

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

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

Proposed Thirteenth Amendments (1861)¹

Many border state representatives and northern Democrats recommended constitutional amendments that they believed would prevent upper South states from seceding and might eventually influence lower south states to retract their secession ordinances. On December 18, 1860, John J. Crittenden of Kentucky proposed constitutional amendments that extended the Missouri Compromise line to the Pacific Ocean, forbade the federal government from emancipating slaves in existing states, and prohibited those amendments from being repealed by a subsequent constitutional amendment. A National Peace Conference, led by ex-President John Tyler, offered a similar set of amendments two months later.

These constitutional amendments proposed several important changes. They provided additional constitutional securities for slavery. They explicitly mentioned “slavery” or “involuntary servitude,” making plain the constitutional complicity with human bondage. Most important, proponents insisted on entrenching their proposed Thirteenth Amendment. The Crittenden Compromise was amendable only with the consent of all states.

Republicans in Congress refused to send the Peace Commission’s recommended constitutional amendments to the states, but both the Senate and House of Representatives voted to recommend the following Thirteenth Amendment to the Constitution.

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.²

Lincoln in his inaugural address endorsed what became known as the Corwin Amendment. The Maryland and Ohio legislatures approved that amendment. Consideration elsewhere stalled. The Corwin Amendment was eventually abandoned during the Civil War.

Consider Lincoln’s decision to endorse the Corwin Amendment, but not the Crittenden Compromise or the amendments proposed by the National Peace Conference. What do you think was the best political reason for this decision? Is there a principled difference between the Corwin Amendment and the amendments proposed by the National Peace Conference? Was Lincoln right to endorse the Corwin Amendment or is this best understood as a political ploy?

Amendments Proposed by the Peace Conference, February 8–27

ARTICLE XIII.

SECTION I. In all the present territory of the United States north of the parallel of 36°30' of north latitude, involuntary servitude, except in punishment of crime, is prohibited, In all the present Territory south of that line, the status of persons held to involuntary service or labor, as it now exists, shall not be

¹ Report of the Kentucky Commissioners to the late Peace Conference Held at Washington City (Frankfort, KY: Jno. B. Major, 1861), 3–4.

² 12 U.S. Stat. 251 (1861).

changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of this Union to said Territory, nor to impair the rights arising from said relation but the same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law. When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the constitution of such State may provide.

SEC. 2. No Territory shall be acquired by the United States, except by discovery and for naval and commercial stations, depots, and transit routes, without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation, nor shall Territory be acquired by treaty, unless the votes of a majority of the Senators from each class of States hereinbefore mentioned be cast as a part of the two-thirds majority necessary to the ratification of such treaty.

SEC. 3. Neither the Constitution nor any amendment thereof shall be construed to give Congress power to regulate, abolish, or control, within any State the relation established or recognized by the laws thereof touching persons held to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland and without the consent of the owners, or making the owners who do not consent just compensation, nor the power to interfere with or prohibit Representatives and others from bringing with them to the District of Columbia, retaining, and taking away, persons so held to labor or service; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage, and the right during transportation, by sea or river, of touching at ports, shores and landings, and of landing in case of distress, shall exist; but not the right of transit in or through any State or Territory, or of sale or traffic, against the laws thereof. . . .

...

SEC. 5. The foreign slave-trade is hereby forever prohibited. . . .

SEC. 6. The first, third and fifth sections, together with this section of these amendments, and the third paragraph of the second section of the first article [the three-fifths clause] of the Constitution, and the third paragraph of the second section of the fourth article thereof [the fugitive slave clause], shall not be amended or abolished without the consent of all the States.

SEC. 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence and intimidation from mobs or riotous assemblages, or when after arrest such fugitive was rescued by like violence or intimidation, and the owner thereby deprived of the same, and the acceptance of such payment shall preclude the owner from further claim to such fugitive. . . .