

*Approved
Brooks*

JOHN BROOKS HENDERSON

AS A REPRESENTATIVE OF BORDER-STATE PUBLIC OPINION

by

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INTRODUCTION

The stormy years of the Civil War and reconstruction period were years of confusion and strife in politics as well as in military affairs; fierce partisanship was the order of the day. No section of the country experienced this more than the border region, settled by people from both North and South and torn between these conflicting loyalties; Missouri furnishes an excellent example of this condition. John Brooks Henderson, the subject of this study, represented Missouri in the United States Senate during the greater part of the war between the states, and through the immediate post-war years. The climax of partisan hatreds which came with the impeachment of President Andrew Johnson marked the end of Henderson's effectual political career, for he had the courage to defy party demands and to vote for the acquittal of the Chief Executive who had earned the vituperative opposition of the Radical Republicans.

The position of a border-state representative was often difficult in these years; the problems which Henderson met and tried to solve were probably typical in the experience of others of his region. His career was

greatly influenced by the events of the Civil War and the post-war years, and by Missouri's reactions to those occurrences. It has seemed profitable to center the study around the most important controversial questions of the day in which he played an important part: specifically, the problems of emancipation, reconstruction, and the impeachment of Andrew Johnson. This has made it necessary to ignore some phases of Henderson's activity, the most important being his service on the Senate Committee on Indian Affairs. There has been no attempt to present an account of either national or Missouri politics during the period, except in so far as it seemed necessary as a background for the development of Henderson's career.

John Brooks Henderson was a native of Virginia; he was born near Danville, in Pittsylvania County of that state, on November 16, 1826.¹ His parents, James and Jane (Dawson) Henderson, moved to Lincoln County, Missouri in 1832 and John, of course, accompanied them. Soon after coming to Missouri both James Henderson and his wife died, leaving John very nearly penniless. He went to live at the farm home of a minister, under whose care young Henderson made a good start in academic studies. By the time he was fifteen, he was teaching in Pike County, Missouri

1. Biographical Dictionary of the American Congress, 1774-1927, 69 Cong., 2 sess., House Document 783, Government Printing Office, 1928, p. 1086.

while he studied law. In 1848, Henderson was admitted to the bar and began his practice at Louisiana, Missouri, where he made his home until he was sent to the United States Senate in 1862. Eventually he built up a comfortable fortune, through practice and investments.²

The same year in which Henderson was admitted to the bar saw his election to the Missouri House of Representatives; he was the youngest member of the House in the 1848 session, becoming old enough to qualify legally just before the General Assembly convened.³ During this session of the legislature, the youthful representative served on the Committee on Rules, on Election, on Judiciary, and on Criminal Jurisprudence, in addition to various special committees.⁴ Early in 1849 Henderson gave evidence of his states-rights Democratic attitude by introducing resolutions declaring that Congress could not legislate on slavery in the territories, and that the territories themselves could decide on the question only when they

2. J. G. de R. Hamilton, "John Brooks Henderson," Dictionary of American Biography, under the auspices of learned societies, New York, 1932, VIII, pp. 527-529.
3. History of Pike County, Missouri, Des Moines, Iowa, 1883, pp. 385-389. Official Manual, State of Missouri, 1913-1914, p. 159.
4. Missouri House Journal, 15th General Assembly, 1 sess. (1848-49), pp. 13, 33, 42, 46, 50, 151, 157, 224, 257, 316, 318, 321, 438, 533.

came to form state constitutions.⁵ Several years later he stated that these resolutions had been incorporated into the famous Jackson Resolutions which were an important landmark in Missouri politics of the late forties and early fifties.⁶

In 1850 Henderson ran for Congress as the Democratic nominee, but was defeated.⁷ When the Louisiana court of common pleas was created in 1853, he was elected to be the first judge of that court, serving for two years until he resigned in 1855.⁸ Henderson was returned to the State House of Representatives in 1856, in which he served as a member of the Committee on Federal Relations and as chairman of the Committee on Banks.⁹ In the regular and adjourned sessions of the Nineteenth General Assembly Henderson played an important part in banking legislation, by virtue of his chairmanship of the committee on that subject.¹⁰

5. Missouri House Journal, 15th Gen. Assem., 1 sess. (1848-49), p. 82.
6. Tri-Weekly Missouri Republican, July 7, 1860; speech at New London, Mo.
7. History of Pike County, Missouri, pp. 385-389.
8. History of Pike County, Missouri, pp. 181-183.
9. Missouri House Journal, 19 Gen. Assem., 1 sess. (1856-57), pp. 35, 36.
10. Missouri House Journal, 19 Gen. Assem., 1 sess. (1856-57), see pp. 112 and 389 for reports of committee and a recommended bill to regulate banks; adj. sess. (1857), pp. 107, 244, 215.

He was also interested and influential in railroad legislation.¹¹

Henderson continued to be active in local politics; he was a Buchanan elector in 1856,¹² and made a second race for Congress in 1858, to be defeated a second time. He opposed Buchanan's Kansas policy¹³ and defended the position of Stephen A. Douglas in denouncing the Lecompton Constitution.¹⁴ In 1860 Henderson made a third race for Congress, conducting a wide speaking campaign. Since this campaign may be said to mark his emergence as an acknowledged leader in state politics and since the events of 1860 led rapidly into the Civil War and Henderson's active political career, it has seemed logical to begin the detailed story of his public life at this point.

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- 11. Missouri House Journal, 19 Gen. Assem., 1 sess. (1856-57), pp. 232, 422, 444, 462, 476; adj. sess. (1857), p. 181.
 - 12. F. A. Sampson, "The Hon. John Brooks Henderson," Missouri Historical Review, VII, pp. 237-241.
 - 13. Hamilton, "John Brooks Henderson," Dictionary of American Biography, VIII, pp. 527-529.
 - 14. Tri-Weekly Missouri Republican, July 7, 1860.

CHAPTER I

The Missouri State Democratic Convention of 1860 met in Jefferson City on April 9 of that year. John B. Henderson was a member of the convention, serving on the resolutions committee. Although anti-Douglas sentiment was strong in the State Convention, an uninstructed delegation with a Douglas majority was sent to the National Democratic Convention. Henderson was a member of this delegation. He supported Douglas in the Convention which met at Charleston on April 23, 1860, and when he returned to Missouri defended Douglas' policies before the people. At a Democratic meeting in Bowling Green near the middle of May, Henderson was reported to have spoken for two hours, upholding Douglas and the course of the Northern Democrats in the Charleston Convention. He defended the northern wing of the Democracy against the charges of free-soilism and of infidelity to the South. After Henderson's speech the mass meeting adopted a resolution approving his action in the Democratic Convention at Charleston and endorsing him for Congress.¹

1. Tri-Weekly Missouri Republican, May 19, 1860.

Mexico, Missouri was the scene, on May 23, of the Congressional Convention of the Second District, in which is included Pike County, the home of Henderson. The counties within the district were all fairly well represented and after a free discussion of candidates by members of the Convention it was apparent that Henderson was the choice of the majority for the congressional nomination. The minority who favored other candidates evidently demonstrated ill feeling and there was some discussion of Douglas' views on territorial legislative powers. Henderson was among those who addressed the Convention. After several speeches the delegates seem to have agreed that the division in the Democratic Party was not serious, that it was more an abstract than a practical matter, and that the whole problem could be settled by the courts.

Henderson was named as the Democratic candidate for Congress from the Second District by a large majority of the convention. In his speech of acceptance he stated that he would call on the convention to discuss the nomination again the next morning and if there was a single dissenting voice to his candidacy, he would turn it back to the convention. The next day, May 24, representatives of several county delegations (Boone, Lincoln, Monroe, and Audrain) spoke, reporting that good feeling and harmony prevailed in their groups and promising good

majorities for Henderson.²

Henderson was evidently recognized as a local Democratic leader at the beginning of the year of 1860. His membership in the State Convention, his position as delegate to the National Democratic Convention, and his nomination for Congress with little apparent opposition, all would point to this conclusion.

When the Democratic National Convention reconvened at Baltimore on June 18, Henderson was again present as a delegate from Missouri, and again supported Douglas. At a ratification mass meeting held in St. Louis on June 27 to celebrate the nomination of Douglas for the presidency, Henderson received tremendous applause when he stated that he had voted for Douglas fifty-nine times: that is, on every ballot. He blamed federal office holders and politicians for the withdrawal of southern delegations from the Democratic National Convention and denied those officeholders represented the southern people. In tune with the spirit of the meeting, Henderson declared that he stood for the principle of non-intervention in the territories on behalf of slavery because he believed that was right under the Constitution and because it was the doctrine that would lead to peace and harmony. This was, he believed, the solution which the great statesmen of

2. Tri-Weekly Missouri Republican, June 2, 1860.

the past had favored and it was now the principle advocated by Douglas. Loyal Democrats should elect Douglas because he was a true patriot and defender of the Constitution.

It is indicative of the confused state of political alignments in Missouri during the decade of the sixties that this same Democratic mass meeting, which Henderson addressed as a regular member of the party, adopted resolutions introduced by C. D. Drake.³ The next years were to see both Henderson and Drake shift, more or less gradually, into the Republican party, until in 1867 both were sitting in the United States Senate as Republicans from Missouri.

The question of Congressional non-intervention with slavery in the territories requires a brief explanation in view of the important part the issue played in the campaign of 1860 and in view of Henderson's politically wise but actually ambiguous statements concerning it. The Southern Democrats had contended before 1850 that Congress could not interfere with slavery in the territories and that the territories themselves could not exclude the institution until they formed their state constitutions. It has been reported that Henderson introduced resolutions supporting this view when he was a member of the Missouri

3. Tri-Weekly Missouri Republican, June 28, 1860.

House of Representatives in 1849.

The 1856 platform of the Democratic party endorsed the policy of non-intervention in the territories in regard to slavery; this plank, however, was made to mean one thing in the North and another in the South. To northern Democrats it implied that the people in their territorial legislatures should decide the fate of slavery, while southerners were convinced the statement meant slavery could not be excluded from the territories until they became states.⁴ In the national conventions of 1860 the northern and southern Democrats openly split on this issue. Douglas, the champion of popular sovereignty, lead the northern wing while Breckinridge became the presidential nominee of the southern branch. So when Henderson used the term non-intervention, he really meant popular sovereignty, but was attempting to attract Democrats of both wings.

Major James S. Rollins was Henderson's opponent in the contest for congressman in the Second District. He was an old line Whig who had been active in Missouri politics for many years, narrowly missing election to the state governorship in 1857. He was running as a nominee of the American Party and supporting Bell for the presidency. Henderson and Rollins traveled over the district

4. James G. Randall, The Civil War and Reconstruction, New York, 1937, pp. 110-144.

together, meeting each other in debate in New London, Hannibal, St. Charles, Sturgeon, and other places.

The first joint-debate between Henderson and Rollins was at New London in the afternoon of July 3. Rollins had been campaigning for some time, but Henderson's health had prevented an earlier opening of his canvass.⁵ The two opponents met again in Hannibal the evening of July 5.⁶ Another major encounter occurred in Court House Hall in St. Charles on the afternoon of July 18. This debate differed from the others in that the speeches were somewhat more formal, less rough and ready, both in content and in presentation. Henderson, particularly, showed that he had made careful preparation for this invasion of hostile territory, for St. Charles with its heavy German population was a Republican stronghold. He spent most of his time reviewing the positions of leading statesmen of the early fifties on the problem of slavery in the territories.⁷ Near the close of the campaign the contestants for office met at Sturgeon for another exposition of their views.⁸

Both men evidently were effective speakers, and the debates were spirited affairs. Rollins, a seasoned

5. Tri-Weekly Missouri Republican, July 7, 1860.

6. Tri-Weekly Missouri Republican, July 12, 1860.

7. Tri-Weekly Missouri Republican, July 21, 1860.

8. Tri-Weekly Missouri Republican, Aug. 4, 1860.

campaigner, seems to have spent much of his time in witty, jocular remarks, relying on his past record and prestige, while Henderson devoted his speeches more definitely to discussions of the political issue of slavery in the territories and its constitutional implications. This contrast was especially noticeable in the St. Charles debate, but seems to have been present in others as well. Henderson objected at New London that Rollins had spoken for an hour without taking a definite stand on a single principle, but had only appealed to conservatives to join the American party. The correspondent of the Missouri Republican agreed with this view in his comments on Rollins' speech.⁹ In the St. Charles debate Henderson again insisted that Rollins had evaded definite commitment by indulging in rhetoric, dwelling on squatter sovereignty, evidently without understanding it, and abusing Douglas.¹⁰

In his speeches throughout the campaign Henderson defended Douglas as a truly national leader who had been correct and consistent in his doctrine of non-intervention by Congress with slavery in the territories. At New London he denied Douglas was an Abolitionist or a Free-soiler, asking why, if that were true, no Abolitionists or Free-soilers were supporting the Little Giant and why no one

9. Tri-Weekly Missouri Republican, July 7, 1860.

10. Tri-Weekly Missouri Republican, July 21, 1860.

had called him an Abolitionist when the Kansas-Nebraska Act was passed. In the same speech Henderson stated that he considered Douglas a national, not a sectional, candidate, one who was perfectly sound on slavery and who would defend the rights of the South at all costs. He further remarked that he would not be afraid to go before the people of the South as an advocate of Douglas' candidacy. Henderson cited his own past defense of Douglas at the time of the controversy over the Lecompton Constitution, and his support of Douglas in the recent National Convention, as definite evidence of his own position in the congressional campaign.¹¹

At Hannibal, where Rollins made the charge that he had been associating with Abolitionists at Charleston and Baltimore, Henderson replied that he was proud to have represented Missouri at those conventions and to have voted uniformly for Douglas. Here again he praised Douglas as a statesman who went to neither extreme and denied he was an Abolitionist.¹² In his speech in St. Charles, Henderson declared that the controversy which developed at Charleston would never have arisen if the officeholders of the Buchanan Administration had not been admitted. He recalled the removals of Douglas men from federal offices

11. Tri-Weekly Missouri Republican, July 7, 1860.

12. Tri-Weekly Missouri Republican, July 12, 1860.

since 1858 and remarked that it was a great misfortune for the country that the Administration should be so hostile to Douglas. Again he urged Douglas as a national candidate, one who would end sectionalism and bring prosperity to all parts of the country.¹³

Henderson likewise defended the whole doctrine of non-intervention in the territories in the matter of slavery, clearly took that position for himself, and praised Douglas' consistency in upholding that doctrine all through the fifties. His interpretation of the doctrine was from the northern viewpoint, though he did not admit any other was possible. In the course of the Hannibal debate he stated that he had no desire to force slaves upon the territories; his object was to make the people sovereign in the land, to advocate self-government.¹⁴ At St. Charles, Henderson clearly stated that before his nomination by the Mexico Convention he was called on to say whether or not he would vote for congressional protection of slavery in the territories, and his answer was "No." He took the position that the territories should be left to legislate on all subjects proper under the Constitution, and if controversy arose as to which subjects were proper, the matter should be left for

13. Tri-Weekly Missouri Republican, July 21, 1860.

14. Tri-Weekly Missouri Republican, July 12, 1860.

judicial decision.¹⁵

Most of his time in the St. Charles debate Henderson devoted to a review of the controversy over slavery in the territories and statement of the views of leading political figures on the subject at various times. Here again he ignored the two diverse interpretations of the doctrine of non-intervention, attempting to persuade his listeners that Douglas was advocating the identical view expressed by southern Democrats in earlier years. The Wilmot Proviso, the Compromise of 1850, the Kansas-Nebraska Act, were all discussed in more or less detail. Henderson attempted to show that Henry Clay in 1850 had refused to vote for measures which would either exclude slavery from or force it upon the territories, and had stated that the right of the territory to act on the institution should be left to judicial decision. He traced Douglas' positions all through the fifties in some fullness, insisting that Douglas had been consistent and that the other Democratic leaders had changed.

Quotations from Breckinridge's speeches of 1854 and 1856 were read by the speaker, who interpreted the statements contained in them from the northern Democratic point of view, and therefore contended that Breckinridge in 1854 and 1856 had agreed with Douglas' 1860 position.

15. Tri-Weekly Missouri Republican, July 21, 1860.

Earlier remarks made by General Lane, Breckinridge's running mate, were given the same type of treatment in Henderson's attempt to show that Douglas' popular sovereignty doctrine was the same as the traditionally accepted Democratic position of congressional non-intervention with slavery in the territories. Thus Henderson concluded that there was no logical justification for a division in the Democratic Party, but every reason why Douglas should be elected.¹⁶

Throughout the campaign Henderson advocated non-intervention by Congress in the territories and leaving interpretation of the constitutional rights of territorial legislatures to the courts. He consistently refused to admit there was any reason for a split in the Democratic Party by always using the ambiguous phrase non-intervention, when he really meant popular sovereignty in the territories. Henderson urged that Douglas be elected President and emphasized the need for a national as opposed to a sectional viewpoint; this need he was sure Douglas would fill. He pledged himself to maintain such a national attitude. His emphasis on the dangers of sectionalism, and his belief that if the sections could really know each other hatreds between them would disappear, was prophetic of the later stand Henderson was to take in

16. Tri-Weekly Missouri Republican, July 21, 1860.

the State Convention of 1861.

The official election returns of the contest for Congressman in the Second District gave Rollins 11,161 votes and Henderson 10,908. Rollins' majority was 253.¹⁷ The Missouri Republican laid Henderson's defeat to the defection of the Breckinridge men of Lincoln County from the Democratic candidate, and to the Black Republican support given Major Rollins.¹⁸ The Republican gave Henderson credit for having reduced the Rollins majority over Stewart in 1857 by fourteen hundred votes,¹⁹ and in so doing, declared a Republican editorial, Henderson's fight had helped the other Democratic candidates in the district.²⁰

Henderson's intensive speaking campaign throughout the Second District and the fact that several of his speeches were reported in full in the Missouri Republican must have made him a much better known political figure than he had been at the beginning of the year 1860. Major Rollins was a seasoned politician and the close vote in the contest indicates that Henderson was able to meet him on very nearly equal terms. Henderson did not drop out of political life with this defeat, even temporarily, but

17. Tri-Weekly Missouri Republican, Aug. 22, 1860.

18. Tri-Weekly Missouri Republican, Aug. 11, 1860.

19. Tri-Weekly Missouri Republican, Aug. 13, 1860.

20. Tri-Weekly Missouri Republican, Aug. 11, 1860.

continued to campaign for Douglas until the National election in November. He spoke in Hannibal the evening of August 14 at a meeting which also heard the Illinoisian, Orville Hickman Browning.²¹

Henderson was evidently recognized as a Douglas leader in the district, for he was elected President of the Young Men's Democratic State Convention when it was called in support of Douglas late in September.²² He was one of the committee of five appointed by a Democratic meeting in St. Louis to ascertain whether or not Claiborne F. Jackson would support Douglas, who was designated by the meeting as the "regular" Democratic candidate.²³ When Douglas came to St. Louis to address a Democratic rally, Henderson was one of the reception committee to greet him.²⁴ He was also announced as a speaker at other Democratic rallies in St. Louis,²⁵ Huntsville,²⁶ Springfield,²⁷ and

21. Theodore Calvin Pease and James A. Randall, editors, The Diary of Orville Hickman Browning, Springfield, Ill., 1925, I pp. 423-424.
22. Tri-Weekly Missouri Republican, Sept. 28, 1860.
23. Tri-Weekly Missouri Republican, Oct. 1, 1860.
24. Tri-Weekly Missouri Republican, Oct. 12, 1860.
25. Tri-Weekly Missouri Republican, Aug. 24, 1860.
26. Tri-Weekly Missouri Republican, Aug. 30, 1860.
27. Tri-Weekly Missouri Republican, Sept. 25, 1860.

Mexico²⁸ Since the entire campaign of 1860 had the effect of making Henderson much better known over the state, it was to be expected that, when the call for a State Convention came early in 1861, he should be mentioned as a candidate.

The events following the election of Lincoln, the ordinances of secession adopted by the states of the deep South, and the renewed agitation on the slavery question all united to force Missouri to take stock of her own position during the winter of 1860-1861. The pro-southern General Assembly on January 18 passed a bill calling for a Convention to consider Missouri's course in the matter of secession.²⁹ Three parties were represented in the election of delegates, the Secessionists, Conditional Union Men and Unconditional Union Men. The election was held February 18; it was a quiet, orderly affair and the State returned an estimated 80,000 majority against secession. Not a single avowed Secessionist was chosen to be a member of the Convention.³⁰

The Missouri State Convention convened on the last day of February, 1861. John B. Henderson was one of the

28. Tri-Weekly Missouri Republican, Oct. 16, 1860.

29. Thomas L. Snead, The Fight for Missouri, New York, 1888, p. 46.

30. Snead, The Fight for Missouri, p. 66.

younger members of the body, being thirty-four years old at that time.³¹ He was one of the delegation of three from the Second Senatorial District of the State. He was elected on a program of compromise between the sections on any possible basis, and of keeping Missouri within the Union.³² Henderson, in his campaign, had declared against coercion as against secession. He called himself a Constitutional Union man.³³ While he must be classified with the Conditional Union group, it is not because there was any doubt in his mind as to Missouri's future course, but because the Unconditional Union name was at first associated with "Black Republicanism" and Henderson was too much of a Democrat to accept a title which would so ally him.

He came to the Convention convinced that Missouri must remain loyal to the Union, that southern rights must be defended, but that establishing separate confederacies would only bring eventual war.³⁴ Henderson still maintained his 1860 position on slavery in the territories--

31. Journal and Proceedings of the Missouri State Convention, Session of March 1, 1861, p. 6.

32. Proceedings, Missouri State Convention, March, 1861, p. 227.

33. Tri-Weekly Missouri Republican, Jan. 28, 1861, Feb. 4, 1861, Feb. 20, 1861.

34. Proceedings, Missouri State Convention, March, 1861, p. 27.

that is, that the territories should be thrown open to settlement from North and South; slavery would go where soil and climate invited it and the people of each territory should decide whether to permit or exclude it. He realized, he said, that the two sectional parties had taken extreme positions on this issue, but Missouri had chosen the middle course when she elected this Convention, of which he was a member.³⁵

When committees were selected, Henderson was appointed to serve on the two key committees of the Convention: the Committee on Federal Relations, of which Gamble was chairman,³⁶ and the Committee on the Communication from the Georgia Commissioner, of which Henderson was chairman.³⁷ These two committees were given permission to meet during the sessions of the Convention;³⁸ consequently Henderson's expressions of opinion were limited to the discussion of the Gamble resolutions, which he strongly defended, and to the majority report of the Committee on the Communication from the Georgia Commis-

35. Proceedings, Missouri State Convention, March, 1861, p. 90.

36. Journal, Missouri State Convention, March, 1861, p. 21.

37. Journal, Missouri State Convention, March, 1861, p. 22.

38. Journal, Missouri State Convention, March, 1861, p. 23.

sioner, which Henderson probably wrote but which was not debated at any length. The following discussion of his attitudes and opinions is taken from his remarks in the Convention.

As Henderson blamed the southern politicians and federal officeholders for the southern withdrawals from the Charleston Convention, so he held that the "drunken demagogues" of the South were responsible for the situation of March, 1861. The people of the South had been misled or prevented from expressing their loyalty, he believed. The politician leaders claimed the South must secede because a sectional party had won a victory and slavery was threatened.³⁹ The Commissioner from Georgia in his address had stated that the ultimate object of this sectional party was to end slavery and give the black race political equality. Henderson admitted there were extremists in the Republican Party who would do harm to southern rights if they could but he asked, at the risk of being called a Black Republican, whether anyone could honestly say that all sectionalism was in the North.⁴⁰ It was true, he continued, that the Republicans advocated excluding slavery from the territories, but as soon as they

39. Proceedings, Missouri State Convention, March, 1861,
p. 85.

40. Proceedings, Missouri State Convention, March, 1861,
p. 89.

came into power they passed three territorial bills and none of them contained the party doctrine. The Southern grievance on this point was not real, only anticipated.⁴¹ The Republican Party had shown it was not controlled by its extremists when Congress voted by a two-thirds majority for an amendment forbidding congressional interference with slavery in the states.⁴² As for giving the black race political equality, if that was the intention of the North, why had the northern states not put the negro on an equal basis with the white, inquired Henderson.⁴³

Non-enforcement of the fugitive slave laws was another southern complaint. Secession would not cure this condition, said Henderson, for if respect for the Constitution and laws would not enforce such measures certainly treaties would not. He pointed out that slaves were safe in Canada, yet the United States had close treaty and commercial relations with Great Britain. If the slaves could not be recovered by treaty from a country so dependent on King Cotton, the South could not expect to recover fugitives

41. Proceedings, Missouri State Convention, March, 1861, p. 89.

42. Proceedings, Missouri State Convention, March, 1861, p. 249.

43. Proceedings, Missouri State Convention, March, 1861, p. 90.

from an independent North.⁴⁴

The majority report of the Committee on the Communication from the Georgia Commissioner may be taken to express Henderson's sentiments since he concurred in it and was chairman of the Committee. It stated that while Georgia had lost faith in the North the Committee had not--radicals in the North no longer had Missouri's confidence but the North retained it. Southern demands on the subject of slavery had not been refused by the North in the past, according to the report. It reminded the Convention that the Northwest Ordinance, prohibiting slavery in the Old Northwest, was proposed by a Virginian; the Missouri Compromise was proposed by a southerner and the North had agreed to it; the concessions of 1850, 1854, and the Dred Scott decision made slavery lawful in every part of the public domain. The present demand of the South for protection of slavery in the territories had been made only in a political convention and it was possible the North might not refuse even that. At any rate, the Committee believed that, "If evils exist under the Constitution and laws, as they are, let the proper appeal be addressed to the American heart, both North and South, and these evils

44. Proceedings, Missouri State Convention, March, 1861,
p. 88.

will be removed.⁴⁵

Henderson did not believe these grievances were the real causes of southern withdrawal. The true reasons for secession, to his mind, were to be found in false ideas of commercial greatness and in the desire of men who felt themselves unappreciated in this country to take Cuba and pillage Latin America. Southern cities, Charleston, Savannah, Mobile, New Orleans, even St. Louis, believed that as a part of a new Southern Confederacy cut off from northern import taxes they would prosper and grow rapidly, even become New Yorks. He condemned the southerners who had mislead the people into thinking themselves mistreated by the federal government; many honest sincere southern citizens had been so persuaded by "Designing demagogues and politicians who today would rot them, if they could only conceal their plunder..." and who would in a few years, he predicted, bring the South down in ruins.⁴⁶

The majority report of the Committee on the Georgia Communication put this idea in very plain terms when it said that the Committee had some doubt as to the deliberation and wisdom with which Georgia had acted. Especially pointed was the suggestion that Georgia, and other seced-

45. Proceedings, Missouri State Convention, March, 1861,
p. 250.

46. Proceedings, Missouri State Convention, March, 1861,
p. 250.

ing States, consider Andrew Jackson's words of 1833: "The tariff, it is now known, was a mere pretext. The next pretext will be the negro or slavery question."⁴⁷

Henderson consistently denied the constitutionality of secession during the sessions of the Convention called to consider the problem of Missouri's future course. He condemned the spirit of insubordination and lawlessness that seemed to be spreading over the country, North and South. He decried the new doctrines which declared that if northern robbers took slave property and southerners were prevented by other robber bands from recovering it, the remedy was to repeal all laws. These were, he said, the forces that were destroying peace and prosperity. Henderson's idea of the true remedy was to revise the laws and provide for better enforcement; secession he considered a damnable heresy, not planned by the forefathers to remedy anything. The framers of the Constitution had believed that in Union there would be strength, prosperity and power to enforce the decrees of an honest judiciary; they had been right and they had intended the Union to be perpetual, declared Henderson.⁴⁸

The right of revolution Henderson admitted as a last

47. Proceedings, Missouri State Convention, March, 1861, p. 86.

48. Proceedings, Missouri State Convention, March, 1861, p. 85-86.

resort against an oppressive government, but it could not be used until all possibilities of a peaceful, lawful settlement had been exhausted; this limitation on the right of revolution automatically eliminated it as a basis of justification for the seceding states. Those states claimed secession to be a right resulting from the nature of the federal government, for they held it to be a confederation of States, not a government of the people.

Every attempt to overthrow the government had been justified by this same claim, insisted Henderson. The delegates of New England States to the Hartford Convention in 1814 had declared that each State must safeguard its own sovereignty, and under special conditions be its own judge and execute its own decisions. They had recommended amendments to the Constitution which they must have known could not be adopted, and had protested against coercion.⁴⁹

"If secession be true," Henderson asked, "what objection have you to the proceedings of the Hartford Convention? No man who held a seat upon the floor of that Convention is to-day willing to let his name be known before the American people.... If this doctrine be true, why were they not right, in consulting their interests, and meeting together upon the floor of that Convention with the view to separate themselves from the Federal Government?"⁵⁰

In 1833 another section of the country had enunciated

49. Proceedings, Missouri State Convention, March, 1861,
p. 251.

50. Proceedings, Missouri State Convention, March, 1861,
p. 87.

similar principles, said Henderson; this time it was the South and the grievance was the tariff act of 1828. The idea that the States were independent sovereignties had been even more clearly stated than in 1814, and the right of a State to judge for itself was reaffirmed. After Jackson's decisive action had ended this attempt, "...a new batch of restless men were consigned to oblivion by an indignant people...."⁵¹

These were tortured constructions of the Constitution in Henderson's opinion. The federal government had been given certain delegated powers by the Constitution and those delegated powers represented a surrender by the people of the whole Union of a part of their sovereignty which could not be withdrawn by any state except in the way provided by the Constitution itself. The framers of the Constitution had foreseen the need of a means of settling disputes and had set up the judiciary as the body to prevent aggression of States on the powers of the Federal Government or undue interference of the Federal Government with affairs of States. The Fathers certainly had intended the federal government to be permanent: the very powers given to it indicated this fact, stated Henderson. Why had they given the United States Government power to

51. Proceedings, Missouri State Convention, March, 1861,
p. 252.

borrow money, lay taxes, raise military forces, declare war, and make treaties if a simple ordinance of secession could excuse the citizens of a State from obedience to such federal acts? The acquisitions of new territory and the payment of the Texas debt by the Union testified to the permanent nature of the federal government.⁵²

If the doctrine of secession and nullification were true then the South could not complain of northern defiance of fugitive slave laws. If the doctrine of secession were true, then the federal Union might fall to pieces in any moment of crisis, Henderson declared. Those who wrote the Constitution had not intended this.⁵³

Quite aside from theoretical debate, Henderson insisted that Missouri could never secede from the Union. Her practical interests could not permit it. Missouri's geographical position, her varied industries, in short, her border-state character made imperative the most sober and conciliatory counsel. If she left the Union to join the South she would be surrounded by enemy territory. The very elements which had brought unity and prosperity as a nation would soon bring irritating conflicts, and then war between independent sovereignties. The great

52. Proceedings, Missouri State Convention, March, 1861, p. 252-253.

53. Proceedings, Missouri State Convention, March, 1861, p. 87-8.

rivers which had been avenues of commerce would become sources of controversy between rival republics.⁵⁴ Henderson hoped in March, 1861, that if separation occurred it would come peaceably and he promised to do all within his power to make it so. But even if two nations could be peaceably established where one had been before he predicted that conflict must inevitably occur within a few years, "...war of the most direful character...and that war will not be terminated until every material and social interest of this country has been buried beneath its ravages. It is inevitable."⁵⁵ Missouri would certainly not safeguard her slave property by seceding, for on three sides of her would be asylum territory, as safe for escaped slaves as Canada had been and was then.⁵⁶

Henderson, then, was most emphatic in denying both the constitutionality of secession and the expediency of the false doctrine for Missouri. The majority report of the Committee on the Communication from the Georgia Commissioner recommended resolutions which expressed Henderson's attitudes very clearly:

54. Proceedings, Missouri State Convention, March, 1861, p. 254.
55. Proceedings, Missouri State Convention, March, 1861, p. 89
56. Proceedings, Missouri State Convention, March, 1861, p. 254.

"1st. That the communication made to the Convention by the Hon. Luther J. Glenn, as a Commissioner from the State of Georgia, so far as it asserts the constitutional right of secession meets with our disapproval.

2nd. That whilst we reprobate, in common with Georgia, the violation of constitutional duty by Northern fanatics, we cannot approve the secession of Georgia and her sister States, as a measure likely to prove beneficial either to us or to themselves.

3rd. That in our opinion the dissolution of the Union would be ruinous to the best interests of Missouri, hence no efforts should be spared on her part to secure its continued blessings to her people, and she will labor for an adjustment of all existing differences, on such a basis as will be compatible with the interest and honor of all the States.

4th. That this Convention exhorts Georgia and the other seceding States to desist from the revolutionary measures commenced by them, and unite their voice with ours in restoring peace and cementing the union of our fathers."⁵⁷

After a few brief remarks had been made and minority resolutions submitted, the report and both sets of resolutions were laid on the table, made the special order of business for the third Monday in December when the Convention expected to reconvene, and ordered printed.⁵⁸ When the Convention did meet again in July, the situation was so completely changed that the report and resolutions had no relation to the facts as they existed and therefore

57. Proceedings, Missouri State Convention, March, 1861, p. 254.

58. Proceedings, Missouri State Convention, March, 1861 p. 256, 258.

were not even considered. The documents were more important as an expression of Henderson's ideas and attitudes than as action actually considered by the Convention to be proper.

Henderson, like a majority of the Convention of 1861, was anxious to see the Union preserved and sincerely fearful of the way events were going, as the discussion above indicates, for he was certain that separation would ultimately bring war. Yet he attempted to reassure himself and the other conservatives of the Convention that things were not so bad as they seemed, even in the same speech in which he predicted inevitable conflict. When Henderson addressed the Convention on March 12 in support of the Gamble Resolutions he said he believed the gravity of the situation was overestimated. Party feeling might predominate for the moment, but it would cool off and judgment would return to the many loyal men.⁵⁹

The seceded states must eventually return to the Union, but Henderson was quite certain that no military action would be used to force the South to return. The President could not carry out such a policy under his oath of office. Before a law could be enforced by federal authority legal processes must be followed and then the

59. Proceedings, Missouri State Convention, March, 1861,
p. 92.

federal government could enforce the court's decision. This could not be done in seceded states, said Henderson, for federal officials had resigned. Some have said, he admitted, that revenues may be collected without court procedure; but he knew of no law under which Lincoln could even collect revenues at the southern ports, for they must be collected within the ports at the custom house and if the federal officials had resigned then Lincoln had no power to force collection. Henderson asked,

"Will the abstract principle of the enforcement of the laws ever be carried by the President of the United States under existing circumstances to the extent of military subjugation? If so, then you might as well declare that this Government is at an end."⁶⁰

This position was to be greatly changed in the next few months.

Missouri's part as Henderson saw it in March, 1861, was to achieve a compromise. He would never consent, he declared many times, to see Missouri follow the seceded states. He was determined that Missouri be held within the Union. He urged adoption of the Gamble Resolutions by the Convention as the best means of attaining these ends. As a member of the Committee on Federal Relations he had been and was determined, he said, to do everything possible to bring peaceful compromise. Probably no two

60. Proceedings, Missouri State Convention, March, 1861,
p. 92.

members of the committee could agree on every point but the resolutions reported by Mr. Gamble contained no doctrine which he considered in conflict with the Constitution and nothing inimical to the Union. In brief, these resolutions stated that there existed at present no adequate reason sufficient to cause Missouri to leave the Union; expressed the earnest desire that harmony be restored; suggested the Crittenden Compromise as a basis of settlement; urged that steps be taken to call a Convention to propose amendments to the federal Constitution; and entreated both the Federal Government and the governments of the seceded States not to use force while compromise measures were under consideration.⁶¹

Henderson opposed amendments to the Gamble resolutions on the general ground that the language of the report had been carefully studied to avoid any implication of secession. Amendments hastily drawn up in heat of debate, he said, might contain implications that the Convention would not see when it adopted them. One particular amendment against which he spoke provided that if the North refused to consider a settlement on the basis of the Crittenden Compromise and if Virginia, Maryland, North Carolina, Tennessee, Arkansas, and Kentucky left the

61. Journal, Missouri State Convention, March, 1861, p. 36-
37, 47, 49.

Union, then Missouri would "...not hesitate to take a firm and decided stand in favor of her sister slave States."⁶² Henderson, in objection to it, urged that the basis of possible compromise be left as wide as possible and especially protested against the pledge that Missouri would leave the Union if the other border states did. For his part, he had distinctly stated to his constituents that no matter what compromise plans failed nor what states left the Union, Missouri would not secede.⁶³ Again in the same speech he reiterated his belief that there was no constitutional right of secession, though he did not deny the right of revolution if citizens were denied their rights and oppressed. Missouri must remain loyal to the Constitution, he insisted; he was certain the American government was the best on earth and those who were attempting to destroy it were simply traitors.⁶⁴

All attempts to include a resolution that Missouri would lend no arms nor money to coercion met with Henderson's disapproval, in spite of his anti-coercion principles. He considered such a statement unnecessary, for as

62. Proceedings, Missouri State Convention, March, 1861, p. 217.
63. Proceedings, Missouri State Convention, March, 1861, p. 227.
64. Proceedings, Missouri State Convention, March, 1861, p. 228.

has been indicated, he did not believe the President could or would attempt military subjugation of the South. Why, then, lend ammunition to the extremists of both parties? Secessionists, he said, would build great hopes on such a resolution, while it would only inflame northern extremists against Missouri.⁶⁵

Throughout the proceedings of the March session of the Convention Henderson, while firmly opposing secession, urged that all men should forget partisanship, refrain from extreme expressions and look for a broad moderate basis of compromise and adjustment. He felt that "...gentlemen are often too prone to apply the terms Republicans and secessionists...the man who talks about compromise sometimes is denounced readily as a Black Republican."⁶⁶ Again in a later speech Henderson reiterated this fact:

"...contemptible pettifoggers and miserable politicians seem now to have seized the reins of government, and all men who look to peaceable reforms--all men who look to a restoration of that tranquillity and happiness which have blessed us for so many years and without which we should be powerless, are being denounced as Republicans and Northern partisans."⁶⁷

He admitted that he had been guilty of partisanship, but

65. Proceedings, Missouri State Convention, March, 1861, p. 92.

66. Proceedings, Missouri State Convention, March, 1861, p. 91

67. Proceedings, Missouri State Convention, March, 1861, p. 228.

the crisis was so great that he believed all men who believed in self-government, who loved the Union and would preserve it, must lay aside such activities, forget their political records, and work to compromise the sectional differences.⁶⁸

The Virginia State Convention, in session at the same time the Missouri Convention was meeting in March, 1861, was expected to adopt a resolution calling for a meeting of border states delegates. On the last day of the Missouri Convention's first session, March 22, such delegates were elected by that body on the basis of congressional districts. Henderson was chosen from the Second District by a vote of fifty-two to thirty-seven cast for his opponent.⁶⁹

Throughout the March session Henderson strenuously opposed secession, denounced the constitutionality of the doctrine and insisted Missouri could never, from a practical point of view, leave the Union. He was a figure of some importance in the Convention as is evidenced by his membership on the two most important committees of the session. The Missouri Republican evidently considered him one of the real leaders, for it had suggested his name,

68. Proceedings, Missouri State Convention, March, 1861, p. 92.

69. Journal, Missouri State Convention, March, 1861, p. 60-61.

along with those of Sterling Price and General Wilson, for the presidency of the Convention.⁷⁰ He might be described as a conservative Unionist: that is, a firm supporter of the Union, but a moderate who was willing to try to compromise between extremists.

By the time the State Convention met again in July, 1861, the whole situation was radically changed. The Civil War was raging, and within the State of Missouri the struggle had begun. Camp Jackson in St. Louis had been taken by Union forces and the regular state government had fled from Jefferson City. The State Convention represented the only loyal governing body with any semblance of authority from the people of the state. It was reconvened to consider what measures should be taken to assure a loyal government for Missouri. There was no debate on whether Missouri would or would not leave the Union. Several delegates who had been present at the March meeting of the Convention, including President Sterling Price, were absent, having joined the attempt to resist General Lyon, the federal commander. A provisional state government, which was to continue in power until 1864, was set up by the Convention.

Henderson was present when the Convention convened

70. Tri-Weekly Missouri Republican, Feb. 22, 1861.

in Jefferson City on Monday, July 22, 1861.⁷¹ One man from each congressional district was elected to compose a committee to report "what action is necessary to be taken by this Convention in the present condition of public affairs in Missouri."⁷² Henderson was elected from the Second Congressional District.⁷³ This Committee, of which James O. Broadhead was chairman, met during the sessions of the Convention.⁷⁴ Probably this accounts for Henderson's lack of extensive participation in the daily meetings of the Convention. Henderson's part in the July session of the body seems to have been limited for the most part to what influence he exerted in framing the ordinances reported by this Committee of Eight; these ordinances were, of course, the basis on which the Provisional Government of the State was organized. The offices of Governor, Lieutenant Governor, Secretary of State, and members of the General Assembly were declared vacant and the first three were filled by the Convention. Hamilton R. Gamble was elected Provisional Governor and Mordecai Oliver became Secretary of State. Laws passed by the

71. Journal, Missouri State Convention, July, 1861, p. 3.

72. Proceedings, Missouri State Convention, July, 1861, p. 14.

73. Proceedings, Missouri State Convention, July, 1861, p. 14.

74. Journal, Missouri State Convention, July, 1861, p. 7.

former state legislature, now disloyal, to create a militia to "repel invasion" were declared void and provision made to revive the law of 1859 concerning the state militia. Elections were set for November of 1861,⁷⁵ but were later postponed because of disrupted conditions in the state. A state legislature was elected in 1862 but no election for Governor was held until 1864.

Henderson was still moderate in attitude, as was shown by his speech on the second day of the July session in which he declared that he favored free expression of opinion by the delegates. He would never vote to expel a member, nor declare his seat vacant, on the basis of opinion expressed, he said, although he would so-vote if a member had taken up arms against the government and broken his oath to support the Constitution.⁷⁶

The disloyal state militia continued their activities in southwestern Missouri through the month of July and the first days of August. The battle of Wilson's Creek, which occurred August 10, 1861, determined that Missouri would remain in the Union, although it was not a federal victory. By pushing the secessionists into one corner of the state and giving the unionists of Missouri time to

75. Journal, Missouri State Convention, July, 1861, pp. 23-24.

76. Proceedings, Missouri State Convention, July, 1861, p. 12.

rally and organize their provisional government, the loyal forces had saved the state for the Union.⁷⁷ This did not mean, however, that civil strife was over in Missouri, for guerilla outbreaks were common and Confederate invasions occurred later in the war. The Provisional Government was upheld by the Lincoln Administration, and the national government cooperated with the loyal state government in military and financial provision for the war.⁷⁸

The convention was called together in October for the express purposes of providing for a more efficient means of enrolling a state militia and of raising the necessary funds to pay the troops. In his message to the Convention Provisional Governor Gamble also commented on the disrupted peace of the state and suggested that elections should be postponed until a better prospect of fair elections existed.⁷⁹ As has been remarked already the elections were postponed another year, and the provisional officials were continued in office.⁸⁰ The new militia ordinance which was adopted by the Convention, made all Missouri men between the ages of eighteen and forty-five liable to

77. Snead, The Fight for Missouri, p. 303.

78. Randall, Civil War and Reconstruction, p. 329.

79. Journal, Missouri State Convention, Oct., 1861, pp. 4, 5.

80. Journal, Missouri State Convention, Oct., 1861, pp. 8, 11.

military service. It provided that the militia should be organized in the same forms as the United States army and be transferred into the federal service at any time.⁸¹ A financial ordinance was adopted to support the military forces to be raised by the militia act. Warrants on the state to the amount of one million dollars were provided for.⁸² Governor Gamble was instructed to go to Washington to make plans for State and Federal cooperation in prosecution of the war.⁸³

When the Convention was again called together in October, 1861, Henderson was appointed to serve on the committee on Militia, of which Jacob T. Tindall was chairman.⁸⁴ As in July, Henderson's activity in the October session seems to have been largely confined to his part in framing the ordinances reported by his committee; in this case they were for the purpose of establishing the State militia. In addition, he was influential in determining the final form of the ordinance which provided for financing the militia.⁸⁵

81. Journal, Missouri State Convention, Oct., 1861, pp. 17-21.

82. Journal, Missouri State Convention, Oct., 1861, pp. 23-25.

83. Journal, Missouri State Convention, Oct., 1861, p. 26.

84. Journal, Missouri State Convention, October, 1861, p. 5.

85. Proceedings, Missouri State Convention, Oct., 1861, p. 108.

Henderson received a commission as Brigadier-General in the State Militia, and organized nearly two full regiments in the northern part of Missouri; but before he had completed enlisting his brigade his military service was ended by his appointment to the United States Senate.⁸⁶ That he saw some active service in the field during his very brief military career is evidenced by the dispatches found in the Official Records of the Rebellion from Brigadier-General Schofield to Henderson and from Henderson to Major-General Halleck.⁸⁷ After Henderson's appointment and later election to the United States Senate most of his time was spent in Washington. He returned to Missouri to attend the 1862 and 1863 sessions of the State Convention, largely in the interest of emancipation; but after the campaign of 1862 and his election to the Senate in 1863 he took little active part in Missouri politics.

86. The Bench and Bar of St. Louis, Kansas City, Jefferson City, and Other Missouri Cities, St. Louis and Chicago, 1884, pp. 106-108.

87. The War of the Rebellion: A Compilation of the Official Records, Washington, Series I, v. VIII, pp. 467, 479. Series II, v. I, p. 254.

CHAPTER II

HENDERSON'S ELECTION TO THE SENATE

When the regularly elected state government headed by Claiborne Jackson attempted to take Missouri out of the Union in the summer of 1861, Missouri's Senators in the United States Congress, Waldo P. Johnson and Trusten Polk, hoped their State would secede and did not support the new provisional government which Union men had set up in Missouri. On January 10, 1862, they were formally expelled from the national Senate for secession and disloyalty.¹ It then became the duty of the Provisional Governor to fill the vacant seats by appointments, which would last only until the next meeting of the state General Assembly. Henderson was named, on January 17, to succeed Trusten Polk, whose term would have expired March 4, 1863,² while Robert Wilson took the place of Johnson who would have

1. John G. Nicolay and John Hay, Abraham Lincoln, A History, New York, 1890, VIII, p. 469.
2. Nicolay and Hay, Abraham Lincoln, VIII, p. 469; Official Manual, State of Missouri, 1913-14, p. 141; Columbia Missouri Statesman, Jan. 24, 1862; Weekly Missouri Democrat, Jan. 21, 1862.

served until March 4, 1867.³

Since the Governor's appointments held only until the first meeting of the General Assembly, the senatorships to be filled in the 1862-1863 session of the legislature became important factors in Missouri's political picture. No attempt will be made to describe in detail the scene of Missouri politics between January, 1862, when Henderson was appointed to the Senate, and November, 1863 when he was elected to a full term in that body. On the contrary, the period will be considered from the angle of its effect on Henderson's views and on his political position.

On January 29, 1862, Senator Wilson, who had arrived in Washington first, presented the credentials of John B. Henderson in the United States Senate,⁴ and the most important part of the latter's political career began. Just before his appointment to the Senate was announced, Henderson had been offered a seat on the Supreme Court of Missouri, but he had refused the position.⁵ The naming of Henderson to the Senate was favorably received by the Missouri Statesman, which remarked editorially that he

3. Nicolay and Hay, Abraham Lincoln, VIII, pp. 469-470.
4. Congressional Globe, 37 Congress, 2 Session, p. 533.
5. Columbia Missouri Statesman, Jan. 17, 1862; Weekly Missouri Democrat, Jan. 21, 1862.

was well known to the people of Missouri, had seen much public service, and most important of all, was a loyal Union man.⁶ The Weekly Missouri Democrat likewise approved the appointment, believing Henderson to be firmly loyal.⁷

Such comment as these papers saw fit to print continued to be favorable to Henderson in the next months. As a new Senator, that gentleman's remarks in the Senate were, for the most part, confined to measures directly affecting Missouri, such as the proposal for compensated emancipation and the bill to confiscate rebel property.

When Lincoln suggested that Congress offer pecuniary aid to slave states who desired to adopt a program of compensated emancipation, the Missouri Senator supported the proposed resolution enthusiastically. He declared that such a proposition would lead to better feeling and closer ties between the north and the border states.⁸ When the bill to confiscate rebel property was before the Senate, Henderson opposed it because, in its original form, it permitted property of disloyalists to be confiscated without judicial procedure; this he considered to be unconstitutional. Henderson also opposed the sections

6. Columbia Missouri Statesman, Jan. 24, 1862.

7. Weekly Missouri Democrat, Jan. 21, 1862.

8. See Chapter III.

dealing with slavery, for he was afraid they would alienate loyal slaveholders in the border region.⁹

Early in May the Missouri Statesman reprinted a note from the St. Joseph Herald praising Henderson's speech in the Senate on confiscation and saying,

"This gentleman is fairly earning a very enviable position in the nation, and will soon be looked upon as one of the most eloquent and influential Senators Missouri ever sent to the Congress of the United States."¹⁰

Later in the month the Statesman quoted another article, this time from the Carrollton (Mo.) Democrat praising Henderson's activity in the Senate.¹¹ On August 1 the same journal remarked editorially,

"Mr. Henderson is among the youngest Senators in Congress, but he has taken a high stand among the able men of that body. His efficiency in advocating all the great measures which concern the peace and prosperity of Missouri, and they were numerous during the last session, commend him warmly to the confidence of every loyal man in the state--traitors will of course misrepresent, malign, and denounce him."¹²

The Weekly Missouri Democrat likewise found praise for Henderson in the first months of his senatorial career. In May that paper published complimentary remarks by Senator Fessenden in which he praised Henderson's

9. See Chapter IV.

10. Columbia Missouri Statesman, May 2, 1862.

11. Columbia Missouri Statesman, May 23, 1862.

12. Columbia Missouri Statesman, Aug. 1, 1862.

moderation of tone and temper in his speeches in the Senate.¹³ In August, at the end of Henderson's first session in the Senate, the Democrat considered that he merited the approval of his constituency, that he had proven his frankness, his independence, and his conscientious regard for the interests of the country. It predicted a distinguished senatorial career for him.¹⁴

The significance of these press comments is more apparent when it is realized that the Missouri Democrat was the organ of the radical wing of the Union party in Missouri; when, in the summer of 1863, that group became openly split into Conservative and Radical groups, the Democrat was the voice of the Radical Party. The Missouri Republican, on the other hand, was a conservative Union paper; it had taken a particular interest in Henderson's political career since the campaign of 1860. After the breakup of the old Union party, the Republican continued to represent the Conservative group in Missouri politics. Both of these papers, the Democrat and the Republican, were published in St. Louis. The Columbia Missouri Statesman, published in Boone County, was conservative in viewpoint.

It has been noted that the State Convention, in

13. Weekly Missouri Democrat, May 13, 1862.

14. Weekly Missouri Democrat, July 25, 1862.

October of 1861, set the time for the election of the General Assembly in August, 1862. The disordered times of 1861 had not disappeared by the summer of the next year, but conditions were considered sufficiently stable to permit a fair election. The political picture in Missouri was as confused as might be expected in any such time of rapid transition and change. The discussion of Henderson's election to the United States Senate must be seen against this backdrop of constantly shifting political groups, changing both in their individual adherents and in their attitudes on particular questions.

The dominant group in Missouri politics after the summer of 1861 was, as would be expected, the Unionist Party. It was made up, however, of all shades of opinion ranging from the very conservative men who belonged only because they opposed secession, to the "Black Republican" emancipationists. After the problem of preventing Missouri's secession was solved, the paramount issue in state politics became that of emancipation. On this question the two wings of the Union party became increasingly divided during 1862, and finally, in the summer of 1863, an open break came between the conservative and the radical Unionists. The former were referred to as the Clay-banks, while the radicals came to be known as Charcoals. The conservatives favored emancipation of a very gradual

nature with compensation, if possible, while the radicals demanded immediate emancipation of slaves without compensation. It will be seen that when Henderson was forced to make a choice, he remained with the conservative provisional government with which he had been associated since 1861 and which was responsible for his appointment to the Senate.

The open break between the Claybanks and Charcoals did not appear in the campaign of 1862 when the legislature was elected, although evidences of dissension were apparent. In 1863 when state Supreme Court judges were elected two separate tickets were placed in the field, one radical and the other conservative. The Claybank judges were elected, but it was the last conservative victory. It was during this period of factional agitation that Lincoln, after hearing the demands of the radical Missourians, said, "The two parties ought to have their heads knocked together. Each would rather see the defeat of their adversary than that of Jefferson Davis."¹⁵ From the last part of 1863 the radicals gained strength and after 1864 that group controlled Missouri for several years. As a Senator from Missouri this inevitably affected Henderson's attitudes to a greater or less extent.¹⁶

15. Thomas S. Barclay, The Liberal Republican Movement in Missouri, Columbia, Missouri, 1926, p. 8.

16. Barclay, Liberal Republican Movement in Missouri, pp. 4-9.

Henderson evidently played no active part in the canvass preceding the election for members of the legislature in August, 1862. Congress did not adjourn until late in July, so Henderson was not even in the state during most of the campaign period. The major speech which Henderson made during the fall of 1862 was at Hannibal on August 20, and dealt largely with the advantages of compensated emancipation for Missouri.¹⁷ In September he spoke in Pike County defending himself against charges of being an abolitionist.¹⁸

In the latter part of November the St. Louis papers began to discuss the coming legislative session and the election of United States Senators to be held by the General Assembly. That body would be called upon to make three elections. The remaining months of the term of Trusten Polk which would end March 4, 1863 and which was occupied by John B. Henderson must be provided for. A Senator must be chosen for the remaining four years of the term of Waldo Johnson, who had been expelled for disloyalty at the same time as Polk. Finally, the new term which began March 4, 1863, must be filled. A correspondent of the Missouri Republican wrote that state Senator Anderson of the Second District was pledged to vote for

17. Daily Missouri Republican, Aug. 29, 1862.

18. Columbia Missouri Statesman, Sept. 21, 1862.

Henderson for the United States Senate, "...a strong spoke in his otherwise weak wheel..."¹⁹ On November 24 the same paper reprinted an editorial from the Missouri Statesman which stated that Henderson was frequently mentioned in that section as a nominee for Senator, and commented favorably on his record in the last session of Congress.²⁰ A month later, however, a correspondent from Columbia wrote the Missouri Republican that Boone County was opposed to emancipation and would not vote for an emancipation Senator, so Henderson would gain little "...by cajoling with the Hon. Jas. S. Rollins."²¹ The Weekly Missouri Democrat reprinted an article from the St. Joseph Journal stating that Henderson would doubtless be elected to the United States Senate if emancipationists were in a majority in the General Assembly,²² while eastern opinion was represented by an article reprinted from the Troy (N.Y.) Times which predicted that Henderson and Brown would be the Senators from Missouri.²³ The Missouri Democrat, which was strongly in favor of abolishing slavery, at first took a favorable view of Henderson's efforts to

19. Daily Missouri Republican, Nov. 22, 1862.

20. Daily Missouri Republican, Nov. 22, 1862.

21. Daily Missouri Republican, Dec. 27, 1862.

22. Weekly Missouri Democrat, Nov. 25, 1862.

23. Weekly Missouri Democrat, Dec. 9, 1862.

obtain compensated emancipation for Missouri. The Democrat's chief interest in the two Senatorships was that E. Gratz Brown, radical emancipationist, should have one of them and the paper gave Brown strong editorial support.²⁴ The Missouri Republican, which has been described as a conservative journal, favored Henderson's election to the Senate. Other prominent candidates for the Senate, in addition to Brown and Henderson, were Samuel T. Glover, of radical tendencies, and John S. Phelps, an old-time Democrat.²⁵ The Democrat began in December, 1862, to find Henderson too conservative and to insinuate that he was anti-emancipationist, that he opposed Lincoln's Emancipation Proclamation. On December 23, in answer to a statement in the Missouri Republican that the new state assembly was not an abolitionist body but would favor emancipation,²⁶ the Democrat denied that the other paper had true information. The radical paper continued by saying there had been rumors that Henderson, in the last election, had sold out the Emancipation Proclamation candidate for Congress in his district in favor of James S. Rollins, a conservative.²⁷

24. Weekly Missouri Democrat, Dec. 2, 1862; Dec. 9, 1862; Jan. 1, 1863; Jan. 5, 1863.

25. Daily Missouri Republican, Dec. 17, 1862.

26. Daily Missouri Republican, Dec. 17, 1862.

27. Weekly Missouri Democrat, Dec. 23, 1862.

The General Assembly opened its session December 29, 1862. Dispatches from Jefferson City in the first days of January indicated that a great deal of bargaining was going on.²⁸ On the evening of December 31 a meeting of all supporters of Henderson was held in the Senate chamber, and resolutions adopted urging his election because of his past services to his country.²⁹ The Missouri Republican, in an editorial on January 5, stated that Henderson's election for the full term without much opposition seemed taken for granted. It urged that the other office go to Col. James H. Moss, Phelps, or Provisional Governor Gamble;³⁰ all of these men were conservatives far removed from the radicalism of Brown. As the situation developed it appeared that Glover's candidacy was proving strong enough to split the radical wing between Brown and Glover.³¹ The St. Louis radical delegation was determined to have Brown, and as early as January 5 evidence appears that the election of Henderson was to be connected with that of Brown as a conservative-radical compromise, for the Missouri Republican of that date stated that some of the radicals "...threatened to throw off on Henderson

28. Daily Missouri Republican, Jan. 3, 1863; Weekly Missouri Democrat, Jan. 5, 1863.

29. Daily Missouri Republican, Jan. 3, 1863.

30. Daily Missouri Republican, Jan. 5, 1863.

31. Tri-Weekly Missouri Democrat, Jan. 7, 1863.

unless Brown's nomination was secured.³²

The two houses of the legislature met in joint session on January 6, 1863, for the election of United States Senators. It was decided that the order of election should be: first, to fill the term expiring March 4, 1863; second, to fill the term expiring March 4, 1867; third, to fill the six year term commencing March 4, 1863. Henderson and Robert Wilson, the two appointed Senators, were nominated for the very short term and Henderson was elected on the first ballot by a vote of one hundred and four to forty-seven for Wilson, and one vote for W. A. Hall who had not been formally nominated.³³ This was only a preliminary to the real struggle for the four-year term which developed within the radical group, between the followers of Brown and Glover. Twenty-nine additional ballots were taken between January 6 and February 11 with no candidate able to poll enough votes for election. On January 10, after six ballots had been taken, the joint session was adjourned until the first Monday in February, the second day of that month.³⁴ When the joint session reconvened it was still impossible to elect any of the candidates;

32. Daily Missouri Republican, Jan. 5, 1863.

33. Missouri House Journal, 22 Gen. Assem., 1 sess., (1862-63), pp. 53-54.

34. Missouri House Journal, 22 Gen. Assem., 1 sess., (1862-63), p. 72.

finally, on February 11, the joint session was adjourned until November.³⁵

Between January 10 and February 2 coalitions between the various shades of opinion were feverishly attempted. Henderson and Breckinridge,³⁶ Henderson and Phelps³⁷ were suggested in place of Henderson and Brown. Evidently those who were willing to vote for one man were not willing to let that man dictate their other vote for United States Senator. The Missouri Republican blamed the St. Louis Charcoals for refusing to compromise on some radical other than Brown; it believed they were determined to make Henderson's election contingent on that of Brown and keep Missouri unrepresented in the Senate unless Brown were elected.³⁸

The first week in February saw a rally for John S. Phelps after he pledged faithfulness to the principle of emancipation for Missouri. For a time there seemed some danger of a Brown-Phelps combination,³⁹ and the Henderson men were reported to be very worried. The Democrat

35. Missouri House Journal, 22 Gen. Assem., 1 sess., (1862-63), p. 257.

36. Tri-Weekly Missouri Democrat, Jan. 30, 1863.

37. Daily Missouri Republican, Feb. 5, 1863.

38. Daily Missouri Republican, Jan. 17, 1863; reprint from St. Louis Union.

39. Daily Missouri Republican, Feb. 9, 1863.

declared, "Mr. Henderson has written to some of the leading Claybanks to vote for Mr. Brown unless they wish to sacrifice him, etc., etc."⁴⁰ An attempt to unite the Phelps and Henderson vote failed.⁴¹ The balloting continued amidst all this fruitless negotiation until finally Glover, the radical, was withdrawn on the twenty-fifth ballot, but the vote remained too scattered to elect either Brown or Phelps, now the two leading candidates.⁴²

Two days later, after the twenty-ninth ballot had been taken with still no election, a resolution was adopted providing that one more ballot should be taken and if no election resulted the joint session would be adjourned until the first Thursday after the second Monday in November.⁴³ Senator Sitton then nominated Henderson for the four year term, declaring that if only one Senator were to be elected, no one was more deserving than John B. Henderson. In the debate which followed this proposal various members of the legislature expressed their opinions freely. One declared Henderson had been a rallying

40. Daily Missouri Democrat, Feb. 7, 1863 (bound with Daily Missouri Republican).

41. Tri-Weekly Missouri Democrat, Feb. 9, 1863.

42. Missouri House Journal, 22 Gen. Assem., 1 sess., (1862-63), pp. 240, 241, 243, 250, 253, 256.

43. Missouri House Journal, 22 Gen Assem., 1 sess., (1862-63), p. 254.

point for emancipation and should be elected; another did consider him a too recent convert to emancipation and not enough of a patriot nor statesman to represent Missouri,⁴⁴ while still another attacked him for inconsistency.⁴⁵ Evidence of a caucus deal between the Brown and Henderson forces came out in the debate; the remarks of one legislator were abstracted by the reporter in these words: "An agreement was there fairly and honorably consummated to elect Mr. Brown and Mr. Henderson, and he intended on his part to carry out that agreement in good faith."⁴⁶

Representative Dyer from Pike County, evidently a leader of the Henderson forces, rose at this point to withdraw Henderson's name. Mr. Henderson, said Dyer, did not want his name used as a wedge to split the Union Party of Missouri. Henderson had been an outstanding leader in northeastern Missouri since the beginning of the War, and had always worked to harmonize and unite the Union Party. He was willing that his name be left before the people until November. Dyer concluded by reading a dispatch from Henderson authorizing the Representative to withdraw his name.⁴⁷ The thirtieth ballot was then taken

44. Daily Missouri Republican, Feb. 13, 1863.

45. Daily Missouri Republican, Feb. 13, 1863.

46. Daily Missouri Republican, Feb. 14, 1863.

47. Daily Missouri Republican, Feb. 13, 1863.

without achieving an election so the joint session was adjourned until November.⁴⁸

In commenting on the failure to elect United States Senators the Missouri Democrat declared that Brown, the radical emancipationist, should have been elected because a majority of those who favored emancipation had desired it. The editorial continued:

"In the caucus meeting...the Brown men, recognizing the fact that there were two shades of opinion in the party--one more radical, the other more conservative--and desiring to pursue such a course of conciliation as would be most likely to combine all classes in favor of freedom in Missouri, put in nomination Mr. Brown, whose radicalism is well known, for the shorter term of four years, and agreed to support Mr. John E. Henderson, who was equally well known to be decidedly conservative, for the longer term of six years. This action on the part of a majority was certainly fair."⁴⁹

On January 23, during the short adjournment of the joint session, the Missouri Democrat printed an article from a Washington correspondent who praised Henderson's speech on emancipation very highly and at some length; it was, said the writer, the first voice from the border encouraging the administration, the voice of a patriot rising above his prejudices and his anti-Republican background. The correspondent defended Henderson from the charge that he had become emancipationist in order to be elected

48. Missouri House Journal, 22 Gen. Assem., 1 sess., pp. 256-257.

49. Tri-Weekly Missouri Democrat, Feb. 13, 1863.

Senator, stating that he had spoken out for emancipation in the State Convention a year earlier (that is, the June, 1862 session). He called on the emancipationist legislature to elect Henderson to the Senate, and assumed that such action would be taken at once. The writer could not understand the failure of the General Assembly to elect Brown.⁵⁰ In a following issue the Democrat commented editorially on this dispatch from Washington, devoting nearly all of the discussion to defense of Brown and further urging that he be elected. Reference to Henderson was limited to the statement that he had created a very favorable impression.⁵¹

After the failure to elect United States Senators in February, 1863, there came a period of little active interest in the senatorial contest, and Henderson's name was largely absent from the Missouri scene. Toward the middle of May, however, General Curtis, the commanding officer at St. Louis, was replaced by General Schofield. Henderson evidently played an important part in the shift, which was an incident in the final split of the Union Party into the Radical and Conservative factions. Henderson's connection with the removal, whatever it was, brought the opening of a bitter campaign against him by the Missouri Democrat,

50. Tri-Weekly Missouri Democrat, Jan. 23, 1863.

51. Tri-Weekly Missouri Democrat, Jan. 26, 1863.

the Radical organ. No matter who was responsible, the Democrat considered the transfer an extremely unfortunate one and paid its respects to Mr. Henderson in these words:

"Ex-Senator (not Senator) Henderson's position is pretty well known in Missouri. He is a pro-slavery Emancipationist--that is, thinks slavery is all right, but that Emancipation, as matters now stand, is likely to be the more popular of the two--and a partisan of Governor Gamble."⁵²

From this beginning the Democrat became progressively more critical as Henderson, through the late spring and summer, became more clearly aligned with the Conservatives. The journal accused the ex-Senator and the conservative Missouri Republican of trying, with the aid of Governor Gamble in deceiving Lincoln, to build up a 'Henderson Party' in Missouri.⁵³ It sarcastically criticized Henderson for his activity after his term as Senator had expired and called him a 'volunteer Senator' who, though really no more than a private citizen, went to Washington to talk to Lincoln as Senator Henderson about the removal of Curtis. One editorial concluded:

"It is very evident that "Senator" Henderson is not much troubled with modesty. If impudence is a virtue he is calculated to be eminently useful. Few men possess the courage in that remarkable degree, which would enable them to represent a people who had just decided their services were not wanted. Happy people! whose interests are watched over by such sleepless guardians. Here-

52. Tri-Weekly Missouri Democrat, May 20, 1863.

53. Tri-Weekly Missouri Democrat, May 27, 1863.

after they can safely dispense with elections. Few certainly are equally blessed, in having a Governor who was never elected, and a Senator chosen by nobody, and who, once in office, have concluded they are entitled to the positions for life."⁵⁴

The Missouri Democrat also reprinted attacks on Henderson and Gamble from smaller Missouri papers for their part in the removal of General Curtis.⁵⁵ A foremost complaint of the radical journal was that a small conservative clique, through Henderson and Gamble, received the federal patronage and the radicals were left out. The explanation given was that this clique was made up, not of political leaders but of politicians such as Henderson, Gamble, and Blair.⁵⁶ The German attitude seems to have been much the same as that of the radical organ. An article in the Missouri Republican reprinted from the Westliche Post attacked the Gamble-Henderson clique for the removal of General Curtis. A meeting of the Germans of Hermann was also reported as having adopted resolutions denouncing "...the false representations of Gamble, Henderson and Co."⁵⁷ So the Curtis incident constituted one step toward an open break-up of the old Union party.

54. Tri-Weekly Missouri Democrat, May 27, 1863.

55. Tri-Weekly Missouri Democrat, May 29, 1863; reprinted articles are from the Chillicothe Constitution, May 23, 1863 and the LaGrange American, May 23, 1863.

56. Tri-Weekly Missouri Democrat, May 29, 1863.
Tri-Weekly Missouri Democrat, June 10, 1863.

57. Daily Missouri Republican, June 5, 1863.

In the session of Congress which had just closed Henderson had attempted to get a bill passed which would have provided financial aid to Missouri for the purpose of compensated emancipation. His bill had passed the Senate, but had died in the House of Representatives. Since this measure had failed, and since the state legislature had taken no action in regard to emancipation, the old State Convention was called together to deal with the problem.

The Missouri State Convention reconvened at Jefferson City for its last meeting in June, 1863. The principal measure adopted by the Convention was an ordinance of gradual emancipation which represented a compromise between the radicals, who demanded immediate emancipation, and the conservatives, who desired a much more gradual scheme than that actually adopted. The Convention decided against submitting the ordinance to popular vote. Henderson was present at the Convention session and was a member of the committee which framed the ordinance. He opposed submitting it to the people because he feared popular unrest and disorder would be the result.⁵⁸ The ordinance itself will be discussed at length in another connection. Its immediate importance at this point is in its effect on the radical-conservative rupture.

58. See Chapter III.

The radical forces in the state, especially the Missouri Democrat, criticized the ordinance because of its gradual features, and particularly attacked Henderson because he had opposed a popular vote on the measure.⁵⁹ The same journal demanded that Gamble resign and let the people elect a new governor and a new convention to pass the emancipation ordinance the people wanted. Henderson's fears of revived disorders in Missouri were dismissed as sheerest trumpery.⁶⁰ The German Neue Zeit was even more outspoken in attacking the Convention, and Gamble and Henderson specifically for continuing the Governor in office, and for passing the emancipation ordinances without submitting it to the people. Henderson, described as "...this long fellow, with his pathetical gestures, and his eternal grimaces..." was held especially responsible for the failure to permit a popular vote on the ordinance.⁶¹ Thus, by his support of the conservative plan of Emancipation Henderson identified himself with the Claybank group.

During the summer of 1863 Henderson spoke in various places in northern and central Missouri, defending the

59. Tri-Weekly Missouri Democrat, June 24, 1863.

60. Tri-Weekly Missouri Democrat, July 10, 1863.

61. Daily Missouri Republican, July 2, 1863, reprint from Neue Zeit.

Lincoln Administration, the Convention and Provisional Government of Missouri, and his own part in affairs of the past months. He spoke most often, probably, to defend his part in the removal of General Curtis, to defend the emancipation ordinance adopted by the Convention, and to urge loyal support of the Union in prosecuting the war. He took an active part in the canvass preceding the election of State Supreme Court judges, campaigning for the conservative candidates. While his action in the Convention in June had allied Henderson with the Conservatives, it was this step which definitely marked his adherence to the Conservatives and his open break with the Radicals, for this was the first clear cut contest between the two factions. While friction between the two had been increasing through the winter of 1862-63, and was particularly evident in the March 1863 session of the Convention, still there was not a distinct line drawn which it was impossible to straddle until the contest for the judgeships. Henderson earned the vituperative regard of the Missouri Democrat as a result of the position he took.

The removal of General Curtis, said Henderson in a speech at Louisiana, Missouri,⁶² seemed to be the most important question of the day in the eyes of the people;

62. Daily Missouri Republican, June 9, 1863; Tri-Weekly Missouri Democrat, June 1, 1863, article reprinted from Louisiana Journal).

actually it was not important, for there were plenty of good men to fill the post. Union men, in general, were satisfied, but around St. Louis a mountain had been made of a molehill. The Senator admitted he had been partly responsible for the change in command at St. Louis. He justified the removal of Curtis on the grounds that the General had not been aggressive enough in proceeding against the Confederates and that under his command there had been illegal activity on the part of the military in connection with the Confiscation Act. This law specifically provided that rebel property should be condemned through federal courts. Yet a "Commissioner of Contraband property" had been appointed, quantities of goods seized and sold by government auctioneers without trial, and even without records being kept. Thus military officers, said Henderson, had been making the law, deciding when it had been violated, arresting the offender, and trying him; in all this they had been usurping civil functions. The war was being fought to preserve not only territorial integrity but also the principles on which the Constitution was based, declared Henderson. He urged that the North must not, in putting down the Rebellion, destroy the Constitution. He believed the new commander, Schofield, would end guerilla disorders in Missouri and

drive the rebels out of Arkansas.⁶³

The country had as its leader in this crisis, Henderson declared in several speeches, a truly honest and loyal man.⁶⁴ Lincoln made mistakes occasionally for no man, making as many decisions and filling as many appointments as he did, could judge perfectly in each case. Henderson stated that he would never doubt Lincoln's integrity and pointed out that the latter recognized that he was not infallible, a thing that many men in important positions had not the sense to realize. Most important of all to Henderson's mind was the fact that Lincoln was trying to fight the war under the Constitution, to protect freedom of speech, press, and ballot box. The Senator's speeches included exhortations to the people to support the war wholeheartedly in order to shorten its duration.⁶⁵

On much the same basis Henderson defended Gamble and the Provisional Government;⁶⁶ the Governor had proven himself to be loyal and honest. That he had probably made mistakes in some of his appointments, Henderson admitted, for, as in the case of the federal executive,

63. Daily Missouri Republican, June 9, 1863.

64. Daily Missouri Republican, June 9, 1863; Aug. 4, 1863; St. Louis Daily Union, Aug. 11, 1863 (bound with Daily Missouri Republican).

65. Daily Missouri Republican, June 9, 1863.

66. Daily Missouri Republican, Aug. 4, 1863; Daily Missouri Republican, Oct. 30, 1863.

there were so many offices to be filled that there were bound to be a few poor officials installed. Henderson ridiculed the rumor that Gamble would imprison those of the Convention who had voted against the emancipation ordinance, stating that the Governor had just turned the state militia over to the federal commander, General Schofield. Partisan jealousies and desire of time-serving politicians for public office were the cause for the attacks on Gamble. He himself had not been an ardent supporter of the present Governor in 1861, said Henderson, though he had always considered him an honest and able man; from the perspective of 1863 he realized the fact that six or eight radicals had tried to persuade him that he "...was large enough for governor himself..." was responsible for his failure to support Gamble. That was the case now with those who called Gamble a copperhead, Henderson continued, for such men wished high office themselves.⁶⁷ That Henderson had sincerely defended Gamble was challenged by the Missouri Democrat, which stated the former had said at Palmyra that Gamble was a 'decrepit old man' but, because he had been urged for the same office in 1861, his modesty had prevented his fighting Gamble. Henderson was also reported as having said that

67. Daily Missouri Republican, Au. 4, 1863.

he disapproved of much Gamble had done, but that no one was perfect and the Governor had done some things of which he could approve.⁶⁸ The Missouri Republican immediately accused the Democrat of carrying a false report of Henderson's speech and denied that Henderson had used disrespectful language about Gamble.⁶⁹

After the Convention had adopted the ordinances of emancipation, Henderson's public speeches included a defense of the ordinance and of the loyalty of the Convention itself. That the ordinance was not perfect he admitted, but he insisted it was the best compromise that could be attained under the existing circumstances, for the opinions of Missouri and of the Convention were extremely divergent. Henderson pointed out that emancipation brought problems of economic and social readjustment for which some provision must be made.⁷⁰ At St. Joseph he showed that if immediate emancipation had been adopted it would have been necessary to levy taxes to provide for those freedmen unable to care for themselves. The plan adopted by the Convention, while not so gradual as he had desired, nevertheless contained provisions regarding slaves over forty and under twelve which were as much as

69. Daily Missouri Republican, July 31, 1863.

70. Daily Missouri Republican, Aug. 4, 1863; St. Louis Daily Union, Aug. 11, 1863 (bound with Daily Missouri Republican); Daily Missouri Republican, Oct. 30, 1863.

a protection to the public as a benefit to the slaveholder, for these sections relieved the public of taxes for the support of the groups indicated. The ordinance of emancipation, said Henderson, meant that slavery was ended forever in Missouri and the last possible tie to the Confederacy was broken. It was the quickest emancipation ever adopted in the United States, according to Henderson, and only partisan political jealousies and desire to control patronage could account for the attacks on the ordinance.

Henderson defended the loyalty of the members of the Convention and denied there was any need for a new convention being elected. The members of the Convention had proven their loyalty in the difficult times of 1861: now in 1863, charged Henderson, disappointed politicians were trying to raise agitation over acts of the Convention.⁷¹

It was to avoid such unrest in the already troubled times that he had urged the emancipation ordinance not be submitted for popular vote; that the Convention had been wise in accepting this course, Henderson repeated in several speeches.⁷²

Criticisms of his own record in the Convention and in the United States Senate were also refuted by Henderson.

71. Daily Missouri Republican, Aug. 4, 1863;
Daily Missouri Republican, Oct. 3, 1863.

72. Daily Missouri Republican, Aug. 4, 1863; Tri-Weekly Missouri Democrat, July 31, 1863; Daily Missouri Republican, Oct. 30, 1863.

He denied all charges of copperheadism, urging spirited prosecution of the war and insisting that he wanted to see slavery abolished by the method most advantageous to the community.⁷³ One side attacked him as an anti-emancipationist, Henderson declared, while the other side charged him with radicalism. His attempts in the Senate to obtain federal compensated emancipation for Missouri had failed through no efforts of his own, and Henderson explained that the Noell Bill on the same subject would have required a later appropriation by Congress, and that it did not conform to the requirements of the Missouri Constitution.⁷⁴

In the later days of the campaign Henderson spoke in favor of the Conservative candidates for the Supreme Court, praising their loyalty and denying the radical charges that, if elected, the Conservatives would declare the Emancipation Ordinance unconstitutional.⁷⁵ This was a definitive step, for as has been remarked, this election was the issue on which the lines became drawn between the Radicals and Conservatives in Missouri. It must have been a difficult decision for Henderson to make,

73. Daily Missouri Republican, Aug. 4, 1863; St. Louis Daily Union, Aug. 11, 1863 (bound with Daily Missouri Republican).

74. Daily Missouri Republican, Aug. 4, 1863.

75. Daily Missouri Republican, Oct. 30, 1863.

in view of the fact that his election to the United States Senate depended on a state legislature with a radically-inclined majority. Certainly this step inspired the greatest hostility to his candidacy on the part of the radical journal, the Missouri Democrat and most of the German press.

As Henderson became more and more clearly aligned with the Conservatives, through the summer and fall of 1863, the radical Democrat increased its denunciations of him, for his part in the removal of General Curtis;⁷⁶ it accused Henderson of being the leading political acrobat of the day.⁷⁷ The journal declared that Henderson's only interest was in being sent to the Senate, and that to attain his desire, he would tie up with any party which could elect him.⁷⁸

The Missouri Republican, Henderson's supporter since the campaign of 1860, indicated its continued support by an editorial praising his public career and emphasizing his moderation. It contended that the vituperation poured on him by the extremists of both sides was added proof of his true moderation. The journal praised his record

76. Tri-Weekly Missouri Democrat, June 1, Aug. 5, Aug. 26, Aug. 31, 1863.

77. Tri-Weekly Missouri Democrat, July 31, 1863.

78. Tri-Weekly Missouri Democrat, Aug. 12, Aug. 24, 1863.

in the United States Senate and urged that he be returned to represent Missouri in that body again.⁷⁹

As November 10 approached, and with it the opening of the adjourned session of the legislature, interest in the senatorial elections quickened. In discussing the coming elections the Democrat reported that Henderson had come to Jefferson City, and was trying to arrange a coalition with either party that would elect him. Said the correspondent, "...Henderson came up on the train today, and tried to play the agreeable to the Radical members. He announced himself as an out-and-outer, and says the report that he wanted to send sixteen Radicals to hell, is all a lie..."⁸⁰ Henderson was working industriously, said the Democrat, though he seemed a little depressed.⁸¹ The Missouri Republican correspondent observed that a great deal of electioneering was going on, and reported one of the projects on the part of leading Radicals was to unite the followers of B. Gratz Brown and Henderson. The friends of the latter candidate seemed to be willing to vote for almost anybody in order to secure his election, the writer for the Republican thought. The most extreme

79. Daily Missouri Republican, Oct. 9, Sept. 8, 1863.

80. Daily Missouri Democrat, Nov. 10, 1863 (bound with Daily Missouri Republican.).

81. Daily Missouri Democrat, Nov. 10, 1863 (bound with Daily Missouri Republican.).

Radicals, however, were not willing to accept Henderson.⁸² The next day's dispatch, that of November 10, reported lively efforts to work out a compromise between the friends of Brown and Henderson; it was believed that only a few more votes were needed to assure the election of those two men, so the correspondent thought the Brown - Henderson combination might triumph.⁸³ The German paper, Neue Zeit, opposed the plan and warned the Radicals that they must not compromise, even though a neutral candidate be elected. It especially denounced Henderson, saying, "...we can scarcely deplore the defeat of B. Gratz Brown, if we remember that his election would have forced upon us Mr. Henderson. If that rascal is to be elected, let it be without our assistance."⁸⁴

A dispatch of November 11 to the Missouri Democrat revealed that activity among the candidates was at a fever heat. Glover, whose following had prevented Brown's election in the preceding session, was said to be very nervous over a rumored coalition of Brown and Henderson men. At the same time it was reported that the Conservatives and the Democrats were considering holding caucuses, each

82. Tri-Weekly Missouri Republican, Nov. 11, 1863.

83. Columbia Missouri Statesman, Nov. 13, 1863 (special dispatch to Missouri Republican).

84. Tri-Weekly Missouri Republican, Nov. 9, 1863; article reprinted from Neue Zeit.

party to list three names from which the other party would choose one and a union would be formed for their election. This maneuver was expected to result in the election of Phelps and Henderson.⁸⁵ The next day the correspondent for the same paper predicted a radical victory on November 13, stating that if all the Radicals had been present Brown could have been elected that day. The conservative coalition was falling to pieces, said the Democrat dispatch, because many who had acted with the Claybanks in the last session were with the Radicals now. Henderson's chances for a successful union with the Phelps forces seemed to be gone and his followers would willingly unite with the Brown men. Henderson and Brown could be elected in the next two ballots if the Radicals chose, declared the Democrat, but the Brown men were not yet willing. "...Henderson," said the Democrat, "has little to give and much to get..."⁸⁶ The German paper, Anzeiger, took a somewhat different view of the situation; it stated, "...the Radicals, despairing of success, play now the amiable game towards Henderson and his friends..."⁸⁷ This is the same Henderson, it pointed out, who was so recently condemned by the Democrat and the Neue Zeit.

85. Tri-Weekly Missouri Democrat, Nov. 13, 1863.

86. Tri-Weekly Missouri Democrat, Nov. 13, 1863.

87. Tri-Weekly Missouri Republican, Nov. 13, 1863; article reprinted from Anzeiger.

The Anzeiger sarcastically remarked that it supposed this was the way in which the "...higher policy..." of the Radicals was to be carried on.⁸⁸ The Westliche Post likewise condemned in severest terms any Radical compromise with the Henderson forces. It asserted that it would be better to let Missouri be unrepresented for a year than to compromise, saying, "If the gentlemen elect no Radical Senators, then it is their duty to prevent the election of Conservative Senators..."⁸⁹

As the newspaper dispatches had predicted, a Brown-Henderson coalition was arranged; those two candidates had been more or less allied in the preceding January and February. They were evidently the only two with any considerable following who could go into a coalition and be sure their men would vote according to agreement. Other candidates, as John S. Phelps, could command an impressive personal following, but attempts to combine on that basis failed. On November 13, the joint session elected B. Gratz Brown for the four year term expiring in 1867,⁹⁰

88. Tri-Weekly Missouri Republican, Nov. 13, 1863; article reprinted from Anzeiger.

89. Columbia Missouri Statesman, Nov. 27, 1863; article reprinted from Westliche Post.

90. Missouri House Journal, 22 Gen. Assem., adj. sess. (1863-64), p. 20.

and on the next ballot elected Henderson for the full term.⁹¹

Brown, when elected on the thirty-second ballot of the joint session, received seventy-four votes of the one hundred and forty-one cast. Henderson, on the thirty-third ballot, was given eighty-four of the one hundred and thirty-eight votes cast. Fifty-four members of the House and twelve members of the Senate, a total of sixty-six, voted for both Brown and Henderson. These sixty-six evidently represented the coalition of the Brown - Henderson followers. In addition, Brown received the votes of six Representatives and two Senators, a total of eight, who did not vote for Henderson. This made up Brown's total vote of seventy-four, which was three votes more than the seventy-one which were necessary to elect. Two Representatives and one Senator seem to have left the joint session between the thirty-second ballot, which saw Brown elected, and the thirty-third. Therefore only seventy votes were necessary to secure Henderson's election on the thirty-third ballot. Henderson, however, proved stronger than Brown outside the coalition for he was given eighteen votes which Brown did not receive: those of eleven Representatives and seven Senators who had not voted for Brown. This made a total of eighty-four

91. Missouri House Journal, 22 Gen. Assem., adj. sess. (1863-1864), p. 21.

votes cast for Henderson for Senator. His nearest opponent, John S. Phelps, received forty-two.⁹²

The reaction to the senatorial elections was varied. The Missouri Democrat, which had attacked Henderson so virulently all summer, announced in its news columns that the election of Brown and Henderson was a glorious victory and a purely Radical triumph. It praised Henderson for his refusal to combine with the corrupt coalitionists, referring to the attempted Claybank-Democratic coalition. The dispatch announcing the election stated that before the union of Henderson and Brown men was effected a committee appointed by the Radical caucus called on Henderson and obtained a declaration that he would support the Lincoln Administration in all measures, including the Emancipation Proclamation and the arming of negroes. It was further stated that Henderson's followers had agreed to support a new convention bill.⁹³ Editorially the Democrat admitted that Henderson's election represented some sacrifice of personal feeling in order to obtain the

92. Missouri House Journal, 22 Gen. Assem., adj. sess. (1863-64), pp. 20-21; Missouri Senate Journal, 22 Gen. Assem., adj. sess. (1863-64), pp. 16-17. There is an error in recording the vote for Henderson in the Missouri House Journal, 22 Gen. Assem., adj. sess. (1863-64), p. 21; the vote of Bailey, of St. Charles, was recorded twice on the thirty-third ballot, once for Henderson and once for General Ben Loan. The official total of the House vote for Henderson is given as 65, but if Bailey's vote is counted 66 House votes are listed for him. The official total has been used and Bailey's vote for Henderson has not been counted.

93. Tri-Weekly Missouri Democrat, Nov. 16, 1863.

success of the principles involved. Henderson was, it admitted, not so radical as Brown, but the probability was that, since men move forward and not backward, the rush of events would soon bring Henderson up to the Radical standard.⁹⁴ The Missouri State Times agreed with the Democrat that Henderson's views were now in perfect unison with the Radical Party. It stated that Henderson's course in 1861 had commanded its admiration, and he had been the choice of the Times for provisional governor. It was true that he had not helped the Radicals in the recent election but nevertheless the Times approved the choice of Henderson and Brown.⁹⁵

The Missouri Republican ridiculed the Democrat's claim of a Radical triumph and its statement that Henderson's election represented a sacrifice of personal feelings for principle. It maintained that Henderson had differed with the Radicals on every important issue, and stated that it wanted to make it clear that Missouri did not have two Radical Senators as the Democrat would like to have people believe. The Republican quoted from past files of the Democrat to show that the latter journal had attacked Henderson repeatedly as a copperhead and

94. Tri-Weekly Missouri Democrat, Nov. 16, 1863.

95. Tri-Weekly Missouri Democrat, Nov. 18, 1863; article reprinted from Missouri State Times.

anti-emancipationist.⁹⁶ The Missouri Statesman agreed with the Republican that the election was no Radical triumph. It stated in plain terms:

"Henderson is a conservative: Brown is a radical of the worst sort -- Henderson supports Lincoln, Schofield and Gamble! Brown goes for Chase, Butler and the Devil! We don't know how this combination happened, but we have understood that it grew out of the obstinacy of a few soreheaded Democrats and fossilised politicians, whose unjust hatred to Henderson prevented them from allowing the Democrats to support him, with Broadhead, Phelps, and Glover or Breckinridge. The result was that John -- combined with the Charcoals! If this be true, we can't exactly see what Messrs so and so have gained! It really looks to us like spiting the face, by biting the nose off."⁹⁷

The St. Louis Union was of the opinion that Henderson and Brown would probably be on different sides of most questions, but Henderson would be on the side of Lincoln and the people.⁹⁸ The Louisiana Journal replied to any statements that Henderson was a Radical by saying that if that meant he was Radical Union, such statements were right; but he was a Conservative statesman who still believed in the supremacy of the Constitution.⁹⁹

Immediately after the election the German press in general was hysterical with rage over what it considered

96. Daily Missouri Republican, Nov. 16, 1863.

97. Columbia Missouri Statesman, Nov. 20, 1863.

98. Columbia Missouri Statesman, Nov. 27, 1863; article reprinted from St. Louis Union.

99. Columbia Missouri Statesman, Dec. 4, 1863; article reprinted from Louisiana Journal.

a disgraceful compromise of principle. The Westliche Post was certain that no senators at all would have been better than to send Henderson to Washington. It continued, "...How a Radical can vote for Henderson, after he has made such an abominable record for himself in the past year, is more than an honest German soul can comprehend."¹⁰⁰ The Anzeiger agreed that Missouri's power in the United States Senate would be null, for Brown and Henderson would inevitably vote against each other on every important measure. No man in the state had been treated with more contempt by the Radicals than had Henderson, said the Anzeiger. It concluded that, "It is a regular 'selling out' with which the Radical party makes its debut."¹⁰¹ The Neue Zeit stated that the Radicals had allowed themselves to be taken in by Henderson's promises, which had proven thoroughly unreliable in the past.¹⁰² After a few days, however, the German papers concluded that Brown's election was a real Radical victory, so perhaps the compromise was not without some gain.¹⁰³

Comments reprinted by the Missouri Democrat from

100. Columbia Missouri Statesman, Nov. 27, 1863; article reprinted from the Westliche Post.

101. Daily Missouri Republican, Nov. 16, 1863; article reprinted from Anzeiger.

102. Daily Missouri Republican, Nov. 16, 1863; articles reprinted from Neue Zeit.

103. Daily Missouri Republican, Nov. 16, 1863; articles reprinted from Neue Zeit and Westliche Post.

papers in Illinois and Kansas praised the election of Brown as a Radical victory and in general agreed that the election of Henderson was a justifiable compromise under the circumstances.¹⁰⁴ The eastern comment reprinted by the Democrat dwelt for most part on Brown's election, but usually reported Henderson as a Radical, though not so radical as his colleague.¹⁰⁵ Probably the most observant comment of all was that made by Lincoln. When notified of the elections, the President telegraphed to the Hon. E. H. E. Jameson, a member of the state House of Representatives: "Yours saying Brown and Henderson are elected Senators is received. I understand this is one and one. If so it is knocking heads together to some purpose.
A. Lincoln."¹⁰⁶

104. Tri-Weekly Missouri Democrat, Nov. 18, 1863; articles reprinted from the Leavenworth Times, The Quincy Whig and Republican and the Alton Telegraph.
105. Tri-Weekly Missouri Democrat, Nov. 20, 1863; articles reprinted from New York Commercial and Advertizer, New York Evening Post, Philadelphia North American and Gazette, Boston Journal, New York Tribune, New York Times, Buffalo Express, Washington Chronicle, Rochester (N.Y.) Express. The last five reprints did not mention Henderson by name.
106. Tri-Weekly Missouri Democrat, Nov. 16, 1863.

CHAPTER III

HENDERSON AND EMANCIPATION

The problem of emancipation of slaves in the border states was inextricably bound up with that of keeping those states within the Union, and with the conduct of the war itself from the very beginning of civil strife. Lincoln recognized this in his project for compensated emancipation when he urged the measure as a "...most efficient means of self preservation."¹ Henderson took up, and continually stressed, Lincoln's argument that it would be cheaper to pay for slaves than to have the war continue.² Henderson likewise urged that emancipation would tie Missouri more closely to the Union.³ The whole struggle for emancipation in Missouri was complicated by the provision of the state constitution, which required any compulsory emancipation laws to provide for full payment to the owners. This meant that either Missouri, which was nearly bankrupt during the war period, must find funds for

1. Journal, United States Senate, 37 Cong., 2 sess., pp. 274-275, Mar. 7, 1862.

2. Cong. Globe, 37 Cong., 2 sess., pp. 1390-1393, Mar. 27, 1862; Daily Missouri Republican, Aug. 29, 1862.

3. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

such payments, or the constitution must be altered if emancipation were to be achieved.⁴

A typical Missourian of his period, Henderson was a slaveowner, though his slave property was not large. As has been reported above, Henderson had taken a moderate southern view on the problems of slavery from the 1840's on. He had urged a resolution in the State legislature denying the right of Congress to exclude slavery from the territories. Through the fifties Henderson had followed Douglas' opinions and in the election of 1860 had made his unsuccessful campaign for Congress on a platform of congressional non-intervention with slavery in the territories, interpreting this doctrine from the Northern Democratic point of view to mean that the people of the territories should decide on the problem of slavery in their territorial legislatures. He had stood for popular sovereignty in the territories again in the first session of the Missouri State Convention in March, 1861. Henderson had always upheld the Constitutional right to hold slave property, and had consistently denied that the federal government could legally interfere with slavery within the states. Before the war had actually begun, however, Henderson had expressed doubt that slavery would be safe if

4. Daily Missouri Republican, Aug. 29, 1862.

conflict arose between the two sections.⁵

President Lincoln, in March of 1862, recommended to Congress that it adopt a joint resolution stating that the federal government should give pecuniary assistance to any state which adopted a plan of gradual emancipation.⁶ In the message accompanying this recommendation Lincoln pointed out that the seceded states still hoped to draw the loyal slave states from the Union; such a measure, if accepted by any of the states, would discourage such expectations and weaken the rebellion that much. He favored gradual, rather than sudden, emancipation because he thought it would be better for all concerned, and showed that current war expenditures would soon pay for the slaves of any given state. The President denied that such a plan represented any interference by the federal government with slavery within a State, since the consent of each state was necessary for the plan to go into operation. He warned that the war must continue as long as the rebellion did, and that no one could foresee all the ruin which might result. He asked whether it might not be more valuable to the states and to private citizens to accept such federal aid than to retain the institution and property of

5. Proceedings, Missouri State Convention, March, 1861,
p. 254.

6. Journal, U. S. Senate, 37 Cong., 2 sess., p. 274,
Mar. 7, 1862.

slavery.⁷

Henderson heartily endorsed these views and the plan suggested by the President. It became the basis of the Missourian's efforts in the next year to obtain some form of compensated emancipation for his state. While the Senate was considering the joint resolution proposed by the President, Henderson proposed an amendment which declared that the war should be prosecuted until every state professing to have seceded should be returned to the Union.⁸ He stated that, unlike most border-state men, he intended to vote for the joint resolution whether or not his amendment was adopted. He explained that he offered this amendment because many border-state men feared the federal government intended to end slavery in the border states, and then consent to a dissolution of the Union. If Missouri ever became persuaded of this, warned Henderson, it would inevitably affect her future feelings because the navigation of the Mississippi was much more important in her eyes than the institution of slavery. The rest of the West would demand a free Mississippi and if the South were permitted to form an independent nation, navigation of that river might be denied the upper sections

7. Journal, U. S. Senate, 37 Cong., 2 sess., pp. 274-275, Mar. 7, 1862.

8. Journal, U. S. Senate, 37 Cong., 2 sess., p. 343, Mar. 27, 1862.

Henderson praised the spirit of the joint resolution and predicted it would bring a new feeling of conciliation and good will in Missouri and the other border states. It would do this because it was not an arrogant demand that the will of the North be conformed to, but rather, said Henderson, it would be an acknowledgement that all sections have some responsibility for slavery. Furthermore, it would be acceptable because it preferred gradual to immediate emancipation. He felt that if this spirit of conciliation might have prevailed earlier the war could have been avoided. Following out Lincoln's suggestion, Henderson computed that ninety-six days of the war would pay for every slave in Missouri, Kentucky, Maryland, Delaware, and the District of Columbia; two years of it would pay for every slave in the nation. As for the President's statement that continued war might destroy slavery, Henderson considered it a true prediction and not a threat. He stated that although slave property had been as safe as any other in Missouri before the war, already much of its value had been destroyed; there had been raids from Kansas and Arkansas, sponsored by extremists from both sides, and some slave owners had moved South with their slaves.⁹

Henderson urged that slavery agitation be dismissed from Congress as much as possible. He blamed the poli-

⁹. Cong. Globe, 37 Cong., 2 sess., p. 1390-1393, Mar. 27, 1862.

ticians of the past for exploiting the subject for partisan ends, and considered such agitation a cause of the present difficulties. He, himself, would not participate, he said, because slavery was a recognized institution in his state and he could do Missouri no good by provoking a controversy on slavery ethics in a body where slavery was condemned. However, as he expected to refrain from condemning opinions opposed to his own, he believed that those opposed to slavery should not condemn the loyal slaveholder. Henderson declared that these men who had been loyal at far greater price than many who were not slaveholders should be defended, not blamed and denounced. Two measures had been considered in the Senate to which, Henderson stated, he had been opposed because he feared their effect on loyal slaveholders of the border states. The first was the bill to abolish slavery in the District of Columbia. He had not opposed it because he thought it unconstitutional nor because he was personally attached to the institution, but chiefly because he feared it would raise the spectre of Abolition to frighten the border states. Likewise he had silently opposed the bill providing for the occupation and cultivation of cotton lands of the south because he believed it would be used by enemies of the Union to cement southern sentiment and raise opposition against the prosecution of the war. Hen-

derson feared that some members of the Senate, because they disapproved of slavery, had no sympathy for loyal slaveholders. He urged those who felt that way to remember that the best weapon Union men in the border states had was the argument that a loyal citizen owed allegiance directly to the federal government, and would be protected by it. It would be against the true interests of the government to tell loyal slaveholders that the government would not protect them, Henderson declared.¹⁰

Because the joint resolution did offer conciliatory understanding and protection to the loyal border state slaveowner, Henderson stated that he hoped the measure would be submitted to the people of Missouri. He considered it a measure looking truly to the restoration of the Union.¹¹ The amendment introduced by Henderson was rejected, but Henderson's vote was cast in favor of the joint resolution which passed the Senate by a vote of thirty to ten.¹²

The resolution had originated in the House of Representatives which had passed it on March 11, 1862 by a vote

10. Cong. Globe, 37 Cong., 2 sess., pp. 1390-1393, Mar. 27, 1862.

11. Cong. Globe, 37 Cong., 2 sess., pp. 1390-1393, Mar. 27, 1862.

12. Journal, U. S. Senate, 37 Cong., 2 sess., p. 357-358, April 2, 1862.

of ninety-seven ayes to thirty-six nays.¹³ When the measure was returned from the Senate early in April, the House agreed to an amendment the Senate had made in its title¹⁴ and on April 10, 1862 the measure was signed by the President.¹⁵ While the resolution declared that the United States ought to cooperate with the states in abolishing slavery by compensating the owners, it made no specific provision for such cooperation. It was a statement of intention, rather than a definite plan.

The Missouri State Convention reconvened in June, 1862, and Henderson made a trip to Missouri to urge consideration of the problems of slavery and emancipation.¹⁶ Mr. Samuel M. Breckinridge, a member of the Convention, introduced an ordinance providing for gradual emancipation.¹⁷ The sentiment of the Convention was strongly against discussing the subject of emancipation, and the proposed ordinance was laid on the table by a vote of

13. Journal, U. S. H. of R., 37 Cong., 2 sess., p. 433, March 11, 1862.

14. Journal, U. S. H. of R., 37 Cong., 2 sess., p. 524, Apr. 9, 1862.

15. Journal, U. S. H. of R., 37 Cong., 2 sess., p. 535, Apr. 11, 1862.

16. Daily Missouri Republican, Aug. 29, 1862.

17. Proceedings, Missouri State Convention, June, 1862, p. 72.

fifty-two yeas to nineteen nays.¹⁸ In the debate which preceded the tabling of the ordinance, Henderson attempted vainly to get the floor, desiring to urge the body to face the problem of emancipation instead of attempting to dodge it. Another member of the Convention, who also wanted the floor, remarked that the Congressmen had had their say and their constituents had a right to speak, too. Henderson replied that he had only addressed the Convention once and was returning to Washington the next day.¹⁹ In the afternoon, however, he did obtain the floor and presented his views on the problem of emancipation and on the future position of Missouri in the Union.²⁰

Henderson urged the Convention to discuss the problem of emancipation freely, for it could never get rid of the subject by putting it off and ignoring it. He pointed out the connection between the question of emancipation and the prosecution of the war. He predicted that in less than six months if the war continued, the federal government would take really radical steps; that Congress would pass an emancipation bill and probably a confiscation act. Henderson reaffirmed his own loyalty to the Union, declar-

18. Journal, Missouri State Convention, June, 1862, p. 20.

19. Proceedings, Missouri State Convention, June, 1862, pp. 82-83.

20. Proceedings, Missouri State Convention, June, 1862, pp. 98-102.

ing that he would never take up arms against the United States. He wished, he said, to put Missouri on guard, to warn her that her loyalty would probably be tested by such measures. The border-state men, by uniting with conservative northerners, had been able to stave off such legislation so far; however, Henderson reminded the Convention, Civil war was razing, and Congress had said that slavery stood in the way of putting down the rebellion. Missouri must realize that Congress would use every weapon, including emancipation, to end the war successfully. Lincoln, so far, had been kind to the border states, said Henderson, but eventually Congress might force him to declare the slaves free.

The war itself destroyed slavery, Henderson continued. Where the armies went, slavery was weakened or killed. Even in Virginia where the Union armies were under the control of a distinguished Democratic general this had happened, not because the federal commanders wished it, but because the disorders of war weakened control over the slaves. Henderson asserted the Union soldiers were coming to believe slavery caused the war, and he cited the situation in Washington, where it was nearly impossible to get runaway slaves from the soldiers, to prove his point.

Urging the Convention to keep Missouri loyal no mat-

ter what action Congress might take, Henderson warned that the federal government would never permit the state to join the South. Such an attempt or resistance to any measures of Congress would bring a second destruction of Missouri, ruining slave property as well as property of every other kind. Henderson was sure that by keeping loyal men in power in Missouri slavery could live much longer in his state than in the deep south, where the institution could not, in his opinion, survive another year of rebellion. He made it clear that he would oppose any measures injuring Missouri interests, slave or otherwise, but stated that the question was what Missouri would do if radical measures were passed over the border-state protests. If the war continued Congress would declare, or force the President to declare, the slaves of rebels to be free, prophesied Henderson. He referred to the resolution passed by Congress proposing to pay loyal men for their slaves as a possible solution for Missouri's problems. In closing his speech to the Convention Henderson reiterated, "I believe our loyalty today is the only shelter slavery has in Missouri."²¹

Back in the Senate, Henderson continued to defend the loyalty of Missouri slaveholders, and to demand of northern Senators some understanding of border-state conditions.

21. Proceedings, Missouri State Convention, June, 1862,
p. 101.

In a speech on the bill to confiscate rebel property, he pledged that Missouri would continue to support the Union.²² The border states had been settled by Yankees and southerners who had become aware of each others good qualities and had learned tolerance from necessity, said Henderson. Located in a central position they had every interest in the preservation of the Union, and they had, from the first, urged mediation. The border states had been the helpless victims of circumstances, Henderson declared, and had suffered so much from the war that they were sobered and anxious for peace, not vengeance. He described the desolation in Missouri in sections where homes, railroads, telegraph lines, and bridges had been destroyed, and the deplorable conditions where half of a community had been arrayed against the other half. A large proportion of Missouri slaveholders, he insisted, had been and were true to the Union, ready to sacrifice their property, and even their lives for it. These men, and others like them in other border states, had proven their loyalty by real sacrifice; Henderson objected, then, to hearing them denounced by fanatical orators from other sections.

Henderson stated that the Union leaders in the border states had, from the first, assured the people that the

23. Cong. Globe, 37 Cong., 2 sess., p. 1884, Apr. 30, 1862

federal government would not disturb slavery in the states. He protested against one section of the proposed confiscation bill which freed slaves of rebels, and allowed the slave to pass on the loyalty of the master; this section, he predicted, would be a source of great antagonism to loyal slaveholders in the border states and would cause slave disorders.²³

In July a militia bill, which provided for the use of negroes in the military and naval services, was considered; Henderson urged that only free negroes or those belonging to rebels be included under the bill. He repeated his earlier defense of the loyalty of Missouri slaveholders, and stated that sentiment among his constituents objected to such provisions, more because they feared the effects of turning large numbers of negroes loose upon the community than because of loss of property. If negroes of loyal men were to be taken, the government should pay the owners for them just as it paid loyal men for other kinds of property, insisted Henderson.²⁴ He objected also to a provision of the bill which freed the family of a negro who was taken by the government because his owner was disloyal; often such a negro's family belonged to loyal men. Surely Congress would not free them without paying

23. Cong. Globe, 37 Cong., 2 sess., p.1884, Apr. 30, 1862.

24. Cong. Globe, 37 Cong., 2 sess., p.3231, July 10, 1862.

the loyal owners, said Henderson, especially since it had no constitutional right to free slaves all over the country. The measure suggested by Lincoln, he considered, did not meet with this constitutional objection, for it left the decision up to the states: Henderson further praised the gradual features of Lincoln's proposal, for it allowed a period for readjustment.²⁵

Before Congress adjourned in the summer of 1862, the President called the border-state Representatives and Senators to the Executive Mansion, where he urged them to support his proposals for gradual or compensated emancipation as a means of ending the rebellion. Lincoln warned them that pressure had been, and would be, brought on him to allow emancipation of slaves of rebels by military order. The majority of the border-state delegates replied to the President in a statement which defended the failure of the border-state representatives to support the compensated emancipation resolution. The reply further stated that the representatives of the border region did not feel they could submit such propositions to the people until Congress had made actual appropriations to substantiate the general declaration of intention. Henderson did not sign the reply of the majority.²⁶ In his answer to

25. Cong. Globe, 37 Cong., 2 sess., p.3342, July 15, 1862.

26. Columbia Missouri Statesman, Aug. 8, 1862.

the President's declarations, the Missouri Senator promised his full support to the President's plan. He believed the border states should accept it, both because of a patriotic desire to break the rebellion, and because it was the best means of securing the slaveowner's property interest in the troubled times of civil war.²⁷

Henderson reviewed his whole course on emancipation in a speech delivered at Hannibal soon after he returned to Missouri at the end of the 1861-62 congressional session. He urged that the whole question be considered calmly, like any other political problem. He denied that he was an abolitionist, though he had been so called because, as early as 1861, he had predicted that war would kill slavery; on the contrary he had guarded Missouri's interests, slave as others, as best he could. He repeated his earlier statements made in the Convention that Missouri must face the facts, for trying to hide from them would not solve the problem. Slavery was in danger in Missouri, Henderson declared; he spoke at some length, as he had at the June session of the Convention, to show that slavery was dying in the South, not as a result of deliberate action of the federal government, but as a result of the disruptive influence of war conditions. As in June, Henderson praised Lincoln as a friend of the

27. Daily Missouri Republican, Aug. 29, 1862.

border states and discussed the congressional resolution promising pecuniary aid to states who adopted a compensated emancipation program. He reiterated his earlier warnings that Congress might destroy slavery as an incidental blow at the rebellion and stated his opinion that it would be to the interest of Missouri slaveholders to emancipate and receive compensation rather than have their slave property thus destroyed.

Henderson reviewed the course of the Convention in refusing to discuss the problem, and declared that Missouri had missed an opportunity to take advantage of Congress' liberal offer. In failing to take some action the Convention had left the problem of slavery to agitate Missouri affairs in the legislative elections. He pointed out that emancipation in Missouri could be accomplished by action of the Convention. The Convention could be called to meet either by the legislature or by the governor. Henderson urged that in their public meetings the people pass resolutions calling on the governor to convene the Convention for the purpose of adopting an emancipation ordinance. He concluded by telling the slave owners that their interests were involved, and that if they did not take advantage of the present opportunity to obtain federal compensation they would have no one but

themselves to blame for their probable losses.²⁸

The importance of emancipation in Missouri politics has already been noted; it was the most discussed question after there was no longer doubt as to the state's position in the union. Emancipation became the issue on which the two wings of the Union Party split into the Conservative and Radical Parties. The open break did not occur until the summer of 1863, but by the end of 1862 all groups, even the most conservative, were coming to see that some form of emancipation was practically inevitable. In the summer of 1862 an election for the state legislature had been held and one of the leading issues had been the problem of freeing the slaves, either without compensation or by obtaining federal pecuniary aid for that purpose. The General Assembly which was elected was definitely pro-emancipation in nature, though it could not be called an abolitionist body.²⁹ Those who favored emancipation made up a sufficient majority to control the organization of both houses when the General Assembly convened and they were recognized as a group definitely enough to be referred to by the newspapers as emancipationists, or

28. Daily Missouri Republican, Aug. 29, 1862.

29. Cong. Globe, 37 Cong., 3 sess., pp. 589-592, Jan. 29, 1863. Daily Missouri Republican, Dec. 17, 1862.

the Emancipation Party.³⁰

The Emancipation Proclamation, formally issued by President Lincoln on January 1, 1863, found a mixed reaction in Missouri. The radical groups within the state approved it, while the conservatives if they did not denounce it were nevertheless not in favor of it. For example, the conservative Missouri Republican, when the question of the senatorial elections was before the legislature late in December, 1862, said "...it is not likely an 'Emancipation Proclamation' radical will wear Senatorial robes."³¹ The radicals in Missouri, needless to say, favored the Proclamation.

Perhaps it was due to this lack of unanimity on the subject in Missouri that Henderson seems to have avoided references to the Proclamation until after it had become a fact. Lincoln had discussed the proposed measure with the Missouri Senator in the summer of 1862; Henderson had approved it, but urged that it be delayed.³² The preliminary proclamation was issued September 22, 1862, to

30. Daily Missouri Republican, Jan. 17, 1863, reprint from St. Louis Union; Weekly Missouri Democrat, Nov. 25, 1862, reprint from St. Joseph Journal; Tri-Weekly Missouri Democrat, Jan. 15, 1863.

31. Weekly Missouri Democrat, Dec. 23, 1862; quoted from the Missouri Republican.

32. Hamilton, "John Brooks Henderson," Dictionary of American Biography, VIII, p. 728.

become final on January 1, 1863.³³ In December a committee representing the border-state delegations in Congress called on Lincoln and urged him not to issue the final proclamation. Henderson refused to sanction the committee's action.³⁴ However, in a speech in the Senate in January the Missourian stated that he did not favor the proclamation originally, but he was firmly convinced that since it had been issued it should be firmly upheld and fully enforced.³⁵ The controversial nature of the subject in Missouri, and the senatorial elections then pending in the state, very probably account to some extent for Henderson's cautious statements in reference to the Emancipation Proclamation.

Soon after the opening of the third session of the Thirty-Seventh Congress in December of 1862, Henderson introduced a bill to provide federal aid to Missouri for emancipation. His bill (S. 434) was referred to the Judiciary Committee.³⁶ Early in January a House bill on the same subject (H. R. 634) was sent to the Senate, where

33. Randall, Civil War and Reconstruction, p. 489.

34. Daily Missouri Republican, Dec. 20, 1862.

35. Columbia Missouri Statesman, Feb. 6, 1863; Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

36. Cong. Globe, 37 Cong., 3 sess., pp. 138-139, Dec. 19, 1862; Journal, U. S. Senate, 37 Cong., 3 sess., p. 62, Dec. 19, 1862.

it, too, was referred to the Judiciary Committee.³⁷ The House bill, introduced by another Missourian, Representative Noell, provided only ten millions of dollars would be given to aid emancipation in Missouri and this was only promised, for the measure made no appropriation.³⁸ On January 14, 1863, the Committee on the Judiciary reported both bills to the Senate; Henderson's bill (S.434) was reported adversely while the House bill (H. R. 634) was reported with an amendment.³⁹

The Senate Judiciary Committee's amendment to the House bill on emancipation in Missouri was to strike out all after the enacting clause and substitute the essential features of S. 434, the bill introduced by Henderson. This substitute reported by the Committee on the Judiciary provided that the federal government would aid emancipation of slaves of loyal owners in Missouri by issuing thirty year, five percent bonds to the amount of twenty million dollars. If immediate emancipation were adopted, that is emancipation by 1865, all the bonds were to be delivered to Missouri on passage of the act; if gradual

37. Journal, U. S. Senate, 37 Cong., 3 sess., p. 88-89, Jan. 7, 1863.

38. Nicolay and Hay, Abraham Lincoln, VI, p. 396; Proceedings, Missouri State Convention, June, 1863, p. 200

39. Journal, U. S. Senate, 37 Cong., 3 sess., pp. 104-105, Jan. 14, 1863.

emancipation were chosen, the bonds would be delivered in four equal installments, the first when the state act was passed and the last on the date of actual emancipation. This differed from Henderson's bill in the amount of aid, and the date of final emancipation; these features in his proposal had been twenty-five million and 1885 respectively.⁴⁰

On January 29 and 30 after the Missouri emancipation bill had been debated at some length, Henderson introduced a series of amendments which changed the bill to provide the alternatives of immediate emancipation with federal aid to the amount of twenty millions or gradual emancipation with a smaller amount of federal aid.⁴¹ After continued debate the bill, together with the proposed amendments, was recommitted to the Committee on the Judiciary.⁴² That Committee reported the bill, further amended, back to the Senate on February 2;⁴³ debate on it was resumed

40. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

41. Cong. Globe, 37 Cong., 3 sess., pp. 586-594, Jan. 29, 1863; 611-622, Jan. 30, 1863; Journal, U. S. Senate, 37 Cong., 3 sess., pp. 171, 174-176, Jan. 29, 30, 1863.

42. Journal, U. S. Senate, 37 Cong., 3 sess., p. 176, Jan. 30, 1863.

43. Journal, U. S. Senate, 37 Cong., 3 sess., p. 181, Feb. 2, 1863.

on February 7⁴⁴ and again on February 12.⁴⁵ On the latter date the bill, as reported from the Judiciary Committee for the second time, was passed by the Senate with only one amendment,⁴⁶ although several proposals to amend had been made.⁴⁷ The measure was approved by a vote of twenty-three yeas and eighteen nays; Henderson voted in the affirmative, but his colleague, Robert Wilson, voted against the proposition.

The bill passed by the Senate incorporated Henderson's proposal for alternative plans of gradual or immediate emancipation. It provided that Missouri should receive federal aid to the amount of twenty millions if she emancipated her slaves on or before July 4, 1865, or ten millions if emancipation was accomplished by July 4, 1876. The Missouri legislature must act within twelve months to receive the promised aid, and the maximum price to be paid per slave was two hundred dollars. The President was authorized by the bill to issue United States thirty year bonds at five percent interest whenever the state of

44. Journal, U. S. Senate, 37 Cong., 3 sess., pp. 214-219, Feb. 7, 1863.

45. Journal, U. S. Senate, 37 Cong., 3 sess., pp. 241-243, Feb. 12, 1863.

46. Journal, U. S. Senate, 37 Cong., 3 sess., p. 243, Feb. 12, 1863

47. Journal, U. S. Senate, 37 Cong., 3 sess., pp. 214-219, Feb. 7, 1863; pp. 241-243, Feb. 12, 1863.

Missouri should adopt the required emancipation measure.⁴⁸ The bill was returned to the House on February 13, with a request that the lower chamber concur in the Senate amendment.⁴⁹ Five days later that body recommitted it to the select committee on emancipation;⁵⁰ the measure H. R. 634 never re-emerged. The House Committee instead reported an entirely new bill, H. R. 777, on the same subject,⁵¹ but since the short session of Congress automatically ended March 3 there was no possibility of securing its passage. The inability of the two houses to agree on a measure thus prevented compensated emancipation of slaves through federal aid in Missouri.

In supporting the principle of compensated emancipation by means of federal aid to the states, Henderson stressed three reasons why the central government should give such assistance to his state: first, that the expenditure required would really be an economy for it would reduce military expenses; second, that the entire country was in reality responsible for the existence of the

48. Journal, U. S. Senate, 37 Cong., 3 sess., 242-243, Feb. 12, 1863.

49. Journal, U. S. House of Representatives, 37 Cong., 3 sess., p. 391, Feb. 13, 1863.

50. Journal, U. S. H. of R., 37 Cong., 3 sess., p. 420-421, Feb. 18, 1863.

51. Journal, U. S. H. of R., 37 Cong., 3 sess., p. 487, Feb. 25, 1863.

institution of slavery in Missouri, and therefore it was not unjust for all sections to bear the expense of removing it; third, that Missouri had remained loyal to the Union and her citizens should not be asked to suffer losses when it was within the power of the federal government to prevent such suffering.

Henderson explained the provisions in the state constitution which required full payment for slave property in event of compulsory emancipation and stated that Missouri had no money with which to make such payment. It was doubtful in his mind that the people of Missouri would approve a constitutional change to permit emancipation with no compensation. Therefore the question must be dealt with by Congress if it were to be met at all. Henderson refused, however, to go into the right or wrong of slavery, for he held it would be inconsistent to praise the institution while seeking to destroy it, or, as a slaveowner and representative of a slave state, to denounce it.

For two years, declared Henderson, the federal government had been forced to carry on military operations in Missouri to keep off rebel invasion, but if slavery were abolished that danger would be ended. The very existence of the institution had provided the excuse for rebel leaders to keep agitation alive by rousing fears

that abolitionist measures would be adopted with political and social equality for the negro. If that was not the case, asked Henderson, why had Jefferson Davis in his speech at Jackson, Mississippi in December, 1862, spoken of "freeing" Missouri and Kentucky when he did not mention Illinois, Indiana, and Ohio? The peaceful removal of slavery would be the best way to discourage rebel hopes of winning the border states, and of encouraging continued loyalty and peace in those states.

Henderson predicted that if the measure were passed and slavery ended in Missouri by compensation, then the war would be over in that state; the loyal element would be greatly strengthened, and the South would no longer attempt to win Missouri. Troops could then be withdrawn to strengthen the army in other parts and thus the war would be shortened.⁵² He estimated that seventy-five or a hundred millions had already been spent in putting down the rebellion in Missouri, and he believed another hundred millions might be required if some such plan to end slavery were not adopted. If however, this proposed federal aid were extended, the monthly rebel inroads into the state could cease when slavery died. Henderson declared that he could not see why, when it willingly voted hundreds

52. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

of millions to wage war, the Senate hesitated to vote the sum asked for in this bill, for this expenditure would bring peace, union, and harmony.⁵³ Anyone who believed that slavery or agitation over slavery had caused the war, anyone who had voted for the Confiscation Act, or for the bill enabling the President to call slaves into the federal service, anyone who endorsed the Emancipation Proclamation must, he urged, support this plan to end slavery peacefully.⁵⁴

It was not unjust that the entire country should bear the burden of eliminating slavery, Henderson contended, for the North as well as the South must admit some responsibility for the perpetuation of the institution. He examined the proceedings of the Constitutional Convention of 1787, quoting from speeches of the delegates, to show that this was true. The extreme North and the extreme South had united to place in the Constitution compromises which perpetuated slavery, he stated, while the central states, both slave and free, had opposed many of them. The date at which the foreign slave trade would be ended was set up from 1800 to 1808 by the votes of the extreme South and extreme North, with New Jersey, Pennsylvania, Delaware, and Virginia opposed to the extension. The

53. Cong. Globe, 37 Cong., 3 sess., pp. 589-592, Jan. 29, 1863.

54. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

northern merchants had used the extra eight years to profit from the slave trade. The provision on fugitive slaves was suggested by a South Carolinian and accepted without protest by the northerners. The compromise, which seemed the most important to Henderson in encouraging the future existence of slavery, was that prohibiting a tax on exports. This agreement was opposed by New Hampshire, New Jersey, Pennsylvania, and Delaware; it prevented any taxation of the products of the plantation economy and was what the South gained from the compromise which permitted federal regulation of commerce.⁵⁵

Aside from the causes of slavery's perpetuation, Henderson emphasized Missouri's loyalty to the Union as a reason for federal aid to eliminate slavery. The border people had come from North and South, from every state in the Union; they had found slavery in Missouri, and had been drawn to the South by ties of commerce. When the war came, Henderson reminded the Senate, those ties had snapped while the stronger ones of loyalty and love of the Union had bound Missouri to the federal government.⁵⁶ Although many individual Missourians joined the rebellion, and although state authorities became corrupted, the loyal men in

55. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

56. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

Missouri had driven them out of the state and set up a government which was true to the Union. Henderson denied, as he had earlier, that the war was a slaveowner's rebellion, and defended the loyalty of many Missouri slaveholders. He, himself a slaveowner, had never hesitated in loyalty to his country even when it was dangerous to announce those sentiments, and, declared Henderson, he never expected to leave his country no matter what his state should do. Congress should remember, however, that it had offered to aid the border states by some such proposition as this. An exciting campaign had been held in Missouri on this very issue. The people of Missouri expected the federal government to make good its pledge, and the state legislature had passed a resolution requesting pecuniary aid for emancipation. If Congress failed to act, warned Henderson, the effect on loyal sentiment of Missouri would be bad. If division did come, as it would if northern arms were not successful, and Missouri were still a slave state, no one could predict what she would do.⁵⁷ In case of a separation, insisted Henderson, Missouri would be a necessity to the loyal states, for in addition to her fertile soil and mineral resources, she was the route to the Pacific; her loss would probably mean the ultimate loss

57. Cong. Globe, 37 Cong., 3 sess., pp. 589-592, Jan. 29, 1863.

of Kansas, the Indian Territory, and New Mexico. Certainly, he urged, the sum involved was small in comparison with these considerations.⁵⁸

Henderson considered it clearly within the constitutional power of Congress to adopt such a measure to aid the states in abolishing slavery. He declared he wished to see no forced constructions of the Constitution which could establish precedent to justify future usurpations of power. For that reason he could not accept the view of John Quincy Adams that the central government possessed two classes of powers, peacetime powers limited by the Constitution, and war powers limited only by the laws of nations; nor could he defend the idea sometimes advanced that the power of Congress to provide for the common defense and general welfare was limited only by the discretion of Congress. These views would permit the federal government to interfere with slavery within the states, a thing which Henderson was not willing to admit as constitutional. The plan proposed was based on the consent of the state, so the problem of whether or not Congress could so interfere in wartime need not be raised, said Henderson. He held that under the circumstances Congress had full authority to make an appropriation to remove slavery

58. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

under the power to declare war, raise armies, repel invasion, call on the militia to suppress rebellion, and to make laws necessary to carry these powers into execution. The federal government was acting under these powers in maintaining armies in Missouri at that time; it could also adopt this measure as a means of overthrowing armed rebellion.

Henderson realized that the border-state men were divided on the proposed federal aid to the states for emancipation. In his speech of January 16 he addressed himself directly to them, urging upon them reasons why they should support the bill.⁵⁹ He declared that the border states had always been the chief sufferers in the controversy; he quoted figures of population growth to show that between 1810 and 1860 Illinois and Ohio had attracted many more settlers than Missouri and Kentucky. He ascribed this condition at least partly to the agitation over slavery. Henderson repeated his earlier statements that the border states had tried to compromise the sectional differences. He pointed out that it had been generally accepted before 1820 that slavery would eventually disappear; he believed there were thousands like himself who would welcome slavery's extinction, if only

59. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

the way were pointed out.

The South had left the Union without consulting the border states, said Henderson. If the border states were going to join her they had better do it now; if they were going to remain loyal then they should unite cordially with others who upheld the central government. Abolishing slavery was one of the best ways to do this, for slavery was a magnet which attracted the iron filings of rebellion, Henderson declared; and certainly the loss of slavery would do no harm if the government compensated loyal slave owners.

The substitute for the House bill on compensated emancipation in Missouri which the Senate Judiciary Committee first reported provided that Congress appropriate twenty millions of dollars for either gradual or immediate emancipation. As debate on the measure proceeded Henderson became convinced that the Senate would never agree to give Missouri twenty millions for gradual emancipation. He also realized that there would be a conflict in the Missouri legislature as to which type of emancipation should be adopted. For these reasons the Missouri Senator introduced a series of amendments which would give the state legislature the alternative of twenty millions for immediate emancipation, or a smaller sum for a gradual scheme. He stated that he was anxious to get a bill

passed so that Missouri would know definitely what Congress would do.⁶⁰

In regard to the amount necessary for gradual emancipation under Missouri's constitution Henderson stated that if the final date were set at 1885 or 1890, ten millions would be sufficient. That amount would not make complete emancipation possible by 1876 if the constitutional requirement of full payment for slave property were to be observed.⁶¹ On the basis of the 1860 slave population, its natural rate of increase, and incomplete auditors's reports, Henderson estimated the number of slaves in Missouri at about one hundred thousand.⁶² He stated that twenty millions would not pay for immediate emancipation in Missouri, but he expected the state to raise the rest; that sum would make it possible for Missouri to emancipate under her constitution. In the same way, ten million dollars would make emancipation by 1890 a possibility for his state.⁶³ Henderson announced that if Congress appropriated only ten millions and required immediate emancipation,

60. Cong. Globe, 37 Cong., 3 sess., p. 586, Jan. 29, 1863

61. Cong. Globe, 37 Cong., 3 sess., p. 586, Jan. 29, 1863.

62. Cong. Globe, 37 Cong., 3 sess., pp. 589-592, Jan. 29, 1863.

63. Cong. Globe, 37 Cong., 3 sess., pp. 589-592, Jan. 29, 1863.

he would advise the state legislature to reject the offer and work out a plan of gradual emancipation on its own initiative. Missouri could not emancipate constitutionally with that amount of money.

The Senate was unable to agree on the advisability of one plan of emancipation over the other. Sherman, for example, preferred gradual emancipation because of the economy of that plan in time of national emergency while Wilson of Massachusetts demanded immediate emancipation.⁶⁴ Henderson urged the necessity of compromise, fearing that the bill would fail of passage because of controversy between the two viewpoints.⁶⁵ After the bill had been re-committed to the Judiciary Committee and reported out a second time Henderson stressed the necessity of compromise even more strongly. He insisted the choice should be left to the state legislature.⁶⁶ Eventually, as has been noted already, the Senate agreed to retain in the alternate plans of emancipation in the bill, and allow the state legislature to choose, but the measure failed to pass the House before the session ended March 3, 1863.

64. Cong. Globe, 37 Cong., 3 sess., p. 612, Jan. 30, 1863.

65. Cong. Globe, 37 Cong., 3 sess., pp. 617-618., Jan. 30, 1863.

66. Cong. Globe, 37 Cong., 3 sess., p. 795, Feb. 7, 1863.

The progress of the proposition to provide federal aid for Missouri emancipation was followed with great interest by the newspapers of the state. That this was true is indicated by the fact that Henderson's speeches were reprinted, either in full or somewhat abstracted, in the Missouri Republican, the Missouri Democrat, and the Columbia Missouri Statesman.⁶⁷ The Republican also published a major part of the debate on the bill.⁶⁸ The reactions of the Republican and Democrat as to the wisdom of the proposal differed widely. The Democrat strongly favored immediate emancipation; it contended that if a gradual plan were adopted a pro-slavery legislature might be elected and reverse the law, again fastening slavery on the state. The journal condemned Henderson's action in including both types of emancipation in the bill and leaving the choice to the legislature. This was merely a politician's attempt to conciliate all shades of opinion in the opinion of the Democrat, and further, the amount proposed by Henderson was too large; ten million would be much nearer right than twenty-five million to pay for the slaves left in Missouri, said the Democrat.

67. Daily Missouri Republican, Dec. 29, 1862; Jan. 23, 1863; Tri-Weekly Missouri Democrat, Jan. 23, 1863; Feb. 6, 1863; Columbia Missouri Statesman, Feb. 6, 1863.

68. Daily Missouri Republican, Feb. 5, 6, 7, 10, 11, 16, 23, 1863.

This, too, was considered a politician's gesture which would be popular in Missouri, if nowhere else. Finally, the date for immediate emancipation should have been set within the term of the existing legislature because of the danger of a new legislature reversing an act which did not take effect until 1865.⁶⁹

The Missouri Republican considered Henderson's measure the best which had been proposed but believed it did not provide for a large enough appropriation. The Republican insisted that the loss of slaves in Missouri had been grossly over-estimated.⁷⁰ Slaveholders were not unanimous in support of the efforts in their behalf. A meeting of Union men in Pike County early in February adopted a resolution regretting Henderson's efforts to obtain federal money for emancipation in Missouri, declaring that "...such appropriation has not been asked for nor desired by the majority of the loyal people of the state."⁷¹

After Congress had adjourned in March, 1863, the Missouri Democrat attacked Henderson, blaming him with the failure of Congress to pass an emancipation bill. He should not have substituted his bill for the House bill,

69. Weekly Missouri Democrat, Dec. 23, 1862.

70. Daily Missouri Republican, Dec. 27, 1862.

71. Columbia Missouri Statesman, Mar. 13, 1863.

said the Democrat. The friends of Missouri, the paper continued, should have known that Henderson was no Republican, and that he did not pretend to be an anti-slavery man except on the basis of expediency--that is, the slave-owners should get what they could.⁷²

Congress had adjourned March 4, 1863 without providing aid for compensated emancipation in Missouri, and the state legislature, in spite of its emancipationist sympathies, had failed to adopt any measure leading to the end of slavery. Therefore Governor Gamble called the State Convention which had been elected in 1861 to meet for a fifth session for the express purpose of considering the problem of emancipation.⁷³ The body convened June 15 in Jefferson City.⁷⁴

The rapid change in public opinion in Missouri on emancipation from June, 1862 to June, 1863 was clearly evidenced by this action of the Governor. In June, 1862, the convention had tabled a proposal for emancipation of a very gradual nature without even permitting debate. In 1863, just a year later, the body met to adopt some plan for ending slavery, and there was a highly vocal group in the Convention at this, its last session demanding

72. Tri-Weekly Missouri Democrat, Mar. 9, 1863.

73. Proceedings, Missouri State Convention, June, 1863, p.3

74. Proceedings, Missouri State Convention, June, 1863, p.4.

immediate, non-compensated emancipation. It will be seen that Henderson himself modified his position rapidly from advocating gradual emancipation by 1885 or 1890 in his Senate speeches to a statement in the convention that he would accept 1868 as the date on which slavery should die. He stated himself that the force of circumstances had changed his views of what was practical, though not necessarily desirable. There can be little doubt that the state political situation was one of the major forces of circumstance so far as Henderson was concerned, for he was still seeking election to the United States Senate for a full term.

The Convention decided, in a resolution introduced by Henderson, to elect a committee of nine to frame an ordinance of emancipation.⁷⁵ One member was elected from each congressional district; Henderson was chosen from his district, and Gamble, the provisional governor, was made chairman of the committee.⁷⁶ The ordinance drawn up by the Committee on Emancipation was presented to the Convention on June 23 together with an ordinance reported by one dissenting member of the committee. The committee ordinance provided for the end of slavery on July 4,

75. Proceedings, Missouri State Convention, June, 1863, p. 53.

76. Proceedings, Missouri State Convention, June, 1863, p. 54.

1876,⁷⁷ while the other plan presented was based on immediate emancipation in 1864 with a period of apprenticeship to last until 1870.⁷⁸ The system eventually adopted by the Convention on July 1 was even more gradual than that recommended by the Committee, for while it provided for the end of slavery in 1870 it included varying periods of apprenticeship. Slaves over forty years of age were to remain under the authority of their owners for the rest of their lives; slaves under twelve years were apprenticed until they reached the age of twenty-three; all between the years of twelve and twenty were subject to the control of their masters until 1876. Other sections of the ordinance provided that, after the date of the measure's passage: all slaves brought into Missouri should be freed, unless they had belonged to citizens of the state prior to the adoption of the ordinance; all slaves taken into seceded states with the consent of the owner and then returned to Missouri should be freed; all slave property should be free of state, county, or municipal taxes.⁷⁹

The debates on the ordinance found Henderson reiterating the same arguments in favor of emancipation which

77. Proceedings, Missouri State Convention, June, 1863, p. 135.

78. Proceedings, Missouri State Convention, June, 1863, pp. 136-137.

79. Journal, Missouri State Convention, June, 1863, Appendix, p. 4.

he had used in the United States Senate, in the 1862 session of the Missouri Convention, and in his other public speeches of the preceding year, especially that the removal of slavery would bind Missouri even more closely to the Union and would end the danger of southern invasion of the state. The Senator also laid stress on other arguments having to do with the economic development of the state. In the major speech which he made during the session⁸⁰ he reviewed his own past statements and record of action on the subject of emancipation. He defended the course he had taken in getting the United States Senate to amend the House bill on compensated emancipation for Missouri. Henderson declared he could never have voted for the Noell bill as it came to the Senate because it promised only ten millions of dollars for immediate emancipation and made no actual appropriation; the Senate bill, on the other hand, had provided for appropriations of bonds in amounts which made emancipation possible for Missouri, and had included alternative plans for immediate or gradual emancipation. He, himself, had favored gradual emancipation.

When the plan for Missouri emancipation had failed in Congress, Henderson stated, he had urged that the State legislature either call a new convention, or another session of the old to provide for gradual emancipation. He

80. Proceedings, Missouri State Convention, June, 1863, pp. 198-212.

was emphatic in his statements that the Convention, now that the governor had called it together, must adopt some plan of emancipation, preferably gradual. He divided his arguments into two groups, addressing the first to those who opposed the removal of slavery, and the second to those who insisted upon immediate emancipation.

To those who opposed emancipation in any form Henderson issued a warning. They should remember that only a year earlier the same Convention had tabled a resolution which would have ended slavery in seventy years, and that in March, 1863, the state legislature had rejected a plan which would have abolished the institution in thirty-seven years. The plan now proposed to the convention, he stated, would end slavery in thirteen years; unless it were accepted the entire institution might be a total loss to slave-owners at once. In its existing precarious state, continued Henderson, slave labor was more expensive and much less reliable than free labor. The proposed measure would benefit the slave owner by giving him thirteen years to dispose of his slaves in the south or to prepare himself for the changed status of the negro. It would benefit the community by preventing the sudden convulsion which would come with immediate emancipation and yet, contended Henderson, it would bring to the state all the advantages of immediate emancipation. Missouri was a rich state, with a

large area, a large population, fertile lands, and great mineral resources; in spite of these advantages it had fallen behind the free states around it.

To prove this point Henderson showed that while Missouri in 1820 had been ahead of Illinois in population and wealth, by 1860 the value of farms in Illinois was two hundred million dollars more than that of the same property in Missouri. The value of real and personal property in Illinois had increased four hundred and eighty-five percent from 1850 to 1860 compared to an increase of only two hundred and sixty-five percent for the same period in Missouri. Illinois had almost three thousand miles of railroad to Missouri's eight hundred. Henderson believed the institution of slavery must bear a large part of the responsibility for Missouri's slow development. The state needed large supplies of labor, more than the slave population of Missouri had furnished even when it all had been at home and contented. Free laborers from the North were prejudiced against the slave states, and so Missouri had not received her share of migration. She had not had enough slaves to be a true slave state, yet those she had gave her all the disadvantages of that status. For the sake of the future development of the state, urged Henderson, the Convention should emancipate the slaves.

Those who opposed emancipation should also realize, Henderson stated, that the Confederate states would not welcome Missouri as a free state. He repeated all of his old arguments to show that by making Missouri a free state the Convention would end southern expeditions into the state, and bind it securely to the Union. In support of his position he referred to Lincoln's well known advocacy of gradual emancipation.

Turning then to those who would vote only for immediate emancipation, Henderson urged the preferable features of a gradual plan and emphasized the necessity of compromise if any measure were to be adopted. The real danger to emancipation lay, he declared, in the likelihood that its friends would vote against all plans but their own. Moral and religious reasons for emancipation should be left out of the discussion, said Henderson, and the problem should be treated as a political one, which must be dealt with in the midst of civil war. The two reasons demanding emancipation, that is, to end the hopes of the South that Missouri would join it, and to invite free Northern migration, would be met just as well by gradual as by immediate emancipation, he insisted. The former type would be much more acceptable to the people, and was therefore preferable.

Henderson, in this speech, favored setting 1873 as

the date of freedom and providing a further term of apprenticeship. He examined the emancipation plans which had been used in Rhode Island, New York, Connecticut, and New Jersey, showing that they had all been gradual in nature, and stating that those states had made great economic progress during the period when slavery was dying. Even the most radical anti-slavery men had not advocated immediate emancipation until recently, Henderson contended, and every proposal for it had included a period of apprenticeship. This would imply either that it was unjust to deprive the owner of the slave's services so abruptly, or that the slave was not ready for immediate freedom. In either case he considered gradual emancipation preferable.

As to the radical argument that, if the Convention did not act, a new convention would be called, Henderson replied that emancipation should not be put off, for the legislature might not call a new convention, or a new body might not agree any better than the present one. He considered it important that action be taken at once because the existing conditions encouraged military interference with the institution of slavery. The basis of republican government was that the people through their representatives should settle such questions as emancipation; if the military usurped the power to deal with this, it would soon interfere in other questions, warned Henderson.

No law of Congress authorized such military interference, yet it had occurred in places, he said. Henderson praised the Convention for its courage and patriotism in 1861 and defended the loyalty of members.⁸¹ Eighty-eight of its ninety-nine members in that year had been slaveholders and they kept Missouri true to the Union. Henderson declared it wrong to denounce the slaveowner; the whole community was responsible for slavery and the individual slaveholder should be allowed time to adjust himself to the extinction of the institution.⁸²

Ratification of the emancipation ordinance by the people was not necessary, Henderson insisted. The people expected the Convention to adopt a plan; submitting it to popular vote would only lead to guerilla warfare and agitation.⁸³ After a provision requiring popular ratification had been adopted, Henderson moved that it be reconsidered and the plan for submitting the ordinance to the people was dropped. Under ordinary circumstances, he stated, such a proposition should be referred to the people; but renewed

81. Proceedings, Missouri State Convention, June, 1863, pp. 318-198-212.

82. Proceedings, Missouri State Convention, June, 1863, p. 211

83. Proceedings, Missouri State Convention, June, 1863, pp. 211-212.

agitation, even war at the polls might be the result.⁸⁴ Submitting a single plan might even lead to defeat of the whole principle if a majority of the voters could not agree on one definite scheme.⁸⁵

During the June, 1863 session of the Convention Charles Drake had been a leader of the immediate emancipationists. In the course of the debates over the emancipation ordinance he and Henderson became involved in argument, each seeking to expose the other's inconsistencies. Drake cited Henderson's vote for the Jackson resolutions in 1849, his approval in 1857 of a resolution denouncing emancipation to show that the Senator had shifted from one side of the question to the other. The radical leader further contended that Henderson was still uncertain as to where he stood, for while the Committee, of which he was a member, had recommended 1876 as the date for final emancipation, he was advocating 1873, and had even stated he would accept 1868.

Henderson in turn charged that Drake had jumped from a position of forcing slavery on Kansas in 1859 to gradual emancipation in February of 1863 and then to immediate emancipation by the time the Convention had met. Henderson

84. Proceedings, Missouri State Convention, June, 1863, pp. 257-258.

85. Proceedings, Missouri State Convention, June, 1863, pp. 336-7.

replied to Drake's remarks by saying that with shifting circumstances men must change too; under the conditions of 1857 he would do the same thing again.⁸⁶ Henderson admitted that in order to achieve emancipation, he was willing to compromise on the best possible scheme that the Convention could agree to, while Drake, he charged, was determined to vote for no plan but his own.

The ordinance of emancipation adopted by the Convention was bitterly attacked by the radical press and the Radical leaders; it furnished one of the leading issues on which the Union party in Missouri actually broke into the Charcoal or Radical and Claybank or Conservative groups.⁸⁷ As has been noted above, Henderson defended the ordinance and the Convention before the people of the state during the summer and fall of 1863.⁸⁸ The Radicals continued their agitation for immediate emancipation; after their victory in 1864, a new state Convention met early in 1865 and adopted an ordinance which ended slavery in Missouri at once.⁸⁹ This increasingly radical trend in Missouri on

86. Proceedings, Missouri State Convention, June, 1863, p. 311-318.

87. Barclay, Liberal Republican Movement in Missouri, p. 5.

88. See Chapter II.

89. Barclay, Liberal Republican Movement in Missouri, p. 11-12.

the subject of emancipation must have had a great deal of influence on Henderson's proposals to end slavery by constitutional amendment, although it would seem that national affairs, too, played a very important part in bringing him to make those suggestions.

At the beginning of the civil conflict in 1861 a thirteenth amendment to the constitution had been proposed, and a joint resolution to achieve that end had passed both houses of Congress by a two thirds vote. The suggested amendment guaranteed that Congress should never interfere with slavery within the states.⁹⁰ Four years later, near the close of the Civil War, the joint resolution, which actually became the thirteenth amendment, was passed by the necessary vote of both houses of Congress. This resolution, when approved by the states, accomplished the final destruction of the institution of slavery. The President by proclamation, the states by ordinance, constitutional provision, or repeal of legislation, and Congress by the Confiscation Acts had struck heavy blows at slavery; but the need for an amendment to the organic law, which would apply to all the country alike and settle forever the constitutional issue involved, was recognized.⁹¹

90. James Ford Rhodes, History of the United States, III, New York, 1899, p. 313.

91. Randall, Civil War and Reconstruction, pp. 507-508.

On January 11, 1864, Henderson introduced a joint resolution (S. 16) proposing amendments to the Constitution; the resolution was read by title and referred to the Committee on Judiciary.⁹² The object of the proposal was to abolish slavery constitutionally. A month later the joint resolution with amendments was reported back from the Committee.⁹³ In April the Senate adopted the measure, S. 16, in the form in which it had been reported from the Judiciary Committee, and in which it became the thirteenth amendment to the Constitution.⁹⁴ Early in the 1863-64 session of Congress Henderson stated his conviction that the country should get rid of slavery by constitutional amendment.⁹⁵ Near the close of the Senate debate on the joint resolution Henderson presented his ideas on the subject in a speech which, as he explained, he had prepared and written beforehand to conserve time.⁹⁶ Lincoln's biographers, Nicolay and Hay, considered it one of the two speeches attracting the most attention during the entire

92. Journal, U. S. Senate, 38 Cong., 1 sess., p. 67, Jan. 11, 1864.

93. Journal, U. S. Senate, 38 Cong., 1 sess., p. 142, Feb. 10, 1864; Cong. Globe, 38 Cong., 1 sess., p. 553, Feb. 10, 1864.

94. Journal, U. S. Senate, 38 Cong., 1 sess., p. 313, Apr. 11, 1864.

95. Cong. Globe, 38 Cong., 1 sess., p. 362, Jan. 27, 1864

96. Cong. Globe, 38 Cong., 1 sess., pp. 1459-1465, Apr. 7, 1864

debate. It was particularly noteworthy, they considered, in that it was made by a border-state man who favored the amendment.⁹⁷

Henderson contrasted the prevailing sentiment of 1864 regarding slavery with that of 1861. A majority of Northern men in the earlier year had opposed disturbing the institution where it existed--anti-slavery sentiment triumphed, if at all, only in regard to territories. The Constitution had left the problem of slavery to the states; this represented a compromise made in 1787 to achieve union. Henderson defended this solution of the problem as the logical one which would have prevented conflict--if all citizens had remembered that democratic governments were not moral codes, but were political systems based on compromise. He traced the development of what he held to be the causes of the conflict. As the two sections of the country grew they took different paths. The North, thrown on its own exertions, became an industrious prospering people; the South built its monopoly of cotton culture on slave labor, and its chief interest became that of proving that slavery was right. Southerners forgot that in earlier periods it was the southern statesmen who attacked slavery the most bitterly. Meanwhile, the North began to denounce slavery in the pulpit and schoolroom.

97. Nicolay and Hay, Abraham Lincoln, X, p. 76.

Extremists on both sides added fuel to the controversy; soon politicians were using the conflict of ideas for their own partisan ends, and too many of those who should have been statesmen became demagogues.

The country finally became divided into two great parties, the true cause of division being the construction of the Constitution. The South, an agricultural section selling its goods abroad and desiring free trade, wanted a limited construction. The North, on the other hand, had become an industrial section, engaged in the carrying trade and desiring a tariff and internal improvement, called for a liberal construction. Extreme men had obtained control of both parties and fanned the controversy over slavery. The South had evolved the heresies of nullification and secession but the Northern Democracy had supported the Union when the crisis came. Thus a great majority of the people believed the war was being fought over slavery. Three-fourths of the people, though not three-fourths of the states, now regarded slavery as wrong, declared Henderson.

To truly restore the Union we must abolish slavery, Henderson continued; any compromise would only result in renewed struggles in the future. Indeed, he said, the South would never return to the Union as it had been, and to prove this point the Missourian read extracts from a

Richmond paper which stated that this was the attitude of the South. The best friends of slavery, insisted Henderson, admitted that if the rebellion was crushed slavery was doomed. Slavery and rebellion had become so intimately associated that, in his opinion they must share the same fate. He stated that he firmly believed there were only two alternatives before Congress, the Union without slavery, or the acknowledgement of the Southern Confederacy at once. This belief, he said, did not arise from any abhorrence of slavery, "It does not spring from hatred of slaveholders, for, whether in honor or shame, I am a slaveholder today."⁹⁸ Unless the Union was to be restored on a permanent basis by eliminating slavery, which had proven a center for agitation in the past, the war should be stopped at once, he declared, to prevent piling up public debt in confiscatory amounts. Congress had no power to abolish slavery, said Henderson. A constitutional amendment for that purpose should be adopted, because that was the only way the question could be finally and permanently settled. Makeshift attempts of Congress and presidential proclamations were not accepted as valid by the northern people; these methods led to such further errors as the theory of state suicide and territorial re-

^{98.} Cong. Globe, 38 Cong., 1 sess., p. 1461, Apr. 7, 1864.

'organization, which Henderson considered an absurd perversion of constitutional theory.

Henderson admitted that universal emancipation would bring many problems, but they would be minor in comparison to the results of the agitation over slavery. As a means of restoring the Union on a truly permanent basis, Henderson concluded that a constitutional amendment abolishing slavery was a necessity.

Henderson's positions on the issue of slavery and emancipation all through his career would seem to have been dictated by the force of events, and the practical end to be obtained, rather than by moral convictions against the institution. His consistent emphasis was that slavery should be considered calmly as a political issue on which the action best for the country must be taken. All through his attempts to achieve emancipation Henderson contended that slavery must be left to state action until the organic law of the federal government was amended. It is difficult, in a study based largely on Henderson's public speeches, to estimate the proportionate influence of state politics and of national events and personalities. Nevertheless Missouri's rapid swing to radicalism after 1863, and the fact that Henderson owed his senatorship to a coalition with the radicals must be considered in any discussion of his development. Undoubtedly the increasingly

radical Missouri background encouraged Henderson's interest and efforts for emancipation.

Henderson became an advocate of emancipation for Missouri before the civil struggle had been raging a year. He was consistently moderate although his proposals in 1862, 1863, and 1864 may appear inconsistent, unless the rapid shift of circumstances and the growing animus of public opinion toward slavery are remembered. It is true that Henderson was willing to propose much more drastic measures against slavery in 1864, that is, immediate uncompensated universal emancipation, than in 1862 and 1863 when he was insisting that the loyal slaveholder was entitled to some compensation, or to a gradual system of emancipation. The reasons for his projected plans, however, were the same ones applied to different sets of conditions. The fundamental object of all his efforts was to assure the preservation and restoration of the Union.

The basic convictions on which Henderson proceeded may be summed up briefly in two groups. First, emancipation of slaves in the border states would bind them firmly to the Union; it would discourage southern attempts to win the border region to secession. To achieve this end, however, the process of emancipation must avoid offending loyal slaveholders who had remained true to the Union. Slavery was inevitably doomed by wartime conditions, but

emancipation must be accomplished constitutionally for one perversion of the Constitution would inevitably lead to others.

By 1864 Henderson had arrived at a third conviction, that the removal of slavery as a center for agitation was fundamental in any attempt to restore the union on a permanent basis.

Henderson was a moderate in that he refused to adopt extreme attitudes on either side of the question of emancipation. He was a moderate in attempting to work out compromises between extreme views, as when he urged the necessity of compromise between gradual and immediate emancipationists in the United States Senate, and in the Missouri State Convention. That he was original in his chief arguments is not asserted, for it would seem that he accepted Lincoln's leadership in the matter of emancipation. He was, however, a leader among the pro-Union elements of the border states.

CHAPTER IV

HENDERSON AND RECONSTRUCTION

Reconstruction plans began long before the war ended and the lack of agreement between Congress and the Executive on the subject was in evidence almost from the first. Lincoln issued a proclamation in December of 1863 offering pardon, with certain exceptions, to southerners who would take an oath to support the federal Constitution. In the same document he set forth his plan for restoring the seceded states to the Union: when one-tenth of the number of voters in 1860 had taken the oath, established a loyal state government, and abolished slavery, they would be recognized by the Executive. The Radicals in Congress, in the summer of 1864, secured the passage of the Wade-Davis bill, which set up much harsher requirements for reconstruction. President Lincoln killed the measure by means of a pocket veto.¹ That the bill failed to become law did not lessen its implications of discord for the future. Henderson, who had supported Lincoln's policy on emancipation, took no part in the debate but voted in the

1. Randall, Civil War and Reconstruction, pp. 699-700.

affirmative on the Wade-Davis bill.²

One important factor in Henderson's course during the difficult time of reconstruction seems to have been a sincere desire to respect the fundamental law of the United States and to work for whatever ends seemed desirable in a constitutional manner. When he took a very definite step toward radicalism in 1866 and 1867 and changed some of his earlier attitudes he was careful to build up a logical argument to justify his new viewpoints. During his entire fight for the emancipation of the slaves Henderson was careful to emphasize the necessity of proceeding in harmony with the Constitution. Likewise in his discussions of other problems connected with the prosecution of the war and reconstruction the Missourian was careful to justify his own proposals by some fundamental law, and to attack propositions which seemed to him doubtful on this basis. The object of the war, he declared, was to preserve the Constitution, and Congress, in crushing the rebellion, must be careful not to destroy the fundamental law of the country.³ He urged, "In the plenitude of power today, we may deny mercy to others; tomorrow we may

2. Journal, U. S. Senate, 38 Cong., 1 sess., p. 715, July 1, 1864.

3. Cong. Globe, 37 Cong., 2 sess., pp. 1571, 1575, Apr. 10, 1862.

ourselves cling in vain to the horns of the altar."⁴

Henderson objected, in 1862, to provisions in the Confiscation Act which forfeited without judicial action property of every kind belonging to those engaged in rebellion. This, he contended, was in violation of the Constitution.⁵ Congress had limits to its power, even in the midst of war, said Henderson; either the Constitution or the law of nations set up the limits. The Missourian believed, in 1862, that the Constitution furnished the bounds beyond which Congress might not go. He considered that document not entirely perfect but sufficient for the emergency and declared that if changes were desirable they should be made in the regular manner.⁶ There was no objection, in his mind, to confiscation of rebel property when guilt had been established by judicial investigation, for that would satisfy the constitutional requirements.⁷ In the same manner Henderson urged that political arrests should not be made in loyal states except upon warrant and that such prisoners should not be held without trial where the courts were open. He declared he was an earnest

4. Cong. Globe, 37 Cong., 2 sess., p. 1575, Apr. 10, 1862.

5. Cong. Globe, 37 Cong., 2 sess., p. 1571, Apr. 10, 1862.

6. Cong. Globe, 37 Cong., 2 sess., p. 1572, Apr. 10, 1862.

7. Cong. Globe, 37 Cong., 2 sess., p. 1575, Apr. 10, 1862; p. 1884, Apr. 30, 1862.

supporter of the administration in the prosecution of the war, but only within the limits of the Constitution.⁸ Early in 1865, in discussing the admission of Senators from Louisiana, Henderson clearly stated that he believed the seceded states must be restored to the Union without violating the principles of the Constitution and without overturning the republican system of government.⁹ Again in February, 1866, in urging that the Constitution should be amended to prevent discrimination in suffrage on the basis of race or color, the Missouri Senator reiterated his conviction that the Constitution must be respected. When Sumner contended that Congress could force negro suffrage on the South on the basis of its duty to guarantee republican forms of government to the States, Henderson disagreed. In theory, said the latter, denial of suffrage to a large part of the population was not consistent with republican forms; in fact, under the Constitution some of the original states, recognized as republican in form, denied suffrage to free blacks. Theory, Henderson stated, would justify a change in the Constitution, but never a change in the powers of Congress under

8. Cong. Globe, 37 Cong., 2 sess., p. 3386, July 16, 1862; 37 Cong., 3 sess., p. 1199, Feb. 23, 1863.

9. Cong. Globe, 38 Cong., 2 sess., p. 1065, Feb. 24, 1865.

the Constitution as it stood.¹⁰ In the same February speech in which Henderson refuted Sumner's arguments that Congress could enforce negro suffrage under the guarantee power, he refused to accept the argument that the enforcement section of the Thirteenth Amendment abolishing slavery would give Congress power to establish negro suffrage in the South. When asked if Congress would not have this power provided a majority of its members considered suffrage necessary to maintain the negro's freedom, Henderson replied in the negative. He reminded the Senate that the Constitution was a written instrument and that Congress was given only delegated powers. If the discretion of Congress was the only limit on its implied powers, then, said Henderson, "...our discretion may be as unlimited as the caprices of tyranny itself."¹¹ The idea that in war time Congress was limited only by the law of nations had been advanced early in the war by other senators but Henderson had never accepted it. In fact, he had expressly refused to admit its validity during the debate in 1862 on the Confiscation Act¹² and in 1863 on

10. Cong. Globe, 39 Cong., 1 sess., Appendix, pp. 121-122, Feb. 13, 1866.

11. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 122, Feb. 13, 1866.

12. Cong. Globe, 37 Cong., 2 sess., p. 1572, Apr. 10, 1862.

the bill providing compensated emancipation for Missouri.¹³ When the Reconstruction Bill came before the Senate in February, 1867, the debate on it found Henderson shifting from his earlier position that the Constitution established the limits to the power of Congress in its dealing with the seceded states. He accepted for the first time the theory that the rules of international law could properly be applied to the reconstruction of the South.¹⁴ Henderson justified certain provisions of the Reconstruction Bill which he held were perhaps contrary to the Constitution by citing the rules of international law which gave certain rights to the conqueror in dealing with conquered territory. He was asked whether or not the Constitution sanctioned international law; his reply was that it did in some provisions, and that the law of nations was not contravened by any article of the Constitution. Reconstruction, Henderson declared in this debate, was a great political problem to be dealt with by the lawmaking power of the nation, and provided the measures adopted were in harmony with established international law, they should not be interfered with by the judiciary. On this basis he was even willing to justify forcing negro suffrage on the

13. Cong. Globe, 37 Cong., 3 sess., pp. 350-357, Jan. 16, 1863.

14. Cong. Globe, 39 Cong., 2 sess., pp. 1641-1645, Feb. 20, 1867.

seceded states, for if the future safety and security of the conqueror demanded it, he considered such measures to be proper.¹⁵

Henderson in the spring of 1867 also shifted from his former position on the constitutionality of attaching fundamental conditions to recognition of state governments. In 1865 when Louisiana had asked Congress to admit her representatives Sumner wished to attach as a condition to recognition that the state guarantee complete manhood suffrage. The Massachusetts Senator cited the admission of Missouri and the guarantee required of that State by Congress as a comparable case. Henderson objected to Sumner's suggestion, insisting the two cases were not at all analogous. He explained that Missouri had included in its constitution a provision giving the legislature power to pass laws to prevent free negroes or mulattoes from coming into the State. Congress had considered this to be in direct opposition to the provision of the federal Constitution that the citizens of each state should be entitled to all the rights of citizens in the several states. Therefore, in admitting Missouri, Congress had laid down as a fundamental condition that the provision referred to should never be construed in violation of the Constitution of the United States; the state legislature was required

15. Cong. Globe, 39 Cong., 2 sess., pp. 1642-1643, Feb. 20, 1867.

to enact this into law before Missouri was admitted.

For two reasons Henderson denied the validity of any comparison between the condition required of Missouri and Sumner's proposal. First, Missouri in 1820 was a territory asking for admission to the Union while Louisiana in 1865 was a state already in the Union. In the second place, the provision to which Congress objected in the Missouri Constitution was in direct contravention of the federal Constitution and it was the duty of Congress to require that harmony be established between the two. In the case of Louisiana the proposed condition to be required did not have the object of reconciling a provision of the state constitution with the federal organic law. On the contrary, stated Henderson, Sumner's projected condition to be attached was in direct violation of the United States Constitution, which clearly left suffrage to the state. Sumner refused to admit that Henderson's argument had anything to do with the case, declaring that the only question involved was whether or not Congress could attach a fundamental condition to its recognition of a state. The case of Missouri, he contended, assured him that Congress did have such power.¹⁶

Two years later Henderson had concluded that Congress might require such guarantees from the seceded states

16. Cong. Globe, 38 Cong., 2 sess., pp. 1103-1104, Feb. 25, 1865.

before admitting their representatives. When the first supplementary reconstruction bill was before Congress in 1867 he first gave evidence of this changed point of view. He did not accept Sumner's arguments as sufficient basis for this action, however. The extension of the powers of Congress in dealing with the South from the limits set by the Constitution to the limits of international law provided the justification for setting fundamental conditions to be met before states were restored. The United States having conquered all the southern territory, Congress had unusual powers over it, said Henderson. Since it was the conqueror's right to take sufficient guarantees for his future safety, Congress could properly require the seceded states to meet certain fundamental conditions before restoration.¹⁷

Again in 1868 when a bill for the admission of Arkansas was before the Senate, Henderson reaffirmed this position. While he opposed a provision of the bill which stated that the state constitution of Arkansas should never be changed in regard to suffrage, he held that Congress had the power to attach such a condition to its admission of the state. As in 1867, he based his attitude on the fact that the rules of international law could be applied to the case of Arkansas. Under those rules, he

17. Cong. Globe, 40 Cong., 1 sess., p. 136, Mar. 16, 1867.

stated as before, conquerors have the right to provide for their future safety so, if they were necessary for that purpose, conditions could be attached to admission of seceded states.¹⁸

During his first session in the Senate Henderson, in April, 1862, took the position that the seceded states were still within the Union; that the acts of secession were void and did not alter the relation of the States to the Union, nor of the people to their government. Individuals could alter their own connection with the government, and this was what had happened in the South. The war, Henderson insisted, was being waged against the guilty individuals who had committed the crime of rebellion against the federal government.¹⁹

Two years later, in urging adoption of a constitutional amendment to abolish slavery, Henderson rejected the theory of state suicide and territorial reorganization. He believed that theory had been worked out by its advocates in order to give Congress power to abolish slavery in the South; since it was recognized that Congress could not constitutionally interfere with slavery in the states, they would reduce the states to territories,

18. Cong. Globe, 40 Cong., 2 sess., pp. 2700-2701, May 30, 1868.

19. Cong. Globe, 37 Cong., 2 sess., pp. 1573-1574, Apr. 10, 1862.

where they believed Congress could act.

The Missourian reaffirmed his earlier position that the states had not been destroyed by the civil conflict and further stated that their governments had not ceased to be republican in form. The acts of secession were void he held, because they contravened the Constitution; but all legislation on local affairs, wills recorded, contracts made under the state governments--all this, he contended, remained valid in so far as the Constitution was not violated. He believed Congress had no power to repeal acts in the sovereignty of the state legislature. "It is idle," he said, "to declare the State dead, for it not only lives, but lives beyond our control."²⁰ The governments were republican in form before secession and Henderson saw no reason to consider their form changed. He recognized that revolutionists had silenced loyal sentiment and transferred allegiance to the rebel government but he declared that when the rebellion was suppressed the laws and constitutions of the states stood ready for the loyal element to act. Loyal men should elect state legislatures and representatives to Congress. He urged this as the wise, expedient policy which would smooth the road to restoration. Some government had been necessary while the federal authority did not operate, many changes of property rights occurred during that period, and it would

20. Cong. Globe, 38 Cong., 1 sess., p. 1464, Apr. 7, 1864.

bring confusion if all that were invalidated.²¹

When the admission of Senators from Louisiana was under discussion in February of 1865 Henderson continued his same line of argument that the states were still alive and in the Union. No state could actually leave the Union except by a constitutional amendment, he insisted, and the seceded states, being still in the Union, were entitled to claim all the rights accorded to other states. Chief among the rights of a state, Henderson considered, was that of standing upon the form of its constitution as it existed at the time of its admission.

The people of the state could change its constitution so long as they retained a republican form of government but, maintained Henderson, neither the President nor Congress could change a state constitution nor could they prescribe any alteration as a condition of association with the other states of the Union. This power was reserved to the State and the Missourian expressed it as his belief that any attempt by Congress to exercise power constitutionally belonging to the state, unless it was absolutely necessary to carry on the war, would tend to destroy the whole federal system rather than to restore the Union.²² The war was not being fought, said

21. Cong. Globe, 38 Cong., 1 sess., pp. 1463-1464, Apr. 7, 1864.

22. Cong. Globe, 38 Cong., 2 sess., p. 1070, Feb. 21, 1865.

Henderson, to destroy state governments and build a strong, consolidated central government; instead its object was to restore the Union with each state in its original condition. He considered strong, healthy states necessary to the well-being of the nation. He declared: "The moment we enter on such a system of legislation and tear down the States of this Union, that moment we have built up a consolidated government that will end in despotism."²³ It has been noted above that when Louisiana sent representatives to Congress in 1865, Sumner of Massachusetts tried to arrange that the state be required to guarantee permanent manhood suffrage as a condition of restoration. Henderson, it will be remembered, opposed this partially on the basis that Louisiana was a state already within the Union and that such conditions could be required only of territories applying for admission as states.²⁴

The definite shift in Henderson's viewpoint on reconstruction which was evident in the first session of Congress after the end of the war and the death of Lincoln, appeared in his changed attitude on the position of the seceded states in the Union. Until that time he had

23. Cong. Globe, 38 Cong., 2 sess., p. 1068, Feb. 21, 1865.

24. Cong. Globe, 38 Cong., 2 sess., pp. 1103-1104, Feb. 25, 1865.

insisted the southern states were alive, within the Union, and possessed republican forms of government. The resolution on the organization of state governments in the South which Henderson introduced in March, 1866, marked the change. The fourth provision of this resolution stated that by attempted secession the southern people had allowed the political connection between their states and the federal government to be broken and that the states no longer had the republican form of government provided for by the Constitution. The fifth provision declared that the state governments, to be truly republican in form, should be organized on the principle of the consent of the governed.²⁵ When in 1867 Henderson declared the powers of Congress over the South were limited only by international law,²⁶ he completed the shift in his theories as to the states and reconstruction. He continued to insist on the necessity of respecting a definite fundamental law which put limits on the power of Congress, but he had changed the basis of the limiting factor from the Constitution to the law of nations so far as Congress' relations with the South were concerned.

Reconstruction was to Henderson a problem to be

25. Journal, U. S. Senate, 39 Cong., 1 sess., p. 215, Mar. 8, 1866.

26. Cong. Globe, 39 Cong., 2 sess., pp. 1641-1645, Feb. 20, 1867.

solved by the Congress and the Executive working together, but with the final decisions being made by Congress. Like most other men in the political life of that day, Henderson evolved in his own mind a plan for reconstruction of the South. His scheme was based on two closely related principles which must be discussed separately although each is really a part of the other. First, Henderson would have allowed the loyal minority within the state to rule, using it as a nucleus around which a stable loyal state government would build itself. Second, the Missourian would have put the loyal minority in control by regulating the suffrage.

Henderson believed that a loyal minority existed in the seceded states and that this minority should be allowed to establish civil governments and rule the restored states. If necessary, he held, the federal government should sustain the loyal minority governments with military aid until they were strong enough to support themselves. In the early stages of the war he declared that there were hundreds of thousands of men in the South who had been forced into support of a de facto government; they would be loyal to the Union if they dared and they would be glad to see northern armies come.²⁷

In 1864 Henderson recommended 'denationalization' of

27. Cong. Globe, 37 Cong., 2 sess., p. 1884, Apr. 30, 1862.

men who had been actively disloyal, and readmittance of the southern states into Congress with the loyal men of the South in control. Objections that this would be anti-republican and yet bring the South back with full political power he met by stating that in New York a population of four million was controlled by one-half million voters. Furthermore, any state could adopt property qualifications for suffrage without having its representation in Congress cut down. Similarly, Henderson contended, the southern representation need not be made smaller even though the voting strength were reduced.²⁸

Before Congress adjourned in the spring of 1865 Henderson urged the necessity of considering the subject of restoring the Union and arriving at some decision in order to let the southern people know what to expect.²⁹ When a majority of the people had passed an ordinance of secession one of three things was true, said the Missourian: either the act of secession was valid, or the loyal minority could govern according to the Constitution, or the state was outlawed and Congress could govern it as a province for all time to come. He insisted the second was the logical result, that the loyal minority should rule. That such a solution would be contrary to republican

28. Cong. Globe, 38 Cong., 1 sess., p. 1464, Apr. 7, 1864.

29. Cong. Globe, 38 Cong., 2 sess., pp. 1065-1070, Feb. 24, 1865.

forms, Henderson denied as he had a year earlier. He declared, as he had before, that a decreased number of voters did not mean a smaller representation for it was the people, not the voters who were represented. Henderson quoted a letter from someone whom he described as 'one of the ablest jurists in the country' to sustain this argument. The letter stated that as a voter may lose his ballot by committing a felony, so he may equally by committing treason; a small part of the population may have a perfect right to vote for all.

Henderson maintained that the only way to achieve loyalty in the South was to establish loyal governments as a nucleus about which Union men could gather. Such governments could be based on the men who were loyal in the beginning of the war, but were, perhaps, forced into disloyalty later.³⁰ That these governments would need military assistance at first Henderson recognized, but he believed that outright military rule would only result in guerilla warfare for years. "To secure national supremacy," he said, "you must have the aid of State authority. For legitimate State authority you must rely on loyal voters."³¹ As for the propriety of lending military assistance to such governments Henderson inquired how

30. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 109, Feb. 13, 1866.

31. Cong. Globe, 38 Cong., 2 sess., p. 1069, Feb. 24, 1865.

that action would differ from the aid extended to Maryland, Missouri, West Virginia, and Kentucky, all of which were represented in Congress. He stated that the loyal government in Missouri could not have supported itself in its early days, although it had a large voting majority, because it had the double duty of putting down rebellion within the state and of repelling invasions from the South.

To restore the Union, Henderson continued, state governments must be organized and acknowledged. As to how the organization should be inaugurated he admitted there might be some disagreement. The most important thing, he held, was to get a state constitution which, whether Congress or the President initiated proceedings, had the approval of the loyal people. The troubled times would excuse proceedings that were somewhat irregular in form if the loyal elements of the state involved were really represented. Henderson cited the case of California as an example of a state constitution which had been set up without correct formal procedure and which had been accepted by Congress because it was republican in form and because the people had approved it. He also reviewed the irregular means by which the loyal provisional government in Missouri had been set up in 1861; yet it had been accepted by Congress. Neither mere irregularity in forms nor the fact that a minority ruled, he concluded, should

prevent the acceptance of loyal southern state governments by Congress.³²

When Congress convened again President Johnson had initiated organization of state governments in the South and representatives from those organizations appeared in Washington seeking admission to Congress. Henderson concurred in the refusal of the majority to admit the southern Senators. He objected to recognizing the state governments which they represented because he was convinced, he said, that disloyal men had participated in their formation and admission of rebel organizations could only complicate Congress' difficulties. The Missourian insisted that Johnson's amnesty oath, legal or not, had permitted disloyal men all over the South to vote in the state elections.³³

Henderson spoke, as he had a year earlier, for his plan of establishing state governments based on the loyal minority. He reiterated his belief that state governments had to be set up before the Union could be complete and defended the idea that a loyal minority could be organized to constitute a republican government. Senator Wade took issue with Henderson on this point, insisting that minority

32. Congressional Globe 38 Cong., 2 sess., pp. 1065-1070, Feb. 24, 1865.

33. Congressional Globe 39 Cong., 1 sess., Appendix, p. 106, Feb. 13, 1866.

rule could never constitute a republican government. Henderson replied that governing by military force, as Wade seemed to desire, would pervert the whole republican system. In answer to a question from Fessenden of Maine, the Missourian admitted he had been troubled by the necessity of maintaining a minority government by force. He declared, however, that it would require a smaller force to maintain a loyal minority which was getting the civil government into running order, than to rule through martial law or to have to overthrow disloyal acts of a disloyal government. The last would be the case, said Henderson, if the President's state governments were recognized, for they represented the rebel majority.³⁴

After the radical victory in the election of 1866, Congress turned its attention seriously to formulating a program of reconstruction. When the bill for military government of the South came to the Senate from the House of Representatives, Henderson expressed distrust of martial law, saying that civil rights were never very safe under such circumstances. He declared the North would be injuring itself more than the South by attempting to rule the seceded states by military force. Henderson reminded the Senate that Congress had already waited over a year

34. Cong. Globe 39 Cong., 1 sess., Appendix, p. 110, Feb. 13, 1866.

from the end of the war to plan for reconstruction, and urged that time be taken to work out a plan that would look forward to the end of military rule and the restoration of civil government. Military government of the South could not continue forever, he reiterated.

In line with his earlier plan to let the loyal minority rule he argued that it would be much better to set up civil governments and use the military to supplement them. Unless Congress intended to keep those states out forever, it must eventually take some such steps.³⁵ Henderson recommended that Congress authorize the President, with the consent of the Senate, to appoint a loyal Governor and a council of ten or fifteen to act as a legislature in each seceded State. Congress should prescribe certain limitations on suffrage, then allow the provisional council to decide on further qualifications and carry out the work of registration. With this loyal framework established, elections should be set in motion, constitutions be formed, and state officials elected. The military should be called in only when needed in support of the civil government. Thus, declared the Missourian, reconstruction would be easily accomplished; he was convinced such a plan looking to the establishment of loyal civil

35. Cong. Globe 39 Cong., 2 sess., pp. 1369-1373, 1384-1385, Feb. 15, 1867.

governments was legal, expedient and necessary.³⁶ The Missouri Senator attempted by amendment to substitute a plan of this kind for the Reconstruction Bill which set up military government in the South, but his proposal was defeated.³⁷

The second integral part of Henderson's plan for reconstruction of the South was to regulate the suffrage to eliminate disloyal votes and to prevent discrimination against the negro in setting up suffrage requirements. In his proposals and positions on this problem of suffrage the Missouri Senator went through much the same evolution that he did in his viewpoint on other matters, gradually becoming more and more radical during the immediate post-war years.

In the period of his senatorial service before the end of the war Henderson advocated denationalization of disloyal southern whites, emancipation of negro slaves and state decision on the question of extending suffrage to the negro. During his speech on the constitutional amendment to abolish slavery in April, 1864, Henderson discussed some aspects of reconstruction, including his proposal to

36. Cong. Globe 39 Cong., 2 sess., pp. 1644-1645, Feb. 20, 1867.

37. Journal, U. S. Senate, 39 Cong., 2 sess., pp. 287-290, Feb. 16, 1867.

38

denationalize insurgents. He urged rapid restoration of state governments, as has already been remarked, on the basis of loyal minority rule. The loyal minority could be separated from the disloyal majority through the power of Congress to control United States citizenship, he believed. Henderson cited Congress' power to naturalize citizens and to grant expatriation at the request of the citizen. He saw no reason why denationalization could not be accomplished in the same manner as expatriation; in both cases the citizen wished to withdraw his allegiance from the United States and transfer it to another power, the difference being that in the one case he stayed in the country while in the other he left it. It did not matter, Henderson thought, whether the government to which the citizen wished to transfer his allegiance was de facto or de jure; he would require all persons in the seceded state to come forward within a certain period and take an oath of loyalty to the United States. Those who refused would be 'denationalized', for by their action they would have asked to withdraw their allegiance and the federal government would consent. Then, declared Henderson, since the State constitutions prior to 1861 required voters to be citizens of the United States, and since changes in violation of

38. Cong. Globe, 38 Cong., 1 sess., pp. 1459-1465, Apr. 7, 1864.

the federal Constitution since 1861 were void, only those who had taken the oath of allegiance to the United States and who were voters in 1860 would be permitted to vote. Henderson in 1864 urged Congress to end slavery by Constitutional amendment and leave the matter of negro suffrage to the states where it belonged under the fundamental law. The application of this principle of denationalization would, he was certain, assure loyal governments for the seceded states.³⁹

The next congressional session, that of 1864-1865, found Henderson again urging his theory of denationalization as the solution to the problem of setting up loyal state governments in the South.⁴⁰ He still insisted that the decision on negro suffrage must be left to the states because the Constitution clearly placed the question of suffrage there. His whole argument for 'denationalization' was based, not on the right of Congress to control suffrage but on the power of that body to regulate United States citizenship.⁴¹

Between the end of the thirty-eighth Congress in March, 1865, and the first session of the Thirty-ninth

39. Cong. Globe, 38 Cong., 1 sess., pp. 1464-65, Apr. 7, 1864.

40. Cong. Globe, 38 Cong., 2 sess., p. 1069, Feb. 24, 1865.

41. Cong. Globe, 38 Cong., 2 sess., pp. 1067, 1069, 1070, Feb. 24, 1865.

which opened the following December, events had moved rapidly in the problem of reconstruction, both in Missouri and in the nation; Henderson returned to Washington with somewhat changed views.

Early in 1865 the new Missouri State Convention, elected in 1864, and controlled by Radicals had met and adopted several measures of importance. It has been remarked that it adopted an ordinance of immediate emancipation. The body also framed a constitution which contained stringent disenfranchisement provisions, with a uniform system of registration to enforce them. The Convention also adopted an ordinance vacating the supreme court judgeships, circuit court judgeships and many county offices. This was justified by the assertion that disloyal men had, in many cases been elected to these offices. Certainly the work of the Convention bore the stamp of the Radicals. During the session Henderson wrote to one delegate, warning him that the Convention should be careful in framing disfranchisement provisions, "lest in the heat of revolutionary strife we confound mere partisan differences with the crime of treason."⁴² Henderson remained silent as to the measures adopted by the Convention for several weeks after that body adjourned.

42. Barclay, Liberal Republican Movement in Missouri, pp. 29-30, quoted from Columbia Missouri Statesman, Feb. 17, 1865.

At last in May, after organization pressure had been brought to bear, Henderson and other more moderate Radicals came out in support of the measures of the Convention.⁴³ These developments among the members of his constituency must have pushed Henderson farther along the road to true radicalism in national affairs.

Changes had likewise occurred in the national field. President Johnson had issued a proclamation of amnesty which restored civil rights to southerners, except for certain excepted classes, on the provision that an oath of loyalty to the United States to be taken. The organization of the seceded states which had been achieved had resulted in the election of state legislatures, several of which had passed black codes for the regulation of the newly freed black population. Many northerners feared this regulatory legislation would lead to actual re-enslavement of the negro, even though he remained free in name.

It has already been noted that Henderson was opposed to recognition of the new state governments organized under the direction of the President, and that he maintained disloyal elements had taken control in the South. In his speeches in the Senate the Missourian did not

43. Barclay, Liberal Republican Movement in Missouri, pp. 16-32.

dispute the power of the President to issue his amnesty proclamation, but he did not admit that the pardon of the chief executive could restore the ballot. However, Henderson contended, even if the pardon granted by Johnson did give suffrage rights to those to whom it was extended, that pardon had been forfeited by southern failure to observe its conditions. The condition which had been broken, he said, was that the seceded states should faithfully support all laws with reference to the emancipation of slaves; yet some of the southern states forbade negroes to hold real or personal property and were guilty of other injustices to the freedman. Henderson declared that Congress could yet 'decitizenize' disloyal men in the seceded states through its power over United States citizenship.
44

When Congress adjourned in March, 1865, Henderson's position on negro suffrage had been that each state must decide for itself. During the summer he became convinced that the negro must, for his own protection, be given the right to vote. Still holding that Congress must recognize the Constitution as setting the limits to its powers, Henderson believed the only way state regulation of suffrage could be interfered with was by amendment to the

44. Cong. Globe, 39 Cong., 1 sess., Appendix, pp. 114-115, Feb. 13, 1866.

Constitution of the United States. Accordingly he introduced a joint resolution to amend the Constitution so that no state, in regulating suffrage, could discriminate against any person on the basis of race or color.⁴⁵

From that time Henderson urged that the only true, practical method of reconstruction was to organize loyal skeleton governments in the states and open the polls to all, white or black, on the same basis. This did not mean that he would admit all to the polls without condition, for he believed that would be disastrous; he warned that if this were done excesses might occur which would set the reform of negro suffrage back for years. -The negro, he recognized, was ignorant and brutalized while the white man might be vindictive because of the loss of his slave property. Henderson approved the requirement of educational or property qualifications of all voters, but insisted the negro should not be discriminated against on the basis of his color. Thus republican principles of government would be preserved and at the same time the individual state would be left free to meet local conditions.⁴⁶

Henderson stated his belief that if only truly loyal whites had been permitted to vote in the reorganized

45. Cong. Globe, 39 Cong., 1 sess., p. 362, Jan. 23, 1866. The text of Henderson's proposal was; "No State, in prescribing the qualifications requisite for electors therein shall discriminate against any person on account of color or race."

46. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 119, Feb. 13, 1866.

state governments of the South, there would have been in the future some provision made for negro suffrage. With those governments in the hands of former rebels, he considered the plight of the negro hopeless. He declared that if the rebels were to be given the ballot, then the negroes must have the same privilege. When the Reconstruction Bill came before the Senate in 1867, Henderson again advocated setting up loyal civil governments on the basis of equality of franchise for negro and white. Other conditions he considered unnecessary, for governments resting on that foundation would never repudiate the public debt or try to pay the Confederate obligations.

The right to vote, Henderson agreed with leading Radicals, would give the negro true protection. The Missourian had protested against special legislation in behalf of the negro since 1865 when the first Freedman's Bureau Bill was debated. At that time Henderson had pointed out the evils of setting up a huge, expensive bureaucracy under conditions which would give its officials every chance to swindle the negro. He had declared that the southern negro was capable of taking care of himself,

47. Cong. Globe, 39 Cong., 1 sess., Appendix, pp. 109-110, Feb. 13, 1866.

48. Cong. Globe, 39 Cong., 2 sess., pp. 1384-1385, Feb. 15, 1867.

that only if the former slaves were treated as freemen
⁴⁹
would their freedom become a fact. A year later Henderson was recommending prevention of discrimination at the polls as the true means of safeguarding the negro's rights. In the debate on the extension of the Freedman's Bureau he denied that the Bureau furnished real protection to the ex-slave and stated his conviction that giving the negro the ballot was the only permanent solution.
⁵⁰
A few months later Henderson said,

"Give the negro the ballot and he will take care of himself, because his interest requires it. Give him a bureau agent, and he will sometimes be plundered, because his interest and the interest of the agent may differ."⁵¹

The same attitude was expressed again in 1867 when, referring to a resolution on money owed to colored soldiers Henderson protested against "...the idea that we must be eternally legislating for the negro in order to protect his interest and regarding him as a ward of the Government."⁵² He reiterated that if the negro were given equal civil and political rights he would take care of himself.

49. Cong. Globe, 38 Cong., 2 sess., pp. 962-963, Feb. 21, 1865.

50. Cong. Globe, 39 Cong., 1 sess., pp. 745-746, Feb. 8, 1866.

51. Cong. Globe, 39 Cong., 1 sess., p. 3035, June 8, 1866.

52. Cong. Globe, 40 Cong., 1 sess., pp. 80-81, Mar. 13, 1867.

Henderson further defended his proposed constitutional amendment as a measure that would operate justly and equally on all states while respecting the traditional right of the state to set up property or educational qualifications for voters.⁵³ The Missouri Senator clearly believed it was unfair for the northern states to deny the ballot to the negro while forcing the South to accept negro suffrage.⁵⁴ He denied absolutely that the extension of the vote to the negro would force the South to give social equality to the freedman or that negro suffrage, subject to the same qualifications as white suffrage, would bring a war of the races. To the argument that the negro was of an inferior race, Henderson replied that while his race was different he belonged to the family of man. No one assumed, he supposed, that all who voted were of equal intelligence or were social equals.⁵⁵

Although Henderson's proposal to amend the Constitution to prevent discrimination at the polls on the basis of race was never reported back from the committee to which it was sent,⁵⁶ the Senator continued to advocate

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- 53. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 122, Feb. 13, 1866.
 - 54. Cong. Globe, 39 Cong., 1 sess., pp. 745-746, Feb. 8, 1866.
 - 55. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 124, Feb. 13, 1866.
 - 56. Journal, U. S. Senate, 39 Cong., 1 sess., p. 99, Jan. 23, 1866.

the measure. In March, 1867, he introduced another joint resolution to amend the Constitution with the same end in view.⁵⁷ Like the first proposal, this one was referred to a committee where it expired, at least so far as that session of Congress was concerned. Perhaps it had some influence ultimately on the 15th Amendment. Blaine, in his Twenty Years of Congress, made the statement that when the fifteenth amendment was drawn up early in 1869 the proposed joint resolution introduced by Henderson was taken as the basis for the amendment first reported to the Senate.⁵⁸

The definite shift from his earlier views which Henderson made early in 1867 in admitting the applicability of international law to the reconstruction of the seceded states has been mentioned at some length. This step, once taken, revolutionized his former position that the ballot for the negro could be constitutionally obtained only by amending the organic document. Henderson justified the action of Congress in forcing negro suffrage on the South in two ways. He quoted Vattel to show that since the negroes were held by the enemy in slavery they should be freed. Likewise under the law of nations the conqueror

57. Cong. Globe, 40 Cong., 1 sess., p. 13, Mar. 7, 1867. The text: "that no State shall deny or abridge the right of its citizens to vote and hold office on account of race, color or previous condition."

58. James G. Blaine, Twenty Years of Congress, Norwich, Conn., 1893, II, p. 413.

could demand the extension of suffrage to the negro as a
 guarantee of future safety and security.⁵⁹

The Fourteenth Amendment to the Constitution was debated in the United States Senate during the spring of 1866. As adopted, the amendment consisted of five sections which defined United States citizenship, reduced representation if male suffrage was limited, disenfranchised Confederate leaders who had formerly sworn to support the United States, and guaranteed the federal public debt. Henderson took an active part in the discussions, disapproving of the Second Section of the proposed amendment, which dealt with apportionment of representation. He urged his own plan of ending discrimination in suffrage on the basis of race and in a speech in February, 1866,
⁶⁰ he presented his objections.

As the proposition first came to the Senate it provided that if negroes were excluded from voting they would likewise be excluded from the basis of representation. The emancipation of the slaves had the effect of increasing southern representation in Congress, since the negroes, formerly counted on a three-fifths ratio, had become freemen entitled to full representation. The southern

59. Cong. Globe, 39 Cong., 2 sess., p. 1643, Feb. 20, 1867.

60. Cong. Globe, 39 Cong., 1 sess., Appendix, pp. 115-120, Feb. 13, 1866.

refusal to give the negro the ballot, said Henderson, had offended loyal men all over the country; he was surprised, not at this feeling, but that the Committee of Fifteen should have thought the proposed amendment would solve the problem. Earlier in the session there had been a plan to base representation on the number of electors, Henderson recalled. The object of the measure was to force negro suffrage on the South. This plan had been dropped immediately when Representative Blaine had shown that it would shift political power comparatively from the East to the West, since in the West there were more males in proportion to the total population than in the East. It at least had the merit, Henderson stated, of operating on all states equally. The proposition which excluded negroes from the basis of representation if they were excluded from the ballot would, he charged, permit the northern States to disenfranchise the negro without penalty but would heavily penalize the southern and border States for the same action.

Henderson's chief objections to the proposal were that it would separate the bases of representation and direct taxation and that it would increase the relative strength of the small-state region in the lower house of Congress. By eliminating the negro from the basis of representation, if he were refused the ballot, and yet apportioning direct taxes on the basis of total population,

it would be possible for the wealthy North and East, by direct taxation, to force the poor South and West to pay an unfair share of the national debt. A direct tax that could be easily paid by the North, Henderson said, would ruin the South, impoverished by war, and the West, a poor frontier country. Separation of the bases of direct taxation and representation would be, he contended, a violation of the fundamental principles of republican theory. If the negro was unworthy of representation, then he was unfit for taxation, the Missourian declared. He showed that if the plan were adopted and a direct tax of twenty millions of dollars were levied, Virginia's share, with 9 Congressmen, would be \$1,015,258 while Illinois, with 16 Congressmen, would pay only \$1,088,800. Henderson acquitted the committee of intending to tamper with the basic principle of representation, saying that their object was to force negro suffrage. Nevertheless, he considered it a dangerous measure.

Robbing the negro of representation if he were denied suffrage was no solution for the problem, Henderson continued. The plan would merely injure the oppressed as well as the oppressor, for the interests of the negro were inextricably bound up with those of the South. Unless the section prospered the negro could never improve his status; his fate as a worker depended on his employer's

progress. This measure, if enforced, would increase the proportionate power of the North and East in Congress. Congress had power to regulate commerce and if the pre-dominate commercial section wished, it might, under this proposal, inflict grave injuries on the agricultural sections while profiting itself from control of the tariffs and imports. This would be as unjust to the southern negro as to the southern white. Henderson said,

"When representation in the lower House becomes unequal, the salt of the Constitution is gone. This looks like an effort to give the power in the lower House, by another compromise, to the same section to which undue power was given in the Senate."⁶¹

To all arguments that the South need not lose power in Congress if the negro were enfranchised, Henderson replied that the South might prefer the penalty to negro suffrage. If the object of Congress was to protect the negro, not to cripple the South, he believed this plan did not attain the desired end. Further, he insisted several times, the proposal admitted that there might be reasons for refusing the ballot to the ex-slave just because he was a negro; it presented negro suffrage as one of two evils. Henderson urged his own plan of a clear cut constitutional amendment to prevent discrimination on the basis of race in determining suffrage.

61. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 117, Feb. 13, 1866.

In June when the joint resolution which became the Fourteenth Amendment was finally passed by the Senate,⁶² Henderson voted in the affirmative. On the same day he explained his position to the Senate.⁶³ In discussing the first section he did not comment on the last part, which guaranteed that no person should be deprived of life, liberty, or property without due process of law; rather he confined his remarks to the definition of citizenship. The section, Henderson stated, did not alter the existing situation with regard to citizenship but only made it clear that freemen born under the United States Constitution were citizens. He spoke at some length to show that when the Constitution was first adopted negroes in five states were entitled to rights of citizens including the ballot, provided they could meet the qualifications. The first section of the resolution evidently met with his approval.

The second section, on apportionment of representation, to which Henderson had objected so strongly in February, now provided that whenever males over twenty-one were excluded from the suffrage, except as punishment for rebellion or crime, the representation in Congress should

62. Journal, U. S. Senate, 39 Cong., 1 sess., p. 504, June 8, 1866.

63. Cong. Globe, 39 Cong., 1 sess., pp. 3031-3036, June 8, 1866.

be proportionately reduced. This made it apply to whites as well as negroes, which Henderson considered an improvement. Because it was the only measure which could be agreed upon, said Henderson, he would vote for it but he expressed regret that he had no other alternative. He repeated his earlier objections to the separation of the bases of representation and direct taxation. The Missourian also reiterated his conviction that the true method of assuring the ballot to negroes was by a constitutional amendment prohibiting discrimination against any race in prescribing electoral qualifications; he predicted that the procedure he recommended must eventually be followed. The objection that the section would operate as a penalty on the South, to which he had more or less subscribed in February, Henderson now considered invalid for a choice was given which applied equally to all states.

The other sections of the resolution, providing for disenfranchisement of leaders in the rebellion, for guarantee of the federal public debt and repudiation of Confederate obligations, Henderson approved. The disenfranchisement provision he believed would not affect over fifteen hundred or two thousand persons in all the South, while he considered the section dealing with the public debt a just and logical requirement. He stated that the resolution was the most merciful act dealing with rebellion that the world had ever seen and believed that if

accepted, it would go far toward settling the problems of restoration. However, Henderson said a month later he did not consider Congress bound to admit the southern states when they had ratified the amendment.⁶⁴

When Louisiana applied for admission of her representatives to Congress before the end of the war, Henderson favored restoring that state to the Union at once.⁶⁵ As the breach between Congress and President Johnson widened, Henderson followed the majority of congressional opinion in condemning the provisional governments which had been set up under the chief executive's guidance. During the debate on the Fourteenth Amendment in the early spring of 1866, the Missouri Senator spoke at length, discussing the President's reconstruction policy.⁶⁶ He stated that in approving the admission of Louisiana a year earlier he had not believed Lincoln nor the military authorities had power to do what they had done; as a war measure to encourage loyalty he had been willing to waive formalities. Congress, he agreed with the Radical majority, had full right to control the admission of its own members and thereby to control restoration of the Union. He doubted

64. Cong. Globe, 39 Cong., 1 sess., pp. 3991-3992, July 21, 1866.

65. Cong. Globe, 38 Cong., 2 sess., p. 1065, Feb. 24, 1865.

66. Cong. Globe, 39 Cong., 1 sess., Appendix, pp. 105-124, Feb. 13, 1866.

the power of the Executive to initiate reconstruction without the aid of Congress, and especially without confirmation of his agents by the Senate. Henderson expressed doubts as to the validity of the presidential pardon in restoring full political rights to the rebels, and he believed the pardon had been too sudden, so encouraging rebels to hope to perpetuate their ideas by seizing the new civil governments. As a result, he contended, the provisional governments were not loyal. Southerners who had formed these governments had forfeited their claim to the President's pardon by their unjust legislation against the negro. If these governments were truly loyal, why did the President, Henderson inquired, have to set aside acts of the legislatures and keep military forces in the South to protect negroes? Would the military be kept there after the states were restored, he asked, and when would the end of military domination come? The civil rights of the negro had been neglected, said Henderson, while rebels had been permitted to resume full citizenship. As a result the President was forced to issue, through the military, orders which Henderson declared were as severe as the measures proposed in Congress.

The Missourian credited the President with desiring to restore civil governments in the South on a loyal basis, but declared that the attempt had failed. Johnson had modeled his plan of reconstruction on that followed by

Lincoln, without stopping to remember that conditions had changed; with the end of the war Johnson's amnesty proclamation had required only future obedience which the success of northern armies had made necessary without an oath. His method of restoration had made it possible for the rebel, defeated on the field of battle, to put down his arms and take up the ballot in order to perpetuate his revolutionary ideas, said Henderson. If disloyal governments had been set up, and in his opinion this was the case, still the Missourian acquitted the President of any such intention. He deplored the developing controversy between Congress and the Executive, for, said Henderson, the wisdom of both departments would be needed to work out a successful program of reconstruction. The President should admit that his plan had not brought loyal governments and be willing to work with Congress to solve the problems of the day.

As Congress became more and more critical of the President's attempts at reconstruction, and as Radical sentiments gained strength, Henderson moved with the times. In the spring of 1865 he had demanded immediate restoration of Louisiana, and recommended that Congress accept the other seceded states as soon as they presented themselves with governments conforming to the principles

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of the Constitution and republican system. A year later Henderson still declared he was anxious to restore the Union, but stated that if Congress recognized disloyal governments the result would be a worse situation than
 68 then existed. Those states left the Union voluntarily, he said, and caused great bloodshed by their action; he saw no reason for readmitting them until loyal governments
 69 were assured. The country demanded some guarantee for future peace before admitting the South, remarked Henderson, and while he would cast his vote to admit when that was accomplished he was certain Congress must set up its
 70 own plan without further hesitation. The Missourian definitely stated his conviction that Congress must do its part in reconstruction when he introduced his March, 1866 resolution on organization of state governments in the South. The third section of the resolution declared that it was the duty of Congress, not of the executive alone, to decide when the causes of the rebellion had been removed
 71 and to adopt measures to prevent future insurrections.

67. Cong. Globe, 38 Cong., 2 sess., p. 1065, Feb. 24, 1865.

68. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 108, Feb. 13, 1866.

69. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 113, Feb. 13, 1866.

70. Cong. Globe, 39 Cong., 1 sess., Appendix, p. 115, Feb. 13, 1866.

71. Journal, U. S. Senate, 39 Cong., 1 sess., p. 215, Mar. 8, 1866.

In July of 1866, when Tennessee, having adopted the 14th amendment, presented its representatives for admission to Congress, Henderson took another step from his earlier desire to re-admit the South rapidly. He stated that he was not willing to say that if the seceded states adopted the Fourteenth Amendment he would vote to re-admit them in every case. He must look at the circumstances and the character of the men sent to Congress as each State was presented. The rebel states went out of the Union and ". . . kept out willingly for four or five years," Henderson declared, "and I am not forced, even within four or five years, to be in great haste to receive them back."⁷² Again in February, 1867, the Missourian repeated that Congress was not bound to admit the southern states even after they adopted the Fourteenth Amendment.⁷³ He recognized the need for an early restoration, stating that reunion was further from achievement than in 1865 when Lee surrendered. That Henderson was not a consistently thorough radical may be implied from the fact that he appreciated the dangers involved in the wrangling in Congress and in the controversy between Congress and the President. He warned that reconstruction had become a political question, and that until it ceased to be so real reunion was

72. Cong. Globe, 39 Cong., 1 sess., p. 3992, July 21, 1866.

73. Cong. Globe, 39 Cong., 2 sess., p. 1384, Feb. 15, 1867.

impossible. As slavery had become a political question and agitated the country for years, so reconstruction might become a center for fanatical argument: if this occurred restoration would be sadly delayed. "If the Republican party regards it as a political necessity to exclude the South," said Henderson, "no reconstruction can take place until a political revolution is wrought in the North. When that comes reconstruction ceases to be necessary for the purpose of the Democratic party."⁷⁴

Although Henderson continued to insist that he desired the early return of the seceded States, he refused to agree that Congress was bound to admit them when they had fulfilled the requirements of the first Reconstruction Act. He contended that no matter what measures had been or would be passed, Congress was free to decide on the admission of each State as it presented itself.⁷⁵

By the time reconstruction on the congressional plan had been completed and the States (except Tennessee) presented themselves for readmittance, Henderson had been repudiated by his former radical associates because of his vote in the impeachment trial. Consequently, he played no part in the final readmission of the seceded States. He was not present when the bill admitting North Carolina,

74. Cong. Globe, 39 Cong., 2 sess., p. 1644, Feb. 20, 1867.

75. Cong. Globe, 40 Cong., 1 sess., p. 111, Mar. 15, 1867.

South Carolina, Georgia, Louisiana, Alabama, and Florida
 passed in the Senate⁷⁶ and did not vote when the bill was
 passed over the President's veto on June 25, 1868.⁷⁷

The reconstruction period in Henderson's career was marked by a series of steps in the direction of radicalism. His statements on the legal position of the seceded states and on the proper methods of restoration were marked with moderation through his first years in the Senate: 1862, 1863, 1864, and early 1865. The Missourian's support of Lincoln seems to have extended to most of the Administration's measures although Henderson was especially interested in emancipation. However, he voted for the Wade-Davis bill in the summer of 1864, although he made no speech in favor of it. It has been noted that in 1865 Henderson was urging speedy restoration of the seceded States when their governments had been organized on Lincoln's plan. The death of Lincoln, the rapid development of the breach between Johnson and the congressional majority, and the progressively increasingly extreme measures demanded by the Radicals must have played a part in pushing Henderson toward more extreme views. The local political situation in Missouri, where the Radicals had

76. Cong. Globe, 40 Cong., 2 sess., p. 2772, June 2, 1868. Henderson was granted a leave of absence for 8 days.

77. Journal, U. S. Senate, 40 Cong., 2 sess., pp. 543-544. June 25, 1868.

complete control after the elections of 1864 and put into effect stringent measures against former confederates, undoubtedly colored Henderson's action in the national Senate.

The first definite step which marked Henderson's break with his moderate position of the past came when in January 1866 he introduced a resolution to amend the Constitution prohibiting discrimination on the basis of race in prescribing electoral qualifications. The next may be said to be represented by the resolution on the organization of State governments in the South in March, 1866. In this resolution, Henderson swung to the principle that Congress must play a most important part in reconstruction, that the seceded States were without republican forms of government, and that republican principles could not permit the negro to remain disenfranchised. The most important step in Henderson's shift to radical theories came in 1867 when he renounced his former position that the powers of Congress under all circumstances were limited by the Constitution; for at that time he accepted the law of nations as setting the limits of Congress' powers over the seceded southern States. Once he accepted this theory, it became easy for Henderson to justify the drastic reconstruction acts as a proper exercise of the powers of Congress.

CHAPTER V

HENDERSON AND THE IMPEACHMENT OF ANDREW JOHNSON

The controversy between Congress and the President over reconstruction of the southern States came to a climax in the winter of 1865-1866 and in the elections of that year. The Radicals in Congress, who hoped at first to be able to dominate the policies of Johnson's administration, soon attacked him bitterly when they saw he was following the moderate plans laid down by Lincoln. As the struggle developed, and the congressional election of 1866 came near, the President's control of patronage became an important factor in the situation. Henderson appears to have been one of the half-dozen leaders in an attempt to limit Executive control of offices which were filled by the President with the confirmation of the Senate. The avowed object of Henderson's course was to prevent the use of the President's power of removal as a political weapon.¹

The Post Office Appropriation Bill was under consideration in the Senate in April 1866; Henderson offered an amendment consisting of an additional section which was intended to prevent any assistant postmaster who had been re-

1. Cong. Globe, 39 Cong., 2 sess., p. 2280, Apr. 30, 1866.

jected by the Senate from being reappointed by the President after Congress adjourned.² A few days later the Missouri Senator modified his amendment in some details³ and introduced another which extended the same principle to any civil office holder.⁴ Eventually Henderson withdrew his amendments in favor of one submitted by Senator Trumbull.⁵ Trumbull's proposed measure clearly stated the principle of preventing executive removal without consent of the Senate to all offices filled by presidential appointment with concurrence of the upper house of Congress.

In his remarks concerning his proposed amendment, Henderson recognized that the practice in regard to such removals had been that when the President appointed to fill a vacancy, the appointment held until the last day of the next session of the Senate. If the Senate adjourned without acting upon the nomination, a vacancy again existed. Thus, in framing his proposal he had conformed with the traditional practice.⁶ When Trumbull's amendment came before the Senate, Henderson made a lengthy speech defending the constitutionality of the proposal and of the principle that in the case of officials appointed with the consent of the Senate removals could be made only with the approval of

2. Cong. Globe, 39 Cong., 1 sess., p. 2016, Apr. 18, 1866.

3. Cong. Globe, 39 Cong., 1 sess., p. 2109, Apr. 23, 1866.

4. Cong. Globe, 39 Cong., 1 sess., p. 2118, Apr. 23, 1866.

5. Cong. Globe, 39 Cong., 1 sess., p. 2274, Apr. 30, 1866.

6. Cong. Globe, 39 Cong., 1 sess., pp. 2111-12, Apr. 23, 1866.

that body.⁷

Henderson admitted that the power of removal had been exercised by the Executive since 1789. The first Congress had debated this question and it had been decided that the President had a constitutional right to remove the Secretaries of State, Treasury, and War if he desired; the decision had been reached in the Senate by the casting vote of the President of the Senate. A study of the debates had shown Henderson that members of the Convention of 1787 who were in the First Congress had disagreed as to whether or not the Constitution gave the President the power of removal. Madison had held that the prerogative belonged to the Executive, while Elbridge Gerry and Roger Sherman had stated that no such view had existed in the Convention. Hamilton, said Henderson, had agreed that the power of removal did not belong to the President by virtue of constitutional provision. He quoted from No. 77 of The Federalist, written by Hamilton, to support this statement and further remarked that the Federalist statesman had reiterated the same conviction in 1799.

An examination of the question had been made again in 1827, Henderson continued, when a Senate committee under the chairmanship of Thomas Hart Benton had pointed out these same differences of opinion and had shown that the

7. Cong. Globe, 39 Cong., 1 sess., pp. 2278-2281, Apr. 30, 1866; pp. 2305-2309, May 1, 1866.

President's power to remove was given him by the first Congress. In 1834 another discussion of the right of the executive to remove appointed officials had occurred. This time, reported Henderson, Henry Clay had introduced resolutions declaring the Constitution did not give the President power of removal and an act should be passed to provide that where the Senate confirmed appointments, its consent must be obtained to removals. Calhoun, in the same debate, had expressed it as his opinion, after reading the speeches of 1789, that the argument that the President did not have the power of removal as a constitutional right was much better founded than the opposing view. Webster, too, stated in the same debate that he believed the decision of 1789 was wrong.

Henderson turned next to legal decisions and Story's Commentaries on the Constitution to uphold the theory that the appointing power had power of removal. He contended that where the President appointed alone, he could likewise remove, but in cases of appointment requiring Senate confirmation, that body must concur in the removal. Later in the same debate Henderson stated that he believed he was safe in saying there had never been a decision of the Supreme Court which recognized the constitutional power of removal as belonging to the Executive.⁸

8. Cong. Globe, 39 Cong., 1 sess., p. 2313, May 1, 1866.

Since Henderson was convinced that such action would be within the limits of constitutionality, he urged that Congress adopt a measure to limit executive removals.⁹ He declared that the situation had changed enormously since 1789 for appointed officials had increased and the number of removals likewise had altered the whole picture. In the first forty years after 1789 there had been only seventy-five removals without cause. Jackson's administration had seen four or five thousand, and since then, Henderson insisted the presidents had seized removal as a means of increasing their powers beyond those given them by the Constitution. The Missourian denied he was actuated by prejudice against Johnson, although he stated that recent appointments in Missouri assured him that his requests would not be favored by the President. Henderson, as in his speeches on reconstruction, credited the Executive with sincere, conscientious conviction that the policy he was following was best for the country. The effect of that policy, Henderson was convinced, would be to build up the old rebel party and lead to more troubled times for the future. He would not be willing, the Missourian stated, to pervert the Constitution to curb the President, but he was certain no violation of the fundamental law was involved. He was anxious, not only to limit Johnson's powers, but to

9. Cong. Globe, 39 Cong., 1 sess., pp. 2278-2281, Apr. 30, 1866; 2305-2309, May 1, 1866.

prevent future presidents from exercising the extensive political strength given by the right of removing appointed officials. Henderson summed up his position by saying:

"I want to be justified first by the Constitution; I want to be justified by laws that stand upon a sound constitutional basis; and when I have done that I would restrain this power, because I believe that it is degrading to the country; because I believe that under Administrations to come after us much harm may accrue to civil liberty in this country unless we pluck out this corrupting and baneful influence in the Government."¹⁰

The Trumbull amendment, which Henderson had defended so strongly, was accepted by the Senate and the bill sent to the House of Representatives.¹¹ Almost immediately the vote was reconsidered and the bill recalled from the House;¹² eventually the Trumbull amendment, seeking to regulate the President's power of removal, was rejected and the bill passed without it. Henderson had supported the measure consistently, voting for it on the ballot which finally rejected the amendment.¹³ The proposition to curb the executive was evidently very important to Henderson, for about the same time he introduced a bill to regulate appointments to and removals from office.¹⁴ It was referred to the Committee on the Judiciary¹⁵ which reported

10. Cong. Globe, 39 Cong., 1 sess., p. 2309, May 1, 1866.

11. Journal, U. S. Senate, 39 Cong., 1 sess., p. 394, May 2, 1866.

12. Journal, U. S. Senate, 39 Cong., 1 sess., p. 395, May 2, 1866.

13. Journal, U. S. Senate, 39 Cong., 1 sess., p. 420, May 11, 1866.

14. Cong. Globe, 39 Cong., 1 sess., p. 2481, May 8, 1866.

15. Cong. Globe, 39 Cong., 1 sess., p. 2589, May 15, 1866.

it back to the Senate with amendments;¹⁶ no further action was taken on the bill, so it expired.

When Congress reconvened in December, 1866, both houses began to consider bills to regulate tenure of office. The Senate bill, which became the basis of the final act, excluded cabinet members from the provisions of the bill. In the House of Representatives, however, the measure was amended to include cabinet members with the avowed purpose of keeping Secretary of War Stanton in office; the proposed congressional reconstruction measures would be administered through the War Department and his radical convictions were held to be invaluable in carrying out the extreme measures. The conference committee which was appointed to settle the differences between the two houses finally framed an ambiguous provision which each house interpreted as a victory for its viewpoint. In the later impeachment trial the peculiar history and statement of the Tenure-of-Office Act played an enormously important part.¹⁷ In this connection it was significant that all members of the cabinet disapproved of the bill and Stanton assisted Secretary of State Seward in preparing the veto message which declared the bill was unconstitutional.¹⁸

16. Journal, U. S. Senate, 39 Cong., 1 sess, p. 625, July 7, 1866.

17. Rhodes, History of the U. S., VI, pp. 129-132.

18. Randall, Civil War and Reconstruction, p. 763.

Henderson voted in favor of the Tenure-of-Office Act on its first passage through the Senate, when it was returned from the conference committee, and when it was passed over the President's veto.¹⁹ He attempted no elaborate theoretical justification of the bill nor of the principle involved, although he believed some such action desirable. His only comments on the measure were incidental to a condemnation of the employment policy of the government naval yards.

Immediately after Congress met Henderson introduced a resolution, which was agreed to, calling on the Secretary of the Navy for copies of all orders relative to employment in the navy yards.²⁰ Gideon Welles, Secretary of the Navy, was of the opinion that the resolution did not originate with the Missourian, but with someone behind him.²¹ Later, Welles asserted that the object of the request was to try to get the Radicals, who had been discharged at the Norfolk Yards for political activity while drawing government pay, reinstated. Senator Grimes was the man behind Henderson, said Welles.²² During the debates on the Tenure-of-Office Bill Henderson discussed parts of the report of

19. Journal, U. S. Senate, 39 Cong., 2 sess., p. 116, Jan. 18, 1867; p. 303, Feb. 19, 1867; p. 419, Mar. 2, 1867.

20. Cong. Globe, 39 Cong., 2 sess., p. 16, Dec. 5, 1866.

21. The Diary of Gideon Welles, New York, 1911, II, p. 633.

22. The Diary of Gideon Welles, III, p. 21.

the Secretary of the Navy and denounced the qualifications set up for employment in the Norfolk Yards. He contended that former rebels were hired if they denied that they believed in secession as a constitutional right, while those who favored Congress' reconstruction policy were considered disunionists. Henderson was not sure that it was wise to leave cabinet removals completely in the hands of the President, for this enabled the executive to replace any Secretary who refused to make desired removals with someone who would follow the President's demands.²³

From this evidence it would seem that Henderson supported the radical measures and assisted radical maneuvers against the Executive. However the Missouri Senator, in all the controversy, never failed to speak respectfully of the President nor to state a belief in his sincerity of purpose. When condemning Johnson's activities and policies, Henderson always credited him with honesty and patriotism, even though of a misguided sort.

The same session of Congress which saw the passage of the Tenure-of-Office Act was also the scene of the first attempt at impeachment of President Johnson. Early in January of 1867 the judiciary committee of the House of Representatives began an investigation of Johnson's activities in all phases and periods of his public life. Although no evidence of criminal action could be found, the committee

23. Cong. Globe, 39 Cong., 2 sess., pp. 494-94, Jan. 16, 1867.

reported a resolution of impeachment, which the lower chamber voted down. Thus, the first attempt at impeachment failed.²⁴

President Johnson, having retained Lincoln's cabinet, had often been embarrassed by the lack of harmony among his advisers. Secretary of War Stanton was an extreme Radical and especially obnoxious to the President, who had nevertheless kept him in office. It has been noted that the House of Representatives had designed the Tenure-of-office Act to protect the Radical Secretary of War from removal by the executive. It has also been pointed out that Johnson and his cabinet, including Stanton, considered that act unconstitutional. Finally, on August 12, 1867, when Congress was not in session, the President suspended Stanton and commissioned Grant to take his place ad interim.

The chief executive desired to test the constitutionality of the Tenure-of-Office Act in the courts and believed Grant had agreed either to remain in the office until the case had been settled in the courts or to turn it back to the President before the Senate acted upon the suspension. Grant denied any such understanding, and instead turned the war department back to the former Secretary when the Senate refused to concur in Stanton's

24. Randall, Civil War and Reconstruction, p. 763.

suspension.²⁵ This occurred January 13, 1868.²⁶ Over a month elapsed before the President formally removed Stanton on February 21 and appointed General Lorenzo Thomas to serve ad interim. Johnson notified the Senate of his action immediately and, a day later, sent to that body the appointment of Thomas Ewing as Secretary of War. The day of the removal the Senate adopted a resolution stating that the President had no power to remove the Secretary of War nor to make an ad interim appointment.²⁷

The House of Representatives, upon these developments, immediately passed a resolution impeaching the President without adopting any specific charges against him. Eleven articles of impeachment were ultimately adopted; they were verbose repetitions, accusations based on the asserted violation of the Tenure Act with its attendant incidents and Johnson's political speeches.²⁸ The impeachment trial opened March 5, 1868, when the swearing in of the Senate as a court began, and ended May 26. The managers for the House opened their arguments March 30 and the proceedings of the trial itself continued until May 4 when the arguments were closed. The Senate set May 11 as the date for deliberation on the articles and the following day for the

25. Randall, Civil War and Reconstruction, p. 766.

26. Rhodes, History of the U. S., VI, p. 99.

27. Rhodes, History of the U. S., VI, p. 106-111.

28. Randall, Civil War and Reconstruction, pp. 768-770.

final vote.²⁹ However, when the Senate convened as High Court on May 12, it was decided to postpone the vote until May 16.³⁰ On that day a vote was taken on the eleventh article and after failure to convict the President on the charges contained in it, the court again adjourned for fifteen days. When the body reconvened on May 25, votes on the second and third articles again failed to convict the Executive and the court was adjourned sine die.

The only attempt in the history of the nation to convict the chief executive of impeachable offenses had failed, but only by one vote, for the record shows that thirty-five Senators, one less than the necessary two-thirds, voted for conviction while nineteen cast their ballots for acquittal.³¹ This result was made possible by the courageous action of seven Republicans who defied party demands and partisan public opinion and who by doing so realized they were committing political suicide. Henderson was one of the seven.³² For him the decision must have been particularly complicated by the fact that Missouri was completely controlled by the extreme Radical organization, and deviation

29. David Miller Dewitt, The Impeachment and Trial of Andrew Johnson, New York, 1903, Ch. VI on The Trial, pp. 404-514.

30. Dewitt, Impeachment and Trial of Andrew Johnson, p. 526.

31. Randall, Civil War and Reconstruction, p. 777.

32. The others were Fessenden of Maine, Trumbull of Illinois Grimes of Iowa, Ross of Kansas, Fowler of Tennessee, and Van Winkle of West Virginia.

from the party will could have only one result--political death. It is necessary to trace, as nearly as can be done, the events and reasoning which led to Henderson's political martyrdom for what he conceived to be justice.

Henderson's constitutional justification of the principle that Congress could limit the President's power of removal has been noted, as has the fact that he voted for the Tenure-of-Office Act when it was passed by the Thirty-ninth Congress. When the Senate refused to concur in the President's suspension of Stanton, Henderson did not vote but he was paired in favor of non-concurrence.³³ When in February of 1868, after Johnson had removed Stanton, the Senate passed a resolution declaring the chief executive had no power to remove the Secretary of War and make an ad interim appointment, Henderson withheld his vote.³⁴ So there is evidence that from the first the Missourian did not agree that Johnson's removal of Stanton was contrary to law.

During the impeachment trial itself Henderson was comparatively silent. He asked only three questions of witnesses, two of which were ruled as inadmissible.³⁵ The questions which were ruled out had to do with the intention

33. Dewitt, Impeachment and Trial of Andrew Johnson, p. 321.

34. Dewitt, Impeachment and Trial of Andrew Johnson, p. 349.

35. Trial of Andrew Johnson, Washington, 1868, I, p. 488,
529-530.

of the President in following the course of action which he did regarding Stanton. Other participation in the proceedings was limited to incidental suggestions on rules and one important question addressed to the Managers.³⁶ On votes taken during the trial concerning the admissibility of evidence, the Missourian was consistently with the conservatives.³⁷ At least ten days before the first vote on the articles was taken, Henderson expressed his belief that the impeachment would not be sustained.³⁸

Eleven o'clock on the morning of May 11 had been set as the hour for final deliberation on the verdict by the High Court. Each Senator was allowed to speak once for fifteen minutes on the articles of impeachment. No official records of the speeches were permitted, so the attitudes expressed by individual Senators can be ascertained only by the reports current at that time and by the written opinions filed later. The Court remained in session until in the evening, with twenty minutes recess at two o'clock and a two-hour break at half-past five. During the dinner recess the news leaked out that Henderson had spoken

36. Trial of Andrew Johnson, I, pp. 81, 185, 699; II, pp. 8, 488.

37. Dewitt, Impeachment and Trial of Andrew Johnson, p. 524.

38. Reports of Committees, United States House of Representatives, 40 Cong., 2 sess., Report No. 75, p. 15. Testimony of Howland before Committee of Investigation, quoted in Butler's report of Managers.

against the first eight articles which were based on Stanton's removal and the ad interim appointment of Thomas.³⁹ The biographer of another of the 'apostate seven' states that during this deliberative session six of the Republicans who voted for acquittal, including the Missourian, declared themselves against conviction on any of the eleven articles.⁴⁰ When the Court adjourned at five-thirty Henderson accompanied Reverdy Johnson, William Sprague, and Chief Justice Chase to the latter's residence, where Henderson dined.⁴¹ Since Johnson was opposed to impeachment, Sprague was considered doubtful, and the Chief Justice had called down on his head the wrath of the Radicals because of his attempts at impartial procedure during the trial, this seemed a bad sign to those who desired Henderson's vote for conviction. The story grew during the night until a report was current the next morning that a second carriage containing Fessenden, Trumbull, Grimes, and either Fowler or Van Winkle, two doubtful Senators, had likewise gone to the Chief Justice's house for dinner, where they had heard arguments against conviction of the President and made plans for a third political party.⁴²

39. Dewitt, Impeachment and Trial of Andrew Johnson, pp. 519 to 521.

40. Fessenden, Francis, Life and Public Services of William Pitt Fessenden, New York, 1907, II, pp. 203-204.

41. Dewitt, Impeachment and Trial of Andrew Johnson, p. 521.

42. Dewitt, Impeachment and Trial of Andrew Johnson, p. 524.

Early the next morning, May 12, the Missouri delegation in the House of Representatives called on Henderson in his room, where they evidently found the Senator in a state of hesitancy and indecision. Charles H. Howland, a member of the Missouri legislature, was also present. The delegation urged Henderson to vote for conviction of the President and expounded upon the demands and expectations of the Missouri constituency. Henderson, after some consideration, stated that he could not vote for conviction on the first eight articles, for he had expressed himself in the Senate against such a course. He offered, however, to telegraph his resignation to Governor Fletcher of Missouri, who could appoint one of the Missouri delegation to succeed him. When one of the group raised the question Henderson assured the other Missourians that the new appointee would be legally entitled to vote on the articles, even though he had not heard the evidence. He expected the first vote to be postponed until Saturday, May 16, although it was originally scheduled for the day this conference occurred.

The members of the delegation replied to Henderson that it was his vote, not his resignation which they desired and suggested that he withhold his ballot on those articles for which he could not vote affirmatively, and cast his vote on those articles which he could approve.

Henderson agreed to this proposition, according to Howland's testimony given later before a House Committee. The Senator asked the delegation to put their request in writing, so there could be no misunderstanding, and told them that if he could not conscientiously comply with it he would resign. This was done and the letter of the Missouri delegation sent to Henderson the same morning. That evening according to Congressman Gravely of Missouri, Henderson had a long conversation with the same group and repeated his promise to resign unless Johnson's conviction could be obtained without his vote or unless he should decide to declare for conviction on the eleventh article. He agreed to give them his final answer by noon of the next day, May 13.⁴³

Early on the morning of the thirteenth an old friend from Missouri, Mr. Craig, visited Henderson to urge him not to resign but to vote according to his honest convictions. Craig promised to defend his vote in Missouri, whether he voted for or against conviction.⁴⁴ The same day Henderson received a telegram from St. Louis reporting

43. Rep. of Com., U. S. H. of R.; 40 Cong., 2 sess., Rep. No. 75, pp. 15-16. Testimony of Howland and Gravely before Committee of Investigation, quoted in Butler's report of Managers.

44. Cong. Globe, 40 Cong., 2 sess., p. 4464; Craig's letter to Henderson, read in Senate, July 25, 1868, during Henderson's personal explanation.

intense feeling there and demanding that he vote for conviction. Just after the Senator received this message, another old political friend, S. S. Cox, who had come from New York to urge Henderson to vote against conviction, called at his room. Cox reports in his memoirs that the Missourian resented the message he had just received, and seemed in a mood for advice. Soon, says Cox, he was asked to write and dispatch a reply to St. Louis. In this telegram Henderson reminded his constituents that he had sworn to do impartial justice according to law and evidence and declared he would do his duty like an honest man.⁴⁵ Henderson's wavering seems to have ended with this step. The night of May 14, he sent his written reply to the Missouri delegation through Congressman McClurg. At the same time the Senator stated that he believed the President would be acquitted by two votes on the second article and by four on the eleventh.⁴⁶ Henderson's answer to the Missourians in the House informed them that he could not honorably resign and that he had decided he must follow the dictates of his conscience in choosing his course of action.⁴⁷

On Saturday, May 16, the High Court of Impeachment

45. Dewitt, Impeachment and Trial of Andrew Johnson, p. 528; Cox, S. S., Three Decades of Federal Legislation, Providence, R. I., 1885, p. 594.

46. Rep. of Com., U. S. H. of R., 40 Cong., 2 sess., Rep. No. 75, p. 18. Testimony of James W. McClurg.

47. Dewitt, Impeachment and Trial of Andrew Johnson, p. 528.

took the first vote on the articles of impeachment. It was decided to ballot first on the eleventh article, since it was the one on which conviction seemed most likely.⁴⁸ Henderson, as had been expected since his reply to the Missouri delegation two days earlier, cast his vote for acquittal. Conviction on the eleventh article failed by one vote, since thirty-six was the necessary two-thirds and only thirty-five affirmative votes were cast.⁴⁹ The High Court adjourned immediately until May 26.⁵⁰

The Senate met in the afternoon following the vote on article eleven; many of its members were anxious to adjourn to attend the Republican National Convention which was to meet in Chicago, May 20. Some Senators wished to go home. In the debate on this proposal Sumner urged that the Senate have no communication with the great criminal in the White House who had been nominally acquitted that morning. Henderson rose to protest. He declared the suggestion that the Senate go home to ascertain the opinion of its constituencies was like sending a jury from the court house to get the viewpoint of the court yard, and insisted that the trial involved a judicial, nor a political, question. Denying any sympathy for the political course of Andrew Johnson, he

48. Rhodes, History of the U. S., VI, p. 148; Trial of Andrew Johnson, II, p. 484.

49. Trial of Andrew Johnson, II, pp. 486-487.

50. Trial of Andrew Johnson, II, p. 488.

repeated his conviction that the decision on impeachment must be made on the basis of the evidence presented, not on partisan emotions. The Missourian urgently stated that he expected to be as good a Republican after the trial as before and asserted that no Senator had a right to reflect on the conduct of any other Senator in connection with the impeachment proceedings. All the opprobrium that could be heaped upon him, Henderson defiantly said, could not force him to violate both his oath and his conscience. Sumner and Drake, the other Senator from Missouri, denied that any reflections had been cast upon those who had voted for acquittal; but, said the former, in listening to Henderson's speech he had been reminded of the old saying, "who so excuses himself accuses himself."⁵¹ After this forthright statement of his position, there could have been little doubt of the course Henderson intended to pursue when the Court reconvened.

The Radicals did not despair of obtaining a conviction on one of the ten articles not yet voted upon. The Managers obtained the passage of a resolution authorizing them to investigate any improper means that had been used to influence the Senate in its decision. On May 19, Henderson received a request to appear before the Managers to give testimony. Two days later the Missourian replied that

51. Cong. Globe, 40 Cong., 2 sess., pp. 2494-2495, May 16, 1868.

while he had no personal objection to testifying he considered the request an insult to the Senate, and refused to go. He declared that such a proceeding held dangerous precedent for the future, for it assumed that the House could control the conduct of members of the Senate; it implied that the prosecutors could subject a judge and juror to secret inquisition before the trial was over. However, Henderson did appear before another Committee of the House which was appointed to investigate the action of the Missouri Congressmen, in requesting him to withhold his vote in the trial if he could not vote affirmatively. The Missouri Senator believed this was proper, since the activities of House members were under examination. He told the Senate that he had answered fully all questions on every phase of the impeachment proceedings, even to his talk at the dinner table and his own private opinions; but he refused to appear at all before the Manager's Investigation.⁵² Other members of the Senate considered Henderson too sensitive on the point; Sumner, Pomeroy of Kansas, Edmunds of Vermont, Yates of Illinois, all Radicals who voted for conviction of the President, declared they saw no such dangerous implications in the activities of the Manager.⁵³

52. Cong. Globe, 40 Cong., 2 sess., pp. 2548-2549, May 21, 1868.

53. Cong. Globe, 40 Cong., 2 sess., pp. 2549-2555, May 21, 1868.

Except for the examination before the House Committee, which Secretary of the Navy Welles considered to be made up of "impertinent interrogatories,"⁵⁴ and the summons to testify before the Managers, which Henderson refused to obey, it would seem there was little attempt to force the Missourian to change his position during the ten-day adjournment. His declarations on the floor of the Senate the afternoon following the first vote on the articles of impeachment were so positive as to preclude probability of a change of mind. Therefore, when the High Court of Impeachment reconvened on May 26, and the vote was taken on articles two and three, there was little surprise that Henderson voted for acquittal on each.⁵⁵ The Radical majority perceiving that conviction on any of the articles must fail since they had not been able to rally the necessary two-thirds on the three strongest articles, adjourned the High Court sine die. Henderson, together with fifteen others of the nineteen who had obtained the acquittal, opposed this failure to take a vote on the first article which contained the basic charge of the whole impeachment, that Stanton had been unlawfully removed.⁵⁶

Each Senator was permitted to file within two days after the vote was taken a written opinion to sustain his

54. Diary of Gideon Welles, III, p. 362, May 20, 1868.

55. Trial of Andrew Johnson, II, pp. 496-497.

56. Trial of Andrew Johnson, II, p. 497.

position in the trial. While these were necessarily formal rationalization of each Senator's attitude, they furnish a clue to the reasoning followed in each case. Therefore it seems of value to examine the opinion filed by the Missouri Senator, John B. Henderson.

The eleven articles of impeachment adopted by the House of Representatives were based, as has been stated, on the President's removal of the Secretary of War and on his partisan speeches. The first article charged the order of removal was a violation of the Tenure Act and likewise of the Constitution since the Senate was in session.⁵⁷ The second and third declared that Thomas' appointment was contrary to the Tenure Act and the Constitution. The fourth, fifth, sixth, and seventh articles accused Johnson of conspiring with Thomas and others to prevent a regularly appointed official from carrying out his duties; these were known as the 'conspiracy' articles. The eighth repeated the charges of the second and third, adding the accusation of intent to control illegally the disbursement of public funds. The ninth article was based on Johnson's conversation with General Emory in which the President declared that the congressional act forcing all military orders to be issued through the General of the Army was unconstitutional. The tenth article, known as the Butler

57. Dewitt, Impeachment and Trial of Andrew Johnson, p.379.

article, charged no violation of the law, but that Johnson had degraded the presidency and been guilty of high misdemeanor in office. The last article recapitulated all the earlier charges based on Stanton's removal and added the allegation that Johnson had referred to the Thirty-Ninth Congress as a Congress of only part of the States, intending to deny the validity of its action.⁵⁸

Each Senator was permitted to file a written opinion in explanation and justification of his vote. Henderson's opinion was well written, a clearly-stated document refuting the charges that Johnson had acted unlawfully in removing Stanton or had been involved in any conspiracy; it affirmed the right and duty of the President to test the constitutionality of laws in the courts.⁵⁹

Henderson stated that in his opinion the only important question involved in the first eight articles was whether or not the President could lawfully remove the Secretary of War. He held that the answer to this would also be the answer to the question of whether or not the executive had the power to make an ad interim appointment, for if he could remove he could fill the vacancy ad interim. Therefore, Henderson considered the two questions together, concluding that the President undoubtedly had the power to

58. Randall, Civil War and Reconstruction, pp. 770-771.

59. Trial of Andrew Johnson, III, pp. 295-309.

remove Stanton. The Missourian stated "This is the opinion that that I have entertained at all times, and which I repeatedly avowed, both before and after the passage of the Tenure-of-Office Bill."⁶⁰

The whole question of removals from office had been exhaustively examined, stated Henderson, in the first Congress; the result of the discussion was that the House of Representatives by a large majority and the Senate by the casting vote of the president decided the President had the power of removal as a constitutional prerogative. This perhaps was not a correct exposition of the Constitution, wrote Henderson, but it was the decision arrived at by the First Congress which contained many framers of the fundamental law. This fact had been agreed upon by American statesmen, Supreme Court decisions, Story in his Commentaries and Chancellor Kent, even though many of them thought the conclusion was wrong.

Members of the First Congress had declared that the President must be able to remove cabinet officers for he was responsible for their acts. Therefore, the acts creating the War, Treasury, and Foreign Affairs Departments had provided that the president could remove these Secretaries at any time, and provided for the succession within each department until a new secretary was appointed. Since

60. Trial of Andrew Johnson, III, p. 296.

there was no distinction between removals made while Congress was in session or in adjournment, Henderson held that the time of the removal made no difference. By the law of 1795 the chief executive was given power to fill vacancies caused by removal, sickness, etc., by a temporary appointment to last not more than six months. No further changes were made in the law until 1863 when Congress, at the request of Lincoln, extended the executive power of making temporary appointments to fill vacancies caused by resignation, sickness, or death in the newer departments set up since 1795. In these more recently created secretaryships, the President had no power to make temporary appointments in case of removal, but that power existed in the case of the three older departments of War, Treasury, and State.

The Tenure-of-Civil-Office Act of 1867 was the next legislation on the subject. The question was, stated Henderson, whether or not Stanton was protected by this act. In the Senator's mind there was no question that the law was constitutional; the only difficulty came in its construction. This difficulty arose, the opinion continued, from the ambiguously phrased compromise adopted by the conference committee regarding cabinet officers, for the Senate was determined to except them while the House had insisted on including them in the provisions of the Act. The article finally accepted stated that cabinet officers should

hold their positions for one month longer than the term of the President by whom they were appointed, and should be subject to removal with the consent of the Senate. Stanton, appointed by President Lincoln, could be protected in his office by this law only if Lincoln's term did not cease until March 4, 1869. This interpretation Henderson rejected as absurd, pointing out that in that case Johnson had no term and the Secretaries appointed by him were in a most uncertain position. It had been specifically stated in the Senate, the Missourian recalled, that this Act could not prevent the removal of Stanton, Seward, nor Welles, all appointed by Lincoln and continued in office by Johnson.

He wrote,

"It will be rather a bad record now to convict the President of crime for taking the same view that we ourselves took on the passage of the act. I took that view of the law then, and have entertained it ever since."⁶¹

In his opinion, Henderson regretted that evidence as to the President's intentions had not been admitted at the trial, for this he considered a fundamental factor in the case. If by his action Johnson was trying to get a judicial construction as to the constitutionality of the law, then he was only performing his duty as a co-ordinate branch of the government. The charge against the President was that he had proceeded as he did from a wicked intent to violate

61. Trial of Andrew Johnson, III, p. 302.

the Constitution and laws. The Executive had offered to show that his constitutional advisers had recommended the procedure that he followed, and Henderson was certain the court should have admitted the evidence.

Henderson stated that another reason he would not vote to convict on the articles connected with the removal of Stanton and the appointment of Thomas was that in none of them was it alleged the removal was actually accomplished. In Henderson's eyes no high crime nor misdemeanor had been committed in this incident because the President had lawful power to do what he had tried to; but if he had not that power, still the chief executive had committed no offence, for he had only attempted to remove Stanton.

Upon the 'conspiracy' articles Henderson could not convict, he wrote, because no evidence proving a conspiracy had been shown, and, anyway, the President was only exercising his lawful rights. In addition, there was no proof exhibited that Johnson intended to use force. The ninth article seemed to Henderson to charge no offense, only an expression of opinion by the President to General Emory, when the former said he believed a certain law was unconstitutional. Many other people held the same opinion, Henderson continued, and certainly the right of private opinion should not be punished.

The tenth article Henderson likewise considered cited

no true misdemeanor, for the President's political speeches while perhaps disgraceful to the chief executive himself, were not a crime. "He too," stated Henderson, "has the right to make foolish speeches,"⁶² for the right of free speech was guaranteed to the President as well as to other citizens.

The eleventh article was the only one on which the Missourian had ever entertained any serious doubts. He found it difficult to decide what accusation the article actually made but decided that the offense charged was that the President had attempted to prevent Stanton from resuming his duties as Secretary of War after the Senate had refused to concur in his suspension. After much examination, Henderson stated, he is assured that even though the charge were proven it would not be a crime nor a misdemeanor because the Tenure Act did not provide a penalty for an effort to keep out of office one who was legally suspended. However, the charge had not been proven and in fact the President had made no attempt to prevent Stanton from resuming the office of Secretary of War after the Senate had passed on the suspension. The only offense was in an earlier request made by the President that Grant retain the office and contest Stanton's right to it in the courts. This was not actually carried out. Finally, since Henderson

62. Trial of Andrew Johnson, III p. 306.

was convinced the President had the right to suspend Stanton under the Tenure Act, and the right to remove him under the Act of 1789, the Senator declared he could not vote to impeach on this eleventh article.

In the closing paragraphs of his opinion Henderson denied that the Senate sitting as a court could make its decision on a partisan basis. Even if nine-tenths of the people clamored for Johnson's removal, said the Missourian, that would be no reason for the Senate, sworn to examine the case from a legal and not a party viewpoint, to surrender its duty. He stated that perhaps the chief executive was not void of offense, and that if the question were whether or not Johnson should be elected President, his vote might be different. He concluded,

"The question is simply one of guilt under the charges as presented by the House, and I cannot, in justice to the laws of the land, in justice to the country or to my own sense of right, render any other response to the several articles than a verdict of 'not guilty.'"⁶³

The Managers of the Impeachment, in their investigation during the ten day adjournment of the Court of Impeachment, had been unable to obtain evidence of corruption on the part of any Senator.⁶⁴ The investigation was

63. Trial of Andrew Johnson, III, p. 309

64. Rhodes, History of the U. S., VI, p. 151.

continued after the trial had ended, chiefly as a weapon to punish the seven Republican Senators who had defied partisan demands. As it degenerated into a process of twisting the available evidence to give an appearance of corruption, the Managers one by one denounced the investigation until when the report was finally ordered printed, Ben Butler was the only one who would sign it. The Senate appointed a committee to investigate allegations of corruption on the part of Senators, but it made no formal report. The chairman at last announced at the close of the Fortieth Congress that,

"From no quarter have we received any information which would even justify us in entering upon any regular investigation, and . . . nothing has appeared to justify any imputation upon any member of the Senate."⁶⁵

After the report of the Managers' investigation appeared in July, Henderson, from the floor of the Senate, answered the insinuations contained in it that the honorableness of his course in the impeachment trial was open to question.⁶⁶ The Senator denounced the whole report as one which suppressed and twisted evidence in order to accuse by innuendo and which was disgraceful not to Butler, the sole signatory, but to Congress. In regard to the attempts

65. Dewitt, Impeachment and Trial of Andrew Johnson, pp. 570-571. Quotation taken by Dewitt from - Cong. Globe, 40 Cong., 3 sess., p. 1865.

66. Cong. Globe, 40 Cong., 2 sess., p. 4463-4465, July 25, 1868.

to blacken his own reputation Henderson remarked,

"I cannot conceive what good purpose this conduct can accomplish. If it were a larceny of my property I could attribute it to a well known infirmity of its author, and suffer the mantle of charity to be drawn over it. But it manifests a degree of obliquity and devilish malice indicating total depravity."⁶⁷

Henderson, as has been noted, had appeared before a House Committee to investigate the conduct of the Missouri delegation in attempting to influence the Senator's vote; there he had testified fully. The report of that committee was never published, but the evidence taken by it was furnished to the Managers' investigation. Henderson charged that Butler had included parts of the evidence of the Missouri delegation, given in their own defense, and had suppressed the testimony of the Missouri Senator and other parties who had appeared before the Managers' investigation.

Henderson declared there was nothing in his record to be ashamed of, unless it had been dishonorable, "to have entertained, as I did, on the 12th of May last, the thought of resigning my seat in the Senate."⁶⁸ This, he continued, was a matter between himself and his constituents, outside the jurisdiction of the House of Representatives. Yet, said the Missourian,

"In this disgraceful paper, that well-known hesitancy of mine is seized upon, and every fact connected with it knowingly distorted and perverted

67. Cong. Globe, 40 Cong., 2 sess., p. 4464, July 25, 1868.

68. Cong. Globe, 40 Cong., 2 sess., p. 4463, July 25, 1868.

to accomplish the base purposes of its author.⁶⁹

The Senator made particular reference to the part of the report dealing with a note sent to the President during the period of the trial which stated that the Henderson matter was all right, and which involved four other men: the Senator's old friend, Craig; a Mr. Cooper; a Mr. Lacy; and Evarts, one of the President's counsel. Lacy and Craig had testified before the committee but Craig declared, in a letter to Henderson, that only parts of his testimony had been used and those parts had been chosen to lead to misunderstanding of his evidence. Henderson had the clerk of the Senate read letters from Cooper, Lacy, Craig and Evarts which contradicted and flatly denied the implication of the report that money or pressure had been used to influence the Missourian's vote in the trial. The Senator likewise denounced the section of the report which quoted testimony that prices had been placed on the votes of several radical Senators, and used the fact that there was no mention by the same witnesses of prices on the votes of the seven 'recusant' Senators as evidence of conscious concealment for fear of discovery of unsavory facts. Henderson's remarks defending himself against Butler's report ended all discussion in the Senate on his part of the impeachment trial.

69. Cong. Globe, 40 Cong., 2 sess., p. 4463, July 25, 1868.

Did Henderson's vote make the difference between conviction and acquittal for the President? That is a question which, of course, can never be answered positively. Indications seem to be, however, that the impeachment would not have been upheld even though Henderson had resigned and permitted a true Radical to have been appointed in his place, or had voted 'guilty' on the eleventh article. William A. Dunning states, on the basis of a conversation had with Henderson in 1901, that other moderates stood ready to acquit if their votes were necessary. Sprague of Rhode Island and Willey of West Virginia were mentioned as two who were unwilling to sacrifice their careers unnecessarily, but who would have accepted political death rather than see Johnson convicted and removed from office.⁷⁰ The biographer of Lyman Trumbull states that Sprague and Willey ". . . attended the meetings of the Republican anti-impeachers and said they would vote not guilty if their votes should be needed." Morgan of New York was ready to join them if necessary.⁷¹

It would seem that the difference between these last

70. Dunning, W. A., Reconstruction, Political and Economic, 1865-1877, (v. XXII, A. B. Hart, editor, The American Nation Series, XXVIII v., New York,) 1904-1918, p. 107.

71. White, Horace, The Life of Lyman Trumbull, New York, 1913, p. 321. (cites Dunning, and also a conversation with Henderson).

named moderates and Henderson, who wavered briefly as to his course, remains one of principle. Henderson's hesitation was not whether to vote 'guilty' or 'not guilty,' but whether he owed to his constituents the opportunity to have their sentiments expressed. To have resigned his office under such circumstances would have assured his political death just as effectively as to have followed the course which he chose.

CONCLUSION

The impeachment trial marked the climax and effective close of Henderson's career in the United States Senate. He attended the last session of the Fortieth Congress, in the winter of 1868-1869, but took little active part in the debates. In the spring of 1868 the Missourian was married to Mary Newton Foote, the daughter of Elisha Foote of New York. After his term in the Senate expired, Henderson returned to St. Louis where he practiced law. In 1870 he supported the Liberal-Republican Party in Missouri, but by 1872 Henderson had returned to the regular party fold, being the unsuccessful Republican candidate for governor. In 1873 he became the party nominee for the United States Senate, only to meet defeat again. In 1875 during the whiskey ring trial in St. Louis, Henderson was named special federal district attorney to aid in the investigation and prosecution; he was soon removed, however, for an attack on General Babcock which offended President Grant. Although he had supported Grant in 1872, Henderson was opposed to a third term for the General in 1876 and again in 1880. In 1884, occurred one of the dramatic moments in Henderson's later life, when he was made president of the

National Republican Convention; thus he was the only one of the 'Seven Traitors' ever to be publicly forgiven by his party.¹

In 1889 Henderson retired from the practice of law and moved to Washington, D. C., where he lived until his death in 1913. He was a delegate to the Pan-American Congress which met in Washington in 1889. Throughout the later years of his life Henderson wrote for magazines and newspapers and from 1892 until 1911 the Missourian was a regent of the Smithsonian institute. Henderson and his wife seem to have been prominent in the social life of the national capital, entertaining a great deal in their mansion, which became popularly known as 'Henderson's Castle.'²

After a brief illness, Henderson died April 12, 1913 at the age of eighty-six years. A young man when he went to the United States Senate in 1862, Henderson had outlived most of his contemporaries with whom he served in the Civil War and reconstruction years.³

1. White, Life of Lyman Trumbull, p. 326.
2. Sampson, Missouri Historical Review 7, 237-41.
3. This brief summary of Henderson's later life has been taken largely from Hamilton, "John Brooks Henderson," Dictionary of American Biography, VIII, pp. 527-529; Biographical Directory of the American Congress, 1774-1927 p. 1086. Two discrepancies in dates must be noted: the article by Mr. Hamilton gives 1889 as the date of Henderson's removal to Washington, while the Biographical Directory gives 1891 as the correct date; the Biographical Directory also gives 1865 as the date of Henderson's (footnote continued on following page)

The final question which must present itself is, what is the significance of Henderson's public career and how does it fit into the national scene of the period? A partial answer may be made by saying that Henderson was to a great extent a product of his times and his border-state environment. His Virginia nativity and early removal to the west was typical of many ante-bellum Missouri leaders. His early adherence to the southern Democratic point of view and his shift through the fifties to become a follower of Stephen A. Douglas is illustrative of the fluid political conditions in the whole nation, but especially in a border state during the eighteen-fifties. Henderson's whole attitude toward slavery must have been conditioned by his experience as a border-state slaveholder. He regarded it as an economic and social problem, consistently refusing to defend or condemn the institution from a moral or religious point of view, for he contended that the solution could not be worked out except through calm logical consideration. Until emancipation ended the necessity for it, Henderson defended loyal slaveholders in the Senate on every necessary occasion.

(footnote 3 continued from preceding page) service in the whiskey ring trial, which is obviously a misprint. The two accounts further disagree as to the place of Henderson's interment, Hamilton stating that it is in Arlington National Cemetery while the Biographical Directory gives it as Greenwood Cemetery, Brooklyn, New York.

The outstanding feature of Henderson's political attitudes in 1860 and 1861, which probably had the greatest influence on his future career, was his devotion to the Union, his determination to support it and keep Missouri loyal at any cost. The outspoken declaration of this position was of the greatest importance in bringing Henderson's eventual alignment with the Republicans. Certainly this was a great factor in his attempts to obtain emancipation for Missouri; as has been remarked at some length, Henderson believed that the end of slavery in his state would finally insure its loyalty to the Union and end Confederate attempts to get it to secede.

Another basic factor in the Missourian's career was his fundamental conservatism and moderation. One evidence of this was Henderson's lack of vindictiveness toward the defeated South; he disclaimed any desire to make its people suffer; he especially denounced military rule in the South and the idea that one section of the country could rule the other. Throughout his service in the Senate Henderson insisted Congress must be limited by some fundamental law; this was further evidence of his conservative attitude in the reconstruction period when extremist leaders were defying all fundamental bonds. Again, while Henderson opposed Johnson's policies many times, he never failed to speak of him respectfully and to recognize the

President's sincerity and honesty of purpose.

During the period of the War Henderson was, in general, a supporter of the Lincoln Administration, although he voted occasionally with the extremists, as on the Wade Davis bill. The attitudes Henderson expressed through 1862, 1863 and 1864 were essentially moderate, in spite of the fact that he was among the first outside the ranks of the abolitionists to propose ending slavery by constitutional amendment. This advanced position on his part would seem to have been due to two fundamental parts of Henderson's political philosophy; his unswerving loyalty to the Union, for he had become convinced by 1864 that slavery must be removed as a center for agitation if the Union were to survive; and his determination to respect the limits on the powers of Congress, which made amendment to the Constitution the only admissible method of ending slavery. In his expressions of the war-period on reconstruction, Henderson showed the same moderation for he refused to admit Congress' power to invade state functions and urged readmission of the representatives of seceded states as rapidly as loyal governments could be formed.

After the end of the War and the death of Lincoln, with the rapid development of radical control in the nation and in Missouri, Henderson followed the trend of the times. He never ceased to speak more or less moderately

but he voted with the Radicals on important measures. Perhaps it may be said that this is evidence of intellectual dishonesty on his part but it must be remembered that, like other political figures, he did not operate in a vacuum. The atmosphere in Missouri after 1865 was one of intense radicalism and must have influenced his action. A further explanation which Henderson himself gave frequently was that after he had attempted and failed to obtain modification of a measure which he considered necessary in some form, there was left only the choice of accepting its bad features in order to obtain its good ones or voting against an essential bill. At any rate, as has been noted, Henderson followed the congressional majority in opposing the President's plans for reconstruction. He returned to Washington late in 1865 prepared to advocate negro suffrage by constitutional amendment. Again, as in the matter of emancipation, he was in advance of majority sentiment, and as in 1864, his radical action was dictated by his conservatism which demanded that the end should be obtained constitutionally.

The next steps in Henderson's change from a moderate to a radical position came in his gradual acceptance of the theory that Congress' relationship to the South could be based on international law instead of the Constitution. This was hinted at in the resolution on the organization

of state governments in the South which he introduced in March, 1866, and was fully developed a year later in his speeches when the Reconstruction bill passed the Senate. This was the intellectual step which enabled Henderson to act with the Radicals and be considered one of their number.

It is difficult however to classify Henderson as a true Radical, with all the connotations of the term. His lack of vindictiveness toward the South and toward Johnson set him apart from the majority of his contemporaries; the lack of a crusading attitude toward the negro, and the insistence that the negro problem was an economic and social rather than a moral and religious one, further differentiates him. The very moderation of his speeches, even when he voted for the measure to which he objected, confirms the difference.

Henderson himself did not consider his political affiliations to be constant through these years, although he was listed as a Republican. It was in 1863 that Henderson remarked in a speech in the Senate that he was a man without a political party; he said,

"I believe that all parties have left me out in the cold. I found out my lonely condition some time ago and entered into an arrangement with the Senator from Virginia, [Mr. Willey, also a moderate]⁴ and we now have a nice little party of two."⁴

4. Congressional Globe, 37 Cong., 3 sess., p. 1197,
Feb. 23, 1863.

In 1866 when he was acting with the Radicals in most measures, Henderson declared he did not know in what political classification he would be ranked, whether Radical Conservative, or Democrat. He thought perhaps his views did not accord with those of any leading party, but were based on what he thought necessary for the country.⁵

In 1868, however, at the time of the impeachment trial, Henderson declared his allegiance to the Republican Party when he said,

"I love the Republican party as well as my friends. I expect to act with it, notwithstanding what may be said of my course here i.e., in the trial. I have not lost my fealty to it."⁶

As has been noted, Henderson remained in the Republican Party throughout the rest of his life except for a brief excursion in Liberal-Republicanism in 1870.

The impeachment trial and Henderson's part in it may perhaps sum up the significance and meaning of the Missourian's whole career. He was opposed to the President's policies, and did not like Johnson personally. However, when confronted with the necessity of choosing between a vote for conviction based on partisan grounds and a vote for acquittal demanded by his basic respect for fundamental law, Henderson's decision was against partisanship and in

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5. Congressional Globe 39: 1: 106. Feb. 13, 1866.
 6. Congressional Globe 40: 2: 2494-5. May 16, 1868.

favor of intellectual honesty. Whether the vote of the Missourian was the factor which prevented conviction of the President or not, it would seem the logical capstone to Henderson's career, for he was, fundamentally, a conservative who was pushed by the force of events into radical attitudes, but who was never completely separated from an underlying basis of moderation.

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DEPARTMENT OF POLITICAL SCIENCE

May 19, 1939

Dean Henry E. Bent
Graduate School
120 Jesse Hall

My dear Dean Bent:-

It has been a pleasure to read the Master's dissertation of Mrs. Dorothy McClure Merideth on "John Brooks Henderson as a Representative of Border-State Public Opinion." I am pleased to report that in my opinion this dissertation meets the general standard which has been established in this University for the Master's dissertation.

Very truly yours,



William L. Bradshaw

Merideth, D.M.

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