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

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All images courtesy of the Library of Congress Website.

Abstract

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

By

Joseph C. Angelillo II

The common narratives of the Reconstruction era address its end by emphasizing either political actions or Supreme Court opinions, resulting in well-known potential ending points *uwaj "cu"vj g"õEgo r tqo kug"qh"3: 99ö* and *Plessy v. Ferguson* (1896). This thesis uses a different approach known as popular constitutionalism, which downplays political actions and legal opinions, and holds that the Supreme Court takes public opinion into account when interpreting the Constitution. õThe Nomination of L.Q.C. Lamarö"wugu"vj ku"conceptual framework to view the 1888 confirmation of former secessionist Lucius Quintus Cincinnatus Lamar to the Supreme Court. Scholars have approached this historical episode as a moment of national reunion yet have largely ignored the extensive public discussion of Nco ctøu"disbelief in the validity of the Thirteenth, Fourteenth, and Fifteenth Amendments, also known as the Reconstruction Amendments. Despite substantial press coverage of this constitutional stance, the Northern public still joined Democrats in supporting the nominee, seen in mainstream Republican publications like the *New York Times* advocating confirmation. Within the framework of popular constitutionalism, this Republican assent sent a signal to the Supreme Court that the public no longer supported federal enforcement of black rights through the Reconstruction Amendments, thus making the battle over Lamar a new way to approach Tgeqputwekpaü"gpf .

Introduction

ōKŭ'ŷj g'y ct 'vq'dg'hqwi j v'qxgt'ci clkp."cpf 'uj cm'gxgt { ŷj kpi "crtgcf { "ceeqo r rkuj gf 'i q'hqt'pcwi j vÄö

Cleveland Gazette, January 7, 1888

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

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

Another way of conceptualizing the end of Reconstruction emerges in emphasis on Supreme Court opinions. This perspective is mainly used by constitutional historians.

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

The Nomination of L.Q.C. Lamar
conclusions reached through the aforementioned conceptual lenses, as these conclusions may stand as perfectly legitimate through their own framework. Rather, this paper seeks to use another framework to contribute to the discussion on the end of Reconstruction. Instead of emphasizing political actions or constitutional opinions, this conceptual framework emphasizes different factors, especially public opinion on the Reconstruction Amendments.

This third way for conceptualizing the end of Reconstruction is popular constitutionalism. This perspective emphasizes public opinion, while downplaying political actions and Supreme Court opinions. As articulated by Larry Kramer, popular constitutionalism holds that the opinions of the people held interpretive power over the Supreme Court during the early years of American constitutional history.⁵ This does not mean that public opinion directly overturned Supreme Court decisions by issuing judicial decrees. Rather, popular constitutionalism, especially as used in this paper, holds that public opinion can, does, and should play a role in a

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

Born in Georgia in 1825, the son of a judge, Lamar studied at Emory College in Atlanta. While he did not receive an extensive legal education, he followed his father-in-law to the University of Mississippi to teach law. There he took up politics and developed a friendship with Jefferson Davis, both winning election to Congress in 1857 as Democrats. Both Lamar and Davis resigned their seats in the wake of secessionist fervor growing in Mississippi, with Lamar resigning to participate in the 1861 Mississippi secession convention. There, he personally signed the Mississippi Secession Ordinance, which included the annulment of all oaths taken in support of the United States Constitution, and he joined Davis as one of the secessionists. He next enrolled in the Confederate Army and joined Davis as a member of the Confederate War Department in Richmond.¹⁰

During the War, Lamar served in several positions of Confederate leadership. As a soldier, he fought at the 1862 Battle of Williamsburg, and Davis subsequently appointed him to the post of commissioner to Russia to earn foreign recognition of the Confederacy. However, he never made it to Russia, and failed to convince audiences in London and Paris to recognize the Confederacy. He also served as a member of the Confederate War Department and speaking on behalf of Davis.

Figure 1. Lamar between 1850 and 1865.

While serving as a Congressman, he established a reputation as a leader of national reconciliation efforts. This was especially apparent in his eulogy of Radical Republican Charles Sumner, Nco ctø most prominent moment of House service and perhaps his career. In this noted speech, described in Lqj p"HO Mpppgf {ø Profiles in Courage cu'ðc'wtpkpi 'r qlpv'kp'tgrv'kpu" dgwy ggp'vj g'P qtj "cpf "Uqwj .ö"Nco ct'ecmgf "qp'j ku'eqmgci wgu'vq'o gpf "ugev'kpcn'vgpukpu'He tglphqtegf "uwej "i wku'gh'c"õtgeqputwewgf ö'r tqr qp'gpv'qh'national reunion in arguing vj cv'ðVj gtg" are many honest, intelligent, and kpf gr gpf gpv'o gp'co qpi 'vj g'P gi tqgu'kp"gxgt {"Uqwj gtp"Ucvgö" in an article published in the *North American Review*. Such a reputation boosted Lamar to election to the Senate in 1876.¹²

¹² Murphy, *L.Q.C. Lamar*, 88-89, Friedman and Israel, *The Justices of the United States Supreme Court*, 1437, John F. Kennedy, *Profiles in Courage* (London: Hamish Hamilton, 1964), 174. James G. Blaine, NGS ØONco ct.'g'ØCm'ðQwi j v'vj g'P gi tq'vq'Dg'F kugpltcpej kugf A'Qwi j v'J g'vq'J cxg'Dggp'Gpltcpej kugf Aö" *North American Review*

While Lamar appeared a celebrated proponent of burying the post-war hatchet in the House and Senate, a much different Lamar existed back in Mississippi. This Lamar led the r kklecn'ghhtw'vq'õtgf ggo ö'O kukuk r k'vq'F go qetcvæ'twrg."a bloody campaign of white supremacist terrorism between 1874 ó 1875 designed to keep black people away from the ballot box. Though he spoke of reconciliation, this period saw Lamar argue against Northern efforts to enforce black rights. He lamented what he saw as the horrors of government provided by black voters, while opposing efforts to investigate the atrocities qh'õTgf go r vqpö Further, Lamar benefitted from such atrocities, as õTgf go r vqpö led to his appointment to the U.S. Senate by the Democratic-majority Mississippi state legislature. Traces of this anti-Reconstruction Lamar appeared in his Senate service as well, as even his most recent biographer admits that Lamar opposed any measure to support federal enforcement of black rights. Such actions paint a picture of a bitter secessionist who sought to revive the antebellum social order.¹³

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

healing the divide between North and South.¹⁵ Though his and similar studies provide valuable details, no scholarship on the Lamar confirmation has approached the topic through the lens of constitutional history. Despite debate over constitutional issues emerging in most of the press on the nomination, no scholarship has stepped beyond examining the confirmation battle as a political action in the context of national reunion and addressed the episode as a moment of constitutional interpretation that influenced subsequent constitutional interpretation. *The Nomination of L.Q.C. Lamar*

The Nomination of L.Q.C. Lamar

Chapter One: Origins of the Lamar Nomination

On December 6, 1887, President Grover Cleveland sent a stack of papers over to the United States Senate. The pile contained nominations, as Congress had resumed session the day prior, and the twenty-second president had several posts within his Cabinet to fill.¹ These included Secretary of the Interior, Postmaster General, Secretary of the Treasury, two assistant cabinet secretaries, and although it lay outside of his cabinet, perhaps most important an associate justiceship of the Supreme Court. About to enter the final year of his first term as president, Cleveland entered into his toughest confirmation battle yet by including a note reading "I have the honor to recommend to the Senate the nomination of Q.C. Lamar of Mississippi, to be Associate Justice of the Supreme Court of the United States, in the place of the late Chief Justice Roger Taney."² The president had nominated Lamar, his sixty-two year old Secretary of the Interior, to sit on the Supreme Court.

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

¹ "President Cleveland's Message to the Senate," *New York Tribune*, December 6, 1887.

² Grover Cleveland, message to U.S. Senate, December 6, 1887.

³ The scholarship labeling Lamar as a pathbreaker for national reunion is rather extensive. Two examples are: "The Lamar Nomination," *Supreme Court Historical Society Yearbook* 1986 (1986): 27-47, and, quite prominently, John F. Kennedy, *Profiles in Courage* (London: Hamish Hamilton, 1964), 165-188.

Context for Reconstruction I: To 1879

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

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

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

the number of rights violations the federal government bore power to prosecute. Following continued white supremacist terrorism in the South, Congress supplemented the original Act with an additional Enforcement Act in 1871, also known as the Ku Klux Klan Act.²⁰ This legislation saw wide use in prosecuting rights violations, with the federal government securing over one thousand convictions between 1871 and 1873.²¹ Congress accompanied the Acts with the creation of the Department of Justice, establishing a staff of federal attorneys to prosecute violations of black civil and political rights.²² These efforts used the Fourteenth and Fifteenth Amendments as justification, and saw much success.

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

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

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

circuit, Bradley overturned

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

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

³¹ Huebner, *Liberty and Union*, 405. For these readings of slave power, see *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

³² *United States v. Reese*, 92 U.S. 214 (1876).

³³ Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 125.

³⁴ *Ibid.*, 128.

³⁵ For information on the Electoral Commission of 1877, see Ross, *Justice of Shattered Dreams*, 228-29.

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

In April 1877, President Hayes ordered federal troops in South Carolina and Louisiana to stand down, an action often seen as the definitive political abandonment of black people in the South. Kpqy p"cu'yj g"õEqo r tqo kug"qh'3: 99.õ"this order concluded a tumultuous presidential election of 1876. Though Democrat Samuel Tilden won a clear victory in the popular vote ó the first Democrat to do so since James Buchanan in 1856 ó the count of the Electoral College remained disputed. This spurred Congress to create a commission to decide the election, staffed by Justices Miller, Davis, Field, Clifford, and Bradley, as well five Congressmen and five Senators. With an apparent eight-seven split between Republicans and Democrats, respectively, the fifteen-member Commission handed the Election of 1876 to Rutherford B. Hayes, with the agreement that Hayes would alter his Southern policy in favor of allowing Democratic home rule.³⁶ With no troops to secure Southern voting rights, Democrats retook the House and Senate amid violence-filled elections in 1878.³⁷ But even without considering a Democratic takeover in the South, the balance of interpretation of the Reconstruction Amendments tipped closer to abandonment, as revealed in an 1879 vote in the United States Senate.

The Edmunds Resolution

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

³⁶ On Reconstruction ending with the Compromise of 1877, see Foner, *Reconstruction*, 575-601.

³⁷ Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 141.

Entering his thirteenth year of service, Edmunds had built a reputation as a Radical, taking an
 1877.³⁸ He walked onto the floor of a Republican Senate, with Edmunds one of the thin 38-36
 majority (two independents also served). However, the Forty-Fifth Congress was approaching its

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

As seen in weeks of debate following the proposition of the Resolution, Gf o wpf øl'j qr gu" for unanimous consent would fall flat. Following a caucus, Senate Democrats announced a substitute resolution to Edmundsø on January 20. Proposed by Democrat John Morgan of Alabama, the Democratic substitute upheld the Reconstruction Amendments as binding, without conceding them as legally ratified. It further diverged from the Edmunds Resolution by denying vj g'hgf gtcnfi qxgtpo gpwø'r qy gt"q"ghqteg"vj g'Hknggpvj 'Co gpf o gpv

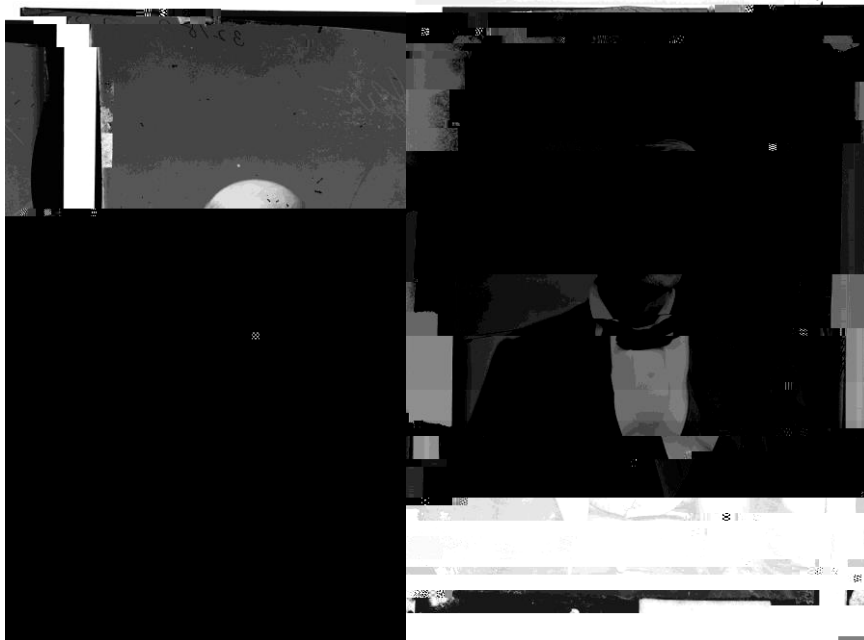


Figure 2. George Edmunds (L) and John Morgan (R) proposed the dueling resolutions concerning the legality and validity of the Reconstruction Amendments.

The high volume of Republican press coverage surrounding the dueling resolutions fell squarely behind Edmunds. The *New York Times* ran several pieces criticizing Democratic ugpcvqtu'y j q'lw r qtvgf "O qti cpø'tguqnwkqn, calling yj g'wvdukwg"ðf cpi gtqwuð"cpf "rcdgrkpi tgcuppu"q"qr r qug'yj g'Gf o wpf u'Tguqnwkqp"ör wtg'wy cf f rg.⁴⁹ This coverage joined with numerous articles from other Republican newspapers such as the *New York Tribune* and *Chicago Tribune*, while press supporting the Senate Democrats was found in Democratic newspapers such as the *Memphis Daily Appeal*. Black newspapers also contributed their views, with the *New Orleans Weekly Louisianan* pqvki "yj cv'yj g'tguqnwkqpu"ðj cxg'gzekgf "eqpukf gtcdrng"comment in the newspapers as y gm'cu'rkxgn{ "cpf "kpvgtgukpi "f kuewukqpu"qp"yj g'hrqt"qh'yj g'Ugpcvgð The

⁴⁹ *New York Times*. "Hgdwtct { "7."3: 9; . "cpf "ðVj g'Rtqvgevkqp"qh'Xqvtu,ð *New York Times*.

Table 1. Senate Vote on the Edmunds Resolution

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

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

One of the 23 votes came from L.Q.C. Lamar, who joined fifteen Democratic senators in voting against the Resolution. This demonstrates the difference between the Republicans and Democrats at the time ó many Republicans expressed indifference to the Reconstruction Amendments, while the Democrats made their opposition known with votes refuting their legality and validity. Three of the opposing Democrats came from northern states, showing the wariness of Northerners towards rights enforcement. The remaining thirteen votes against came from Southern Democrats, with senators from Deep South states such as Georgia, Mississippi, and Alabama opposing the Resolution.

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

⁵³ *Cong. Rec.*, 45th Cong., 3rd sess., 1879, vol. 9, pt 3: 1029. For the parties and years of service of the Ugpvcqtu."ugg"øUgpvcqtu"qh'j g'Wpkygf "Ucygu.ø"Ctv'cpf "J kxqt {."Wpkygf "Ucygu"Ugpvcg." <https://www.senate.gov/artandhistory/history/resources/pdf/chronlist.pdf>.

more nuance to the otherwise infamous nature of this opinion, with Brandwein emphasizing its consistency with *Cruikshank*.⁵⁷ Dqj "qr kpkpu"ugk gf "qp"vj g'kf gc"qh"öucvq"pgi rgev.ö"r j tcug" Brandwein uses to describe the concept that the actions of private individuals on the state level remain beyond the reach of the federal government *unless the state fails to address them* (emphasis added).⁵⁸ Vj ku'gzi rckpu'vj g'Eqwt vü'cevku'kn the *Civil Rights Cases*, as the Civil Rights Act enabled direct federal prosecution without prior state inaction. This shows that the *Civil Rights Cases* did not leave black rights completely to the mercy of the states. Rather, the outcome accorded with thg'Eqwt vü'gucdrkj gf "kpvtr tgvckpu"qh'hgf gcrkuo ö⁵⁹ However, Dtcf r{ö'rcpi wci g'ucvki "vj cvöy gtg'o wuv'dg'uqo g'uci g'k"vj g'r tqi tguu"qh']drcem'Co gtlecpö" elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the lcy u.ö'f kf "pq'hcxqtu'hqt'drcem'ki j uö⁶⁰ By proclaiming that the time had arrived for the federal government to treat black people as integrated citizens, while white supremacy still festered throughout the country, Bradley expressed a blindness to the realities of discrimination and furthered the mainstream progression towards abandoning black rights.

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

⁵⁷ Hqt'gzco r rgu'qh'uej qrtu'etk'ecn'qh'vj g'Eqwt vü'f gekukp. 'ugg'Y qqf y ctf. *The Strange Career of Jim Crow*, 71, and Rayford W. Logan, *The Betrayal of the Negro* (New York: Collier Books), 105.

⁵⁸ Hqt'c"o

federal authority to directly enforce voting rights ⁶¹ and showed that the Justices still retained some interest in enforcing black rights.⁶² Further, even after the controversial Election of 1876, the public remained interested in preventing national reconciliation. Republicans retook the House in 1880 and affirmed their hold on the presidency by electing James A. Garfield that same year.⁶³ The

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

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

vj cv'vj g'p'gy 'Lwvleg'y km'dg'c"Uqwj gtp"o cp.ö'the *Appeal* wrote on June 23.⁷⁶ öSince Justice Campbell of Louisiana,ö'k'eqp'p'wgf . öno Southern man distinctive in character, birth and opinion has represented this section in the highest judicial tribunal of this countryö'The *Appeal* here spoke of John Archibald Campbell, a member of the *Dred Scott* majority who resigned his Supreme Court justiceship in 1861 to serve as an official in the Confederac Tm0 g0 G[(Dre)5(d S)-9(c)4(ott)] T

Nco ctø'ur qw{ 'tgeqt f 'y kj 'drcemlt

go r gtco gpvö'y kj "a more detailed account than that provided by the *Tribune*. However, the *Times* and other mainstream Republican publications certainly did not express opposition to Lamar during the summer months.

It remains unknown how much Lamar knew about his potential appointment. According to England did not speak to him regarding the nomination during the summer. Lamar surely heard rumors, but later informed the press that he had heard further, it remains unknown whether Lamar

Chapter Two: The Nomination and Constitutional Interpretation

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

Nomination: Debate

With the nomination submitted on December 6, 1887, debate over confirmation broke out in the Senate. Opponents argued that the nomination was premature and that the Senate should wait until the Reconstruction Amendments were fully implemented. They also argued that the nominee was disloyal to the Union and that his appointment would undermine the Reconstruction process. Supporters of the nominee argued that the Senate had a duty to act on the nomination and that the nominee was qualified for the position. The debate was heated and lasted for several days. In the end, the Senate confirmed the nominee by a narrow margin.

Radical Republicans expressed immediate hostility to the nomination, initially based on issues of judicial temperament and the nominee's perceived disloyalty to the Reconstruction process.

considering the ages at which the other justices of the Reconstruction-Era Court took their seats.² Most saw confirmation in their middle or late fifties, while at least two (Hunt and Blatchford) assumed their places at the exact age of sixty-two.³ Rather than being outliers, Lamar and Blatchford fit in with the norm at the time. The *Tribune* also attacked Lamar for his lack of legal profession, which, indeed, he appears not to have practiced at all since 1854.⁴ This claim that Lamar had not practiced law during short stints between elected offices.⁵ However, other justices also came to the Court from a more political, rather than legal, background. For example, both Strong and Matthews served in Congress before their nominations, and only Miller and Bradley came directly from private law practice to the Court.⁶ So while Lamar perhaps did lack a distinct legal background, paramount to this issue likely did not mean much to Republican opposition.

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

which saw Lamar join twelve of his Southern Democrat colleagues (and three Northern
 F go qetcw+l"p"xqvkpi "ōP c{ō"q"ctguqmwkq"chko kpi "vj g"legality, validity, and federal
 enforcement power of the Reconstruction Amendments.⁸ The *Tribune* levied fierce attacks
 against him for the vote, claiming that it expressed Nco ctø"qr kpkq"vj cvōvj g'rcuv"vj tgg"
 amendments to the Constitution are not valid and binding in the sense that the remainder of that
 kputwo gpv"kuō⁹ The *Tribune* considered the consequences of such views, querying ōk"vj g"
 co gpf o gpv'ctg'pqv'xcnkf "k"vj g"qr kpkq"qh'O t0Nco ct."y j cv'qh'rcy u'gpcev'gf "w'pf gt"vj go Aō¹⁰
 This alluded to the distinct possibility that Lamar, if confirmed, would likely have to rule on such
 legislation. Given his vote on the Edmunds Resolution, a lack of certainty surrounded his
 potential fairness and impartiality towards Reconstruction statutes. With these attacks, Radical
 Republicans began laying bare the issues for constitutional interpretation qh"Nco ctø"
 confirmation. Confirmation now represented more than embracing national reunion. It
 represented an effort to refute enforcement power under the Reconstruction Amendments.

8

Radical opposition to Lamar perhaps appeared most evident in the labeling of the pgo lpcvqp"cu'ōan announcement of the Democratic programme (sic) to reconstruct that Eqwtv'qp'c'Eqphgf gtcvg'dcuk¹¹ With their strong opposition, Radicals hoped to keep the nominee off the Court. Perhaps they wanted to turn the confirmation battle into a referendum on the issue of interpretation of the Reconstruction Amendments. Whether or not they wanted to do so, vj gk'r qtvc {cñ'qh'vj g'lo r ñecvqp'u'qh'Nco ctā'eqphkto cvkqp"started to turn the battle into such a referendum.

As throughout Reconstruction, black Americans did not simply hope for white institutions to work on their behalf. Rather, they f gr m {gf "vj g'r tcevegu'qh'ōdrcen' eqpuvkwkqpcrkuo ö"q'cevkgñ{ "oppose Nco ctā'eqphkto cvkqp, as seen in the Chattanooga-based black newspaper *Justice*. Its contribution to the discussion, published on December 24, made clear vj cv'Nco ctā'pgo lpcvqp was òqpg'qh'i tgcv'lo r qtvcpeg"v'eqmgtf "r gqr rgö and addressed many reasons to oppose Lamar. These included Nco ctā'lpuwuu'qh'Rt gukf gpv'Npeqrp, his regard for Jefferson Davis, and his ghqtu"ōby force of arms to destroy the government and the eqpuvkwkqpc⁶ However, *Justice* seemingly pardoned the nominee for such offences, stating their intention to ò

colored man, would you not

eqo o kwgg"eqpukf gtcvqp"õj cu'pgxgt'r tgcxckgf .ö²⁴), a general pro-Lamar

the new year,

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

qt f gcn'qh'r n'p f gt "cpf "qr r t guk qp.ö"ht "y j kg"Uqwj gtpgtu⁶ This dodging of white violence against black voters, in favor of refuting that

page.

Like most opposition to confirmation, the *Gazette* placed heavy emphasis on constitutional issues by discussing the 1879 Edmunds Resolution. Yet with Reconstruction Amendments in mind, the *Gazette* brilliantly captured the frustrations of the black community by asking "What have we accomplished for the colored people? Shall the rebels come to the front and take the government again?" Though the resolution of the Civil War saw black Americans gain rights and keep secessionists out of government, an individual who represented all they opposed stood poised to gain a seat on the Supreme Court. Black Americans had themselves fought for these rights, recognized by the *Gazette* in writing "the blood of the hundreds and thousands who fell in the war to destroy the Southern Confederacy, to ensure that Black Americans wanted to ensure those who fell had not done so in vain. Keeping Lamar off the Supreme Court accorded with this objective.

Coming into the new year, Democrats perhaps felt on the defensive. Radicals at the *Tribune* and black newspapers around the country were publishing extensive pieces against Lamar, and Democrats stood to lose confirmation of the first Democrat-nominated justice in thirty years. Faced with these attacks, the *Appeal* stuck close to Lamar. The Democratic paper published the statements of Senator Philetus Sawyer of Wisconsin, which assured Democrats' loyalty to the Union, seen especially in the *Appeal*'s "The *Appeal* also attacked the *Tribune* by name, stating that the opposition amounted to nothing. Such critiques echoed those made by the *Appeal* in 1888.

³⁸ "Nco ct'cpf 'y g'Uwr tgo g'Eqwtvö" *Cleveland Gazette*, January 7, 1888.

³⁹ "Nco ct'cm'ki j vö" *Memphis Appeal*, January 3, 1888.

⁴⁰ "C"Y tqpi 'F qpg'Nco ct.ö" *Memphis Appeal*, January 7, 1888.

debate, but the *Appeal* went beyond these to impeach the credibility. It called the Tcf kecn'r cr gtø' accusation of voter suppression ðdqj w.ö"cpf "kø r mrtgf "F go qetcw'vq"öo cmg" haste to relieve Mr. Lamar from the embarrassing position in which *The Tribune* and its newspaper abettors j cxg'r rcegf "j kø 6⁴¹ Thus, the *Appeal* maintained its methods for supporting Lamar. It cwcengf "vj g"qr r qukkqp"cpf "cuwtgf "vj g"ecpf kf cvgø"m{ cm{. "cm'y kj "vj g'i qcn'qh'r rcekpi " their man on the Supreme Court.

The *New York Times* continued to concur with Democrats on the issue, further displaying their move away from the Reconstruction Amendments. Like the *Appeal*, the *Times* assured Nco ctø'loyalty, calling Lamar on January 4 c"ðhwm{ "tgeqputwvfg ø'ekkk gpö"and claiming that ðP qv'qpg'qh'vj g"Ugpcvqtu'y j q'r tqr qugu'vq"xqv"ci ckpυj kø "j cu'cp{ "j qpguv'f qwdv'cdqw'gkj gt"j ku" j qpguv{ "qt"j ku'm{ cm{ 6⁴² The paper followed this with a noticeably nuanced evaluation of Lamarø'pgo kpcvqp'two days later. The *Times* qdugt'xgf "vj cv'ðVj g'nomination of Mr. Secretary Nco ct'vq'vj g'Uwr tgo g'Eqwtv'ku'qpg'vj cv'e'qwf "dg'hckn{ "etkkkk gf .ö perhaps the most anti-Lamar statement printed by that newspaper.⁴³ However, it claimed that Lamar remained the superior candidate for the Supreme Court vacancy, vj cpm'vq"ðvj g'tgr wcvkqp"j g'j cu'tlej n{ "gctpgf "hqt" probity, integrity, and kpf gr gpf gpegö Though the nominee did bear a number of detractions (the *Times* cited age and lack of legal experience), no evidence convinced the *Times* qh'Nco ctø' continued disloyalty. That the *Times* did not consider Nco ctø'career as reinforcing claims against his loyalty shows how far mainstream Republicans had fallen from their position twenty years prior. Once the party that joined black Americans in passing the Fourteenth and Fifteenth

⁴¹ Ibid.

⁴² ðY j { 'Nco ct'ku'Qr r qugf .ö"New York Times, January 4, 1888.

⁴³ ðO t0Nco ct'hqt"vj g'Uwr tgo g'Eqwtv.ö"New York Times, January 6, 1888.

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

The position of Democrats, at the reins of the federal government, and mainstream Republicans, the main element of the second half of the political dichotomy, combined to keep Nco ctø'qr r qukkp"qp"vj g'hkpi gu0This dueling of newspapers such as the *Tribune* and *Appeal* turned the confirmation battle into a referendum of sorts. At issue: whether a former Confederate, who perhaps held the Reconstruction Amendments as invalid, would join the pcvkpa'j ki j gu'eqwt0However, the implications of such referendum tease at much larger issues. Perhaps the largest of these: whether the public accepted the work of the Supreme Court in interpreting the Reconstruction Amendments. These interpretations had grown stricter as Reconstruction passed, and if the Republicans truly cared to see this trend reversed, one would expect them to unflinchingly deny a seat to an individual who voted against the legality, validity, and federal enforcement power of the Amendments. They did not. Further, they assented to Lamar despite his service with the Confederacy, making the pressøgeneral acceptance of the nominee a sign of Reconstruction hastening to an end.

Nomination: Acceptance

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

f qwd'cu'q'y j cv'yj g{'uj cmf q0⁵¹ The *Tribune* clung to such reports and refused to acknowledge confirmation as certain.⁵² In contrast, the *Appeal* happily reported the pro-Lamar statements of Senator John P. Jones, a Republican from Nevada. õUga

Such a defection occurred on January 12. That day, President Pro Tempore John J. Ingalls brought a resolution proposed by New Hampshire Senator William E. Chandler to the floor for discussion. The resolution pertained to possible suppression of black voters in Jackson, Mississippi, with Chandler requesting that the Judiciary Committee investigate such claims.⁵⁸ He also connected the issue with the Lamar nomination, criticizing a resolution adopted by Mississippi, which stated that the State seeks to-day to furnish an associate justice of the Supreme Court of the United States to aid in passing upon the validity of the constitutional amendments.⁵⁹ The resolution also mentioned the Lamar nomination, and the opposition expressed by Radicals and black Americans. By joining this reference with his resolution regarding Jackson, he also incorporated the *Tribune* accusations against the Reconstruction Amendments.⁶⁰ This provides an explanation as to why Ingalls brought this resolution for discussion while the *Tribune* was publishing its article. After all, Ingalls would not have wanted to be accused of conspiring with the *Tribune*.⁶¹ While no evidence confirms that Ingalls and Chandler conspired to sink Lamar with the resolution, that the two Republicans planned to muddy the water does not seem hard to believe. However, whatever damage the Republicans intended to do quickly evaporated.

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

⁵⁸ *Cong. Rec.*, 50th Cong., 1st sess., 1888, vol. 19, pt 1: 402.

⁵⁹ *Ibid.*

⁶⁰ Ugg'öC"Y qtf "q" Tgr wdreep'Uggpcvtu.ö'cpf "Ngo cpp." *Redemption*.

⁶¹ O gcf qt. "öNco ct"q"j g'Eqwtv.ö'650

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

prominence in a former rebel state. Rather than identify as a Republican or Democrat, he represented a third party known as the Readjusters, described by Eric Foner as a Virginia-based pro-education, pro-social services, and pro-black civil and political rights party.⁶² Y kj "Nco ctø" nomination seemingly deadlocked due to the defection of Senator Stewart, Republicans needed to prevent Riddleberger from voting for confirmation. Otherwise, assuming all Democrats voted solidly in favor of Lamar, the confirmation would overcome the Republican majority and succeed. J qy gxgt. 'Ej cpf rgtø"ucvgo gpw"gpctci gf "Tk f leberger, who derided Ingalls for allowing discussion of a Supreme Court nomination to occur in open session. øIf it be allowable to have this kind of debate in open session,ø"Tk f ledgti gt "f gerctgf. "øthen it becomes me, sir, to say that I will vote for Lamar.ø⁶³ Y kj "vj cv."cu'y gm'cu"chgy "ucvgo gpw"eqpf go plpi "E_Ó "

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

Virtually all press, including Radicals at the *Tribune*, accepted confirmation as certain in advance. The radical newspaper, somewhat signifying defeat, did not publish a front-page story covering the statements made in the Senate. Rather, on January 13, they published a short editorial addressing the announcement, the *Tribune* announced.⁶⁵

Lamar on the Supreme Court.

entire three-hour session, ~~knuglpi "y kj "öwngp"cpf "kpuqngp"kp khtgpegö~~ while Republicans made several speeches against confirmation.⁷²

no Democrats voted against confirmation, and twenty

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

Democrats also emphasized Lamar himself, celebrating his ascension to the bench made illustrious by O'Connell. In this position, the *Appeal* wrote, Lamar in interpreting the Constitution.⁷⁸ With that nominee now confirmed, Democrats rejoiced. They finally had a former Confederate on the Supreme Court.

Both ends of the Republican Party — mainstream and Radical — responded with minimal commentary. The *Tribune* front page story merely described the Senate debate and final vote, adding neither further criticisms nor expressions of disappointment.⁷⁹ A page four editorial provided final Radical Stewart, and Stanford would In speaking of these defecting Republicans, the *Tribune* the Republican ⁸⁰ Uwej "c" as

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ecmki "cwgpvkpp"q"vj g"ōdmqf { "uj k vō"Vj ku'f kf "pqv'bo gcp"vj cv'Tgr wdnecpu'pqy "accorded with Democrats on all issues. However, it did mean that they endorsed F go qetcvā'pcttqy "xky "qh" black rights under the Reconstruction Amendments.

Senate confirmation represented the final stage of acceptance, and perhaps the political abandonment of black Americans. Senate Republicans bear less responsibility here, as the vast o clqtk{ "qh"vj ku'hcevkpp"qr r qugf "Nco ctā'eqphkto cvkqp0No matter what the political action of confirmation represented, however, in the framework of this paper, the debate is what matters. It saw mainstream Republicans join Democrats in advocating confirmation. This meant that the urge to protect black rights no longer constituted a common objective. It represented the fringes. With the Republican-backed confirmation of a man who represented everything the Party once opposed, Reconstruction came to a close.

Justice Lamar

As with many nineteenth-century justices, Nco ctā judicial career can best be described

Conclusion: The End of Reconstruction

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

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

When using a different framework to conceptualize the end of Reconstruction, the battle over public opinion and the rise of populism as a form of political participation in the late nineteenth century is a key element of the story. This concept of populism, which emphasizes public opinion rather than political and judicial actions. Notably espoused by legal scholar Larry Kramer in his book *The People Themselves*, this concept challenges notions of judicial supremacy by claiming that the people (and not the courts) held interpretive power during the early years of constitutional history.⁵ In distinguishing this concept from normal political participation, Kramer notes that popular constitutionalism is a form of political participation that is distinct from the political branches and by the community at large.⁶ Kramer does not hold this to mean that individual

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

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

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

¹⁵ 163 U.S. 537, 559 (1896).

¹⁶ See W.E.B. DuBois, *The Souls of Black Folk* (Chicago: A.C. McClurg, 1903) and *Black Reconstruction in America* (New York: Simon and Schuster, 1999). *Black Reconstruction in America* was originally published in 1935 as a

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

Plessy v. Ferguson, 163 U.S. 537 (1896).

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