

The Reconstruction Amendments: Challenges and Consequences

“By these recent successes the re-inauguration of the national authority -- reconstruction -- which has had a large share of thought from the first, is pressed much more closely upon our attention. It is fraught with great difficulty.”

-Abraham Lincoln, “Last Speech”

In his last speech on April 11, 1865, Abraham Lincoln explained that rebuilding an entire nation was going to be extremely difficult. And he was right. African-Americans would not be fully free until almost a hundred years later and even then would still face discrimination. It would take three amendments to the Constitution, along with several Civil Rights Acts, to bring about the changes Lincoln envisioned. These three amendments, known as the Reconstruction Amendments, faced numerous challenges to their enactment, resulted in many unforeseen consequences and ultimately increased the power of the federal government.

The first of these Reconstruction Amendments, the 13th Amendment, officially granted all slaves the liberty which Lincoln’s Emancipation Proclamation had begun to give them almost three years earlier. It prohibited any kind of involuntary servitude except as a punishment for a crime and gave Congress power to enforce the Amendment with appropriate legislation. But many citizens, especially Southerners, began to worry about this new power given to the federal government. They did not want the government to be able to change their way of life, so they began to take several measures to resist the government’s new strength.

Several states began to enforce laws called Black Codes to prohibit African-Americans from having full freedom. Among other things, Black Codes prevented African-Americans from owning a business (Hemmingson) and said that they would be whipped if unemployed (dhswoles). Then the freed slaves, desperate to find a job, would go back to the plantations and work there as poor tenant farmers, or sharecroppers. Sharecroppers made so little money that

they were often in debt to the landowners the rest of their lives and were tied to the land until they could work off the debt.

Another way Americans defied the purpose of the 13th Amendment was through a loophole in the Amendment itself, the words “except as a punishment for a crime.” State governments “enacted laws greatly expanding the number of crimes that constituted felonies” (Foner 50). Convicts were leased to landowners and forced to work on plantations. Even in Northern states there were rumors of African-Americans being sold as punishment for petty crimes such as vagrancy (Foner 49). One Florida law even suggested temporary enslavement for African Americans who did not pay their taxes (Hemmingson).

Seeing that the loophole phrasing of the 13th Amendment was resulting in continued enslavement, Representative John Kasson proposed a resolution in 1867 explaining that the criminal exemption did not mean that criminals could be sold into slavery but rather that they could be subject to labor “under the immediate control of officers of the law” (Kasson, quoted in Foner 49). Unfortunately, his resolution did not make it through the Senate as many Senators believed that it was unnecessary because of the Civil Rights Act of 1866 (Foner 49). However, the Civil Rights Act was not permanent; a later Congress could easily repeal it. To permanently secure the rights of all Americans, a new Amendment was needed.

Congress passed the 14th Amendment in 1866 and by July 9, 1868, the required three-fourths of the states had ratified it. Although the 14th Amendment came about to put a stop to racial inequality, it has been used to justify a wide range of rights, such as the right to an abortion (*Roe v. Wade*), the right to raise children as one sees fit (*Meyer v. Nebraska*, *Troxel v. Granville*, etc.), the right to free legal counsel (*Gideon v. Wainwright*) and the right to co-education (*US v. Virginia*) (Duignan, Hudson 69 and Encyclopedia Britannica). The

Fourteenth Amendment is the longest amendment to the US Constitution and contains five sections. Sections Two, Three and Four of the Amendment largely dealt with the aftermath of the Civil War and have had few long-term consequences. However, Sections One and Five have remained particularly relevant in law and politics to this day.

Section One covers a variety of provisions. First is the guarantee that all persons born or naturalized in the United States are citizens of the United States. Second is the Privileges and Immunities clause which says States cannot deprive anyone of their Constitutional privileges and immunities. Third is the Due Process clause which states both that the States must follow procedures set in the law when someone's life, liberty, or property is in jeopardy and that the legal procedures must be fair (Hudson 12). Fourth is the Equal Protection Clause which states: "Nor shall any State...deny to any person...the equal protection of the laws" (14th Amendment). Finally, the Fifth Section of the Amendment gives Congress the power to enforce the article with appropriate legislation.

The Due Process Clause and the Privileges and Immunities Clause have led to a variety of consequences due to the broad range of interpretation they hold. Some scholars have argued that these clauses extend the Bill of Rights to state and local governments, while others take a more limited view (Hudson 11). In the 1925 Supreme Court case *Gitlow v. New York*, the Court decided that because of those clauses, the Bill of Rights is binding on the States (Britannica, *Gitlow*), but the question is still open to debate today.

Like the Privileges and Immunities Clause, the Equal Protection Clause is open to a wide range of interpretations. This ambivalent wording led to the verdict in *Plessy v. Ferguson*, where the court decided that racial segregation was permitted provided the facilities for each race were "separate but equal" (Duignan, *Plessy*). The *Plessy* decision paved the way for Jim Crow laws,

which promoted segregation and discrimination against African-Americans. Jim Crow laws varied from state to state. In Oklahoma, some of the Jim Crow laws made teaching in a biracial school a misdemeanor and mandated that “fishing, boating and bathing” be segregated (Jim Crow Museum). Jim Crow laws remained in effect until the 1954 case, *Brown v. The Board of Education of Topeka*, where segregation was outlawed in public schools, sending the message that other forms of segregation were no longer acceptable (Duignan, *Brown*). The Equal Protection Clause of the 14th Amendment was also used in a 1958 case, *Loving v. Virginia*, where the court decided that Virginia’s ban on interracial marriage violated the Constitution (Duignan, *Loving*). *Loving v. Virginia* also overturned an earlier Supreme Court case, *Pace v. Alabama* (1883), which had used the very same Equal Protection Clause to uphold criminalization for interracial marriage. Thus, although the Equal Protection Clause originally helped to promote segregation, it later was the key to prohibiting it.

The 14th Amendment, however, did not in practice give African-Americans the right to vote. Although African-Americans were citizens under Section One, it was not clear if voting privileges extended to them. In order to address this confusion, Congress passed the 15th Amendment February 26, 1869, and it was ratified February 3, 1870.

The 15th Amendment prohibited denying voting rights to citizens on the basis of race, and thereby gave African-American men the right to vote. However, several states liked neither the new federal power given in the Amendment nor the fact that African-Americans could now vote, so they set up several limits to deny African-Americans the power of the ballot yet not overtly defy the Amendment. In Maryland, a law was passed requiring a potential voter to own property. Former slaves could not afford to own property and were thus prevented from voting (Banfield 64). Tennessee went so far as to amend its Constitution to require a poll tax, again

because African-Americans usually had little or no money (Banfield 64). The Virginia government gerrymandered the electoral districts to benefit the Democratic party (which at that time opposed African-American enfranchisement) as well as requiring a poll tax (Banfield 64). In Mississippi, a long system of tests was made in order to deny African-Americans the right to vote without inhibiting the voting rights of poor whites. Anyone who wanted to register to vote had to do so a month in advance. He would then have to show that he owned property. If he did not, he had to prove either that he was of good character or had maintained employment for three to five years. If he could not do so, he would have to prove that he could read, write and understand the Constitution. To do this, he would have to read aloud a portion of the Constitution, then explain what it meant. If the examiner decided his explanation was reasonable, he could go on. Then he would have to prove that he had paid his taxes by providing a receipt. This part of the test was based on the fact that African-Americans, only recently out of slavery, were not accustomed to keeping track of documents. Finally, the voter would have to pay a poll tax (Banfield 75).

Many African-Americans who “passed” these tests then faced intentional deception and confusing tricks designed to keep them from voting. Polling places were placed far away from the parts of town where African-Americans lived, forcing them to use ferries that always “broke down” the first week of November (Banfield 73). African-Americans were not told when polling places were changed, and even if they found the new location, there were often confusing processes at the polling place (Banfield 73). In South Carolina, for example, there was a different ballot box for each office, eight total. A ballot placed in the wrong box was void.

Another issue African-American voters faced was intimidation. A secret society known as the Ku Klux Klan began to terrorize both African-Americans and their white supporters,

hoping to deter them from the polls (Banfield 65). Dressed up as Confederate ghosts to hide their identity, Klan members burned buildings, beat African-Americans, and even killed them (Banfield 65). Several other organizations throughout the country began to copy the KKK's tactics of violence and intimidation. During the Reconstruction period alone, it is estimated that between 20,000 and 40,000 African-Americans were killed by the Ku Klux Klan (Banfield 68), and between 1888 and 1968, over 3,000 African-American men were lynched (Hemmingson).

Despite the challenges they faced, some African-Americans did vote, and a few were even elected to office. These few helped keep their minority constituents represented in the government.

Though the 15th Amendment granted suffrage to African-American men, those who opposed it were able to defeat its purpose for quite a while. Likewise, the 13th amendment, although it was meant to free African-Americans, did not originally achieve its goal but instead through a loophole in its wording allowed some to remain in a slave-like condition. The 14th Amendment was intended to advance equality, yet cases such as *Plessy v. Ferguson* and *Pace v. Alabama*, used it to promote segregation and inequality. However, because of the new powers given by the Reconstruction Amendments to Congress to enforce them "with appropriate legislation," Congress was eventually able to pass the Civil Rights Act of 1964 which prohibited segregation and discrimination, marking an advance in the equality which the Reconstruction Amendments had begun. While the Reconstruction Amendments originally failed to end discrimination and inequality, in the long term, the new powers they gave the federal government allowed their original goals to be accomplished in the Land of the Free.

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