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PERSPECTIVE

A veto begets the 14th Amendment

By Allen Lanstra

One hundred and fifty years ago today, President Andrew Johnson surprised many in Congress by vetoing a bill to extend the Freedmen's Bureau. The veto agitated radical and moderate Republicans, strengthening their determination to achieve a meaningful reunification with the Southern states that would be protected by a constitutional prescription to ensure equality under the law for the freed slaves. The result was a resolve to ensure adoption of the 14th Amendment.

The Freedmen's Bureau was established in March of 1865 as a temporary agency to facilitate the transition from slavery to freedom following ratification of the 13th Amendment abolishing slavery. Its primary purpose was to assist former slaves remaining in the South with food, education, clothing, medical supplies, employment contracts, or settling on abandoned estates. Enacted as a wartime measure, the Freedmen's Bureau was originally authorized to operate for only one year beyond the end of the war. A bill to extend the agency was introduced in January 1866 and passed in early February. Most onlookers anticipated Johnson to continue President Abraham Lincoln's policies and sign the bill, including congressional leaders who had worked closely with him in the weeks leading up to the bill's passage. Presidential vetoes were also very rare at that time.

However, on Feb. 19, 1866, Johnson vetoed the bill. The primary objection to the Freedmen's Bureau was that it demanded a military presence and military courts in the South. The president asserted that freed persons could care for themselves and that state courts could afford the protection necessary to freed slaves, positions so unreasonable that they revealed a desire to see the freed slaves fail and the antebellum Southern culture preserved. While Johnson's veto was truly founded on his political views and bigotry, his confrontational veto message also argued that federal control of the former Confederacy in peacetime was an unconstitutional extension of federal power.

Three days later, Johnson accented his written veto message with an unscripted speech to a crowd of Confederate sympathizers who had gathered outside the White House to express approval of the veto. He attacked both conservative and moderate Republicans, labeling radical congressional leaders Thaddeus Stevens and Charles



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A statue of President Andrew Johnson outside the Tennessee State Capitol.

Sumner "enemies of the Union." The tone of Johnson's message clarified that he would embrace no legislation to help freed slaves and it led Republicans, who felt betrayed by the veto, to take full ownership of the path to a legal prescription to ensuring equality and freedom for the freed slaves. As then-Congressman James Garfield observed, Johnson had "begun the war" and "opened fire on the Sumter of our civil liberty."

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The South was emboldened by the veto. It now viewed Johnson as the firewall protection from a policy of rehabilitative "reconstruction," allowing it to obtain its preferred policy of "restoration" of its place in the Union upon simply renouncing secession, pledging loyalty, and acknowledging the end of slavery. As a Tennessee Democrat who owned slaves until the middle of the Civil War, Johnson was added to the Republican presidential ticket to signal to the Confederate states that they would not be punished after the war. But reconstruction was not punishment. Led by the famed Representative Stevens, conservatives believed it necessary for the nation to seize the opportunity to reconstruct the South to provide a more republican framework that required equal treatment under the law and to facilitate the freed slaves' integration into a reformed Southern society. But Johnson's unanticipated veto was plainly anti-reconstruction, and it unfortunately encouraged the South to continue its fight against equality and the fair treatment of blacks through Black Codes and violence towards blacks that replaced the violence

of the war. However, Johnson and the Southern states misinterpreted the legislative setting.

The president's veto of the Freedmen's Bureau bill motivated both the conservatives and moderates in Congress, enhanced the relevance of the "overreaching federal power" constitutionality objections to reconstruction legislation, and helped position the necessity of a constitutional amendment that ultimately reshaped the relationship between the central government and states. That is, the expressed doubts as to the constitutionality of the Reconstruction Acts led to broad support for the necessity of the 14th Amendment. By passing the amendment, and requiring Southern states to assent to it before readmission, Congress' determined reaction to Johnson produced the first and arguably most progressive era in American history.

Finally afforded in the 20th century the constitutional revolution that was intended in the 19th century, the 14th Amendment restructured the relationship between the federal government and the states in a way that was seismic and in a way that would not have been possible in 1789. The 14th Amendment is the legal basis of many of the judicial and legislative advances in civil rights. As constitutional law Professor Akhil Amar has remarked, the powerful second clause of the 14th Amendment "is the handiest constitutional tool in the judicial kit bag, a constitutional provision deployed in court more often than any other — more often, perhaps, than all others combined."

In short, the 14th Amendment exacted a constitutional reconstruction. It is foundational to our modern federalist framework and fundamental to civil rights advances. It has helped shape modern American society. While we cannot know whether the amendment would have gathered sufficient steam to be adopted otherwise, we do know that President Johnson's confrontational veto of the Freedmen's Bureau bill — 150 years ago today — and his veto of a civil rights bill a month later,

emboldened the resolve of proponents to ensure the amendment's passage and adoption by the states.

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