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Fourteenth Amendment: Tool of Tyranny, but Was It Legally Ratified?

The ratification of the Fourteenth Amendment to the United States Constitution in 1868 is widely regarded as a momentous event in American history. However, many noted constitutional scholars and historians have highlighted persistent and perplexing issues about the legality of its ratification. In this article, I will explore the arguments that challenge the legitimacy of the Fourteenth Amendment's ratification process, shedding light on the complexities and controversies that surround this pivotal moment in American constitutional history.

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The Constitutional Ratification Process:

Before delving into the arguments against the legal ratification of the Fourteenth Amendment, it is important to understand the constitutional process for ratifying amendments. According to Article V of the U.S. Constitution, an amendment must be proposed by a two-thirds majority vote in both houses of Congress and subsequently ratified by three-fourths of the states. This process ensures that the proposed amendment receives widespread support and agreement from the federal and the state governments.

Congressional "Chicanery"

While there is a reasonable argument to be made that the Fourteenth Amendment did not garner the constitutionally mandated number of votes in either the House or the Senate, there is an equally sustainable argument that it did, so space doesn't permit me to rehearse that episode in the history of the Fourteenth Amendment.

However, I will take space to share with you a bit of "chicanery" in the U.S. Senate that casts considerable doubt on that body's vote to approve the Fourteenth Amendment. I take this account of the story from an article published in the *Georgia Journal of Southern Legal History* in 1991:

> The numbers cited concerning the vote in the Senate mask some chicanery. One of the fifty non-southern senators was the newly elected John P. Stockton of New Jersey, an outspoken opponent of the Fourteenth Amendment, who took the oath of office and was formally seated when the Thirty-ninth Congress convened on December 5, 1865. Later, after informal polls revealed that only thirty-three senators favored it (one short of the necessary two-thirds) a motion was made not to seat Stockton. The motion not to seat was resorted to, even though he had already been seated, because Article I, Section 5, of the Constitution requires a two-thirds vote to expel a member, and that majority could not be mustered. Following a great deal of debate, a vote was taken and the motion not to seat failed twenty-two to twenty-one. Overnight, however, one member of the Senate was persuaded to change his vote. The next day the same motion passed. Stockton was thus unconstitutionally

> expelled, and only in that way did the thirty three votes for the Fourteenth Amendment become a two thirds majority.

To not be troubled by that story, one has to really want to live in a world where the Fourteenth Amendment is considered "law" and is used by Joe Biden to justify his student-loan bailout scheme, by Bernie Sanders to argue in favor of raising the debt ceiling, and by five Supreme Court justices in forcing same-sex marriage on every state in the union. Do you want to live in that world?

Arguments Against the Fourteenth Amendment's Ratification

Questionable Legitimacy of Southern Ratifications

One of the primary arguments challenging the legality of the Fourteenth Amendment's ratification lies in the questionable legitimacy of the Southern states' ratifications. After the Civil War, Southern states were placed under military control, and the Reconstruction Acts forced them to ratify the Fourteenth Amendment to regain representation in Congress. Coercion instead of consent as the basis for "government" is contrary to the principles upon which the secession of the 13 American states from the empire of Great Britain was justified in the Declaration of Independence. States whose governments were forced to ratify the Fourteenth Amendment in order to end armed occupation of their towns is hardly consistent with the letter or the spirit of the Declaration of Independence or the Constitution.

For reference, you may recall in the Declaration of Independence that one of the "facts submitted to a candid world" was that in the United States, governments "derive their just powers from the *consent* of the governed…," not the coercion of the government.

Here's the story as recorded by renowned American history scholar Forrest McDonald:

> Senator Charles Sumner of Massachusetts had, as early as 1862, formulated his "state suicide" theory, which held that the very act of seceding destroyed a state and dissolved its lawful government. In the House the Radical Pennsylvanian Thaddeus Stevens advanced the alternate theory that the eleven southern states were conquered provinces without any political rights. Either way, the ex-Confederates were governable exclusively by Congress under its express power to govern territories, and could have no voice in ratifying amendments. Accordingly, nineteen of the twenty-five loyal states would constitute the three-fourths majority necessary to ratify the Fourteenth Amendment, not twenty-seven of thirty-six states counting the South.
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> Congress might have had the right to act on either theory, but instead it rejected both. What is more, on June 16, 1866, when the proposed amendment was sent to the state governors for legislative ratification, it was sent to all thirty-six, a tacit endorsement of the position that the southern states were still full-fledged members of the Union.

In other words, the Article V of the U.S. Constitution grants to states the authority to ratify amendments. If the states that seceded were required to ratify an amendment in order to *become* states, how could they ratify, considering they weren't states until they ratified the Fourteenth Amendment? This is called "circular reasoning" and represents a pragmatic defect in the attempt of federal proponents of the Fourteenth Amendment to force the Southern states to accept it. You cannot be what you are and what you are not at the same time, no matter how badly Washington, D.C., wishes you could.

Rogue Ratification

Opponents of the Fourteenth Amendment's legality argue that the process by which it was ratified was fundamentally flawed. They contend that some states were forced to ratify the amendment against the will of their legislatures, bypassing established constitutional procedures. Additionally, they claim that some states rescinded their ratifications, calling into question the amendment's status as law.

There is much here to be read and considered, but for the sake of space in this brief article, I'll relate the bizarre events that took place in three states: Tennessee, Oregon, and Ohio.

Members of the Tennessee House of Representatives who opposed the Fourteenth Amendment refused to attend the vote, thus preventing a quorum, the minimum number of representatives necessary for conducting business. The Speaker of the House declared that the lack of a quorum prevented a vote, but the members in favor of ratification ignored the speaker's order, ignored the lack of a quorum, and proceeded to vote in favor of ratification. This violates the Tennessee state constitution as well as all accepted parliamentary procedure.

Then there's Oregon.

In Oregon, proponents of the Fourteenth Amendment's ratification held a razor-thin one-vote advantage in the state's House of Representatives. The problem, though, was that the elections of two of those representatives supporting ratification were being challenged. Before the challenges could be heard and the merits thereof adjudicated, the Oregon House voted in favor of ratification. Later, however, the two seats were awarded to men who opposed ratification and the state's notice of ratification was rescinded.

As for Ohio, that state's government also violated its own state constitution by submitting the amendment to a popular referendum instead of obtaining approval through the state Legislature, required by the state constitution. Legally, this violation of the state's constitution invalidates Ohio's ratification, which, as with the gross irregularities in the two other states I've mentioned here, undermines the overall legality of the ratification of the Fourteenth Amendment.

Rejection of Rescissions

Kentucky, Delaware, Maryland, California, Ohio, New Jersey, and Oregon rescinded their ratifications. Those rescissions reduced the number of states voting in favor of ratification down to 19, one shy of the 20 that was required under Article V.

Not to be deterred, however, Congress simply rejected the rescissions. Congress rejected the argument that was made — and an argument that all of us fighting to avoid a constitutional convention should pay close attention to — that "a legislative ratification of an amendment was not a contract until it became part of the Constitution and could therefore be cancelled."

In other words, state legislators vote on ratification of an amendment, not former state legislators. If I rent a house beginning July 1, the landlord has no legal relationship with me until that date. I can, and people often do, change my mind and decide to look elsewhere for housing. In the case of the ratification of the Fourteenth Amendment, a group of sitting state legislators voted in favor of an amendment, but the legislators elected after them voted to reject it. As the amendment process was not complete, the decisions of the state legislatures was not set in stone, and thus could be — and was — changed. Here, too, those of us who oppose a constitutional convention should learn from this episode in history.

Conclusion

There is much here that is debatable, but there is much that isn’t. The Fourteenth Amendment has been the tool that tyrants have used to construct much of the unconstitutional machinery that operates on the lives, liberty, and property of Americans today. We should not, therefore, accept these irregularities in something so vital to the strength of the union as the document that created it.