The 14th Amendment Born in Despotism Steeped in Tyranny

An Analysis of the Unconstitutional Ratification of the 14th Amendment With Discussion of the 39th Congress Congressional Debates

By Alan P. Halbert

Table of Contents

The 14th Amendment Born in Despotism Steeped in Tyranny

The *Obergefell v. Hodges* decision is probably the worst case of legislation from the federal bench and impermissible judicial activism[45] in our lifetime; it is simply the Dred Scott decision of our day. Not one shred of legislative intent, debate or ratification discussion[35] as a proper legal construction is presented or is made part of the record.

This latest travesty of the Court assaults our sensibilities for the lefts latest societal change masquerading as constitutional law. It becomes another waypoint a mere moments rest as our society is radically transitioned from a Christian centered nation to a debased society where anything goes. Not by acts of Congress, or will of the people by amending the Constitution but actions of an unelected body of judges on the Supreme Court as they fulfill the desire of a select few that wish to impress their will on the nation for a society devoid of the rule of law, comity and morals.

With this opinion it is the people be damned, which is epitomized by this excerpt from the majority's opinion:

"whether same-sex couples may exercise the right to marry. Were the Court to uphold the challenged laws as constitutional, it would teach the Nation that these laws are in accord with our society's most basic compact."

So now we are nothing but unruly children and must be taught what is best for us by these five unelected oligarchs...who never reveal where in the Constitutional record this alleged "right" is hidden other than claiming it is in the 14th Amendment.

The Supreme Court has forced bussing, school desegregation, abortion, college entrance racial quotas and divined gender discrimination all from thin air and the 14th Amendment, now they come forward and find ever more rights hiding in this same amendment. Now it's gay marriage as a newly formed right based on what the majority calls 'identity' proclaimed for every State in the entire nation.

We shutter to think on how this newly formed and found 'identity' as a Constitutional model and principle will morph by future actions of the Court…no doubt through the 14th Amendment.

These new rights were found in the post civil war amendment drafted to enshrine the Civil Rights Act of 1866 and to grant former slaves separate[29] but 'equal rights' with other Americans which were known as 'privileges and immunities'[12] under the Constitution and grant them to the freedmen who had been merely chattels as slaves by the framers of the amendment.

This is nothing short of a revolution or coup, to suddenly after 227 years find that marriage is no longer a State power under Article IV Sec. 4 and the 10th Amendment. But is now a right that had been hiding in the 14th Amendment, and that the States had been in the majority's opinion oppressing gay couples who wished to be married:

"[t]he freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power."

Who knew that a State government not acting in accordance with the wishes of an infinitesimally small portion (less than .052% of our population) of their citizens wishes; in this case to be married was somehow unlawful exercise of governmental power. Could this be the revolution or coup mentioned above, or is it the "judicial Putsch" that Justice Scalia called the majority's decision in his dissenting opinion.

For a sitting Justice to use such incendiary language raises some serious questions which were not answered by Justice Scalia or the three other Justices, Roberts, Thomas and Alito in their dissenting opinions.

This led to the obvious question, is something hiding in plain sight in the 14th Amendment that may hold the key to turn back this abysmal travesty of comity and the hijacking of our constitutional processes, and even due process itself, to allow the people the right to decide this and other matters for ourselves.

The 14th Amendment's History

This amendment was born out of the aftermath of the civil war to grant equal but separate rights[7] to the recently freed slaves that had been considered property under another travesty of the Courts opinion, Dred Scott. It was to mirror and enshrine equal rights that all Americans enjoy, to life, liberty and property, and were granted in the Civil Rights Act of 1866 [9] and nothing more as the Congressional record is clear it was not to grant suffrage[13] or integrate education between white and black children to the freedmen.

The States were left free to practice segregation and withhold political rights from them as proven by this excerpt from the Congressional Globe on the floor debate and Senator Howard's speech of February 23, 1866 to the Senate from the committee of 15 on the proposed amendment:

But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a despotism.

The freedmen were to be granted the right to safety in ones own being, the right to relocate and move about as one wished free from incarceration, travel restrictions or bondage, the right to purchase property, to bring suit in court and be sued and testify in court which every American enjoyed as 'privileges and immunities'[12] under the Constitution.

From Howard's Speech which defined the scope of 14th Amendment:

It will be observed that this is a general prohibition upon all the States, as such, from abridging the privileges and immunities of the citizens of the United States. That is its first clause, and I regard it as very important. It also prohibits each one of the States from depriving any person of life, liberty, or property without due process of law, or denying to any person within the jurisdiction of the State the equal protection of its laws.

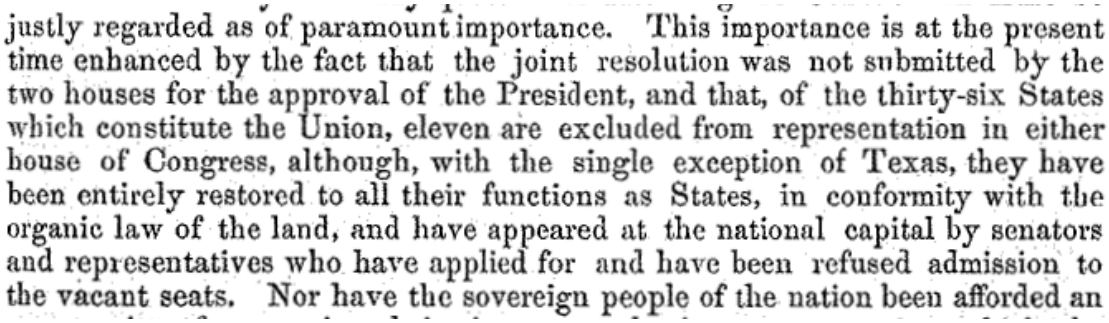
The leading Radical Republicans[21] in Congress felt an amendment to the Constitution was needed to make the Civil Rights Act of 1866 nearly impossible to repeal, and to grant these rights in perpetuity to the freedmen. Ironically, it also strengthened the powers of suffrage and education belonging to the States to discriminate amongst their citizens which we still have today.

Discriminate means that the States decide who can vote, attend school and a host of other conditions have been retained by the States since the Constitution was ratified in 1788 as they legislate through their police powers of the 10th Amendment; and by their sovereignty of Article IV of the States Republican form of government.

The 14th Amendment has a questionable legislative and unconstitutional ratification history with ramifications steeped in the abolitionist politics of the day and covers this issue with so much intrigue and subterfuge that it begs to be revealed once again and the amendment scrapped.

Constitutional Defects

The first glaring violation of the Constitution was when the joint resolution for the proposed amendment was not approved by all the States in Congress as required in Article 1 Sec. 3 as eleven Southern States had been excluded from Congress which had refused to seat them. It was brought to the Senate and House of Representatives attention on June 22, 1866 by President Johnson in a letter to them, and was read on the floor of the Senate, it was directed to be printed into the record of the Senate Journal (source: Library of Congress) the salient printed portion from the Journal is shown below:


justly regarded as of paramount importance. This importance is at the present time enhanced by the fact that the joint resolution was not submitted by the two houses for the approval of the President, and that, of the thirty-six States which constitute the Union, eleven are excluded from representation in either house of Congress, although, with the single exception of Texas, they have been entirely restored to all their functions as States, in conformity with the organic law of the land, and have appeared at the national capital by senators and representatives who have applied for and have been refused admission to the vacant seats. Nor have the sovereign people of the nation been afforded an

The representation issue that President Johnson discusses is no simple matter since it goes to the heart of the Constitutional question of representation of the States of the Union in regard to the joint resolution of Congress for what would become the 14th Amendment. This means that 23 Senators were not seated in the Senate at the time that

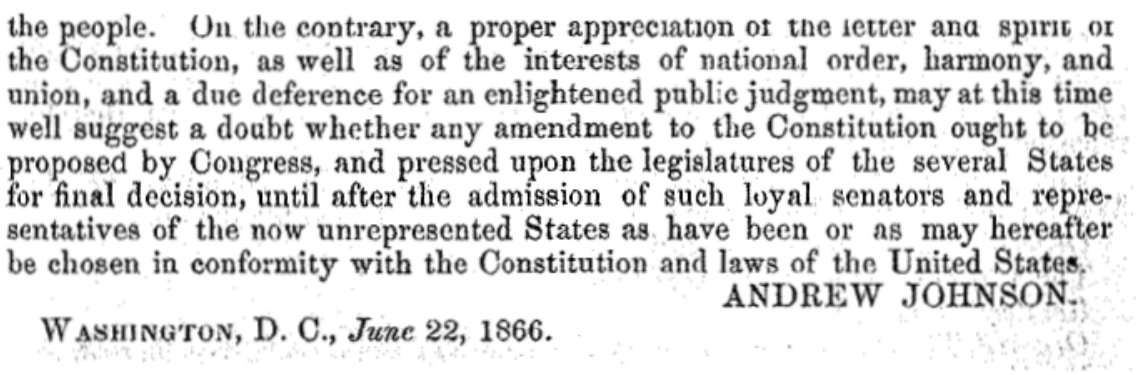
this joint resolution was passed and barred these 11 states and New Jersey from any input on what this amendment would become, and subsequently violated Article 1, Sec. 3:

"The Senate of the United States shall be composed of two Senators from each State"

It was also in furtherance to unconstitutional acts by the 39th Congress in violation of Article V :

"No State, without its consent, shall be deprived of its equal suffrage in the Senate."

All of this came about because the Republicans and their Radical colleagues had refused to seat the Senators and Representatives from the Southern States that had been in rebellion against the Union forces and shown in Johnson's letter to the House and Senate of June 22, 1866:



the people. On the contrary, a proper appreciation of the letter and spirit of the Constitution, as well as of the interests of national order, harmony, and union, and a due deference for an enlightened public judgment, may at this time well suggest a doubt whether any amendment to the Constitution ought to be proposed by Congress, and pressed upon the legislatures of the several States for final decision, until after the admission of such loyal senators and representatives of the now unrepresented States as have been or as may hereafter be chosen in conformity with the Constitution and laws of the United States.

ANDREW JOHNSON.

WASHINGTON, D. C., *June* 22, 1866.

Let's dispense with the question of why these Senators and Representatives were not seated in Congress after being sent to Washington by their respected legislatures and citizens, as we are working from the Congressional and historical record and we will ignore the political intrigue that went on during this time, the facts speak for themselves.

With that said; it appears this was done so that this amendment could be passed in a decidedly and almost exclusively 'Radical Republican' Congress… Eight States sent protest by Resolution of their legislatures to Congress over these Senators and Representatives not being seated in the 39th Congress and the proposed amendment was in their opinion unconstitutional, the following States protested:

New Jersey, by Resolution of March 27, 1868 (*New Jersey Acts*, March 27, 1868.)[1]
Alabama, by Resolution (*Alabama House Journal*, 1866, pp. 210-213)
Texas, by Resolution on October 15, 1866 (*Texas House Journal*, 1866, p. 577)[2]
Arkansas, by Resolution on December 17, 1866 (*Arkansas House Journal*, 1866, p. 287)[3]
Georgia, by Resolution on November 9, 1866 (*Georgia House Journal*, 1866, p. 66-67)[4]
Florida, by Resolution of December 5, 1866 (*Florida House Journal*, 1866, p. 76)[5]
South Carolina, by Resolution of November 27, 1866 (*South Carolina House Journal*, 1866, pp. 33-34)[6]
North Carolina, by Resolution of December 6, 1866 (*North Carolina Senate Journal*, 1866-67, pp. 92-93)[7]

Without placing all the Resolutions before the reader a few of the more salient passages from some of the States will be presented, for the others the links to the notes section at the end of the dates above will allow them to be read:

New Jersey…
"they deliberately formed and carried out the design of mutilating the integrity of the United States Senate, and without any pretext or justification, other than the possession of the power, without the right, and in the palpable violation of the Constitution, ejected a member of their own body, representing this state, and thus practically denied to New Jersey its equal suffrage in the Senate, and thereby nominally secured the vote of two thirds of the said house."

Georgia…
"*Two thirds of the whole Congress never would have proposed to eleven States voluntarily to reduce their political power in the Union, and at the same time, disfranchise the larger portion of the intellect, integrity, and patriotism of eleven co-equal States*."

South Carolina…
"*Hence this amendment has not been proposed by "two thirds of both Houses" of a legally constituted Congress, and is not, Constitutionally or legitimately, before a single Legislature for ratification."*

Combine these facts that the 39th Congress was a constitutionally defective legislative body and a joint resolution passed by same. Congress directed the joint resolution to be sent to the State legislatures by the Secretary of State William Henry Seward, even though it was constitutionally defective by barring eleven States from acting on the matter making the joint resolution a nullity. Since it only had 2/3rds majority of those 25 states seated at the time not 2/3rds of the Union which was 36 States in 1866. Much less the skullduggery of removing a sitting Senator from a Northern State: causing the New Jersey legislature to protest by means of a Resolution, all of this was done to reach the 2/3rds requirement for submission to the States which would have been impossible if the Senators and Representatives had been seated from the eleven Southern States.

The Joint Resolution has Failed

The Resolution has not even been submitted to the States yet and it has failed constitutional muster at every turn, from Congress itself. This amendment was not needed to accord rights to the freedmen as the Civil Rights Act of 1866 had done so in April. The Joint Resolution of Congress is constitutionally and legally defective and in the words of Arkansas from their Resolution of protest of December 17, 1866:

"The Constitution authorized two thirds of both houses of Congress to propose amendments; and, as eleven States were excluded from deliberation and decision upon the one now submitted, the conclusion is inevitable that it is not proposed by legal authority, but in palpable violation of the Constitution."

The Unconstitutional Joint Resolution is Submitted to the States

The 39th Congress itself was an unconstitutional legislative body and created a defective resolution that would become the 14th Amendment it was submitted by the Secretary of State to the State legislatures in full knowledge that it was legally and constitutionally defective. It was subsequently rejected by all the Southern States along with the Northern States of Delaware, Ohio, New Jersey and Maryland:

Texas rejected the Fourteenth Amendment on October 27, 1866[12]
Georgia rejected on November 9, 1866[13]
Florida rejected on December 6, 1866[14]
Alabama rejected on December 7, 1866[15]
Arkansas rejected on December 17, 1866[16]
North Carolina rejected on December 14, 1866[17]
South Carolina rejected on December 20, 1866[18]
Kentucky rejected on January 8, 1867[19]
Virginia rejected on January 9, 1867[20]
Louisiana rejected on February 6, 1867[21]
Delaware rejected on February 7, 1867[22]
Maryland rejected on March 23, 1867[23]
Ohio rejected on January 15, 1868[24]
Mississippi rejected on January 31, 1868[25]
New Jersey rejected on March 24, 1868[26]

The 14th Amendment Has Failed Ratification

To ratify the amendment needs twenty seven States to accept the joint resolution and only received twenty votes for ratification with ten Southern and two Northern States rejecting the amendment which left the Resolution dead and failed by an action of the duly recognized legislatures of these States by February 15, 1867. This means that the proposed amendment is foundering and is defeated. Five States are yet to be heard from and the amendment would need seven ratification votes for passage, which is impossible, as Mississippi and California do not vote for ratification, and they only pick up three more in 1867. If it does not pass it will need a new joint resolution of Congress being debated and passed by a 2/3rd majority of the House and Senate for submission to the States, time has run out for this amendment.

The 13th Amendment

The Southern States had another joint resolution presented to them in 1865 which they ratified and became the 13th Amendment which outlawed slavery. This could only have been done by duly elected and seated legislative body(s) of the States recognized by Secretary of State Seward to receive the joint resolution of Congress for their consideration, and by the following Presidential Proclamations of presidents Lincoln & Johnson normalizing their State governments:

This is shown by Lincoln's No. 11 Proclamation dated December 8, 1863 on the conditions for these same States for their admittance back into the Union. On May 29, 1865 the government of North Carolina had been re-established by Proclamation of President Johnson, he did the same for Mississippi on June 13, 1865, and Georgia on June, 17, 1865, Alabama on June 21, 1865, South Carolina on June 30, 1865, Florida on July 18, 1865.

The 13th Amendment was proposed by a Joint Resolution of Congress with the Senate passing it on April 8, 1864; the House passed it on January 31, 1865 President Abraham Lincoln ceremoniously signed the joint resolution the following day February 1, 1865. The 13th Amendment was ratified by twenty seven of the thirty six states of the Union, including Virginia, Louisiana, Arkansas, South Carolina, North Carolina, Alabama, and Georgia. Since these States considered and approved the proposed Amendment, there can be no doubt that these legislatures were duly enabled, empowered and seated to consider this Amendment to the Constitution, the facts speak for themselves, since it was ratified on December 6, 1865.

On April 2, 1866, President Andrew Johnson issued a proclamation stating the following States were no longer in a state of belligerence and they were at peace with the Union:

"The insurrection which heretofore existed in the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida is at an end, and is henceforth to be so regarded."

Then on August 20, 1866 Johnson through another proclamation had declared peace and that the insurrection of the Southern States had come to an end with an understanding with Texas:

"Now, therefore, I, Andrew Johnson, President of the United States, do hereby proclaim and declare that the insurrection which heretofore existed in the State of Texas is at an end and is to be henceforth so regarded in that State as in the other States before named in which the said insurrection was proclaimed to be at an end by the aforesaid proclamation of the 2nd day of April, 1866.

And I do further proclaim that the said insurrection is at an end and that peace, order, tranquility, and civil authority now exist in and throughout the whole of the United States of America."

The date of these proclamations are important to this discussion as it sets the stage for what comes next as these States are now considered to be within the Union and fully part once again of our Compact in conformance with the resolutions of Congress and the Senate of 1861 and 1863 and Johnson's Pardon of March 29, 1865 for Confederate soldiers and sailors. This means that these States and their citizens have been recognized by the President and Congress to all the rights and privileges of the Constitution free of interference in their own internal affairs, free to pass laws, collect taxes send representatives and senators to Congress of their choosing as their legislatures are functioning within the Constitutions requirements of Article IV Sec. 4.

Congress Rains Retribution on the Southern States with the Reconstruction Acts for Failure to Ratify the 14th Amendment

To understand and fully discuss what comes next we need to set the stage on how the 37th Congress and Abraham Lincoln's government viewed the civil war in the initial stages with almost identical Resolutions of the House of Representatives and the Senate. Here is a portion of the resolution from July 22, 1861:

> Mr. Noble submitted the following resolution; and debate arising thereon the same lies over, viz:
>
> *Resolved*, That the contest now existing between the government of the United States and the disloyal organizations now existing in certain States which are now waging an unjustifiable war upon the constitutional authority of the government, should be treated and regarded by all loyal citizens not as a sectional war, nor an anti-slavery war, nor a war of conquest or subjugation, but simply as a war for the maintenance of the government, the suppression of rebellion, and the preservation of all the rights of all the States full and undiminished as they were purchased by the blood of the revolution of 1776, and secured by all the provisions and compromises of the federal Constitution, and for no other purpose whatever.

This Resolution initiated the civil war for the House of Representatives, it was not a war of conquest, or of domination, but simply to reestablish the Union, in peace and prosperity and the Constitution to all States and citizens of the United States. This may have changed as the war proceeded but the evidence suggests this was so by the acts of Presidents Lincoln then Andrew Johnson. This was to be a war of reconciliation and to reestablish the Union.

Then at the conclusion of the war we have the Proclamations of President Johnson on April 2, 1866 and his Proclamation of August 20, 1866 which informed the nation that Texas and the United States were at peace and the civil war was officially over. Johnson's Pardon of March 29, 1865 for the soldiers and sailors of the Confederacy attempted to heal the rift this war created and reunite the Union. The 13th Amendment had been submitted to fully functional legislatures of the Southern States the preceding year and been ratified by December 6, 1865 by twenty seven States and proven by a Proclamation from Secretary of State Seward on December 18, 1865. This also supports the objectives of the Resolution of the House of Representatives and Senate of 1861 had been achieved; now if only Congress would see it that way our history surely would have taken other directions. The Union had been returned to a Constitutional Republic as evidenced by the 13th Amendment and the presidential proclamations of 1865 and 1866...

Congress was now going to use all the delegated and usurped unconstitutional powers that they could to impress on the Southern States an absolute despotism and the tyranny of martial law to force these States and people to approve the 14th Amendment by force of arms. The Civil Rights Act of 1866 had given the freedmen privileges and immunities the same as anyone else they were free to leave the South if they chose and escape the Black

Codes if they wished so it was unnecessary. Congress had taken a course that few despots had only dreamed of when they with the corruption of law, comity, fair play and honor forced their will on ten Southern States and People; it would lead to the impeachment of Andrew Johnson as well as this Congress coming off the rails.

The Reconstruction Act of 1867

This Act of Congress was vetoed by President Johnson on March 2nd 1867 in language that was so disturbing that it shocks the senses even today; it should be read in its entirety to grasp the full measure of the depravity that this Congress held for the Constitution, the Southern States, the President and anyone that got in their way...

Here is an excerpt from Johnson's veto and his point is well taken as he had proclaimed in August of 1866 that the nation was at peace and that civil order had been restored throughout the nation. He discusses that the courts both State and federal are open and that they are under proper authorities, yet Congress will place ten Southern States under martial law and disband their legislatures and replace them with ones that will do the bidding of congress and their military governors:

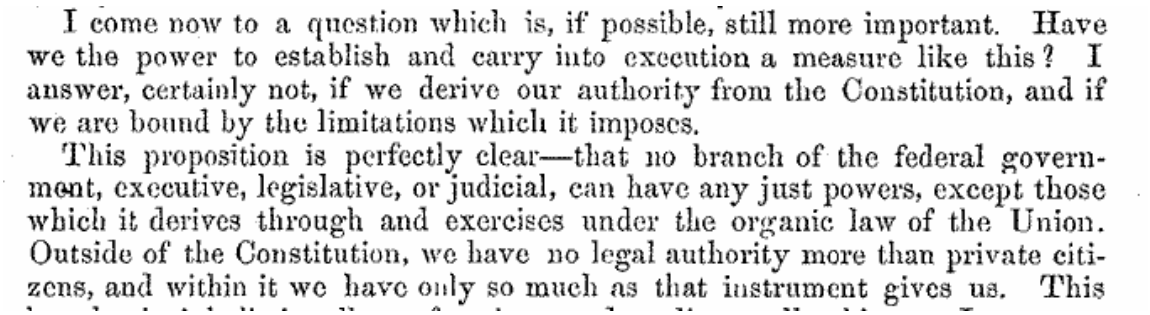
> This is a bill passed by Congress in time of peace. There is not in any one of the States brought under its operation either war or insurrection. The laws of the States and of the federal government are all in undisturbed and harmonious operation. The courts, State and federal, are open, and in the full exercise of their proper authority. Over every State comprised in these five military districts, life, liberty, and property are secured by State laws and federal laws, and the national Constitution is everywhere in force and everywhere obeyed. What, then, is the ground on which this bill proceeds? The title of the bill announces that it is intended "for the more efficient government" of these ten States. It is recited by way of preamble that no legal State governments, "nor adequate protection for life or property," exist in those States, and that peace and good order should be thus enforced. The first thing which arrests attention upon these recitals,

Johnson then goes on to remind Congress that our Constitution under Article IV Sec. 4 guarantees each State a Republican form of government and that this Act of Congress will wipe that away for their own desire for revenge for not ratifying the joint resolution of Congress for the 14th Amendment. He discusses the dissolving of their duly empowered legislatures (the same ones that had ratified the 13th amendment in 1865) and the creation of military districts which will be overseen with absolute authority by military governors with the dictatorial powers of an absolute monarch:

> The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this obligation is not palpably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States, and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority?

He then tries to implore and reason with them, and that there may still be some better Angels among them as he asks them to consider that it is the Constitution that they have taken an oath to protect and defend, as this mere instrument of governance is now laying

shredded at their feet if they proceed with this dastardly plan to disenfranchise nine million citizens of their Constitutional rights:



I come now to a question which is, if possible, still more important. Have we the power to establish and carry into execution a measure like this? I answer, certainly not, if we derive our authority from the Constitution, and if we are bound by the limitations which it imposes.

This proposition is perfectly clear—that no branch of the federal government, executive, legislative, or judicial, can have any just powers, except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution, we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This

The House has seated only 26 of the 36 States that comprise the Union with 10 Southern States representatives still not seated; overrides Johnson's veto by a vote of 173 for, 4 against and 14 abstaining in the House of Representatives. The Reconstruction act with all the despotism and tyranny that Congress could muster in the veto override is passed by the House, the Senate followed. This left the Southern States to be divided up into five military districts, and martial law imposed on these Southern States:

District:	**State(s):**	**Commanded by:**
First	Virginia	Gen. John Schofield
Second	North & South Carolina	Gen. Daniel E. Sickles
Third	Georgia, Florida, Alabama	Gen. John Pope
Fourth	Mississippi & Arkansas	Gen. Edward Ord
Fifth	Texas & Louisiana	Gen. Philip H. Sheridan

These military governors and commanders had over 200,000 men under their command to carry out the orders of Congress during this period; they also dissolved the legislatures in the States above. These were fully functional governments that had been dissolved and reconstituted by Congress so that they could force the Southern States to ratify the 14th Amendment. These military governors set about their work with the determination of men on fire and appointed new legislators[8] in these States Houses that would do the bidding of Congress and subsequently they took up the failed joint resolution of Congress for the 14th Amendment and recycled it as if it had never had any previous consideration in 1866 and early 1867 as it had been rejected by enough States that it failed ratification.

It was ratified by what become known as rump legislatures as follows:
Arkansas on April 6, 1868.
Florida on June 9, 1868.
North Carolina on July 2, 1868.
Louisiana on July 9, 1868.
South Carolina on July 9, 1868.
Alabama on July 13, 1868.
Georgia on July 21, 1868.

Secretary of State Seward was hesitant to issue a Proclamation that announced the passage of the 14th Amendment as it had been done at the point of a bayonet after

disenfranchising nine million citizens in the Southern States and his Proclamation of July 20, 1868 shows the gravity of his misgivings, with his statement "doubtful questions." He discussed the newly established legislatures and there ratification of the 14th Amendment which in his mind is "questionable" in the Southern States and the withdrawal of ratification by Ohio and New Jersey:

And whereas neither the act just quoted from, nor any other law, expressly or by conclusive implication, authorizes the Secretary of State to determine and decide doubtful questions as to the authenticity of the organization of State legislatures, or as to the power of any State legislature to recall a previous act or resolution of ratification of any amendment proposed to the Constitution;

Seward then uses the word "avowing" as if this statement is true, however; why did he choose this word if not to raise a question in the readers mind, after all he alluded to the fact as these are "newly constituted" and not the same legislatures that had been reestablished by Presidents Lincoln and Johnson from 1865 when the 13th Amendment was ratified. Is he saying in fact that they are different…?

Then we have the question of Ohio and New Jersey withdrawing their ratification of the amendment and that he is unable or unwilling to pass judgment on this fact either:

And whereas it further appears from documents on file in this Department that the amendment to the Constitution of the United States, proposed as aforesaid, has also been ratified by newly constituted and newly established bodies avowing themselves to be and acting as the legislatures, respectively, of the States of Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama;

And whereas it further appears from official documents on file in this Department that the legislatures of two of the States first above enumerated, to wit, Ohio and New Jersey, have since passed resolutions respectively withdrawing the consent of each of said States to the aforesaid amendment; and whereas it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent of the said two States, or of either of them, to the aforesaid amendment;

As a matter of law until the amendment is in fact passed a State has the right to withdraw its resolution of ratification, after the fact would be too late, though Secretary Seward has in fact received these resolutions and he is unable or unwilling to effectuate the desire of these two States…New Jersey sent their withdrawal in April 1868, and Ohio in January 1868. It is the States that ratify in Article V, not the federal government; the States are sovereign under Article IV, Sec 4. They have the power to determine these matters; they control the ratification process and their resolution(s) of same. The facts in this matter are clear the 14th Amendment has failed once again, as the count now is only twenty seven States with Ohio and New Jersey's withdrawals as Nebraska entered the Union in March of 1867 making the Union 37 States, and the requirement for ratification is 28 States. The States that are under martial law are being extorted and forced to do the will of Congress, when we subtract all seven, then we are left with only twenty States that ratify this amendment, leaving Secretary Seward to question the outcome for this amendment.

The matter does not end here, after seeing Secretary Seward's Proclamation of July 20th; Congress passes a joint resolution on the 21st of July and directs the Secretary of State to certify fully 27 States have ratified the 14th Amendment:

So the said report was agreed to.

Mr. Pomeroy moved that the vote last taken be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, That the Clerk acquaint the Senate with the concurrence of the House in the said report.

A message from the Senate, by Mr. Gorham, their Secretary:

Mr. Speaker: The Senate have passed a concurrent resolution, as follows, viz:

Whereas the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, West Virginia, Kansas, Missouri, Indiana, Ohio, Illinois, Minnesota, New York, Wisconsin, Pennsylvania, Rhode Island, Michigan, Nevada, New Hampshire, Massachusetts, Nebraska, Maine, Iowa, Arkansas, Florida, North Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the thirty-ninth Congress: Therefore,

Resolved by the Senate, (the House of Representatives concurring,) That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State;

in which I am directed to ask the concurrence of the House.

This is good place to take a review of Article V and the powers that Congress has in this matter as they are limited to only housekeeping matters and that is, that they can "propose" amendments and specify their method of ratification, Article V:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

That is the extent of their powers in these matters directing the Secretary of State to ignore the withdrawal of Ohio and New Jersey is beyond their Constitutional purview as they are only given limited duties in this matter and ratification power is only given to the several sovereign States, the concurrence of Congress with the States decision is not mentioned.

However Secretary of State Seward is kowtowed by Congress and issues his revised Proclamation on July 28, 1868, however he certifies thirty States with inclusion of the rump legislature of Georgia which ratified the amendment on the 21st of July 1868:

Now, therefore, be it known that I, WILLIAM H. SEWARD, Secretary of State of the United States, in execution of the aforesaid act, and of the aforesaid concurrent resolution of the 21st of July, 1868, and in conformance thereto, do hereby direct the said proposed amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States, and I do hereby certify that the said proposed amendment has been adopted in the manner hereinbefore mentioned by the States specified in the said concurrent resolution, namely, the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota,

Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, Alabama, and also by the legislature of the State of Georgia; the States thus specified being more than three fourths of the States of the United States.

And I do further certify that the said amendment has become valid to all intents and purposes as a part of the Constitution of the United States.

One has to wonder at this point whether this was done to guarantee that if Ohio and New Jersey challenged the ratification results since these States had withdrawn their ratification they still achieve the magic number of 28 or three quarters of the 37 States would be reached. It appears so. Another glaring issue is that the State count differs from the record in the House Journal for the concurring joint resolution which only shows 27 States, and the joint resolution in Secretary Seward's proclamation of July 28th, shows the House certifying 29 states, absent is Georgia which the Rump legislature ratified on July 21st. Though there is a discrepancy between the House Journal and what was transmitted to Secretary Seward sometime on or before the 28th.

Gone are the concerns about the two states that have withdrawn their ratification and the legality of such, and the "newly formed governments" as well. All we have is a simple statement regarding New Jersey and Ohio's withdrawal of ratification buried in the body of the proclamation showing dates of ratification and the resolution of withdrawal. Other than that he issued a proclamation which included the joint resolution of Congress of the 21st of July, and his obedience to the instructions contained within it:

Now, therefore, be it known that I, WILLIAM H. SEWARD, Secretary of State of the United States, in execution of the aforesaid act, and of the aforesaid concurrent resolution of the 21st of July, 1868, and in conformance thereto, do hereby direct the said proposed amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States, and I do hereby certify that the said proposed amendment has been adopted in the manner hereinbefore mentioned by the States specified in the said concurrent resolution, namely, the States of Connecticut, New

This has been a tainted and unconstitutional process from the very start and it ends with a whimper of capitulation against a Congress that used despotism and tyranny to pass this amendment for what good it does. As the 39th and 40th Congress unleashes a fury of violence across the Southern States by their tyranny and made a mockery of the principles enshrined in the Constitution. So much so that Oregon withdraws its ratification by a rescinding resolution of the 14th Amendment in October of 1868 on the grounds that it was:

"Fourteenth Amendment" had not been ratified by three fourths of the States and that the "ratifications" in the Southern States were "usurpations, unconstitutional, revolutionary and void" and that, "until such ratification is completed, any State has a right to withdraw its assent to any proposed amendment."

Oregon frames the issue for us today as well as in 1868 when they withdrew their ratification resolution. The actions of Congress were usurpations and unconstitutional to think that the unchecked power of Congress could be misused in such a manner is beyond the rule of law it is reckless and rank tyranny though was considered necessary in 1866 and speaks to us today to right this wrong against the Constitution.

Selected Excerpts from the 39th Congress Congressional Debates for the Proposed 14th Amendment

A complete analysis of the ratification of the 14th Amendment would not be complete without reviewing some of the legislative debates to peak behind the curtain to ascertain legislative intent. We are given the admonition that it is the will of the legislature that is to be enforced by the courts with these admonitions from Thomas Jefferson and Chief Justice John Marshall:

The Constitution is to be construed, in Jefferson's words, in accordance with the *"meaning contemplated by the plain understanding of the people at the time of its adoption—a meaning to be found in the explanation of those who advocated it."*

"Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature."

This final admonition from chief justice Marshall:

"The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional."

Which brings us full circle from where we started with the *Obergefel v. Hodges* opinion in that we have a case of judicial activism and impermissible review which will be illuminated through the floor debate in the House and Senate for the 14th Amendment. We will be shown what the true intent was of the amendment by the men who advocated for it at the time. We will be shown the aftermath of the hatred of the legislators towards the South and the Rebel cause. We will also be shown the limited scope of the amendment and how it has been misused by many courts since its unconstitutional impressing into the Constitution.

We will also learn that the intent of the amendment was only to apply to citizens and not foreign nationals which have far reaching consequences to today with the invasion by illegal aliens who are given citizenship to their children when birthed on our soil all due to the retched 14th Amendment...

Congressman Bingham February 28, 1866 Report to the House of Representatives

Confuses the Constitution with the Articles of Confederation's Perpetual Union

We are given to believe that the Constitution was never ratified and that the Article of Confederation are still in force, since they provided a convenient excuse for the concept of perpetual Union. When in fact the Confederation was a Compact between States instead of the Compact between the people of the several states and our federal government as established by the Constitution and sets the stage for all the tyranny to follow. The Constitutional question of a properly seated and constitutional body is raised by Pennsylvania since the 39th Congress as seated only comprises 25 States:

We have the extraordinary argument of the gentleman from Pennsylvania, [Mr. RANDALL,] that however just the amendment may be we ought not to pass it in the absence of the Representatives of the eleven States lately in insurrection against the country. Mr. Speaker, when the gentleman comes to reflect upon that remark of his he will see by using it he casts an imputation upon the very men who framed the matchless Constitution of the country under which we are assembled here to-day. It was written in the Articles of Confederation that they "should be articles of perpetual Union" between the original thirteen States who were parties to it.

We see that members of the House have deep concerns that this amendment is not being considered by the whole nation and that Congress is not constitutionally comprised to consider this matter, and was discussed in the **Constitutional Defects** section. Which means that the debates themselves were cast in a pall of unconstitutionality by the assembled Congressmen during the debates, and who considered this question.

Bill of Rights not applicable to the States

The members of Congress in 1866 did not conclude that the Bill of Rights extended to the States and it wasn't until 1873 with the Slaughter-House cases did the Supreme Court hear the first challenge where the 14th Amendment's 'privileges and immunities' clause were challenged, it withstood the first attempt to usurp States powers:

"If these propositions be correct, the fifth amendment must be understood as restraining the power of the General Government, not as applicable to the States."

I read one further decision on this subject— the case of the Lessee of Livingston vs. Moore and others 7 Peters, page 551. The court, in delivering its opinion, says: "As to the amendments of the Constitution of the United States, they must be put out of the case, since it is now settled that those amendments do not extend to the States; and this observation disposes of the next exception, which relies on the seventh article of those amendments."

Which again brings us full circle to *Obergefel v. Hodges* as we have the Supreme Court applying and usurping the power of State governments to legislate the issue of marriage, the 39th Congress did not have the understanding that they could.

Privileges & Immunities applies to the Freedmen as recently freed slaves

Bingham narrows the scope of the amendment and the aims with which the amendment seeks to address clearly it is not the sweeping and broad avenues that later courts have taken. Which means these later decisions are not based on legislative review to give voice to Congress but that of the judge and justices.

As the whole Constitution was to be the supreme law in every State, it therefore results that the citizens of each State, being citizens of the United States, should be entitled to all the privileges and immunities of citizens of the United States in every State, and all persons, now that slavery has forever perished, should be entitled to equal protection in the rights of life, liberty, and property.

Clearly the 14th Amendments debate centered on the privileges and immunities issue to bestow on the freedmen the rights they had been denied through Dred Scott and was limited to this narrow scope as shown by the excerpt above.

Reference to Dred Scott and slaves as chattels and mere property

This reference was to another famous case of the Supreme Court Dred Scott which stripped any and all rights from the slaves as they were mere property and chattels and not considered as humans that were equals, the description is apt “brutes of the field:

As slaves were not protected by the Constitution, there might be some color of excuse for the slave States in their disregard for the requirement of the bill of rights as to slaves and refusing them protection in life or property; though, in my judgment, there could be no possible apology for reducing men made like themselves, in the image of God, to a level with the brutes of the field, and condemning them to toil without reward, to live without knowledge, and die without hope.

Which we have another instance where the freedmen were to be given 'privileges and immunities' the same as every other citizen in this nation that was a citizen.

Question is raised over Tennessee denied their seats in Congress

Questions are being raised over Congress itself since 11 southern States have been denied their seats in the House and Senate making the amendment itself questionable since it cannot and will not be acted on by all 36 States of the Union of 1866:

Mr. BINGHAM. It is not for me, Mr. Speaker, or for any member of this House, to suppose any such thing as that. And I beg leave to state further, in which I have no doubt the venerable gentleman from Pennsylvania, [Mr. STEVENS,] the chairman of the committee on reconstruction on the part of the House, will join me, that every endeavor has been made by that committee, without regard to this amendment, to present the case of Tennessee; so that BY the sovereign act of the American people, through the joint act of Congress, the constitutional relations of the State of Tennessee as a State of this Union might be restored. I am not at liberty to state, even if I knew, what the committee intend to do in regard to that State. I do know that the matter is still before us; and that we have given it attention.

Congressmen are at least asking questions about this abnormal make up of the 39th Congress since no amendment has ever been raised in Congress that was not acted upon by every State in the Union. We have somewhat of a paradox since the concept of the entire civil war was one of an insurrection and not of a sectional war. The belief was that we had a perpetual Union, now those same States are not represented in Congress brings the entire process into question. As Article 1 Sec. 3 and Article V have a direct bearing on their deliberations as 11 States will not have a say in this amendment as it is proposed without them. The Constitution requires the representatives and senators from the southern states to be seated, though are held in abeyance by not acting on their credentials and elections returns.

Seeds for the tyranny of the Reconstruction Act are planted

The animosity that Congressman Howard holds for the South and the confederates that fought for their cause are plainly visible in this statement where he holds nothing but contempt for the newly elected governor of Mississippi Benjamin G. Humpreys a former brigadier general for the confederate forces. The contempt that he holds for the people of Mississippi for electing this man to office is palpable, as he blithely neglects his former service to the State of Mississippi before the war as a well known legislator, though one who does not wish to give the Freedmen political rights as he embraced and advocated for Jim Crow laws. It makes no difference he is forever tainted and sets the stage for what is to come after the southern states reject the 14th Amendment in 1867 and bring to the fore an absolute despotism with the Reconstruction Act where he will be removed from office by the military governor General Edward Ord.

Mr. BINGHAM. Mr. Speaker, I have already called the attention of the House to the condition of South Carolina, in which I will be sustained by the facts already before the House and before the country touching that people. I call the attention of the House also to the condition of Mississippi. How is it that a man who fought in the armies against the country throughout all those years of conflict—a man who, I believe, had a rebel commission as brigadier general—is elected Governor of that State, and is now Governor over that people? The people who would elect Humphreys Governor are doubtless the people who followed Humphreys in the war for treason, in the War for the dismemberment of the Union. Now, we are told by these gentlemen to make haste to restore all of those States and permit them to reenact by law the crimes which they have inflicted by force for the last four years. I think there are exceptions among those States. I think there is a greater proportion of loyal men in some than in others. I think it may become the accepted policy of this House, and I trust it will, to admit such States as are so far advanced in reconstruction and reorganization and an honest return to allegiance under the Government as will enable them to consolidate their strength and maintain a republican constitutional State government.

It seems to me equally clear if you intend to have these thirty-six States one under our Constitution, if you intend every citizen of every State shall in the hereafter have the immunities and privileges of citizens in the several States, you must amend the Constitution. It cannot be otherwise. Restore those States with a majority of rebels to political power, and they will cast their ballots to exclude from the protection of the laws every man who bore arms in defense of the Government. The loyal minority of white citizens and the disfranchised colored citizens will be utterly powerless. There is no

efficient remedy for it without an amendment to your Constitution. A civil action is no remedy for a great public wrong and crime.

Nobody dreams, if we admit these States unqualifiedly, but some of their officials would violate their oaths as they have heretofore done and clothe themselves with perjury as with a garment in order to sweep away the rights of loyal men, and be avenged upon them for their fidelity to the sacred cause of the Constitution, and the laws.

Sir, we are no longer permitted to doubt that whole communities are capable of so great infamy and perfidy. They did this in eleven of these States five years ago, and if they did it once may they not do it, again?

Clearly this statement was meant to inflame the passions of the other members of Congress and we get a glimpse into the hatred that was felt for the south and their efforts to secede from the Union. Bingham simply does not trust any former rebel and will poison the well at every opportunity.

Frames the privileges and immunities clause

Congressman Bingham has explained that our 'privileges and immunities' shall be applied to everyone and since the Freedmen had no rights because of the Dred Scott decision he makes the point that these rights would now apply equally to the former slaves. As the Supreme Court had made the slaves chattels and mere property which this amendment will bestow on them equal protection as the rest of the nations citizens Article IV Sec. 2 rights.

Representatives, to you I appeal, that hereafter, by your act and the approval of the loyal people of this country, every man in every State of the Union, in accordance with the written words of your Constitution, may, by the national law, be secured in the equal protection of his personal rights. Your Constitution provides that no man, no matter what his color, no matter beneath what sky he may have been born, no matter in what disastrous conflict or by what tyrannical hand his liberty may have been cloven down, no matter how poor, no matter how friendless, no matter how ignorant, shall be deprived of life or liberty or property without due process of law—law in its highest sense, that law which is the perfection of human reason, and which is impartial, equal, exact justice; that justice which requires that every man shall have his right; that justice which is the highest duty of nations as it is the imperishable attribute of the God of nations.

His language is eloquent, though he frames exactly what 'privileges and immunities' are with:

" shall be deprived of life or liberty or property without due process of law"

Clearly this was the limit that the 14th Amendment would bestow on the Freedmen and not the expansive rights we see being meted out today by the Roberts Supreme Court and past courts.

Defines Equal Protection Clause as Life, Liberty & Property

Congressman Hale reiterates his understanding of the 'privileges and immunities' clause as simply life, liberty and property which frames the understanding of 39th Congress in this debate as it applies to the equal protection clause as is shown below:

Mr. HALE. The gentleman misapprehends my point, or else I misapprehend his answer. My question was whether this provision, if adopted, confers upon Congress general powers, of legislation in regard to the protection of life, liberty, and personal property.

Mr. BINGHAM. It certainly does this: it confers upon Congress power to see to it that the protection given by the laws of the States shall be equal in respect to life and liberty and property to all persons.

Mr. HALE. Then will the gentleman point me to that clause or part of this resolution which contains the doctrine he here announces?

Mr. BINGHAM. The words "equal protection" contain it, and nothing else.

A point must be made as the debate centered on the granting of rights to the Freedmen who had been chattels and they were to be given their Article IV Sec. 2 rights the same as any other citizen and these were defined as life, liberty and property and nothing more. What's more this is to be done through the "*equal protection*" clause of §1 in the 14th Amendment.

Link to the entire House debate of February 28, 1866
http://patriotsandtyrants.org/SCOTUS/Bingham_Speech_2-28-1866.pdf

Senator Howard May 23, 1866 Report on the Amendment to the Senate

Senator Howard in the absence of Senator Fessenden who was ill at the time and chairman of the Senate Committee that drafted the amendment, so it fell to Howard to report to the full Senate on the status of the Joint Resolution H.R. No. 127 for what would become the 14th Amendment.

Howard makes it clear this Amendment is for the Freedmen

Senator Howard does not couch his words as carefully as Congressman Bingham nor is he as eloquent and leaves no doubt or misunderstanding on who and what he is discussing and that is granting 'privileges and immunities' to the Freedmen.

It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law?

When in fact it is '*equal protection,*' what else needs to be said...!

The political reality of what was an abolition issue is now a political issue

We are introduced to the abject racism of the day which was prevalent among all people of the time, the abolitionists were vocal about the institution of slavery, though hated the black race as individuals. The question for them was one of ownership of another human as a chattel. The reality while the civil war raged was an academic question after the war was over it became a political one which we will soon see was a hot potato.

The colored race are destined to remain among us. They have been in our midst for more than two hundred years; and the idea of the people of the United States ever being able by any measure or measures to which they may resort to expel or expatriate that race from their limits and to settle them in a foreign country, is to me the wildest of all chimeras. The thing can never be done; it is impracticable. For weal or for woe, the destiny of the colored race in this country is wrapped up with our own; they are to remain in our midst, and here spend their years and here bury their fathers and finally repose themselves. We may regret it. It may not be entirely compatible with our taste that they should live in our midst. We cannot help it. Our forefathers introduced them, and their destiny is to continue among us; and the practical question which now presents itself to us is as to the best mode of getting along with them.

Here it is one hundred and fifty years later and we are still in many ways still trying to "*get along with them*" who have been shunted into ghettos in most all of our major metropolitan cities under Democrats have left them to rot in between elections by their cities leaders and politicians with crushing and familiar problems compounding the strife.

The 14th Amendment is about political power, 3/5ths Compromise is dead

The wheels are turning and the political reality is hitting the Senate and House Republicans as never before as they now have the political reality on how best to capitalize on this newly created electorate. Here it is prefaced as a proposition of "*lost property*" which means that Senator Howard regard the Freemen in the same manner as the Supreme Court in the Dred Scott decision and he prefers to make sure that the South will not profit from it.

The three-fifths principle has ceased in the destruction of slavery and in the enfranchisement of the colored race. Under the present Constitution this change will increase the number of Representatives from the once slave-holding States by nine or ten. That is to say, if the present basis of representation, as established in the Constitution, shall remain operative for the future, making our calculations upon the census of 1860, the enfranchisement of their slaves would increase the number of their Representatives in the other House nine or ten, I think at least ten; and under the next census it is easy to see that this number would be still increased; and the important question now is, shall this be permitted while the colored population are excluded from the privilege of voting? Shall the recently slaveholding States, while they exclude from the ballot the whole of their black population, be entitled to include the whole of that population in the basis of their representation, and thus to obtain an advantage which they did not possess before the rebellion and emancipation? In short, shall we permit it to take place that one of the

results of emancipation and of the war is to increase the Representatives of the late slaveholding States? I object to this. I think they cannot very consistently call upon us to grant them an additional number of Representatives simply because in consequence of their own misconduct they have lost the property which they once possessed, and which served as a basis in great part of their representation.

So we have started to see the beginning of the Reconstruction Act which would not come about until two years later after the Southern States reject the 14th Amendment which he is reporting on to the full Senate. Though the ramifications of the war's aftermath are being seen and acted upon on who will capitalize and win this new electorate for the future Democrats or Republicans as the oldest game in the world power.

Howard defines actions of enforcement is by Congress not the Courts

The object of enforcement of the 14th Amendment was to be made through Congress by the making of law to enact the newly created powers that were limited to their scope and did not create any new rights whatsoever as these excerpts have shown. They merely wished to bestow upon the recently freed slaves the same rights that other citizens already had though had been denied them due to the Dred Scott decision. The use of the 14th Amendment by the courts is certainly not warranted as §5 gave these powers to Congress.

As I have remarked, they are not powers granted to Congress, and therefore it is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that "the Congress shall have power to enforce by appropriate legislation the provisions of this article." Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution.

What are we to think when we see the limited scope of the 14th Amendment been abused and twisted to grant such sweeping rights and powers not seen or discussed in these debates or amendment to the point that gay marriage has now been divined through this amendment.

Link to the entire Senate Report from Senator Howard of May 23, 1866

http://patriotsandtyrants.org/SCOTUS/Howard_Speech_5-23-1866.pdf

Note:

Page 3 of the Howard speech debate defines who has citizenship and a citizen and excludes all non-citizens as having any rights under the 14th Amendment and is relevant to the current illegal alien debate and anchor babies who are granted citizenship:

The first clause of this section relates to the privileges and immunities of citizens of the United States as such, and as distinguished from all other persons not citizens of the United States.

Conclusion

The 14th Amendment was born in despotism and steeped in tyranny to suborn the Constitutional rights of this nation's citizens both North and South with duly seated and recognized legislatures protesting this fact. The Joint Resolution of June 13, 1866 was issued by an unconstitutional Congress that did not have the mandate of this Union's citizens when Congress refused to seat the Senators and Representatives from eleven Southern States and tainted the joint resolution from the outset. This was a Constitutional defect that could not be overcome by any Constitutional means; it was a nullity at that point as the States that been in rebellion had complied with the proclamations of Lincoln and Johnson and the resolutions of Congress for admittance back into the Union.

The joint resolution for the 14th amendment was rejected by a majority of States by early 1867 and enraged Congress which passed a series of Reconstruction Acts that was an utter despotism the likes of which had not been seen on this planet for hundreds of years before by the bitterest monarch. Law and the rule of law was suspended in the five military districts of Virginia, North & South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Texas and Louisiana as these States were placed under martial law and absolute despotism and coerced by the force of arms by the military commander of their district until such time as Congress felt otherwise and they passed the resolution.

The violence that these actions placed against the nation's citizens by these unconstitutional actions at a time when no State, Territory or Possession was in rebellion or insurrection was a travesty of epic proportions as the Constitution was swept aside for mere political power, to gather then keep the vote of the freedmen in the Southern States. The Civil Rights Act of 1866 had granted privileges and immunities to the freedmen, making the 14th Amendment superfluous and unnecessary. The unconstitutionality of this amendment's creation and the mischief it has caused since its corrupted impressing into our Constitution demands that it be ripped out by its poisonous roots and discarded before the Supreme Court can do more harm to this nation and people by the continuation of its use, which is in keeping with the depravity of its creation.

For a nation bound by the Constitutional principles found within its boundaries demands that this be done as we have a new threat that anything under the Sun will be found among its verbiage of an ever expanding 14th amendment becoming new principles in depravity. As it has only the boundary of the human mind to limit these newly found manifestations in Constitutional rights by a severely tainted court in conjunction with an unconstitutional amendment.

The Congressional debates that we discussed show the limited scope of the 14th Amendment and not the sweeping rights that have been divined by the Supreme Court as they remake the Constitution into whatever they deem necessary at the time to change our society into their favored image.

Congress has also been made aware of the unconstitutionality of this amendment in all its particulars and has chosen not to act, when in fact Sec. 5 of the 14th Amendment gives empowerment to Congress to enforce the provisions of this amendment.

Congress has allowed the courts and especially the Supreme Court to engage in amending the constitution by a panel of oligarchs in black robes that use it to their own ends; it is time this comes to an end.

In Liberty, while we can keep it…

Alan P. Halbert, CMBA
July 15, 2015

Research Notes

Notes on the 14th Amendment from Raoul Berger, *Government Judiciary: The Transformation of the Fourteenth Amendment* [1977]

http://oll.libertyfund.org/titles/675

We are apt to overlook Chief Justice Marshall's caution that:

"*The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional.*"

And

"*has been emphatically termed a government of laws and not of men.*"

And

"*Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature.*"

Concept of Judicial Review:

http://legal-dictionary.thefreedictionary.com/Judicial+Review

http://legal-dictionary.thefreedictionary.com/Warren+Court

The Constitution is to be construed, in Jefferson's words, in accordance with the "meaning contemplated by the plain understanding of the people at the time of its adoption—a meaning to be found in the explanation of those who advocated it."

The decade preceding adoption of the Constitution was one of great intellectual ferment in which, **Gordon Wood** has shown, a revolution in political thinking was taking place.48 The postulate, for example, that sovereignty was in the people, that rights need not flow from the Crown, was far more revolutionary than judicial review.49

It needs to be borne in mind that the Constitution contains no specific provision for judicial review. What legitimacy it has largely rests on the legislative history, which contemplates no more than policing constitutional boundaries,54 limits which Chief Justice Marshall declared were not to be "transcended."

Respect for the limits on power are the essence of a democratic society; without it the entire democratic structure is undermined and the way is paved from Weimar to Hitler. Raoul Berger

Oliver Wendell Holmes (1902-1943) in *Baldwin v. Missouri*, he stated:

I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us *carte blanche* to embody our economic or *moral beliefs* in its prohibitions . . . Of course the words "due process of law," if taken in their literal meaning, have no application to this case; and while it is too late to deny that they have been given a much more extended and artificial signification, still we ought to remember the great caution shown by the Constitution in limiting the power of the States, and should be slow to construe the clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass.41

1. Basis for most SCOTUS decisions is based on the 14th Amendment, Raoul Berger 'Basis of amending power' bookmark.

2. What does it mean 'What did it mean when they wrote it' Scalia's determination on intent and meaning.

3. 'Democrat Racists'

Of Nevada to the "nearly insurmountable" prejudice, James F. Wilson of Iowa to the "iron-cased prejudice" against blacks. These were Republicans, sympathetic to emancipation and the protection of civil rights.40 Then there were the Democratic racists who unashamedly proclaimed that the Union should remain a "white man's" government.41 In the words of Senator Garrett Davis of Kentucky, "The white race . . . will be proprietors of the land, and the blacks its cultivators; such is their destiny." 42

4. Reality hits home for GOP politicians 'GOP intrigue freedmen are full citizens 3/5th's no more' the reality that the South would drive the House to be reapportioned due to full citizenship for Negros.

5. Democrats and GOP wanted to limit the power that would be conveyed to Negros by the 14th amendment as they believed them to be inferior and our society was essentially racist against them whether North or South as it would have consequences to politicians due to reapportionment of Congress for House seats.

6. 'No encroachment to State Sovereignty:'

No trace of an intention by the Fourteenth Amendment to encroach on State control—for example, of suffrage and segregation—is to be found in the records of the 39th Congress.

A mass of evidence is to the contrary, and, as will appear, the attachment of the framers to State sovereignty played a major role in restricting the scope of the Amendment.

7. 'Three Clauses:'

Meaning of the three clauses of §1 were three facets of one and the same concern: to insure that there would be no discrimination against the freedmen in respect of "fundamental rights," which had clearly understood and narrow compass. Roughly speaking, the substantive rights were identified by the privileges or immunities clause; the equal protection clause was to bar legislative discrimination with respect to those rights; and the judicial machinery to secure them was to be supplied by nondiscriminatory due process of the several States.

NOTE:
Therefore the scope of the amendment was only to apply over fundamental rights of citizenship and operative through State Legislatures and Courts with remedies against seats in Congress only for federal intervention...

8. 'Only federal consequence'

Consider the "one man-one vote" doctrine. Section 2 of the Fourteenth Amendment provides that if suffrage is denied on account of race, the State's representation in the House of Representatives shall be proportionally reduced. This constitutes the sole provision for federal intervention. Senator William Fessenden, chairman of the Joint Committee on Reconstruction, explained that the Amendment "leaves the power where it is, but it tells [the States] most distinctly, if you exercise that power wrongfully, such and such consequences will follow."

9. 'Purpose of the Amendment:'
The "privileges or immunities" clause was the central provision of the Amendment's §1, and the key to its meaning is furnished by the immediately preceding Civil Rights Act of 1866, 1 which, all are agreed, it was the purpose of the Amendment to embody and protect. The objectives of the Act were quite limited. The framers intended to confer on the freedmen the auxiliary rights that would protect their "life, liberty, and property" — no more. For the framers those words did not have the sprawling connotations later given them by the Court but, instead, restricted aims that were expressed in the Act. The legislative history of the Amendment frequently refers to "fundamental rights," "life, liberty, and property," and a few historical comments will show the ties between the two.

10. 'Embody & Incorporate Civil Rights Act of 1866:'
An ardent advocate of an abolitionist reading of the Amendment, Howard Jay Graham, stated that "virtually every speaker in the debates on the Fourteenth Amendment—Republican and Democrat alike—said or agreed that the Amendment was designed to embody or incorporate the Civil Rights Act."

11. 'Corfield rebutted:'
But we cannot accede to the proposition . . . that the citizens of the several states are permitted to participate in all the rights which belong exclusively to the citizens of any other particular state.

12. 'Privileges & Immunities:'
clinging to the traditional trinity: “life, liberty, and property.” suffrage excluded and left to States to fashion.

13: 'No suffrage onto the States:'
The decision was made, however, not to propose a limited, single purpose amendment; not to advertise the particular issue of Negro suffrage and to dispose of it through a provision instantly validating the laws of all states where equal suffrage regardless of race was denied.

NOTE:
It was understood in 1866 that this power belonged to the States and that Congress could not force onto the States suffrage for Negros, though in 2015 SCOTUS has used the 14th Amendment to usurp a States power over marriage which had been an Article IV and 10th amendment issue since our founding...

14.'States Rights by Lincoln:'
On the eve of the Civil War, Lincoln stated in his First Inaugural Address, “The right of each State to order and control its own domestic institutions according to its own judgment exclusively is essential to the balance of powers on which the perfection and endurance of our political fabric depends.”

15. 'Long standing right of States Rights:'
Howard is confirmed by the Report of the Joint Committee, which drafted the Amendment: “It was doubtful . . . whether the States would surrender a power they had always exercised, and to which they were attached.”

16. '15th amendment GOP ascendency:'
A secondary objective, he found, “was to protect the southern Negro against future disfranchisement,” 17 for it had become apparent that military occupation must come to an end and continued control must rest on Negro voters, who would help perpetuate Republican ascendancy. Thaddeus Stevens, leader of the Radicals, therefore began drafting the Amendment “to save the Republican party from defeat.

17. 'Hegemony for GOP:'
The dominant purpose of the 39th Congress was to maintain Republican hegemony by reducing Southern representation; and only secondarily did they think to secure the “person and property” of the Negro from oppression.3 There were repeated disclaimers of any intention to interfere with State sovereignty beyond those
objectives.

NOTE:
The Oh Shit factor now that the 3/5ths compromise is ended and Southern legislatures could end up dominating Congress due to swollen populations of freemen...
18. 'Incontrovertible:'
Unless some special magic was deemed to inhere in the words “equal protection” —a supposition hereinafter examined—the evidence, to my mind, that suffrage was excluded from the Amendment is all but incontrovertible.

19. 'Political reality:'
Unless Northern voters preferred Democratic resurgence to Negro suffrage, the interests of Republican voters and members of Congress were one and the same. In fact the framers shared the prejudices of their Northern constituency, to recall only George W. Julian's statement in the House: "The real trouble is we hate the Negro."

20. 'No blank check:'
Studied ambiguity also collides with Senator Fessenden's suggestion of a change because "there is a little obscurity or, at any rate, the expression in section 4 might be construed to go further than was intended." 29 A "blank check to posterity**"** is likewise refuted by Chairman Wilson's statement: "I fear that comprehensive statesmanship which cares for posterity as well as for itself will not leave its impress upon the measure we are now considering."

and

Shortly after congressional approval of the Amendment, and during the warm-up for the elections of 1866, a leading Radical, Congressman Robert C. Schenck of Ohio, averred the Democrats "are afraid that it may have some concealed purpose of elevating negroes . . . [to] make them voters. It goes to no such length."

21. 'Senator Howard plainly states:'

(States rights were upheld for the granting of franchise) Senator Howard, who has been regarded as "one of the most reckless of the radicals," one who "served consistently in the vanguard of the extreme negrophiles," 36 explained to the Senate that he would have preferred to secure suffrage to the colored race to some extent at least . . . But sir, it is not a question what you, or I, or half a dozen other members of the Senate may prefer in respect to colored suffrage . . . the question really is, what will the Legislatures of the various States . . . do in the premises; what is likely to meet the general approbation of the people. The Committee were of the opinion that the States are not yet prepared to sanction so fundamental a change.

22. 'Senator Wilson:'
Thirteenth Amendment for constitutional authority to enact the Civil Rights Act. But there was vigorous opposition. Conkling declared that "Emancipation vitalizes only natural rights, not political rights." 55 And most Republicans held that natural rights did not include the right to vote. Senator Henry Wilson, a Massachusetts Radical, stated that the Thirteenth Amendment "was never understood by any man in the Senate or House to confer upon Congress the right to prescribe or regulate the suffrage in any State . . . If it had been supposed that it gave that power the amendment would never have passed the Congress, never have received the sanction of the States."

23. 'Established rule:'
The established rule is that if a thing is within the intention of the framers, it is as good as written in the text.

24. 'No concealed purpose:'
During the ratification process, in the summer election campaign of 1866, the

Republicans repeatedly assured the people that, in the words of Senator John Sherman of Ohio, the Amendment "was an embodiment of the Civil Rights Bill," itemizing several of its provisions. A similar assurance was given by Senator Lane of Indiana.64 Congressman Schenck of Ohio repudiated "a concealed purpose" to confer Negro suffrage; his Ohio colleague Columbus Delano stressed that the Amendment was designed to make citizens "safe in the South." 65 Logan of Illinois said it was meant to permit the citizen "to sue and be sued, to own property, to have process of court," a reminder of the limited objectives of the Civil Rights Act, accompanied by a specific disclaimer that §1 "gives the negro the right of suffrage." 66 These and still other representations collected by Charles Fairman militate against a concealed purpose to go beyond the confines of the Act.

25. 'Ratification Premise:'

The doctrine of ratification premises that the principal knows what he is ratifying; without full disclosure there can be no ratification.67 And there is the larger issue of political morality.

26. 'Lee voice of reason:'

As Lee stated in the Virginia Ratification Convention, "When a question arises with respect to the legality of any power, exercised or assumed," the question will be, " *Is it enumerated in the Constitution*? . . . It is otherwise arbitrary and unconstitutional."

27. 'New law for a new Day:'

He told the Conference that he would "file a separate concurring opinion" if the "Court feigned that the Justices were doing anything other than declaring new law for a new day." 55 This, Kluger comments, was asking the majority to admit that "there was no judicial basis for its decision," that "it was acting in a frankly unjudicial way." 56 Kluger considers it "a scarcely reasonable request to make of the brethren." 57 Why not? What kind of "consensus of society" (which the Court purportedly effectuates) is it that cannot withstand the truth—that effectuation required "new law for a new day"? An adult jurisprudence for an age of "realism" surely called for an end to the pretense that it was the Constitution, not the Justices, who spoke.58 Concealment suggests there may in fact have been no consensus.59 Perhaps Jackson's insistence impelled Chief Justice Warren —after labeling the history "inconclusive" 60 —to state that "we cannot turn back the clock to 1868," 61 a veiled declaration that the intention of the framers was irrelevant and that the Court was revising the Constitution to meet present-day needs

NOTE:

Verify Frankfurter's comment "new law for a new day.'

28. 'No Federal Oversight of State Courts:'

The states did not adopt the Amendment with knowledge of its sweeping meaning under its present construction. No section of the Amendment gave notice to the people that, if adopted, it would subject every state law . . . affecting [judicial processes] . . . to censorship of the United States courts. No word in all this Amendment gave any hint that

its adoption would deprive the states of their long recognized power to regulate [judicial processes].

29. ‘Excluded political rights:’

The Civil Rights Act, it will be recalled, secured to blacks the *same* right to contract, to hold property, and to sue, as whites enjoyed, and the “*equal* benefit of all laws *for security of person and property.* ” “Political rights” were excluded.

30. ‘Chief Justice Marshall:’

For Chief Justice Marshall, on the other hand, the words of the Constitution were not to be “extended to objects not . . . contemplated by the framers” 94 —let alone unmistakably excluded.

31. ‘Purpose of due process:’ (Bergers opinion)

The extraordinary transformation of due process by the Court55 has turned the Fourteenth Amendment topsy-turvy. The original design was to make the “privileges or immunities” clause the pivotal provision in order to shield the “fundamental rights”enumerated in the Civil Rights Act from the Black Codes. Intertwined with that enumeration was repeated emphasis on the enjoyment of the “same rights,” and “equal benefit of all laws and proceedings for the security of person and property.”

32. ‘Harris Defines:’ (Read in conjunction as a trinity)

Harris comments, “was the mutual interdependence of the privileges and immunities, due process, and equal protection clauses.” 65 And in answer to the question “equal protection of what?” he replies: “when the three clauses are read together as they ought to be, it is equal protection by equal laws pertaining to the rights of life, liberty and property, and the privileges and immunities of citizenship.

33. ‘No new criteria of Justice:’
(Howard and Steven reiterate followed by Trumbull) As in the case of the “equal protection” clause, the framers were content to bar discrimination, to assure blacks that they would have judicial protection on the same State terms as whites, no more, no less. It should be apparent from the foregoing that the due process clause was not meant to create a new, federal criterion of justice. Like State *laws* at which “equal protection” was aimed, State *justice* had to be nondiscriminatory. It was “equal justice to all men and equal protection under the shield of law” of which Howard spoke.69 [E]quality in the protection of these fundamental rights . . . was the common refrain throughout,” as is exemplified by Stevens’ “Whatever means of redress *is afforded* to one shall be afforded to all,”

34. ‘Wilson quotes Blackstone:’(No new rights were fashioned, equality and due process)

Wilson had quoted Blackstone’s pairing of “due process of law” and by the “laws of the land” in commenting on the Civil Rights Bill, exhibiting awareness that Blackstone

regarded them as the sole means of curtailing the specified rights. He emphasized that the Bill "does not go one step beyond" protection from discrimination with respect to designated "immunities," that "it is not the object of this bill to establish new rights," but to declare "the equality of all citizens in the enjoyment of civil rights and immunities."

35. 'Bork's Conclusion:'
(The Court, in short, was not empowered to substitute its policy choices for those of the framers.) The words are general but surely that would not permit us to escape the framers' intent if it were clear. If the legislative history revealed a consensus about segregation in schools and all the other relations in life, I do not see how the Court could escape the choices revealed and substitute its own, even though the words are general and conditions have changed. It is the fact that history does not reveal detailed choices concerning such matters that permits, indeed requires, resort to other modes of interpretation.80

36. 'Robert S. Hale:' (Protect the Freedmen was the intent of the Amendment)
Robert S. Hale said, "It is claimed that this constitutional amendment is aimed simply and purely toward the protection of 'American citizens of African descent' . . . I understand that to be the whole intended practical effect of the amendment." Bingham replied, "It is due to the committee that I should say that it is proposed as well to protect the thousands . . . of loyal white citizens . . . whose property . . . has been wrested from them." 91 He recurred, however, to a broader statement: "all persons, whether citizens or strangers . . . shall have equal protection . . . in the rights of life, liberty, and property."

37. 'Samuel L. Warner:' (Mistrust of SCOTUS)
Not long after congressional approval of the Amendment, Samuel L. Warner, a Connecticut Republican, said he had "learned to place but little reliance upon the dogmas of [the] Court upon any question touching the rights of humanity." 9

38. 'Congress was the remedy, not the Courts:'
(Under sec. 5 Congress was to remedy) It was "necessary," said Senator Poland, that Congress "enforce the provision . . . and *compel* its observance." 26 Stevens explained that the Amendment "allows Congress to correct the unjust legislation of the States"; and Charles Fairman observed that "Stevens' thought ran to political rather than judicial action." 27 Other framers also looked to Congress to undertake "corrective" action.

Furthermore:
The overtones of such expressions were amplified by Senator Howard: section 5 constitutes a direct affirmative delegation of power to Congress *to carry out* all the principles of these guarantees, a power *not found in the Constitution* . . . It casts upon Congress the *responsibility* of seeing to it, for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of person and property . . . I look upon this clause as indispensable for the reason that it thus *imposes upon Congress* this power and *this duty*. It enables *Congress*, in case the States

shall enact laws in conflict with the principles of the amendment, *to correct* that legislation by a formal congressional amendment.29

39. 'Berger's well reasoned question:'
(Courts have usurped Congressional Powers) A reasoned argument for a judicial power of enforcement of the Fourteenth Amendment—apart from that derived from the grant in the Civil Rights Act of 1866, which Congress is free to withdraw—has yet to be made. Section 5, I would insist, raises questions which go to the heart of judicial enforcement of the Amendment, questions which the Court has never attempted to answer, which have been neglected by scholars, and to which they might well devote further study.

40. 'Problem in Politics:'
(Reality bites, the real issue their reelection and House Seats) Bingham's change of heart illustrates Russell Nye's pithy summation: after 1865 the "Negro was no longer a problem in morality, but a problem in politics."

41. 'Warren upended Law:'

(Chief Justice Warren ignored the legislative record and the rights of the States to push a federal and his agenda) Stated baldly, what the framers meant by the words they employed is not binding on the Court; the Court lays claim to power to revise the Constitution to meet present needs. A celebrant of the Warren Court, Paul Murphy, commented that *Brown* disclosed Chief Justice Warren's "unabashed and primary commitment to justice and his willingness to shape the law to achieve it." 61 He did not merely "shape" the law, he upended it; he revised the Fourteenth Amendment to mean exactly the opposite of what its framers designed it to mean, namely, to leave suffrage and segregation beyond federal control, to leave it with the States, where control over internal, domestic matters resided from the beginning.

NOTE:
Tenth Amendment controls this issue as it had since 1789 when Constitution was ratified, the legislative record is clear segregation in the schools and suffrage were State matters per the 10th amendment, more importantly the Courts had no remedy as Congress alone had retained that power, making their decision a usurpation of the 14th amendment.

42. 'Distortion of Due Process:'
Whatever the scope of procedural due process, the "deposit of history" incontrovertibly shows that it did not comprehend a judicial veto of legislation on policy grounds. Frankfurter acknowledged that the "vagueness" of due process "readily lends itself to make of the Court a third chamber with drastic veto power."

NOTE:

This time period 1926 was firmly in the grasp of the progressive era where Lasize Fare economic systems were being shed for more stringent socialist forms. With the classical

definition of due process being jettisoned allowed new avenues to implement change on society... through the courts.

43. ‘Marshall’s admonition:’

Once limits are prescribed, Chief Justice Marshall stated, they may not “be passed at pleasure.” It was because constitutions were bulwarks against oppression that, in his words, “written constitutions have been regarded with so much reverence.” 32 The Constitution represents fundamental choices that have been made by the people, and the task of the Courts is to effectuate them, “not [to] construct new rights.

Explained by Berger:

When the judiciary substitutes its own value choices for those of the people it subverts the Constitution by usurpation of power. No dispensation was given to the Court to step outside its powers; it is no less bound by constitutional limits than are the other branches, as the historical evidence makes plain. First, it was clearly excluded from participation in the making of policy, the function of the legislature.

44. “Judiciary’s Purpose:’

Third, conclusive evidence that the judiciary was designed only to police constitutional boundaries, not to exercise supraconstitutional policymaking functions, was furnished by Hamilton. In Federalist No. 78 he stressed that the courts were to serve as “bulwarks of a limited Constitution against legislative encroachments” —a note repeatedly sounded in the subsequent Ratification Conventions.

Marshall speaks to this issue:

Chief Justice Marshall rephrased this in unmistakable terms: the Court was only to give “effect to the will of the legislature.”

45. ‘No more heinous offense:’

Finally, well aware that there existed considerable distrust of the proposal for judicial review, Hamilton sought to allay it in Federalist No. 81 by calling attention to the important constitutional check which the power of instituting impeachments . . .

would give to that body [Congress] upon the members of the judicial department. This is alone a complete security. There can never be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it.50

These were no idle words, for both the English and the Founders regarded “usurpation” or subversion of the Constitution as the most heinous of impeachable offenses.51

46. “Robert H. Jackson:’ (Justice Jackson)

Justice, Robert H. Jackson, perceived, as Chief Justice Warren did not, that “the rule of law is in unsafe hands when courts cease to function as courts and become organs for control of policy.”

NOTE:

Nowhere is this admonition been more fulfilled than with the Warren and now Roberts Courts that have made a sham of the Court as they abandoned the legislative record for natural law to an unknown principle by being the policy arm of the Obama regime in the ObamaCare and Gay marriage cases…

47. ‘Washington’s parting statement:’

(Contained in his farewell address)If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.61

48. ‘Wary of Legislative Powers at the Convention:’ (Looked for ways to curtail Legislature)

Edmund Randolph proposed in the Convention that the President, “and a convenient number of the National Judiciary, ought to compose a council of revision” to examine every act of Congress and by its dissent to constitute a veto.4 When his fellow Virginian George Mason argued for judicial participation in the presidential veto, he recognized that judges already could declare an unconstitutional law void. But with regard to every law *however unjust oppressive* or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished further use to be made of the Judges, of giving aid in *preventing every improper law*.5

49. ‘James Wilson had similar views on Powers of the Legislature:’

Laws may be *unjust, may be unwise, may be dangerous*, may be destructive; and yet be *not so unconstitutional* as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power [in order to “counteract”] the improper views of the Legislature.

50. ‘Justice Douglas Speaks:’

Justice Douglas therefore stood on solid ground in stating that “when the Court used substantive due process to determine the wisdom or reasonableness of legislation, it was indeed transforming itself into the Council of Revision which was rejected by the Constitutional Convention.”

51. ‘Gay Marriage and ObamaCare Response:’

To thrust aside the dead hand of the Framers is to thrust aside the Constitution. The argument that new meanings may be given to words employed by the Framers10 aborts their design; it reduces the Constitution to an empty shell into which each shifting judicial majority pours its own preferences.

52. ‘Whirligig of Justice:’

Such are the fruits of a value-oriented system which makes of “constitutional [case] law” a veritable whirligig. No rhetoric can disguise that this is but the kadi administering justice under a tree.

14th Amendment Ratification Notes

...Florida's ratification as valid and ignore the sometimes marked differences among the versions the States had approved. The 14th Amendment was never Constitutionally proposed to the States and never Constitutionally ratified by the States. This is a scary concept since it stands as one of the most significant parts of the American legal system and when most Americans think about their rights, they think about their 14th rights - an amendment that is not and was not ratified.

The purported 14th Amendment to the United States Constitution is and should be held to be ineffective, invalid, null, void and unconstitutional for the following reasons:

A. The Joint Resolution proposing said amendment was not submitted to or adopted by a Constitutional Congress per Article I, Section 3, and Article V of the U. S. Constitution. Only twenty five States were seated as Congress had excluded 11 States:
Proof from the Journal of the Senate dated June 22, 1866, Johnson’s letter to the Senate:http://memory.loc.gov/cgi-bin/ampage?collId=llsj&fileName=058/llsj058.db&recNum=562

B. The Joint Resolution was not submitted to the President for his approval as required by Article I, Section 7 of the U. S. Constitution.

Proof from the Journal of the Senate dated June 22, 1866, Johnson’s letter to the Senate:http://memory.loc.gov/cgi-bin/ampage?collId=llsj&fileName=058/llsj058.db&recNum=562

C. The proposed 14th Amendment was rejected by more than one-fourth of all the States then in the Union, and it was never ratified by three-fourths of all the States in the Union as required by Article V of the U. S. Constitution.

The CONGRESS was Unconstitutional
Article I, Section 3. "The Senate of the United States shall be composed of two Senators from each State" Article V provides: "No State, without its consent, shall be deprived of

its equal suffrage in the Senate." The fact that 28 Senators had been unlawfully excluded from the U. S. Senate, in order to secure a two-thirds vote for adoption of the Joint Resolution proposing the 14th Amendment is shown by Resolutions of protest adopted by the following eight State Legislatures:

New Jersey Legislature by Resolution of March 27, 1868
Alabama Legislature protested against being deprived of representation in the Senate of the U. S. Congress.
Texas Legislature by Resolution on October 15, 1866
Arkansas Legislature, by Resolution on December 17, 1866
Georgia Legislature, by Resolution on November 9, 1866
Florida Legislature, by Resolution of December 5, 1866
South Carolina Legislature by Resolution of November 27, 1866
North Carolina Legislature protested by Resolution of December 6, 1866
The Alabama Legislature protested against being deprived of representation in the Senate of the U.S. Congress.[(4)]

1. The New Jersey Legislature by Resolution on March 27, 1868, protested as follows:

The said proposed amendment not having yet received the assent of three fourths of the states, which is necessary to make it valid, the natural and constitutional right of this state to withdraw its assent is undeniable....

That it being necessary by the *Constitution* that every amendment to the same should be proposed by two thirds of both houses of Congress, the authors of said proposition, for the purpose of securing the assent of the requisite majority, determined to, and did, exclude from the said two houses eighty representatives from eleven states of the Union, upon the pretense that there were no such states in the Union; but, finding that two thirds of the remainder of the said houses could not be brought to assent to the said proposition, they deliberately formed and carried out the design of mutilating the integrity of the United States Senate, and without any pretext or justification, other than the possession of the power, without the right, and in the palpable violation of the *Constitution*, ejected a member of their own body, representing this state, and thus practically denied to New Jersey its equal suffrage in the Senate, and thereby nominally secured the vote of two thirds of the said house.[(3)]

2. The Texas Legislature, by Resolution on October 15, 1866, protested as follows:

The Amendment to the *Constitution* proposed by this joint resolution as Article XIV is presented to the Legislature of Texas for its action thereon, under Article V of that *Constitution*. This Article V, providing the mode of making amendments to that instrument, contemplates the participation by all the States through their representatives in Congress, in proposing amendments. As representatives from nearly one third of the States were excluded from the Congress proposing the amendments, the constitutional requirement was not complied with; it was violated in letter and in spirit; and the proposing of these amendments to States which were excluded from all participation in their initiation in Congress, is a nullity.[(5)]

3. The Arkansas Legislature, by Resolution on December 17, 1866, protested as follows:

The *Constitution* authorized two thirds of both houses of Congress to propose amendments; and, as eleven States were excluded from deliberation and decision upon the one now submitted, the conclusion is inevitable that it is not proposed by legal authority, but in palpable violation of the *Constitution*.[(6)']

4. The Georgia Legislature, by Resolution on November 9, 1866, protested as follows:

Since the reorganization of the State government, Georgia has elected Senators and Representatives. So has every other State. They have been arbitrarily refused admission to their seats, not on the ground that the qualifications of the members elected did not conform to the fourth paragraph, second section, first Article of the *Constitution*, but because their right of representation was denied by a portion of the States having equal but not greater rights than themselves. They have in fact been forcibly excluded; and, inasmuch as all legislative power granted by the States to the Congress is defined, and this power of exclusion is not among the powers expressly or by implication defined, the assemblage, at the capital, of representatives from a portion of the States, to the exclusion of the representatives of another portion, cannot be a constitutional Congress, when the representation of each State forms an integral part of the whole.

This amendment is tendered to Georgia for ratification, under that power in the *Constitution* which authorizes two thirds of the Congress to propose amendments. We have endeavored to establish that Georgia had a right, in the first place, as a part of the Congress, to act upon the question, "Shall these amendments be proposed?" Every other excluded State had the same right. The first constitutional privilege has been arbitrarily denied. Had these amendments been submitted to a constitutional Congress, they would never have been proposed to the States. Two thirds of the whole Congress never would have proposed to eleven States voluntarily to reduce their political power in the Union, and at the same time, disfranchise the larger portion of the intellect, integrity, and patriotism of eleven co-equal States.[(7)]

5. The Florida Legislature, by Resolution on December 5, 1866, protested as follows:

Let this alteration be made in the organic system and some new and more startling demands may or may not be required by the predominant party previous to allowing the ten States now unlawfully and unconstitutionally deprived of their right of representation is guaranteed by the *Constitution* of this country and there is no act, not even that of rebellion, can deprive them.[(8)]

6. The South Carolina Legislature, by Resolution on November 27, 1866, protested as follows:

Eleven of the Southern States, including South Carolina, are deprived of their representation in Congress. Although their Senators and Representatives have been duly elected and have presented themselves for the purpose of taking their seats, their credentials have, in most instances, been laid upon the table without being read, or have been referred to a committee, who have failed to make any report on the subject. In short, Congress has refused to exercise its Constitutional functions, and decide either upon the

election, the return, or the qualification of these selected by the States and people to represent us. Some of the Senators and Representatives from the Southern States were prepared to take the test oath, but even these have been persistently ignored, and kept out of the seats to which they were entitled under the *Constitution* and laws.

Hence this amendment has not been proposed by "two thirds of both Houses" of a legally constituted Congress, and is not, Constitutionally or legitimately, before a single Legislature for ratification.[(9)]

7. The North Carolina Legislature, by Resolution on December 6, 1866, protested as follows:

The Federal *Constitution* declares in substance, that Congress shall consist of a House of Representatives, composed of members apportioned among the respective States in the ratio of their population and of a Senate, composed of two members from each State. And in the Article which concerns Amendments, it is expressly provided that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." The contemplated Amendment was not proposed to the States by a Congress thus constituted. At the time of its adoption, the eleven seceding States were deprived of representation both in the Senate and House, although they all, except the State of Texas, had Senators and Representatives duly elected and claiming their privileges under the *Constitution*. In consequence of this, these States had no voice on the important question of proposing the Amendment. Had they been allowed to give their votes, the proposition would doubtless have failed to command the required two thirds majority....

Link to Information:
http://www.barefootsworld.net/14uncon.html

Rejection of the Several States:

Texas rejected the 14th Amendment on Oct. 27, 1866.
Georgia rejected the 14th Amendment on Nov. 9, 1866.
Florida rejected the 14th Amendment on Dec. 6, 1866.
Alabama rejected the 14th Amendment on Dec. 7, 1866.
North Carolina rejected the 14th Amendment on Dec. 14, 1866.
Arkansas rejected the 14th Amendment on Dec. 17, 1866.
South Carolina rejected the 14th Amendment on Dec. 20, 1866.
Kentucky rejected the 14th Amendment on Jan. 8, 1867.
Virginia rejected the 14th Amendment on Jan. 9, 1867.
Louisiana rejected the 14th Amendment on Feb. 6, 1867.
Delaware rejected the 14th Amendment on Feb. 7, 1867.
Maryland rejected the l4th amendment on Mar. 23, 1867.
Mississippi rejected the 14th Amendment on Jan. 31, 1867.
Ohio rejected the 14th amendment on Jan. 16, 1868.
New Jersey rejected the 14th Amendment on Mar. 24, 1868.

12. *Senate Journal* (39th Congress, lst Session), p. 563; *House Journal*, 1866, p. 889.
13. *House Journal*, 1866, pp. 578-584; *Senate Journal*, 1866, p. 471.

14. *House Journal*, 1866, p. 68; *Senate Journal*, 1866, p. 72.
15. *House Journal*, 1866, p. 76; *Senate Journal*, 1866, p. 8.
16. *House Journal*, 1866, pp. 210-213; *Senate Journal*, 1866, p. 183.
17. *House Journal*, 1866-67, p. 183; *Senate Journal*, 1866-67, p. 138.
18. *House Journal*, 1866, pp. 288-291; *Senate Journal*, 1866, p. 262.
19. *House Journal*, 1866, p. 284; *Senate Journal*, 1866, p. 230.
20. *House Journal*, 1867, p. 60; *Senate Journal*, 1867, p. 62.
21. *House Journal*, 1866-67, p. 108; *Senate Journal*, 1866-67, p. 101.
22. Reference: James M. McPherson, *The Civil War and Reconstruction*, p. 194; *Annual Encyclopedia*, p. 452.
23. *House Journal*, 1867, p. 223; *Senate Journal*, 1867, p. 176.
24. *House Journal*, 1867, p. 1141; *Senate Journal*, 1867, p. 808.
25. Reference: James M. McPherson, *Reconstruction*, p. 194.
26. *House Journal*, 1868, pp. 44-50; *Senate Journal*, 1868, pp. 22-38.
27. *Minutes of the Assembly*, 1868, p. 743; *Senate Journal*, 1868, p. 356.
28. *House Journal* (39th Congress, 2nd Session), p. 563.

Protests of

There was no question that all of the Southern states which rejected the 14th Amendment had legally constituted governments, were fully recognized by the federal government, and were functioning as member states of the Union at the time of their rejection.

President Andrew Johnson, in his Veto message of March 2, 1867, [Cite 26] pointed out that:

"It is not denied that the States in question have each of them an actual government with all the powers, executive, judicial and legislative, which properly belong to a free State. They are organized like the other States of the Union, and, like them they make, administer, and execute the laws which concern their domestic affairs."

If further proof were needed that these States were operating under legally constituted governments as member States in the Union. the ratification of the 13th Amendment by December 8, 1865 undoubtedly supplies this official proof. If the Southern States were not member States of the Union, the 13th amendment would not have been submitted to their Legislatures for ratification.

2a. The 13th Amendment to the United States Constitution was proposed by Joint Resolution of Congress [Cite 27] and was approved February 1, 1865 by President Abraham Lincoln, as required by Article I, Section 7 of the United States Constitution. The President's signature is affixed to the Resolution.

The 13th Amendment was ratified by 27 states of the then 36 states of the Union, including the Southern States of Virginia, Louisiana, Arkansas, South Carolina, Alabama, North Carolina and Georgia. This is shown by the Proclamation of the Secretary of State December 18, 1865. [Cite 28] Without the votes of these 7 Southern State Legislatures the 13th Amendment would have failed. There can be no doubt but that the ratification by these 7 Southern States of the 13th Amendment again established the fact that their

Legislatures and State governments were duly and lawfully constituted and functioning as such under their State Constitutions.

http://memory.loc.gov/cgi-bin/ampage?collId=llhb&fileName=040/llhb040.db&recNum=439

House directing Secretary of state to accept 14th amendment

http://memory.loc.gov/cgi-bin/ampage?collId=llhj&fileName=066/llhj066.db&recNum=1125&itemLink=r%3Fammem%2Fhlaw%3A%40field%28DOCID%2B%40lit%28hj0661%29%29%3A%230660001&linkText=1

Unorthodox and Paradox: Revisiting the Ratification of the Fourteenth Amendment (Alabama Law Review, 2000):

http://www.law.ua.edu/pubs/lrarticles/Volume%2053/Issue%202/Bryant.pdf

1. It seems quite clear that the Fourteenth Amendment was not ratified, if proposed, even loosely within the text of Article V of the Constitution.' Article V does not give Congress the power to deny a state representation in Congress without its consent. In fact, it prohibits such conduct. Nor does Article V give Congress the power to abolish a state government when it refuses to ratify a proposed amendment. And certainly, Article V does not allow Congress to deny a state its representation until it ratifies a desired amendment.

2. The most disturbing problem arising out of the Fourteenth Amendment ratification story is the precedent for constitutional amendment it may have set. For one to assume the constitutionality of the Amendment, they must accept its method of proposal and ratification as constitutional. Therefore, one who accepts the constitutionality of the Fourteenth Amendment must also accept the premise that, at least in certain circumstances, Congress may deny states their representation in Congress in order to compel ratification of a desired amendment. This cannot be right, but the dilemma is heightened by the recognition that the Fourteenth Amendment is a cornerstone of federal jurisprudence. There is simply no acceptable outcome if we are forced to choose between accepting a doctrine of congressional coercion or the Fourteenth Amendment. The only answer, besides ignoring the question, is to re-propose the Fourteenth Amendment.

3. Senator Doolittle of Wisconsin, in a statement before Congress, demonstrated quite clearly the new strategy Congress would pursue to ensure the ratification of the Fourteenth Amendment: "[The people of the South have rejected the constitutional amendment, and therefore we will march upon them and force them to adopt it at the point of bayonet, and establish military power over them until they do adopt it.

4. But now, through the Reconstruction Act, Congress is saying that their refusal to accept the Amendment has deprived them of all political power in the councils of the nation. Further, Congress is also telling the South that if they ever want that power back, the Fourteenth Amendment must become part of the Constitution, and until it does, the South will be governed by the Union army.' This is entirely inconsistent with the limited power granted to Congress in Article V. Surely, the founding fathers never

contemplated that an amendment to the Constitution could be lawfully compelled "*at the point of the bayonet,*" or that a state could be placed under the duress of continued and compelling military force to achieve the ratification of a desired amendment.

5. Even placing aside the coercive nature of the Reconstruction Act, there is a further unavoidable problem with the Act's inconsistent internal logic. The Act stated that no legal republican state governments existed in the South. According to the Act, in order for Congress to legally recognize Southern governments, the Fourteenth Amendment must have been ratified by the Southern states, and must have become part of the Constitution. The key inconsistency is that the Amendment must have been ratified by the provisional government of a Southern state before that government was legally recognized. Yet, what good is ratification by a government that is not legally recognized or entitled to representation in Congress? And if ratification by a congressionally unrecognized state government is allowed, why can't an unrecognized state government reject an amendment?

Alphabetical Index

S

T

U

V

W