

1 Reconstruction  
~~United States Senate Chamber.~~  
~~Washington.~~ 1867

Report of the committee

Sec. 1. is a general prohibition  
upon all the states, from abridging  
the privileges & immunities of citizens of  
the U. S. — or,

~~or~~ depriving any person of life &c.  
without due process of law; — or  
~~denying~~ to deny to any person the equal  
protection of the laws. —

The first clause guards the  
the "privileges & immunities" of citizens of  
the U. S. from unjust state legislation.

Who are "citizens of the  
U. S.?" —

The expression occurs twice in the old Const.

in  
 D ~~the~~ <sup>gen</sup> the proposed amendment it is  
 used in the same sense.

They are persons  
~~It means one born in~~  
 the country, or <sup>who are</sup> ~~are~~ made such  
 by naturalization.

As such citizens they are  
 called "entitled" to all the privileges  
 & immunities of citizens in the  
 several states (Art. 4 Sec. 2).

These privileges & immunities  
 of citizens of ~~the~~ comprise the  
 fundamental rights which belong  
 to the citizens of all free govts

See 4 Wash. C. C. R. 380-1,  
Coxfield vs. Coryell, cited 1st Brightly  
 p. 10

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To these privileges & immunities  
may be added the <sup>personal</sup> rights guaranteed  
& secured by the first 8 amendments  
to the constitution, such as  
the freedom of speech & of the press,

— the right of petition —

— the right to keep & bear arms

— the right to be exempted from  
the quartering of soldiers in a  
house without the consent of  
the owner —

the right to be exempt from un-  
reasonable searches & seizures —

— the right to be tried by an  
impartial jury, &c.

— the security against excessive  
bail & cruel & unusual punishments

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The courts have held that all these guarantees operate as ~~some~~ restraints only upon the power of Congress, & not upon state legislation, —

And there is ~~no~~ no power given by the constitution to enforce them.

This proposed amendment gives the power

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By the first clause each state is <sup>prohibited</sup> ~~restricted~~ from restricting those fundamental civil rights of citizens, whatever may be their nature or extent.

Don't attempt to define them.

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But the 2 last other clauses of this amendment go further and <sup>disably</sup> ~~disable~~ a state from depriving, not merely any citizen citizen, but any person of life, liberty or property without due process of law or denying to him the equal protection of the laws.

This abolishes all class legislation & the injustice of subjecting one caste of persons to a code not applicable to another.

It prohibits the hanging of a black man for a crime for which the white man is not to be hanged.

It protects the black man in his fundamental rights as a citizen with the same shield it throws over the white man.

But it does not give to either the right of voting.

That is not one of the "privileges" &c

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This Sec. ~~also~~ is purely a  
<sup>restriction</sup>  
~~prohibition~~ of the upon the states  
and does not of itself confer any  
power upon Congress.

The 5<sup>th</sup> of last ~~ex~~ section  
gives Congress the power to enforce  
it by legislation appropriate  
to its object.

The Second Section.

Read it. —

I could have wished to  
 an amount which would have  
 disabled the states from de-  
 priving the col. <sup>of</sup> ~~from~~ the  
<sup>right</sup>  
~~part~~ of suffrage.

They are to live with us —

They have been loyal & true

They have, in proportion to  
 their numbers &c. &c.

And it is wrong to proscribe  
 them as a race



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But the committee were  
 of opinion that the States are  
 not yet prepared to sanction  
 so ~~so~~ fundamental a change,  
 and I am content to wait  
 the movements of public opinion

The 2<sup>d</sup> section leaves  
 the right to regulate the  
 elective franchise still  
with the states & does not  
 meddle with that right.

Its basis of representation  
 is whether white or black  
numbers, - i. e. the white  
population, except sentay

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Indians & persons excluded by  
state laws for rebellion or other  
crime.

Formerly, under the constitution,  
~~the~~ while the free States were  
represented only according to their  
respective numbers of men, women  
& children, all of course endowed  
with civil rights, the slave  
states had the advantage of  
being represented according to their  
numbers of the same free classes  
increased by  $3/5$  of <sup>the</sup> ~~them~~ slaves  
whom they treated not as men  
but as property.

No property in the free States was <sup>represented</sup>

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And this inequality gave  
the slave states 21 additional  
Reps. under the census of 1860.

The 3/5 principle has  
caused in the destruction of  
Slavery & the enfranchisement of  
the col<sup>d</sup> race.

~~This freedom of~~  
~~the blacks~~ Under the present  
Constitution this ~~freedom~~ change  
will increase the no. of rep<sup>s</sup>.  
from the one slave - holding  
states, by 9 or 10; and under  
the next census still more.

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And the real question now is, shall this be permitted while the col. ~~was~~ population are excluded from the privilege of voting?

The committee thought not, I thought it wiser to adopt a general principle applicable to all the states alike, that where the state excludes any part of its <sup>own</sup> citizens from the elective franchise it shall lose rep<sup>s</sup> in proportion to the no. so excluded.

They did not adopt the principle of making the ratio

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of representation depends upon  
the number of voters — for it  
happens that there is an un-  
equal ~~size~~ distribution of voters  
in the several states, the old having  
proportionally fewer than the new.

But they adopted numbers as,  
after all, the most just and  
satisfactory basis: —

Our government should be  
guarded against aristocratic tendencies.

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By the census of 1860 the whole  
no. of col. persons in the several  
states was 4,227,067 <sup>or 7.5% of</sup>

In 5 of the N. E. states  
they are permitted to vote.

Their number in those 5 states was 12,132

This leaves, unrepresented in  
the ~~remaining~~ <sup>other</sup> states } 4,414,935  
or 1/7 of our entire population!

Of these, 3,650,000 were in the 11  
seceding states, and only 547,000  
in the 4 remaining slave states,  
which did not secede, viz. Del. Md.  
Ky & Mo. In the 11 seceding states the

blocks are to the whites nearly as 3 to 5  
If the late slave states  
continue to exclude the

blacks from voting, they will do it at the loss of 24 representatives, according to the rule established by the Statute of 1850: —

And it is not to be disputed that the proposed amendment is intended to induce them, by their own interests, to extend the right of suffrage, <sup>in some degree at least,</sup> to the black race.

And it operates in the same way upon all the other states

Those who are to bear the burdens of obey the will of the govt. should have voice in it.  
Madison, vol. 4 p. 27

Section 3

I look upon it as useless.

I should prefer a clause prohibiting all persons who have participated in the rebellion & who come over 25 % of age at the breaking out of the rebellion, from all participation in office, federal or state

Sections 4, ~~5~~

The safety of the country requires that ~~the~~ the rebel debt & all claims for slaves should be forever put at rest & cease to be subjects of party agitation



Reconstruction  
Notes

Notes by M.H.

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