

# “I Will Continue to Make the Best Defense I Can”:

Edward Bates and the Battle over the Missouri Constitution of 1865

BY MARK ALAN NEELS

The Missouri Constitutional Convention convened first in Jefferson City in early 1861, then in March in St. Louis. The Convention voted overwhelmingly—98 to 1—against seceding from the union, despite the leanings of newly elected governor Claiborne Fox Jackson. When Jackson and other state officials fled the state, the convention declared the offices vacant and appointed provisional officers who governed the state until almost the end of the war. (Image: Missouri State Archives)



In December 1864, as the Civil War neared its conclusion, radical members of the Missouri state Republican Party capitalized on their high regard with the electorate to pass a referendum for the reconvening of the state constitutional convention. While the stated purpose of this meeting was to pass an amendment mirroring the proposed federal Thirteenth Amendment then being debated in the United States House of Representatives, radical members of the Republican Party also proposed a less-celebrated cause than emancipation—changing the constitution to disenfranchise and punish all persons suspected of sympathizing with the ongoing rebellion. In the midst of this politically charged atmosphere stepped Edward Bates, recently returned to St. Louis after resigning his post as attorney general in the cabinet of President Abraham Lincoln. Having defended the administration's most controversial policies (from the president's suspension of Habeas Corpus in 1861 to the Emancipation Proclamation in 1863), and having watched the other conservative members of Lincoln's cabinet such as Postmaster General Montgomery Blair leave only to be replaced by (as Bates called them) "extreme Radicals,"<sup>1</sup> the 71-year-old Bates now decided that he should address his family's concerns regarding his fragile health and forsake public life for good and all. After all, he reassured himself, with Lincoln re-elected, the Union was undoubtedly secure, and Bates could retire knowing that he had done all in his power to save the nation he so loved. It was time to let a younger generation take the reins of power. Events in Missouri, however, would not allow him to rest just yet.

Bates found his hometown absorbed by chatter surrounding the imminent convening of the convention at the Mercantile Library. Over the next few months, as it became clear that the radicals intended to overstep their mandate from the public and instead write an entirely new constitution, conservative-leaning citizens expressed their skepticism at the legality of the convention. While he intended to simply watch these proceedings from the sidelines, Bates privately expressed the same reservations as his conservative neighbors, fearing the possible radical alteration of the governing institutions of his home state—a government he had personally helped to frame in 1820. Ultimately, these events compelled him to re-enter the public arena, and in what may have been a greater political battle than any he had fought while attorney general, in a newspaper editorial war with Charles Daniel Drake—the leading radical Republican in the state—Bates worked tirelessly to articulate the values of conservative opponents to the maneuverings of the radicals. Curiously, although Missouri was never "reconstructed," since it had not officially seceded from the Union in 1861, in many ways the debate between Bates and Drake mirrored that occurring at the national level over the course of Reconstruction.<sup>2</sup>

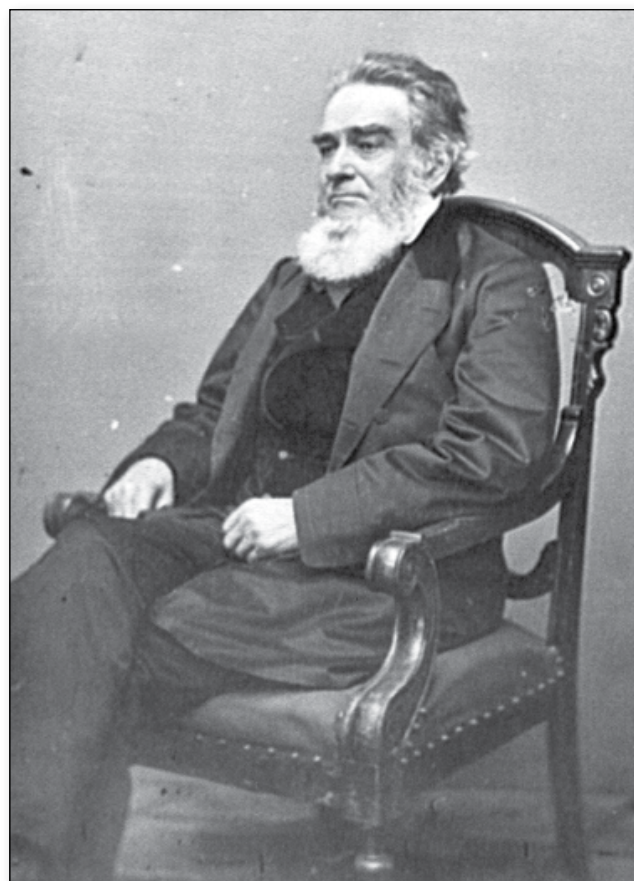
During the war, issues such as emancipation and federal-over-state control of the military electrified Missouri politics. In the state legislature, the ideological divide over these issues manifested in three clearly identifiable

factions. Radical Republicans, for one, advocated immediate emancipation of all slaves and supported the control by federal officials (generally military commanders) of the court system as well as all military aspects of the war. Conservative Republicans alternatively supported a more gradual process of emancipation, the maintenance of a divide between civilian and military affairs, and the management of military affairs by the state militia under the command of the governor. And lastly, the Democrats opposed both emancipation and the war on almost equal terms. Of these three, the two factions of the Republican Party vied for superiority in the state legislature, and their inability to compromise largely accounted for Missouri's sluggishness in tackling the issues of slavery and the guerilla war in the west.

Out of the stalemate between these two factions stepped St. Louis attorney Charles Daniel Drake. As one biographer described him, "seldom, if ever, has a Missouri politician been hated so intensely by so many

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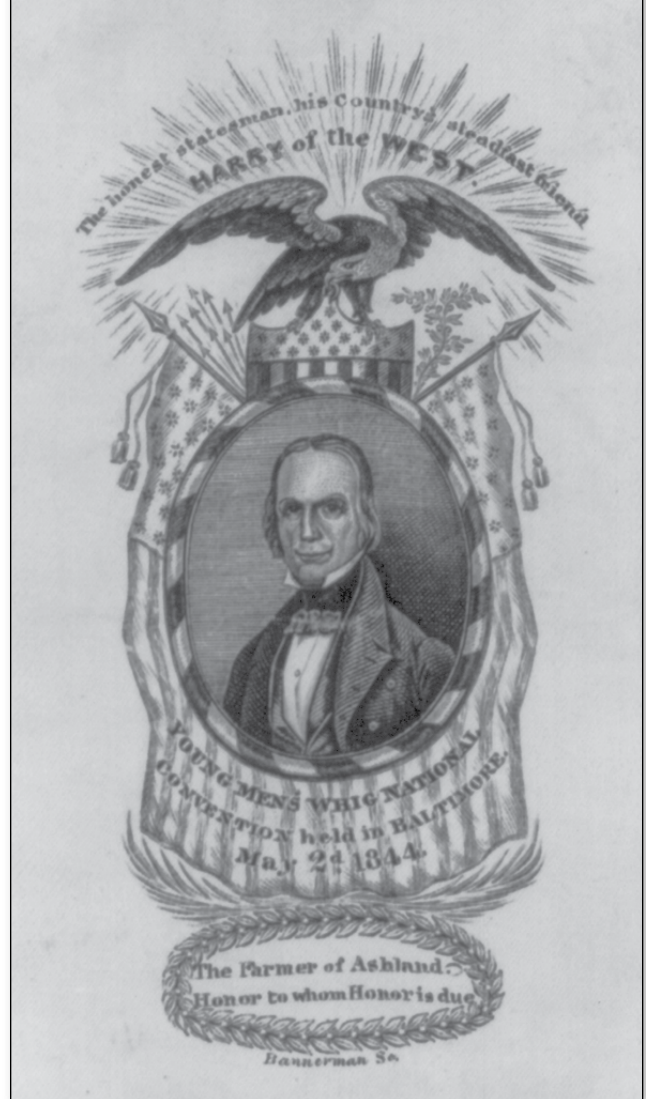
Edward Bates (1793-1869) was an early member of a long line of political leaders in Missouri. When he arrived in Missouri Territory in 1814, his older brother James had already been in St. Louis for a decade, serving as secretary to territorial governor Meriwether Lewis. When Abraham Lincoln appointed him Attorney General, he became the first cabinet member from west of the Mississippi. *(Image: Library of Congress)*





As an experienced lawyer, Charles Daniel Drake (1811-1892) was a Radical Republican by the end of the Civil War. The Missouri constitution crafted at its convention in early 1865 reflected the future Radical agenda nationally—an immediate end to slavery, restricted rights for Confederate sympathizers, a ban on compensating slave owners for their losses on human “property,” and an “Ironclad” oath of allegiance to the union. It also created free public schools state-wide. The so-called “Drake Constitution” was replaced by a new one in 1875. *(Image: Library of Congress)*

Missourians.<sup>23</sup> Yet this assessment reflects the hindsight of Missourians years after Drake’s political career had ended. Fifty-four years old in 1865, he was in his prime. Originally from Ohio, Drake had piloted a life of twists and turns in economic and political fortunes. Nearly bankrupted during the Panic of 1837, he rose by the 1850s to great prominence as the founder of the St. Louis Law Library and as an advocate for the implementation of a citywide public school system. A supporter of Henry Clay and Zachary Taylor in the presidential contests of 1844 and 1848 respectively, by 1859 he had moved to the Democratic Party, which elected him to the Missouri state assembly later that year. In the assembly, Drake’s belief in his own self-importance won him few friends among his colleagues. Furthermore, his support of such initiatives as Sunday Blue Laws and his castigation of German voters as Sabbath-breakers for their opposition to said laws, earned



Henry Clay’s American System advocating a limited executive coupled with a more activist role of government in advancing the national economy was central to Whig ideology from the 1820s until the death of the Whig Party after the 1852 presidential election. Edward Bates—like Abraham Lincoln—carried those Whig notions about the role of government, as well as its limitations, into his involvement in the newly formed Republican Party. *(Image: Library of Congress)*

him few converts among St. Louis voters. Consequently, he did not stand for reelection in 1860.<sup>4</sup>

Drake did not stay out of politics for very long. Decidedly pro-slavery during the first year of the war, once he sensed that the political atmosphere in Missouri was fast turning against the institution Drake defected to the radical Republicans in the winter of 1862. With the success of anti-slavery pro-Union men in the state elections that year and having been elected as a replacement delegate to the Missouri Constitutional Convention of 1863, he subsequently began advocating for immediate emancipation. When that convention eventually implemented a gradual process of emancipation, he rose to the rank of leader of the radical element of the Republicans by organizing a separate meeting in Jefferson City in September calling for immediate emancipation.<sup>5</sup>

By November 1863, Missouri’s “loyal citizens”—



Abraham Lincoln's cabinet, seen here, included three of his adversaries for the Republican presidential nomination in 1860: Secretary of the Treasury Salmon Chase of Ohio (second from left), Secretary of State William Seward of New York (seated in profile facing Lincoln), and Attorney General Edward Bates of Missouri (far right). (Image: Library of Congress)

those on record as having taken an oath of loyalty to the Union—overwhelmingly favored the radical persuasion, giving them a three-thousand-vote lead in the state elections. By the time the legislature convened in early 1864, then, they had enough votes to successfully call a referendum for a new state convention with the intention of amending the state constitution, and thus immediately ending slavery and disenfranchising any and all disloyal persons. To that end, the following November—a full year after the radicals first won control of the legislature—Missouri voters overwhelmingly approved the referendum, and three-fourths of their chosen delegates to the new convention were of the radical persuasion. Nonetheless, as William Parrish noted, their election was a hollow victory in that they owed it to both Abraham Lincoln's landslide victory in the presidential contest as well as the disfranchisement of Missouri Democrats who failed to prove their allegiance to the Union. Still, the radicals insisted on interpreting their victory as yet another triumph for the advocates of emancipation, as well as union over rebellion.<sup>6</sup>

Having returned to St. Louis on the eve of the convention's assembly, Bates initially confined his observations of the radicals' maneuvers solely to the pages of his diary. Although he had sometimes compromised his political affiliation—he had started public life as a National Republican, then became a Whig, and even flirted with the Know-Nothing Party of the mid-1850s before reluctantly joining the Republican coalition in 1860—all of his life, he had been a principled statesman. Unlike Drake, Bates's deep-rooted political values hardly, if ever,

changed. It was, instead, the parties that moved away from *him*. And these uncompromising principles now led him to read chicanery in the actions of the radicals.

Born in Virginia in 1793, Bates took the advice of his older brother Frederick—the secretary and recorder of deeds for the Louisiana Territory, and later second governor of Missouri—and came to the village of St. Louis following a short military service in the War of 1812. From 1814 to 1860, he—like Drake—developed a lucrative public career in his new hometown. However, in contrast to his younger adversary, Bates fostered his political values early and maintained them with little variation throughout his entire life. Furthermore, his particular values and public service were instrumental during the first days of the Missouri state government.

Taking advantage of Frederick's high status and his contact with prominent citizens like the Chouteaus, Edward developed his *own* professional connections and eventually convinced prominent St. Louis lawyer Rufus Easton to let him study law in his office. A few years later—through the course of his work prosecuting land cases for prominent French creole St. Louisians—he caught the attention of Territorial Governor William Clark, who nominated him as circuit attorney for St. Charles, St. Louis, and Washington counties. The prominence of that position, along with his connections to high society, made him a natural choice for public office, and he thus entered the arena during the crusade for Missouri statehood.

Publicly opposing the maneuverings of New York Congressman James Talmadge to mandate the emancipation of all Missouri slaves over the age of

21, and similarly opposed to Illinois Senator Jesse B. Thomas's amendment banning slavery in all of the Louisiana Territory north of the 36<sup>th</sup> parallel, Bates instead believed that the only provision that must be adhered to in the formation of a state was the requirement, in Article IV, section 4 of the United States Constitution, that the state establish a republican government. He thus became a candidate to represent his home district as a strict constructionist and anti-restrictionist in the state constitutional convention of 1820, where he made his most lasting contribution by serving on the Judiciary Committee and drafting the preamble to the constitution. When the convention adjourned on July 19, 1820, his accomplishments had so enhanced his reputation that Missouri's first governor, Alexander McNair, named him to be the state's first attorney general.<sup>7</sup>

From the 1820s through the 1840s, Bates served in both the Missouri assembly and U.S. congress, and he became an influential figure in the national Whig Party. Indeed, by the time of his retirement from the Missouri Senate in 1835, his friends had come to see him as a potential leader against Democratic ideals. Another Whig candidate, though, was always chosen by the national party in Bates' stead. Likewise, Bates turned down several offers for patronage offices by Whig presidents, putting the needs of his ever-expanding family before his own political ambitions. Still, his editorials in the St. Louis newspapers and his position as president of the River and Harbor Convention in 1847, indicate his importance in articulating the Whig message to American voters.<sup>8</sup>

As the Whig party collapsed from sectional divisions in the mid-1850s, Bates refused to compromise his principles in order to court the new northern political coalitions. Instead, he hoped those coalitions (mainly comprising anti-slavery, pro-union men) could be convinced to adopt his personal views on the numerous issues facing the nation. This hope ultimately led to his failed attempt to win the Republican nomination for president in 1860 and fueled his efforts to advocate a conservative agenda on public policies from within the Lincoln Administration. However, as the president and his closest advisers more and more supported a moderate-to-radical stance on emancipation, black citizenship, central banking, and reconstruction, Bates's unflinching conservatism led him to conclude that he had become irrelevant to the administration. This realization, more than his stated health concerns, may have been the real reason behind his resignation in 1864. At any rate, unlike his younger adversary Drake, Bates did not conform to the times, and was thus increasingly left behind by younger generations of politicians.<sup>9</sup>

On December 20, 1864, Bates ruminated on terms such as "radical," "loyalty," and "convention"—all being tossed around in private conversations. "*Radical*," he observed, was defined as "adhesion to my clique." But he fashioned his own definition of a "radical politician," suggesting facetiously that, "the good of the people is the *Supreme Law*, and *he* is the only judge of what is good

for the People!" Comparing them to the secessionists of 1860, Bates saw the radicals as a small band of fanatics who had managed to assume control of the government by professing their love of personal liberty while, in actuality, suppressing any and all political dissent. As for their call for a new state convention, Bates further commented that a "convention" was defined as "a gathering of Demagogues, designed to throw society into anarchy, and then to gamble for a better system." The late referendum, he believed, was simply a method by which radicals worked to solidify their power. This examination later became central to his public crusade against them.<sup>10</sup>

For the time being, these ruminations were his *only* mention of the imminent convention. However, it is evident from this short passage that Bates viewed the radicals with some measure of disdain. This is partially explained by that faction's treatment of his late brother-in-law, Hamilton R. Gamble (the earlier wartime governor of Missouri). Angered by the governor's slow approach to emancipation and his reluctance to centralize power in the hands of the military, several radical Missouri Republicans (including Drake) began publicly haranguing Gamble and

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Hamilton Rowan Gamble (1798-1864) was provisional governor of Missouri under the pro-Union government. Gamble came from a legal background, and was chief justice of the Missouri Supreme Court in 1852—he was the dissenter when the court overturned the "once free always free" doctrine in the Dred Scott case. (Image: *Special Collections, Fine Arts Library, Harvard College Library*)

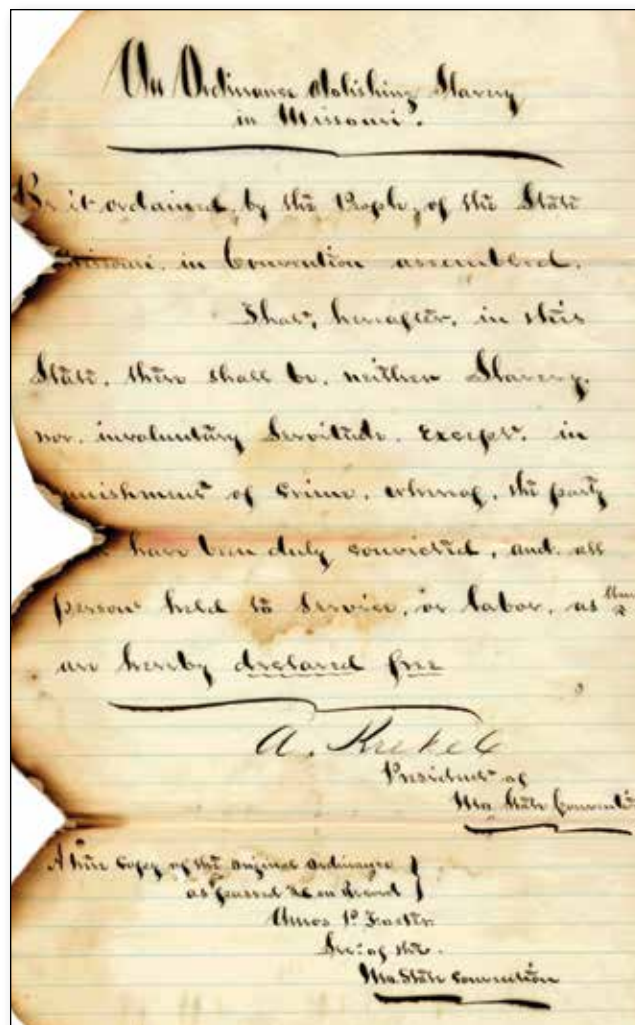


actively lobbied the president for his removal from office.<sup>11</sup> At one moment in December 1863 Bates wrote in his diary of a particularly vile speech given by Missouri legislator Sempronius H. Boyd against the governor at a meeting of the Union League (a political interest group devoted to radical causes and now active in 18 northern states), stating that Boyd's comments were laced with "vulgar ignorance, for which, if I had time, I would trounce them soundly."<sup>12</sup> And when, in February 1864, Bates learned of Gamble's unexpected death, he wasted no time in placing the blame for his brother-in-law's demise squarely on the shoulders of the radicals. For instance, while reviewing the report of the *Missouri Republican* on the expressions of grief made at the February 4 meeting of the Missouri Bar Association, Bates noted the absence of Drake's name from any part of the proceedings. "I am a little curious about the motive of his absence," wrote Bates. "Whether he [stayed] away, because he could not, *conscientiously* join in honoring to so *bad a man as Gamble*; or was he frowned away, by those who thought him unworthy to mingle, on a solemn occasion, with Gamble's friends!"<sup>13</sup>

Clearly, then, Bates had no respect for the radicals. But he nonetheless remained relatively silent—publicly—about their maneuvers regarding the convention, because of a decision on his part to wait and see whether his suspicions about their motives would prove true. He did not have to wait long. Once the convention set about the work for which it had been called, Bates became more vocal in the debate over the future of civil rights and minority representation in Missouri.

January, 7 1865, marked the convention's first full day, and its members wasted no time in addressing the issues for which they had assembled. In a mere four days, for instance, the delegates passed an ordinance immediately abolishing slavery in Missouri. Arnold Krekel and Charles Drake signed the ordinance in their respective capacities as president and vice president of the convention. Sixty-two other delegates also lent their names to the measure and, the following day, Governor Thomas Fletcher gave his endorsement by declaring the ordinance the law of the land.<sup>14</sup>

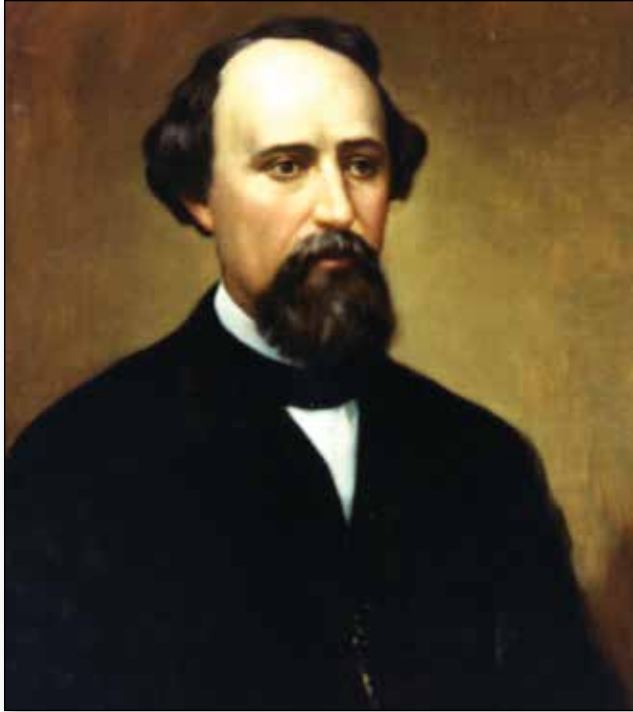
The emancipation ordinance prompted Bates's first entry in his diary for the year, and also provided his first major criticism of the convention. On January 12, he confessed that he found the emancipation ordinance wholly unnecessary. The convention of 1863, he remarked, had already adopted a sufficient plan for gradual emancipation over a period of seven years. Only wait another five years and slavery would cease to be a problem. Since the only difference between the two plans was the immediacy of the 1865 ordinance, Bates again surmised that emancipation was merely the means of calling the convention into being, and not its true goal. If, alternately, emancipation *was* the true goal of the convention, he observed, there would have been no need for its assembling in the first place. Furthermore, having passed the 1865 ordinance, the convention had no further business to attend to, and should thus adjourn. Instead, he surmised, the radicals would surely use the emancipation ordinance as a springboard for



Part of the work of the Constitutional Convention was banning slavery in the state in early 1865, almost a year before the Thirteenth Amendment in late 1865, ending slavery nationally. (Image: Missouri State Archives)

embarking on their true course to secure "the ascendancy and permanency" of their faction.<sup>15</sup>

Indeed, as Bates expected, the radicals soon announced that their next order of business was the nullification of the old constitution and the creation of a new document. Afterward, so the rumors went, they planned to introduce an ordinance removing all non-radicals from public office. Having been called, therefore, "ostensibly to enfranchise the slaves and punish rebels," Bates lamented, the radicals "assume to remodel the State and dispose of all its interests. They do not condescend to *amend* the constitution, but assume to make a new one."<sup>16</sup> The fact that perhaps rankled Bates more than any other was that he had been influential in forging the very document that the radicals now sought to overturn. Along with his criticism of their suppression of all political opposition, replacing the old constitution with a new document thus formed the



Thomas Fletcher (1827-1899) was the governor of Missouri in 1865 who issued the initial proclamation abolishing slavery. Fletcher was part of a number of key events during the Civil War. He was a delegate to the Republican National Convention in 1860, and supported Abraham Lincoln's nomination. In the Union army he was at the fall of Vicksburg July 4, 1863, and commanded units at both William Sherman's campaign against Atlanta and at Pilot Knob in Missouri where Gen. Sterling Price's advances were stopped in 1864. (Image: Missouri State Archives)

second pillar of Bates's battle against the radicals.

By January, several of Bates' friends, realizing that he had lived through some of the most interesting years in American history, began to urge him to make some contribution to history by writing a memoir of his personal experiences in the most pivotal events of the past 70-odd years. For some time, he had actually been considering such a project, but he ultimately dismissed it because he distrusted his ability to recount the past objectively. Instead, he believed himself far more suited "to state a principle, in accurate terms, and maintain it by logical argument, and to pass judgment upon a man or measure, and support it with such power as the facts of the case and the principles involved in it, may warrant."<sup>17</sup> Long ago he had decided upon the occupation of attorney; he now believed himself best suited to contribute to society by using his particular skills as a jurist to prosecute what he believed to be gross disservices to his fellow Missourians. Having thus made the decision to lend his voice publicly to the perceived radical violations to law and order, it was evident from the amount of space allotted in his diary to

the happenings in the convention that the new constitution would be the target of his prosecution. The only question remaining then was, what newspaper should provide the vehicle of that prosecution? Only a local newspaper bold enough to oppose the convention's extralegal measures without fear of repercussion would suffice. However, he observed, bold criticism from the press seemed to be lacking these days. Certainly, the newspaper editors would eventually realize the extent of the radicals' wrongdoings, but until then Bates feared that his essays would be shunned by a cowardly press. In the end, Bates concluded that he could not wait for the editors to find their courage for a series of exchanges published in the papers between Governor Thomas Fletcher and Major General John C. Pope, commander of Union forces in St. Louis, over whether or not to continue the use of martial law in the state forced Bates to act sooner than later.<sup>18</sup>

On February 20, President Lincoln wrote to Fletcher with some suggestions for hastening an end to hostilities in Missouri. Despite a few cases of bushwhacking on the western frontier, the intelligence that the president had reviewed suggested that there no longer remained a viable threat to Union forces in the state. As for those unfortunate cases in the west, Lincoln suggested that the cure might be "within easy reach of the people themselves." Even this late in the war, Lincoln continued to put faith in what he described in his first inaugural as the "better angels" of man's nature—that is, the ability of Americans to set aside their differences and uphold their "mystic chords of memory," their common "bonds of affection."<sup>19</sup> This faith had led Lincoln to suggest to Fletcher that the time had come to hand over management of military affairs in Missouri to the militia. If allowed to assemble freely, the president believed, honest Missourians might express their common love of country and community and resolve to defend it against what Lincoln perceived to be a small band of fanatics that had, thus far, succeeded in dividing the community and terrorizing the countryside, but whose powers were obviously waning.<sup>20</sup>

Fletcher completely disagreed. Responding to Lincoln on February 27, he suggested that, of all current theatres of war, the situation in Missouri was the worst. To prove his point, he gave the example of a village in western Missouri that was recently wracked by inhumane acts of butchery. For this unfortunate community, he wrote, the war in Missouri was truly a war of neighbor against neighbor. The survivors would most certainly reject the idea that they make "a covenant with the accessories of the slayers of their kindred." Furthermore, he observed, recent events had proven that promises of peace were easily broken. Some rebels, having been paroled, had broken their vows to no longer take up arms by instead joining General Sterling Price's raid through the southwest. Others had recently fled to the woods "to become banditti." What was more, it was likely that these men would again be taking up arms when they learned that the convention in St. Louis sought to disfranchise them. No, Fletcher told the president, "we want no peace with rebels but the peace which comes of unconditional submission to the authority



General John Pope (1822-1892) served in Missouri and the Mississippi River theatre early in the Civil War, gaining sufficient distinction to be promoted to the army of the Potomac under George B. McClellan. After his defeat at the Second Battle of Bull Run, he spent the rest of the war in Minnesota. He returned to Missouri in early 1865 to command the Military Division of the Missouri. (Image: Library of Congress)

of the law.” And that authority could only be found in the justice meted out against civilian and soldier alike by military tribunals.<sup>21</sup>

In the end, although he personally disagreed with them, Fletcher recognized the importance of a personal request from the President of the United States, and he decided to at least present Lincoln’s proposals to General Pope in order to obtain the commander’s opinion on whether or not to reinstate the power of the civilian courts. His letter to the general was later published, along with Pope’s lengthy reply, in the March 8 edition of the *Missouri Republican*. Surprisingly, Pope sided with the president. The recent elections of Lincoln and Fletcher, he believed, were sufficient evidence that the people of Missouri were “prepared to meet and settle any questions affecting the welfare and prosperity of the State.” It was therefore the job of state and federal forces to empower the citizens to now direct their own fate.<sup>22</sup>

Pope’s letter was enough to convince Fletcher. On

March 7, the same day that the *Republican* printed Pope’s response, the governor issued a proclamation reversing his earlier position on this issue. “There no longer exists within the state of Missouri,” Fletcher now admitted, “any organized force of the enemies of the Government of the United States.” Now acting upon Lincoln’s earlier suggestion, he invited all loyal citizens of the state to unite behind the civilian officials and “make common cause against whomever shall persist in making, aiding, or encouraging any description of lawlessness.” Finally, Fletcher added, military tribunals would no longer prosecute accused rebels within the state. Judges and justices of the peace would, instead, exercise that authority.<sup>23</sup>

Bates heartily approved Fletcher’s decision to reestablish civil law, but his elation was short lived. Radicals in the convention immediately responded to the governor’s proclamation with a ringing condemnation. This denunciation of the governor’s proclamation, Bates wrote in his diary on March 9, “not only proves the ignorance and folly of the members of that body, but . . . also, to what destructive and wicked measures they resort for the sole purpose of consolidating and continuing their heartless and brainless party!”<sup>24</sup> Still holding out hope that his assessment was premature, he bided his time, waiting to see what effect, if any, the radicals’ condemnation would have on state and federal forces. Again, events moved quickly.

While Bates believed that Fletcher’s proclamation ordered the complete removal of martial law in Missouri, others certainly disagreed. In the March 9 edition of the *Missouri Democrat*, the editor argued that martial law was “still in force and will remain in force as long as there exists the least necessity for its exercise.” Additionally, on March 17 the editor warned his readers to avoid interpreting Pope’s response to Fletcher as encouraging immediate withdrawal of federal troops. Instead, the editor claimed to have learned directly from Pope himself that the commander intended only “to transform the military into a police force.” Civil courts *would* try criminals, he clarified, but if convicted, the *military* pronounce sentence on those criminals.<sup>25</sup> As if to confirm the claims made by the *Democrat*, on March 20 Pope issued Special Orders No. 15, rescinding his earlier stance in his letter to Governor Fletcher and now declaring that the military, not the civil courts, would both apprehend *and* prosecute criminals. Far from reestablishing the sovereignty of the people, then, Pope’s order reversed Fletcher’s proclamation and established the superiority of military over civilian government.<sup>26</sup>

Issued by a commander who, mere weeks before, had professed his faith in the ability of the people to govern themselves, and following on the heels of the governor’s proclamation to that same effect, Bates judged Pope’s new order as wholly absurd. Moreover, he read sinister undertones in Pope’s about face. The commander’s recently shaken confidence in civil law, Bates concluded, was clearly the work of “the truculence of the Convention!”<sup>27</sup> Bates had stayed his pen these past several



months in order to coolly observe events. He had remained hopeful that Fletcher's proclamation was a step in the right direction, but he was severely disheartened by Pope's sudden abandonment of his earlier faith in Missourians' ability to control their own destiny. For Bates, it was thus clear that the influence of the radicals knew no bounds. If they could infiltrate the highest levels of the military, they might do the same elsewhere in state government, and thus lead the state down a dangerous path. The time had come to intervene. On March 25, he sent a letter to the editor of the *Democrat* requesting space to publish several essays on current events. Then, having notified his closest associates of his intentions, he put his pen to paper.

By April 3, Bates finished the first of six letters addressed to the people of Missouri. Printed in both the *Missouri Democrat* and the *Missouri Republican*, he initially sought to dispel any possible accusations of his own disloyalty in speaking out against the convention. "All that I am," he affirmed, "and all that I have is inseparably connected with the interests and character of the State." That said, he believed it his duty to educate the people of "the danger and utter ruin which now hangs [over them]." Blaming his age and health for not being more physically active in opposing these events, he nonetheless reminded his readers that he had only lately been very active in the Lincoln Administration, where all of his strength was employed toward preserving the Union.<sup>28</sup>

Although the nation was preserved, Bates stated that a new crisis had emerged—civil rights in Missouri were in jeopardy. Bates recalled how he had returned to St. Louis to find civil law "trodden down." To that end, despite the radicals' arguments to the contrary, he urged that martial law be immediately ended throughout the state. Additionally, he contended, the very idea that martial law successfully suppressed violence by bushwhackers was really a radical ploy to mislead the public and weaken civil authority. To further clarify this fact, he revisited the claims made by the *Democrat* that General Pope's letter and Governor Fletcher's proclamation did not immediately suspend martial law. On the contrary, Bates wrote. Pope had admitted in his original letter to Fletcher that the rebel threat equated to perhaps twenty people per county. Suggesting Pope's original letter displayed the general's true feelings, Bates concluded that Pope's later about face was the result of pressure from radical factions. Furthermore, he wrote, the *Democrat's* argument for continuing martial law should be read merely as a nervous and deceitful clique attempting to maintain its own authority.<sup>29</sup>

In his second letter, published ten days later, Bates turned his attention to the subject of martial law as it related to the convention. It was a subject on which he had fairly extensive experience. In the opening days of the war, President Lincoln had felt compelled by the national crisis to assume a broad range of powers previously granted by the constitution to other branches of the federal government. In no case was this truer than in the suspension of the writ of habeas corpus and the subsequent use of martial law by military commanders as a means of

quelling the rebellion. After the Maryland legislature flirted with the idea of secession (which would have surrounded Washington, D.C., with rebel territory), on April 27, 1861, Lincoln took drastic measures and suspended the writ of habeas corpus along a declared military line extending from Washington to Philadelphia. General Winfield Scott was then directed to arrest any person deemed dangerous to the Union war effort within that region. Later, on May 10, the president extended the suspension to the entire state of Florida and, eventually, suspended the writ nationwide. Naturally, this action did not go unnoticed by conservatives. Chief Justice Roger Taney, a holdover from the Jacksonian era, responded with a caustic criticism of Lincoln's supposed abuse of power, and he claimed that the Constitution strictly reserved to the legislative branch *alone* the power to suspend habeas corpus.<sup>30</sup>

As attorney general, it was Bates' responsibility to make the legal case for his chief's actions. Doing so, however, put him in a difficult situation. As a Whig, he had detested the expansion of executive authority. Now he was put to the task of sanctioning such actions. Asked to write an official response to Taney's opinion, he examined both Article I of the Constitution as well the Judiciary Act of 1789, which had first granted to Congress the power to suspend the writ. Since the constitution had created the Congress, Bates argued, the power to suspend the writ was embodied in the former, and not bestowed upon the latter. The act, which gave Congress its power, could be repealed at any time, while the power itself remained. Beyond that, if the branches of the federal government enjoyed separate but equal status under the constitution, then by the understanding that the legislature—a political body—was given the power to suspend the writ, it followed that the executive branch—by its status as the only other political branch of the government—might be understood as having the same power. It was a slippery argument, to be sure, but it meant that the authority to suspend the writ of habeas corpus could essentially be assumed by any branch of the government during a time of crisis.

As to the president's ability to invoke martial law, Bates focused on the president's dual responsibility as both civil magistrate and military chief. Their specific oaths of office separated the executive and legislative branches in ways that Taney could not possibly have unintentionally overlooked. Congressmen and senators swore an oath to "support the Constitution," but the president swore an oath to "preserve, protect and defend" it. The former oath was passive in nature while the second was assertive. Furthermore, observed Bates, the Insurrection Act of 1807 had granted the president the ability to fulfill his oath and suppress insurrection through the use of martial law. Thus, the president was given certain powers for the express purpose of defending the nation against all enemies. By directing his military commanders to invoke martial law, Bates concluded, Lincoln had acted within the limits of his constitutional authority as commander-in-chief.<sup>31</sup>


Drafting an opinion that interpreted executive power so broadly was no easy feat for the conservative Whig. His lifelong philosophy was naturally contradictory to

*Oath of Loyalty*

I B. F. Crowwhite do

Solemnly Swear that I am well acquainted with the terms of the Third Section of the second article of the Constitution of the State of Missouri adopted in the year eighteen Hundred and twenty five and have carefully considered the same that I have never directly or indirectly done any of the acts in said Section specified that I have always been truly and loyally on the side of the United States against all enemies thereof foreign and domestic that I will bear true faith and allegiance to the United States and will support the Constitution and laws thereof as the Supreme Law of the Land any Law or Ordinance of any State to the contrary notwithstanding in that I will to the best of my ability protect and defend the Union of the United States and not allow the same to be broken up and dissolved or the Government thereof destroyed or overthrown under any circumstances if in my power to prevent it that I will support the Constitution of the United States of Missouri and that I make this

Oth without any mental reservation or evasion whatever and hold it to be binding on me So Help me God  
B. F. Crowwhite



State of Missouri }  
County of Boone }

I certify that the foregoing Oth has been sworn to and subscribed before me this 25 day of August A. D. 1865  
In the presence of  
Notary Public

*Oth of Loyalty*  
B. F. Crowwhite

The Loyalty Oath, like this one, was central to the political conflict in the aftermath of the Civil War, as Radical Republicans sought to keep Confederate sympathizers from having influence in the new government. (Image: Missouri State Archives)

such broad interpretation. Still, the drastic state of affairs seemed to have compelled him to temporarily discard his reservations for the sake of national security. Now, four years later, Bates was not so willing to discard his personal opinions—especially when he saw the radicals in the Missouri state convention using martial law not for the purposes of protecting the people against an enemy, but rather as a means of shoring up their political power in the state. “There are some members of [the convention],” he asserted, “who ought to know and do know that martial law [as opposed to civil law] is simply no law at all.” Unable to find a description of martial law in any statute book he owned, Bates concluded that the term was merely “a nickname for arbitrary power, assumed against law.” Furthermore, the danger in this policy, as he saw it, lay in the opportunity it provided for a military commander to become a Cromwell or a Bonaparte, and thereby assert his authority over both the people and their elected representatives. To prevent such an event, Bates believed, it was crucial that the people understand that

“the military is subordinate to the civil power, and can act only as the minister and servant of the law.” Given the influence that the convention already exhibited over state and local authorities, it was true that, were the convention to continue to enforce martial law, it would be operating “without any fear of punishment [from a higher authority] for [its] misdeeds.” Nonetheless, if a dictator were somehow to assume power through the prolonged use of martial law, then the convention and the people might just become victims of the very monster they had created.<sup>32</sup>

On April 10, three days before the publication of Bates’ second letter but too late for him to amend its contents, the convention passed the new state constitution. The following day the local papers immediately published the text and announced that a vote on ratification was set for June 6. This was more than enough time for supporters of the document to educate the public on its provisions. “Let it have a free and fair discussion before the people,” exclaimed the *Democrat*, “and this so far as in us lies it shall have—and there is no doubt about its triumphant

adoption.” However, Charles Drake—curiously—did not share the *Democrat*’s optimism. In the wake of the growing conservative criticism, he warned in a letter published in the *Democrat*, radicals should prepare to vigorously defend the constitution as the best means of securing the supremacy of loyalty within the state. “Disloyalty in Missouri is in the last ditch,” Drake wrote, “and will die hard” only if ratification were successful. “Look forward, then, in the next fifty nine days, to the severest struggle we have yet had to make.”<sup>33</sup>

Aside from the role that martial law played in its conception, the conservatives’ other primary criticism of the constitution was over both an article of that document that disfranchised former rebels, and an ordinance empowering the governor to remove from office any person whom he personally deemed disloyal. They also argued that the constitution’s very creation was extralegal, since a new document was not one of the proposals voted on by the populace in the 1864 referendum that called the convention into session.

Article II, Section 3 of the document expressly forbade the right to vote to any persons who had participated in or aided rebellion against the United States. Examples of disloyalty were numerous—from sheltering or sympathizing with rebel troops, to holding office in the Confederate government, to communicating with or assisting bushwhackers in the west. However, the measure also provided numerous less-clear examples, including taking up arms against the state, which many persons loyal to the Union had done when they opposed the pro-secession administration of Claiborne Fox Jackson in 1861. Any person who had performed one of these acts was barred under the article from serving in government office, holding a position as a trustee, director or manager of any corporation, or from serving in positions such as educators, lawyers, members of school boards, or even as clergymen. In order to regulate the measure, Sections 4 and 5 of the article authorized the legislature to generate lists of qualified and unqualified voters. And finally, franchise rights would be barred from anyone who did not first take an oath of loyalty.<sup>34</sup>

Hand-in-hand with the disfranchisement clause, the convention passed a measure known as the “ousting ordinance.” Passed on March 17, it ordered the offices of all court judges (including the state Supreme Court), court clerks, circuit attorneys and their assistants, and sheriffs and county recorders vacated by May 1. The governor was then authorized to appoint seat holders who had professed their allegiance to the state and national governments through the loyalty oath. The new officers would then be elected starting in 1866.<sup>35</sup>

Like the Federalist campaign of 1787-1788, Drake intended to use the next few months to explain to Missourians the constitution’s most controversial sections. To that end, he published the first of several letters in its defense on the same day as the document’s public debut. In doing so, Drake accurately predicted the intensity of the conservative opposition. While Drake intended to be the leading voice among the constitution’s supporters,

Bates’ first two letters had made him a logical choice to lead the opposition. Bates had originally planned only to criticize the radicals’ use of martial law, believing that its removal would rob the radicals of their best ability to out-voice conservatives and result in the creation of a far more moderate constitution. However, sudden publication of the constitution in early April thrust Bates into a new role as leader of both the conservative Republicans and the loyal Democrats. The publication of his next series of essays, then, had the potential to provide a foundation for building an opposition platform.<sup>36</sup>

While conservatives did not argue that the disfranchisement clause was extralegal (the convention was, after all, called for the express purposes of both eradicating slavery and securing franchise rights for loyal citizens), they did express dissatisfaction with the *wording* of the article. Publishing an essay in the local newspapers on April 18, the conservative members of the convention—led by Dr. Moses Linton—publicly expressed their concern. The examples of disloyalty listed in the article, they explained, were so broad that “no conscientious man can take [the loyalty oath], however loyal he now is, if in the beginning of our troubles, he has even said a word or done an act countenancing secession, or even sympathizing with a secessionist in any degree.”<sup>37</sup>

Bates naturally supported Dr. Linton and his colleagues, and his third letter, published on April 29, briefly touched upon their concerns. Bates agreed that the examples of disloyalty were too ambiguous to properly differentiate between a loyal and a disloyal person. Furthermore, he considered the forced removal of government personnel whom the constitution deemed “disloyal” as further evidence of a radical scheme to place their colleagues in positions of power otherwise unobtainable by them through lawful means. The radical standard of loyalty, he wrote, was simple to understand: “no man can be loyal who is not a Radical.” However, true loyalty, he avowed, was defined as allegiance to the rule of *law*, “not a blind devotion to a clique or faction.”<sup>38</sup>

Expanding on his argument against the ousting ordinance, Bates used it to show that the convention, by the means of its creation, was a revolutionary assembly. In his fourth letter, published on May 11, he reminded his readers that the original 1864 referendum was a call for the constitution’s amendment, not its nullification. Since both emancipation and disfranchisement were accomplished through *ordinance*, instead of *amendment*, in Bates’s opinion, the convention was guilty of fostering a revolution. Furthermore, the ousting ordinance proved that the radicals had convinced General Pope to sustain martial law with the intent of using it to quell any opposition by the legally elected government officials. These acts, he concluded, proved that the radicals were employing “a new and extraordinary power, not belonging to any department of the state government nor to all of them combined.” The “radical revolution,” then, began when the original constitution was discarded, and it was completed by the forced removal of anyone who stood in the convention’s way.<sup>39</sup>

Drake did not sit idly by while Bates sullied the reputation of the convention. Instead, he directly responded to Bates' accusations with all the cunning of an experienced politician. In his response to Linton's charges against the disfranchisement clause, he highlighted Linton's Catholic faith in his explanation of the importance of the clause. Catholics, Drake argued, believed in the Sacrament of Reconciliation (in which a person expressed repentance for sins and followed through with physical acts of penance). Also, he noted, Catholics believed in the existence of Purgatory (a sort of limbo where souls remained in penance for a period of time before entering Heaven). It was curious, then, that Linton opposed the disfranchisement clause, since doing so contradicted both of those doctrines. How, Drake asked, could a person who believed in the connection between repentance and penance, when it applied to religion, not also see the wisdom in disfranchising rebels for a period of time after they had recanted through the loyalty oath? Were not the principles applied to the Sacrament and those applied to disloyalty the same? Loyal citizens, he concluded, subscribed to the principle "once a traitor, always a traitor." For them, the disfranchise clause effectively addressed this concern.<sup>40</sup>

Drake also addressed Bates' assertion that the convention was part of a scheme to consolidate radical power in the state. It was true, Drake conceded, that the convention had acted in error when it accomplished emancipation and disfranchisement through ordinance, rather than amendment. However, he absolved himself of any blame by explaining that the convention had passed these measures during a time when he was personally absent due to illness. The damage done and the ordinances now considered the law of the land, the only way to correct the mistake was to nullify the current operating constitution and replace it with this new document. This rationalization, Drake hoped, would effectively convince Missourians that the 1865 constitution, in actuality, was created through legal means and with the best of intentions. At worst, declaring his innocence in the convention's errors might acquit him of any wrongdoing.<sup>41</sup>

Despite his best efforts, Drake failed to garner much support against conservative critics. In fact, several of the radicals who had earlier supported the convention now turned against it. In a letter published in the *Democrat*, Governor Fletcher himself expressed concern that the rigidity of the constitution's terms would inhibit the ability of future generations to amend it. Considering this flaw, Fletcher wrote, he would personally vote against ratification in June. After reading this announcement, Bates observed gleefully, "'the rats are running from the burning house.' Governor Fletcher [has] waked up, from the drunken dream of radicalism, just in time to smell the smoke of the kindling fires, and save [himself], by timely flight, from the coming conflagration."<sup>42</sup>

In the final days before the vote, Bates managed to publish two more letters. For the most part, they recapped his argument against martial law and continued to press upon the convention's revolutionary conception. He also

took this occasion to express his hope that the people would choose wisely in the coming referendum. The state constitution, he avowed, was not the property of the legislators or the lawyers, but of the people. Having begun his crusade to champion civilian rule, he concluded by promising, "I will continue to make the best defense I can of the only valuable inheritance left to us by our fathers—liberty according to law."<sup>43</sup>

After publishing six letters against the convention, Bates earned the title of leader of the conservative opposition. Yet his efforts received mixed reviews. For instance, one writer to the *Democrat* called him a feeble old man—his apparent ravings against the radicals being attributed to "the influence and promptings of accumulating years which strengthen prejudices as they weaken the reason." Another equated him with the former rebels, declaring him the leader of all enemies of the truly loyal populace. Yet another defended Bates, describing him "as honorable and pure a man and patriot as lives in Missouri," and urging its readers to "swear and vote . . . though it is evident [the reader] would do wisely to vote no."<sup>44</sup>

For the most part, however, the citizenry of Missouri appeared to support the conservatives. And this fact was not lost on the radicals. St. Louis citizen Louis Fusz, for instance, noted in his diary a number of rumors that in some regions of the state where radicals held a large majority, conservative citizens were being denied the right to vote, regardless of whether or not they had previously taken the loyalty oath. As well, Fusz noted, just as he had done after receiving Pope's letter against martial law, Governor Fletcher had once again reversed his opinion against ratification and now embraced the power of the ousting ordinance. Fusz, for one, never doubted that radical pressure had influenced Fletcher's reversal. The election judges who barred conservatives from voting, after all, were placed in their positions by the ousting ordinance.<sup>45</sup>

Despite cases of voter fraud, early indications predicted that the conservatives would ultimately be victorious. Bates and Fusz both noted in their diaries that the vote in St. Louis County, for instance, was overwhelmingly against the constitution. "We have carried St. Louis and St. Charles," Bates declared, "and to all appearance, the nuisance will be abated." Drake, he noted, "is plucked bare, and cast down upon his own dunghill, " and "all the prominent members of the Convention are sunk into contempt and the whole party in this state, I think has received its death blow."<sup>46</sup>

Although victory seemed imminent, the actual results took weeks to tally. On July 1, Missouri secretary of state Francis Rodman certified the results as 43,670 votes in favor, 41,808 against. By a narrow 51 percent, the referendum passed. That same day, Governor Fletcher proclaimed the constitution in effect as of July 4.<sup>47</sup> For Bates, the result was bittersweet. On the one hand, his cause was ultimately lost. On the other hand, conservatives had managed to carry St. Louis. Furthermore, the *civilian* population had voted down the constitution by a narrow majority of 965 votes. Only by allowing *soldiers* still

in the field to cast absentee ballots and by empowering partisan judges to reject votes in opposition had the radicals managed to secure a victory. Ultimately, Bates marked his disappointment with silence. He chose not to expound upon it in his diary—a characteristic he often displayed whenever he failed to impact the implementation of a policy he felt passionate about (he had acted similarly during the debate and implantation of Lincoln’s Emancipation Proclamation in 1862-63).<sup>48</sup>

In the months following the vote, Bates slipped back into obscurity. The ratification of the constitution along with the radicals’ strong majority in the state legislature convinced him that his conservative Whig values were formally out of favor in both state and national politics. Nevertheless, small groups of the opposition continued to advocate the conservative cause. On July 19, for instance, St. Louis Archbishop Peter R. Kenrick ordered his priests to refuse to take the loyalty oath. If Roman Catholics opposed the constitution, Bates hoped, perhaps other “weaker sects” such as teachers and lawyers would follow the Church’s example. Bates’ own fighting spirit, however, had been severely taxed by his battle with the radicals. As had occurred during his tenure as attorney general, his efforts sapped much of his strength. On the same day that he noted Bishop Kenrick’s opposition, he also recorded that his health had become “feeble.” Less than a week later, his breathing was increasingly labored, prompting his family to send for a doctor. The pain in his chest was almost unbearable. Fearing the worst, Bates left parting words for his family. But, by slow degrees, his health rallied—although he was confined to bed for several days.<sup>49</sup>

On September 4, just over a month later, he celebrated his seventy-second birthday. On this occasion, he noted, “there remain now, of the 12 children brought up by my parents, only two of us—my sister Margaret M. Wharton . . . now 80 years, and myself.” If his recent political defeat had not done so already, his age and health became constant reminders that he was a member of a generation slowly disappearing from the earth. Furthermore, his daughter noted during his last illness that her father had found peace with God and was prepared to leave the world in the hands of a younger generation. The death of his sister on December 11, coinciding with a relapse of his breathing malady, must only have strengthened his belief in his own imminent departure from life.<sup>50</sup>

Political events only further reminded Bates of his frailty. No longer could he affect the course of events. On October 26 a conservative convention met in St. Louis to solidify opposition to the radical majority in the assembly, but in light of their defeats over the past year, Bates was less than enthusiastic about their ability to halt the radical advance. Although the civilian vote had sided with the opposition in the late referendum, his faith in their success through “harmony and unity of purpose” was badly shaken. Still, while Bates no longer led the opposition, he did make an attempt to aid them by writing an article in support of Senator Benjamin Gratz Brown’s call for universal suffrage of all Missourians. Without proper

guidance, though, it appeared that conservatives lacked strong enough leadership to make any headway.

Instead, on November 25 several radicals called for the universal disfranchisement of all disloyal citizens. The constitution had, until this time, merely disfranchised them for a *period of time* before re-administering their rights. This new measure, Bates believed, confirmed what he had long believed—that the very men who had given birth to the new constitution now saw fit to treat it “not as the Organic law of the State, but a contrivance to consolidate the strength and continue the supremacy of the present dominant faction.” These new measures, he lamented, were a final testament to the fact that “Ours is no longer a *Government of the People*—a democracy—but an aristocracy of the good people, the *loyal* people, the *Radicals!*”<sup>51</sup>

Throughout the first half of 1865, believing that Missourians might not otherwise be aware of the disregard for their individual liberties, Bates pursued a pedagogical campaign to inform the citizenry of the extralegal measures of the convention. While it had begun as a criticism against the use of martial law, it eventually blossomed into a full discourse against the suppression of civil rights and minority representation. In taking up this fight, he did only what he had done throughout his entire public career, playing the role of the people’s advocate. As attorney general, desperate times had forced him to endorse desperate measures, such as military arrest of civilians in order to preserve the Union. With the war won, however, Bates believed that civil law must be reinstated. When this did not occur, he resolved that another battle must be fought to reinstate republican government. Deciding to fight this battle, he had done all in his power to rally conservatives to his cause, and in this, he succeeded. But the citizen vote had been narrowly defeated. The radicals were victorious in sustaining their measures, and they continued to strengthen their power—both in Missouri as well as nationwide—over the course of the next few years.

Drake himself personally rode the wave of radical popularity. In 1867, having worked tirelessly to support their faction which was now squarely in control of the state assembly, the radicals elected him to the United States Senate. However, Drake’s popularity lasted for only a short while. As with the rest of the nation, as business prospects between former rebels and Union men in Missouri began to overshadow other issues directly associated with the late war (such as enfranchisement of blacks), the radical cause declined. The first check on Drake’s influence within the state came in 1869 when Carl Schurz challenged Benjamin F. Loan of St. Joseph for election to the U.S. Senate. Drake correctly saw this campaign as an attempt to divide the loyalties of the Republican Party, and he subsequently traveled to Jefferson City to directly confront Schurz in a Republican caucus. Schurz, however, masterfully handled Drake—forcing the radical Senator to lose his temper and launch an ethnic tirade against Germans (a sizable voting bloc in both the state and in the assembly). Leaving Jefferson City shortly after this confrontation, Drake was

not present to witness Schurz's victory. Subsequently, the next November, the radical faction suffered heavily at the polls. And although President Ulysses S. Grant nominated Drake as chief justice of the court of claims—a position that Drake held until his retirement in 1885—his fall from political prominence had been nothing short of meteoric.<sup>52</sup>

Unfortunately, Bates did not survive to see the eventual humiliation of his radical adversary. In the months following the ratification of the constitution of 1865, Bates grew more estranged from those in power, including some of his own friends. He recorded on December 24, 1865, that his health had once again deteriorated and, in light of the fact that visits from his friends had tapered off over the preceding months, he feared himself “forgotten like a dead man.” By the last days of 1865, then, he could look back upon the failures and disappointments of the past year and conclude, “Old men like me, sick, it may be, and uninteresting, ought not be surprised that the young do not affect their society.”<sup>53</sup> Politics, it seemed, had moved beyond the need for men like Edward Bates.

Instead of going extinct, however, the conservative values by which Bates had so staunchly abided all his life actually saw resurgence during the early 1870s in response to the federal policies of Reconstruction. Beginning in 1866 the movement—ultimately known as the Liberal Republican movement—rooted itself prominently in the agenda of Senator Benjamin Gratz Brown. The factional strife within Missouri led conservative Republicans, so recently cast from power by the radicals, to call for a new policy of universal amnesty and enfranchisement for all citizens (whether or not they had been former rebels) whose rights were subjugated by workings of the late constitutional convention. This movement was not fully organized, however, until 1871 when Missouri became the springboard for launching a national movement to take back the party. In the previous year the Liberals officially broke from the state party and submitted their own ticket in the state elections; the result was the successful election of Brown as governor of Missouri. By 1872, a national conservative movement was under way in both North and South that ultimately nominated Brown as vice president on a ticket with former *New York Tribune* editor Horace Greeley.<sup>54</sup>

Likewise, this conservative resurgence was ultimately successful in 1875 in overhauling the Missouri constitution. Finally eliminated from that document were the draconian clauses that Bates had fought against so vociferously. Instead, the document specifically defended the principle of states' rights (but not at the expense of the Union), the securing of natural rights for all citizens, and the calling for free and open elections. Particularly important, the constitution defined treason against the state as waging war against the state, but it noted that a person could only be convicted of such a crime upon the testimony of two or more witnesses and in a court of law. Furthermore, all restrictions placed upon office holders and private occupations were omitted along with the disenfranchisement clauses of the earlier document. No longer would a political faction exercise the power to

declare traitors and patriots. No longer would that faction likewise control both public and private offices.<sup>55</sup>

Had Bates lived long enough, it is likely that he would have endorsed the Liberal Republicans. Furthermore, if his health had permitted, he might even have partaken in the public support of liberal candidates. However, by December 1868, on the eve of this new wave of conservatism, his was once again wracked by old afflictions in both his lungs and throat, and his health steadily worsened through the New Year. By March 1869, doctors informed his family that this would likely be Bates's final illness. Surrounded by his friends and relatives, Edward Bates died on March 25, 1869. He was 76 years old.<sup>56</sup>

In the days following his death, individuals and organizations that had previously been estranged from Bates' acquaintance by his comments against ratification of the Missouri constitution openly mourned the loss by the city, state, and nation of this public servant. “Such men as Edward Bates have seldom lived,” eulogized James O. Broadhead at a meeting of the St. Louis Bar Association just days after Bates' death, “and therefore it is that we are seldom called to mourn the death of such.” Throughout Bates' long life, Broadhead noted, the late statesman had always remained a true, upright, charitable, and kind-hearted man. “He had a wonderful equipoise of character, not so much the result of education as of native instinct.” Also, though Broadhead recalled that Bates was not above personal difficulties and controversies, he was separated from lesser men by his ability to meet adversity without compromising his own personal integrity. “With all his gentle nature,” Broadhead concluded, “he was without exception, the bravest man I ever knew.”<sup>57</sup>

Samuel T. Glover likewise mourned Bates' passing. Bates, Glover eulogized, was most remembered as having never compromised his own integrity. “Few men,” Glover wrote, “have passed through the turmoil of active public and private life for fifty years and left a name that may so well defy even the tongues of malice.” Though agreeing with Broadhead that Bates' moral character would be long remembered in the hearts of his contemporaries, Glover believed it was Bates's strong defense of the U.S. Constitution that would be of lasting significance. “Would to God,” Glover prayed, “that among our leading and most influential citizens that have taken ‘oaths’ to support the Constitution there were found a greater number who employed the care that he did to comprehend its meaning.”<sup>58</sup>

Believing that Bates represented a moral fiber and character that would be forever lacking in subsequent generations, Glover recalled the words of a friend who walked with him in the procession that accompanied Bates to his final resting place in Bellefontaine Cemetery. “A friend observed,” Glover concluded, “that Mr. Bates belonged to a generation that had passed away. . . . I have pondered upon these words. They conveyed to my mind more than their literal import.” It should be the business of all good citizens, Glover therefore proposed, to venerate Bates' name and merits for all time.

Glover's proposal was eventually adopted. Bates' memory has been preserved in the city of St. Louis by the existence of a statue to the elder statesman, unveiled during the opening of Forest Park in 1876. The statue was originally located at the western entrance to the park, and though the entrance has since been demolished, Bates' likeness remains. Today, the statue stands atop a red granite pedestal displaying medallions depicting St. Louis citizens James Eads, Hamilton Gamble, Charles Gibson, and Henry Geyer. The statue of Bates stands facing east, as if to symbolize that he is a favorite son of the west who never forgot his eastern origins. Such could also be said of his political philosophy. Though western politics had

drastically changed during his lifetime, he never forsook those principles that had been engrained in him from his youth. When the opportunity came for him to exert his influence on the Lincoln Administration, radical eastern pressures also failed to change his principles. And when he returned to St. Louis, much the same man that had left four years previous, he fought vehemently to make those earlier principles relevant once more. Although he did not live to see the resurgence of that conservatism, the statue in Forrest Park serves as both a lasting tribute and a testament to this lifelong western conservative.<sup>59</sup>

## E N D N O T E S

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- <sup>1</sup> Howard K. Beale, ed., *The Diary of Edward Bates, 1859-1866* (New York: Da Capo Press, 1971), 412.
- <sup>2</sup> *Ibid.*, 428-29, 430-32.
- <sup>3</sup> David D. March, "Charles Daniel Drake," in *Dictionary of Missouri Biography*, edited by Lawrence O. Christensen, William E. Foley, Gary R. Kremer, and Kenneth H. Winn (Columbia: Missouri University Press, 1999), 253.
- <sup>4</sup> *Ibid.*, 254.
- <sup>5</sup> William E. Parrish, *Missouri under Radical Rule, 1865-1867* (Columbia: University of Missouri Press, 1965), 2-13.
- <sup>6</sup> *Ibid.*, 8-14.
- <sup>7</sup> For an in-depth look at Bates's early political career, as well as his work at the state convention, see Floyd C. Shoemaker, "David Barton, John Rice Jones and Edward Bates: Three Missouri State and Statehood Founders," *Missouri Historical Review* 65, No. 4, 527-43.
- <sup>8</sup> Marvin R. Cain, *Lincoln's Attorney General: Edward Bates of Missouri* (Columbia: University of Missouri Press, 1965), 61-62.
- <sup>9</sup> For an excellent treatment of Bates and his fellow cabinet ministers in the Lincoln administration, see Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon & Schuster, 2005).
- <sup>10</sup> Beale, ed., *Diary of Edward Bates*, 430-32.
- <sup>11</sup> Numerous letters from Charles Drake, as well as other radical Missourians, to Abraham Lincoln can be found in the Abraham Lincoln Papers, Library of Congress, Washington, D.C. (hereafter "LOC").
- <sup>12</sup> Beale, ed., *Diary of Edward Bates*, 321.
- <sup>13</sup> *Ibid.*, 329.
- <sup>14</sup> "An Ordinance Abolishing Slavery in Missouri," passed in Convention, January 11, 1865, Missouri History Museum, St. Louis (hereafter "MHM").
- <sup>15</sup> Beale, ed., *Diary of Edward Bates*, 439-41.
- <sup>16</sup> *Ibid.*, 441.
- <sup>17</sup> *Ibid.*, 450.
- <sup>18</sup> *Ibid.*, 452-53.
- <sup>19</sup> These phrases can be found in the last paragraph of the final version of Lincoln's First Inaugural Address, March 4, 1861, Abraham Lincoln Papers, LOC.
- <sup>20</sup> Abraham Lincoln to Thomas C. Fletcher, February 20, 1865, Abraham Lincoln Papers, LOC.
- <sup>21</sup> Thomas C. Fletcher to Abraham Lincoln, February 27, 1865, Abraham Lincoln Papers, LOC.
- <sup>22</sup> Major General John C. Pope to Thomas C. Fletcher, as printed in the *Missouri Republican*, St. Louis, March 8, 1865 (hereafter "*Republican*").
- <sup>23</sup> "Proclamation by the Governor of Missouri," March 7, 1865, as printed in the *St. Louis Democrat*, March 8, 1865 (hereafter "*Democrat*").
- <sup>24</sup> Beale, ed., *Diary of Edward Bates*, 457-58.
- <sup>25</sup> *Democrat*, March 9, 1865; March 17, 1865.
- <sup>26</sup> Major General John C. Pope, *Special Orders No. 15*, as printed in the *Democrat*, March 20, 1865.
- <sup>27</sup> Beale, ed., *Diary of Edward Bates*, 463, 467.
- <sup>28</sup> *Republican*, April 7, 1865.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> Taney's opinion can be found in the *New York Times*, June 4, 1861; Article I, Section 9 of the Constitution of the United States of America read, "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it," but—curiously—did not specifically

- reference which branch was given this authority. Still, this clause's location, among other grants and limits of power, in Article I, which is clearly concerned with the makeup and powers of Congress, served as justification for Taney's judgment that the legislature was the authorized branch of the government. Constitution of the United States of America, Article I, Section 9, National Archives, Washington, D.C.
- <sup>31</sup> Edward Bates to Abraham Lincoln, July 5, 1861, Abraham Papers, LOC; Cain, *Lincoln's Attorney General*, 13, 143.
- <sup>32</sup> *Republican*, April 13, 1865.
- <sup>33</sup> *Democrat*, April 10, 1865.
- <sup>34</sup> *Missouri State Constitution of 1865*, Article II, Sections 3-6, adopted by Convention, April 10, 1865, ratified by the people of Missouri, June 6, 1865, Missouri History Museum, St. Louis.
- <sup>35</sup> "An Ordinance Providing for the Vacating of Certain Civil Offices in the State, Filling the Same Anew, and Protecting the Citizens from Injury and Harassment," Passed in Convention, March 17, 1865, MHM.
- <sup>36</sup> Cain, *Lincoln's Attorney General*, 319-24.
- <sup>37</sup> *Democrat*, April 18, 1865.
- <sup>38</sup> *Republican*, April 29, 1865.
- <sup>39</sup> *Democrat*, May 11, 1865.
- <sup>40</sup> *Ibid.*, April 21, 1865.
- <sup>41</sup> *Ibid.*, April 18, 1865.
- <sup>42</sup> *Ibid.*, April 21, 1865; Beale, ed., *Diary of Edward Bates*, 475.
- <sup>43</sup> *Republican*, May 26, 1865; *Democrat*, June 3, 1865.
- <sup>44</sup> *Democrat*, June 2-6, 1865.
- <sup>45</sup> Louis Fusz, *Diary*, Vol. 3, 92, MHM.
- <sup>46</sup> Beale, ed., *Diary of Edward Bates*, 486.

- <sup>47</sup> "Proclamation of Governor Thomas Fletcher upon the results of Ratification," *Republican*, July 1, 1865; Parrish, *Missouri under Radical Rule*, 46-48.
- <sup>48</sup> *Ibid.*, 48; Beale, ed., *Diary of Edward Bates*, 490-91.
- <sup>49</sup> Beale, ed., *Diary of Edward Bates*, 494-95. Editor Howard K. Beale notes that this entry was actually recorded in the handwriting of one of Bates' daughters, her father being too ill to write. There is but one other entry in Bates' diary in another person's handwriting. It is an entry by Bates' son during a period of time in the service of the Lincoln Administration when the strains of office seemed to have become too much for the attorney general, resulting in what biographer Marvin Cain and I believe to have been a small stroke.
- <sup>50</sup> *Ibid.*, 504, 521.
- <sup>51</sup> *Ibid.*, 512, 519.
- <sup>52</sup> March, "Charles Daniel Drake," in Christensen et al., eds., *Dictionary of Missouri Biography*, 256.
- <sup>53</sup> Beale, ed., *Diary of Edward Bates*, 527-29.
- <sup>54</sup> Earle Dudley Ross, *The Liberal Republican Movement* (Seattle: University of Washington Press, 1910), 48, 57, 62.
- <sup>55</sup> *Constitution of the State of Missouri of 1875*, Jefferson City: The Hugh Stephens Printing Company, 1909.
- <sup>56</sup> Cain, *Lincoln's Attorney General*, 332-33.
- <sup>57</sup> "The Late Edward Bates," Second Meeting of the Members of the Bar, Resolutions of Respect, March 1869, Bates Family Papers, MHM.
- <sup>58</sup> *Ibid.*
- <sup>59</sup> For a discussion of the Bates statue, along with other memorials to St. Louis' Civil War personalities, see Louis S. Gerteis, *Civil War St. Louis* (Lawrence: University Press of Kansas, 2001), 336-37.