

THE ADOPTION
OF THE
FOURTEENTH AMENDMENT

by
Horace Edgar Flack, Ph.D.

William S. Hein & Co., Inc.
Buffalo, New York
2003

Library of Congress Cataloging-in-Publication Data

Flack, Horace Edgar, 1879-

The adoption of the Fourteenth Amendment / by Horace Edgar Flack.
p. cm.

Originally published: Gloucester, Mass. : P. Smith, 1965. (Johns Hopkins University studies in historical and political science. Extra volume ; 26).

Includes index.

ISBN 1-57588-770-3 (alk. paper)

1. United States. Constitution. 14th Amendment. 2. African Americans--Civil rights. 3. Equality before the law--United States. 4. Privileges and immunities--United States. 5. Due process of law--United States. I. Title. II. Johns Hopkins University studies in historical and political science. Extra volumes ; 26.

KF4757.F588 2003

342.73'0873--dc21

2003047781

This acid-free reprint was digitally archived under the strict quality control guidelines established by William S. Hein & Co., Inc.'s "Preservation Program" This program was established to preserve the integrity of legal classics for future generations of legal researchers.

This paper meets the requirements of
ANSI/NISO Z39.48-1992 (Permanence of Paper).



Printed in the United States of America.

THE ADOPTION
OF THE
FOURTEENTH AMENDMENT

BY

HORACE EDGAR FLACK, PH.D.

Fellow in Political Science, Johns Hopkins University 1905-06

BALTIMORE
THE JOHNS HOPKINS PRESS
1908

COPYRIGHT 1908 BY
THE JOHNS HOPKINS PRESS

PRESS OF
THE NEW ERA PRINTING COMPANY
LANCASTER, PA.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

EXTRA VOLUME
XXVI

THE ADOPTION
OF THE
FOURTEENTH AMENDMENT

BY

HORACE EDGAR FLACK, PH.D.

Fellow in Political Science, Johns Hopkins University 1905-06

GLOUCESTER, MASS.

PETER SMITH

1965

Copyright, 1908 by
The Johns Hopkins Press
Reprinted, 1965 by Permission of
The Johns Hopkins Press

CONTENTS.

	PAGE
PREFACE	7
CHAPTER.	
I. THE FREEDMEN'S BUREAU AND CIVIL RIGHTS BILLS	11
II. THE AMENDMENT BEFORE CONGRESS.....	55
Section One of the Amendment.....	55
Section Two of the Amendment.....	97
Section Three of the Amendment.....	127
Section Four of the Amendment.....	133
Section Five of the Amendment.....	136
III. THE AMENDMENT BEFORE THE PEOPLE.....	140
IV. THE AMENDMENT BEFORE THE STATES.....	161
V. CONGRESSIONAL INTERPRETATION OF AMEND- MENT	210
APPENDIX: TEXT OF THE WAR AMENDMENTS.....	278

PREFACE.

The Supreme Court of the United States, in the Slaughter House Cases, declared that the privileges and immunities of citizens guaranteed by the Fourteenth Amendment are those which they possess as citizens of the United States and not those which they enjoy by virtue of state citizenship. This decision means that those privileges and immunities which flow from state citizenship must rest for their security and protection where they have heretofore rested, namely, upon the States. In *Maxwell vs. Dow* the Court declared that the privileges and immunities of citizens of the United States do not include those enumerated in, and secured against violation on the part of the Central Government by the first eight Amendments to the Federal Constitution. The same Court, in the Civil Rights Cases, declared that Congress cannot enact direct, affirmative legislation for the enforcement of the Fourteenth Amendment and can enact only remedial legislation.

The decisions in the above cases have given to the Fourteenth Amendment a meaning quite different from that which many of those who participated in its drafting and ratification intended it to have. The decisions in the Slaughter House and Civil Rights Cases especially have been criticized on this ground. Treatises have been written on the judicial construction of the Amendment, but thus far no effort has been made to give anything like a complete or exhaustive study of the historical incidents connected with its proposal and adoption. An examination, therefore, of the circumstances under which this addition to our fundamental instrument of government was made, and the discovery from them, if possible, of the desires and expectations of its framers and supporters, becomes an interesting and important constitutional inquiry. This has

also necessitated an examination of the legislation preceding the proposal of the Amendment and that enacted for its enforcement. The purpose of this study is to pass historical judgment as to the purpose and object of the Amendment, the powers intended to be granted to the Federal Government as well as those to be prohibited the States, and not to pass political judgment. Furthermore, it is not the purpose of the study to consider the effect of the limited construction given the Amendment, but unquestionably it has had the effect of preserving our dual form of government as established by the Constitution of 1789, and, although the Federal Government has to-day, under the Fourteenth Amendment, greater powers than it possessed under the old Constitution, there has been no revolutionary change in the respective powers of the States and the General Government. Those who believe this dual form of Government best, all things being considered, must thank the Judicial, and not the Legislative, Department for preserving it. No opinion has been expressed as to whether the limited construction given the Amendment has been or will be to the best interests of the country, but the assertion may be ventured that the South has welcomed the position taken by the Supreme Court.

The chief sources used have been the Congressional Globe and Record, the Reports of Committees, especially those of the Reconstruction Committee, the Journal of the Reconstruction Committee, the Journals and Reports of the Legislatures of the several States, and contemporary newspapers. References to other sources will be found in the foot-notes. It may be said that the Journal of the Reconstruction Committee has, for the first time, been used to any considerable extent in connection with a study of the Fourteenth Amendment.

The first eleven Amendments to the Constitution of the United States were intended as checks or limitations on the Federal Government and had their origin in a spirit of jealousy on the part of the States. This jealousy was

largely due to the fear that the Federal Government might become too strong and centralized unless restrictions were imposed upon it. The War Amendments marked a new departure and a new epoch in the constitutional history of the country, since they trench directly upon the powers of the States, being in this respect just the opposite of the early Amendments. Since reference is made so frequently to the War Amendments, it has been thought advisable to publish them in the Appendix.

The writer is greatly indebted to Prof. W. W. Willoughby, of the Johns Hopkins University, at whose suggestion this study was begun and whose counsel and advice have been invaluable during its preparation.

DEPARTMENT OF LEGISLATIVE REFERENCE,
BALTIMORE, MD., Sept., 1908.

INDEX

- Alabama, ratified by, 191; rejected by, 194f.
- Amendments, see Thirteenth, Fourteenth, and Fifteenth Amendments, and Bill of Rights.
- Amnesty Bill, ch. 5.
- Arkansas, ratified by, 190; report of committee, 200; rejected by, 201.
- Atlanta Intelligencer, quoted, 154.
- Baker, J., remarks by, 93.
- Baltimore American, quoted, 48, 49.
- Barnes vs. Browning, cited, 47.
- Barron vs. Baltimore, cited, 59, 233.
- Beck, J. M., remarks by, 216, 229f., 261.
- Benjamin, J. F., remarks by, 104.
- Bill of Rights (first eight Amendments), to be made applicable to the States, 74, 79, 81, 85, 86, 94, 142, 151, 187, 233-235, 241, 248, 255, 256, 261, 266, 274.
- Bingham, John A., remarks by, 30, 35, 56, 58, 65, 66, 71, 79, 80, 150, 219, 230, 231ff.
- Blaine, Jas. G., remarks by, 98, 99f., 129.
- Blair, Senator, of Maryland, remarks by, 245, 259.
- Boreman, Senator, of West Virginia, remarks by, 259.
- Boutwell, Geo. S., remarks by, 61, 117, 128, 211, 212ff., 268, 275f.
- Boyer, B. M., remarks by, 76, 116f., 129.
- Broomall, J. M., remarks by, 29, 76, 98, 127.
- Browning, O. H., letter giving exposition of the Amendment, 146; editorials on this letter, 144, 147, 154.
- Burchard, Mr., of Illinois, remarks by, 243f.
- Butler, Benjamin, remarks by, 260, 272.
- California, Amendment not acted on, 207.
- Carpenter, Matthew, remarks by, 223, 253, 254, 255, 269, 276.
- Caucus, Republican, 11, 12, 120, 121.
- Cessna, Mr., of Pennsylvania, remarks by, 274f.
- Charleston (S. C.) Courier, quoted, 41, 154.
- Chittenden, Mr., of New York, remarks by, 274.
- Chronicle (Washington), quoted, 143.
- Cincinnati Commercial, quoted, 41, 43, 45, 46, 144, 146.
- Citizenship, Clause defining, 88-90, 94; not chief purpose of Fourteenth Amendment, 63, 83.
- Civil Rights Bill of 1866, discussion of, 15, 22-34; outline of, 20; votes on, 25, 35, 38, 39; veto of, 35; passage over veto, 38, 39; meaning of, 40, 92; efforts to secure privileges under, 46ff.; cases under, 47ff.; judicial decisions concerning, 49ff.; constitutional, 48; unconstitutional, 50; reenacted, 219, 222-224; see also 218, 272, and the Civil Rights Bill of 1875.
- Civil Rights Bill of 1875, 218ff., 277.
- Coburn, Mr., of Indiana, remarks by, 241.
- Colfax, Speaker, remarks by, 40, 149.

- Confederate debt, not to be paid, 133-136.
- Congress, the Amendment before, 55-139; efforts to enforce the War Amendments, 214-279. See also Civil Rights and Freedmen's Bureau Bills.
- Congressional interpretation of the Amendment, 210ff.
- Conkling, Roscoe, remarks by, 59, 101, 111, 128, 271.
- Connecticut, Amendment ratified by, 161.
- Cook, B. C., remarks by, 26, 137.
- Corfield vs. Coryell, cited, 85, 181, 235, 243, 246.
- Cowan, Edgar, remarks by, 19, 22, 23, 25.
- Cox, S. S., remarks by, 240f.
- Cullom, Shelby M., remarks by, 216.
- Davis, Garrett, remarks by, 15, 18, 24, 38, 136, 254.
- Davis, T. T., remarks by, 30, 58.
- Dawes, H. L., remarks by, 241f.
- Dawson, J. L., remarks by, 16.
- Delano, Columbus, remarks by, 29-30, 150.
- Delaware, rejected by, 204.
- Doolittle, Jas. R., remarks by, 19, 89, 90, 123, 125.
- Edmunds, Geo. F., remarks by, 219, 257f., 270, 276.
- Eldridge, C. A., remarks by, 28, 77, 215f.
- Eliot, T. D., remarks by, 77, 102.
- Enforcement Bills, 218ff.
- Farnsworth, J. F., remarks by, 79, 230f.
- Federalist, The, quoted, 238.
- Ferry, Senator, of Connecticut, remarks by, 257.
- Fessenden, W. P., report of Reconstruction Committee by, 71; remarks by, 74, 107.
- Fifteenth Amendment, bills to enforce, 210ff.; text of, 279.
- Finck, W. E., remarks by, 75, 272.
- Florida, ratified by, 190; rejected by, 193f.
- Force, M. F., remarks by, 150.
- Fourteenth Amendment, section 1, 55-97; section 2, 97-127; section 3, 127-133; section 4, 133-136; section 5, 136-139; forms in which proposed, 56, 60, 61, 66, 98, 100, 109, 111, 113, 127, 128, 131; debates on, 56-60, 74-93, 97-106, 137-139, 115-126, 129-133, 137-139; before Reconstruction Committee, 60-71, 106-114, 128; votes on in Committee, 62, 66, 67, 68, 109, 110, 111, 113, 114, 128; votes on in the House, 82, 93, 103, 104, 118, 126, 131, 132, 134; votes on in the Senate, 90, 92, 123, 126, 131, 132; authorship of, 69, 71; purpose of, 32, 33, 56, 64, 69, 81, 94, 96, 127-133, 137, 139, 140-142, 146, 153-157, 187, 233 (see also the several States, the Bill of Rights, and debates in chapter 5); incorporation of Civil Rights Bill, 75, 78, 81, 86, 94, 96, 137, 140, 141, 143, 145, 149, 153, 155, 228, 231, 237, 245; to make Bill of Rights binding upon the States, 74, 79, 81, 85, 86, 94, 142, 151, 187, 233, 241, 248, 255, 256, 261, 266, 274; text of, 278; before the people, 140-160; ratified by the States, 161ff.; congressional interpretation, 210ff.; see also the several States; caucus for ratification of, 208.
- Freedmen's Bureau Bill of 1866; introduction of, 12; outlined, 13-14; votes on, 16, 17; debated, 16, 17; vetoed, 17; veto sustained, 19; later reenacted over veto, 19.
- Frelinghuysen, Senator, of New Jersey, remarks by, 226, 246f., 265.
- Garfield, Jas. A., remarks by, 75, 116, 129, 238ff., 274.
- Georgia, ratified by, 191; rejected by, 192f.
- Golladay, Mr., of Tennessee, remarks by, 241.

- Grimes, J. W., remarks by, 71, 74.
- Grinnell, J. B., remarks by, 17.
- Guthrie, James, remarks by, 25, 37.
- Hale, R. S., 57, 58, 273.
- Hamilton, Senator, of Maryland, remarks by, 222.
- Harding, A., remarks by, 93, 139.
- Harris, Ira, remarks by, 128.
- Henderson, J. B., remarks by, 24, 91f., 104f., 125.
- Hendricks, T. A., remarks by, 14, 37, 91, 122, 138, 149.
- Herald (N. Y.), quoted, 40, 41, 141, 145, 147.
- Herndon, Mr., of Texas, remarks by, 264.
- Hill, B. H., letter to New York Herald, 159.
- Hill, Ralph, remarks by, 28.
- Hoar, Geo. F., remarks by, 229.
- Holman, Mr., of Indiana, remarks by, 241.
- Hotchkiss, G. W., remarks by, 59.
- Howard, J. M., remarks by, 23, 84ff., 88, 89, 90, 118, 122, 131, 135, 137, 221.
- Howe, T. O., remarks by, 91, 259, 268.
- Hunton, Mr., of Virginia, remarks by, 272.
- Illinois, ratified by, 171.
- Indiana, ratified by, 173ff.
- Iowa, ratified by, 189.
- Johnson, President, Veto of Freedmen's Bureau Bill, 17-18; veto of Civil Rights Bill, 35; telegram advising rejection of Amendment, 195.
- Johnson, Reverdy, author of report of minority of the Committee, 73; remarks by, 23, 37, 89, 92, 107f., 111.
- Kansas, ratified by, 172.
- Kelley, W. D., remarks by, 57, 76, 117.
- Kentucky, rejected by, 204.
- Kerr, M. C., remarks by, 16, 30, 216, 229.
- Lansing, Mr., of New York, remarks by, 242.
- Latham, G. L., remarks by, 32, 35.
- Lawrence, Wm., remarks by, 112, 262.
- Livingston vs. Moore, cited, 233.
- Louisiana, ratified by, 190; rejected by, 203.
- Louisville Journal, quoted, 157.
- Lowe, Mr., of Kansas, remarks by, 237.
- McCulloh vs. Maryland, cited, 274.
- McDougal, J. A., remarks by, 25, 38.
- McKee, Samuel, remarks by, 216.
- Madison, James, quoted, 238.
- Maine, ratified by, 172.
- Marshall, S. M., remarks by, 16.
- Maryland, rejected by, 204; report of Committee, 205ff.
- Massachusetts, ratified by, 186ff.; report of Committee of Legislature, 187ff.
- Memphis Avalanche, quoted, 157.
- Michigan, ratified by, 186.
- Miller, G. F., remarks by, 118, 216.
- Mills, Roger Q., remarks by, 261.
- Minnesota, ratified by, 175f.
- Mississippi, ratified by, 191; rejected by, 203.
- Missouri, ratified by, 172f.
- Mobile Register, quoted, 45.
- Montgomery Mail, quoted, 158.
- Morgan, E. D., remarks by, 19, 38.
- Morgan, Geo. W., remarks by, 149.
- Morrill, Lot M., violated pledge to unseat Stockton, 39; remarks by, 252f.
- Morton, Senator, of Indiana, remarks by, 221, 245, 251, 254, 256, 267.
- Moulton, S. W., remarks by, 17.
- Nashville Union and American, quoted, 157.
- National Intelligencer, quoted, 41, 44, 46, 152.
- Neal, Judge Stephen, claim to

- authorship of Amendment, 69, 70.
- Nebraska, ratified by, 189.
- Negroes, efforts of, to secure civil rights, 46ff., 264; see also Civil Rights Bill.
- Nevada, ratified by, 172.
- New Hampshire, ratified by, 161ff.
- New Jersey, ratified by, 165; ratification withdrawn, 165ff.
- New York, ratified by, 168f.
- Noell, T. E., remarks by, 39.
- North, Attitude of the, 140-153; see also the several States.
- North Carolina, ratified by, 190; report of Committee, 196ff.; rejected by, 200.
- Norwood, Senator, of Georgia, remarks by, 254, 257, 266.
- Ohio, ratified by, 169f.; ratification withdrawn, 170f.
- Oregon, ratified by, 167f.; ratification withdrawn, 168.
- Owen, Robert Dale, plan of, 65, 67, 69, 70, 113, 135.
- Pendleton, Geo. H., remarks by, 150.
- Pennsylvania, ratified by, 178f.; amendment debated in, 179ff.
- Phelps, C. E., remarks by, 35, 83.
- Philadelphia News, quoted, 158.
- Picayune (New Orleans), quoted, 158.
- Pike, F. A., remarks by, 98, 102.
- Pittsburg Post, quoted, 153.
- Poland, L. P., remarks by, 91, 123, 244.
- Pool, Senator, of North Carolina, remarks by, 220.
- Post (New York), quoted, 41, 143.
- Pratt, Senator, of Indiana, remarks by, 247, 267.
- Press, views of the, 140-160.
- President, see Johnson.
- Raleigh Sentinel, quoted, 155-157.
- Randall, S. J., remarks by, 78, 134, 135.
- Randall, W. H., 35.
- Raymond, H. S., remarks by, 29, 39, 77, 130.
- Read, Mr., of Kentucky, remarks by, 264.
- Reconstruction Committee, composition of, 60; Fourteenth Amendment before, 60-68, 93, 111; report of, 71-74.
- Representatives, clause providing for apportionment of, 97-127.
- Rhode Island, ratified by, 176.
- Rice, Mr., of Illinois, remarks by, 237.
- Rogers, A. J., remarks by, 26, 78.
- Rousseau, L. H., remarks by, 16, 35.
- Sargent, Mr., of California, remarks by, 269, 270.
- Saulsbury, Willard, remarks by, 22, 25, 38, 90.
- Sawyer, Senator, of South Carolina, remarks by, 251.
- Schenck, R. C., remarks by, 76, 98, 103.
- Schurz, Carl, article by, 149; remarks by, 220.
- Seward, Secretary, opinion as to Thirteenth Amendment, 26.
- Shanklin, G. S., remarks by, 76, 129, 135.
- Sharkey, Governor of Mississippi, quoted, 154.
- Shellabarger, Samuel, remarks by, 32, 216f., 228.
- Sherman, John, remarks by, 120, 124, 149, 220, 245, 255f., 258f.
- Slaughter House Cases, cited, 246, 265, 266, 268, 276.
- Smith, G. C., remarks by, 35.
- Smith, Mr., of Virginia, 272.
- South, Attitude of the, 154ff.; see also the several States.
- South Carolina, ratified by, 190; rejected by, 202.
- Southern leaders to be disqualified from holding office, 127-133.
- Spalding, R. P., remarks by, 127.
- Stevens, Thaddeus, remarks by, 12, 38, 56, 60, 69, 70, 74, 75, 98, 101, 103, 104, 107, 111, 113, 114, 116, 128, 129, 131, 135, 210.
- Stewart, W. M., remarks by, 19, 60, 119, 219, 269.

- Stockton, J. P., remarks by, 36, 38-39, 220, 247f., 268.
- Storm, Mr., of Pennsylvania, remarks by, 236f., 273.
- Sumner, Charles, remarks by, 127, 218, 225, 250, 258, 264.
- Tennessee, ratified by, 163ff.
- Texas, ratified by, 191; rejected by, 191f.
- Thayer, M. R., remarks by, 27, 75, 76, 116, 129.
- Thirteenth Amendment, views of, 26, 27, 185, 247; text, 278.
- Thornton, A., remarks by, 17, 28.
- Thurman, A. G., remarks by, 219, 221, 251f., 275, 276.
- Times (New York), quoted, 41, 43, 49, 147.
- Tribune (New York), quoted, 41, 147.
- Trumbull, Lyman, remarks by, 12, 14, 17-19, 21, 24, 37, 89, 148, 248.
- Tyner, Mr., of Indiana, remarks by, 242.
- Van Winkle, remarks by, 22, 25.
- Vermont, ratified by, 168.
- Vickers, Senator, of Maryland, remarks by, 219.
- Vicksburg Herald, quoted, 158.
- Vicksburg Republican, quoted, 158.
- Virginia, ratified by, 191; rejected by, 202f.
- Wade, Benjamin, remarks by, 37, 88; rebuked, 38.
- War Amendments, text of, 278f.
- Westminster, Md., mass meeting at, opposed the Civil Rights Bill, 44.
- Weston, Geo. W., letter giving exposition of first section, 151.
- West Virginia, ratified by, 172.
- Whaley, K. V., remarks by, 39.
- Whipple, E. P., article by, 149.
- Willard, Mr., of Vermont, remarks by, 242f.
- Williams, G. H., remarks by, 90, 114.
- Wilson, Henry, remarks by, 15, 119, 124, 242.
- Wilson, Jas. F., remarks by, 25, 32, 34.
- Wisconsin, ratified by, 178; report of minority committee on, 176ff.
- Woodbridge, F. E., remarks by, 58.
- World (New York), quoted, 41, 42, 140.