

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

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

Congressional Debate on the Fifteenth Amendment

The Fifteenth Amendment prohibits federal and state voting laws that make racial discriminations. The text states, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." The second section asserts, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." The Fifteenth Amendment does not grant any person the right to vote in any election. Congress and the states are free to pass laws that restrict voting rights as long as those measures do not discriminate on the basis of race. The Fifteenth Amendment was proposed by Congress in February 1869 and ratified by the states a year later.

The Fifteenth Amendment was a bold and controversial political gamble. Many Midwestern states in referenda held immediately after the Civil War rejected extending suffrage to persons of color. During the 1867 national elections, Democrats made considerable inroads into Republican political majorities by claiming the majority party was too radical on racial issues. Many Republicans concluded that enfranchising persons of color was necessary to bulk up decreasing northern support for their party. "Where the colored men vote," the Philadelphia Press asserted, "There the cause of Republicanism is entirely safe." Republican political strategists elected to pursue a constitutional amendment that could be framed and ratified by existing Republican majorities in the national and most state legislatures. This process avoided the state referenda that had been unsuccessful in the past.

Republicans disputed the wording of the necessary constitutional amendment. More radical Republicans favored language that guaranteed persons of color the right to vote and hold office. Southern Republicans shared this concern with the right to hold office. Persons of color voted under most Reconstruction governments, but such states as Georgia denied persons of color the right to sit in the state legislature. Other Republicans favored a constitutional amendment that prohibited discrimination on the basis of nativity, property, and education, as well as race. Such an amendment secured universal male suffrage, while inhibiting indirect attempts to disenfranchise persons of color. Conservative Republicans favored an amendment prohibiting only race discrimination. Democrats opposed black suffrage, but often voted with radical Republicans in an effort to secure a proposed amendment they were confident could not be ratified. Leading advocates for women's rights demanded that any proposed constitutional amendment enfranchise both women and persons of color.

Conservative Republicans prevailed after a long political struggle. A House and Senate conference committee jettisoned a proposed right to hold office and ban on property qualifications. More radical Republicans loathed the text of the Fifteenth Amendment. Faced with the imminent loss of their two-thirds majority in the House of Representatives, enough Republicans in the lame duck 40th Congress supported the final proposal to pass the amendment on to the states.

Ratification in the states was difficult. States that already allowed black suffrage quickly ratified the amendment. Many Midwestern and border states were recalcitrant. The crucial turning point occurred when Congress passed a resolution refusing to readmit into the Union several southern states until those states ratified the Fifteenth Amendment. Mississippi, Virginia, Georgia, and Texas ratified on that basis.

When reading the materials below, consider the various proposed Fifteenth Amendments. Which version do you believe best? Which versions do you believe most likely to have been ratified? What versions would you have supported after you concluded that your version was unlikely to be ratified? Should the text of the rejected versions of the Fifteenth Amendment influence how the actual Fifteenth Amendment is interpreted.

Proposed Alternative Versions of the Fifteenth Amendment, Section One

The right of citizens of the United States to vote and hold office shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous conditions of servitude.¹

Citizens of the United States of African descent shall have the same right to vote and hold office as other citizens.²

All citizens of the United States residents of the several States now or hereafter comprehended in the Union of the age of twenty-one years and upward, shall be entitled to an equal vote in all elections in the State wherein they shall reside . . . except such citizens as shall engage in rebellion or insurrection, or shall be duly convicted of treason or other infamous crimes.³

The right to vote and hold office shall belong to all male citizens of the United States who are twenty-one years old and of sound mind, and who have not been or shall not have been duly convicted of treason or other infamous crimes. . . .⁴

There shall be no discrimination in any State among the citizens of the United States in the exercise of the elective franchise in any election therein, or in the qualifications for office in any State, on account of race, color, nativity, property, education, or religious belief.⁵

*The Congressional Debate*⁶

SENATOR JACOB HOWARD (Republican, Michigan)

. . . I shall vote to concur in the report not because this amendment of the Constitution as presented is entirely satisfactory to me, but because I think that it is at present the best that can be obtained. . . .

. . . It will be observed from the language of the report now before us that it does not confer upon the colored man the right to vote. I wish it did; because if it had that effect it would for the future put an end to all controversy respecting his political right as a voter in the United States. As to his right to hold office that, in my judgment, would follow almost as a matter of course. At any rate it would be a subject about which I should have little concern for the future; for a person possessing the right of voting at the polls is inevitably in the end vested with the right to hold office under the Government of which he is a voter. This, however, confers no right to vote. It declares that "the right of citizens of the United States to vote shall not be denied or abridged," etc., without imparting the right itself.

Suppose that after the reorganization of the Government in the State of South Carolina, for example, the voters in the State shall see fit to divest the colored man there of his right to vote. They certainly have a right to do so, under the reserved rights of the States as one of the States of the Union; and the only mode in which the right to vote could be restored to the colored man in that State would be under the subsequent clause in this amendment giving to Congress power to carry out and effectuate this

¹ SENATOR WILLIAM STEWART (Republican, Nevada), *Congressional Globe*, 40th Cong., 3rd Sess. (1869), 828 (SENATOR STEWART rejected a motion to insert "natural born" before "citizens").

² SENATOR JACOB HOWARD (Republican, Michigan), *ibid.*, 828 (SENATOR HENRY CORBETT [Republican, Oregon] proposed adding the following words, "But Chinamen not born in the United States, and Indians not taxed, shall not be deemed or made citizens").

³ SENATOR JOSEPH FOWLER (Republican, Tennessee), *ibid.*, 828.

⁴ SENATOR FREDERICK SAWYER (Republican, South Carolina), *ibid.*, 828.

⁵ SENATOR HENRY WILSON (Republican, Massachusetts), *ibid.*, 1029.

⁶ *Ibid.*, 1625–41.

clause by appropriate legislation, so that Congress would then, if it saw fit, step in and remedy the defect of the State law and restore to the colored man his right to vote. . . .

Suppose that after having passed such an act of Congress thus conferring the right upon the colored man a subsequent Congress should see fit to overhaul our action on the subject and take away from the colored man the right to vote. That might be done, because the action of one Congress does not necessarily bind a subsequent Congress in regard to its action. So that this question of negro suffrage, as it is called, will still be a subject for political discussion and wrangling for perhaps all time to come. . . .

SENATOR GEORGE EDMUNDS (Republican, Vermont)

...
There is no instance within my knowledge of history for the last five hundred years in any country where the people have any rights at all of political action where there has been attempted the method that is proposed in this amendment of excluding the mass of the community from exercising the powers of government in the way of being voted for and representing their fellow-citizens instead of merely having the boon that the plebeians in Rome had to vote for the aristocratic magistrate selected from among the patricians.

SENATOR HENRY WILSON (Republican, Massachusetts)

... I had hoped that the majority in Congress would seize the great occasion which was present, when the hearts, minds, and souls of the people, after having passed, through a great struggle, were deeply imbued with the love of liberty and the sense of justice, and we had twenty-five State Legislatures in the hands of our friends, and take the responsibility of submitting to the Legislatures a position to amend the Constitution so as to secure to the colored citizens of this country the right to vote and be voted for. But day after day, week after week, month after month passed away without action.

Then, sir, came the proposition, I think a very lame and halting one, providing that colored men should have the right to vote, but silent about the right to hold office. The Senate amended that proposition by a comprehensive amendment that covered more than the black man, for it covered the white man and prohibited distinctions on account of nativity, property, education, or creed. Sir, I have no doubt that if that amendment could have reached the people it would have been the strongest amendment ever submitted to the American people. Outside of a few localities in New England and on the Pacific coast there could have been no resistance to it. In the great central States and in the West, and especially in the West, there is not a square mile on which men could have stood and made opposition to it.

... If the black man in this country is made equal to the white man—and I hope he soon will be—I mean, by the blessing of God, while I live to hope on and to work on to make every white man equal to every other white man. I believe in equality among citizens—equality in the broadest and most comprehensive democratic sense. No man should have rights depending on the accidents of life.

... I am going to vote for this proposition [the actual Fifteenth Amendment] without taking any responsibility for it. I am not responsible for this half-way proposition. I simply take it at this late hour as the best I can get after having struggled for the right to vote and the right to hold office.

...
Now, for one, if this amendment goes to the people in this form, I protest against any inference that I am not in favor of the colored citizens holding office, not in favor of protecting adopted citizens, not in favor of protecting men in their equal rights, on account of religious belief, property, or educational qualifications. I am in favor of protecting citizens against all these qualifications, and I mean, by the blessing of God, by speech and act, to work for the enjoyment of the absolute right of citizens in the States to vote and hold office without regard to race, color, property, or religious faith.

...
Do not tell me, sir, that the right to vote carries with it the right to hold office. It does no such thing. If there is nothing said about it the fair inference is that it does, but if there is a provision in a State

constitution otherwise silent does not annul or overthrow that constitutional or legal declaration. No man in the world has a right to hold office. The people have a right to vote, and they have the right to put terms and conditions to the offices that they make.

Mr. Webster said in the constitutional convention in Massachusetts, in 1820, that no man had the right to hold office, but the people had a right to define and make the terms and conditions upon which offices should be held. I do not believe in anybody's right to make terms and conditions founded on race or color that cannot be overcome, but many of the States have done it, and silence will not overthrow what they have done. I believe, however, that if the black men have the right to vote they and their friends in the struggle of the future will achieve the rest. . . .

SENATOR OLIVER MORTON (Republican, Indiana)

...
I may be compelled to take this proposition just as it is because at this late hour of the session if I do not take it I may not get anything. . . .

...
There are some other elements connected with the suffrage question besides that of color, and it was proper for us to say in the Constitution, when we came to amendment upon this subject, that the right to vote should not be denied to any citizen of the United States on account of his nativity. It is a great democratic principle that we recognize in our hearts; and when we came to amend the Constitution it was proper to put it in. Sir, it would appeal strongly to the hearts of a large part of the population of this country, and was proper as a safeguard against any future Know-Nothing excitements or movements.

Then, there was that other word "property;" the provision that the right to vote should not be denied on account of a want of property. That appeals to a strong democratic sentiment; it is the establishment of a republican principle that most of us recognize; and when we come to amend the Constitution on this subject it is proper to put that principle in. It appeals to a strong republican sentiment that is rife throughout the whole nation.

And it was proper to say, too, as another essential republican principle, that the right to vote and hold office should not be denied on account of religious faith or creed. Do we not recognize that as being a true and sound principle? What was the objection to putting that in? . . . [I]t will be said that we are willing that the negroes shall vote provided they vote for white men, but the offices but must be reserved for white men. We can say, of course, that we do not mean that; but they will come back on us and say, "When the proposition was made in the Senate, and after it had been concurred in by both Houses, that the words 'to hold office' should be put in, why did you strike them out?" What answer have we to make?

...
SENATOR JAMES ROOD DOOLITTLE (Republican, Wisconsin)

...
... Each State should judge for itself of the qualifications of its own electors, for in different States with different populations a uniform rule of suffrage may not be the best rule of suffrage throughout the United States. Take California and the Pacific coast, which in a very few years will have not only hundreds of thousands but perhaps millions of Chinese and other Asiatics, and it may not be wise to put the government of those States into their hands. . . .

... Is it not better that we leave the political power in those States where we find it, in the hands of our own people and our own race, who can best judge when this right of citizenship shall be extended to the Chinese? . . .

SENATOR FREDERICK SAWYER (Republican, South Carolina)

. . . We have for two years been subject to the charge in [the former slave] States that the Republican party of the northern States put the negro on one platform in the loyal States and upon another platform in the lately disloyal States. . . .

Now, Mr. President, we are asked to accept an amendment of the Constitution which pleads guilty to the charge. . . .

You may say, and Senators on this floor do say, that the right to vote involves the right to hold office. I say the discussions on this floor, and the private opinions of Senators as expressed in debate, show that the proposition is denied; and I put it to the individual conscience of each Senator on this floor whether he is not wanting in perfect clearness about that fact. We know certainly that the gentlemen of the Democratic party on this floor do not entertain this view. At any rate it will go before the country that a proposition to hold office has been suggested to form part of this amendment and that it has been deliberately voted down. If it means nothing why vote it down? . . .

I hold, Mr. President, that if we are to run a risk in this manner of losing this amendment because there are some States which will not adopt the proposition to hold office, it is better to run the risk in the direction of the right. Whenever it is necessary to run a risk in a matter of this sort, let us run it for the right and not for the wrong; and I appeal again to the conscience of every Senator on this floor on the Republican side of the House whether he does not believe that the right belongs to every citizen of the United States to carry a vote and to hold office if it belongs to any other man? Is not that the ground work of the action of the Republican party in the past? And have we not preached the doctrine among ourselves? Have we not preached it to the people? And now when we come to propose a constitutional amendment shall we halt and stop short of what we believe is right and what everyone of us has been preaching? I submit there is more danger of losing this proposition, of losing the confirmation of the amendment on this count if we have it half right than if we have it wholly right.

. . .

SENATOR WILLIAM STEWART (Republican, Nevada)

. . .

. . . There are no two Senators who agree as to exactly the thing which should be done. The Senator from Kansas has been pressing his motion for female suffrage. The Senator from Vermont wants to have office holding included; the Senator from Massachusetts wants to have nativity and creed inserted. Neither of these concurs with the other; one wants a t crossed this way, and thus it is that we lose time discussing little things that do not enter into the main question.

. . .

. . . The friends of equal rights in Tennessee gave the negro the ballot. The Democrats commenced at once to say to them: "You are good enough to vote; but not good enough to hold office." The Republican party immediately in the Legislature . . . gave them the right to hold office; and that will be the result everywhere where the ballot is given. The Senator from South Carolina says that in five years the logic of events will bring this about. Sir, if we fail now, it never will be brought about. The States by individual action will not do it in his day or more. You give the negroes in Maryland the ballot and they will demand their other rights, as they did in Tennessee. Give it to them in Kentucky and Delaware, and they will demand and obtain all their rights. The ballot is the mainspring; the ballot is power; the ballot is the dispenser of office. . . .

. . . [G]ive to all men, regardless of race or color, the ballot, and they will secure to themselves all their other rights.

SENATOR GARRETT DAVIS (Democrat, Kentucky)

. . .

. . . [A] class of people who are entitled to vote and to whom by principles of right and good policy the right to vote ought to be conceded ought to have at the same time the concession of the right to hold office. . . .

But, Mr. President, I deny the negro has the proper capacity to exercise this right, and for that reason I vote inflexibly against . . . giving him in the first instance the right to either vote or hold office. . . . I hold that he is incapable of a wise and safe exercise of either of those rights in our Government. The denial of those rights is not in conflict with natural rights, because there is no natural right to vote or hold office in any Government. . . .

Mr. President, it is nothing but a form of demagoguery to say that every man is entitled by nature to the right to hold office or to vote. Those are artificial rights. They are creatures of an artificial state and law of society. They do not exist as natural rights, because the intelligence, the circumstances, and the conditions of all nations differ. It might be very safe and proper in one community to give the whole political power to all the people, and it might be very unsafe in another nation and another community to give this right to the whole population. Sir, this is a truth in relation to all statesmanship and to the exercise of power by wise lawgivers: the political power of a country ought to be deposited where its exercise would produce the greatest good to all the people.

Gentlemen concede that idiots and lunatics have not either a natural or an artificial right to vote or to hold office. I ask them how they can give this right to a race of men who throughout their whole history, in every country and condition in which they have ever been placed, have demonstrated their utter inability for self-government.

...
... The power to decide who shall vote and who shall not vote and the power to decide who shall hold office and who shall not hold office is the essential power in all Governments. . . . The power in a State that has the right to determine who shall vote in the election of all officers . . . and who shall not vote, and has at the same time the power to decide who shall hold office and who shall not hold office, exercises all the essential powers of government.

Sir, this attempt at this time in the form of amending the Constitution of the United States is simply an exercise of the power to revolutionize the Government. The existence of the State governments in our system of mixed State and Federal governments is as essential to the system as that of the Federal Government itself. I ask gentlemen who have the right to form a State government? Who but the people of the States? What power on earth can legitimately enter upon the work of forming or remodeling in their essential characters and principles the State governments except the people of the States? That is the inherent, reserved power of the people of the States. It is one that they never conceded by ingrafting upon the Constitution the power to amend it. . . .

Sir, this is simply an act of revolution. . . . This is a simple proposition to establish in the General Government a power supreme over the governments of the States, and that can at its pleasure, in any form that a majority of the two Houses of Congress may choose, exercise the power of amendment to revolutionize our system of General and State governments, to abolish our State governments, to bring those State governments to the feet of a tyrannical and despotic faction in the two Houses of Congress. . . . No man who understands the principles of our Constitution and our complicated system of blended governments would ever hazard his judgment and his knowledge of the principles of that system of government by asserting that this power existed under the Constitution in virtue of the restricted and qualified right and power that Congress has to propose amendments to the Constitution. No, sir; it is a bald, naked attempt to usurp power and to bring all the sovereign and reserved powers of the States to the feet of a tyrannical and despotic faction in Congress. That is the whole of it. That is the undisguised proposition; and an intelligent and virtuous Supreme Court, if the question could be brought before them and they would entertain jurisdiction of it, would so decide.

...
SENATOR JOSEPH FOWLER (Republican, Tennessee)

... [T]he amendment as it is now presented entirely ignores the great principle of human rights. There is nothing protective in this amendment except in regard to color, race, or previous condition of slavery. The principle of the Declaration of Independence is entirely ignored. It is not an amendment that gives manhood suffrage at all. . . . The right of suffrage is a greater right than the right of holding office

for this reason; the principle laid down in the Declaration of Independence is that Governments derive their just powers from the consent of the governed. Of course the right to hold office must be an inferior right to that of voting, because it is not supposed that men who have the right to consent to a Government which would debar them from the right to hold office.

Again, I think the Constitution as it stands at present would guaranty to each citizen of the United States the right to hold office if he were elected. . . . Now, if this amendment is made to the Constitution as it stands it will deny to those citizens specified in the amendment the right to hold office. That is the clear and inevitable construction of it. That of course defeats the rights which the citizen holds under the Constitution as it stands at the present time.

SENATOR CHARLES BUCKALEW (Democrat, Pennsylvania)

...
... [T]he amendment power of the Constitution does not authorize this change. It is my idea that the amendment clause has some limitations, the leading and principal one of which being that an amendment must be within the scope and purpose of the original instrument. It must be in pursuance of the objects for which the Constitution was formed; within the general scope and purpose for which it was made. ...

...
If by virtue of this power of amendment which is in the Constitution you can propose and adopt an amendment which shall have the effect of proscribing the rule of suffrage for State purposes what, have you done? You have put the institutions of the State, their home institutions, their domestic policy, their local frames of government, their sovereignty, and their powers altogether within the control of three fourths of the other States.

...
... The State is composed of the people of the State; and when you come to define that term "people" in its political sense, under our institutions it means the electors of the State, for with them is lodged the sovereign power of the State, and they participate in the possession and enjoyment of that power with no other community or power under heaven. . . . Now, what is the principle which underlies this amendment before you? It is that three fourths of the States, as distinct political communities, acting upon this question of amendment, may reach into a co-State and change that State; may decree that those who hold its sovereign powers shall hold them no longer, or that they shall participate in the enjoyment of those sovereign powers with others against their will. I insist that this is so clearly a departure from any of the general principles on which the Constitution was formed and this Federal Government established that it does not and cannot fall within the amending power of that Constitution. ...

SENATOR WILLARD WARNER (Republican, Alabama)

... While I shall probably vote for it in the shape it is, I shall do it rather in deference to the judgment of older and wiser men than myself than in accordance with my own deliberative judgment. I do not feel that it is worth our while to change the organic law of the country, to amend it for the protection of a single class, unless at least we protect that one class completely and entirely. . . . I believe it is the duty of the hour to put into the Constitution a grand affirmative proposition which shall protect every citizen of this Republic in the enjoyment of political power. ...

SENATOR DANIEL NORTON (Republican, Minnesota)

...
... The amendment is to pass, I have no doubt; it is to be submitted to the States. Party appliances, party machinery, and party discipline are to be brought to bear on the Legislatures now in

existence in the several States to adopt it. It may be adopted, but when it is thus adopted by the States and twenty-seven States compel all the thirty-six to accept this as their rule of suffrage, from that date, in my judgment, you may date the downfall, the destruction of the rights of the States, and from that day you may date the consolidation, the centralization, of power in the Federal Government, and you may date the despotism of Congress.



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