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

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All images courtesy of the Library of Congress Website.

Abstract

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

By

Joseph C. Angelillo II

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

Introduction

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

Cleveland Gazette, January 7, 1888

The above question, posed by the black-owned *Cleveland Gazette* in January of 1888, emphasized the vast implications raised President Grover Clevelandôs nomination of Lucius Quintus Cincinnatus Lamar (L.Q.C.) to the Supreme Court of the United States. In opposing Lamar, the *Gazette* combatted a nominee who had voted against the opposing

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

Another way of conceptualizing the end of Reconstruction emerges in emphasis on Supreme Court opinions. This perspective is mainly used by constitutional historiansBv1v96.26 Tm0 g0 G1v96.

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

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

This third way for conceptualizing the end of Reconstruction is popular constitutionalism. This perspective emphasizes public opinion, while downplaying political actions and Supreme Court opinions. As articulated by Larry Kramer, popular constitutionalism holds that the opinions of the people held interpretive power over the Supreme Court during the early years of American constitutional history.[5] This does not mean that public opinion directly overturned Supreme Court decisions by issuing judicial decrees. Rather, popular constitutionalism, especially as used in this paper, holds that ñpublic opinion can, does, and should play a role in a complex) ˘ ḥ ư š m·ẹ M⁼ ˘ Ḭ 4] £

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here, as in 1879, a Senate resolution affirming the legality, validity, and federal power of the Reconstruction Amendments gained much press nationwide. One of the Senators who voted against this resolution, L.Q.C. Lamar, was nominated to the Supreme Court within the next decade. While Radical Republicans and black Americans disapproved of Lamarôs nomination for his stance on this constitutional issue, their fears were overruled by the general public ï including moderate Republicans ï assenting to the nominee. This debate over the nomination occurred throughout the nation, and the pressô extensive discussion of Lamarôs constitutional views makes his confirmation battle unique in the framework of popular constitutionalism, as it provides a window into public opinion unlike other nominations. The wide breadth of coverage of the nomination and subsequent popular assent signaled to the Supreme Court an indifferenc/F1 24o2 r79Pu-3(

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

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

Figure 1. Lamar between 1850 and 1865.

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

[12] Murphy, *L.Q.C. Lamar*, 88-89, Friedman and Israel, *The Justices of the United States Supreme Court,* 1437, John F. Kennedy, *Profiles in Courage* (London: Hamish Hamilton, 1964), 174. James G. Blaine, L.Q.C. Lamar, et. All, ñOught the Negro to Be Disenfranchised? Ought He to Have Been Enfranchised?ò *North American Review*

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

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

healing the divide between North and South.[15] Though his and similar studies provide valuable details, no scholarship on the Lamar confirmation has approached the topic through the lens of constitutional history. Despite debate over constitutional issues

Chapter One: Origins of the Lamar Nomination

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

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

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

Context for Reconstruction I: To 1879

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

Federal enforcement of black civil and political rights emerged from the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments.[7] The Thirteenth Amendment delivered emancipation, which constituted perhaps the most important result of the American Ci

Americans deserved voting rights because they had proven themselves worthy through the courageous participation of hundreds of thousa

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

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

Despite Republican dominance of its ranks, the Supreme Court interpreted the Reconstruction Amendments with indecision and ambiguity

decided against New Orleans butchers attempting to challenge the legality of a state-created

circuit, Bradley overturned

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

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

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

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

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

The Edmunds Resolution

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

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

Entering his thirteenth year of service, Edmunds had built a reputation as a Radical, taking an active role in Andrew Johnsonôs impeachment and serving on the Electoral Commission of 1877.[38] He walked onto the floor of a Republican Senate, with Edmunds one of the thin 38-36 majority (two independents also served). However, the Forty-Fifth Congress was approaching its

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

As seen in weeks of debate following the proposition of the Resolution, Edmundôs hopes for unanimous consent would fall flat. Following a caucus, Senate Democrats announced a substitute resolution to Edmundsôon January 20. Proposed by Democrat John Morgan of Alabama, the Democratic substitute upheld the Reconstruction Amendments as binding, without conceding them as legally ratified. It further diverged from the Edmunds Resolution by denying the federal governmentôs power to enforce the Fifteenth Amendment

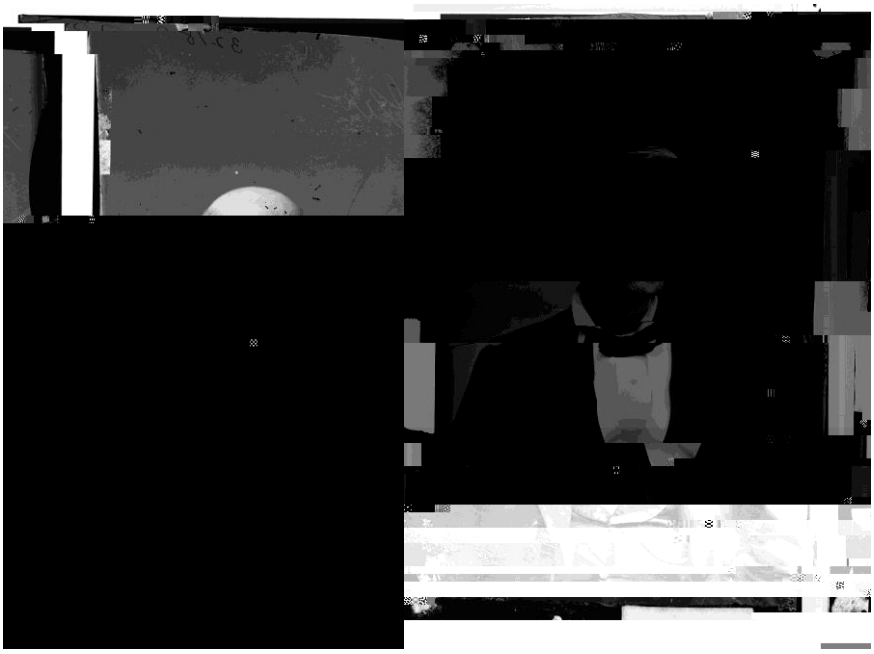

Figure 2.George Edmunds (L) and John Morgan (R) proposed the dueling resolutions concerning the legality and validity of the Reconstruction Amendments.

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

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

Table 1. Senate Vote on the Edmunds Resolution

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

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

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

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

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

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

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

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[57] For examples of scholars critical of the Courtôs decision, see Woodward, *The Strange Career of Jim Crow*, 71, and Rayford W. Logan, *The Betrayal of the Negro* (New York: Collier Books), 105.

[58] For a m

federal authority to directly enforce voting rights ï and showed that the Justices still retained some interest in enforcing black rights.[62] Further, even after the controversial Election of 1876, the public remained interested in preventing national reconciliation. Republicans retook the House in 1880 and affirmed their hold on the presidency by electing James A. Garfield that same year.[63] The

died at age sixty-two on May 14, 1887, after seven years on the

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

that the new Justice will be a Southern man,ò the *Appeal* wrote on June 23.[76] ñSince Justice Campbell of Louisiana,ò it continued, ñno Southern man distinctive in character, birth and opinion has represented this section in the highest judicial tribunal of this country.ò The *Appeal* here spoke of John Archibald Campbell, a member of the *Dred Scott* majority who resigned his Supreme Court justiceship in 1861 to serve as an official in the Confederac Tm0 g0 G[(Dre)5(d S)-9(c)4(ott)] TJ

Lamarôs spotty record with black r

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

It remains unknown how much Lamar knew about his potential appointment. According to Daniel Meadorôs article on Lamarôs confirmation, Cleveland did not speak to him regarding the nomination during the summer. Lamar surely heard rumors, but later informed the press that he had ñno knowledgeò of Clevelandôs wishes.[93] Further, it remains unknown whether Lamar

Chapter Two: The Nomination and Constitutional Interpretation

On January 16, 1888, Senator George Edmunds took the floor of the Senate and spoke for thirty minutes against the confirmation of L.Q.C. Lamar. Having proposed the resolution affirming the validity of the Reconstruction Amendments nearly a decade earlier, Edmunds bore much experience in speaking on matters of black rights. However, on this occasion

Nomination: Debate

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

Radical Republicans expressed immediate hostility to Lamarôs nomination, initially based on issues of judicial temperament

considering the ages at which the other justices of the Reconstruction-Era Court took their seats.[2] Most saw confirmation in their middle or late fifties, while at least two (Hunt and Blatchford) assumed their places at the exact age of sixty-two.[3] Rather than ñadvancedò for a nominee, Lamarôs age fit in with the norm at the time. The *Tribune* also attacked Lamar for his lack of ñeminenceò in the legal profession, ñwhich, indeed, he appears not to have practiced at all since 1854.ò[4] This claim bore some truth, as Lamarôs time in private law practice usually came during short stints between elected offices.[5] However, other justices also came to the Court from a more political, rather than legal, background. For example, both Strong and Matthews served in Congress before their nominations, and only Miller and Bradley came directly from private law practice to the Court.[6] So while Lamar perhaps did lack a distinct legal background, paramount for consideration to serve on todayôs Supreme Court, this issue likely did not mean much to Republican opposition.

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

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

8

colored man, would you not

committee consideration ñhas never prevailed.ò[24]), a general pro-Lamar

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

In perhaps the most telling sign of mainstream Republican abandonment of the Reconstruction Amendments, the *Times* argued that Lamar earned constitutional distinction for his Senate tenure. According to the *Times*, Lamarôs service ñmade him familiar with constitutional questions and the legislation with which the Supreme Court has to deal.ò[27] Such praise seems rather ironic, as Lamarôs Senate tenure did grant him exposure to a constitutional question: the validity and legality of the Reconstruction Amendments. Irony turns to shock when considering the stance adopted by the *Times* during the debate over the Edmunds Resolution, which saw the Republican newspaper call opposition to the Edmunds Resolution ñpure twaddleò and the Democratic substitute ñdangerous.ò[28] Though then-Senator Lamar had voted for the Democratic substitute and voted against the Edmunds Resolution, the *Times* in 1888 displayed no qualms with praising Lamarôs time in the Senate. Mainstream Republicans did not go so far as to explicitly praise Lamar for voting ñNayò to the validity and legality of the Reconstruction Amendments, but they did not take issue with it. This displayed a dramatic indifference to the Amendments and a stark mainstream Republican reversal, further evidenced by a glowing pro-Lamar endorsement issued in the same

the new year,

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

ordeal of plunder and oppression,ò for white Southerners.[36] This dodging of white violence against black voters, in favor of refuting that

page.

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

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

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

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

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

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[41] Ibid.
[42] ñWhy Lamar is Opposed,ò *New York Times*, January 4, 1888.
[43] ñMr. Lamar for the Supreme Court,ò *New York Times*, January 6, 1888.

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

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

Nomination: Acceptance

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

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

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

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

doubt as to what they shall do.ò[51] The *Tribune* clung to such reports and refused to acknowledge confirmation as certain.[52] In contrast, the *Appeal* happily reported the pro-Lamar statements of Senator John P. Jones, a Republican from Nevada. ñSe_

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

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

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

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

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

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

Virtually all press, including Radicals at the *Tribune*, accepted confirmation as certain in the wake of Riddlebergerôs declaration. The radical newspaper, somewhat signifying defeat, did not publish a front-page story covering the statements made in the Senate. Rather, on January 13, they published a short editorial addressing the development. Because of Riddlebergerôs announcement, the *Tribune* stated, ñOf Mr. Lamarôs ultimate confirmation there appears to be no doubt.ò[65]

Lamar on the Supreme Court.

entire three-hour session, listening with ñsullen and insolent indifferenceò while Republicans made several speeches against confirmation.[72]

no Democrats voted against confirmation, and twenty

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

defense.ò[77] Democrats also emphasized Lamar himself, celebrating his ascension to ñthe bench made illustrious by Marshall, Taney, and Campbell.ò In this position, the *Appeal* wrote, Lamar ñwill alwaysé be found on the side of justice,ò as ñno man knows better or is more competentò in interpreting the Constitution.[78] With that nominee now confirmed, Democrats rejoiced. They finally had a former Confederate on the Supreme Court.

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

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

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

Conclusion: The End of Reconstruction

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

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

When using a different framework to conceptualize the end of Reconstruction, the battle ovpru1.1Q.7C92 Lramaf e12mges/as 1 2fiT40090d24 3163p709d.08 Thm f0 g0mC[(pk8s it)ñ3(pula)r60091322.61 constitutionalism,ò which emphasizes public opinion rather than political and judicial actions. Notedly espoused by legal scholar Larry Kramer in his book *The People Themselves*, this concept challenges notions of judicial supremacy by claiming that the people (and not the courts) held interpretive power during the early years of constitutional history.[5] In distinguishing this concept from normal political participation, Kramer notes that popular constitutionalism ñsupposes that an equally valid process of interpretation can be undertaken in the political branches and by the community at large.ò[6] Kramer does not hold this to mean that individual

Slaughterhouse (1873), *Cruikshank*, and the *Civil Rights Cases*. Further, by 1888 the American populace and political branches had demonstrated a willingness to retreat from strenuous rights enforcement, evidenced by the 1879 Edmunds Resolution and by the return of Democrats to power in 1884. In this context, the confirmation battle of L.Q.C. Lamar stood as the ultimate test. If the public truly wished to see this trend of ambiguity and retreat reversed ï and instead see the Supreme Court begin issuing strong pronouncements of black rights through the Reconstruction Amendments ï they bore quite the opportunity with the nomination. For their consideration: a candidate which in many ways represented the human embodiment of abandonment of black

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

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

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

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

Ex parte Yarbrough, 110 U.S. 651 (1884).

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