Supplementary Material

Chapter 6: The Civil War and Reconstruction—Sources/Constitutions and Amendments

Congressional Debate on the Fourteenth Amendment (expanded)

The bipartisan coalition that secured the Thirteenth Amendment fractured when considering the Fourteenth Amendment. Republicans were outraged by southern behavior immediately after the Civil War. Most former slave states passed Black Codes. These laws prohibited persons of color from engaging in many occupations and exercising such political rights as serving on juries and voting. Southern Unionists were also persecuted and denied fundamental rights. While most Republicans believed the Thirteenth Amendment gave Congress the power to outlaw these offensive laws, party members agreed that a more specific constitutional amendment was necessary to secure greater racial equality. Democrats aggressively challenged Republican efforts to reconstruct the South. Party members, even those who supported the Thirteenth Amendment, insisted that southern practices after the Civil War reflected an enduring constitutional commitment to white supremacy.

Politics and principle freely mixed during the debates over the Fourteenth Amendment. Republicans feared that a reconstructed South might provide the Democratic Party with the votes necessary to return that coalition to national power. Such an outcome was likely if former slaves, who were denied the ballot, counted as full persons for purposes of apportioning representatives in Congress. Many Democrats believed that their party could make substantial inroads in the north running as the party committed to rule by white men.

The Republican Party internally divided over an appropriate constitutional amendment. Party members after the elections of 1864 and 1866 enjoyed the majorities necessary to ratify the constitutional amendment of their choice, but could not agree on principles or language. Such radical Republicans as Thaddeus Stevens and Charles Sumner favored a package of constitutional amendments and statutes that granted persons of color the same political, civil, and economic rights as white persons. They championed a Fourteenth Amendment that declared,

> *Congress shall have power to make all laws necessary and proper to secure all citizens of the United States, in every State, the same political rights and privileges; and to all persons in every State equal protection in the enjoyment of life, liberty and property*[1].

Stevens proposed legislation confiscating southern plantations and redistributing the land to former slaves. More conservative Republicans insisted that the federal constitution and federal law not undermine the economic status quo in the South. They favored constitutional amendments and federal statutes limited to guaranteeing former slaves (and southern Unionists) formal legal equality.

The resulting Fourteenth Amendment was a compromise between more radical and more conservative Republican factions. The crucial provisions of that text declare,

> *1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*
> *. . .*
> *5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

[1] *Journal of the Joint Committee on Reconstruction*, 39th Cong., 1st Sess. (1866), 14.

Section 2 of the Fourteenth Amendment penalizes states that deprive male citizens of the right to vote in a federal election for reasons other than participation in the rebellion or criminal offenses by reduced the offending state's representation in Congress in proportion to the percentage of men disenfranchised. Section 3 declares former state and federal officials who sided with the Confederacy ineligible to hold political office. Section 4 states that the United States is not liable for debts incurred by the Confederate government or states that joined the Confederacy. The Fourteenth Amendment was proposed by Congress in June 1866 and ratified by the states in July 1868. Congress refused to acknowledge efforts by several states to rescind ratification. Some southern legislatures were not allowed representation in Congress until the state legislature approved the Fourteenth Amendment.[2]

When reading the excerpts below, consider the relationship between the constitutional amendment proposed by the more radical Republicans and the final version of the Fourteenth Amendment. What rights did the most radical faction of the Republican Party seek to protect? What rights did the most conservative faction of the Republican Party seek to protect? To what extent did the persons who proposed different Fourteenth Amendments believe they were using different words to protect the same constitutional rights? To what extent do you believe the final language of the Fourteenth Amendment reflects a self-conscious decision to reject more radical Republican claims? To what extent does the final language of the Fourteenth Amendment reflect a self-conscious decision not to decide? Do you believe the original and final versions of the Fourteenth Amendment are substantially different? Compare the final version of the Fourteenth Amendment with the most radical interpretation of the Thirteenth Amendment. Do any significant differences exist between the Thirteenth Amendment as interpreted by Charles Sumner and the Fourteenth Amendment? Did the Fourteenth Amendment narrow or broaden the more radical version of the Thirteenth Amendment?

Many contemporary scholars pay special attention to speeches made by Representative John Bingham of Ohio and Senator Jacob Howard of Michigan. In early 1866, the House and Senate formed a Joint Committee on Reconstruction and charged that committee with drafting the Fourteenth Amendment. Bingham and Howard were the Congressmen responsible for presenting the agreed version to the House and Senate. Do they agree on the principles underlying the Fourteenth Amendment? Why were such radicals as Thaddeus Stevens so disappointed with the final language?

The Thirteenth, Fourteenth, and Fifteenth Amendments included provisions that declare, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Future generations would debate whether that language gives Congress authority to interpret the meaning of the post–Civil War Amendments. Do the excerpts below cast any light on how the framers of those amendments understood constitutional authority? Such Democrats as Andrew Rogers insisted that the Fourteenth Amendment radically altered the Constitution. Did Republicans agree?

REPRESENTATIVE GILES HOTCHKISS (Republican, New York)[3]

[Hotchkiss spoke when Congress was debating the early version of the Fourteenth Amendment that included only a provision granting Congress powers to enforce civil rights]

. . .

. . . [I]f the gentleman's object is . . . to provide against a discrimination to the injury or exclusion of any class of citizens in any State from the privileges which other citizens enjoy, the right should be incorporated into the Constitution. It should be a constitutional right that cannot be wrested from any class of citizens by mere legislation. But this amendment proposes to leave it to the caprice of Congress; and your legislation upon the subject would depend upon the political majority in Congress, and not upon two thirds of Congress and three fourths of the States.

Now, I desire that the very privileges for which the gentleman is contending be secured to the citizens; but I want them secured by a constitutional amendment that legislation cannot override. Then if the gentleman wishes to go further, and provide by laws of Congress for the enforcement of these rights, I

[2] For the complex rites of passage of both the Thirteenth and Fourteenth Amendments, see Bruce Ackerman, *We the People: Transformations* (Cambridge, MA: Harvard University Press, 1998), 99–119.

[3] *Congressional Globe*, 39th Cong., 1st Sess. (1866), 1095.

will go with him.

. . . Suppose that we should have here the influx of rebels which the gentleman predicts; suppose a hundred rebels should come here from the rebel States. Then add to them their northern sympathizers and a reasonable percentage of deserters from our side, and what would become of this legislation? . . .

. . .

. . . The Constitution now gives equal rights to a certain extent to all citizens. This amendment provides that Congress may pass laws to enforce these rights. Why not provide by an amendment to the Constitution that no State shall discriminate against any class of its citizens; and let that amendment stand as a part of the organic law of the land, subject only to be defeated by another constitutional amendment. We may pass laws here today, and the next Congress may wipe them out. Where is your guarantee then?

REPRESENTATIVE THADDEUS STEVENS (Republican, Pennsylvania)[4]

. . .

The first section prohibits the States from abridging the privileges and immunities of citizens of the United States, or unlawfully depriving them of life, liberty, or property, or of denying to any person within their jurisdiction the "equal" protection of the laws.

I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted, in some form or other, in our DECLARATION or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which, operates upon one man shall operate equally upon all. . . .

The second section I consider the most important in the article. It fixes the basis of representation in Congress. If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. If they do not enfranchise the freedmen, it would give to the rebel States but thirty-seven Representatives. Thus shorn of their power, they would soon become restive. Southern pride would not long brook a hopeless minority. True it will take two, three, possibly five years before they conquer their prejudices sufficiently to allow their late slaves to become their equals at the polls. That short delay would not be injurious. In the meantime the freedmen would become more enlightened, and more fit to discharge the high duties of their new condition. In that time, too, the loyal Congress could mature their laws and so amend the Constitution as to secure the rights of every human being, and render disunion impossible. . . .

I admit that this article is not as good as the one we sent to death in the Senate. In my judgment, we shall not approach the measure of justice until we have given every adult freedman a homestead on the land where he was born and toiled and suffered. Forty acres and a hut would be more valuable to him than the immediate right to vote. Unless we give them this we shall receive the censure of mankind and the curse of Heaven.

REPRESENTATIVE ANDREW J. ROGERS (Democrat, New Jersey)[5]

. . .

. . . [T]he first section of this program of disunion is the most dangerous to liberty. It saps the foundation of the Government; it destroys the elementary principles of the States; it consolidates everything into one imperial despotism; it annihilates all the rights which lie at the foundation of the Union of the States, and which have characterized this Government and made it prosperous and great during the long period of its existence.

---

[4] Ibid., 2459–60.

[5] Ibid., 2538.

This section of the joint resolution is no more nor less than an attempt to embody in the Constitution of the United States that outrageous and miserable civil rights bill[6] which passed both Houses of Congress and was vetoed by the President of the United States upon the ground that it was a direct attempt to consolidate the power of the States and to take away from them the elementary principles which lie at their foundation. It is only an attempt to ingraft upon the Constitution of the United States one of the most dangerous, most wicked, most intolerant, and most odious propositions ever introduced into this House or attempted to be ingrafted upon the fundamental law of the Federal Union.

. . . What are privileges and immunities? Why, sir, all the rights we have under the laws of the country are embraced under the definition of privileges and immunities. The right to marry is a privilege. The right to contract is a privilege. The right to be a juror is a privilege. The right to be a judge or President of the United States is a privilege. I hold if that ever becomes a part of the fundamental law of the land it will prevent any State from refusing to allow anything to anybody embraced under the term of privileges and immunities. If a negro is refused the right to be a juror, that will take away from him his privileges and immunities as a citizen of the United States, and the Federal Government will step in and interfere, and the result will be a contest between the powers of the Federal Government and the powers of the States. It will rock the earth like the throes of an earthquake until its tragedy will summon the inhabitants of the world to witness its dreadful shock.

. . .

I assert that the second section of this proposed amendment is unparalleled in ferocity. It saps the foundations of the rights of the States, by taking away the representation to which they would be entitled under the present Constitution. . . .

. . .

Yes, gentlemen, it is but the negro again appearing in the background. The only object of the constitutional amendment is to drive the people of the South, ay, and even the people of the North, wherever there is much of a negro population, to allow that population not qualified but universal suffrage, without regard to intelligence or character, to allow them to come to the ballot-box and cast their votes equally with white men.

. . .

Sir, I want it distinctly understood that the American people believe that this Government was made for white men and white women. They do not believe, nor can you make them believe—the edict of God Almighty is stamped against it—that there is a social equality between the black race and the white.

I have no fault to find with the colored race. I have not the slightest antipathy to them. I wish them well, and if I were in a State where they exist in a large numbers I would vote to give them every right enjoyed by the white people except the right of a negro man to marry a white woman and the right to vote. But, sir, this proposition goes further than any that has ever been attempted to be carried into effect. Why, sir, even in Rhode Island today there is a property qualification in regard to the white man's voting as well as the negro. And yet Representatives of the eastern, middle, western, and some of the border States come here and attempt in this indirect way to inflict upon the people of the South negro suffrage. God deliver this people from such a wicked, odious, pestilent despotism! God save the people of the South from the degradation by which they would be obliged to go to the polls and vote side by side with the negro!

. . .

Do not pretend you are in favor of the unity of the States when you offer a proposition which every reasonable, honorable, conscientious man must know will never be adopted by the States. Do you believe the people of the South will close their eyes to the teaching of ages and wait for shackles and chains to convince them their liberties are endangered and allow no awakening convulsions to shake their rugged minds until despotism shall eat out their vitals?

I am not unmindful of the lessons taught us by the despotism of the Old World. I remember Poland and Hungary, and I stand here protesting against this measure which is more wicked than the

[6] The Civil Rights Act of 1866 (excerpted in Vol. 1 and an expanded excerpt on this website).

tyranny practiced upon them. I believe under God that Andrew Johnson will plant the flag of liberty on every hilltop of this land until the tidings shall go forth to the civilized world that the United States of America are united in one bright constellation based upon equal representation.

REPRESENTATIVE JOHN BINGHAM (Republican, Ohio)[7]

. . .

. . . I repel the suggestion made here in the heat of debate, that the committee or any of its members who favor the proposition seek in any form to mar the Constitution of the country or take away from any State any right that belongs to it, or from any citizen of any State any right that belongs to him under that Constitution. The proposition pending before the House is simply a proposition to arm the Congress of the United States, by consent of the people of the United States, with the power to enforce the bill of rights as it stands in the Constitution today. . . .

. . .

Gentlemen admit the force of the provisions in the bill of rights, that the citizens of the United States shall be entitled to all the privileges and immunities of citizens of the United States in the several States, and that no person shall be deprived of life, liberty, or property without due process of law; but they say, "We are opposed to its enforcement by act of Congress under an amended Constitution, as proposed." That is the sum and substance of all the argument that we have heard on this subject. Why are gentlemen opposed to the enforcement of the bill of rights, as proposed? Because they aver it would interfere with the reserved rights of the States! Who ever before heard that any State had reserved to itself the right, under the Constitution of the United States, to withhold from any citizen within its limits, under any pretext whatever, any of the privileges of a citizen of the United States, or to impose upon him, no matter from what State he may have come, any burden contrary to that provision of the Constitution which declares that the citizen shall be entitled in the several States to all the immunities of a citizen of the United States.

What does the word immunity in your Constitution mean? Exemption from unequal burdens. Ah! Say the gentlemen who oppose this amendment, we are not opposed to equal rights; we are not opposed to the bill of rights that all shall be protected alike in life, liberty, and property; we are only opposed to enforcing it by national authority, even by the consent of the loyal people of all the States.

REPRESENTATIVE ROGERS

. . . I only wish to know what you mean by "due process of law."

REPRESENTATIVE BINGHAM

I reply to the gentleman, the courts have settled that long ago, and the gentleman can go and read their decisions.

. . .

. . . If a State has not the right to deny equal protection to any human being under the Constitution of this country in the rights of life, liberty, and property, how can State rights be impaired by penal prohibitions of such denial as proposed.

But, says the gentleman, if you adopt this amendment you give to Congress the power to enforce all the rights of married women in the several States. I beg the gentleman's pardon. He need not be alarmed at the condition of married women. Those rights which are universal and independent of all local State legislation belong, by the gift of God, to every woman, whether married or single. The rights of life and liberty are theirs whatever States may enact. But the gentleman's concern is as to the right of property in married women.

Although this word property has been in your bill of rights from the year 1789 until this hour,

[7] *Congressional Globe*, 39th Cong., 1st Sess. (1866), 1088–91.

who ever heard it intimated that anybody could have property protected in any State until he owned or acquired property there according to its local law or according to the law of some other State which he may have carried thither? I undertake to say no one.

As to real estate, every one knows that its acquisition and transmission under every interpretation ever given to the word property, as used in the Constitution of the country, are dependent exclusively upon the local law of the States, save under a direct grant of the United States. But suppose any person has acquired property not contrary to the laws of the State, but in accordance with its law, are they not to be equally protected in the enjoyment of it, or are they to be denied all protection? That is the question, and the whole question, so far as that part of the case is concerned.

. . .

The question is, simply, whether you will give by this amendment to the people of the United States the power, by legislative enactment, to punish officials of the States for violation of the oaths enjoined upon them by their Constitution? That is the question, and the whole question. The adoption of the proposed amendment will take from the States no rights that belong to the States. They elect their Legislatures; they enact their laws for the punishment of crimes against life, liberty, or property; but in the event of the adoption of this amendment, if they conspire together to enact laws refusing the equal protection to life, liberty, or property, the Congress is thereby vested with power to hold them to answer before the bar of the national courts for the violation of their oaths and of the rights of their fellow-men. Why should it not be so? That is the question. Why should it not be so? Is the bill of rights to stand in our Constitution hereafter, as in the past five years within eleven States, a mere dead letter? It is absolutely essential to the safety of the people that it should be enforced.

. . .

. . .I am perfectly confident that that grant of power would have been there but for the fact that its insertion in the Constitution would have been utterly incompatible with the existence of slavery in any State; for although slaves might not have been admitted to be citizens they must have been admitted to be persons. That is the only reason why it was not there. . . .

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.

But, sir, there never was even colorable excuse, much less apology, for any man North or South claiming that any State Legislature or State court, or State Executive, has any right to deny protection to any free citizen of the United States within their limits in the rights of life, liberty, and property. Gentlemen who oppose this amendment oppose the grant of power to enforce the bill of rights. Gentlemen who oppose this amendment simply declare to these rebel States, go on with your confiscation statutes, your statutes of banishment, your statutes of unjust imprisonment, your statutes of murder and death against men because of their loyalty to the Constitution and Government of the United States.

. . .

SENATOR JACOB HOWARD (Republican, Michigan)[8]

. . .

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. . . .

. . .

It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States. I do not propose to go at any length into that question at this time. . . . But we may gather some intimation of what probably will be the opinion of the judiciary by referring to a

[8] Ibid., 2765–68.

case adjudged many years ago in one of the circuit courts of the United States by Judge Washington. . . . It is the case of *Corfield vs. Coryell* [1823], . . . Judge Washington says:

> The inquiry is what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free Governments and which have at all times been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent, and sovereign. What these fundamental principles are it would, perhaps, be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole. The right of the citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal, and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental, to which may be added the elective franchise, as regulated and established by the laws or constitution of the State in which it is to be exercised.

. . . To these privileges and immunities . . . should be added the personal rights guaranteed and secured by the first eight amendments of the Constitution. . . .

. . . [I]t is a fact well worthy of attention that the course of decision of our courts and the present settled doctrine is, that all these immunities, privileges, rights, thus guaranteed by the Constitution or recognized by it are secured to the citizen solely as a citizen of the United States and as a party in their courts. They do not operate in the slightest degree as a restraint or prohibition upon State legislation.

. . .

. . . The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. How will it be done under the present amendment? 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 the 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."

The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. 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, . . . that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law? Ought not the time to be now passed when one measure of justice is to be meted out to a member of one caste while another and a different measure is to be meted out to the member of another caste, both castes being alike citizens of the United States, both bound to obey the same laws, to sustain the burdens of the same Government, and both equally responsible to justice and to God for the deeds done in the body?

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 and 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] first section . . . will, if adopted by the States, forever disable every one of them from passing laws trenching upon those fundamental rights and privileges which pertain to citizens of the United States, and to all persons who may happen to be within their jurisdiction. It establishes equality before the law, and it gives to the humblest, the poorest, and the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty. That, sir, is republican government, as I understand it, and the only one which can claim the praise of a just Government. Without this principle of equal justice to all men and equal protection under the shield of the law, there is no republican government and none that is really worth maintaining.

. . .

It is very true, and I am sorry to be obliged to acknowledge it, that [the second] section of the amendment does not recognize the authority of the United States over the question of suffrage in the several States at all; nor does it recognize, much less secure, the right of suffrage to the colored race. . . . [I]f I could have my own way, . . . I certainly should secure suffrage to the colored race to some extent at least; for I am opposed to the exclusion and proscription of any entire race. If I could not obtain universal suffrage in the popular sense of that expression, I should be in favor of restricted, qualified suffrage for the colored race. . . .

. . .

The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. . . . The time may come, I trust it will come, indeed I feel a profound conviction that it is not far distant, when even the people of the States themselves where the colored population is most dense will consent to admit them to the right of suffrage. Sir, the safety and prosperity of those States depend upon it; it is especially for their interest that they should not retain in their midst a race of pariahs, so circumstanced as to be obliged to bear the burdens of Government and to obey its laws without any participation in the enactment of the laws.

The second section leaves the right to regulate the elective franchise with the States, and does not meddle with that right. . . .

The three-fifths principle has ceased in the destruction of slavery and the enfranchisement of the colored race. Under the present Constitution this change will increase the number of Representatives from the once slaveholding States by nine or ten. . . . [T]he 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.

. . .

. . . A further calculation shows that if this section shall be adopted as a part of the Constitution, and if the late slave States shall continue hereafter to exclude the colored population from voting, they will do it at the loss of at least twenty-four Representatives in the other House of Congress. . . .

. . .

. . . If, then, Massachusetts should so far forget herself as to exclude from the rights of suffrage all persons who do not believe with my honorable friend who sits near me [Charles Sumner] on the subject of negro suffrage, she would lose her representation in proportion to that exclusion. If she should exclude all persons of what is known as the orthodox faith she loses representation in proportion to that exclusion. No matter what may be the ground of exclusion, whether a want of education, a want of property, a want of color, or a want of anything else, it is sufficient that the person is excluded from the

category of voters, and the State loses representatives in proportion. The principle applies to every one of the States in precisely the same manner. And, sir, the true basis of representation is the whole population. It is not property, it is not education, for great abuses would arise from the adoption of the one or other of these two tests. Experience has shown that numbers and numbers only is the only true and safe basis; while nothing is clearer than that property qualifications and educational qualifications have an inevitable aristocratic tendency—a thing to be avoided.

. . . The point is that the person who is bound by the laws in a free Government ought to have a voice in making them. It is the very essence of government. . . .

[Senator Reverdy Johnson of Maryland at this point interrupted and declared "Females as well as males?"]

. . . [T]here [is] such a thing as the law of nature which has a certain influence even in political affairs, and that by that law women and children [are] not regarded as the equals of men. . . .

The [last] clause is a very simple one. . . . it gives to Congress power to enforce by appropriate legislation all the provisions of this article of amendment. Without this clause, no power is granted to Congress by the amendment or any one of its sections. 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 persons or 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 enactment.

SENATOR BENJAMIN WADE (Republican, Ohio)[9]

I move to amend the joint resolution by . . . substituting the proposition which I send to the Chair to be read.

. . .

SEC. 2. No class of persons as to the right of any of whom to suffrage discrimination shall be made, by any State, shall be included in the basis of representation, unless such discrimination be in virtue of impartial qualifications founded on intelligence or property or because of alienage, or for participation in rebellion or other crime.

. . .

. . .

. . . There are some reasons, and many believe there are good reasons, for restricting universal suffrage, and upon such principles as not to justify the inflicting of a punishment or penalty upon a State which adopts restricted suffrage. It is already done in some of the New England States. . . . I believe the constitution of [Massachusetts] restricts the right of suffrage to persons who can read the Constitution of the United States and write their names. I am not prepared to say that that is not a wise restriction. At all events, a State has the right to try that experiment; but if she tries it, under the report of the committee she must lose, in the proportion that she has such persons among her inhabitants, her representatives in Congress. I do not think that ought to be so. . . .

Under [my proposed] amendment you ascertain the classes of the population, and when any discrimination shall be made upon any of these subjects the whole of that particular class will be excluded. There is only one question to be determined. If the exclusion is because of race or color, the question is what amount of colored population is there in the State, and in exactly that proportion she is to lose representation. . . .

. . .

I have seen other suggested amendments which I would like to have prevail. . . . I am for the suffrage to our friends in the South, the men who have stood by us in this rebellion, the men who have

[9] Ibid., 2768–69.

hazarded their lives and all that they hold dear to defend our country. I think our friends, the colored people of the South, should not be excluded from the right of voting, and they shall not be if my vote with the votes of a sufficiently number who agree with me in Congress shall be able to carry it. I do not agree with the Senator from Michigan. He yields to the provision in the committee's resolution on the subject reluctantly, because he does not believe three fourths of the States can be got to ratify that proposition which is right and just in itself. My own opinion is that if you go down to the very foundation of justice, so far from weakening yourself with the people, you will strengthen yourself immensely by it; but I know that it is not the opinion of many here, and I suppose we must accommodate ourselves to the will of majorities, and if we cannot do all we would, do all we can. . . .

. . .

REPRESENTATIVE STEVENS[10]

. . .

In my youth, in my manhood, in my old age, I fondly dreamed that when any fortunate chance should have broken up for awhile the foundation of our institutions, and released us from obligations the most tyrannical that ever man imposed in the name of freedom, that the intelligent, pure and just men of this Republic, true to their professions and their consciences, would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich. In short, that no distinction would be tolerated in this purified Republic but what arose from merit and conduct. This bright dream has vanished "like the baseless fabric of a vision." I find that we shall be obliged to be content with patching up the worst portions of the ancient edifice, and leaving it, in many of its parts, to be swept through by the tempests, the frosts, and the storms of despotism.

Do you inquire why, holding these views and possessing some will of my own, I accept so imperfect a proposition? I answer, because I live among men and not among angels; among men as intelligent, as determined, and as independent as myself, who, not agreeing with me, do not choose to yield, their opinions to mine. Mutual concession, therefore, is our only resort, or mutual hostilities.

. . .

The first section [of the proposed Fourteenth Amendment] is altered by defining who are citizens of the United States and of the States. This is an excellent amendment, long needed to settle conflicting decisions between the several States and the United States. It declares this great privilege to belong to every person born or naturalized in the United States.

The second section has received but slight alteration. I wish it had received more. It contains much less power than I could wish; it has not half the vigor of the amendment which was lost in the Senate. It . . . would have worked the enfranchisement of the colored man in half the time.

The third section has been wholly changed by substituting the ineligibility of certain high offenders for the disfranchisement of all rebels until 1870.

This I cannot look upon as an improvement. It opens the elective franchise to such as the States choose to admit. In my judgment, it endangers the Government of the country, both State and national; and may give the next Congress and President to the reconstructed rebels. With their enlarged basis of representation, and exclusion of the loyal men of color from the ballot-box, I see no hope of safety unless in the prescription of proper enabling acts, which shall do justice to the freedmen and enjoin enfranchisement as a condition precedent.

. . .

. . . [L]et us no longer delay; take what we can get now, and hope for better things in further legislation; in enabling acts or other provisions.

. . .

[10] Ibid., 3148.