here and there an able and upright man cleansed administration, checked corruption, served them as a real friend and an honest leader; but not for long. The negroes were exalted; the states were

misgoverned and looted in their name; and a few men, not of their number, not really of their interest, went away with the gains. They were left to carry the discredit and reap the consequences of ruin, when at last the whites who were real citizens got control again.

But that dark chapter of history is no part of our present story. We are here concerned, rather, with the far-reaching constitutional and political influences and results of Reconstruction. That it was a revolutionary process is written upon its face throughout; but how deep did the revolution go? What permanent marks has it left upon the great structure of government, federal, republican; a partnership of equal states, and yet a solidly coherent national power, which the fathers erected?

First of all, it is clear to every one who looks straight upon the facts, every veil of theory withdrawn, and the naked body of affairs uncovered to meet the direct question of the eye, that civil war discovered the foundations of our government to be in fact unwritten; set deep in a sentiment which constitutions can neither originate nor limit. The law of the Constitution reigned until war came. Then the stage was cleared, and the forces of a mighty sentiment, hitherto unorganized, deployed upon it. A thing had happened for which the Constitution had made no provision. In the Constitution were written the rules by which the associated states should live in concert and union, with no word added touching days of discord or disruption; nothing about the use of force to keep or to break the authority ordained in its quiet sentences, written, it would seem, for lawyers, not for soldiers. When the war came, therefore, and questions were broached to which it gave no answer, the ultimate foundation of the structure was laid bare: physical force, sustained by the stern loves and rooted predilections of masses of men, the strong ingrained prejudices

which are the fibre of every system of government. What gave the war its passion, its hot energy as of a tragedy from end to end, was that in it sentiment met sentiment, conviction conviction. It was the sentiment, not of all, but of the efficient majority, the conviction of the major part, that won. A minority, eager and absolute in another conviction, devoted to the utmost pitch of self-sacrifice to an opposite and incompatible ideal, was crushed and overwhelmed. It was that which gave an epic breadth and majesty to the awful clash between bodies of men in all things else of one strain and breeding; it was that which brought the bitterness of death upon the side which lost, and the dangerous intoxication of an absolute triumph upon the side which won. But it unmistakably uncovered the foundations of force upon which the Union rested.

It did more. The sentiment of union and nationality, never before aroused to full consciousness or knowledge of its own thought and aspirations, was henceforth a new thing, aggressive and aware of a sort of conquest. It had seen its legions and felt its might in the field. It saw the very Constitution, for whose maintenance and defense it had acquired the discipline of arms, itself subordinated for a time to the practical emergencies of war, in order that the triumph might be the more unimpeded and complete; and it naturally deemed nationality henceforth a thing above law. As much as possible, — so far as could be without serious embarrassment, — the forms of the fundamental law had indeed been respected and observed; but wherever the law clogged or did not suffice, it had been laid aside and ignored. It was so much the easier, therefore, to heed its restrictions lightly, when the war was over, and it became necessary to force the southern states to accept the new model. The real revolution was not so much in the form as in the spirit of af-

airs. The spirit and temper and method of a federal Union had given place, now that all the spaces of the air had been swept and changed by the merciless winds of war, to a spirit which was consciously national and of a new age.

It was this spirit which brushed theories and technicalities aside, and impressed its touch of revolution on the law itself. And not only upon the law, but also upon the processes of lawmaking, and upon the relative positions of the President and Congress in the general constitutional scheme of the government, seeming to change its very administrative structure. While the war lasted the President had been master; the war ended, and Mr. Lincoln gone, Congress pushed its way to the front, and began to transmute fact into law, law into fact. In some matters it treated all the states alike. The Thirteenth, Fourteenth, and Fifteenth amendments bound all the states at once, North and West as well as South. But that was, after all, a mere equality of form. The amendments were aimed, of course, at the states which had had slaves and had attempted secession, and did not materially affect any others. The votes which incorporated them in the Constitution were voluntary on the part of the states whose institutions they did not affect, involuntary on the part of the states whose institutions they revolutionized. These states were then under military rule. Congress had declared their whole political organization to be illegal; had excluded their representatives from their seats in the houses; and yet demanded that they assent, as states, to the amendment of the Constitution as a condition precedent to their reinstatement in the Union! No anomaly or contradiction of lawyers' terms was suffered to stand in the way of the supremacy of the lawmaking branch of the general government. The Constitution knew no such process as this of Reconstruction, and could furnish no rules for it. Two years and a half be-

fore the Fifteenth Amendment was adopted by Congress, three years and a half before it was put in force by its adoption by the states, Congress had by mere act forced the southern states, by the hands of military governors, to put the negroes upon the roll of their voters. It had dictated to them a radical revision of their constitutions, whose items should be framed to meet the views of the houses rather than the views of their own electors. It had pulled about and rearranged what local institutions it saw fit, and then had obliged the communities affected to accept its alterations as the price of their reinstatement as self-governing bodies politic within the Union.

It may be that much, if not all, of this would have been inevitable under any leadership, the temper of the times and the posture of affairs being what they were; and it is certain that it was inevitable under the actual circumstances of leadership then existing at Washington. But to assess that matter is to reckon with causes. For the moment we are concerned only with consequences, and are neither justifying nor condemning, but only comprehending. The courts of the United States have held that the southern states never were out of the Union; and yet they have justified the action of Congress throughout the process of Reconstruction, on the ground that it was no more than a proper performance by Congress of a legal duty, under the clause of the Constitution which guarantees to every state a republican form of government. It was making the southern governments republican by securing full standing and legislative representation as citizens for the negroes. But Congress went beyond that. It not only dictated to the states it was reconstructing what their suffrage should be; it also required that they should never afterward narrow that suffrage. It required of Virginia, Texas, and Mississippi that they should

accord to the negroes not only the right to vote, but also the right to hold political office; and that they should grant to all their citizens equal school privileges, and never afterward abridge them. So far as the right to vote was concerned, the Fifteenth Amendment subsequently imposed the same disability with regard to withholding the suffrage upon all the states alike; but the southern states were also forbidden by mere federal statute to restrict it on any other ground; and in the cases of Virginia, Mississippi, and Texas Congress assumed the right, which the Constitution nowhere accorded it, to regulate admission to political office and the privileges of public education.

South Carolina and Mississippi, Louisiana and North Carolina, have since changed the basis of their suffrage, notwithstanding; Virginia and Mississippi and Texas might now, no doubt, reorganize their educational system as they pleased, without endangering their status in the Union, or even meeting rebuke at the hands of the federal courts. The temper of the times has changed; the federal structure has settled to a normal balance of parts and functions again; and the states are in fact unfettered except by the terms of the Constitution itself. It is marvelous what healing and oblivion peace has wrought, how the traces of Reconstruction have worn away. But a certain deep effect abides. It is within, not upon the surface. It is of the spirit, not of the body. A revolution was carried through when war was done which may be better comprehended if likened to England's subtle making over, that memorable year 1688. Though she punctiliously kept to the forms of her law, England then dismissed a king almost as, in later years, she would have dismissed a minister; though she preserved the procedure of her constitution intact, she in fact gave a final touch of change to its spirit. She struck irresponsible power away, and made her government once for all a constitutional

government. The change had been insensibly a-making for many a long age; but now it was accomplished consciously and at a stroke. Her constitution, finished, was not what it had been until this last stroke was given,—when silent forces had at last found sudden voice, and the culminating change was deliberately made.

Nearly the same can be said of the effect of the war and of the reconstruction of the southern states upon our own government. It was a revolution of consciousness,—of mind and purpose. A government which had been in its spirit federal became, almost of a sudden, national in temper and point of view. The national spirit had long been a-making. Many a silent force, which grew quite unobserved, from generation to generation, in pervasiveness and might, in quiet times of wholesome peace and mere increase of nature, had been breeding these thoughts which now sprang so vividly into consciousness. The very growth of the nation, the very lapse of time and uninterrupted habit of united action, the mere mixture and movement and distribution of populations, the mere accretions of policy, the mere consolidation of interests, had been building and strengthening new tissue of nationality the years through, and drawing links stronger than links of steel round about the invisible body of common thought and purpose which is the substance of nations. When the great crisis of secession came, men knew at once how their spirits were ruled, men of the South as well as men of the North,—in what institutions and conceptions of government their blood was fixed to run; and a great and instant readjustment took place, which was for the South, the minority, practically the readjustment of conquest and fundamental reconstruction, but which was for the North, the region which had been transformed, nothing more than an awakening.

It cannot be said that the forms of the

Constitution were observed in this quick change as the forms of the English constitution had been observed when the Stuarts were finally shown the door. There were no forms for such a business. For several years, therefore, Congress was permitted to do by statute what, under the long-practiced conceptions of our federal law, could properly be done only by constitutional amendment. The necessity for that gone by, it was suffered to embody what it had already enacted and put into force as law into the Constitution, not by the free will of the country at large, but by the compulsions of mere force exercised upon a minority whose assent was necessary to the formal completion of its policy. The result restored, practically entire, the forms of the Constitution; but not before new methods and irregular, the methods of majorities, but not the methods of law, had been openly learned and practiced, and learned in a way not likely to be forgot. Changes of law in the end gave authentic body to many of the most significant changes of thought which had come, with its new consciousness, to the nation. A citizenship of the United States was created; additional private civil rights were taken within the jurisdiction of the general government; additional prohibitions were put upon the states; the suffrage was in a measure made subject to national regulation. But the real change was the change of air,—a change of conception with regard to the power of Congress, the guiding and compulsive efficacy of national legislation, the relation of the life of the land to the supremacy of the national law-making body. All policy thenceforth wore a different aspect.

We realize it now, in the presence of novel enterprises, at the threshold of an unlooked-for future. It is evident that empire is an affair of strong government, and not of the nice and somewhat artificial poise or of the delicate compromises of structure and authority charac-

teristic of a mere federal partnership. Undoubtedly, the impulse of expansion is the natural and wholesome impulse which comes with a consciousness of matured strength; but it is also a direct result of that national spirit which the war between the states cried so wide awake, and to which the processes of Reconstruction gave the subtle assurance of practically unimpeded sway and a free choice of means. The revolution

lies there, as natural as it was remarkable and full of prophecy. It is this which makes the whole period of Reconstruction so peculiarly worthy of our study. Every step of the policy, every feature of the time, which wrought this subtle transformation, should receive our careful scrutiny. We are now far enough removed from the time to make that scrutiny both close and dispassionate. A new age gives it a new significance.

Woodrow Wilson.