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Martin Welker: Ohio's Unsung Hero

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Seminar in Selected Legal Problems: Law and History

Professor Richard Aynes

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I. Introduction

The “American Dream” is the idea that anyone can start from nothing and through determination, hard work, and American ingenuity one can become a success. Martin Welker’s life had meager beginnings, but would end as a well-respected public servant who contributed in shaping the United States into the country it is today. As an attorney, judge, lieutenant governor, military official, soldier, congressman, college professor, and author Welker saw the nation work through one of its most tumultuous periods in history.

The major debates at this time concerned slavery and what rights to grant freed slaves after the passage of the Thirteenth Amendment. Martin Welker’s most important contribution in this debate occurred as a congressman in 1866 when he voted for the Fourteenth Amendment to the Constitution. On May 10, 1866, the House of Representatives passed the bill that would become the Fourteenth Amendment.¹ On July 9, 1868 the Fourteenth Amendment to the Constitution which grants citizenship to “all persons born or naturalized in the United States” was ratified.² This paper will examine the life and experiences of Martin Welker and use these experiences to analyze what may have persuaded him to vote in favor of the Fourteenth Amendment. Despite his obvious

¹ *Cong. Globe*, 39th Cong. 1st Sess. 2545 (1866).

² U.S. CONST. amend. XIV, § 1.

contributions to his state and his country, Martin Welker remains predominately unknown today and remains Ohio's unsung hero.

II. Early Life

Martin Welker was born April 25, 1819 in Knox County, Ohio.³ His education originated in a small log cabin school.⁴ Welker described the school, in which he attended his only formal education, in a speech at the dedication of the Wooster High School in Wooster, Ohio in October 1870 when he said,

The scene before me today recalls to me days of other years, far back in the history of common schools in our State. I shall never forget the first school in which I entered and the house in which it was held. On a cold December morning I walked through a heavy snow, three miles, to the schoolhouse, on the banks of Owl Creek, in Knox County. I there found a little log cabin, sixteen feet square, with puncheon floor, clapboard door and roof, greased paper in the windows. The whole end of the house one wide fireplace, with a chimney made of clay and sticks built on the outside, and a blazing log fire in the ample fireplace. The benches or seats were split logs and with the flat side uppermost, with round sticks for legs, on which we sat, with our feet dangling above the rude floor. The 'master,' as the teacher was then called, had the only desk, and that was a flat board, with four legs, split slabs along one side of the room, supported by pins driven in the logs of the house. In this public building—and it is a fair representative of its day—

³ JUDGES OF THE UNITED STATES 225 (United States Government Printing Office 2d ed. 1983).

⁴ *Id.*

we were provided a school for three months in the year, the winter season only.⁵

But even with this beginning Welker always had a desire to read and learn.⁶ As a boy he worked on his father's farm but at age fourteen he went to work as a clerk in the local general store.⁷ As was the common practice, Welker would likely have continued clerking in the general store for the remainder of his career; however, one single event changed that. He was subpoenaed as a grand jury witness in Mount Vernon, Ohio.⁸ This was Welker's first experience with lawyers, judges, and the legal system.⁹ From this one encounter, Welker vowed to become a lawyer.¹⁰ It is obvious that the impressionable youth was very captivated by the judge in the grand jury proceeding. He later met Major W.R. Sapp, a local attorney and began an apprenticeship in Sapp's law office in Millersburg, Ohio.¹¹

⁵ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES 26-29 (J.H. Beers & Co. 1889).

⁶ *Id.* at 29

⁷ JUDGES OF THE UNITED STATES 225.

⁸ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES 29.

⁹ *Id.*

¹⁰ *Id.*

¹¹ JUDGES OF THE UNITED STATES 225.

III. Early Legal Career

Upon the completion of his apprenticeship with Sapp, Welker was admitted to the Ohio bar in 1840.¹² He originally remained in Millersburg and entered into a partnership with Sapp.¹³ In 1857, however, Welker moved to Wooster, Ohio to form a partnership with Judge Levi Cox.¹⁴

IV. Early Political Career

While still working as an attorney in Millersburg, Welker became the editor of a Whig newspaper and used the position to support William Henry Harrison for President of the United States in the election of 1840.¹⁵ He was appointed as Clerk to the Holmes County Court of Common Pleas in 1846, a position he held until 1851.¹⁶ While serving as Clerk of the Common Pleas Court, the Whig party nominated Welker as their candidate for Congress in 1848.¹⁷ The race was a difficult one because the congressional district did not

¹² GEORGE IRVING REED, *BENCH & BAR OF OHIO: A COMPENDIUM OF HISTORY AND BIOGRAPHY* VOL. 1 at 225 (Century Publishing & Engraving Co. 1897).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO*, VOL. 2 at 324 (Western Biographical Publishing Co. 1884).

¹⁶ BEN DOUGLAS, *HISTORY OF THE LAWYERS OF WAYNE COUNTY, OHIO FROM 1812 TO 1900* at 68-69 (Clapper Printing Co. 1900).

¹⁷ *Id.* at 69.

favor Whig candidates as most of the district was Democratic, and Welker was defeated.¹⁸

Welker found better fortune in the election of 1851 in which he was elected to the position of Judge of the Court of Common Pleas for the Sixth District of Ohio.¹⁹ Welker served the entirety of his five year term and was unanimously re-nominated for the position in 1856.²⁰ However, the presidential election that same year became extremely heated and controversial and Welker again fell victim to a largely Democratic district and lost the election.²¹ Martin did not find himself out of public service for long, as he was elected Lieutenant Governor of Ohio in 1857.²² He served for one term under Governor Salmon P. Chase who would later become the Chief Justice of the United States Supreme Court.²³

V. Military Service

When the Civil War broke out, Welker was appointed as a major to General Jacob Dolson Cox's staff.²⁴ General Cox would later serve as Governor

¹⁸ THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 324.

¹⁹ *Id.*

²⁰ *Id.*

²¹ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES 30.

²² *Id.*

²³ *Id.*

²⁴ GEORGE IRVING REED at 225.

of Ohio and Secretary of the Interior.²⁵ Welker was then appointed to Second Brigade, Ohio Volunteer Militia as a Judge Advocate General of the State of Ohio by Governor William Dennison, Jr. in 1861.²⁶ When Governor Dennison's term ended in 1862, Welker took over command of the ship, *Emma Duncan*, which was a transport ship on the Ohio River for wounded soldiers.²⁷ Welker was appointed Assistant Adjutant General of the State of Ohio by Governor David Tod and served as the State superintendent of the military draft for 1862.²⁸

VI. Congress

A. Thirty-Ninth Congress

While still in military service, Welker was nominated by the Republicans as their candidate for Congress, but once again suffered political defeat.²⁹ This election was much closer than his previous defeats, with Welker losing to Hon. George Bliss by a mere thirty-six votes.³⁰ Welker was nominated to run for

²⁵ THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 324.

²⁶ BEN DOUGLAS, HISTORY OF THE LAWYERS OF WAYNE COUNTY, OHIO FROM 1812 TO 1900 at 69 (Clapper Printing Co. 1900).

²⁷ BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1774-1996 at 2051.

²⁸ BEN DOUGLAS, HISTORY OF THE LAWYERS OF WAYNE COUNTY, OHIO FROM 1812 TO 1900 at 69 (Clapper Printing Co. 1900).

²⁹ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES at 31.

³⁰ BEN DOUGLAS, HISTORY OF THE LAWYERS OF WAYNE COUNTY, OHIO FROM 1812 TO 1900 at 69 (Clapper Printing Co. 1900).

Congress for a third time in 1864 and was elected to the Thirty-Ninth Congress.³¹ Welker's district, the Fourteenth Ohio District, was made up of Holmes, Ashland, Wayne, Medina, and Lorain counties.³²

Welker served on the Committee for the District of Columbia, beginning with his first term in Congress.³³ During his first term on that committee Welker introduced a bill to incorporate the National Union Envelope, Paper, and Stamp Company of Washington.³⁴ He additionally introduced a bill which regulated divorce in the District of Columbia.³⁵ Welker did further work on the Committee for the District of Columbia by supporting an amendment to the acts which established a Metropolitan police force, to increase efficiency in the District of Columbia.³⁶ Among other things, Welker suggested names for each rank of the police force similar to those of the military; a process for the selection of a justice of the peace; the regulation of liquor licenses in the District of Columbia; and regulation of the powers of the property clerk of the Metropolitan police.³⁷

³¹ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES at 31.

³² THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 325.

³³ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES at 31.

³⁴ *Cong. Globe*, 39th Cong., 1st Sess. 135 (1866).

³⁵ *Id.* at 3043.

³⁶ *Id.* at 3906-07.

³⁷ *Id.*

During his first term, Welker also submitted several resolutions. One such resolution requested that the Committee on Invalid Pensions inquire into the process of granting pensions to all soldiers who had become permanently injured or disabled by accidents on their return home from the Civil War.³⁸ A second resolution submitted by Welker requested that the Committee on Military Affairs inquire into the process of payment to privates and officers who had served for the Union Army during the Civil War.³⁹

Representative Welker was also a strong advocate for his constituents in Ohio during his first term in Congress. He presented petitions for several manufacturers, including D. Smith & Co. of Smithville, Ohio, requesting a change in the tax law, so that materials used in harvester manufacturing which were taxed as materials would not be taxed again as machinery.⁴⁰ Additionally, Welker presented many petitions on behalf of constituents requesting protection from foreign markets for wool producers.⁴¹

Despite these admirable actions, Welker's largest contribution during his first term in Congress came in the form of the longest speech of his congressional career. During a debate about reconstruction and the best policy to adopt where the former Confederacy was concerned, Welker spoke at length about his

³⁸ *Id.* at 136.

³⁹ *Id.* at 350.

⁴⁰ *Id.* at 1099.

⁴¹ *Id.* at 1662.

opinion.⁴² Welker felt very strongly that some restrictions must be placed on those states that had seceded from the Union and that history dictated that the Union should punish the states from the former Confederacy.⁴³ Welker remarked,

It cannot be that a war of such gigantic proportions, marshaling their millions of soldiers on each side, should not in some respect change the relations of the parties to each other. The rebels, just emerging from the leadership of a self-constituted government, cannot at once and without conditions take their original place in the Government against which they warred. This would be an anomaly in history. It would falsify all the records of the past. No rebels in any Government have ever been allowed such rights, no conquered people ever so treated.⁴⁴

Welker continued in his speech to disagree with those members of Congress who advocated that the best policy was to welcome the states that had seceded back into the Union and to do so as quickly as possible as a matter of bringing unity to the country. Welker's reasoning for his hesitation to welcome the states back with open arms rested on two points: the destruction the Confederacy caused and his belief that secession could occur again if the states of the former confederacy did not provide proof that they had truly changed their ways:

Let these men so lately engaged in the rebellion have time to satisfy us that they are thoroughly cured of many of the heresies they have heretofore entertained. They can afford to wait after what they

⁴² *Id.* at 726-28.

⁴³ *Id.* at 726.

⁴⁴ *Id.*

have done against the Government, after the great injury they have inflicted upon the country—the deluge of blood, the ravages of war they have caused all over our broad land, the widows and orphans they have made, the crippled and maimed soldiers they have scattered everywhere among us. There is much for them to do in the way of improvements and reforms in their localities before they are ready to assume all responsibilities of Government. As a matter of law most of them have forfeited their lives, and if the laws were enforced strictly against them, many of them would be hung for treason, as they ought to be. They should remember that during these bloody four years they have caused the sacrifice of millions of precious lives and thousands of millions of treasure in this mad attempt to disconnect themselves from the Government, and establish forever the infernal institution of slavery.⁴⁵

Welker's solution to the problem of Reconstruction and how to handle relations with states of the former Confederacy came in the form of four amendments to the Constitution of the United States of America.⁴⁶ Welker suggested first that representation in the House of Representatives be based on voting population, and not general population.⁴⁷ Recently freed slaves had not been granted the right to vote at that time; however, they were still counted as part of the general population to determine representation in the House of Representatives. The increase in general population by four million freed slaves actually increased former Confederacy-member states' representation in the

⁴⁵ *Id.* at 727.

⁴⁶ *Id.* at 727-28.

⁴⁷ *Id.* at 727.

House of Representatives by twelve members total.⁴⁸ Welker did not believe that those states which had seceded from the Union and caused so much destruction in the form of the Civil War should then be rewarded with increased representation.⁴⁹ Additionally, because the freed slaves were not legally allowed to vote, the system of representation at that time gave “a rebel white man two and a half votes to one for the Union soldier in the North.”⁵⁰ Welker believed, as many Northerners did, that Southern States’ representation should be decreased if freed slaves did not have the right to vote; on the other hand, “if they enfranchise the masses their representation will be increased.”⁵¹ Welker felt this policy would be a great incentive in eventually extending to freed slaves the right to vote.⁵²

Welker next suggested a change to the law so that the Southern States would not have the power to raise taxes to pay penalties the Confederacy owed the Union.⁵³ Welker reasoned that there were many citizens of the states that made up the Confederacy who did not choose for their state to secede from the Union, and it would not be right to penalize those individuals with a tax for acts they did not commit.⁵⁴ Welker further reasoned that if the states that made up the former Confederacy raised taxes, Northern citizens that move to Southern States

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 728.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

would be penalized for acts they did not commit.⁵⁵ Welker reasoned that by restricting the ability to tax, Northern citizens would move to Southern States bringing Northern businesses, Northern school systems, and Northern beliefs of “freedom and equality made perpetual among all the people.”⁵⁶

Welker next suggested the Constitution be amended to protect the freed slaves in their rights of “‘life, liberty, and the pursuit of happiness’ in the States, and prohibit the passage of all laws, by any of the States, making any difference in the civil rights of their inhabitants, but that all, both white and black, shall stand equal before the civil and criminal law.”⁵⁷ While the second clause of the Emancipation Proclamation touches on this issue, Welker was pushing for a constitutional amendment addressing equal rights for all citizens, regardless of race. This amendment later came to fruition in the form of the Fourteenth Amendment later in Welker’s congressional career.

Welker’s last proposal for a constitutional amendment could be perceived as controversial, but in reality was very patriotic and responsible. Welker recommended that America’s creditors be protected, so as not to make them feel compelled to release the United States from its obligations to pay for expenses

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

resulting from the Civil War.⁵⁸ Welker feared that without such an amendment, future leaders and officials of the United States would default on their responsibilities to creditors and those creditors would have no recourse.⁵⁹

1. The Fourteenth Amendment

House Joint Resolution 127 came before the House for discussion and vote from the Committee on Reconstruction in May of 1866.⁶⁰ Members of the House debated the Resolution on May 7-10.⁶¹ At the time of the vote, the resolution read:

SEC. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any state, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ AMENDMENTS TO THE CONSTITUTION: A BRIEF LEGISLATIVE HISTORY 31 (U.S. G.P.O., October 1985).

⁶¹ *Id.*

proportion which the number of such male citizens shall bear to the whole number of male citizens no less than twenty-one years of age.

SEC. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress, and for electors for President and vice President of the United States.

SEC. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.⁶²

On May 10, 1866 the House of Representatives passed H.J. Res. 127 by a vote of 128 to 37, with 19 members not voting.⁶³ Martin Welker voted in favor of the amendment to the Constitution.⁶⁴

The Senate would later make changes to the text of the Resolution passed by the House.⁶⁵ The Senate added a sentence to the first section of the Resolution, stating, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

⁶² *Cong. Globe*, 39th Cong. 1st Sess. 2545 (1866).

⁶³ AMENDMENTS TO THE CONSTITUTION: A BRIEF LEGISLATIVE HISTORY 31 (U.S. G.P.O., October 1985).

⁶⁴ *Cong. Globe*, 39th Cong. 1st Sess. 2545 (1866).

⁶⁵ AMENDMENTS TO THE CONSTITUTION: A BRIEF LEGISLATIVE HISTORY 31 (U.S. G.P.O., October 1985).

wherein they reside.”⁶⁶ The Senate changed the wording of the second section of the Resolution, but did not substantively change the section.⁶⁷ The Senate rejected the House’s attempt, in the third section, to punish former members of the Confederacy by withholding their right to vote for a period of four years.⁶⁸ Instead, the Senate only limited former Confederate public officials’ right to again hold office.⁶⁹ Finally, the Senate reworded the fourth section, adding a phrase to clarify that the final section of the resolution was not applicable to the public debt of the United States.⁷⁰

The amended Resolution passed the Senate on June 8, 1866 by a vote of 33 to 5.⁷¹ The Resolution was then sent back to the House for passage of the amended version.⁷² The House passed the Resolution with no additional amendments on June 13, 1866 by a vote of 120 to 32, with 32 members not voting.⁷³ On June 18 both the House and the Senate passed concurrent resolutions requesting that the President submit the Fourteenth Amendment to the governors of each State for ratification.⁷⁴

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 31-32.

⁷¹ *Id.* at 32.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

The Fourteenth Amendment required twenty-eight states for final ratification.⁷⁵ After one year, nearly all the Southern States had voted to reject the amendment with only twenty-four states ratifying the amendment to the Constitution.⁷⁶ To sway Southern States to ratify the Fourteenth Amendment, Congress passed the Military Reconstruction Act on March 2, 1867.⁷⁷ Among other things, the Act provided for a plan in which States that had seceded from the Union would once again be permitted in Congress and be removed from military rule, if and only if, that State ratified the Fourteenth Amendment.⁷⁸ This strategy was successful, and soon a sufficient number of states had ratified the amendment on July 9, 1868 and a certificate of adoption was issued on July 20, 1868.⁷⁹

Interestingly, Ohio was one of the first states to ratify the Fourteenth Amendment on January 11, 1867.⁸⁰ Due to the Amendment not being ratified in full for over a year, however, Ohio's General Assembly had elections, a new party took control of the legislature, and almost a year from the day it ratified the amendment, Ohio rescinded its ratification. Ohio did not ratify the Fourteenth Amendment again for over one hundred years, doing so on September 17, 2003.⁸¹

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 32-33.

⁸⁰ *Id.* at 32.

⁸¹ *Fourteenth Amendment*, OHIO HISTORY CENTRAL: AN ONLINE ENCYCLOPEDIA OF OHIO HISTORY, <http://www.ohiohistorycentral.org/entry.php?rec=1485>.

2. Reasons Why Welker May Have Supported the Fourteenth Amendment

First and foremost, one major reason why Martin Welker may have supported the Fourteenth Amendment is because he was born and raised in a Northern State. This fact is not determinative for many reasons, however, slavery was not as prominent in the North as it was in the South and support of slavery was much weaker in the North. If Welker did not grow up with the mentality that slavery was a necessary part of life, as many Southerners viewed the practice, it is much more likely that he would not be a supporter of it. If Welker was opposed to slavery, then it stands to reason that once slavery was outlawed by the Thirteenth Amendment that he might also be supportive of equal protection under the law for all people, regardless of race.

Another reason that may have contributed to Welker's support of the Fourteenth Amendment was his anger with the States that had seceded from the Union and his wish for those states to be punished. His frustration was clear during a lengthy speech on the House floor regarding Reconstruction. Welker made it clear that he felt the States which had seceded, had to earn the Union's trust back. The Fourteenth Amendment directly opposed the "black codes" put into place by Southern States, designed to prevent black Americans from enjoying the full extent of their freedom. It is likely that Welker viewed the Fourteenth Amendment not only as a vehicle to help recently freed slaves, but also a means

of further punishing and exacting vengeance on the Southern States for their role in the Civil War.

Related to the Civil War, another reason Welker may have been supportive of the Fourteenth Amendment is because he served as a soldier for the Union Army and witnessed the sacrifice of many young men to preserve the Union. Regardless of which side a man fought on, the Civil War made a lasting impact on a generation. It pitted state against state, neighbor against neighbor, and brother against brother. Like nothing else before or since, the War tore the country in half. Perhaps Welker saw the Fourteenth Amendment as an opportunity to quash any possibility of slavery returning to the United States; slavery which had been such a divisive issue, one that had helped lead to the Civil War. It is possible that Welker realized that the only way for a nation to be truly unified was for its entire people, regardless of race, to be free and have their freedoms equally protected.

A final reason that may have caused Martin Welker to support the Fourteenth Amendment is that after more than twenty-five years of public service and political activism, Welker had learned that his duty to serve Americans did not stop with white Americans. Perhaps his obvious desire as an attorney, judge, and congressman, to help those around him and better the State of Ohio and the United States of America, aided in fostering an instinctive belief that all men are

created equal and should be protected under the laws of their country as such. It may be that these lofty ideals did not even occur to Welker, and he was instead voting with his party, however, from what is known of Martin Welker, it seems more likely that his conscience and beliefs led him to the decision to support the Fourteenth Amendment.

B. Fortieth Congress

Welker was re-elected to the Fortieth Congress in 1866.⁸² Welker was active during this term of Congress introducing many bills. Welker also again served on the Committee for the District of Columbia and the Joint Committee on Retrenchment.⁸³

While serving on the Committee for the District of Columbia during the First Session of the Fortieth Congress, Representative Welker introduced a bill to provide a criminal code for the District of Columbia.⁸⁴ He also pushed for a system of education for public schools within the nation's capital, introducing a bill on the subject in 1867.⁸⁵ Welker also introduced a bill which would provide for juries in certain cases in the District of Columbia.⁸⁶ Welker only introduced

⁸² COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES at 31.

⁸³ *Id.*

⁸⁴ *Cong. Globe*, 40th Cong., 1st Sess. 186 (1867).

⁸⁵ *Id.*

⁸⁶ *Id.* at 813.

one bill in the First Session of the Fortieth Congress that was not directly related to the Committee for the District of Columbia.⁸⁷ That one bill was in relation to deserters from the United States Army and Navy, which was referred to the Committee on Military Affairs.⁸⁸

The bills introduced by Welker during the Second Session of the Fortieth Congress did not vary much from the First Session. Welker's predominant focus was the Committee for the District of Columbia, but he also introduced a bill to fix the compensation of the First Comptroller of the Treasury, which was referred to another of Welker's committees; the Committee on Retrenchment.⁸⁹

Relating to the Committee for the District of Columbia, Welker focused on two social issues. He first tackled marriage, when he introduced a bill to preserve the evidence of marriages in the District of Columbia.⁹⁰ Second, he introduced a bill that provided for the amending of a previous act providing for the establishment of the District of Columbia House of Correction for Boys.⁹¹

On three separate occasions during this Session Welker introduced bills for the incorporation of businesses in the Washington, DC area.⁹² The first was

⁸⁷ See *Cong. Globe*, 40th Cong. 1st Sess. 511 (1867).

⁸⁸ *Id.*

⁸⁹ *Cong. Globe*, 40th Cong. 2nd Sess. 474 (1868).

⁹⁰ *Id.*

⁹¹ *Id.* at 934.

⁹² *Id.* at 1418, 1759, 3031.

the Evening Star Newspaper Company, which was later referred to committee.⁹³ The next bill introduced was for the incorporation of the Lloyd Car-Heating and Ventilating Company.⁹⁴ Last was a bill to incorporate the Potomac Navigation Company, which was also referred to committee.⁹⁵ Welker's bill introductions went further than simply incorporating businesses. He introduced a bill providing regulations for the construction of private buildings in the city of Washington, DC.⁹⁶ The last bill Welker introduced during the Second Session of the Fortieth Congress was a bill to authorize the corporate authorities of Georgetown to pledge the sum of \$300,000 and levy a tax to build a branch railroad to connect Georgetown with the Alexandria Loudoun and Hampshire railroad.⁹⁷

In the Third Session of the Fortieth Congress, Welker introduced several bills, three of which were of consequence.⁹⁸ The first established a police court for the District of Columbia.⁹⁹ The second provided for the removal of the Centre Market, in the city of Washington, DC and for the erection of a market building in a more suitable location.¹⁰⁰ Welker's last introduction of a bill during the Fortieth

⁹³ *Id.* at 1418.

⁹⁴ *Id.* at 1759.

⁹⁵ *Id.* at 3031.

⁹⁶ *Id.* at 934.

⁹⁷ *Id.* at 3587.

⁹⁸ *See Cong. Globe*, 40th Cong. 3rd Sess. 281, 423 (1869).

⁹⁹ *Id.* at 281.

¹⁰⁰ *Id.*

Congress was to incorporate the Butcher's Benevolent Association of the District of Columbia.¹⁰¹

C. Forty-First Congress

After two successful terms in Congress Welker was elected to his third and final term in 1868.¹⁰² During the Forty-First Congress Welker again served as a member on the Committee for the District of Columbia, but served as the Chairman of the Committee on Retrenchment.¹⁰³ He additionally was a member of the Committee on Private Land Claims and would later serve as the acting chairman during his last session in Congress.¹⁰⁴

During the First Session of what would be his last term in Congress, Welker introduced three bills directed toward his Committee for the District of Columbia. He first introduced a bill to provide a uniform system of education for the public schools of the District of Columbia.¹⁰⁵ This was Welker's second attempt to introduce this bill; the first was introduced by Welker during the Fortieth Congress.¹⁰⁶ Welker also re-introduced a bill to provide a criminal code

¹⁰¹ *Id.* at 423.

¹⁰² COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES at 31.

¹⁰³ THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 325.

¹⁰⁴ *Id.*

¹⁰⁵ *Cong. Globe*, 41st Cong. 1st Sess. 505 (1869).

¹⁰⁶ *Cong. Globe*, 40th Cong., 1st Sess. 186 (1867).

for the District of Columbia.¹⁰⁷ The third and final bill introduced by Welker during the First Session of the Forty-First Congress was a bill to incorporate the Irving Literary Association in Washington, DC.¹⁰⁸

During the Second Session of the Forty-First Congress, Welker introduced twelve different bills, the majority of which were directly related and were referred to the Committee for the District of Columbia. He first introduced a bill to promote the international industrial exhibition to be held in Washington, DC in 1871.¹⁰⁹ Next, Welker introduced a bill to amend an act incorporating the National Junction Railway Company.¹¹⁰ Welker further introduced a bill to amend an act entitled “An act to define more clearly the jurisdiction and powers of the Supreme Court of the District of Columbia, and for other purposes.”¹¹¹ Welker later introduced a bill to abolish imprisonment for debt in the District of Columbia.¹¹² Welker re-introduced a bill to amend an act entitled “An act to establish in the District of Columbia a House of Correction for Boys.”¹¹³ Welker then introduced three bills in one day that were referred to the Committee for the District of Columbia.¹¹⁴ The first was a bill to incorporate the Washington City

¹⁰⁷ *Cong. Globe*, 41st Cong. 1st Sess. 505 (1869).

¹⁰⁸ *Id.* at 194.

¹⁰⁹ *Cong. Globe*, 41st Cong. 2nd Sess. 21 (1869).

¹¹⁰ *Id.* at 102.

¹¹¹ *Id.* at 239.

¹¹² *Id.* at 306.

¹¹³ *Cong. Globe*, 41st Cong. 2nd Sess. 337 (1870).

¹¹⁴ *Id.* at 1738.

Belt Railroad Company.¹¹⁵ The second was a bill providing for the taking of depositions to be used in the superior court of the District of Columbia.¹¹⁶ The last of these three bills was to abolish joint tenancy in the District of Columbia.¹¹⁷

Bills introduced by Welker during the Second Session of the Forty-First Congress that were not referred to the Committee for the District of Columbia included a bill referred to the Committee on the Post Office and Post Roads, the Committee on Roads and Canals, the Committee on Retrenchment, and the Committee on Reconstruction.¹¹⁸ The first was a bill to establish a mail route in the State of Ohio.¹¹⁹ The second was a bill to authorize the building of a railroad from Washington, DC to the Schuylkill River in Pennsylvania.¹²⁰ The third was a bill to amend an act establishing the Department of Education, discontinuing the Bureau of Refugees, Freedmen, and Abandoned Lands.¹²¹ Finally, the last bill established a department of revenue.¹²²

In his final session of his congressional career, Martin Welker introduced three bills of note.¹²³ The first was to incorporate the Washington Dime Savings-

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 337, 708, 1087, 4861.

¹¹⁹ *Id.* at 337.

¹²⁰ *Id.* at 708.

¹²¹ *Id.* at 1087.

¹²² *Id.* at 4861.

¹²³ *Cong. Globe*, 41st Cong. 3rd Sess. 176 (1870), *Cong. Globe*, 41st Cong. 3rd Sess. 525 (1871).

Bank of the District of Columbia.¹²⁴ The second was a bill to allow defendants in criminal cases in the District of Columbia to testify on their own behalf.¹²⁵

Welker's final introduction of a bill as a congressman was a bill to incorporate a free university in the District of Columbia.¹²⁶

While Chairman of the Committee on Retrenchment for the House, he and the chairman from the Senate Committee on Retrenchment travelled across the country to California to investigate the San Francisco Custom House in 1869.¹²⁷ Travel was much more difficult at this time, but was improving with the completion of the First Transcontinental Railroad in the same year of Welker's trip. Due to the difficulty of travel, few public figures or politicians made their way to California and Welker's congressional contingent was met with great excitement and hospitality as they toured not only the San Francisco Custom House, but also Yosemite, the geyser that is today known as "Old Faithful", the Cliff House, the San Francisco Bay, and received a cannon salute from Alcatraz.¹²⁸ Welker's time on the Committee on Retrenchment was also marked

¹²⁴ *Cong. Globe*, 41st Cong. 3rd Sess. 176 (1870).

¹²⁵ *Cong. Globe*, 41st Cong. 3rd Sess. 525 (1871).

¹²⁶ *Id.*

¹²⁷ THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 325.

¹²⁸ *Id.*

by the reorganization of the Attorney General's office into the Department of Justice.¹²⁹ Martin Welker's congressional career ended in 1871.

VIII. Later Years

Welker was first appointed as District Judge of the United States for the Northern District of Ohio by President Ulysses S. Grant in December 1873.¹³⁰ During this time Welker presided over the District Court, as well as the circuit court when the circuit judge was absent.¹³¹ Welker served in courts in both Cleveland and Toledo, Ohio.¹³² Although his term as District Judge was for life, a constitutional provision allowed for judges to retire and maintain a continued salary when they had reached age seventy, which Welker did in June 1889.¹³³ He hoped to build a model farm, a passion stemming from his childhood when he was raised on a farm.¹³⁴ He retired to Wooster, Ohio where he had resided since 1857 with his wife Maria Armor.¹³⁵ Maria was from Millersburg, Ohio and the

¹²⁹ COMMEMORATIVE BIOGRAPHICAL RECORD OF WAYNE COUNTY, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES at 31.

¹³⁰ THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 325.

¹³¹ BENCH & BAR OF OHIO: A COMPENDIUM OF HISTORY AND BIOGRAPHY VOL. 1 at 226.

¹³² THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 325.

¹³³ BENCH & BAR OF OHIO: A COMPENDIUM OF HISTORY AND BIOGRAPHY VOL. 1 at 226.

¹³⁴ *Id.* at 227.

¹³⁵ *Martin Welker Obituary*, WAYNE COUNTY DEMOCRAT, Mar. 19, 1902.

couple had wed on March, 4 1841, the day of President William Henry Harrison's inauguration, whom Welker had been an avid supporter.¹³⁶

Welker's career did not end with retirement, however. He served as a professor of political science, constitutional law, and international law at Wooster University (now known as The College of Wooster).¹³⁷ While a professor at Wooster he was given an honorary doctorate degree in law (L.L.D.).¹³⁸ Welker also served as President of the Wooster National Bank and the County Fair Association.¹³⁹ Welker was also successful in creating a model farm and authored a book called, *FARM LIFE IN CENTRAL OHIO SIXTY YEARS AGO* which was published in 1892.¹⁴⁰ The purpose of the book was twofold. First, was to share his experiences and expertise from creating the model with farmers of the present day.¹⁴¹ Second, Welker hoped to reach young readers, so that they would "be interested as well as benefitted" by learning the way farming had once been done and the advances that had been made in the sixty years since Welker was a young man.¹⁴²

¹³⁶ THE BIOGRAPHICAL CYCLOPAEDIA AND PORTRAIT GALLERY WITH AN HISTORICAL SKETCH OF THE STATE OF OHIO, VOL. 2 at 325.

¹³⁷ BENCH & BAR OF OHIO: A COMPENDIUM OF HISTORY AND BIOGRAPHY VOL. 1 at 227.

¹³⁸ *Martin Welker Obituary*, WAYNE COUNTY DEMOCRAT, Mar. 19, 1902.

¹³⁹ BENCH & BAR OF OHIO: A COMPENDIUM OF HISTORY AND BIOGRAPHY VOL. 1 at 227.

¹⁴⁰ *Id.*

¹⁴¹ MARTIN WELKER, *FARM LIFE IN CENTRAL OHIO SIXTY YEARS AGO* at 6 (Clapper Printing Co. 1892).

¹⁴² *Id.*

Maria died on February 22, 1894.¹⁴³ Two years later on January 16, 1896, Welker married Flora Uhl of Cleveland.¹⁴⁴ Even in his advanced age and in the last few years of his life, Welker was a strong advocate for law and the legal profession.¹⁴⁵ He addressed the Ohio State Bar Association on July 17, 1895 saying,

I know it is often said that lawyers are not needed; that they are useless as well as expensive members of our body politic. This is a great mistake. As our laws now stand, with their necessarily wide range, their intricacies, their diversified subjects, covering the great improvements of the day, in the arts, in commerce, and the progress of the age in every department of business, embodied as they are in thousands of volumes of books, reports of courts and statutes, it takes the life work of an exclusive class of men, specially trained for that purpose, to understand and administer them in our courts, so that right and justice may be meted out in litigation. There always will be controversies among the people. Men will not understand or view things alike. Disputes will grow up as to the rights of person and of property, and whose settlement is of great consequence in every community. These must be settled by the lawyers, or as a last resort, the courts. This is most frequently accomplished by lawyers without law-suits. Grave questions of professional ethics are often presented to the lawyer as to his duty to the court and that demanded by his client. The official duty of his office as an attorney, is to aid the court and the jury in the correct administration of the law. It is not his duty to misrepresent and thereby prevent its proper

¹⁴³ *Martin Welker Obituary*, WAYNE COUNTY DEMOCRAT, Mar. 19, 1902.

¹⁴⁴ BENCH & BAR OF OHIO: A COMPENDIUM OF HISTORY AND BIOGRAPHY VOL. 1 at 228.

¹⁴⁵ *Id.* at 227

application. It is right and proper that fair, legitimate arguments be presented, bearing upon the side of this client, and that they be put in their strongest and most prominent form. Whether his client is right or wrong, he is not to be the judge—that question is determined by the tribunal trying the cause. It is questioned whether it is the duty of the attorney to undertake his client's cause when he must know he is wrong. The answer to this is, how does he know it until he hears the evidence on both sides as developed on the trial? Then in all trials there are usually two sides; each party is entitled to a fair hearing; and to insure that, both sides must be presented. In criminal cases the law presumes the defendant to be innocent until proven guilty, and the attorney has no right to presume the guilt of his client, but is bound to employ his utmost ability and skill in the defense. It is sometimes thought that the great field of the lawyer is in the court room, before judges and jury, with an admiring crowd around him, where he contends for the right of his client. This no doubt appeals to his ambition and love of applause, and is exceedingly gratifying to his desire for excitement and controversy, and affords him an opportunity to use his logic, eloquence and wit. But his greatest work is in the silence of his office. There he works out the arguments and hunts up the authorities that win his client's cause. There he comprehends and elaborates the principles applicable to his case, that overthrow in the public contests all opposition.¹⁴⁶

It is evident from the presented portion of Welker's speech that he had a deep passion for the law and helping others. It is the way Welker lived his life as a public servant; spending nearly the entirety of his life working for the benefit of the others and the country.

¹⁴⁶ *Id.* at 227-28

IX. Death

Judge Martin Welker died Saturday, March 15, 1902 at his home in Wooster from complications of diseases.¹⁴⁷ He was laid to rest in a sepulcher in the northern corner of the Wooster Cemetery in Wooster, Ohio.¹⁴⁸

X. Conclusion

Despite serving his state and his country as an attorney, judge, lieutenant governor, military official, soldier, congressman, college professor, and author, Martin Welker remains a predominately unknown figure in American and Ohio history. Welker presided over countless cases; wore the uniform of his country and served as leader in the military; introduced many bills as an advocate for Ohio and the city of Washington, DC; and voted in favor of an Amendment that gave equal protection of the law to all Americans. Although history may have forgotten Martin Welker, his impact on the nation during one of its most tumultuous periods ever, is undeniable

The “American Dream” concept contemplates one rising from nothing to become a success, but provides no guarantees that one will be recognized for that success. Martin Welker’s life is no exception. Although this paper cannot change

¹⁴⁷ *Martin Welker Obituary*, WAYNE COUNTY DEMOCRAT, Mar. 19, 1902.

¹⁴⁸ *Martin Welker*, FIND A GRAVE, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=11925224>.

those that history chooses to remember, it is the hope of the author that in some small way this paper serves as recognition for one of Ohio's unsung heroes.