

From Civil War to Civil Rights: The Story of the 13th, 14th and 15th Amendments

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In 1865, most northern white people in the US were opposed to black voting. By 1866, formerly enslaved people were full citizens. By 1868, black voting was widespread and supported by the white majority. A window for change had opened right after the war, but within 20 years closed again.

Most of the white north favored ending slavery after the war. They favored it because slavery was an archaic, brutal institution that was out of step with modernity. They also favored it as a means to break the “slave power” – the power of the planter class. But few whites in the North supported actual racial equality.

The makeup of Congress: In this era, the Democratic Party was the party of agriculture, made up largely of small farmers north and south, and the southern planter class. The planters ruled the party and set its agenda until secession. The Republicans were a fairly new party, a North-only party, standing for the newer urban and professional middle-class. The Republicans’ first principle was their opposition to slavery. In 1864 Congress was mostly Republican, split between the moderates (the majority who did not favor racial equality or blacks voting) and the “Radicals” (an impassioned minority, standing for racial equality in all things).

Slavery’s extinction had begun with the Emancipation Proclamation in 1863. But to be truly ended, emancipation must be made national (not just in the conquered areas of the South) and be confirmed by a federal law or, better, an amendment. In 1864 the Senate passed an amendment bill, but northern Democrats blocked it in the House. Lincoln was unhappy with forced emancipation: he wanted slaveholders to voluntarily give up slavery and receive federal compensation for their loss. He also hoped freed blacks would be willing to move out the US so that white people could dodge having to face integration. Lincoln did not openly support the amendment until the Radical Republicans started talking about leaving the party, for they were disgusted by the slow movement on emancipation. Lincoln, running for reelection, needed the votes from the Radicals’ districts. He signaled that he favored the abolition amendment. After reelection, Lincoln made the 13th amendment his cause. It passed Congress in early 1865 and was ratified in December.

Both of its 2 brief articles are revolutionary: the first eliminated an institution that had been present since colonial times and the source of much of America’s wealth; the second gave Congress new job of making states behave themselves.

The 13th Amendment said what the former slaves were not – they were not slaves. But it did not say what they *were*. Citizens? Sub-citizens? Events in late 1865 and early 1866 wrought a great change in the power classes of America, bringing majorities around to supporting full citizenship and voting for African-Americans.

In these years, Confederate states were reentering the Union and taking up authority in their own borders. They began signaling what freedom for the former slaves would look like by instituting a peonage. This they accomplished through state laws called “black codes.” Most infamous among these codes were the “vagrancy laws” which required all blacks to work for a white person or pay a fine. Those who did not pay their fine would be “sold” – that is, their labor would be sold for a year. This “sale” took place on an auction block, just like in the old days. At the same time, egregious acts of violence, white against black, broke out in the South. Most infamous were race riots in Memphis and New Orleans. These left hundreds of black people dead.

Congress responded with a law and an amendment aimed at empowering the recently enslaved people so they could protect themselves from white violence. The Civil Rights Act of 1866 declared birthright citizenship (this was the first federal definition of American citizenship) and mandated equality between black and white in the marketplace. All were to have equality in the making of contracts, purchasing and selling, in property laws, etc. -- “as it is enjoyed by white citizens.” This, then, was Congress’s first pass at defining freedom: it meant freedom to compete equally in the marketplace. President Johnson vetoed this law, to the great consternation of moderate Republicans. That veto drove moderates into the Radical camp. Their alliance permitted passage of this law and other reform laws and amendments. The midterm election of 1866 was a Radical Republican sweep. Indeed, a time of national reform had dawned.

In summer 1866, Congress formed a Committee of Fifteen to create a 14th Amendment that would put the principles of the Civil Rights Act of 1866 into the Constitution, as well as clean up certain issues left over from the war. Section 1 affirmed birthright citizenship and the “privileges and immunities” of citizenship.

“These privileges and immunities” were not defined; there was no list in this amendment as there was in the Civil Rights Act of 1866. The Committee apparently preferred to let Congress and the courts define them. (This is, I believe, the constitutional source of “unenumerated rights.”)

Soon after ratification, it was decided that “privileges and immunities” meant, at the very least, the rights listed in the first eight amendments, the Bill of Rights. Even this was revolutionary. Before this, the Bill of Rights functioned as a statement of limitation on the federal government. “**Congress** shall make no law respecting an establishment of religion” – but states could, and did; the Congregational Church was the established (that is, tax-supported) church in Massachusetts until 1833. Now for the first time, the rights in the Bill of Rights were guaranteed to all citizens, and the federal government took on the new job of being the guarantor of those rights to all citizens. (To learn more about this, search under “incorporation of the Bill of Rights.”) This amendment also struck down discriminatory laws across the nation.

Alas, sweeping change was not long-term. Courts quickly interpreted Article I of the 14th Amendment to mean that, though *state* laws could not be discriminatory, private individuals could legally discriminate. For instance, restaurant owners could choose to not serve blacks.

The second clause of the 14th Amendment tried to ensure that states would enfranchise all of the people that they counted in the census; and thus black men, being counted, would be allowed to vote. This section was never enforced. Also, this is the first time that the word “male” appears in the Constitution, in order to dodge a possible interpretation that would enable female voting. Section 3 was designed to keep high-ranking Confederates out of office. Section 4 affirmed that the Confederate debt was “repudiated;” if you lent money to the Confederate cause, you could not be repaid. The final section stated that the federal government would enforce this amendment. And so a new role was given to the federal government. It is now the ultimate protector of American rights.

It took 2 years to ratify this amendment, and some states first ratified and then unratified. Likely it never would have passed if African Americans in the South had not been able to vote at this time.

The 15th Amendment, affirming voting rights regardless of race or previous condition of servitude, was necessary because blacks were voting only in those parts of the US that were under military rule. They were still disenfranchised by states in the upper south and most of the north. Though white Americans in the North now saw that black voting was necessary for peace in the South, many objected to blacks voting in their own states. Radical Republicans wanted this amendment to be a blanket affirmation that all males could vote. But this was too radical for much of the nation: the West wanted to keep their Chinese disenfranchised; New England, their Irish; the upper South, their Confederate vets. In the end, some Radical Republicans were so disgusted by this watered-down version that they refused to vote for it; they saw (accurately) that blacks would easily be legally disenfranchised through mechanisms like poll taxes and literacy tests. And yet at its ratification it was celebrated by the old abolitionist crowd, who thought they would never live to see that day. Frederick Douglass said, “We have all that we asked, and more than we expected.”

Despite their weaknesses and disappointments, despite the long century in which the most significant elements of the 14th and 15th amendments were not enforced, these amendments are still remarkable. The United States is the only former slaveholding nation in the modern world that (at least on paper) so quickly enfranchised and incorporated into its national polity their formerly enslaved population.

Perhaps it is most instructive to look at the era of Reconstruction as a second founding. The first founding (1775 – 179) had as its key principles representative government, governance by consent of the governed, and the federal system of national and state governments. The key principles of the second founding (1864 – 1877) were birthright citizenship, interracial democracy, the federal government over state governments, the federal government as the protector of people’s rights, and the guarantee of due process and equal protection for all.