

## CONSTITUTION 101

### Module 14: Battles for Freedom and Equality: Modern Battles

#### 14.1 Info Brief

## RECONSTRUCTION AND AMERICA'S “SECOND FOUNDING”

Following the Civil War, the American people transformed the Constitution—its very text—forever. This is why some scholars—including leading Reconstruction historian Eric Foner—refer to the 14th Amendment as a core component of America’s “Second Founding.” Do you agree?

During this critical period, our nation confronted a series of vexing questions.

- What was the meaning of the Civil War—a bloody, bloody war—and what should be the terms of a lasting peace?
- How should our nation answer the Declaration of Independence’s prophetic call for freedom and equality?
- How should we define what it means to be a U.S. citizen?
- How broadly should the right to vote sweep?
- And what role—if any—should the national government play in protecting the civil and political rights of all?

And make no mistake, the Reconstruction Amendments transformed our Constitution forever. Recall where the Constitution stood before this critical period.

Of course, it didn’t mention the word “slavery.” However, various constitutional provisions—including the Three-Fifths Clause and the Fugitive Slave Clause—had increased the political power of the slaveholding states throughout the pre-Civil War period.

The Constitution was silent on the Declaration of Independence’s promise of equality and on the issue of African American voting rights.

States could violate key Bill of Rights protections like free speech with impunity—and many Southern states did just that, banning abolitionist speech and writings.

And citizenship rights were left to the states and the courts—with Chief Justice Roger Brooke Taney infamously concluding in *Dred Scott v. Sandford* that African Americans could not be citizens and that they had “no rights which the white man was bound to respect.”

And after our nation’s Second Founding?

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- Our Constitution abolished slavery. (That's the 13th Amendment.)
- It made everyone born on American soil a U.S. citizen. (That's the 14th Amendment.)
- It promised equal protection of the laws for all. (That's the 14th Amendment—again.)
- It protected us from state abuses of important rights enshrined in the Bill of Rights like free speech. (That's the 14th Amendment—yet again)
- It guaranteed the right to vote free of racial discrimination. (That's the 15th Amendment.)
- And it gave the national government the authority to protect the civil and political rights of all. (That's the 13th, 14th, *and* 15th Amendments.)

Now, of course, the Second Founding wasn't perfect. It was thwarted in its own time by violence in the South, a mix of racism and indifference in the North, and a desire for North-South (white) reconciliation, more generally.

It would take nearly a century and the civil rights movement to begin to fulfill the promises enshrined in the Reconstruction Amendments.

Nevertheless, our Reconstruction founders made an important start.

#### RECONSTRUCTION AMENDMENTS

Finally, let's briefly review the power of each of the Reconstruction Amendments.

[The 13th Amendment](#)—ratified in December 1865—abolished slavery.

[The 14th Amendment](#)—ratified in July 1868—wrote the Declaration of Independence's promise of freedom and equality into the Constitution. It combined *four* big ideas—*four* ways in which it transformed the Constitution forever:

- Birthright citizenship: *Dred Scott* is overturned, African Americans *did* have rights that the white man was bound to respect, and generally speaking, if you're born on American soil, you're an American citizen.
- Equality: The original Constitution was silent on the issue of equality, and now the Declaration of Independence's founding promise is written into the Constitution.
- Freedom: The original Bill of Rights was limited to abuses by the *national* government, and now the Constitution protects those in the United States from abuses of key rights by the *states*—key rights like those in the Bill of Rights, including free speech and religious liberty.
- National power over civil rights: Congress is now given the power to enforce the protections enshrined in the 14th Amendment. The Reconstruction Amendments are the first set of constitutional amendments to *expand* the reach of national power—rather than *restrict* it. So, Congress has *more* power than before.

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The [15th Amendment](#)—ratified in February 1870—promised to end racial discrimination in voting.

#### THE STORY OF THE 14TH AMENDMENT

Why did the Reconstruction generation frame and ratify the 14th Amendment? To begin to answer those tough questions, let's return to April 1865. The Civil War has ended, Abraham Lincoln has been assassinated, and Andrew Johnson has become president. Our nation is wrestling with some of the most difficult questions to arise since its founding. Should we pardon or punish the former rebels? Should we restore political power to the former Confederate states, and on what terms? And, of course, what duty do we owe to African Americans—many of whom fought in the Union Army, laying claim to our nation's promise of freedom and equality—in other words, to *equal* citizenship?

Following Lincoln's assassination, many Republicans remained optimistic about Reconstruction. In their new president—Andrew Johnson—they saw a border-state Unionist (a Tennessean) eager to punish the plantation class and, in turn, remake the conquered South.

They couldn't have been more wrong.

President Johnson *did* agree with many Republicans on the need for the former rebels to pledge their loyalty to the Union, abolish slavery, and renounce secession. However, that was just about all that Johnson required of them. He quickly pardoned thousands of high-ranking Confederate officials and large plantation owners, restoring their property rights and their political power.

He also deferred to the South on how to rebuild its postwar society, leaving the former rebels free to abuse African Americans and white Unionists and do everything possible to restore the pre-Civil War status quo. This led to the infamous Black Codes—what many (including Frederick Douglass) referred to as “slavery by another name.” President Johnson's post-Civil War vision wasn't a mystery. He came right out and said what he wanted to build—“a white man's government.” Northerners may have won the war, but congressional Republicans—the party of Lincoln and of the Union—feared that they might well lose the peace.

Enter the Joint Committee on Reconstruction and one of its key leaders, the hero of our 14th Amendment story, Representative John Bingham of the great state of Ohio. Congress established the Joint Committee on Reconstruction in December 1865. The body was tasked with studying the conditions in the post-Civil War South and recommending a congressional response—one that might counter President Johnson, rally the Republican Party, and provide a new blueprint for Reconstruction. The Committee's most enduring legacy is Section 1 of the 14th Amendment. This critical text was the handiwork of Representative John Bingham of Ohio.

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First, a little bit about our forgotten hero. Bingham's professional credentials alone are astonishing. Prior to the Civil War, he was a leading antislavery voice in Congress—especially on behalf of robust federal protection of free speech rights and religious liberty. Following Lincoln's assassination, he was a member of the team that prosecuted John Wilkes Booth's co-conspirators. During Reconstruction, he was a leading Republican in the House of Representatives and a key member of the Joint Committee on Reconstruction. He also delivered the closing argument in President Andrew Johnson's impeachment trial. And, following Bingham's congressional career, President Ulysses S. Grant tapped him to be America's minister to Japan, a position that he held for 12 years. Not a bad run. However, Bingham's most lasting achievement was *constitutional*. He was the main author of [Section 1 of the 14th Amendment](#). In fact, the great Justice Hugo Black would later call Bingham the 14th Amendment's James Madison. And Gerard Magliocca—Bingham's biographer—described the Joint Committee on Reconstruction as “A Second Constitutional Convention.” High praise, and quite right.

#### THE POST-RECONSTRUCTION STORY

In the end, Reconstruction represents America's first attempt at multiracial democracy. And for a time—far too brief a time—it worked. It really worked.

We saw African Americans meeting in conventions throughout the nation—laying out their vision of what America's “new birth of freedom” ought to look like for the African American community in post-Civil War America.

We saw African Americans voting in massive numbers—electing Republicans throughout the South and pushing for the ratification of the 14th and 15th Amendments.

We saw African Americans holding office at all levels of government.

- As U.S. senators and U.S. House members.
- As governors and state legislators.
- All the way down to key positions in local governments throughout the South—like town sheriff.

And we saw the national government—for a time—acting to protect the constitutional rights of all.

However, after a period of success, Reconstruction ultimately faced a series of setbacks.

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Over time, white Southerners regained political power and imposed second-class citizenship on African Americans.

This system of Jim Crow segregation forced African Americans to attend different schools than white Americans, drink from different water fountains, use different restrooms, travel in different train cars, and stay in different hotels—and on and on.

These states also used a mix of violence, intimidation, and laws on the books—including polls taxes and literacy tests—to keep African Americans from voting.

But the civil rights community kept fighting until the civil rights movement finally redeemed the promise of the Reconstruction Amendments through canonical Supreme Court decisions like *Brown v. Board of Education* and *Loving v. Virginia*, landmark civil rights laws like the Civil Rights Act of 1964 and the Voting Rights Act of 1965, and through timeless speeches like Dr. Martin Luther King's *I Have a Dream Speech*.