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THE MAKING OF FEDERAL ENFORCEMENT LAWS, 1870-1872*

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The Fifteenth Amendment represented the highest achievement of the Republican party's Reconstruction politics. By prohibiting the national and state governments from depriving citizens of the right to vote on the basis of race, color, and previous condition of servitude, the Amendment conferred suffrage on newly emancipated African-American men, thus constitutionalizing the principle and practice of black suffrage which was first established in early 1867. Black participation in Reconstruction not only helped to consolidate the outcomes of the Civil War and congressional Reconstruction, but it also redefined the course of American democracy. In order to maintain the vitality and validity of the Fifteenth Amendment, the Republican party had to permanently and effectively implement that Amendment in the South, where anti-black suffrage forces mounted high.

Between May 1870 and June 1872, the Republican-controlled Congress passed five laws to implement the Fourteenth and Fifteenth Amendments. Three of these laws were known as the "Enforcement Acts" or "Force Acts." Two of the three "Force Acts" dealt directly with the enforcement of the Fifteenth Amendment. The other "Force Act" and the other two federal laws dealt with other issues, but nonetheless contained provisions that concerned enforcement of the Fifteenth Amendment. These enforcement acts represented the Republican party's effort to give concrete meaning to the Fifteenth Amendment, to provide federal machinery for implementing the Amendment, and to establish a uniform system of supervision and enforcement at national elections. Constitutionally speaking, these enforcement laws marked the beginning of the infrastructure of modern state power.1 Although the Republican party maintained a dominant

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1. The five laws to be discussed in this Paper are: (1) Act of May 31, 1870, ch. 114, 16 Stat. 140 (enforcing voting rights of U.S. citizens); (2) Act of July 14, 1870, ch. 254, 16 Stat. 254 (amending naturalization laws); (3) Act of Feb. 28, 1871, ch. 99, 16 Stat. 433 (amending Act of
majority in both Houses when these laws were debated, the passage of these laws did not come easily. This Paper examines the historical background of making the enforcement laws; documents the legislative history of these laws; analyzes how the Republican legal and political minds understood and interpreted the meanings of such Reconstruction establishments as black freedom and political equality; and discusses how the intra-party debates affected the quality of federal enforcement of the Fifteenth Amendment.

I. ADOPTION OF THE FIFTEENTH AMENDMENT AND ENSUING PROBLEMS

Congress passed the Fifteenth Amendment on February 26, 1869, and immediately submitted it to the states for ratification. The New England and the Northwestern states promptly approved the Amendment. Bitter fights over ratification occurred in large industrial states such as New York, Pennsylvania, Ohio, and Illinois, but eventually they all ratified the Amendment. The Amendment was rejected by the states with large non-white populations, especially border states and the Far West, but it was ratified by ten Southern states. On March 30, 1870, Secretary of State Hamilton Fish announced that the Fifteenth Amendment had become law.2

In the Northern populace, the passage and ratification of the Fifteenth Amendment produced the feeling that the long struggle against American slavery had finally come to an end. During April and May 1870, blacks throughout the country celebrated the ratification of the

May 31, 1870); (4) Act of Apr. 20, 1871, ch. 22, 17 Stat. 13 (enforcing provisions of the Fourteenth Amendment); and (5) Act of June 10, 1872, ch. 415, 17 Stat. 347 (appropriation for Sun-dry civil expenses of the government). The first and third laws specifically deal with the enforcement of the Fifteenth Amendment, while the other three laws contain provisions to enforce black suffrage. In this Paper, for the convenience of discussion, I will call all of these laws Enforcement Acts, although I am perfectly aware that the traditional use of “Force Acts” indicates only the first, third, and fourth laws listed above.

2. Altogether, twenty-nine states ratified the Amendment. For Texas, Virginia, Mississippi, and Georgia, ratification was a prerequisite for readmission into the Union. The other six Southern states that ratified the Amendment were North Carolina, West Virginia, Louisiana, South Carolina, Arkansas, and Florida. Three of the six states that failed to ratify the Amendment in the nineteenth century, Kentucky, Maryland, and Tennessee, never ratified it while the other three, Delaware, Oregon and California, ratified the Amendment in 1901, 1959, and 1962 respectively. 9 JAMES D. RICHARDSON, A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 4010-11 (1897); Statement of Hamilton Fish certifying the ratification of the Fifteenth Amendment, No. 10, 15 Stat. ix-x (1870) (appendix); ALAN P. GRIMES, DEMOCRACY AND THE AMENDMENTS TO THE CONSTITUTION 58 (1978). For the legislative history of the Fifteenth Amendment, see WILLIAM GILLETTE, THE RIGHT TO VOTE: POLITICS AND PASSAGE OF THE FIFTEENTH AMENDMENT (1965). For the evolution of Republicanism and the Republican policies regarding black suffrage between 1860 and 1870, see Xi Wang, Black Suffrage and the Redefinition of American Freedom, 1860-1870, 17 CARDOZO L. REV. (forthcoming 1995).
Amendment. In Boston, about 3,000 blacks, including the veterans of the 54th and 55th Massachusetts regiments, participated in the procession held in Boston Public Park. In Detroit, blacks carried portraits of Abraham Lincoln, Ulysses S. Grant, and John Brown, and sang verses which rang, "The ballot-box has come, now let us all prepare to vote/With the party that made us free." Prominent antislavery activists, Republican legislators, and black leaders spoke at the celebrations, all proclaiming the final victory in the revolution against slavery.

To many antislavery veterans, the Fifteenth Amendment ushered the American nation into a new historical epoch. Frederick Douglass declared at a meeting in Albany in April 1870 that "color is no longer to be a calamity; . . . race is to be no longer a crime; and . . . liberty is to be the right of all." Although not completely satisfied with the final version of the Amendment, Wendell Phillips, a leading abolitionist and a radical Republican, shared Douglass's anticipation. Calling it "the grandest and most Christian act ever contemplated or accomplished by any Nation," Phillips believed that the Amendment elevated African Americans from the status of "a lately enslaved and still hated race to the full level of citizenship," and that the Amendment was thus "the completion and guaranty of emancipation itself." On April 9, 1870, ten days after the Fifteenth Amendment was ratified,

7. *Id.* at 107.
8. *Id.* at 106. See also Wendell Phillips, *The Constitutional Amendment*, Nat'l Anti-Slavery Standard, Mar. 20, 1869, at 2. Phillips admitted that he was rather disappointed by the Senate's decision to remove the right to take office from the final version of the Fifteenth Amendment. He wished the senators who handled the Amendment were "a little more politicians—and a little less reformers." Wendell Phillips, *Congress*, Nat'l Anti-Slavery Standard, Feb. 20, 1869, at 2 (emphasis in original).
the American Anti-Slavery Society, of which Phillips was the president, announced the end of its existence.9

Many Republican leaders shared the popular feeling that the Fifteenth Amendment settled the issue of black men's voting rights and signaled the end of the party's antislavery mission. President Grant was convinced that, with the ratification of the Fifteenth Amendment, the issue of black suffrage was "out of politics, and reconstruction [was] completed."10 In his special congratulatory message to the members of Congress, Grant urged the legislative branch to "encourage popular education" of blacks to ensure the better use of their new rights of suffrage.11 Other Republican leaders gave similar advice. Salmon P. Chase urged blacks to acquire faith, virtue, knowledge, patience, temperance, and "brotherly kindness" to intelligently exercise their political rights.12 Even black leaders like Frederick Douglass believed that the Fifteenth Amendment had placed black men "upon an equal footing with all other men" and that blacks had to rely on their own efforts to achieve economic success and social respect in the future.13

For some Republicans, the ratification of the Fifteenth Amendment meant the end of the nation's antislavery history. They saw no need to continue to make race or previous condition of servitude an issue in national politics, and they urged leniency for the former rebels. In his reply to an invitation from black citizens in Cincinnati, who were organizing a celebration of the Fifteenth Amendment, Chief Justice Chase suggested that blacks urge Congress to remove the political disability imposed on former rebels in the South by the Fourteenth Amendment. Chase stated that by such actions blacks could help establish peace, good will, and prosperity throughout the na-

9. The last meeting of the society was held at Apollo Hall, New York City. At that meeting the members agreed to dissolve the society. *The Disbandment of Forces, New Era*, Apr. 28, 1870, at 2. At the meeting, Frederick Douglass told his audience that the spirit of the society would be carried on "through new instrumentalities" and devoted to the interests of the Indians, women and "suffering humanity everywhere." *Speech of Frederick Douglass, supra* note 5, at 1; 4 LIFE AND WRITINGS OF FREDERICK DOUGLASS 45 (Philip S. Foner ed., 1955). Wendell Phillips believed that the influence of the Society would not die out and he said, "We sheathe no sword. We only turn from the front rank of the army upon a new foe." American Anti-Slavery Society, NAT'L ANTI-SLAVERY STANDARD, Apr. 16, 1870, at 1.


11. 9 RICHARDSON, supra note 2, at 4009-10.


tion. A Boston Republican paper believed that "the amendment would put an end to all the woes and leave the national energies free to adjust the disturbed industries of the country, and to unite in ministering to its highest prosperity and happiness." The gratitude blacks demonstrated toward the Republican party seemed to assure the party of firm black support in the future. A Republican newspaper predicted that the newly enfranchised blacks would reinforce the party's strength in both the North and the South during the upcoming congressional and state elections of 1870. Adding at least 850,000 black voters to the Republican camp would assure the party of national preeminence for years to come. Harper's Weekly, another staunch Republican organ, optimistically predicted that in a year or so "the Union will be wholly restored, equal rights secured, the debts greatly reduced, taxation diminished, and foreign questions satisfactorily adjusted."

Despite all of the jubilation and optimism generated by the passage and ratification of the Fifteenth Amendment, Republicans in Congress remained rather cautious about the Amendment's actual effects. The loopholes in the Amendment were obvious to radical Republicans. Theoretically, the Fifteenth Amendment imposed no restrictions on the states' power to regulate voting qualifications (other than prohibiting exclusion on the basis of race, color, or previous condition of servitude). Nor did the Amendment clearly challenge the ultimate authority of the states in regulating suffrage. Once Democrats regained control of Southern states, some Republicans feared that such states might enact legal restrictions on voting, such as prop-

15. Boston Advertiser, Jan. 25, Mar. 1, 1869, & Apr. 1, 1870, quoted in Edith E. Ware, Political Opinion in Massachusetts During Civil War and Reconstruction 181 (1916).
17. The New Year, Harper's Wkly., Jan. 8, 1870, at 18. After he observed a local election in Cincinnati, Rutherford B. Hayes wrote in his diary: "The colored people vote for the first time under the Fifteenth Amendment. They are very happy and the people generally approve. They vote Republican almost solid." 3 Diary and Letters of Rutherford Birchard Hayes 94 (Charles R. Williams ed., 1924).
18. In several decisions delivered between 1871 and 1886, the Supreme Court and the lower federal courts affirmed that the Fifteenth Amendment did not confer the right to vote on any American citizens, but only restricted the federal and state governments from prohibiting citizens from voting on the basis of race, color, and previous conditions of servitude. In 1874, the Court held that the right to vote was not a privilege necessarily accompanying United States citizenship and that the Fifteenth Amendment dealt with suffrage by protecting a citizen against discrimination at the polls on account of race or color. But in 1883, in Ex Parte Yarbrough, the Supreme Court stated that, given the political situation of the day, the Fifteenth Amendment did aim at conferring on black men the right to vote. 110 U.S. 651 (1884). See also Minor v. Happersett, 88 U.S. (21 Wall.) 162 (1874); United States v. Anthony, 24 F. Cas. 829 (N.D.N.Y. 1873) (No. 14,459).
erty and literacy tests, which could prevent most black men from voting. Michigan Republican Jacob M. Howard voiced this concern in the Senate debate over Virginia’s readmission. Howard warned that if the state of Virginia was allowed to impose a $200 property qualification for voting, very few blacks in Virginia could vote and the Fifteenth Amendment would be “of very little value.”

Republicans in Congress had good reason to worry about whether the political equality promised by the Fifteenth Amendment would be realized. Southern politics in 1870 were characterized not by the peace, good feeling, and prosperity that northerners had expected to see, but by the violence, brutality, and disorder caused by Ku Klux Klan activities. The Ku Klux Klan, founded in early 1866 and composed mainly of extreme white supremacists and former rebels, spread throughout the South in late 1869 and 1870. Under the pretext of restoring social order, but in reality to destroy Republican-controlled state governments, Klansmen used force and terror to attack black voters who voted or would vote for Republican tickets. By 1870, the Ku Klux Klan and other similar organizations like the Knights of the White Camelia and the White Brotherhood, in Eric Foner’s words, “had become deeply entrenched in nearly every Southern state.” Serving as “a military force” for the Democratic party in the South, the Klan’s terror was aimed at both overthrowing the Republican state governments and privately persecuting Republican leaders and supporters, black and white. Under the Klan’s terror, the number of black voters was reduced, Democrats won control of state legislatures, and black Republican leaders were whipped and murdered in their homes.

Meanwhile, state and local Republicans were restrained by state constitutions from enacting powerful and effective policies to combat the Klan’s activities. According to historian Allen W. Trelease, between 1869 and 1870 the Klan’s terror quickly developed in almost every Southern state except South Carolina, where the Klan peaked in 1868. Although the Republican government of Arkansas passed anti-Klan laws, those laws were “unfeasible politically, and seldom were their sections enforced.” One reason for the ineffectiveness of these laws was that the state constitution denied the governor the authority to suspend the writ of habeas corpus. In March 1870, this situation

forced North Carolina Governor William W. Holden to appeal to President Grant and Congress for federal legislation on Klan activities and ask to have Klansman punished by military tribunal. Meanwhile, no fair trial could be carried out because of the interference of Klan sympathizers.\textsuperscript{21}

The intensity of the Klan's activities forced black legislators in Georgia to present a petition to Hiram R. Revels of Mississippi, the nation's first black senator, in which they declared,

If elections take place this fall . . . [v]iolence and bloodshed will mark the course of such elections, and a fair expression of the will of the people cannot be had. We shall be driven from the polls, as in the Presidential election by armed and organized bands of rebels, and our State given over to the guidance and control of the most extreme men of the Democratic party.\textsuperscript{22}

This petition revealed not only the urgent need to check the Ku Klux Klan's terror, but also the foreseeable collapse of the Republican governments in the South if the federal government failed to take serious and prompt action to protect black voters. On March 16, 1870, when the Senate discussed the Georgia readmission bill, Revels rose "to plead for protection for the defenseless race" in the South and urged the Republican party and Congress to enforce the recent constitutional amendments.\textsuperscript{23} Other Republican senators from the South warned their colleagues that "every mail brings to us the details of some revolting tragedy" and that "[n]othing but the most stringent of all laws and regulations will check this era of bloodshed and dethrone this dynasty of the knife and bullet."\textsuperscript{24} The Southern Republican senators declared that "the Republican party must stand in carrying into effect the reconstruction policy, or the whole fabric of reconstruction, with all principles connected with it, amounts to nothing at all."\textsuperscript{25}

The Klan terrorism certainly alarmed the Republicans and motivated them to make the enforcement of the Fifteenth Amendment an

\textsuperscript{21} \textsc{Allen W. Trelease}, \textit{White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction} 191-273 (1971); \textsc{Foner}, \textit{supra} note 20, at 342-44, 425-30.

\textsuperscript{22} \textsc{Edmund L. Drago}, \textit{Black Politicians and Reconstruction in Georgia: A Splendid Failure} 58 (1982) (quoting \textit{Atlanta Const.} Mar. 16, 1870).

\textsuperscript{23} Revels forcefully argued that black soldiers rushed to rescue Union armies "thinned by death and disaster," and the people in the North "owe to the colored race a deep obligation which it is no easy matter to fulfill." Obviously, Revels was responding to the petition sent to him by the Georgia black legislators, although there is no evidence that he read the petition before the Senate. \textit{Cong. Globe}, 41st Cong., 2d Sess. 1987 (1870) (statement of Senator Revels).

\textsuperscript{24} \textit{Id.} at 3669 (statement of George E. Spencer).

\textsuperscript{25} \textit{Id.} at 3613 (statement of John Pool of North Carolina).
“absolute necessity.”\textsuperscript{26} The second section of the Amendment, which empowered Congress to enforce the first section by “appropriate legislation,”\textsuperscript{27} established a constitutional basis for enforcement. In effect, many Republicans believed that the Fifteenth Amendment would remain ineffective until and unless it was enforced by additional federal laws. In other words, if no further federal laws were enacted, racial discrimination in voting would be constitutionally feasible. This belief was largely derived from the expectation that states would not observe the Amendment faithfully. Senator John Sherman, usually a moderate Republican, argued that “some law should be passed by Congress”\textsuperscript{28} to implement the first section of the Fifteenth Amendment, for without additional laws the Fifteenth Amendment would not have the full force and sanction of law. At least there is such a doubt about it that it is our imperative duty before we leave here to pass suitable laws to enforce the [F]ifteenth [A]mendment in every State of the Union. Otherwise, Democratic judges... who enforce the election laws in the different States, will cover themselves under this construction of the Constitution, and the [F]ifteenth [A]mendment will be practically disregarded in every community where there is a strong prejudice against negro voting.\textsuperscript{29}

Sherman’s argument represented a practical concern that the meaning of the Fifteenth Amendment had to be interpreted and defined by further enforcement laws. Given the political tensions between the Democratic-buttressed Klan activities and the recently established Southern Republicanism, Republicans saw enforcement as an opportunity to develop and consolidate the party’s influence among Southern voters, especially black voters. Republicans also hoped to make black voters a long-term, loyal, Republican voting population so that the party could meet the expected challenges of the Democratic party. But the Republicans were not motivated solely by partisan interests. In fact, during much of the Reconstruction period, many Republicans frequently identified the party’s political interests with the interests of the nation. Whether the Republican party could shield black men’s right to vote was a test of the strength of the national authority, as well as that of the endurance of the party’s Reconstruction program.

\textsuperscript{26} Id. at 3568 (statement of Senator Sherman).
\textsuperscript{27} Id.
\textsuperscript{28} Id.
\textsuperscript{29} Id. Senator Oliver P. Morton of Indiana later reinforced Sherman by arguing that “[the] second section is intended to give to Congress the power of conferring upon the colored man the full enjoyment of his right.... [W]e take both of these sections together, we construe them in harmony with each other.” Id. at 3670.
By early 1870, many radical Republicans identified the party's programs and interests with national interests, particularly on the issue of black suffrage. For them, the Fifteenth Amendment was the greatest achievement of the Civil War, and its constitutionality had to be maintained. The Ku Klux Klan and Democratic denial of black suffrage was a denial of the authority of the Fifteenth Amendment, as well as of the whole principle of civil and political equality underlying Reconstruction as led by the radical wing of the Republican party. Thus, for the radicals, enforcing the Fifteenth Amendment was not merely a partisan issue, but a matter of national concern. The enforcement was designed to demonstrate the national government's power to protect the political rights of its citizens. The political implication of enforcement, as Carl Schurz, a leading Republican in the Senate, put it, was to use national power to impose a change upon the "[p]opular prejudice, so long nourished . . . [and] naturally arrayed against the enfranchisement of the former slave." Thus, Jacob Howard said that enforcing black suffrage in the South would prevent "a repetition" of the Civil War crisis and maintain "the authority of the Union." In a sense, enforcing the Fifteenth Amendment was indeed a struggle for the success of the party, but more importantly, it was an effort to fulfill the political promises of the nation's recent revolution which the party had led.

II. The First Enforcement Act

Throughout the period in which the enforcement laws were debated, the Republican party maintained a dominant majority in Congress. At the Second Session of the Forty-First Congress, when the first and second Enforcement Acts were debated and passed, there were 61 Republicans, 10 Democrats and 2 Conservatives in the Senate, while in the House there were 164 Republicans and 67 Democrats. Given this political advantage, it seemed that the party would have little difficulty passing an Enforcement Act. But from the introduction of the first enforcement bill at the second session of the Forty-First Congress in February 1870 to the passage of the last enforcement act at the second session of the Forty-Second Congress in June 1872,

30. Id. at 3608.
31. Id. at 3610-11. As early as the debate over the Fifteenth Amendment, William Stewart had reminded the Democrats of the congressional power to "go into all the States and secure to all men the equal protection of the laws in their civil rights" and to "wipe out all distinctions and discriminations on account of race or color in their political rights." Id. at 1329.
32. Id. at v-xi.
tensions and disagreements occurred among Republicans in both Houses. The Republicans heatedly debated several issues: How far and how extensive should the enforcement be carried out; whose voting rights should be protected under the Fifteenth Amendment; how much power should the federal enforcement officers be given to enforce the Amendment; should the President be authorized to use military force in their behalf; and should individual citizens be punished for violating the Fifteenth Amendment. On the surface, these debates suggested that Republicans differed on policy making. But underneath, these debates reflected a growing divergence of the Republicans' political outlook that would eventually split the party. The differences also exposed intra-party divisions over political equality between white and black Americans, as well as indicated a change in how the party defined its role in protecting black rights.

The first clash among the Republicans regarding enforcement occurred when the first enforcement bill was discussed in both Houses in May 1870. The House enforcement bill was introduced on February 21, 1870, but was not called for discussion until May 16, 1870. The essential object of the House bill, according to John Bingham who introduced it, was to enforce the Fifteenth Amendment nationwide. Bingham noted that black suffrage had been denied not only in the South, but also in such Northern states as Ohio, his home state. The House bill confirmed the principle underlying the Fifteenth Amendment, that racial discrimination against black voters should be removed in all states. It penalized by fine and imprisonment any action by federal and state officers that obstructed citizens from registering and voting. It punished any individual who prevented black citizens from exercising the suffrage by force and violence. Finally, the bill authorized the judges of federal circuit courts to hear all cases concerning its enforcement.

Although brief, the House bill was unambiguous in direction and harsh in punishment. Much of it was focused on regulating the behavior of federal and state enforcement officers. Clearly, the primary

33. *Id.* at 1459, 3503.
34. The House bill (H.R. No. 1293) had ten sections. Its first section extended federal enforcement of the Fifteenth Amendment "at any Federal, State, county, municipal, or other election." Violations would be punished by a fine between $500 and $5,000 or imprisonment between one and three years. Sections 2 and 9 provided punishment for any individual who prevented black voters from voting by force and violence. Sections 3 to 8 penalized state and federal officers who refused to register black voters, who prevented black voters from casting their votes, or who refused to receive taxes from black voters if the taxes were prerequisites for voting or registration. Section 10 gave federal district courts the power to hear cases arising under the law. *Id.* at 3503-04.
goal of the House bill was to punish violations committed by federal and state officials who were designated to handle and supervise elections. The bill also included two notable features: the enforcement of black suffrage at all elections, federal, state, or municipal; and the imposition of punishment upon individual citizens who prevented black voters from voting. But the bill provided no enforcement machinery other than to designate federal circuit and district judges to hear cases arising under the bill. No other legal or military apparatus was considered. The House bill was more declaratory than punitive.

Compared with the House bill, the Senate measure was lengthy and comprehensive. The Senate bill differed radically from the House bill in four respects. First, the Senate bill established the principle that the act of fulfilling one’s voting prerequisites was equivalent to the act of exercising one’s right to vote, so that any attempt or action by federal and state officials to prevent a black voter from meeting voting prerequisites was equivalent to infringing his right to vote. In other words, while the House bill defined illegal practices only as the refusal of federal or state election officials to receive taxes and to assess property for black voters, the Senate bill made it illegal to block black voters from registering and voting. Second, the Senate bill made it a federal crime for individuals to conspire against a citizen’s enjoyment of rights secured by the Constitution and federal laws, including the right to vote. While the House bill only lightly punished individual violations of the Fifteenth Amendment, the Sen-

35. Id.
36. The Senate bill grew out of several similar bills introduced by William Stewart, Oliver P. Morton, Charles Sumner, and George F. Edmunds between February and April. Although based upon Edmunds’s proposal, the final version of the bill was heavily reworked by the Judiciary Committee, which included Stewart, the author of the Fifteenth Amendment. Senate Republicans started to introduce enforcement bills even before the Fifteenth Amendment was ratified. Sumner’s bill (S. 598) was introduced on February 28, 1870, two weeks after Morton introduced his first bill (S. 538) to enforce the Fifteenth Amendment. On April 1, 1870, Morton introduced another bill (S. 744) to substitute for his first bill. All these Senate bills, including Stewart’s own bill (S. 503), were put aside when the Senate Judiciary Committee decided to bring before the Senate a new bill (S. 810, originally proposed by George F. Edmunds of Vermont on April 19, 1870) for discussion. Id. at 1584, 2808, 2942.
37. The original version of the Senate bill had 17 sections. Sections 1 to 5 prohibited federal and state officials or any individual from preventing black voters from exercising their right to vote, to register, and to fulfill the prerequisites of voting. Violations would be punished by fine or imprisonment or both. Section 6 authorized federal courts to hear cases under this law. Sections 8 to 10 empowered federal district courts to appoint election commissioners (which were later called “supervisors”), described the duties of the commissioners, and provided fees for the arrests they would make at the polls. Sections 11 and 12 authorized the President to direct the enforcement and to use military force, when necessary, to aid the enforcement. Section 13 and 14 asked to remove those barred by the third section of the Fourteenth Amendment from holding office and continued to bar them from holding offices. Sections 15 to 17 enforced the rights proscribed by the Civil Rights Act of 1866. Id. at 3559-62.
ate bill penalized individuals who conspired to deprive black voters of any of their civil and political rights. This was particularly important since the Ku Klux Klan carried out much of black disfranchisement in the South. Third, the Senate bill provided for a substantial enforcement machinery. While the House bill only authorized federal courts to hear cases, the Senate bill empowered judges to appoint supervisors to watch the process of voting and registration, to make arrests, and to appoint deputies, who were also authorized to make arrests at polls. The bill also gave the President the power to use federal military force "for the purpose of the more speedy arrest and trial of persons charged with a violation of this act."

Fourth, the Senate bill enforced not only the Fifteenth Amendment, but also the third section of the Fourteenth Amendment by continuing to disqualify former rebels from holding office and by removing those who already held office. To prevent Klan actions against blacks outside the polling places, the bill enforced some provisions of the Civil Rights Act of 1866. Enforcement of the Fourteenth Amendment and the Civil Rights Act of 1866 was absent from the House bill.

Obviously, Senate Republicans were far more perceptive than their House counterparts in detecting the problems in the South. They saw the real obstacle to black suffrage not in the election laws of Southern states, but in the terrorism of the Ku Klux Klan. They realized that many infringements of black suffrage occurred not at the polls, but on plantations and highways, or other places with an "immediate relation to registration and to voting." Furthermore, they believed that more voting prerequisites would be "invented" to disfranchise black voters once Democrats took over Southern state governments. Finally, they saw that the Republican state governments in the South alone could not stop the Klan terror or the rapid development of black disfranchisement by force, and that the federal government was obliged to intervene. Thus, the Senate intended to create an enforcement bill that would provide black voters with more complete protection, and that would be executed by an adequate federal enforcement machinery. The framers clearly expected the bill to

38. Id. at 3561.
39. Id. at 3559-61.
40. Id. at 3559.
41. In his criticism of the House bill, Senator Stewart labelled it as "good for nothing." He pointed out that the House bill provided nothing to protect black voters if they were driven out of the polls or prevented from registration by a mob. He agreed with Senator John Pool of North Carolina that conspiracies against black voters could occur on plantations rather than at polling places. Id.
be a cure-all to stop the rampant Ku Klux Klan, to protect the civil and political rights of African Americans, and to defeat Democratic attempts to regain political power in the South.

Both Houses started to debate their own enforcement bills in mid-May. After a brief debate, the House passed its bill with overwhelming partisan support on May 16.\textsuperscript{42} When the House bill reached the Senate on the same day, the upper house was virtually in a stalemate. Moderate Republicans immediately asked to substitute the House bill for the Senate version in order to further the discussion of enforcement. Having seen that it was impossible to neglect the House bill, William Stewart, the Republican floor manager of the enforcement issue, agreed to have the House bill brought up for discussion. But as soon as the House bill was presented, Stewart asked to amend it by striking its original contents and inserting instead the whole Senate bill, under the title of the House bill. By this tactic, the House bill virtually became the Senate bill.\textsuperscript{43}

The initial debates in the Senate focused on which enforcement bill should be passed. Although opposed to both, Democrats particularly loathed the Senate bill. George Vickers of Maryland argued that "[t]he contingency or occasion for the passage of this act has not arisen . . . . [T]he extension of suffrage to the African race was not intended to enlarge the power of Congress over the white race. . . . The term 'appropriate legislation' confers no new power on Congress."\textsuperscript{44} Vickers obviously saw the Republicans' purpose of using the national power to change the political habit of the South and cried that "the ballot cannot elevate the colored man and make him equal to the white. . . . Providence has wisely made and separated the races by a law which no Government can annul. . . . The laws of nature, of the races, have in those respects created an inseparable barrier which neither legislation nor bayonets can demolish."\textsuperscript{45} Allen Thurman of Ohio called the Senate bill "inofficious and nugatory." Thurman was the only Democrat who criticized the bill on legal grounds. He argued that to put the trial of election perjury in the hands of federal courts was "to take away from the State courts the right to punish offenses" because election perjury was also an offense under many state laws.

\textsuperscript{42} The vote was almost strictly by party, with 131 yeas (all Republicans), 43 nays (42 Democrats and 1 Republican) and 53 not voting (34 Republicans, 18 Democrats, and 1 Conservative). \textit{Id.} at 3504.

\textsuperscript{43} When the Senate could not agree on its own bill, John Sherman suggested that the House bill be considered as a substitute. \textit{Id.} at 3518.

\textsuperscript{44} \textit{Id.} at 3481.

\textsuperscript{45} \textit{Id.} at 3484.
He also criticized the congressional authorization that the President could use military power to keep order at polls as putting "the civil under the military authority in its most vital point."46

But the Republicans were also divided. A major criticism from the Republican camp was that the Senate bill was too harsh on former rebels and too broad in its scope. Orris S. Ferry, a conservative Republican from Connecticut, asked to remove sections 13 and 14 from the Senate bill concerning the political disability of Southern whites. Ferry argued that disqualifying them from suffrage and political offices was "in defiance of the principles upon which our party rests... [and would] injure the whole society."47 His argument for restoring the political rights of the former rebels was that since the amendments established national citizenship and national political rights, the former rebels should be encouraged to "get out of this sectional isolation and come up to the grandeur of American nationality."48 Ferry's real concern, however, was that the party should develop a conciliatory policy toward Southern whites, "the class out of whom we have got to win adherents to the Republican party, or the Republican party will go down in every Southern State."49 He deeply distrusted black voters, who, in his view, would "retain the old attachment to the old home and the old master, and those attachments will stay with them till they die."50

Ferry's remarks won support from a group of Republicans from the South, including Hiram R. Revels of Mississippi, the first black to serve in the Senate. Revels also urged political leniency for Southern whites.51 Frederick A. Sawyer of South Carolina praised Ferry for echoing "the sentiments of the vast majority of the people of the Re-

46. Id. at 3487, 3488.
47. Id. at 3490.
48. Id.
49. Id. at 3511.
50. Id.
51. This was the only speech Revels made in the whole debate over the enforcement act. Revels's term in the Senate was very brief (February 25, 1870, to March 3, 1871) and he was placed on an insignificant committee on education and labor. During his term, Revels introduced three bills on Mississippi's economy and mixed education in Washington, D.C., none of which became law. Revels also introduced eighteen petitions, many of which asked for removal of political disabilities for white Mississippians. As for enforcing the Fifteenth Amendment, Revels seemed to respond coldly to the radical Senate bill, although in his first speech on March 16, 1870, on the Georgia readmission bill, he strongly demanded federal protection to support the state government. Revels was the only black representative in the entire Congress when the first and second enforcement acts were debated, but he was absent from final voting of both acts. Id. at 1986-88, 3520 (statements of Hiram R. Revels); see also SAMUEL D. SMITH, THE NEGRO IN CONGRESS, 1870-1901, at 20 (1940); MAURINE CHRISTOPHER, BLACK AMERICANS IN CONGRESS 9 (1976).
publican party,” and argued that continuing the political disability of Southern whites would “cut off from the Republican party one of its great elements of strength.” 52 Conservative concerns about whether former rebels could hold office reflected their belief that the future of the Southern Republicanism depended on white instead of black voters, a belief that would gain widespread acceptance in the party in the late 1870s and the 1880s.

Radical Republicans were upset with the moderates and conservatives for advocating a “policy of conciliation.” 53 They quickly saw the danger in returning former rebels to political offices. Oliver P. Morton argued that without black suffrage firmly established in the South, allowing politically disabled whites to hold office would dismantle black suffrage and make the Fourteenth Amendment “a perfect nullity.” Morton warned his colleagues that if Jefferson Davis were allowed to return to the Senate, the black Senator Hiram Revels would be driven out of the Senate. Thus, the policy of conciliation, cried Morton, was “a mistaken policy that has failed from the very first.” The former rebels, Morton stated, “have been cast in the mold of the rebellion, and in that mold they will remain.” 54 Simon Cameron agreed, endorsing a measure that would require the enforcement of black suffrage prior to the removal of white disabilities. The Pennsylvania Republican argued that “the rebels of the war were rebels still.” 55

While most Republicans did not want to restore the rights of the former rebels to hold office, they were hesitant to commit to an extensive federal law. They feared that protecting black political rights to such a comprehensive degree might supersede the states’ right to regulate elections. For many Republicans, the regulation of suffrage had been and remained a state matter, over which the federal government had no authority except for the color qualification. In their view, enforcement of black suffrage should never go beyond a narrow inter-

53. The use of “radical” or “moderate” is confined to defining Republicans’ stances on enforcement. In other words, these terms are used as working terminology. People switched their positions on the issue from time to time, even during the discussion of the same bill, as Oliver P. Morton, John Pool, and Carl Schurz did. “Radical Republicans” refers to those Republicans who tended to support a harsher policy toward the South and more comprehensive federal protection for black voters. “Moderates” or “conservatives” refers to those who tended to leave the question to the states, with a minimum of federal interference.
55. Id. at 3519.
pretation of the Fifteenth Amendment.56 John Sherman, who approved the enforcement but opposed a harsh bill, argued that the second and third sections of the Senate bill were "too vague and indefinite to found an indictment upon." According to Sherman, the Fifteenth Amendment should be interpreted strictly, but not to the extent that all other state registration laws would be overruled to protect black voters.57 Oliver P. Morton, who had earlier opposed the moderate "policy of conciliation" because it restored former rebels back to political office,58 criticized the Senate bill as "too general in its character . . . without reference to the Fifteenth Amendment." John Pool, a Republican from North Carolina, also criticized the Senate bill as too broad and inapplicable to individuals.59 These Republicans shared some of the Democrats' views on state regulation of suffrage and doubted federal authority to punish individual violators of the Fourteenth and Fifteenth Amendments. Where the line between state and federal authority over these issues remained undefined, these Republicans chose a milder and more restrained enforcement policy.60

For the radicals, the states' rights theories were "fallacies," and were no more than an excuse to deny the federal government the authority to protect the political and civil rights of American citizens. To those who fought the Slave Power before the war, the term "state rights" was still an irritating reminder of the cause of the late war. Attacking the call for respecting states' rights, Carl Schurz argued that black liberties and civil rights had been subject to the mercy of the states, rescued by the Republican-led revolution, and placed "under the shield of national protection."61 In his view, the late war and Reconstruction had transformed the constitutional culture of American

56. Morton argued that suffrage was still "completely under the control of the several States . . . except we have taken away their power to deny suffrage on account of race, color, or previous condition of servitude." Id. at 3569-70.
57. Id. at 3570.
58. Id. at 3489.
59. Both Morton and Pool had no consistent position in the debates. In later discussion, Morton contributed a section to the final version of the bill (the fifth section) to punish anyone who wanted to prevent blacks from voting by economic threats. Pool contributed to the sixth section of the final bill, which punished individual conspiracies against black voters outside polling places. Id. at 3569-70, 3611-12.
60. The Democrats regarded the Senate bill as particularly dangerous, because it severely punished "not officers of a State at all, mere private individuals, [but] mere trespassers, mere breakers of the peace, mere violators of the State law." Id. Democratic Senator John P. Stockton of New Jersey, a leading opponent of both bills, stated that "the Fifteenth Amendment will enforce itself . . . [It] would be wise not to pass any bill." He charged the Senate bill with creating "a great many new offenses," Id. at 3568. Allen G. Thurman of Ohio called the Senate bill "wholly unnecessary and nugatory." Id. at 3485.
61. Id. at 3608.
society, which "secures to the generality of its members . . . to the whole people, and not to a part of them only, the right and the means to cooperate in the management of their common affairs, either directly, or, where direct action is impossible, by a voluntary delegation of power." Thus, to guarantee the enjoyment of national rights, the national government was obliged to provide adequate protection for its citizens.62

Undoubtedly, radical Republicans looked to black suffrage as a major support for the development of Republicanism in the South, but their motivations for enacting a strong enforcement bill were more complicated than simply gaining political advantage. They believed that black suffrage in Southern states was "for half a century, perhaps a century, to be the safeguard by which the authority of the Union [was] to be maintained and upheld in those States."63

The radicals broadly interpreted the Fifteenth Amendment. They saw that black suffrage could be disrupted by various state and individual actions discriminating on the account of race or color and that, if such a violation occurred, the federal government had to punish it. Radical Republicans refused to see voting rights as isolated from the rest of the political and social context. Rather, the right to vote was an integral part of federal citizenship and closely associated with the exercise of civil rights. Senator William Stewart of Nevada stated that the enforcement policy had to meet a hundred prerequisites that were invented by the States and had to prevent the Ku Klux Klan from going upon plantations and intimidating people.64 The use of "general language" in the Senate bill and the inclusion of the power to enforce civil rights prescribed by the Fourteenth Amendment and the Civil Rights Act of 1866, Stewart reasoned, were to cover any "act necessary to give a voter the right to vote."65 The differences between the House and Senate bills was that the House bill was "simply to follow on after the violation of law and punish the man who has violated it, in each particular case, by fine and imprisonment" while the Senate bill was "to carry out and enforce the principle of this amendment of the Constitution and give effect to the votes of colored persons offered at the polls."66

62. Id. at 3608-09.
63. Id. at 3613 (statement of Jacob Howard).
64. Id. at 3658.
65. Id.
66. Id. at 3563 (statement of Matthew H. Carpenter of Wisconsin).
Concerns about the reactionary nature of states’ rights theory, the need to consolidate national authority over citizens’ political and civil rights, and the broad interpretation of the Fifteenth Amendment supplied the rationale for the Senate bill. There was, however, a problem of time. The radicals wanted to enforce the Fourteenth Amendment and the Civil Rights Act of 1866 in separate bills, but they feared that there was “no time to take it up as a separate measure, discuss it, and pass it at this session.”

As a result, the Senate debates provided a kaleidoscope of amendments and changing positions. The Senate bill actually grew instead of being reduced or restricted. John Pool of North Carolina suggested that private individuals could be punished if they violated the Fourteenth and Fifteenth Amendments. Although those amendments prohibited only state violations, he said, “If a State by omission neglects to give to every citizen within its borders a free, fair, and full exercise and enjoyment of his rights, it is the duty of the United States Government to go into the State.” Pool’s interpretation became the underpinning of the bill’s sixth section, which punished individual violations.

Realizing that most Southern blacks still depended upon the white economy, Morton, earlier a Republican critic of the Senate bill, asked to insert punishments against individuals who prevented blacks from voting by using economic threats, such as unemployment, ejection from rented houses, lands and other property, or refusing to renew leases or contracts for labor. These threats, Morton believed, were the most effective means for former masters to control the freedmen’s votes and were “the great[est] . . . danger to which the colored population of the South [are] exposed . . . .” The Senate immediately accepted Morton’s amendment and it became the fifth section of the final bill.

During the debate, problems at the Northern polls were also discussed when John Sherman asked to add three sections dealing with fraudulent voting practices in Northern cities. Referring to the Republican loss in New York City in 1868, Sherman called the election fraud “a grievance which has become of greater magnitude even than denial of right to vote to colored people . . . .” Because of the fraud committed in Northern cities like New York, where the Democrats controlled every congressional district, the purity of the nation’s entire

67. Id. at 3559.
68. Id. at 3613.
69. Id. at 3678.
70. Id. at 3663.
election system was destroyed. According to Sherman, Northern election fraud had become “a national evil so great, so dangerous, and so alarming in character” that Congress had to adopt some provisions “to protect itself and the people from the danger arising from these great frauds.”

Sherman proposed to add three sections to the Senate bill to punish fraud in voting and registration. Democrats immediately opposed Sherman’s amendments, calling them inappropriate and partisan. But Republicans stood firm, and Sherman’s proposals were eventually written into the enforcement law. The Sherman sections on election fraud actually opened a new vista for the enforcement, which would become a major issue two months later when a naturalization bill was brought into discussion.

After a tiring debate of nineteen hours on May 20, the Senate passed the bill. When the bill returned to the House for concurrence, the House immediately asked for a joint conference to discuss the differences. But the bill remained substantially unchanged and was once again approved by the Senate on May 25. Democrats in the House tried to filibuster against the measure, which they called “a fatal blow at the State rights.” But owing to the Republican majority, the House succeeded in passing the conference report of the bill. On May 31, 1870, the bill went into effect with President Grant’s approval.

The first Enforcement Act, altogether 23 sections, enforced several clusters of Reconstruction laws, including the Fourteenth and Fifteenth Amendments and the Civil Rights Act of 1866, but the focus was on black suffrage. The bill restated the first section of the Fifteenth Amendment in a positive tone, asserting that all U.S. citizens’

71. Id. at 3664.
72. Sherman’s three sections eventually became sections 21, 22, and 23. Id.
73. Id. at 3664-65 (statement of Eugene Casserly); id. at 3672 (statement of Charles Sumner).
74. A majority of Republicans finally agreed with the Senate amendments to the House bill. The voting result was 43 yeas (all Republicans), 8 nays (6 Democrats and 1 Union Republican [Joseph S. Fowler]), and 21 absents (4 Democrats and 17 Republicans). Id. at 3690.
75. In his report to the Senate, Stewart, who headed the senatorial representation of the joint conference, said that the report did “not change any of the essential features of the bill as it passed the Senate, but [only made] it a little more harmonious . . . .” Id. at 3754. The vote was overwhelmingly partisan, with 48 yeas (all Republicans), 11 nays (10 Democrats and 1 Union Republican) and 13 absents (1 Conservative and 10 Republicans, including Hiram R. Revels, Carl Schurz and Henry Wilson). Id. at 3809.
76. For details of the House Democrats’ remarks on the bill, see speeches made by Michael C. Kerr of Indiana, James B. Beck of Kentucky, Clarkson N. Potter of New York, James A. Johnson of California, and John D. Stiles of Pennsylvania. The final vote in the House was 133 yeas (all Republicans), 58 nays (55 Democrats, 2 Conservatives and 1 Republican), and 39 not voting (31 Republicans, 7 Democrats and 1 Conservative). Id. at 3872-81, 3884.
right to vote "at any elections by the people" should not be deprived on the basis of race, color, or previous condition of servitude. The bill ordered election officers to give equal opportunity for all voters to meet any prerequisites required by the states for voting without racial discrimination (sections 2 and 3); punished those who obstructed qualified voters from voting and registering by force, bribery, threats, and intimidation (section 4); imposed a severe fine and imprisonment upon those who prevented voters from exercising suffrage by threatening to terminate existing financial arrangements with the voters, such as employment, contracts and tenancy (section 5); and penalized two or more individuals who, by conspiracy or in disguise, intimidated or injured a citizen with intent to prevent his "free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States" (section 6).  

The bill also provided a mechanism for enforcement, including authority for federal district courts to hear enforcement cases, federal district attorneys and marshals to investigate violations of the Fifteenth Amendment and make arrests, and the president to use military force to keep order at the polls if needed (sections 7-13, 19, 23). The second object of the act was to ban fraudulent practices in elections (sections 20-22). Third, the act continued to bar former rebels from holding political office, essentially a provision contained in the third section of the Fourteenth Amendment (sections 14-15). Finally, the bill provided that all persons, including immigrants, should be given equal civil rights, such as the right to make contracts and to sue, and others secured by the Civil Rights Act of 1866 (sections 16-18).  

77. Emphasis is added by this author. The act did not specify what was "any right or privilege granted or secured to him by the Constitution or laws of the United States." But given the context of the debates, it clearly meant the rights secured by the Fourteenth and Fifteenth Amendments, and the Civil Rights Act of 1866. The right to vote was certainly included in "any right or privilege." This section was strongly opposed by the Democrats and moderate Republicans and would be challenged by the Supreme Court in its 1876 United States v. Cruikshank decision. But no action was taken by the Court regarding this section, which was adopted in the Revised Statutes in 1875 and 1878, and has remained in federal statutory books until today. For a more detailed discussion of this issue, see Xi Wang, Black Suffrage and Northern Republicans, 1865-1891, ch. 3 & 5 (1993) (unpublished Ph.D. dissertation, Columbia University); see also Michael Les Benedict, Preserving Federalism: Reconstruction and the Waite Court, 1978 Sup. Cr. Rev. 39-79.  

78. Section 16 provided that same right should be applied to all persons in the United States, citizen or alien, who should enjoy "the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens" and should be subject to equal punishment and taxation. No unequal taxation should be imposed by any state upon foreign immigrants. Section 17 provided that no unequal punishment should be imposed upon a foreigner because of his color or race. Section 18 declared that the Civil Rights Act of 1866 would be enforced by this enforcement bill. Cong. Globe, 41st Cong., 2d Sess. app. 651-53 (1870).
of the diversity of the objectives of the bill, the framers of the bill finally entitled it "An Act to enforce the Fifteenth Amendment and for other purposes."  

The enforcement bill, known as the Enforcement Act of May 31, 1870, was the first and most important congressional legislation to enforce the Fifteenth Amendment. All other Enforcement Acts passed thereafter were either a derivation or extension of this act, or aimed at other subjects with the suffrage enforcement included as a rider. The act concretely defined the extent to which voting rights would be exercised and protected under the Fourteenth and Fifteenth Amendments. It gave substance to the Fifteenth Amendment and identified the connection between civil and political rights. While the Enforcement Act provided punishment for individual actions against black suffrage, it did so in the historical context that much of the Southern terrorism was committed by conspiracies of allied individuals (Klan members) unpunished by state laws. The act was also significant because it was the first to extend federal enforcement in the North, which signaled the party's effort to establish a national system of election supervision.

But the act caused fear, even among those who pushed it through Congress. Carl Schurz, a staunch supporter of the act, warned his colleagues that federal enforcement of black rights should not be used "as soon as the pressure of necessity ceases." If the Republican party attempted "to carry that revolution much farther in the direction of an undue centralization of power[, it] would run against a popular instinct far stronger than party allegiance has ever proved to be." Not long thereafter, Schurz became a leading spokesman for the liberal Republicans, who would constantly attack the enforcement policy.

Republican disagreements on the Senate and House bills were closely observed by the New York Times, which believed that they indicated "the sentiment of the Senate on the question of general amnesty and the policy of the Republican party toward the People of South." Later the paper asserted that the fight over enforcement

79. 16 Stat. 140 (1870).
80. The second Force Act (July 14, 1870) was aimed at standardizing the process of naturalization. The third (February 28, 1871) reinforced the first Enforcement Act of May 31, 1870. The fourth, known as the Ku Klux Force Act (April 20, 1871), focused on punishing Klanism although it enforced black rights to vote. The fifth, contained in an appropriation bill of 1872, had a few sections dealing with judicial enforcement in elections. These acts will be discussed in detail in the latter parts of this paper.
82. The Fifteenth Amendment, N. Y. Times, May 18, 1870, at 1.
showed that the Republicans were split into two factions, "the one seeking to inaugurate new and harsh measures toward the South, and the other to secure pacification and to construct some wise and prudent policy independently of old issues of the war." The *Times* had detected the party's problem, and the problem would not go away.

### III. THE NATURALIZATION ACT

Although the primary object of the Enforcement Act of May 31, 1870, was to protect Southern black voters from Klan terrorism, several sections of the act also dealt with fraudulent election practices occurring in the North. True, the Fifteenth Amendment neither addressed the issue of election fraud nor specifically authorized Congress to provide appropriate legislation to correct the fraud. But the reality that Northern fraud could hurt the party as much as Southern black disfranchisement, and eventually hurt the whole system of congressional elections, alarmed the Republicans. For such Republicans as John Bingham in the House and John Sherman in the Senate, removing election fraud in the North was as important as protecting black suffrage in the South. During the debate over the first Enforcement Act, they reminded their colleagues that the fraudulent election practices found in Northern cities could come back to haunt the party.

While the Republican party might protect Southern black voters with the first Enforcement Act, the measure was defeated in the North by the Democratic party, which became increasingly effective in regaining influence over Northern voters. The Republican party's loss in New York during the 1868 presidential election was still a fresh memory. Not only did New York fail to give its electoral votes to Grant and Colfax, but the Democratic party also won thirteen of the state's thirty-one seats in Congress.

One serious fraudulent practice in Northern cities, particularly in New York City, was that recent immigrants cast votes by using false naturalization papers to certify citizenship. Although national citizenship was constitutionally confirmed and established in 1866 by the
Civil Rights Act and in 1868 by the Fourteenth Amendment, the naturalization of foreign immigrants remained largely state business. Because neither the Fourteenth nor the Fifteenth Amendment clearly conferred the right to vote upon citizens or made suffrage part of the integral rights of national citizenship, the states were left to regulate matters of suffrage, including those regarding naturalized aliens. Thus, controlling the naturalization process in places like New York City, where immigrants came in large numbers, meant controlling of new voters. But the Democrats posed a particular threat to the Republicans in New York City, largely because the Democratic machine controlled the bulk of the city's new immigrant votes. With the elections of 1870 coming, the elimination of fraud in Northern elections became an urgent issue for the Republicans. The Republicans in Congress proposed to make the process of naturalization a federal matter and to eliminate such corruption in elections.

The Naturalization Act of 1870, the second of the voting rights Enforcement Acts between 1870 and 1872, originally had nothing to do with the Fifteenth Amendment. The bill primarily established a national system for naturalizing aliens. But the congressional debate over the bill led to the unusual explosion of disagreements among the Republicans on a number of issues: the relation between naturalization, citizenship, and the right to vote; race and qualifications of national citizenship; universal suffrage; and the future of American democracy. Because the naturalization bill was mostly discussed within the Republican camp of the Senate, the debate revealed much about the dilemma of the Republican party in its fight for the principle of political equality. It was clear that some party leaders had re-

86. There was no uniform regulation imposed by the federal government on enfranchising an alien, before or after he was naturalized or declared the intention to be naturalized. Naturalization was left to the states, as was enfranchisement. Alien suffrage varied from state to state. In 1848, the Wisconsin Constitution gave aliens the right to vote once they declared their intention for naturalization. In 1850, Indiana allowed aliens to vote one year after declaring their intention, but they had to wait five years before they could be naturalized. Illinois tried to extend the franchise to aliens, but the proposal was defeated in 1848 by a narrow margin. The Michigan Constitution of 1850 allowed white male citizens to vote only after residing six months in the state, and disallowed foreigners to vote. The Kentucky Constitution of 1850 required two years of residence before aliens could vote. In 1857, Minnesota imposed a six-month-residence requirement on foreign immigrants who wanted to vote. In 1859, Oregon began to allow aliens to vote after they declared their intention and lived in the state one year, an additional six months was required for the natives; but Chinese, blacks, and mulattoes were specifically excluded from voting. In 1859, Massachusetts amended her constitution to require aliens to live in the state for two years after naturalization in order to vote. "In the middle states the foreigner was being enticed with brief residence periods and even the franchise itself." KIRK H. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 113-34 (1918); JAMES H. KETTNER, THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608-1870, at 344-45 (1978).
fused to commit the party to universal suffrage on the ground that it would damage the party and its influence in local economies and politics.\textsuperscript{87}

The naturalization bill was first introduced into the House by Noah Davis, a radical Republican from New York, on June 13, 1870, just two weeks after the first Enforcement Act had become law. According to Davis, the measure was to amend the existing naturalization laws, to punish fraudulent practices in the naturalization process, and to give federal courts exclusive jurisdiction over controversial cases concerning naturalization. It was a simple, straightforward bill, with no reference to voting rights.\textsuperscript{88} Although some Democrats voiced their opposition, the Republican majority passed the bill without difficulty.\textsuperscript{89}

When the Senate took up the bill a week later, Senator Roscoe Conkling, a New York Republican and a member of the Judiciary Committee, presented the House bill with "an amendment in the nature of [a] substitute."\textsuperscript{90} His substitute was much more complicated and substantial than the original House bill. Eleven of the 13 sections of Conkling's bill dealt with naturalization matters, encompassing all the details regarding procedures, manners, fees, qualifications for naturalization and citizenship, and the punishments for frauds in the naturalization process. Like the House bill, it specified that only federal courts were authorized to handle offenses concerning naturalization practices.\textsuperscript{91} But the Conkling bill went beyond the issue of naturalization and into the sphere of voting. In the last two sections, the bill empowered federal district or circuit court judges to designate depu-

\textsuperscript{87} Few studies of enforcement give extensive attention to the naturalization bill. Others simply ignore it. I believe the bill had a logical and political connection to the first and third Enforcement Acts. More importantly, the debate over the bill substantially reflected Republican perceptions of political equality in a larger socioeconomic context.

\textsuperscript{88} Davis' bill had only four sections. The first provided punishment for fraudulent and false oaths, affirmation or affidavits regarding the naturalization of aliens; the second punished false conduct in applying for citizenship; the third punished the use of naturalization certificates falsely obtained; and the fourth provided that the U.S. courts would hear cases relating to the act. \textit{Cong. Globe}, 41st Cong., 2d Sess. 4366-67 (1870).

\textsuperscript{89} As in the case of the first Enforcement Act, the vote was strictly partisan, with 130 yeas, 47 nays and 53 not voting. \textit{Id.} at 4368.

\textsuperscript{90} \textit{Id.} at 4834-36.

\textsuperscript{91} The first five sections of the bill detailed the procedures, residence qualifications, methods, time, and place to apply for naturalization by aliens. The sixth and seventh sections proposed regulations regarding the use of the citizenship certificates and the naturalization of the children of naturalized citizens. Section 8 authorized that certificates of citizenship be uniformly issued by federal courts. Section 9 punished fraudulent uses of the certificates. Section 10 punished those who disturbed the commission of federal judges. Section 11 regulated fees for naturalization. \textit{Id.}
ties who had to attend all places fixed for voter registration in each precinct in cities and towns of more than 20,000 people. These deputies were designated to watch registration, voting, and counting, and "to challenge any name proposed to be registered and any vote offered" (section 12). The bill also empowered federal marshals to appoint as many deputies as needed to keep order at the polls, and to make all necessary arrests "for any offense or breach of the peace committed in their view" when congressional elections were held (section 13). Essentially, the measure would require a naturalized citizen to present his certificate, authorized by a federal court, before voting. 92

In the long run, Conkling's bill might be understood as a genuine effort to modernize the federal system administering naturalization. 93 Even for the time, the bill contained a special constitutional meaning: empower the federal government to control the process of recruiting new American citizens, since national citizenship was confirmed by the Fourteenth Amendment. The purpose of the bill was to remove the states' sole jurisdiction over citizenship and to have the national courts uniformly handle the process of conferring citizenship upon naturalized aliens. Conkling declared, "the bill does nothing except to purify the process of naturalization, and . . . to render more assured, to appreciate, to set a new value upon the rights of American citizenship . . . ." 94 But given the political context of 1870, the bill was enacted for more immediate partisan purposes: to break Democratic voting power

92. Id. at 4835-36.

93. According to Frank G. Franklin, the issue of establishing a uniform rule of naturalization in the United States was raised in the Constitutional Convention of 1787, but the idea was rejected. In every naturalization law made before 1861, the authority to process naturalization was given to the state and federal courts; in practice, however, naturalization was conducted mainly by individual states. The Naturalization Act of 1790, the nation's first, permitted free white persons to be naturalized after two years of residence in the United States and "upon application to any common law court of record in the state where they had resided for one year." FRANKLIN G. FRANKLIN, THE LEGISLATIVE HISTORY OF NATURALIZATION IN THE UNITED STATES 48 (1906). The Naturalization Act of 1795 required a longer residence and a preliminary declaration of intention and renunciation of former allegiance and of any title of nobility, but retained the color requirement. Id. at 70. The act specified that "the supreme, superior, district or circuit court of some one of the states or of the territories . . . or a circuit or district court of the United States" was empowered to naturalize aliens. Id. at 71 n.28. The Naturalization Act of 1798, which was produced under the fear that the United States might get involved in the European war, only amended the length of the residence requirement. Id. at 93. The Naturalization Act of 1802 again kept the color requirement and required a registration of all aliens in the office "of some federal or state court." Id. at 107. The subsequent naturalization acts of 1813 and 1824 made no substantial change in the authority of naturalization. Id. at 117-28, 167-83. Several attempts were made in 1845 and in the late 1850s to amend the naturalization laws, but no bill passed Congress.

94. CONG. GLOBE, 41st Cong., 2d Sess. 5121 (1870).
in New York and to prevent falsely naturalized aliens from voting in Northern congressional elections, especially in the big northern cities with their high ratio of alien populations.

Neither Conkling nor any other member of the Committee explained why the last two sections were added to the bill. But the rationale underlying the arrangement was obvious: to have federal officials be present at the polls in populous cities to challenge foreign-born voters who were unlawfully naturalized. Conkling may have calculated that such an arrangement was a logical extension of the first Enforcement Act, which had provided the federal machinery to enforce black suffrage in the South. Conkling also may have felt that, since the federal government had the power to control naturalization (which in turn would lead to federal citizenship), it was the federal government's duty to review the voting qualifications of naturalized citizens at congressional elections. Whatever the reason, the last two sections of Conkling's bill linked the issues of naturalization, citizenship, and suffrage to the first Enforcement Act. Technically, the two sections regarding federal supervision of elections expanded the substance of the first Enforcement Act without going beyond its principles. These two sections also became the stepping stone for the Enforcement Act of February 28, 1871, which would give specific attention to Northern election fraud.

The Democrats immediately saw this measure as a Republican effort to block their efforts to recruit voters from naturalized citizens in the North and to help reinvigorate the Republican party in New York. But much of the Democratic attack focused on naturalization, especially the power of the states to naturalize aliens. Only Thomas Bayard of Delaware challenged the two sections concerning federal supervision at the polls. Bayard opposed Conkling's attempt to link suffrage, citizenship and naturalization, arguing that suffrage "may or may not be one of the incidents of citizenship" and should be decided by the states in which the naturalized citizens resided. Since the Fifteenth Amendment only limited states' rights to regulate suffrage on color, race, and previous conditions of servitude, it did not give the federal government "unlimited power" to supervise elections in the North.

Democrats were a weak minority party in the Senate and presented no threat to the passage of the bill. The real challenge was

95. Id. at 4837-40 (statements of Willard Saulsbury & George Vickers).
96. Id. at 5175 (statement of Thomas Bayard).
from the Republican party itself: many Republicans disliked the bill, and some of them loathed it. Republicans from the West and Midwest echoed the Democratic charges, calling the bill "an obstruction to naturalization." The West and Midwest wanted new immigrants, and in many states laws were passed to shorten the residency periods to attract permanent settlement. The lengthy and meticulous process of federal control of naturalization would stop the states from adopting a more liberal policy in this regard.97 Morton of Indiana, usually a supporter of federal action on behalf of black rights, complained about the complications in the proposed naturalization process and asked not to go beyond the House bill. James B. Howell of Iowa assailed the bill as an effort by New York Republicans to promote their own self-interests. Others warned that an unfriendly attitude toward naturalized citizens would cost the party popularity among immigrants and damage Republican forces at state and local levels.98 Ironically, the Republican opposition to the bill was based mostly on the ground that the states had the right to regulate naturalization. This view represented an emerging ideological split among Republicans on the definitions of state and federal power. It also indicated the political difficulties that the party would confront in its future enforcement program.

Under pressure, Conkling agreed to modify his proposal on the basis of the original House bill, but did not remove the last two sections since no Republican opposed them. But right before the Senate reached an agreement on the final version of the bill, Charles Sumner rose and proposed to add to the revised Conkling bill a new section, "[t]hat all acts of Congress relating to naturalization be, and the same are hereby, amended by striking out the word 'white' wherever it occurs, so that in naturalization there shall be no distinction of race or color."99

Sumner's logic was simple: since a color-blind American citizenship had been established by the Civil Rights Act of 1866 and the Fourteenth Amendment, it was necessary to remove racial discrimination from the national law of naturalization. Sumner probably made this proposal to correct existing federal naturalization laws, which permitted only "free white persons" to be naturalized. Such a proposal

97. Id. at 5115-17 (statement of Oliver P. Morton).
98. Id. at 5118-19 (statement of Carl Schurz).
99. Id. at 5121.
was consistent with Sumner’s anti-discrimination record. But unexpectedly, his amendment became an ideological time bomb that completely destroyed the agreement on the bill and almost killed it.

If Sumner’s proposal became law, no foreign immigrants entering the United States could be barred from applying for naturalization on the basis of color and race. Their naturalization would, after a certain period, enable them to obtain United States citizenship and, consequently, the rights accompanying it, including the right to vote. Such a proposal was absolutely unacceptable to Republicans from Western states, who were already engaged in heated debates about the issue of Chinese coolie labor, as waves of contracted Chinese workers rushed into the West and Rocky Mountain regions. Although it was still ten years away from the first anti-Chinese violence in the West, the anti-Chinese sentiment had become phenomenal. The Chinese question had come up during the debates on the Fifteenth Amendment and the issue was settled by a compromise: to leave the states the right to regulate nativity tests for potential voters. California and Oregon rejected the amendment; Nevada ratified it only after state Republicans were assured that the amendment would not enfranchise the Chinese. Under such circumstances, accepting Sumner’s proposal would mean political suicide for Republicans in the Far West. Thus,

100. The first naturalization act, passed by Congress in 1790, said that only “free white persons” could be naturalized as American citizens. Although naturalization laws were changed several times, no proposal had ever been raised to remove the word “white” from the existing laws. Sumner was the first Senator to challenge racial discrimination in naturalization. For the interpretations of “free white persons” and cases concerning this provision, see LUELLA GETTYS, THE LAW OF CITIZENSHIP IN THE UNITED STATES 62-69 (1934).

101. According to Roger Daniels, significant Chinese migration to the United States began with the California gold rush of 1849 and ended with the passage of the Chinese Exclusion Act in May 1882. The total number of the Chinese entering the United States during this period was nearly 300,000 and about 100,000 Chinese arrived from 1849 to 1870. ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850, at 9, 29, 39, 69 (1988). Stanford M. Lyman offers a smaller figure. According to his calculation, during the unrestricted period of Chinese immigration (1852-1882), about 100,000 Chinese men and 8,848 Chinese women entered the United States. STANFORD M. LYMAN, THE ASIAN IN THE WEST 27-28 (1970). But both authors agree that over 90% of these Chinese were adult males. The Chinese issue started as a regional concern in the early 1860s, but it soon became a national issue as the California Republicans lost their control of the state power in 1867 partly for their resolution in favor of voluntary immigration, which was interpreted by the voters as “pro-Chinese” statement. Thus, between 1868 and 1871, California Republicans opposed Chinese immigration and called on the federal government to halt their coming. By July 1870, some anti-Chinese demonstrations and mass meetings had been held in San Francisco and put pressure on the state lawmakers, who enacted anti-Chinese legislation and ordinances at the state and municipal levels. The first large-scale anti-Chinese violence occurred in Denver on October 31, 1880. William Gillette notes that in California in 1870 there were half a million whites, 49,310 Chinese, and only 4,272 blacks. GILLETTE, supra note 2, at 154; LYMAN, supra, at 18, 27-28.

102. GILLETTE, supra note 2, at 54, 77-78, 154-58.
as soon as Sumner’s proposal was made, it was immediately engulfed by criticism and opposition from Western Republicans.

William Stewart, who had just led the party’s fight for the Fifteenth Amendment and the first Enforcement Act, was the most vocal. Stewart claimed that he did not oppose protecting the civil rights of Chinese laborers, but frowned on having them naturalized and subsequently enfranchised. For Stewart, black enfranchisement was “an act of justice,” because

[t]he negro was among us. This was his native land. He was born here. He had a right to protection here. He had a right to the ballot here. He was an American and a Christian, as much so as any of the rest of the people of the country. He loved the American flag. Although he was ignorant, although he had been a slave, it became important that he should be enfranchised, so that he might protect himself in this great strife that we always have and always must have in a free government, where every man must take care of himself.103

But, Stewart said, the Chinese were entirely different, “pagans in religion, monarchists in theory,” who “look with utter contempt upon all modern forms as dangerous innovations.” To enfranchise the Chinese meant to subject the “the political destiny of the Pacific coast” to ignorant Chinese laborers.104

George H. Williams of Oregon, who later became Grant’s attorney general in charge of enforcing the Fifteenth Amendment, asked that the Chinese be excluded from Sumner’s proposal. Williams saw Chinese naturalization as a potential threat to the free labor ideology and practice in America. The Chinese laborers were an organized labor force, which in Williams’s view, could be equated with the old Southern slavery and turned into an organized political force if citizenship and suffrage were granted to them. Williams warned his colleagues that once the Chinese were enfranchised, “the black and white laborers of the country should combine to crush the [Republican] party which invites competition with their labor from China” at the next election.105

The Republican division over the Chinese issue was ironic. The line that once distinguished radicals from moderates and conservatives on the race issue was blurred on the Chinese issue. Sumner was the strongest defender of his proposal. Two of Sumner’s comrades were Lyman Trumbull of Illinois and William Sprague of Rhode Island. Trumbull, normally more conservative, charged both Stewart

103. CONG. GLOBE, 41st Cong., 2d Sess. 5152 (1870).
104. Id. at 5150.
105. Id. at 5158.
and Williams with racism and reminded them that it was "not long since the color of the skin being black deprived an individual of all his rights."\textsuperscript{106} Sprague, a textile manufacturer, supported Sumner's proposal mainly because it would eventually enable America to benefit from cheap Chinese labor. Carl Schurz, once identified as a radical and increasingly called a liberal Republican, disagreed with Stewart and Williams, but persuaded Sumner to withdraw the proposed color-blind naturalization law because it was "not yet fully matured" and "serve[d] to obstruct the passage of a useful bill."\textsuperscript{107}

Even Henry Wilson of Massachusetts shared the Western fear of Chinese labor. Well aware of the controversies surrounding the use of Chinese strikebreakers in Massachusetts, Wilson refused to support Sumner's proposal. He opposed the bill because he wanted to break up the importation of Chinese labor, which was a "modern slave-trade system" used by big corporations to challenge "the free labor of this country, North and South."\textsuperscript{108} Oliver P. Morton, who led several major Senate debates over issues of black rights, told Sumner that excluding the Chinese from suffrage did not contradict the Declaration of Independence because the Chinese did not have a natural right to enjoy American rights.\textsuperscript{109}

For opponents of Sumner's proposal, the issue of Chinese naturalization and suffrage was unlike the issue of black suffrage, which was "an act of justice." Naturalizing and subsequently enfranchising the Chinese was, in Williams' words, "a practical problem," not "a question of principle."\textsuperscript{110} The local anti-Chinese pressure, the fear of

\textsuperscript{106} Id. at 5164.
\textsuperscript{107} Id. at 5159. Schurz actually opposed all of the racial remarks made by Stewart and Williams against the Chinese immigrants. He saw no threat from the growth of the Chinese immigrant population. Instead of shutting off the Chinese, Schurz suggested that the country should try to Americanize the Chinese immigrants and, through them, to "propagandize" the American habits of consumption in China, and eventually to open a new market for American products in China. Id. at 5159-60. William Sprague saw the Chinese labor force as part of a growing international economic system, which would bring to the United States much-needed profits and cheap labor. While Stewart and Williams appeared more like provincial politicians, Schurz and Sprague were surely among the best minds of the Republican party in projecting the globalization of American economy, which would be partly materialized in the next century, although not quite in China. Id. at 5170-71 (statement of William Sprague).
\textsuperscript{108} Id. at 5161-62; \textsc{Foner}, supra note 20, at 483. Wilson's main point was that Sumner's proposal blocked the passage of the naturalization bill, which was important for the party. Although Wilson said that he would not oppose enfranchising the Chinese if they came voluntarily and were willing to assimilate into American culture, he did echo Stewart's anti-Chinese remarks by defining China as "a country of cheap labor, a country of paganism, [and] a country with a civilization wholly distinct from our own . . . ." \textsc{Cong. Globe}, 41st Cong., 2d Sess. 5175 (1870).
\textsuperscript{109} \textsc{Cong. Globe}, 41st Cong., 2d Sess. 5175 (1870).
\textsuperscript{110} Id. at 5158.
the revival of slave labor because of the unrestricted immigration of Chinese labor, the prospect of a great number of ignorant Chinese voters controlled by anti-free labor interests, the white workers moving into the Democratic camp in response to that prospect, and the dark image of Chinese political culture—all scared the anti-Chinese Republicans and made them put aside the principle of universal political equality and set limits for the enjoyment of American democracy. But excluding the Chinese from naturalization prompted a question: if a Chinese alien could be prohibited from becoming an American citizen and obtaining the right to vote because of his race, what was wrong with the Democrats who wanted to exclude blacks from suffrage for the same reason? To avoid such a dilemma, the Republicans resorted to the theory of constitutional origins, as Stewart’s argument showed. Blacks were citizens of the United States and entitled to vote. Most Republicans agreed that the Chinese should be ranked as a race culturally and politically insufficient to acquire the status of American citizenship and the rights attached to it.

The final vote on the bill was dramatic. Before Sumner’s proposal was called for a final vote, Democratic Senator Willard Saulsbury proposed, in an attempt to defeat the entire bill, that both Chinese and Africans be excluded from naturalization. The majority of Republicans immediately voted down the amendment, but the Democratic proposal alerted the Republicans. To show the party’s firm stance on black equality and “save the practical good . . . rather than endanger all,” Willard Warner of Alabama proposed to add a new section to the current bill so that naturalization could be extended “to the aliens of African nativity and to persons of African descent.” The new proposal won a majority Senate approval and became the last section of the Naturalization Act of 1870. After the vote, Lyman Trumbull tried to amend Warner’s section by putting “persons born in the Chinese empire” under the protection of Warner’s amendment, but the effort was voted down by an over-
whelming Republican majority.\textsuperscript{113} When Sumner's proposal came up for a final decision, many Republicans did not vote at all, while 19 Republicans joined the Democrats to defeat the proposal.\textsuperscript{114}

Probably because much of the debate was focused upon the Chinese question, the two sections regarding federal supervision at the polls were entirely ignored until the last minute. Again, it was Democrat Thomas Bayard who questioned the constitutionality of the two sections. But Bayard's question attracted no attention.\textsuperscript{115} On July 8, 1870, the Senate passed the naturalization bill,\textsuperscript{116} and a few days later, the House accepted the Senate's amendments. On July 14, President Grant signed the bill.

The final version of the naturalization bill remained largely the same as the original House bill, except for the last three sections that the Senate added. Sections 5 and 6 specified the duties and powers of federal officials at the polls in large cities, thus strengthening the provisions prescribed in the first Enforcement Act.

In a way, the Naturalization Act of 1870 (which was technically the second Enforcement Act) had no long-term impact on the course of enforcing the Fifteenth Amendment, especially in the South. This was because of its supplementary nature and the brief life of the two enforcement sections, which, in less than one year, would be superseded by the third Enforcement Act of February 28, 1871. But the act significantly linked the issues of suffrage, citizenship, and naturalization. The debate showed continued Republican support for black suffrage and political equality. It also showed that, while the party was still held together by the issues of the Civil War and Reconstruction, the Republican principle of political equality was subject to the pragmatic needs of the party's local constituencies. It highlighted North-

\textsuperscript{113} Id. at 5177. Trumbull's motive for extending naturalization to the Chinese was very complicated. His real purpose seemed to be to oppose African immigration rather than to naturalize the Chinese. He thought African naturalization would open "the whole continent of Africa, where are to be found the most degraded examples of man that exist on the face of the earth, pagans, cannibals, men who worship beasts, who do not compare in intelligence at all with the Chinese." But the majority was unmoved by his warning and defeated his proposal with 9 yeas, 31 nays and 32 absent. \textit{Id.}

\textsuperscript{114} The vote on Sumner's proposal was 12 yeas (all Republicans including Sumner, Sprague, Trumbull, and Fowler, who was normally a very conservative Republican), 26 nays (7 Democrats and 19 Republicans including Stewart, Williams, Conkling, Zachariah Chandler and Henry Wilson), and 34 not voting (3 Democrats and 31 Republicans). The bulk of the votes against Sumner's proposal was Republican. \textit{Id.}

\textsuperscript{115} Bayard's question was finally referred to the Committee of the Whole and had no further result. \textit{Id.} at 5176-77.

\textsuperscript{116} The vote was 33 yeas (all Republicans), 8 nays (1 Republican and 7 Democrats) and 31 absent (26 Republicans and 5 Democrats and Conservatives). Hiram R. Revels was again absent. \textit{Id.} at 5177.
ern concerns about political corruption and immigrant votes, which would became important issues to the liberal Republicans.

Constitutionally, the last section of Naturalization Act of 1870 was crucial for opening the door for African immigration, especially those settling in the Caribbean. But since Republican supporters were assured that few Africans could come to America at that time, the section served largely as a political gesture to accord with what Warner called "a ripened public opinion" on black rights rather than as a sincere policy to attract Africans to America.\footnote{117}

Watching the debate closely, Frederick Douglass praised Sumner for upholding the republican principles of political equality on the Chinese question. But the "bitter contest" among the Republicans made him doubt how endurable the party's future policy on black rights would be:

> A bitter contest, I fear, is before us on this question. Prejudice, price of race, narrow views of political economy, are on one, humanity, civilization and sound policy are on the other. In your position I see the value of fixed principles. While others hesitate you go forward. While others are entangled in the meshes of temporary expediency you can promptly move forward in the light and harmony of those principles which are broad, grand and eternal.\footnote{118}

**IV. Three Other Enforcement Laws**

The first two Enforcement Acts were enacted not only for ideological reasons, but to meet Democratic challenges in the elections of 1870, in both the North and the South. To the Republicans, the 1870 elections would test their strength for the 1872 presidential election. Soon after the second Naturalization Act took effect, President Grant, writing to Senator Roscoe Conkling of New York, expressed his concerns for the upcoming election. He added that "New York, the largest, is certainly the most important state to secure a fair election, and to secure to the Republican party if it is right. If it is not right a majority of the legal voters are the ones to so declare."\footnote{119} The Northern press, such as the *Chicago Tribune*, welcomed the Naturalization Act

\footnote{117. Oliver P. Morton made it clear that "there are some who have come from the West India islands who are desirous of being naturalized, but so far as Africa is concerned there are none that will come." *Id.*}

\footnote{118. Letter from Frederick Douglass to Charles Sumner, Rochester (July 6, 1870) (*quoted in* 3 *Life and Writings of Frederick Douglass*, supra note 9, at 222-23).}

\footnote{119. Letter from Ulysses S. Grant to Roscoe Conkling (Aug. 22, 1870) (on file with the Roscoe Conkling Papers, Library of Congress).}
and its provisions for the federal supervision of elections in large cities.120

On the election day of October 18, 1870, the federal agencies in New York, led by Noah Davis, who had resigned from the House and become the district attorney in the southern district of New York, carried out the Enforcement Acts. Twenty-six individuals were arrested, including a member of the Tammany Hall General Committee. A master list of 15,000 suspected names was compiled for poll watchers.121 According to the New York Times, voter registration in the city was reduced by twenty to thirty thousand.122 Despite the enforcement, the results of the 1870 elections were less encouraging than Republicans had either expected or hoped. Although Democrats in New York City failed to increase their seats due to the effectiveness of the Enforcement Acts, upstate Democrats won four more congressional seats.123 In the 1870 elections, the total number of the Democratic seats in the House rose from 69 in the third session of the Forty-First Congress to 100 in the first session of the Forty-Second Congress.124

The political situation in the South was equally threatening for the Republicans. With the aid of Ku Klux Klan terrorism, Democrats quickly returned to the center of the Southern political stage. In Georgia, Democrats won eighty percent of the seats in the state legislature and most of the congressional seats. General Dudley Du Bois, a leading Georgia klansman, was elected to Congress from the eastern district, where Klan intimidation was dominant. In Florida, the Republican majority was substantially reduced because black voters were threatened if they voted Republican.125 The Alabama Democrats won the lower house of the state legislature. Texas Democrats won three of the state's four seats in the House.126 Meanwhile, the first

120. The Chicago Tribune, after pointing out two or three minor weak points of the act, believed that if the law was "fairly and firmly enforced at the next election, every honest and decent Democrat throughout the land, as well as every Republican, will breathe freer, in the consciousness that one of the chief dangers to the republic has been removed." The Law Against Election Fraud, Chi. Trib., Oct. 19, 1870, at 2.

121. SWINNEY, supra note 85, at 107.


123. SWINNEY, supra note 85, at 111. Democrats in New York City had six seats in the House and the number remained unchanged in 1870 elections, but the total number of the New York Democratic seats in the House rose from 12 in the Forty-First Congress to 16 in the Forty-Second Congress. The Total Registration Largely Less than Last Year, N.Y. Times, Nov. 2, 1870, at 5.

124. These numbers are calculated from the rosters of the Congressional Globe for the Forty-First and Forty-Second Congresses.

125. TRELEASE, supra note 21, at 241-42.

126. According to Eric Foner, the defeat of the Republican party was due to a cluster of factors. In Georgia and Alabama, Democrats took advantage of the Republican infighting and
Enforcement Act was ineffectively carried out in the South. President Grant called attention to the need for enforcement, but he did very little to implement the law.127

At the end of the election, the Republicans were probably more alarmed by the Democratic gains in the North than by the Klan outrages in the South. Although the party maintained majorities in both Houses, a reversal was clearly possible in two years if Republicans remained idle on enforcement. The election result also made the first two Enforcement Acts inadequate in many ways. Just as the New York Times predicted, amendments to the first two Enforcement Acts were soon introduced into Congress at the beginning of the Third Session of the Forty-First Congress.128

The new enforcement bill, as reported by John Bingham from the House Judiciary Committee on February 15, 1871, aimed at providing technical details about enforcement machinery, which were believed to be missing or lacking from the first two Enforcement Acts. The bill had 20 sections, eighteen of which were devoted to details regarding the duties, performance, and power of federal enforcement officials and courts, and to punishments for violations of the law.129 Compared
demoralization. Violence was important, but varied from state to state. In Missouri, West Virginia, Virginia, and Tennessee, the party split. In the Deep South, violence played a more significant role. But around 1870, the Klan "devastate[d] the Republican organization in many local communities." FONER, supra note 20, at 441-44; TRELEASe, supra note 21, at 273.

127. TRELEASe, supra note 21, at 385-86. Later, Charles Sumner strongly criticized Grant for his indifference to the first Enforcement Act, which allowed the Ku Klux Klan to develop rapidly in the South. In a letter to Gerrit Smith, Sumner refused to endorse Grant's renomination and said that "[i]t is my solemn judgt . . . that the much-criticized Ku Klux legislation of the last Congress would have been entirely unnecessary, if this Republican President had shown a decent energy in enforcing existing law and in manifesting sympathy with the oppressed there." Letter from Charles Sumner to Gerrit Smith (Aug. 20, 1871), reprintE d in 2 SELECTEd LETTERS OF CHARLES SUMNER 569-70 (Beverly W. Palmer ed., 1990).

128. The General Results, N.Y. TIMES, Nov. 10, 1870, at 1. Between December 1870 and January 1871, Republicans in both Houses introduced several bills for discussion. CONG. GLOBE, 41st Cong., 3rd Sess. 170 (1870) (John Charles Churchill's and Thomas A. Jenckes's bills); id. at 378 (Churchill's second bill); id. at 1014 (Roscoe Conkling's bill).

129. The third Enforcement Act was basically an enlargement of section 20 of the Enforcement Act of May 31, 1870. In the new act, nineteen sections were added following the original section 20, which made fraudulent practice in voting and registration a federal crime and required all state laws regarding congressional elections to observe the federal law. The act repealed sections 5 and 6 of the Naturalization Act of July 14, 1870 (section 18), but re-enacted those sections in its second section. The Act detailed the procedures of appointing chief supervisors by circuit and district courts (sections 13 and 3); prescribed payment and the duties of supervisors in watching voting, registration, and counting; challenged doubtful voters, inspecting the registry, and making arrests (sections 4-6); empowered the supervisors and marshals to appoint their deputies (sections 8, 12); and provided penalties against offenders who molested enforcement officials and officials who neglected their duties (sections 7, 9, 10, 11). The act authorized circuit and federal courts to hear cases arising under the law and allowed such cases to be removed from state courts to federal courts upon petitions (sections 14-17). The last section (sec-
to the previous Enforcement Acts, the new bill had three radical features: the establishment of a powerful national system of election supervision with federal marshals, supervisors, and their deputies watching voting and registration processes; the removal of the all cases arising under the law from the state courts to federal courts (which essentially invalidated all state laws that encouraged false practices in voter registration); and the requirement of written ballots for congressional elections. The new enforcement bill obviously targeted the states’ power to regulate elections. The political contest of 1870 showed that Northern fraud and Southern Klanism were equally detrimental to Republican efforts to maintain the taxpayers’ rights and the party’s power. For some, the Northern election fraud was even more threatening. Any military attempt to overthrow liberties, declared Illinois Republican Burton C. Cook, “is far more remote than the possibility that the fountain of all law shall be poisoned and corrupted by such frauds . . . .”130 The new enforcement bill, in Bingham’s view, was to equip the national government with some kind of “power of self-preservation” against the state laws “acting separately and without violence” to “demolish the national government.”131

Democrats in both houses saw the bill as the Republican party’s “desperate extremity to retain power.”132 But the Democrats failed to filibuster against the bill, and it passed both houses with strong support from the Republican majority. President Grant approved the bill on February 28, 1871.133

While fighting to get the third Enforcement Act past Congress to suppress election fraud in the North, the Republican party was fighting a different battle in the South: suppressing the Ku Klux Klan. In 1870 and 1871, Klan terrorism continued to run rampant. A campaign
of violence and terrorism against black voters had begun in North and South Carolina. By the spring of 1871, a delegation from South Carolina informed President Grant that state authorities could no longer maintain order. Meanwhile, in North Carolina, Republican legislators were ousted from the state legislature. Governor Holden was impeached and convicted for misusing martial law.\textsuperscript{134} Harper's Weekly urged the Republican-controlled Congress to take immediate actions to protect black voters who "would prevent the national government [from] falling into the hands of the Ku Klux party."\textsuperscript{135} President Grant also pressed Congress to pass an effective act to control the Klan. Grant wrote to James Blaine, the Speaker of the House, and asked Congress to give "immediate attention" to "a deplorable state of affairs existing in some portions of the South." Even if Congress could only discuss a single subject in the coming session, Grant urged that it should be on "providing means for the protection of life and property in those sections of the country."\textsuperscript{136}

To suppress the Klan outrages, Republicans again resorted to "the broad conception of national authority spawned by the Civil War and embodied in the postwar amendments."\textsuperscript{137} Because the Civil Rights Act and the Fourteenth Amendment were applied to states' actions against the civil rights of blacks, the anti-black crimes conducted by private individuals (in other words, the Klan), which consisted of the main bulk of Southern outrages, went unpunished. Radical Republicans believed that the only way to stop the Klan outrages was to enact, as Benjamin F. Butler put it, "strong and vigorous laws . . . promptly executed by a firm hand, armed, when need be, with military power."\textsuperscript{138} The protection of black civil rights would require national action.

Republicans presented the anti-Klan bill, later known as the Ku Klux Force Act of April 20, 1871, in the House soon after the First Session of the Forty-Second Congress convened in March 1871.\textsuperscript{139}
The fourth Enforcement Act since 1870, it was an amalgam of several propositions. The great variety of subjects covered by the bill made some moderate Republicans believe that it had absorbed "the entire jurisdiction of the States over their local and domestic affairs." The debates were long—and more than eighty members of the House spoke. After many amendments, the House passed the bill on April 6. The Senate adopted the bill on April 10 with more than twenty amendments to perfect the wording. When the bill finally passed both Houses after two joint conferences, the votes were absolutely partisan. Grant approved the bill on April 20.140

The final version of the measure was short but retained much of its original strength. In its first section, the bill authorized federal courts to hear all cases regarding rights infringements under the Civil Rights Act of 1866. Section 2 was the core of the bill. It was actually an enlargement of section 6 of the Enforcement Act of May 31, 1870, which established the principle of conspiracy in civil rights but had proved vague and difficult to use in framing indictments. The new section spelled out more than twenty kinds of specific practices for which conspiracy was to be illegal, including using force or intimidation to interfere with voting rights in federal elections.141 This section virtually outlawed the Klan and similar groups that conspired to deprive citizens of their political and civil rights. Sections 3 and 4, which were very controversial, enlarged the president's power to use military force to suppress domestic disturbances and to suspend the writ of habeas corpus when organized conspiracies were powerful enough to obstruct authorities' execution of the laws. Section 5 required all ju-

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140. The final vote on the conference report of the bill in the House was 93 yeas (all Republicans), 74 nays (all Democrats) and 63 not voting (49 Republicans and 14 Democrats). CONG. GLOBE, 42nd Cong., 1st Sess. 808. In the Senate, the vote was 36 yeas (all Republicans), 13 nays (all Democrats and Conservatives) and 21 absents (20 Republicans and 1 Democrat). Id. at 831. These figures show that the voting strength of the Republican party in the House was not as strong as when other enforcement acts were passed. SWINNEY, supra note 85, at 154-79.

141. These practices included conspiracies by force or threat to overthrow the Government of the United States, to prevent the execution of any law of the United States, to prevent anyone from accepting or holding federal office, to injure federal officers and their property, to deter any party or witness in any federal court from testifying, to influence the verdict and indictment of any juror, to go in disguise upon the public highway to directly and indirectly deprive any person "of equal protection of the laws, or of equal privileges or immunities under the laws," to prevent "any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice President of the United States, or as a member of the Congress of the United States . . . ." Act of Apr. 20, 1871, ch. 22, 17 Stat. 13-14 (1871) (enforcing the Fourteenth Amendment).
rors in federal courts to take an oath that they had “never, directly or indirectly, counselled, advised, or voluntarily aided” any Klan conspiracy. Section 6 punished those who aided criminals penalized under the bill’s second section. Section 7 specified that the bill was not understood to supersede other enforcement acts.

The Ku Klux Force Act, Eric Foner observed, “pushed Republicans to the outer limits of constitutional change.” The Act defined crimes committed by individuals as offenses punishable under federal law. Although it was the most effective weapon for the federal government to suppress the Klan activities, the Ku Klux Force Act intensified Republican infighting and, in a sense, accelerated the party’s disunity in its policy toward the South. The Force Act passed when the liberal Republican movement was on the horizon. The liberals, composed mostly of former radical Republicans in the Northeast who were disgusted with the political corruption of the Grant administration, wanted a conciliatory policy toward the South and due restoration of traditional constitutionalism. Naturally, they became the arch-opponents of the Force Act. Carl Schurz, one of the founders of the liberal Republican movement and a former supporter of black rights, called the act “a general crime code for the states.” He blamed blacks for misusing their right of suffrage and therefore causing so much violence and disorder in the South. Enforcing black suffrage would not stop violence, Schurz argued; instead, the party should remove the political disabilities imposed upon the “good elements” in the South and make them the party’s future partners. He warned the radical Republicans that the “passing evil” could not be cured “at the expense of a permanent good.”

The Chicago Tribune ridiculed the Force Act as “attempting to cure a cancer with a compress.” The paper blamed the troubles in the South on “the evil fruits of Radicalism” and urged Republicans to abandon enforcement.

Many other Republicans worried about going beyond the limits of traditional constitutionalism. Although they welcomed federal assistance in certain economic and financial arenas such as railroad land grants and monetary policy, these Republicans opposed the federal interference with civil rights, a sphere previously reserved for

142. Id. at 13-15.
143. Foner, supra note 20, at 454-55.
144. For details on the intellectual and political origins of the liberal Republicans, see John G. Sproat, “The Best Men” Liberal Reformers in the Gilded Age 3-71 (1982).
state authorities. A sweeping enforcement would eventually lead to the creation of a highly powerful and centralized federal government, which would, in turn, produce political corruption. "We are working on the very verge of the Constitution," stated James Garfield, "and many of our members are breaking over the lines, and, it seems to me, exposing us, to the double danger, of having our work overthrown by the Supreme Court and of giving the Democrats new material for injuring us, on the stump." Even staunch Republican organs, like Harper's Weekly, expressed concerns about state rights secured by the Constitution, although it believed that an anti-Klan bill was necessary.

Contrary to the conservative constitutional thinking of the moderates and liberals, radical Republicans argued that as long as black voters in the South were neither safe nor free, the federal government was obliged to protect them. "The ballot is no protection against the bullet when he who holds the ballot is unarmed, homeless and landless. The vote is a great safeguard against encroachment upon rights among equals, but is no privilege to a dependant or serf," Ben Butler said. In his view, if the Democrats won the 1872 presidential elections, "all benefits of those Constitutional guarantees will be taken away from the colored man."

Although some Republicans, including Charles Sumner, shared some of the liberals' views and were persuaded to join their anti-Grant course, they still refused to commit themselves to the liberal cause, which would abandon the interests of blacks to win a victory in partisan infighting. For these Republicans, the consolidation of national authority over citizens' rights should precede the removal of the former rebels from political office. Restoring the political rights of

147. Letter from James Garfield to Burke Hinsdale (Mar. 30, 1871) (on file with James A. Garfield Papers, Library of Congress); Gillette, supra note 2, at 52.
149. BENJAMIN F. BUTLER, THE NEGRO IN POLITICS: REVIEW OF RECENT LEGISLATION FOR HIS PROTECTION-DEFENSE OF THE COLORED MAN AGAINST ALL ACCUSERS 6-10 (1871).
150. Sumner faced a difficult dilemma. His dispute with Grant on the issue of Santo Domingo made him extremely suspicious about the president's sincerity in Republican politics and a strong opponent of Grant's second term. But he disliked the liberals' idea of universal amnesty, which he believed to be premature. In his letter to Carl Schurz, Sumner expressed his inability to make a decision in the coming elections of 1872: "I tremble for my country when I contemplate the possibility of this man [Grant] being fastened upon us for another four years.... I also tremble when I think of reconstruction, with Liberty & Equality, committed for four years to the tender mercies of the Democrats. Which way is daylight?" Letter from Charles Sumner to Carl Schurz (Sept. 25, 1971), reprinted in 2 SELECTED LETTERS FROM CHARLES SUMNER, supra note 127, at 573-74. On another occasion, Sumner wrote to Henry W. Longfellow about the "political sky with the uncertainty as to the future" and his confusion about which position to take to "best serve the country & especially continue to maintain the rights of the African race." Letter from
the former rebels would be too premature before the national authority was consolidated, and as the influential New York Republican John Bigelow put it, the time was far from safe "for the Democrats to go to Washington."  

Blacks throughout the country opposed this dismantling of the Republican party. To them, the party was the necessary political vehicle to carry out the transition from the old constitutional culture to the new one. Frederick Douglass predicted that once the Republican party was broken, not only blacks but also "the honor and safety of the country" would be imperiled. Thus, he asked black voters to use their votes effectively to support the Republicans.

The disputes among the Republicans over the federal authority to enforce black rights clearly had a negative effect on the Republican party's course on enforcement, particularly the last Enforcement Act in 1872. The original bill, introduced by Louisiana Republican William Kellogg on March 11, 1872, was essentially a supplementary bill, extending to every locale the power and authority given to federal officers in cities and towns with a population of more than 20,000. This power and authority were originally given to the federal officers by the third Enforcement Act of February 20, 1871. The purpose of the bill was to strengthen federal enforcement in the South, especially


Meanwhile, Samuel Bowles, the editor of the liberal Springfield Republican, asked Henry L. Dawes to join the liberal Republicans. "There is nothing that the people and the party yearn for more now, than for a leader. . . . Our demoralization and our danger have come very much from this lack." Letter from Samuel Bowles to Henry L. Dawes, Springfield (Sept. 22, 1871) (on file with the Henry L. Dawes Papers, Library of Congress).

151. Letter from Frederick Douglass to Cassius Clay (July 26, 1871) (on file with the Frederick Douglass Papers, Library of Congress), quoted in Merline Pitre, Frederick Douglass and the Annexation of Santo Domingo, 63 J. OF NEGRO HIST. 398 & n.42 (1977). In commenting on Douglass's call for black voters to oppose those congressmen who had voted against the civil rights bill or any other bill in which black interests were involved, the Chicago Tribune criticized black voters for not having "risen to the dignity of Americans" and being "unable to speak . . . as Americans, but only ex-slaves." The New Orleans Convention, CHI. TRIB., Apr. 17, 1872, at 4.

153. Before Kellogg introduced his bill (S. 791), Republicans introduced several bills into the Senate and House to amend the first and second Enforcement Acts. Congress only considered one of these bills (S. 793), which was proposed by Henry W. Corbett (Republican, Oregon) on a technical amendment. See CONG. GLOBE, 42d Cong., 2d Sess. 24 (1871) (Henry B. Anthony's bill); id. at 59 (George Hoar's bill); id. at 318 (Frederick T. Frelinghuysen's bill, S. 438); id. at 1115 (Thomas Boles's bill); id. at 1558 (William P. Kellogg's bill, S. 791); id. (Henry W. Corbett's bill); id. at 1773 (Hale Sypher's bill).
in rural areas. Republican floor manager Oliver P. Morton declared that the bill was to reinforce the high character of the third Enforcement Act and "inspire as much confidence . . . as may be possible."\textsuperscript{154} Senate Democrats tried to defeat the bill by tying it to an amnesty bill then under debate. The majority of Republicans opposed the linkage and managed to rush the bill through the Senate.\textsuperscript{155} But when the bill reached the House for discussion on May 28, Democrats asked to drop it, for they did "not want an army at the polls to superintend the holding of elections."\textsuperscript{156} Bingham, the Republican floor manager, replied that the bill was to prevent "the Ku Klux army" from going to polls.\textsuperscript{157} Bingham then suggested that the House consider the bill, but many Republicans joined the Democrats and voted to not discuss the bill, hence killing it.\textsuperscript{158}

Determined to revive the Senate enforcement bills, Republicans decided to fight back at the first opportunity. When the House Civil Appropriation bill came to the Senate in early June for endorsement, Kellogg sought to add his aborted enforcement plan as a rider to the appropriation bill, to extend power and authority to judges of all federal circuit courts to supervise elections and appoint supervisors to make arrests at polls. Kellogg made it clear that the amendment was to "reenact" his bill, which the House had voted down a few days before.\textsuperscript{159} Democrats were extremely angry at the Republicans' strategy. They argued that the provisions to be included were unrelated to the appropriation bill. The verbal exchanges between the Republicans and Democrats were very heated.\textsuperscript{160} Charles Sumner for one,

\textsuperscript{154} Id. at 3320.
\textsuperscript{155} Much of the debate over the bill focused on whether the circuit or district judges would have the power to enforce the law. For details, see id. at 3322 (statement of George Edmunds); id. at 3322-23 (statements of Thomas Norwood and Eugene Casserly); id. at 3420 (statements of Henry B. Anthony, Lyman Trumbull, Thomas J. Robertson, and John Sherman); id. at 3421 (statement of Charles Sumner).
\textsuperscript{156} Id. at 3934 (statement of James Beck).
\textsuperscript{157} Id.
\textsuperscript{158} The House vote took place on May 31, 1872. On the same day, the House failed to pass another Senate bill (S. 656), which was designed to extend the tenure of the fourth section of the Ku Klux Force Act for another congressional session. The original Ku Klux Force Act provided that the fourth section, which empowered the President to suspend the writ of habeas corpus if necessary, would terminate after the one regular congressional session. The Senate passed the bill on May 21, 1872, but when vote was called in the House, James A. Garfield and other Republicans voted with the Democrats. Id. See also id. at 4103 (voting records); id. at 3432, 3931.
\textsuperscript{159} Id. at 4361.
\textsuperscript{160} All the leading Democrats and Republicans in the Senate joined the debates. For details, see id. at 4362 (statement of Allen G. Thurman); id. at 4363 (statement of Eugene Casserly); id. at 4363 (statement of William Kellogg); id. at 4364 (statement of Roscoe Conkling); id. at 4389 (statement of John Sherman).
strongly defended the bill’s legality. He said that the appropriation was to carry out existing statutes, which included all of the enforcement acts passed by Congress. He even suggested adding provisions from his civil rights bill to the House bill. Having seen two Senate enforcement bills defeated by House Republicans, Sumner was pessimistic about the prospect of Congress passing any further force act on black suffrage. He told his colleagues, “I trust that at this last moment, when we do seem to have it in our power to secure the equal rights of the colored race, they will not be set aside on a technicality.”

The bill finally passed the Senate on June 7. But the House could not reach agreement. On June 8, representatives from both Houses met again. After several hours of discussion, the Senate made some concessions, including: first, although the bill gave power to federal judges to name deputies to supervise voting, such appointments would not be made until requested by ten citizens (the original provisions required a request from only two citizens); second, supervisors must be appointed from the precinct where they resided; third, the supervisors would receive no compensation except in cities of twenty thousand inhabitants; and fourth, also the greatest, the federal marshals appointed to supervise elections were to be prohibited from making any arrests at polls in areas with less than 20,000 population. James Garfield admitted that such an arrangement virtually stripped the effectiveness of enforcement and made the presence of federal enforcement officers at the polls merely “a moral challenge” to the violations of the Fifteenth Amendment. When the report of the last joint conference returned to the House, only Shellabarger questioned the power of federal marshals to make arrests, the rest of Republican majority remained silent on the issue. The bill passed the House on June 8. When the final report reached the Senate, Morton challenged the last concession as to make federal supervisors “silent spectators without even the power to challenge a vote.” George Edmunds, one of the Senate conferees, explained that the House insisted on “having this provision put in as a means of composing their difference in the other body.” Edmunds admitted that “we were

161. Id. at 4393.
162. The Senate passed the bill by a vote of 32 yeas, 11 nays and 31 not voting. Id. at 4398.
163. Id. at 4440 (report of James A. Garfield in the House); id. at 4495 (report of Cole in the Senate).
164. Id. at 4454.
165. The House vote on the final conference report was 102 yeas, 79 nays, and 59 not voting. Id. at 4456.
forced to assent with a view of getting to an end." 166 Finally, the Senate accepted the report on June 10, the last day of the session. 167

The enforcement rider in the Civil Appropriation Act of June 10, 1872, was virtually powerless and ineffective. It was in fact a retreat from the previous enforcement laws. It was the product of the growing divergence between the still radical Senate and the already moderate and conservative House Republicans on the issue of black suffrage.

V. Conclusion

The legislation of the five enforcement laws between 1870 and 1872 demonstrates a dichotomy of political and constitutional arguments within the Republican party. This dichotomy is featured with three sets of arguments: first, the necessity to protect the civil and political rights of black Americans vs. the breach of the tenets of traditional constitutionalism; second, the necessity to expand federal authority to enforce the federal laws vs. the possibility that such expansion would take away rights reserved to the states and create a centralized federal government and lead to political corruption; third, the necessity to protect the rights of newly enfranchised black Americans vs. the fear that such protection would damage and abridge the rights of white Americans. These arguments ultimately led to a single question: how far should the federal government go to enforce black suffrage and the Civil War amendments.

Ideologically, radical Republicans viewed the enforcement of black suffrage as both a political necessity and an obligation of the federal government. Federal enforcement was crucial to stabilizing and sustaining Republican control at both the national and state levels, which was in their view an indispensable political guarantee of the nation's general interests. This was neither an ideological misconception of the party nor merely its pretext for expediency. It was a belief that had evolved historically from the events of the Civil War and Reconstruction, through which the strength and possibility of the national government was tested. The Civil War and Reconstruction reactivated the potential of the national government, as the Thirteenth, Fourteenth, and Fifteenth Amendments being added to the original Constitution. These Amendments gave the nation a new political life, the national government new responsibilities, and the

166. Id. at 4495.
167. The Senate vote was 39 yeas, 17 nays, and 18 absent. Id.
Republican party a new mission: to establish and consolidate a national government immune from being again put into the danger of the tragic Civil War. Thus, for radical-minded Republicans, Reconstruction was a continuation of the confrontation between the Union and Confederacy. Making enforcement laws was a work to define the "new birth of freedom" and to defend the war achievements including the party's control of power. Under this circumstance, black suffrage was both an object of defense and a weapon of defense.

The more conservative and moderate Republicans took black suffrage with caution and, perhaps, suspicion. They were not as confident as their radical counterparts in black men's political capacity. They accepted black emancipation and enfranchisement as legitimate results of the war, but they were not prepared for the drastic change of the traditional federal-state relations. These Republicans shared Democratic fears that the unlimited expansion of the federal government power could damage the state governments and that the national government's power could be abused by unscrupulous politicians. For them, a comprehensive enforcement of black political and civil rights could fundamentally change the nature of the American polity, and break the checks and balances between federal and state powers. They were deeply troubled by the prospect that unqualified suffrage, as aided by federal enforcement, would turn the traditional republican form of government of free and independent men into a democracy of ignorance and alienation.

These ideological differences were not the only dividing line by which individual Republicans in Congress were labelled "radical," "moderate," or "conservative." In fact, except for Charles Sumner and a few other whose records were consistent, many Republicans had carried with them simultaneously the above mentioned political outlooks. They could be "radical" in discussing once enforcement bill and be "moderate" or "conservative" at the debate for a different bill, or switch positions when the same bill was discussed. Political outlook was not the sole factor that affected the decision making of the Republicans. In effect, because the geographical, economic, and political interests represented by the party members were so diverse, many Republicans had to make decisions on grounds other than the party's proclaimed principles.

But, despite all of the ideological confusion and divisive political and economic interests, the Republicans managed to push through five enforcement laws in a short period of two years. In spite of all the suspicions and infighting, as the voting records show, the majority of
the party stood with the party. What held the party together was not merely the party’s proclaimed principles for justice and equality, or the desire to punish the former enemies, or partisan interests, but all of these added together. The Republicans were not political angels and they wanted the enforcement laws to meet the party’s pragmatic need to win elections in the North and to protect the black voters in the South. But at the time, the party’s need for self-preservation and expansion was indisputably associated with doing justice to black Americans, defining the contents of Civil War amendments, constructing a healthy system of national elections, and expanding federal government’s functions in protecting citizens’ rights. The enforcement laws carried with them these mixed goals. It is in this context that the Republicans and their enforcement acts deserve credit for consolidating the political results of the Civil War and opening new possibilities for American democracy.