

30 The Checkered History of the Great Fourteenth Amendment

ERIC FONER

In the following selection, Eric Foner, today's foremost historian of the Reconstruction era, recounts the dramatic and controversial history of the great Fourteenth Amendment. Because it promised equality of all Americans before the law, Foner states that it was "one of the most important lasting consequences of the immense changes produced by the war."

To place Foner's story in historical context, it would be well to pick up the Reconstruction story with what was transpiring in the nation's capital in 1865 and 1866. Johnson's soft, conciliatory reconstruction policy enraged Republican leaders on Capitol Hill. As we saw in the previous selection, the president not only opposed granting black men the right to vote but also allowed former Confederates to return to power in the southern states. Johnson also stood by when ex-rebel legislators enacted black codes that reduced blacks to a virtual condition of peonage, and he hotly opposed congressional interference in the reconstruction process. He even urged southern states to reject the Fourteenth Amendment, pushed through Congress by the Republicans, which would protect southern blacks. The amendment would prevent the states from adopting laws that abridged "the privileges or immunities of citizens of the United States." It would also bar the states from depriving "any person of life, liberty, or property, without due process of law," or from denying any person the "equal protection of the law." Johnson did more than just oppose the amendment; he damned Republican leaders like Charles Sumner of Massachusetts and Thaddeus Stevens of Pennsylvania, calling them tyrants and traitors. He even campaigned against the Republican party in the 1866 off-year elections. As a consequence, he alienated moderate as well as radical Republicans, who soon united against him. When the 1866 elections gave the Republicans huge majorities in both houses of Congress, they took control of Reconstruction and set about reforming the South themselves, granting blacks the right to vote and hold office.

Thus the stage is set for Foner's brilliant essay on one of the most important constitutional amendments in American history. In the short run, the equal protection clause had little effect on the lives of the former slaves. Southern white resistance and northern complacency resulted in what Foner calls "a new system of racial subordination" that sought to eliminate black voting, institute racial segregation, and place severe restrictions on "blacks' economic power."

Moreover, the great Fourteenth Amendment itself underwent a drastic reinterpretation. When Reconstruction ended in 1877, the United States entered what Mark Twain called the Gilded Age, a conservative era dominated by big businessmen and their corporate monopolies. In this period, reflecting the spirit of the times, the Supreme

Court changed the original purpose of the Fourteenth Amendment: the Court's new interpretation turned it into an instrument for the protection of corporations. At the same time, the Court acquiesced in the ruthless oppression of black people in the white supremacist South.

But decades later, in the activist 1960s and 1970s, a progressive Supreme Court not only returned the Fourteenth Amendment to its original purpose, but also expanded it to protect the rights of "aggrieved groups of all sorts—blacks, women, gays, welfare recipients, the elderly, the disabled." More than a century after its ratification, this powerful amendment, first conceived in "imperfect compromise" during Reconstruction, has become today (in Foner's words) "the most important bulwark of the rights of American citizens." What follows is the fascinating story of how that came to be.

GLOSSARY

BLACK CODES See glossary in previous selection.

BROWN v. BOARD OF EDUCATION OF TOPEKA (1954) The Supreme Court's landmark decision that ruled that state-initiated racial segregation violated the equal protection guarantee of the Fourteenth Amendment. This was because separation inherently meant inequality.

DRED SCOTT v. SANDFORD (1857) With a majority of southerners as justices, the Supreme Court ruled that neither Congress nor the territories could outlaw slavery. Five justices maintained that to do so would violate the property rights clause of the United States Constitution. Since slaves were property, the Court said that they could not be United States citizens.

FIFTEENTH AMENDMENT Race could no longer be a factor in the determination of voter qualifications in an individual state. The southern states would later use poll taxes, literacy tests, and grandfather clauses to make this potentially significant amendment meaningless for the next one hundred years.

JOHNSON, ANDREW Lincoln's vice president who entered the Oval Office after Lincoln's assassination. A product of the poor white South, he believed in the Union but had no interest in

protecting the rights of the freedmen. Although he was impeached for political reasons, the Senate failed to convict him, and the strong-willed and unpopular president remained in office until 1869.

PLESSY v. FERGUSON (1896) This Supreme Court decision upheld "separate but equal" accommodations for whites and African Americans. The majority of justices argued that the ruling was consistent with the equal protection clause guaranteed by the Fourteenth Amendment.

RECONSTRUCTION ACT of 1867 Provided the freedmen with the right to vote and "launched the short-lived period of Radical Reconstruction during which, for the first time in American history, a genuine interracial democracy flourished."

SANTA CLARA COUNTY v. SOUTHERN PACIFIC RAILROAD In a strange twist the Supreme Court ruled in this case that a corporation was a person under the law. By this decision, the Fourteenth Amendment forbade states to interfere with a corporation's activities, like the regulation of working conditions.

STEVENS, THADDEUS A Radical Republican leader in the House of Representatives, he devoted his career to the struggle against slavery and the equal rights of the freedmen. He promoted the Fourteenth Amendment and the confiscation and distribution of former rebel lands to the newly freed slaves, and he was a major force in the impeachment trial of Andrew Johnson.

SUMNER, CHARLES One of the leading Radical Republicans in the Senate, he too was a committed idealist who advocated complete civil and political equality for African Americans. "More than any of his political contemporaries," writes his biographer, David Herbert Donald, "Sumner realized that the future of American democracy depended on the ability of the white and black races to live together in peace and equality."

TRUMBULL, LYMAN This Illinois senator and his colleague, Senator John Sherman of Ohio, thought that suffrage for the freedmen was "a political liability." Both men represented the moderate wing of the Republican party that desired a free labor economy in the South. They joined the Radicals who desired more drastic changes only after President Johnson opposed the Fourteenth Amendment and stuck adamantly to his pro-southern policy.

On June 13, 1866, Thaddeus Stevens, the majority floor leader in the House of Representatives and the nation's most prominent Radical Republican, rose to address his congressional colleagues. His subject was the Fourteenth Amendment to the Constitution—which, after months of deliberation and innumerable drafts and redrafts, was about to receive final approval by Congress. Its purpose was to secure the fruits of Union victory in the Civil War by guaranteeing equal civil rights for the freed slaves and loyal governments in the South.

Born during George Washington's administration, Stevens had enjoyed a public career that embodied, as much as anyone's, the struggle against the "Slave Power" and for equal rights for black Americans. In 1837, as a delegate to Pennsylvania's constitutional convention, he had refused to sign the state's new frame of government because it abrogated the right of African Americans to vote. As a member of Congress during the 1850s, he had fought against the expansion of slavery and, during the secession crisis, opposed compromise with the South. Once the Civil War began, he was among the first to advocate the emancipation of slaves and the enrollment of black soldiers.

During the era of Reconstruction that followed the war, Stevens insisted that the South was a "conquered province," which Congress could govern as it saw fit. He was the most prominent advocate, for example, of distributing land to former slaves so that they might have an economic foundation for their freedom. Like other Radicals, he believed that Reconstruction was a golden opportunity to purge the nation of the legacy of slavery and create a society whose citizens enjoyed equal civil and political rights, secured by a powerful and beneficent national government. "The whole fabric of southern society must be changed," he declared, "and never can it be done,

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Thaddeus Stevens was the driving force behind the Fourteenth Amendment, but controversy followed this champion of the freedmen. In the superstitious nineteenth century, his clubfoot was deemed a sign of evil. Although he never married, there were many rumors about his relationship with an African American housekeeper with whom he lived for many years. (Library of Congress)

if this opportunity be lost." Stevens's speech on June 13 was an eloquent statement of this political creed:

In my youth, in my manhood, in my old age, I had fondly dreamed that when any fortunate chance should have broken up for awhile the foundation of our institutions, and released us from obligations the most tyrannical that ever man imposed in the name of freedom, that the intelligent, pure and just men of this Republic . . . would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich. . . . This bright dream has vanished [quoting Shakespeare's *The Tempest*] "like the baseless fabric of a dream." I find that we shall be obliged to be content with patching up the worst portions of the ancient ed-

ifice, and leaving it, in many of its parts, to be swept through by the . . . storm of despotism. Do you inquire why, holding these views and possessing some will of my own, I accept so imperfect a proposition? I answer, because I live among men and not among angels.

A few moments later, the Fourteenth Amendment was approved by the House. The result was never in doubt because, with the southern states still unrepresented, the Republican party commanded an overwhelming majority. The final vote was 120–32, well above the required two-thirds majority. Three days later, having been approved by the Senate shortly before the House vote, the amendment was sent to the states for ratification. It became part of the Constitution on July 28, 1868.

The Fourteenth Amendment prohibited the states from abridging the equality before the law of American citizens, provided for a reduction in representation in Congress should any state deprive male citizens of the right to vote, excluded Confederates who had previously taken a constitutional oath from holding state or federal office, and prohibited payment of the Confederate debt. It was one of the most important lasting consequences of the immense changes produced by the Civil War and the subsequent political crisis of Reconstruction, especially the struggle between the president and Congress over control of Reconstruction policy.

In late May 1865, six weeks after he succeeded the martyred Abraham Lincoln, Pres. Andrew Johnson announced his plan for reuniting the nation, launching the era of presidential Reconstruction. Although a staunch Unionist from Tennessee, Johnson was an inveterate racist and a firm defender of states' rights. The essentials of his Reconstruction plan allowed white southerners to establish new state governments—which were required by Johnson to abolish slavery, repudiate secession, and abrogate the Confederate debt but otherwise accorded a free hand in controlling local affairs. When these new govern-



Andrew Johnson from Tennessee remained loyal to the Union and became Lincoln's vice president at the end of the Civil War. The former senator was motivated by his devotion to the Constitution and his disdain for the planter class. With his poor southern white background, Johnson opposed granting political rights to the freedmen. His lenient Reconstruction program allowed former Confederates to take office in southern state governments, and he permitted these governments to enact the infamous black codes, which virtually reenslaved African Americans in the South. (Library of Congress)

ments quickly enacted the repressive Black Codes, most northern Republicans turned against the president. As one observer put it, the Black Codes seemed designed to "restore all of slavery but its name." Meanwhile, the election of "rebels" to leading offices in the South and reports of violence directed against both freed people and northern visitors reinforced the conviction that Johnson's plan played into the hands of the southern Democrats.

When the Thirty-ninth Congress (elected in November 1864) finally assembled in December 1865, Radical Republicans, led by Stevens, called for abrogation of the Johnson-authorized state governments and the establishment of new ones based on equality before the law and universal manhood suffrage. The Radicals, however, didn't control the Republican party. Occupying the political middle ground was the moderate Republican majority, led in Congress by Sen. Lyman Trumbull of Illinois and Sen. John Sherman of Ohio. Unenthusiastic about black suffrage—which they viewed as a political liability in the North and an experiment whose outcome couldn't be predicted in the South—Trumbull, Sherman, and their allies were nonetheless fully committed to ensuring "loyal" governments in the former states of the Confederacy and protecting the elementary rights of freed slaves in a society organized on the basis of free labor rather than slavery. Eventually, however, Johnson's policies, and the actions of the state governments created under his supervision, drove them into the Radicals' arms, uniting the entire Republican party against the president.

Much of the ensuing debate over Reconstruction revolved around the problem, as Trumbull put it, of defining "what slavery is and what liberty is." The Civil War had greatly enhanced the power of the national state. Especially because of the service of two hundred thousand black men in the Union army and navy, the war had also put the question of black citizenship on the national agenda. By early 1866, moderates had concluded that equality before the law—enforced, if necessary, by national authority—had become an inevitable consequence of emancipation and a condition for restoring the South to full participation in the Union. These principles were embodied in the Civil Rights Act of 1866, a precursor to the Fourteenth Amendment that outlined the rights all Americans were to enjoy regardless of race. These included the rights to make contracts, bring lawsuits, and enjoy equal protection of the security of person and property. Johnson's veto

of this measure and its repassage by Congress in April 1866 marked the final breach between the president and the Republican party. It was the first time in American history that a significant piece of legislation became law over a president's veto.

Beyond impelling congressional Republicans to devise their own Reconstruction plan, Johnson's intransigence persuaded them to write their understanding of the consequences of the Civil War into the Constitution, there to be secure from shifting electoral majorities. The result was the Fourteenth Amendment, adopted by Congress after months of committee deliberations and a series of alterations on the House and Senate floors. Some Republicans wished to disqualify leading Confederates from voting; others wanted to include both "universal amnesty" for "rebels" and "universal suffrage" for black men. But these proposals failed to win the support of most Republicans. In its final form, the amendment was a compromise on which all Republicans could unite.

This process of compromise, however, as Stevens's June 13 speech suggests, resulted in a text that didn't fully satisfy the Radicals. The Fourteenth Amendment, as enacted, didn't abolish existing state governments in the South, nor did it guarantee blacks the right to vote; indeed, in one section, it offered each southern state, once readmitted to the Union, the alternative of allowing black men to vote and retaining the state's full representation in Congress or continuing to disenfranchise blacks and suffering a loss of representation proportionate to the black percentage of the state population. (No penalty applied, however, when women were denied the right to vote, an omission that led many advocates of women's rights to oppose ratification of the amendment.)

The Fourteenth Amendment had five sections in all, three of which have little importance today—those barring Confederates from office, dealing with the Confederate debt, and reducing a state's repre-

sentation in Congress if men are denied the right to vote. (This last provision was never enforced, even during the decades when southern states disenfranchised most black voters.) Nonetheless, the Fourteenth Amendment has since become, after the Bill of Rights, the most important constitutional change in the nation's history. Its heart was Section 1, which declared that all persons born or naturalized in the United States were both national and state citizens. Section 1 also prohibited states from abridging the "privileges and immunities of citizens"; depriving them "of life, liberty, or property without due process of law"; and denying them "equal protection of the laws." It thus established, as Thaddeus Stevens told the House, the principle that state laws "shall operate equally upon all." Later he added, "I can hardly believe that any person can be found who will not admit that . . . [it] is just."

In keeping with constitutional authority the principle that equality before the law, regardless of race, could and should be enforced by the national government, the Fourteenth Amendment permanently transformed the definition of American citizenship and refashioned relations between the federal government and the states as well as those between individual Americans and the nation. We live today in a legal and constitutional system shaped profoundly by the Fourteenth Amendment.

During the 1866 Congressional Elections, ratification of the Fourteenth Amendment became the central issue of the campaign. That fall, the president embarked on an unprecedented speaking trip across the North, known as the "swing around the circle." Its primary purpose was to drum up support for candidates associated with Johnson's National Union party—mostly northern Democrats who supported the president's Reconstruction policies. Yet Johnson also took the opportunity to rally whatever opposition to ratification he could. Again and again, he called for reconciliation between North and South, insisting that suffrage requirements and citizens'

rights should be left to the states. Johnson also engaged in impromptu debates with hecklers, intimating that Stevens and the other Radicals were traitors. For their part, Republicans defended the amendment as necessary to secure the emancipation of the slaves and prevent Confederates from controlling the South.

The outcome of the midterm elections was continued Republican dominance in Congress and a clear mandate for Stevens and the Radicals. Johnson, however, continued his intransigent opposition to the amendment, urging southern legislatures to refuse to ratify it. And during the winter of 1866–1867, every southern state, except Tennessee, indeed rejected the amendment. With southern state governments thus having thoroughly discredited themselves in the eyes of nearly all Republicans, moderate and radical alike, party leaders concluded that only by establishing entirely new governments in the south could Reconstruction be accomplished. In March 1867, on the penultimate day of its post-election session, the Thirty-ninth Congress passed, over Johnson's veto, the Reconstruction Act of 1867. This gave the right to vote to black men in the South and launched the short-lived period of Radical Reconstruction during which, for the first time in American history, a genuine interracial democracy flourished. In March 1870, the Fifteenth Amendment, prohibiting any state from depriving citizens of the right to vote because of race, became part of the Constitution. What Republican leader Carl Schurz called "the great Constitutional revolution" of Reconstruction was complete. "Nothing in all history," exulted abolitionist William Lloyd Garrison, equaled "this wonderful . . . transformation of four million human beings from . . . the auction-block to the ballot-box."

In general, the Acts and Amendments of Reconstruction reflected the intersection of two products of the Civil War era: the newly empowered national state and the idea of a national citizenry enjoying

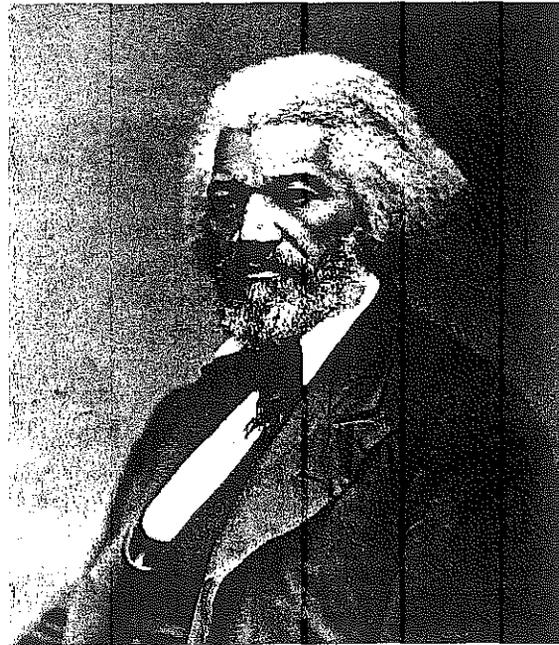
equality before the law. In fact, rather than embodying a threat to liberty (as Jefferson had perceived it), the federal government had now become "the custodian of freedom," declared Charles Sumner, the abolitionist senator from Massachusetts. The rewriting of the Constitution during Reconstruction promoted a sense of the document's malleability and further suggested that the rights of individual citizens were intimately connected to federal power. This was a substantial departure from the pre-Civil War period, when disenfranchised groups were far more likely to draw inspiration from the Declaration of Independence than from the Constitution. (After all, the only mention of equality in the original Constitution came in the clause granting each state an equal number of senators.)

For example, the Bill of Rights, ratified in 1791, defined civil liberties in terms of state autonomy. Its language—"Congress shall pass no law . . ."—reflected the Jeffersonian belief that concentrated power was a threat to freedom. The Reconstruction amendments, however, which included the Thirteenth Amendment abolishing slavery, assumed that rights required political power to enforce them. These amendments, therefore, not only authorized the federal government to override state actions that deprived citizens of equality but also concluded with sections empowering Congress to "enforce" the amendments with "appropriate legislation." The Reconstruction amendments, especially the Fourteenth, transformed the Constitution from a document primarily concerned with federal-state relations and the rights of property into a vehicle through which members of vulnerable minorities could stake a claim to substantive freedom and seek protection against misconduct by all levels of government.

Limiting the privileges of citizenship to white men had long been intrinsic to the practice of American democracy. In 1857, in deciding *Dred Scott v. Sandford*, the Supreme Court had declared that no black person could be a citizen of the United States. Racism, federalism, a belief in limited government

and local autonomy—Reconstruction challenged all these principles of nineteenth-century political culture. So deeply rooted were they, in fact, that only during an unparalleled crisis could they have been superseded, even temporarily, by the vision of an egalitarian republic embracing black Americans as well as white under the protection of the federal government. Indeed, it was precisely for this reason that the era's laws and constitutional amendments aroused such bitter opposition. The underlying principles—that the federal government possessed the power to define and protect citizens' rights, and that blacks were equal members of the body politic—were striking departures in American law. It isn't difficult to understand why President Johnson, in one of his veto messages, claimed that federal protection of African-American civil rights, together with the broad conception of national power that lay behind it, violated "all our experience as a people."

Reconstruction proved fragile and short lived. Its end is usually dated at 1877, when federal troops were withdrawn from the South (as a consequence of the contested 1876 presidential election) and white-supremacist Democrats regained control of southern state governments. But retreat from the idea of equality was already underway prior to 1877, as traditional ideas of racism and localism reasserted themselves during the early 1870s and violence disrupted the southern Republican party. This transition accelerated after 1877, when Supreme Court interpretation of the Fourteenth Amendment increasingly eviscerated its promise of equal citizenship. Deciding the 1873 Slaughterhouse Cases, for example, the Court severely restricted the rights protected under the amendment, ruling that these comprised only those rights that owed their existence to the federal government—such as traveling on navigable waterways, running for federal office, and being protected on the high seas. Clearly, *these* rights were of limited concern to most former slaves. All



Frederick Douglass was a runaway slave, the author of a popular autobiography, the editor of the North Star, perhaps the most dynamic of the abolitionist spokesmen, and the greatest black man of his generation. He was also a champion of the women's rights movement. (The National Archives)

other rights, the Court ruled, were derived from state, not national, authority, and with these the amendment had "nothing to do."

Next came the 1883 Civil Rights Cases, which invalidated a federal law prohibiting unequal treatment of blacks in public accommodations on the grounds that the Fourteenth Amendment barred only *legal* discrimination, not the actions of private individuals. Finally, the Court's famous 1896 decision in *Plessy v. Ferguson* decreed that state-mandated racial segregation didn't violate the Fourteenth Amendment's equal protection clause because "separate" could be equal. By the turn of the twentieth century, therefore, the states had been given carte blanche to nullify the Reconstruction amendments

and civil rights laws. A new system of racial subordination was put in place in the South, centered on the elimination of black voting, racial segregation, and the severe restriction of blacks' economic opportunities. And these blatant violations of the Fourteenth and Fifteenth Amendments occurred with the acquiescence of the North, as reflected in the Supreme Court rulings.

Meanwhile, the Court made use of the Fourteenth Amendment in a manner that Thaddeus Stevens could never have imagined—as a barrier against governmental regulation of corporate behavior. In 1886, in *Santa Clara County v. Southern Pacific Railroad*, the Court declared that a corporation was a “person” under the law and thus couldn’t be deprived of the “privileges and immunities” specified in the amendment’s first section. This principle underpinned a long legal era during which the Court held that “liberty of contract”—the right of corporations to operate without state interference such as regulation of working conditions, limitation of working hours, and so on—was the real intention of the Fourteenth Amendment. Not until the late 1930s did the Court abandon this liberty-of-contract jurisprudence.

The Fourteenth Amendment’s checkered history, however, is also the history of evolving American ideas about civil rights and civil liberties. During the first half of the twentieth century, the Court slowly took up the work of applying Fourteenth Amendment protections to the citizens’ rights enumerated in the Bill of Rights. That is, the Court began to rule that states must respect the same civil liberties that the first ten amendments to the Constitution protect against federal intrusion. This process, called “incorporation” by legal historians, began shortly after World War I, when the Court responded to extensive censorship by wartime authorities with an opinion that obligated states under the Fourteenth Amendment to refrain from unreasonable restrictions on the freedoms of speech and of the press. Soon af-

terward, it invalidated state laws that required all students to attend public schools and prohibited teachers from instructing in languages other than English (measures directed against schools established by churches and immigrant groups). The amendment’s guarantee of equal liberty, it declared, included the right to bring up children and practice religion free from governmental interference.

During the 1950s and 1960s, led by Chief Justice Earl Warren, the Court again turned to the Fourteenth Amendment as a source not only for the racial justice envisioned by its framers but also for a vast expansion of civil liberties for all Americans. In 1954, in the *Brown v. Board of Education* decision that overturned *Plessy*, the Warren Court ruled that state-sanctioned racial segregation violated the Fourteenth Amendment’s equal protection clause because separation was inherently unequal. In subsequent decisions, it struck down state laws that sought to destroy civil rights organizations by requiring them to disclose lists of their members; and in *New York Times v. Sullivan* (1964), it greatly expanded the legal protections given newspapers and other media by requiring that plaintiffs in libel suits prove that the defamatory remarks in question were made out of either malice or a “reckless disregard” for the truth. Reversing its long history of compliance with racial injustice, the Supreme Court had become by the end of the 1960s the Congress’s leading ally in the struggle for racial justice.

The Warren Court continued the process of incorporation until the states were required to abide by virtually every clause in the Bill of Rights—from such literal guarantees as protection against unreasonable searches and seizures and the right to a speedy trial to inferred rights, including the right of indigent defendants to publicly appointed legal counsel. During this period, the Court struck down numerous state and local measures, including some mandating prayer in public schools, that violated the First Amendment’s ban on government support for religion.

Meanwhile, generating even greater controversy, it discovered under the aegis of the Fourteenth Amendment some entirely new rights that the states couldn't abridge. Most dramatic of these was the right to "privacy," embodied in the 1965 *Griswold* decision overturning a Connecticut law that prohibited the use of contraceptive devices and in *Roe v. Wade* (1973), which created the constitutional right to terminate a pregnancy. This "rights revolution" undertaken by the Warren Court elevated the status of the Fourteenth Amendment until it became the major constitutional provision to which aggrieved groups of all sorts—blacks, women, gays, welfare recipients, the elderly, the disabled—appealed in seeking to expand their legal rights and social status.

Today, amid the continuing controversies over abortion rights, affirmative action, the rights of homosexuals, and many other issues, the Court's interpretation of the Fourteenth Amendment remains a focus of judicial as well as political debate. An imperfect compromise when added to the Constitution during Reconstruction, the amendment has since become the most powerful bulwark of the rights of American citizens. We haven't yet created the "bright dream" of which Thaddeus Stevens spoke in his June 1866 speech, but thanks to the reinvigoration of the Fourteenth Amendment by the twentieth-century Supreme Court, more Americans enjoy more rights and more freedoms today than ever before in our history.

QUESTIONS TO CONSIDER

1 Consider the long career of Thaddeus Stevens. What issues did he champion and what frustrations did he face? Why would Foner state that Stevens viewed Reconstruction as a "golden opportunity"?

2 Why would Foner describe the Fourteenth Amendment as "one of the most important lasting consequences of the immense changes produced by

the Civil War and the subsequent political crisis of Reconstruction?" After its passage, do you think that race should have been a factor when determining legal equality? In what ways was its original purpose later compromised in Supreme Court rulings such as *Plessy v. Ferguson* and *Santa Clara County v. Southern Pacific Railroad*?

3 Why would Foner state that the Reconstruction amendments made the Constitution a document "through which members of vulnerable minorities could stake a claim to substantive freedom and seek protection against misconduct by all levels of government"? Before Reconstruction, why did the Declaration of Independence, more so than the Constitution, provide hope for the downtrodden and oppressed?

4 Why did the mood of the country in the conservative period following the fall of the Radical Republicans erode the original purpose of the Fourteenth Amendment? How would Thaddeus Stevens have viewed the Slaughterhouse Cases, the 1883 Civil Rights Cases, and the separate but unequal society that emerged?

5 The Fourteenth Amendment's checkered history reflected the changing values of the country. Explain how, during probusiness eras, it has protected corporations more than people. How did it fail to prevent racial discrimination at the end of the nineteenth century? How did it help spark a "second reconstruction" nearly sixty years later, after a groundbreaking decision from the Warren Court?

6 The Fourteenth Amendment, initially passed to help guarantee equality under the law for the freedmen, became a vehicle in the twentieth century to help many other groups—women, gays, the elderly, and the disabled. Is this a violation or a natural extension of its original intent? Examine the rationale for decisions that applied the Fourteenth Amendment to issues like abortion, school prayer, and the rights of the accused. Are we now approaching that "bright dream" envisioned by Thaddeus Stevens?