

CONSTITUTION 101

Module 12: Slavery in America: From the Founding to America's Second Founding
12.5 Primary Source

JOHN BINGHAM, ONE COUNTRY, ONE CONSTITUTION, ONE PEOPLE (1866)

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SUMMARY

John Bingham of Ohio was a leading Republican in the U.S. House of Representatives during Reconstruction and the primary author of Section 1 of the 14th Amendment. This key provision wrote the Declaration of Independence's promise of freedom and equality into the Constitution. Because of Bingham's crucial role in framing this constitutional text, Justice Hugo Black would later describe him as the 14th Amendment's James Madison. Bingham delivered this speech in defense of an early draft of the 14th Amendment, advancing a bold vision of nationally protected rights. Today, the Bill of Rights represents a charter of national freedom applying to all levels of government: national, state, and local. However, when it was added to the U.S. Constitution in 1791, the Bill of Rights applied only to the national government—not to the states. So, throughout the pre-Civil War period, if a state violated a person's free speech rights or right to freely exercise one's chosen religion, that person had no legal claim under the U.S. Constitution. And many Southern states did violate core Bill of Rights protections throughout this period—for instance, banning abolitionist speakers and preachers. Following the Civil War, Bingham and his colleagues sought to attack state laws and practices like that. In his speech "One Country, One Constitution, One People," Bingham explained that his early draft of the 14th Amendment was "simply a proposition to arm the Congress of the United States . . . with the power to enforce the bill of rights as it stands in the Constitution today." Eventually, the Supreme Court embraced Bingham's vision of nationally protected rights through a process known as "incorporation"—applying many core Bill of Rights protections like free speech and religious liberty to abuses against state governments.

Excerpt

This Congress is doing important work that will be felt for generations to come; the Joint Committee on Reconstruction sent this early draft of the 14th Amendment to Congress because the committee thought that it was important to the safety of all Americans; this proposed amendment gives Congress the power to protect the key rights enshrined in the Bill of Rights against state abuses. [T]he action of this Congress in its effect upon the future prosperity of the country will be felt by generations of men after we shall all have paid the debt of nature. I believe, Mr. Speaker, as I have had occasion to say more than once, that the people of the United States have intrusted to the present Congress in some sense the care of the Republic, not only for the present, but for all the hereafter. Your [Joint Committee on

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Reconstruction], sir, would not have sent to this House for its consideration this proposition but for the conviction that its adoption by Congress and its ratification by the people of the United States is essential to the safety of all the people of every State. I repel the suggestion made here in the heat of debate, that the committee or any of its members who favor this proposition seek in any form to mar the Constitution of the country, or take away from any State any right that belongs to it, or from any citizen of any State any right that belongs to him under that Constitution. The proposition pending before the House is simply a proposition to arm the Congress of the United States, by the consent of the people of the United States, with the power to enforce the bill of rights as it stands in the Constitution today. It “hath that extent—no more.”

Even if this amendment is ratified, the states will still preserve many of their key powers; the system of federalism will survive; but the Bill of Rights has been a dead letter in the ex-Confederate states; this amendment will address this problem and ensure equal protection for all. The adoption of the proposed amendment will take from the States no rights that belong to the States. They elect their Legislatures; they enact their laws for the punishment of crimes against life, liberty, or property but in the event of the adoption of this amendment, if they conspire together to enact laws refusing equal protection to life, liberty, or property, the Congress is thereby vested with the power to hold them to answer before the bar of the national courts for the violation of their oaths and of the rights of their fellow men. Why should it not be so? Is the bill of rights to stand in our Constitution hereafter, as in the past five years within eleven states, a mere dead letter? . . .

Without this amendment, there's little that Congress can do to address abuses of key rights in the states. Why, sir, what an anomaly is presented today to the world! We have the power to vindicate the personal liberty and all the personal rights of the citizen on the remotest sea, under the frowning batteries of the remotest tyranny on this earth, while we have not the power in time of peace to enforce the citizens' rights to life, liberty, and property within the limits of South Carolina after her State government shall be recognized and her constitutional relations restored. . . .

The Founding generation didn't grant Congress this power. [I]t is surprising that the framers of the Constitution omitted to insert an express grant of power in Congress to enforce by penal enactment these great canons of the supreme law, securing to all the citizens in every State all the privileges and immunities. . .

The Founding generation would have included this grant of power in the original Constitution but for the fact that it would have conflicted with slavery; we have now abolished slavery. What more could have been added to that instrument to secure the enforcement of these provisions of the bill of rights in every State. . . . Nothing at all. And I am perfectly confident that that grant of power would have been there but for the fact that its insertion in the Constitution would have been utterly incompatible with the existence of slavery

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in any State; for although slaves might have not have been admitted to be citizens they must have been admitted to be persons. That is the only reason why it was not there. There was a fetter upon the conscience of the nation. Thank God, that fetter has been broken; it has turned to dust before the breath of the people, speaking as the voice of God and solemnly ordaining that slavery is forever prohibited everywhere within the Republic except as punishment for crime on due conviction. . . .

If we are going to readmit the ex-Confederate states, we must ratify an amendment like this one to prevent them from abusing the rights of African Americans and white Unionists. It seems to me equally clear if you intend to have these thirty-six States one under our Constitution, if you intend that every citizen of every State shall in the hereafter have the immunities and privileges of citizens in the several States, you must amend the Constitution. It cannot be otherwise. Restore those states with a majority of rebels to political power and they will cast their ballots to exclude from the protection of the laws every man who bore arms in the defense of the Government. The loyal minority of white citizens and the disfranchised colored citizens will be utterly powerless. There is no efficient remedy for it without an amendment to your Constitution. . . .

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**