

A Proper Custodian of Freedom: How Grant and Johnson Used Presidential Power in Pursuit of Civil Rights

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Abstract

This paper is a cross-historical comparison of the Grant and Lyndon Johnson administrations in how they each used presidential power to uphold de jure civil rights. With a difference of around a hundred years, both Presidents acted on Congressional will differently, with a myriad of outcomes. These events are framed using Charles Sumner's "custodian of freedom" doctrine, which he devised in the Reconstruction landscape. This is coupled with the historic context that each administration operated in, to allow for a better understanding of the constitutional powers available to each administration. Using this framing and context, major events in the Grant and Lyndon Johnson administrations are analyzed to draw conclusions about which presidents used their delegated presidential powers to enforce the laws Congress had passed.

Introduction

Lyndon Johnson said in a speech in 1965, “Our mission is at once the oldest and the most basic of this country: to right wrong, to do justice, to serve man” about the Selma March in 1965.¹ The message to do justice and embrace the federal responsibility to serve the people of the United States is not recent. Since the waning days of the Civil War, the US Federal Government and the office of the President created a mandate to the people of the US to protect their civil rights. This mandate to “right wrong...do justice...[and] and serve man” is echoed historically by Senator Charles Sumner, with Historian Eric Foner noting, “...the state that emerged out of the Civil War was seen, in the words of Charles Sumner, as ‘the custodian of freedom’”.² Acting as the “custodian of freedom,” the federal government could serve its people and do justice for the preservation of their civil rights. Although a blanket term, for the sake of this paper, the executive office and its impact in implementing this mandate will be analyzed. Two of the best case study presidents are President Ulysses Grant and President Lyndon Johnson. Despite serving nearly a century apart, these two presidents handled similar circumstances in markedly similar ways, while impacting executive power distinctively. The main focus of this paper is to analyze the executive actions of Grant and Johnson to understand how they wielded executive power in upholding the custodian mandate.

The Handling of Congress

Grant’s Fruitful Partnership

Throughout the history of the United States, the power of Congress to impact and sway the executive branch has been in continuous flux. Beginning in 1868, Congress’s power, with the “Radical Republicans”, started to grow since the years of Lincoln. Milkis and Nelson exemplify this, noting Congress had passed 1,012 laws and resolutions from 1871 to 1873.³ With this in mind, they also note that Grant acted as an agent of Congress and at times had bent to the will of the empowered Senate, due to old Whig ideas of presidential power. Although I disagree with their analysis, it is still valuable in viewing how the two bodies interacted. Due to the mismanagement of Andrew Johnson, Grant’s administration, early on, was faced with a volatile atmosphere. This led Congress and the Senate to take over as the main driver behind Reconstruction policy. With the election of Grant, Congress believed it had a more favorable executive to work with.

Milkis and Nelson note that because of this executive power, Grant’s cooperation with Congress had allowed for the expansion of the office's power. Additionally, he also pushed for the passage of the 15th Amendment and other civil rights-related legislation, such as the Military Reconstruction Acts (1867-1868), Enforcement Acts (1870-1872), and the Civil Rights Act of 1875. This close cooperation differs from Lyndon Johnson’s bully-like approach with his Congress. This allowed for the two to work in tandem and build off of one another, and Grant was able to “... build upon the previously established framework

¹ Lyndon Johnson, "Special Message to the Congress: The American Promise | The American Presidency Project.", The American Presidency Project, Accessed December 9, 2024. <https://www.presidency.ucsb.edu/documents/special-message-the-congress-the-american-promise>.

² Eric Foner, "The Civil War and a New Birth of American Freedom", In *Rally on the High Ground: The National Park Service Symposium on the Civil War*, edited by Robert K. Sutton, (Eastern National, 2001), Accessed December 30, 2022, https://www.nps.gov/parkhistory/online_books/rthg/index.htm.

³ Sydney Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776-2021*, (9th ed. CQ Press, 2021).

by championing the 15th Amendment”, and other legislation to promote the custodian mandate.⁴ Legislation such as the aforementioned Military Reconstruction Acts (1867-1868), Enforcement Acts (1870-1872), and the Civil Rights Act of 1875, were influential in their support for this mandate, but also expanded executive action in the aggregate. For example, the Enforcement Acts allowed Grant to suspend habeas corpus and deploy Federal Troops against the Klan. Grant, also in tandem with the Enforcement Acts, pushed for the creation of the Department of Justice to prosecute the Klan and White League Members.

This is best summarized by Historian Brooks Simpson, who noted that these acts granted Grant the responsibility of overseeing the establishment of government in the South.⁵ This responsibility was only possible through the cooperation of Grant with policy drivers in Congress, which allowed for the expansion of executive power, which is a far cry from what Milkis and Nelson call an abdication of executive power.

A good case study of this is the Civil Rights Act of 1875, which Grant helped push for. By this point in Grant's term, he had been met with scandal, such as The Whisky Ring, and pushback (in the form of violence) from the South. However, this had also been met with calls from the liberal and abolitionist allies to pass legislation in accordance with the 15th Amendment. Grant, in an inadvertent partnership with Senator Sumner, had “...recommend[ed] in his annual message to Congress of a law ‘to better secure the civil rights’.”⁶ Historian James McPherson argued it created a more favorable political climate for Sumner's bill. By doing this Grant had both followed the Senate's policy lead while still providing some sway in how policy was created. This role, combined with his execution of Senate-led legislation, created the perfect partnership between the institutions.

Grant's role, of an enforcing executive with some sway, mirrors the way one runs a council of war. Given Grant's lack of civilian administrative experience, he acted as a general by organizing the Executive Office around the motives of Congress, and was granted more power. Overall, Grant's cooperation and fruitful partnership with Congress grew both civil rights protections and executive power in its enforcement.

Johnson and the Executive led Legislature

Nearly a hundred years after Grant, in 1964, Lyndon Johnson was faced with a similar crisis and, instead of cooperation, decided to handle Congress differently. Johnson, now in popular history, is revered for his Civil Rights success and The Great Society programs he advocated for, while taking fair criticism for Vietnam. Unlike Grant, Johnson was faced with a fairly divided Congress, where Civil Rights legislation had been bogged down since former President Kennedy's death. Additionally, Johnson was not a military outsider, like Grant was, and had significant Congressional connections. Milkis and Nelson note that “...the new president's greatest strength as a majority leader of the Senate was personal persuasion...”⁷ This personal connection was due to his long stint in the Senate as Democratic Whip and leader of the party in the chamber (both majority and minority). Due to his time in the Senate, he had grown close to

⁴ "A Short Overview of the Reconstruction Era and Ulysses S. Grant's Presidency", National Park Service, Accessed February 8, 2023, <https://www.nps.gov/articles/000/a-short-overview-of-the-reconstruction-era-and-ulysses-s-grant-s-presidency.htm#:>

⁵ Brook Simpson, “Ulysses S. Grant and the Failure of Reconstruction”, (Illinois Historical Journal, no 81. Winter 1998), 277, Accessed December 9, 2024, <https://www.jstor.org/stable/40192091> .

⁶ James McPherson, “Abolitionists and the Civil Rights Act of 1875”, (The Journal of American History 52, no. 3, 504, Accessed December 9, 2024, <https://doi.org/10.2307/1890844> .

⁷ Milkis and Nelson, 362.

many of his colleagues and thus held sway. This power allowed him to essentially strong-arm Congress into passing bills such as the Civil Rights Act of 1964.

Focusing on this particular bill, one can see the influence that Johnson wielded over Congress. After the death of Kennedy in 1963, the bill was mired in the Senate and faced little chance of passing. Johnson had at first worked with the liberal members of Congress to move the bill forward, but was blocked by the Senate leader of the Republicans, Everett Dirksen, and Judge Smith in the Rules Committee. Johnson, in a move that Grant would never have attempted, had pushed the publisher of the Washington Post to lobby members of Congress for a discharge petition to get around the Rules Committee roadblock.⁸ This lobbying took the form of negative front-page reports with images and critical editorials.⁹ Johnson's pressure tactics are a sharp contrast to the friendly partnership between Grant and Congress. Part of this is due to the political environment, but also the political savvy of each President in their situations. His lobbying efforts allowed for the passage of the 1964 Civil Rights Act and opened the door for further gains.

Although only one episode of Johnson's famous strong-arm tactics, he did this with many other bills in his Great Society Program and bent Congress to his platform. The White House largely designed Johnson's platform to "avoid[...] bureaucratic timidity and conservatism...", with task force members being informed not to worry if their recommendations could pass Congress.¹⁰ This confidence, combined with Johnson's "lobbying" efforts of Congressional members, paints a picture of how Johnson viewed the role of Congress in his term. Johnson's shaping of Congress, much like Grant's Partnership, provided a continuation of upholding the custodian mantle, while Johnson only flexed the executive power but did not see *de jure* expansion like the Enforcement Acts during his tenure.

Both of these presidents treated Congress in distinct ways due to their backgrounds and political environments. Grant was not as much of an agent of Congress as he was a cooperative partner. However, Johnson acted more unilaterally and told Congress the plan, rather than waiting for it. Despite most of Grant's accomplishments being gutted by the court system (in cases such as *Plessy v. Ferguson* and *US v. Cruikshank*), he still had a significant impact in pushing the United States to be a custodian of freedom and expanding the power of his office. Johnson saw more success legislatively and also worked to uphold the rights of the people, but did not see the same *de jure* power expansion as Grant. Despite Johnson not sharing the *de jure* power expansion that Grant saw, the effectiveness of Johnson's legislative triumphs demonstrates how energy and decisiveness were better in upholding the custodian mantle. In the end, both men approached Congress in dramatically different ways, but still achieved similar results in upholding Charles Sumner's custodian idea.

Executive Enforcement and Power

Grant's Situational Heavy Hand

Part of Grant's benefit from the fruitful partnership was the expansion and solidification of the Executive branch's power to protect the rights of newly freed blacks. This principally took the form of the Enforcement Acts and the Klan Acts. These acts were largely passed due to violence and suppression of the black vote in Southern states by groups like the Klan and White League. A primary example of this

⁸Ted Gittinger, and Allen Fisher, "LBJ Champions the Civil Rights Act of 1964", (National Archives, August 15, 2016), Accessed December 9, 2024, <https://www.archives.gov/publications/prologue/2004/summer/civil-rights-act>.

⁹ Ibid.

¹⁰ Milkis and Nelson, 365.

violence, (although after the passage of the aforementioned legislation) was the Colfax Massacre of 1873, where black people were attacked and held in a church, and hundreds were killed. The New York Times had described the event as “dangerous and wicked” and feared retribution.¹¹ With dozens of other events cropping up across the postbellum South, Grant and Congress decided to take action in two chief forms.

The first form of action was the use of the Federal military to suppress the Klan and other race-related terrorism. This Bill allowed the President, “To take action against this newly defined federal crime, the President could suspend habeas corpus, deploy the U.S. military, or use ‘other means, as he may deem necessary’”.¹²

The suspension of habeas corpus and the deployment of Federal troops unilaterally, without Congressional permission prior, had not been seen before, not even by Lincoln. This kind of expansion could only occur for two reasons. One is that the politics of the day warranted it. Secondly, Congress trusted President Grant to enforce its will, even in dire circumstances. These powers in execution had a great effect, however, Grant personally limited it through his hesitant enforcement.

By the third year of Grant’s first term, he had fully embraced the custodian ideology and began to move against the Klan and other groups. Eric Foner notes that “The legal offensive of 1871, culminating in the use of troops to root out the South Carolina Klan, represented a dramatic shift...” from the inactivity of the previous two years.¹³ This rollout was in two thrusts: the prosecution of Klansmen and the deployment of troops. In 1871, the United States Attorney General had obtained 700 indictments in Mississippi. In South Carolina federal troops were deployed, dispersing 2,000 Klansmen and arresting hundreds.¹⁴ By the end of 1872, this had broken the back of the Klan, but not the wider movement.

This wider movement exploded even after the prosecution of the Klan and led to violence at places such as Colfax in 1873. Grant needed to learn the hard way in 1870 and early 1871 and did not use the power he was granted. Being a Civil War general, he had valued a certain level of rebuilding relations with the South and had tried to encourage the Southerners to manage themselves. Grant had, according to Simpson, wanted to continue the move toward reunion, and even after the Colfax massacre occurred, “...he made explicit his willingness to conciliate white Southerners, and he reminded the nation of his reluctance to order federal intervention”.¹⁵ Grant did not want to use the power given to him by Congress, due to personal convictions, on what he believed was right for the nation. Whether he was right or not, this hindered the ability of his office to continue acting as the custodian of freedom for those people. This issue continued into his second term. Sociologist W.E.B Du Bois noted that by 1876 Congress was begging Grant to enforce the Enforcement Acts, but “Grant kept appealing to the southern people to stop this situation of their own initiative and make the exercise of his power unnecessary”.¹⁶

Overall, Grant had been given the resources he needed to move against the Klan but did so in a haphazard manner making it ineffective. Even though he had the benefit of a Congressional partnership to give him these powers, he was reluctant to use them. This hindered both the execution of federal power and the goal of upholding Sumner’s custodian principle. Grant’s approach to Congress and their trust in him had created an opportunity to expand Presidential power to points not yet seen; Grant, however, did

¹¹ New York Times, "A 'War of Races'", (*New York Times* (NY), June 22, 1874), 4, Accessed February 8, 2023, <https://timesmachine.nytimes.com/timesmachine/1874/06/22/79073703.html?pageNumber=4>.

¹² "The Ku Klux Klan Act of 1871", (History, Art & Archives, Last modified April 20, 1871), Accessed December 5, 2022, https://history.house.gov/Historical-Highlights/1851-1900/hh_1871_04_20_KKK_Act/.

¹³ Eric Foner, *Reconstruction America's Unfinished Revolution, 1863-1877*, (Harper Perennial Modern Classics, 2014), 458.

¹⁴ Ibid, 457.

¹⁵ Simpson, 280.

¹⁶ W.E.B DuBois, *Black Reconstruction in America 1860-1880*, (New York: The Free Press, 1992), 685.

not have the wherewithal to do it. This led to half-baked measures, such as late deployment of Federal Troops in response to massacres and insisting that southerners control themselves. The half-baked measures eventually led to a recession of executive powers due to the courts, a few years after his tenure ended.

Johnson's Executive Push Back

Johnson, known for his bullying of Congress, was not much different in his treatment of the Klan and other racial incidents across the South. Beginning with Selma in 1964, Johnson began to face similar violence as Grant had endured in his tenure, however, he lacked the same legislative authority granted by the Enforcement Acts. Despite this, Johnson took an opposite approach to Grant, who used "reunion" as an excuse to let the incidents go unpunished. Johnson had inherited a fractured America that was left with the ghosts of Reconstruction and the loss of a renowned President. Johnson proved to be far more adept at enforcing the custodian mandate than Grant.

Beginning with the Selma March in 1964, a great amount of violence had been committed against protesters on the (now known) John Lewis Bridge by local police. Governor Wallace of Alabama refused to bring up the National Guard to protect them, so Johnson signed an order nationalizing them and promised he "would seek legislation to bring its activities 'under effective control of the law'".¹⁷ Johnson made the effort to protect and enforce the laws that had been passed by Congress. These, although controversial, saw support from the majority of Congress and were followed up by other measures.

In 1964, there was a continued escalation of racial tensions in Mississippi. Similar to during Grant's term, there was mass violence and murders of pro-civil rights officials and black civilians. With the disappearances of major organizers in the state, later known as the Mississippi Burning Case, the long, violent summer in Mississippi began. Johnson had invoked extra air assets and military personnel to solve this case getting to the point of opening a new field office in the State.¹⁸ These actions, in addition to the legislative civil rights push, had continued to alienate those in the South, like George Wallace, and stoked racial tensions across the nation. Events like these are what Grant had tried to avoid through "reunion" but ultimately failed due to uneven policy enforcement. A further point of this is Johnson's use of the National Guard to quell riots, whereas Grant was not seen doing so. Johnson had, "Between 1964 and 1968, [with] race riots shatter[ing] many American cities,...[deployed] federal troops in the Watts Riots in Los Angeles as well as in the Detroit and Washington, D.C., riots".¹⁹

The riots in Detroit were of particular significance due to the scale of destruction and nature of the federal response. The riot began on July 23, 1967, with a confrontation between police and black onlookers during a raid on a speakeasy establishment, with the inciting incident being a brick smashing a police car window. This would spiral out of control and lead to the Governor calling in the regular army, who would aim to secure certain points of the "ghetto".²⁰ The regular army's goal was to help restore order and prevent any further loss of property and life. With this in mind, the army troops were sent in with the order to take any action, "...believed necessary..." assuming it was within the bounds of the Constitution, and

¹⁷ Colleen Shogan, "We Shall Overcome", (WHA (en-US)), Accessed December 9, 2024, <https://www.whitehousehistory.org/we-shall-overcome-lbj-voting-rights>.

¹⁸ Kent Germany, "Lyndon B. Johnson and Civil Rights", (Presidential Recordings Digital Edition), Accessed December 9, 2024, <https://prde.upress.virginia.edu/content/CivDetroitRights>.

¹⁹ "Lyndon B. Johnson: Domestic Affairs | Miller Center," (October 4, 2016), Accessed December 9, 2024, <https://millercenter.org/president/lbjohnson/domestic-affairs>.

²⁰ Brian Tobin, "Detroit Riot" (EBSCO, 2022), Accessed September 25, 2025, <https://www.ebsco.com/research-starters/history/detroit-riot#full-article>.

engagement orders using force as a last resort.²¹ This action by Johnson is in stark contrast to how Grant handled similar crises. Domestic disorder and violence were common under both administrations, but Johnson acted with more decisiveness and with less Congressional support than Grant. Johnson had moved to ensure the safety of both black and white people and refused to let it, or other similar events, become another Colfax Massacre. In doing this, Johnson acted as a custodian of freedom and guaranteed the safety and freedom of those living in Detroit.

Overall, in this effort, Johnson had proven more capable than Grant in using the office's power to enforce the rights of the people. The parallels in the policy measures used by both men are apparent, however, the outcomes differed significantly in their effects. Johnson, unlike Grant, had proven that strong exercise of federal power allowed for a more stable enforcement of rights and the greater upholding of the custodian mandate. Grant, despite his beliefs and actions, demonstrated that half-baked measures, even with a Congressional partnership, were ineffective. Johnson had righted wrongs and served justice more than Grant did. In the end, both men strove for the government to be a custodian of freedom, however using executive power unabridged was the only effective guarantee in maintaining civil rights.

Conclusion

Both of these presidents handled varying crises in their days, and in broad strokes are remarkably different and see more differences than similarities in their administrations. However, the single unifying force of these administrations is the racial tensions and battle for civil rights that engulfed their years in office. In the words of Alexander Hamilton, “[e]nergy in the Executive is a leading character in the definition of good government...”.²² This statement, while generally true, is particularly descriptive in analyzing the Presidents enforcement of civil rights.

Grant, despite having a strong Congressional partnership and expanded de jure powers, could not bring to heel the reactionary movements in the South. He had lacked “energy” in his own personal will in pushing the South to accept the Reconstruction policy of the federal Government. The lack of will and energy had, despite legislative success, amounted to a failure in policy implementation. Grant’s failure to capitalize on the downfall of the Klan in 1872 allowed for a resurgence and continued success of groups like the White League and Redeemers. In this way, Grant’s lack of will and energy was the leading issue in these failures and governmental weakness. Only a few years after his term, *US v. Cruikshank* and other court cases had rendered these enforcement mechanisms unconstitutional. Overall, Grant’s administration expanded de jure executive power but failed to use it to be a custodian of freedom for black Americans.

In contrast, Johnson’s fight, nearly 100 years later, was an uphill fight that proved to require an increase in executive authority to implement the legislation passed. Johnson strong-armed Congress and fought for many of the bills passed. Unlike Grant, Johnson had the energy and will to deploy the National Guard and make arrests among the reactionary elements in his day. He did much of this without Congressional approval, a power Grant benefited from. Overall, Johnson’s energy provided for strong enforcement and use of presidential power that allowed for the government to be a successful custodian for black Americans, although 100 years late.

In the end, the use of executive power by both presidents for the protection of civil rights is admirable. However, the failure of Grant and his successors created the need for a presidency like

²¹ Cyrus Vance, “Final Report of Cyrus R. Vance Special Assistant to the Secretary of Defense Concerning The Detroit Riots July- 23 through August 2, 1967”, (Special Assistant to the Secretary of Defense n.d), National Archives, Accessed September 25, 2025, <https://www.archives.gov/files/declassification/iscap/2015-071-doc02.pdf>.

²² Alexander Hamilton, John Jay, and James Madison, “Federalist 70”, In *The Federalist Papers*, edited by Robert Scigliano, (Modern Library, 2001), 447.

Johnson's that warranted a heavy hand. Both men tried, "to right wrong,..do justice, [and] serve man". However, only one could be Charles Sumner's custodian of Freedom, only 100 years deferred.²³

²³ Lyndon Johnson, "Special Message to the Congress: The American Promise".

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