

I. Constitutional Crisis: Theory and Practice

*“So, having **no hope of reconciliation**, and finding no other remedy, we have, agreeable to the law of nature in our own defense, and for maintaining the rights, privileges, and liberties of our countrymen, wives, and children, and latest posterity from being enslaved by the Spaniards, been constrained to **renounce allegiance to the King of Spain**, and pursue such methods as appear to us most likely to secure our ancient liberties and privileges.”*

The Dutch Act of Abjuration 1581

A. The theory of social contracts worked out by Hobbes, Locke, Montesquieu and Rousseau in the 17th and 18th centuries suggest that common interests lead individuals to form governments as a method of advancing those interests.

- i. Political philosophers often cast these common interests in very general terms.
 - { Hobbes: as peace and security of person
 - { Locke: as security of property and other civic rights
 - { Montesquieu : as escape from fear
 - { Rousseau: as the a means of advancing the social will.
 - { Bentham: as a means of increasing of social utility (happiness).
 - } (Bentham rejects social contract theory, but his reasoning was very much influenced by their work.)
- ii. In practice, these common interests are advanced through the production of particular services: national defense, a legal system (police and courts), infrastructure (roads, canals, "right of ways"), a post office, public education, and social insurance.
- iii. However, in the financing and production of these services that advance shared interests, there are a number of potential conflicts:
 - { How will the cost of these services be divided up among citizen - tax payers?
 - { How much of these services should be produced?
 - { How will the services be provided?

{ Where and who will be the persons (companies, corporations, etc..) who will produce the services?

{ Exactly, which property rights will be enforced in law and to what extent?

iv. Such conflicts may undermine support for a given social contract--both theoretically, and in practice.

{ In 1651, Hobbes argues that even a less than perfect social contracts are so productive that all members of a community are duty bound to support the existing contract.

} There is no "right" of revolution or secession.

} This was echoed by Kant a century later in 1793

} And by Lincoln another century later in 1861 (as we will see below).

{ The other famous social contract theorists all argue that some social contracts are worse than no contract.

} In such cases, a social contract becomes "null and void" when it makes members worse off than they would have been without the contract--without the greater community.

} This was, of course, part of the basis of the Declaration of Independence in 1776

} And for the secession of South Carolina in 1860, shortly after Lincoln was elected (as we will see below).

v. **Moments at which a given constitutional arrangement fail or are at risk of failing are moments of "constitutional crisis."**

{ Such moments can lead to the new negotiated agreements,

{ secession,

{ or to the end of civil society and war.

vi. During the first half of the 19th century, a fairly broad cross section of Southern voters, but especially Southern elites, became increasingly less satisfied with the social contract that (the perpetual union) they had entered under the articles of confederation.

} (Recall that in many cases, only relatively wealth property owners could vote in the South--so the terms voters and elite in some cases applied to essentially the same people.)

{ . Southern voters and their representatives felt unfairly burdened by tariff policies

} For example, the tariff acts of 1828 adversely affected southern interests by raising the cost of British imported good to favor northern manufacturers.

} Faced with a loss of exports to the South, the British also reduced imports of Southern cotton

- { Southern voters also feared that the North wanted to free their slaves--without compensating slave owners--which would generate very substantial economic losses and the end of southern culture as they knew it.
- vii. As noted last time, several quasi-constitutional agreements were worked out to deal with such issues during the first half of the 19th century.
 - { For example, the constitution formally took slavery and the slave trade "off the table" for twenty years.
 - } An informal agreement was reached to match new southern states with new northern ones.
 - } The Missouri compromise specified that new northern states (except Missouri) would be free and new southern states would be slave states.
 - { These compromises revealed that the North and the South agreed that being together in one nation state was more important than coming to an agreement about a uniform national law on slavery.
 - } Laws on slavery were left largely to the states.
- viii. However, these informal agreements were unraveling by the middle of the 19th century.
 - { For example, in 1832, South Carolina declared that it had the right to "nullify" federal laws that it disagreed with.
 - } South Carolina refused to collect the tariffs of 1828 and 1832, mentioned above (the "tariffs of abomination").
 - } (This in spite of Constitutional provisions to the contrary.)
 - } Congress passed a "Force Bill" in 1833, authorizing the President to take whatever actions he deemed fit to enforce the tariff laws.
 - } South Carolina rescinded its Nullification Act and a compromise tariff bill was negotiated in 1833.
 - } (John Quincy Adams had signed the tariff bill into law, but lost the 1828 election to Andrew Jackson, partly as a consequence of the tariff.)
 - } (Andrew Jackson's vice president was from South Carolina, John C. Calhoun, who is quoted above in Lecture 9.)
 - { Northern abolitionist groups in the North passed state legislation that made slaves that reached the north free when they arrived in their states.
 - } In 1842 (Prigg v. Pennsylvania) ruled that states did not have to aid in the return of runaway slaves.
 - } In 1850, the Congress passed the Fugitive Slave Bill which gave slave owners the right to organize a posse at any point in the United States to aid in recapturing runaway slaves. Courts and police were obligated to assist.

- } Of course, this did not end conflict over how this should be done by the "free" states of the North.
 - } And, moreover, at this point the "under ground railroad" which had helped slaves escape from the South to the North was extended to Canada, where under British law, run away slaves could escape the reach of their slave owners.
 - { In 1856, the Supreme Court ruled (in Dred Scott vs. Sandford) that slaves were not and could not be citizens and thus were not entitled to sue in Federal courts.
 - } The Taney lead Supreme Court also ruled that the compromise of 1820 was unconstitutional since Congress could not forbid citizens from taking their property (slaves) across state lines.
 - } See Rehnquist, 2001, pg. 53-65, for a nice overview and critique of this important decision.
 - { Tensions between the North and South were clearly rising as a consequence of profound disagreements about such tariff and slave issues.
 - } (It is interesting to note that the North was idealistic (ideological) on slaves whereas the South was largely economic, whereas the South was more or less ideological in their opposition to tariffs while the North pursued economic advantage for its manufacturers.)
- B. In 1860, there was an especially contentious and important election for the U. S. Presidency in which there were four candidates for the office: two from the North and two from the South.**
- i. The candidates of the North included Abraham Lincoln (Republican party's candidate) and Stephen Douglas (Democratic party's candidate).
 - { Recall that Lincoln and Douglas had previously competed for the Senate in Illinois, where Lincoln had lost, because Lincoln had been too much of an abolitionist for the Illinois electorate and state assembly, although he did not think that the central government had the power to abolish slavery.
 - } (Recall that senators at this time are still appointed by state assemblies, so there was no direct electoral contest for the Senate between Lincoln and Douglas.)
 - { Douglas favored a referendum (popular sovereignty) approach to slavery whereby states would determine their status on that issue by direct ballot. (in this he opposed the Missouri compromise.)
 - { Lincoln favored a free status for all remaining territories, whether desired by a majority or not. (In this he also opposed the Missouri compromise., but accepted slavery in the South.)

ii. The candidates of the South included John Breckinridge (the Southern Democrat's candidate) and John Bell (the candidate of the Constitutional Union Party).

{ Breckinridge was the standing vice president (under James Buchanan), and ran on a pro-slavery platform, that is to say **he favored continuation of the status quo**--as per the recent Supreme Court decision on Dred Scott. (See: Heck, F. H. *J of Southern History*.1955.)

{ Bell's Constitutional Union Party took no position on slavery beyond those already stated in the constitution. "That it is both the part of patriotism and of duty to recognize no political principle other than THE CONSTITUTION OF THE COUNTRY, THE UNION OF THE STATES, AND THE ENFORCEMENT OF THE LAWS" (*Tribune Almanac* 1861, pg. 31.)

iii. Note that these four positions on slavery **differed more in tone** than in substance--all accept the existence of slavery in the South, although there was considerable disagreement about how it should be developed in the territories that were not yet states.

{ In tone, Lincoln was the most antislavery and Breckenridge the most pro-slavery or perhaps pro-south, although in substance they were not that far apart.

} Lincoln wanted all new states to be "free."

} Breckenridge wanted slavery permitted in all the new states, not simply those in the south (as seems necessary under the Dread Scot decision).

iv. The more extreme candidates **Lincoln and Breckinridge got the bulk of the electoral college votes** in the 1860 presidential election.

{ The two middle candidates, Douglas and Bell, split the middle vote, which together included more voters than received by Lincoln or Breckenridge.

{ Popular vote: Lincoln, 39.9%, Douglas 29.5%, Breckinridge 18.1% and Bell 12.5%. (Note that Bell + Douglas > Lincoln.)

{ Electoral college: Lincoln, 180, and Breckenridge, 72, Bell, 39, Douglas, 12.

{ Lincoln won only 39% of the votes cast, but won a super majority of electoral votes (180 out of 303).

v. It bears noting, however, that Lincoln **had not run as an abolitionist** (his position had not changed significantly from the Lincoln-Douglas debates excerpted in lecture 9).

{ His speeches made it clear that he was an abolitionist "at heart" and that he would attempt to block the entry of new slave states, although he did not believe that the Federal government could interfere with slavery in states that already existed.

{ A majority of Southern voters, none the less, thought that they saw the "writing on the wall" and began to seriously think that they would be better on their own than inside the current social contract.

{ A constitutional crisis was at hand.

C. Recall that there was some ambiguity in the original constitution (the Articles of Confederation).

i. The union created was to be perpetual, but the states were sovereign!

{ The new Constitution of 1789 had clearly reduced state sovereignty, but had it eliminated it?

} If sovereignty still existed, could the states leave the union?

} How could state sovereignty be squared with a perpetual union?

{ Moreover, was there a natural right of rebellion as maintained in the Declaration of Independence?

} If Lock's or Rousseau's logic applied, then a social contract is void when its fails to advance the interests of all members of the compact.

} Didn't the south have a "natural right" to secede regardless of the exact meaning of the original articles of confederation and their amendment through the constitution of 1789?

ii. Unfortunately, neither negotiation nor the courts were able to sort this out to the satisfaction of all, and the result was a bloody 4 year war.

II. A Short overview of the Civil War

A. A month after Lincoln's election, South Carolina "affirmed" its right of secession and announced that it was, in fact, seceding from the United States of America.

i. The South Carolina state government declared that Lincoln's election implied that:

{ "This sectional combination for the submersion of the Constitution, has been aided in some of the States by elevating to citizenship, persons who, by the supreme law of the land, are incapable of becoming citizens; and their votes have been used to inaugurate a new policy, hostile to the South, and destructive of its beliefs and safety."

ii. It further declared that when Lincoln took office in March 1861,

{ " the South shall be excluded from the common territory, that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States. The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slave-holding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy."

- iii. Six other states soon followed South Carolina's example: Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas.
- iv. In February, 1861, these seven southern slave-holding states formed a new government, "the **Confederate States of America.**"
 - { They adopted a new constitution modeled after the old Articles of Confederation and the U. S. Constitution (see below).
 - { A prewar peace conference met in Washington in 1861, but failed to resolve the crisis.
- v. In March 4, 1861, Lincoln became president of the United States and (following Andrew Jackson's resistance to South Carolina's act of nullification two decades earlier) argued that the constitution was a binding contract and called state secession legislation "legally void."
 - { His inaugural speech, however, also attempted to put the South at ease, by reaffirming his electoral speeches on the limits of federal authority:
 - } "Apprehension seems to exist among the people of the Southern States that by the accession of a Republican Administration their property and their peace and personal security are to be endangered. There has never been any reasonable cause for such apprehension. Indeed, the most ample evidence to the contrary has all the while existed and been open to their inspection.
 - } It is found in nearly all the published speeches of him who now addresses you. I do but quote from one of those speeches when I declare that--
 - } I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. **I believe I have no lawful right to do so, and I have no inclination to do so.** "
 - { But he also clearly rules out secession by current members of the "union":
 - } "I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.
 - } Again: If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it--break it, so to speak--but does it not require all to lawfully rescind it?

- } Descending from these general principles, we find the proposition that in legal contemplation the Union is perpetual confirmed by the history of the Union itself. The **Union is much older than the Constitution.**
- } **It was formed, in fact, by the Articles of Association in 1774.** It was matured and continued by the Declaration of Independence in 1776.
- } It was further matured, and the faith of all the then thirteen States **expressly plighted and engaged that it should be perpetual**, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was "to form a more perfect Union."

B. In April, 14, 1861 the South attacks the United States fortress at Fort Sumner (a national fort that protects the harbor of Charleston, South Carolina)

- i. After the first battle of the civil war, **four more** states join the confederacy in April and May 1861: Arkansas, Tennessee, North Carolina, and Virginia.
 - { (Western Virginia seceded from Virginia and remained in the "Union").
- ii. In counter attack, Lincoln proclaims a blockade against Southern ports.
 - { Lincoln, in a speech to Congress, states the war is...
 - } "a People's contest...a struggle for maintaining in the world, that form, and substance of government, whose leading object is, to elevate the condition of men..."
 - { The Congress authorizes a call for 500,000 men.

C. At first, both sides thought that the war would be a short one, but in the end the battles continued for four years.

- i. The north was plagued with incompetent, timid, and/or over confident generals, who were replaced in a fairly rapid secession.
- ii. The south was blessed with several exceptional generals (particularly Robert E Lee) who managed to win many battles while being out-manned and out-gunned.
 - } (Although to be fair to the North, defensive battles are generally easier to fight than aggressive ones.)
- iii. More Americans lost their lives in this first industrial "total war" than in any other war before or since.
 - { It is estimated that about 500,000 American deaths occurred in the Civil War.
 - { (By comparison, about 400,000 American deaths occurred in W. W. II in both European and Asian theaters. The population of the United States was 31.4 million in 1860 and 132.2 million in 1940.)

D. Finally, on April 9, 1865, Lee surrenders at Appomattox Court House in Virginia to General Ulysses S. Grant (who would soon become president).

{ (Lee's surrender is usually regarded to be the end of the civil war, although Southern troops continued surrendering for the next month or so as the news gradually spread that the war was over.)

{ In the end, the North won the war because of its superior resources: more manpower and more industrial capacity.

III. A Short overview of the Constitution of the Confederacy

A. Apart from its defense of slavery, many people find much of interest in the Confederacy's short-lived constitution.

{ (See <http://www.yale.edu/lawweb/avalon/csa/csapro.htm>)

B. The Confederate State of America adopted a structure approximately midway between that of the Articles of Confederation and the US Constitution.

- i. The South was a great defender of "states rights" and thus its structure is formally a **confederation** rather than a federation or union of states
- ii. There is a President and a Congress.
 - { However, both the Congress and President are elected by the states.
 - { The president has veto power, that can be overridden with a 2/3 majority of the Congress.
 - { Each state in Congress has a single vote (e.g. in effect members are representatives of their own sovereign state governments).
 - { The president holds office for a term of just one year.
 - { (This architecture should remind you of both the Articles of Confederation and the present procedures of the European Union.)
- iii. There is also a Supreme court, which was lacking under the Articles of Confederation:
 - { The judicial power shall extend to all cases of law and equity, arising under this Constitution, the laws of the United States, and of this Confederacy, and treaties made, or which shall be made, under its authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the Confederacy shall be a party; controversies between two or more States; between citizens of different States; between citizens of the same State claiming lands under grants of different States.
- iv. And, the power of the Congress is greater than that of the old Continental Congress.

{ In this its powers, it was very similar to the Congress of the United States.

C. The constitution also includes a bill of rights, although as an integral part of its body rather than a series of amendments. For example:

- i. (6) No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
- ii. (7) Congress shall appropriate no money from the treasury, unless it be asked and estimated for by the President or some one of the heads of departments, except for the purpose of paying its own expenses and contingencies.
- iii. (8) No title of nobility shall be granted by the Confederacy; and no person holding any office of profit or trust under it shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.
- iv. (9) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of such grievances as the delegated powers of this Government may warrant it to consider and redress.
- v. (10) A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.
- vi. (11) No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.
- vii. (12) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- viii. (13) No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.
- ix. (14) In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

D. The confederate constitution can be amended by a 2/3 majority of the Congress

E. And, perhaps surprisingly, the importation of slaves is banned (except from other states in the Confederacy).

{ (Is there an economic explanation for this, or is this a sign of the abolitionist movement in the South?)

{ The Confederate Constitution lasted only until the end of the Civil War.

IV. The Civil War and Amendments to the U. S. Constitution

A. For the purposes of this course, however, the battles won and lost are less relevant than the constitutional affects of the war.

B. Both during and after the civil war, there were a series of short term "quasi-constitutional reforms" and also a series of more or less permanent formal and informal constitutional reforms.

C. Perhaps the most important of these durable war time amendments was: *Lincoln's Emancipation Proclamation:*

- i. On January 1, 1863, and drawing on his power as commander in chief declares that
- { "I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the **Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.** ...

{ And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defense; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

{ And I further declare and make known, that **such persons of suitable condition, will be received into the armed service of the United States** to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service. ..."

- ii. It bears noting that the Emancipation Proclamation clearly advanced several purposes for Lincoln.

{ It advanced Northern military interests in the South by further undermining its economy.

{ It also to increased electoral and Congressional support from North Eastern abolitionists.

{ And, it also advanced Lincoln's often expressed moral interests in eliminating slavery as an institution (in spite of declaring repeatedly that the central government had no such power).

D. Another significant reform of fundamental procedures occurred after the war when the republican Congress adopted new legislation that reduced the presidents authority to call and dismiss Congress.

{ Congress had met only once every two years at the Presidents invitation, normally about a year after elections had taken place.

{ (See Johnson, 1997, pg. 503.)

E. After the war, three new amendments to the constitution were adopted by the northern states:

- i. The 13th amendment formally abolished slavery (January 31 1865).
- { Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
- { Congress shall have power to enforce this article by appropriate legislation.
- } (Note that it, in effect provided the necessary legal support for Lincolns Emancipation Proclamation.)
- } (Note, also that it was ratified by the Northern states alone, before the war ended.)
- ii. The 14th amendment was ratified on July 9, 1868. It guarantees all persons "equal protection of the law" within states, and changes the apportionment of representatives to reflect state populations counting "the whole number of persons, excluding Indians not taxed, ... "
- { All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.
- { Congress shall have power to enforce this article by appropriate legislation.
- iii. The 15th amendment was ratified on Feb. 26, 1869. It states that the rights of citizens to vote shall:
- { "shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

{ (Note that there was a modest effort to include "sex" in this definition but that attempt failed.)

{ (Note also that the 15th amendment does not rule out other exclusionary devices such as property, literacy tests, etc. as methods by which states may exclude persons from voting. It simply states that states cannot use race or condition of servitude for doing so now or in the future.)

F. These three amendments explicitly transferred authority from the states to the federal government, by granting the federal government the powers to regulate activities of the states themselves and by eliminating state authority to adopt various kinds of legislation on voting, slavery, and with respect to equality before the law.

V. Reconstruction: Non-constitutional Governance of the South?

A. Lincoln had won reelection in 1864 over General McClellan (whose platform called for a cease fire) with 55% of the popular vote.

{ Only the remaining states in the Union--the North and West--participated, of course, and Lincoln had done well in these states in 1860.

{ Although quite aggressive in his conduct of the War, Lincoln was relatively modest in his treatment of the South, once it had surrendered.

B. Just a few days after Lee's surrender in 1865, President Lincoln is assassinated while watching a play in Washington on April 14, 1865.

{ On April 11, shortly before his death, Lincoln has recommended a moderate, relatively, lenient reconstruction policy.

} He had already begun implementing such policies on the territories occupied by Union armies .

{ Postwar governance thus fell to vice president Andrew Johnson, as he took the office of President.

} Plans, however, had been largely worked out by Lincoln prior to his death, which Johnson largely implements (at least at first).

C. The Civil War amendments were for the most part passed by the Union states, alone, and more or less imposed on the Southern states as a condition of regaining their powers of self-governance.

i. In 1867, the first, second, and third reconstruction acts pass (over President Johnson's veto) which places the South temporarily under military rule.

ii. The first act requires the new southern state constitutions to provide for Black Suffrage.

D. For a few years, the Southern states were administered by the North--e.g. by the post war U. S. government.

i. The Southern states were deemed by majorities in the Congress to have given up, at least temporarily, their right to representation in the Congress, pending revisions in their state constitutions.

{ The Southern states were only allowed to return to full statehood after they outlawed slavery (thus ratifying the 13th amendment) and also if they ratified the 14th and 15th amendments to the constitution

} Southern military governors were temporarily appointed by the President .

} (Voting rights for blacks were implemented initially through state constitutions.)

{ Their appointed military governors created a new registrar of voters, based on the governor's interpretation of Congressional mandates on suffrage.

} These registrars often tended to over represent blacks.

} (See, Johnson, 1997, pg 503--06, and also the voter registrar tables at: <http://en.wikipedia.org/wiki/Reconstruction>)

} (Some 10-15,000 confederate officials were temporarily banned from voting).

} Many whites also boycotted the first elections after the Civil War, which they regarded as illegitimate. (See Johnson, 1997, pg 505.)

{ The central government also created the Freeman's Bureau (1865-72) which helped blacks in their transitions from slave to citizen, with food, clothing, and medical help.

} More than 4000 schools were opened for black Americans.

} Black colleges were also founded during this period, such as Howard University in 1867.

} (Many of these schools, however, failed to survive the white "backlash" after reconstruction ended.)

ii. It bears noting that black "over registrations" favored republicans in the south, who were credited with eliminating slavery in the South and enfranchising the freed slaves.

iii. New state governments were elected under these rules, which included many black local officials and state representatives

{ In 1867, republicans swept to victory in all the state elections except in Virginia..

} As a consequence, there **were many black elected to local, state, and national office during the reconstruction period.**

- } Many of the office holders were free blacks who had returned south to run for office.
- } (Johnson, 1997, pg. 505-06, and Wikipedia suggests that the **majority of state delegates were blacks**, largely as a result of their over registration as voters. See also Rhodes 1920, v. 6, pg. 199)
- { It was these newly elected governments that agreed to the conditions required by Congress for readmission to the United States.
- { In 1868, General Grant won the presidency running as a Republican, with 52.7% of the popular vote, including republican support from the readmitted southern states.
 - } Grant won most of the southern states.
 - } All but 500 top confederate officials were subsequently pardoned (from treason) by the Amnesty Act of 1872 (signed by President Grant, who had won the presidency in 1868).
- iv. The new state governments rapidly passed the necessary amendments to their state constitutions.
 - { Arkansas, North Carolina, South Carolina, Louisiana, Alabama and Florida were readmitted to the Union in 1868 after incorporating black suffrage into their state constitutions, and passing the 14th amendment.
 - { Virginia, Mississippi, Texas, and Georgia were readmitted in 1870 after ratifying the 14th and the 15th amendments.
- v. However, Union troops continued to be stationed in the South.
 - { The last troops left South Carolina only in 1877, which some deem the end of reconstruction.
 - { (Thus, it can be said that the Civil War amendments were not passed via the amendment procedures specified in the constitution. There was an "all or nothing" choice given the Southern states, continued military rule or pass the 13, 14, and 15 amendments.)
- vi. **Black representation, however, did not survive long after the reconstruction ended.**
 - { This was partly because of the election of 1872 in which the republican party split over efforts to reelect Pres. Grant, because of his administration's corruption.
 - } It was also partly because, after all, there were white majorities in the South, who returned to the polls as reconstruction ended.
 - { And it was also partly because the **first civil rights act** adopted by a republican Congress (1865) was blocked by Pres. Johnson's veto.
 - } This allowed "**Jim Crow codes**" to be adopted in many parts of the south.
 - } ("Jim Crow" laws reduced black American access to state government facilities and to black participation in elections.)

- } (It bears noting, however, that in most cases, the "Jim Crow" laws were less onerous than the earlier "black codes" that had existed in the south.)
- { And republican losses were also made even more likely by the fact that the new republican (black) state governments had often been incompetent and extremely corrupt, by many accounts. (See Johnson, 1997, pg. 506-07.)
 - } It was also partly a result of intimidation of republican (black) voters by the Ku Klux Klan and other similar groups.
- { Upon their return to office, the southern democrats were able to use "non racial" discrimination to block blacks and many working class and poor whites from voting during the late 19th century. (See Johnson, 1997, pg 501,507, and Keyssars, 2000, ch. 4-5.)

VI. Constitutional Consequences of the Civil War

A. Overall, the new amendments reduced somewhat the scope of state authority and increased that of the Federal government insofar as the new amendments formally transferred power from the states to the federal governments.

{ (Note the "and Congress shall have the power" ... clauses in each amendment.)

B. Perhaps more important for the future of the United States, the war itself make it clear that the states were no longer sovereign and that exit (secession) was not an option.

{ This also informally shifted authority from the state to the national government.

C. It bears noting, however, that the national government did not significantly use this authority for several decades.

- i. Indeed, it can be argued that the role of the central government in American life did not expand until after then "progressive movement's" amendments of the early 20th century.
- ii. Total state services and **state expenditures were larger** than national expenditures for the rest of the 19th century.