The
Fourteenth Article
in Amendment to the Constitution

From the Ratification of the Constitution through today

What affect has it had on the concept of government intended by the Framers of the Constitution; on our Liberties and our Lives; and, is it really what we believe it to be?

Revised to include reference to Minor v. Happersett, 88 U.S. 162, which explains that rights were not conveyed by the Fourteenth Amendment - July 18, 2011

A study of the history of the Fourteenth Amendment
and its effects

by

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Outpost of Freedom

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Preface

For nearly thirty years, I have attempted to resolve a series of questions that are common to the patriot, or constitutionalist, community. These questions relate to what has happened to the legal system that we were supposed to have adopted, at the time of the formation of this country, based upon both the Common Law of England, as it existed on July 4, 1776, and, a concept of justice that removed us from the arbitrary control of government.

Over the years, I have listened to what others had to say I have watched their actions to see the results. I have read cases that seemed to bear on the subject, and, I have "experimented", when the opportunity to do so arose.

Over time, as will be explained in the following, the pieces seem to fit a pattern. Rather than trying to wrap the facts around a theory, I developed a theory that fit all of the facts that I could find. However, in finding that some of the facts were, inexplicably, unwilling to fit any theory, I realized that there must be two theories, and it was a matter, then, of determining which theory fit which facts.

The two outstanding theories, neither of which will recognize the other, are:

- We are subject to all laws enacted by the government, unless the Supreme Court overrules them.
- We are subject to no laws enacted by the Congress; instead, we are only subject to the common law.

The two sides (theories) have advocates who faced off with the other side, each insisting that they are right and the other is wrong. While, in fact, both sides are partially right, and, partially wrong.

The former recognized the supremacy of government (statist). They do not accept that there was an alternative, even though England had three jurisdictions, in times past: The King's Bench, the Common Law, and, the Ecclesiastic Court. The have accepted that which is taught in law schools, that administrative law is the law of the land, and can only be changed by legislation, or a decision of the Supreme Court. The concept of common law has no place in our society, according to this theory.

The latter, on the other hand, determined that the federal legislature has no authority to enact laws that are not in the purview of the common law (extreme constitutionalists). The assertion is that no federal laws operate on them. To this last claim, I do believe that they are, in part, correct, as will be explained in the body of this work. They ignore, however, that the Constitution did empower the Congress to enact certain laws, which, if enacted consistent with the Constitution, do operate on them.

It appeared to me that these two 'schools' are face to face, arguing that the other is wrong. They do not seem to realize that a chasm existed between them, and, that the

chasm is the distinct separation of two classes of people, each subject to a different jurisdiction. After all, the courts are not going to explain that separation, as they did in Twining v. State of New Jersey. Instead, the courts are going to accept the acquiescence to jurisdiction, as they did in Dred Scott v. Sandford.

Though there may be an easier, and, perhaps, more succinct means of establishing which jurisdiction you are in, whenever you do enter a courtroom, or find yourself dealing with any federal (or state) agency, the means that I have used to "test" such relationships are addressed herein.

Though not mentioned in the body of this work, it might be worth pointing out that the nexus (interconnection) between Social Security Account Numbers and being a federal citizen does not appear to be valid, as the one side claims. I have a Social Security Account Number. I am not a "taxpayer" (explained herein), though I do receive Social Security Benefits. Simply having, and using, that number does not appear to have forced me into a jurisdiction, since I have managed to separate myself from imposition of federal jurisdiction, without regard to, or any consideration, of that account number. Unfortunately, the banks have been duped into seeing things differently, so I do not deal with them.

It does, however, appear that many of the intermediate jurisdictions (other than courts), institutions, and even private corporations, believe that the nexus is there, and, that they are bound by such laws they are told to abide by. They insist that you, too, are bound by such laws. To argue the point with them is fruitless, and, at best, will only create dissension. They, too, have been duped, along with most of the people in this country, into believing that which is not true.

It is for the purpose of exposing that deception that the following has been prepared, for your consideration.

Gary Hunt

March 23, 2011

Acknowledgement

For over twenty years, I have had the opportunity to meet and exchange ideas with numerous patriots, constitutionalists, and, legal advocates (on both sides of the fence). It is from others, as well as my own research, that I have been able to delve into the question that is, perhaps, the most trying, concerning both our rights and our relationship with the federal government.

Probably first among these was Richard McDonald, State Citizen advocate. In 1992, while still on crutches with a broken foot, I flew to California and spent two weeks as Richard's guest. I had free access to his library, writings, and, his time, when he was not engaged in teaching classes on State Citizenship. Those two weeks were a crash course, and my introduction, to this pursuit of what really is.

Over the years, I was able to spend time, speak with, or, correspond with, many others, some whose names I have forgotten, though not what I learned from them. Among them are Larry Becraft, John Wolfgram, Charles Stewart, Emilio Ippolito, Susan Mokdad, and others, unnamed, who were in pursuit understanding the complexities of the legal institutions of this country. To all of them, I offer my grateful thanks for the part that you played in my education.

During the preparation of this document, I have relied upon friends to assist me in proofreading; continuity; reduction of complex or confusing presentations to wording understandable to a layperson, and general overall comprehensibility of the writings. Their patience, and, yes, endurance, to go through this multifaceted subject with a fine-toothed comb, is indicative of their desire to understand, and help to bring to others, an understanding, of the subject matter contained herein. To them I extend my gratitude.

Finally, to those who read this work, whether you agree with my conclusions, or not, your seeking an understanding of the subject matter is indicative of your desire to learn, understand, and correct, these problems.

G. H.

Contents

The 14th Amendment is, without a doubt, the most controversial Amendment to the Constitution. It is, perhaps, also, the most misunderstood.

To understand the Amendment, it is necessary to go back to 1787-88, during the ratification conventions, to understand what the sympathies toward Article III (Judiciary) were.

The Ratification of the Constitution

During the various state Constitution Ratification conventions, there were concerns about the effect of that Article (III). Some of those, the fact that it did not extend jury trials to civil matters, and, that it did not prohibit an accused from furnishing evidence against themselves, were rectified in the subsequent ten Amendments (now known as the Bill of Rights).

Though little had been said in previous convention debates, the Virginia debates brought forth the consideration of that Article, and all subsequent conventions spent days on that subject.

During that convention, a few significant objections arose, always with the same defense.

James Mason argued that the judicial branch was "so constructed as to destroy the dearest rights of the community", that its jurisdiction was so broad that it left no business for state courts that would be wiped out by the Federal courts who would try all cases under the laws of Congress, whose power was essentially unlimited.

Patrick Henry argued that the Constitution demanded "the surrender of our great rights". The Virginia state judiciary was" one of the best barriers against strides of power", that the Federal judiciary would support what the Constitution declared, that Federal law would be superior to that of the states.

Both had argued for an amendment that would set limits on federal court jurisdiction.

John Marshall denied Mason's claim that the jurisdiction of Federal courts would expand because they have jurisdiction over cases under the laws of Congress and Congress' power was essentially a limited power. He stressed that Congress' powers were enumerated, and so, are limited that they would not supersede States' rights. If Congress tried to make a law outside of those powers, judges would consider it an infringement of the Constitution that they were pledged to defend to "declare it void".

Federalists had argued that this Article would not impose itself on the states, except in clearly federal matters. With this understanding, the objections to Article III were not, except as before stated, taken into consideration in the subsequent amendments. This condition was accepted, and was held to, for all intents and purposes, until after the Civil War.

Judicial Review

John Marshall, Chief Justice of the Supreme Court (1801-1835), established the concept of "judicial review", while deciding the Marbury v. Madison case [5 US 137 (1803)].

The question arose as to which branch of government would determine the Constitutionality of a matter. Congress had established Justice of the Peace positions in the federal district (District of Columbia), which were appointments for a period of 5 years, once approved by the President (Adams), which were made at the end of his term as President. Jefferson did not deliver the Commissions to the appointees, believing that since the Justices had not been seated, he had the right to withhold delivery of the commissions and to make his own appointments.

The concept of judicial review evolved from Marshall's dealing with the Marbury case and espousing the position that since the law (Judiciary Act of 1789, enacted by the Legislature) was enacted under the authority of the Legislative provisions of the Constitution, and, since the President (Jefferson) felt that his executive decision was within his authority as the Executive, meant that the First (Legislative) and Second (Executive) Branches of government both felt that their interpretation of the Constitution was correct.

Who is to decide, when both parties, under the same Constitution, disagree on what is constitutional? Clearly, the Supreme Court was the only option for a 'disinterested' third party, capable of deciding which side had the proper interpretation of the Constitution in the matter before it. There can be little doubt that the final decision could not be left to the Legislative or the Executive Branch, since the passing and signing of laws were powers of the First and Second branches of government, respectively -- a shared authority to enact laws, veto, and veto override, as means of dispute resolution, prior to enactment.

Marshall also provided, in that decision, that "an act of the legislature repugnant to the constitution is void ". Unfortunately, this second provision seems to be what is most often referred to, when citing Marbury v. Madison, with total disregard to the significance of 'judicial review'.

This implementation of judicial review changed the Court from the Circuit Riding Court that had acted in no such capacity, prior to Marbury v. Madison, to the ultimate authority on Constitutional interpretation. Prior to this time, they simply acted in the capacity of judges, dealing with those cases that fell into their purview, as described in Article III, Section 2, and, revised by the ratification of the 11th Amendment, in 1795.

This practice of Judicial Review would remain fully intact until the 1930s, when that same Court provided a means to absolve themselves from the responsibility of making

such discernment, if they could otherwise decide matters before them. This will be covered, in detail, later.

Jurisdiction

When we get the Fourteenth Amendment, we will have to understand what the authority of the Congress was, with regard to jurisdiction. To understand this, we can look at a law enacted in 1825, which lays out the authority of the government to punish crimes against the United States.

> ***An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes.*** (March 3, 1825)
>
> *"That if any person or persons, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to, and under the jurisdiction of, the United States, or on a site of any lighthouse, or other needful building belonging to the United States, the sight whereof is ceded to them [United States}, and under their jurisdiction, as aforesaid, shall, willfully..."*

The Act goes on for a number of Sections, describing crimes, though only within the jurisdiction addressd, above, and on waterways and the open seas. Clearly, Congress (and the President) recognized that their authority had geographical limits. It could, however, extend to those who were not citizens of the various states, as they were not otherwise protected by the state government.

In light of the above, if Congress were to enact laws, or an amendment to the Constitution were ratified, and the wording of the law or amendment was "and subject to the jurisdiction of the United States, it would not, unless something had changed, previously in the Constitution, extend to those citizens of the states who were not within any of the described premises. It could only apply to those who were without an allegiance to the state (non-citizen), by any stretch of the imagination.

Keep this thought stirring in your mind. You will, shortly, find that it is one of two critical considerations, for us to understand, if we truly want to understand the ramifications of the Fourteenth Amendment.

Prior to the Civil War

The period from the ratification of the Constitution (June 21, 1788) through the Civil War, laws were written to support the operation of government (such as the Judiciary Act of 1789), or, were written as protective of the government (such as John Adams' Alien and Sedition Acts). Federal laws that acted to protect people from other people, or from themselves, were unheard of. The authority for any such legislation was clearly understood to reside with the state, or local government.

Many matters that might otherwise be challenged under the Constitution, if simply rights protected thereby could be heard and decided, but any such case must have apparent and direct violation of the Constitution. Since each of the states had Bill of Rights as part of their own constitutions, state decisions were accepted, in accordance with Article IV of the Constitution. States' autonomy was recognized, as was the promise made during in the ratification conventions.

To demonstrate the inability of Congress to enact laws that acted upon the individual, we need simply understand that the original Thirteenth Amendment (whether ratified, or not -- see The Missing Thirteenth Amendment PDF) had wording that demonstrates that inability to act directly upon the people.

The Thirteenth (Titles of Nobility) Amendment, which was ratified by a number of states, read:

> "*If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatsoever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.*"

Notice that the Amendment does not give the Congress, the Executive, or the Judicial Branch the authority to divest someone of his citizenship; No punishment is prescribed; no crime is committed. It simply states that that person "shall cease to be a citizen of the United States", and, shall hold no public office. It is the act of the individual that removes his citizenship. Since the government could not act directly, they made the act of the individual constitute a voluntary deprivation of citizenship.

The Civil War

Though there were many violations of the Constitution, perhaps justified under the provisions for national emergencies, the most appalling is the suspension of habeas corpus, especially in Maryland.

Washington, D.C. (then "Federal City" or "Washington City") is situated straddling the Potomac River, parts of which were lands in both Virginia and Maryland. Virginia's secession from the Union, created a rather embarrassing situation. The Federal Capital was split, partly bounded by enemy land.

Maryland had many citizens who sided with the South. Secession of Maryland would mean that the enemy surrounded the entire Capital. This was nearly beyond comprehension, and since the Capital could easily be taken (generally indicating

victory), it was necessary to curtail any possibility that the people of Maryland could seceded. Jailing those who spoke for secession, especially politicians and newspaper editors, was the best, and, perhaps, only way to stem the tide towards secession and assure that at least a part of the Capital remained under the control of government.

Whether this action was consistent with the Constitution, or not, is not the subject of this discussion, so will be addressed no further. It is simply foundational.

The next significant event, which was clearly a violation of the Constitution, was the acceptance of West Virginia as a state of the Union. West Virginia is comprised of lands that were wholly within the boundaries of Virginia. As such, they were protected from federal dissection by Article IV, Section 3, clause 1, which reads in part, "... no new State shall be formed or erected within the Jurisdiction of any other State... without the Consent of the Legislatures of the States concerned as well as of the Congress."

Now, that is not difficult to understand, and if we look at what really happened, we can see that the Constitution was put aside in the acceptance of West Virginia as a state of the Union.

Virginia secedes from the Union of April 17, 1861. Lincoln had declared that the states were not allowed to secede -- that they were in rebellion, though the country and the Constitution were intact. That being the case, the legislature of Virginia, whether in rebellion, or not, was required by the Constitution to approve the creation of West Virginia, prior to its admission to the Union. It did not.

West Virginia was admitted to the Union on June 20, 1863. Obviously, this admission was contrary to the Constitution, though post Civil War acts attempted to smooth over this transgression with rather feeble arguments.

With a presidential election coming in late 1863, a problem arose. A number of states were in turmoil, and, according to the 12th Amendment to the Constitution, a quorum of two-thirds of the states was necessary to conduct the election. The Amendment (presidential election) states, in part, *"A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice"*. With 34 states in the Union (West Virginia was the thirty-fifth), that would require twenty-four states to make the quorum.

So, we have 34 states with 11 in rebellion (no active legislature willing to oversee the selection of the electors), we have only 23 states with which to make a quorum. Quite simply, without West Virginia, Lincoln would have to proclaim himself President, contrary to the whole concept embodied in the Constitution.

Though there are many other transgressions against the Constitution, the significance of these two is sufficient for the purpose of this discussion.

So, then, we now understand Lincoln's desperation to retain a semblance of the government created by the Constitution, though we can now look back and see if there were, perhaps, some other motives to his actions. Though he did claim that he wanted to preserve the Constitution and the government, some of his most well known words seem to contradict this assertion.

On November 19, 1863, at the dedication of a cemetery for the war dead from the Battle of Gettysburg, Lincoln concluded his speech with the following:

> "*...that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth."*

Ironically, this "new birth of freedom" may be more than simple prose in his speech, for it clearly was a harbinger of a new form to the old government created by the Founders.

Lincoln died shortly after the surrender of Confederate forces at Appomattox, Virginia, so we will never know to what extent he would have restored the nation, had he lived. The foundation, however, was set to allow those who controlled the government to redirect the course away from the reconciliation that Lincoln had promised.

The 14th amendment

Ratification

The Congress proposed the 14th Amendment to the Constitution on June 13, 1866.

The ratification 3/4ths of the states, or 28 of the then 37 states), by states, is as follows:

Connecticut (June 25, 1866)
New Hampshire (July 6, 1866)
Tennessee (July 19, 1866)
New Jersey (September 11, 1866) *
Oregon (September 19, 1866)
Vermont (October 30, 1866)
Ohio (January 4, 1867) *
New York (January 10, 1867)
Kansas (January 11, 1867)
Illinois (January 15, 1867)
West Virginia (January 16, 1867)
Michigan (January 16, 1867)

Minnesota (January 16, 1867)
Maine (January 19, 1867)
Nevada (January 22, 1867)
Indiana (January 23, 1867)
Missouri (January 25, 1867)
Rhode Island (February 7, 1867)
Wisconsin (February 7, 1867)
Pennsylvania (February 12, 1867)
Massachusetts (March 20, 1867)
Nebraska (June 15, 1867)
Iowa (March 16, 1868)
Arkansas (April 6, 1868)
Florida (June 9, 1868)
North Carolina (July 4, 1868, after having rejected it on December 14, 1866)
Louisiana (July 9, 1868, after having rejected it on February 6, 1867)
South Carolina (July 9, 1868, after having rejected it on December 20, 1866)

Throughout our history, this is the only instance where, a state had previously rejected ratification, it was later allowed to withdraw that rejection. Conversely, when Ohio *, on January 15, 1868, attempted to withdraw its ratification, and, on February 28, 1868, New Jersey * attempted to withdraw its ratification, both were rejected in their withdrawals. Prior to, and since the 14th Amendment, once a state ratifies or rejects a proposed amendment, that action is unchangeable.

Now, that is a sort of one-way ticket to ratification. Eventually, each state, for one reason or another, might have a legislature that would support ratification. Not being able to withdraw from, only to add to indicates that any proposed amendment will, ultimately, be ratified.

To demonstrate, let's suppose that in one session of the state's legislatures, ratification received 50% approval and 50% rejection. In the next session, there was 25% approval (changes in state ratification) and 25% rejection (similarly, changes in ratification). The result, then, would be 75% in favor, since only the changes in one direction (ratification) are counted. By such procedure, any Amendment will, eventually, be ratified. This was not the intention of Article V of the Constitution.

We also have to wonder why a state would vote to ratify an amendment that would deny them the representatives of their own "chusing". More on that, later.

So, let's look at why the southern states would ratify this amendment, and how it was ratified.

Reconstruction, and its effect on ratification

The Constitution Provides for representation of both the people (House of Representatives) and the states (Senate). It sets qualifications for each office, and it provides for the punishment of members for "disorderly Behaviour ". "Each House shall be the Judge of the Elections, Returns and Qualifications" (Art I, Sec 5, cl 1), provides the authority to "Judge", though not to change the qualifications of its members.

However, in July 1862, Congress enacted a law, the Oath of Office Act (See Appendix), providing a new "oath of office" to be taken by anyone elected to "any office of honor or profit under the government of the United States".

This, presumably, displaced the oath that had been previously established for such offices, under the authority of Article VI, clause 3, which reads:

> *The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.*

However, the Act only applied to federal office holders. Clearly, they questioned their own authority to extend what amounted to a change in qualifications, by virtue of the new oath, which, according to the Act, reads:

> *"I, A B, to solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, council, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of the evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God".*

At war's end, the Congress, in opposition to both Lincoln's expressed after war policy of reconciliation, and the sitting President, Andrew Johnson's continuation of those policies, following the same course, began enacting a series of Acts known as the Reconstruction Acts.

The First Reconstruction Act was enacted on March 2, 1867. (See Appendix)

The Act is titled, "*An Act to provide for the more efficient Government of the Rebel States*".

This Act begins by stating that "no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas". Note that Tennessee had, apparently, already been rehabilitated.

Interesting that this declaration was made at this point in time, when West Virginia was brought into the Union to create a quorum. However, Lincoln was alive, at that time, and wielded considerable influence, due to his popularity. Lincoln always stated that the Union was not dissolved, so these states must have remained in the Union -- but how can a state be a state when it has no government? Especially, considering what the Constitution says regarding the States, in Article IV, Section 4:

> *"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."*

This seems to support that the right of the State to have a "Republican Form of Government", meaning one elected by its own people, exists, regardless of what Congress might think on the matter.

President Andrew Johnson apparently agreed, since he vetoed the Reconstruction Act, though he was overridden by the requisite two-thirds majority of each house.

Johnson's Veto, of March 2, 1867 (See Appendix)

Johnson's veto makes clear his position, and reason for vetoing the Reconstruction Act. The last paragraph sums up a rather interesting explanation, to wit:

> *"It is a part of our public history which can never be forgotten that both Houses of Congress, in July, 1861, declared in the form of a solemn resolution that the war was and should be carried on for no purpose of subjugation, but solely to enforce the Constitution and laws, and that when this was yielded by the parties in rebellion the contest should cease, with the constitutional rights of the States and of individuals unimpaired. This resolution was adopted and sent forth to the world unanimously by the Senate and with only two dissenting voices in the House. It was accepted by the friends of the Union in the South as well as in the North as expressing honestly and truly the object of the war. On the faith of it many thousands of persons in both sections gave their lives and their fortunes to the cause. To repudiate it now by refusing to the States and to the individuals within them the rights which the Constitution and laws of the Union would secure to them is a breach of our plighted honor for which I can imagine no excuse and to which I can not voluntarily become a party."*

So, what else did the Reconstruction Act accomplish? It divided the 10 named states into five military districts, and established an officer of the rank of brigadier-general, or above, as commander of each district. It also provided that military commissions or tribunals would be used to try criminals, without regard to local, state, or Federal Court systems.

In order to provide a means for these states to return to the union, which they never left, provision was made to provide for a new constitution for the respective states. However, those allowed to vote for delegates, or to be delegates, to the state constitutional convention was limited to those who had not participated in the rebellion and were not felons.

If the new constitution was ratified and submitted to Congress for examination and approval, the Congress would approve the constitution, if the convention had also ratified the 14th amendment. Quite simply, ratification of the 14th amendment, though separate from the State constitution, had to be ratified in order for Congress to accept the state constitution and allow readmission. Now, I realize that this is rather confusing, so let's look at what it says:

> SEC. 5. *And be it further enacted*, That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been a resident in said State for one year previous to the day of such election, except such as may be disenfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

Trying to put this into perspective, the state must ratify the 14th amendment, which it is not qualified to do since it is not a state, for consideration to be made regarding

readmission to the union, so that as a state, the ratification of the 14th amendment would have the appearance of satisfying Article V of the Constitution. So, the Amendment had to be ratified before Congress would accept the state constitution and readmit it to the Union. Is a ratification valid if it is done be a non-entity (not a legal state), as a condition of becoming an entity (legal state)?

The first Reconstruction Act concludes with the admonishment that all civil government is provisional, until such time as the Congress accepts that state back into the union.

The Second Reconstruction Act was enacted on March 23, 1867 (See Appendix).

Just three weeks later, Congress enacted the Second Reconstruction Act, overriding, once again, a veto by President Johnson.

The Act is titled, "*An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration."*

The Act begins by modifying the oath prescribed in the Oath of Office Act of July 2, 1862, to wit:

> *"I, _____ do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the State of _____ ; that I have resided in said State for _____ months next preceding this day, and now reside in the county of or the parish of _____, in said State (as the case may be) ; that I am twenty-one years old ; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or, as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do so help me God".*

This oath effectively disenfranchised anyone who had fought on the side of the South, even if conscripted. This leaves the infirm, the freed slaves, and those who refused to abide by their own states call to defend themselves against northern aggression. Rather a selective, though not representative, body of electors. However, because of this Act, they became the people who would decide the future of the state -- a small minority.

This Act, just weeks after the First Reconstruction Act, seemed to be directed at clarifying deficiencies in the former. It goes on to clarify the procedures to be adopted to conduct the elections prescribed in the former.

The Third Reconstruction Act was enacted on July 19, 1867 (See Appendix).

This Third Reconstruction Act once again passed by a veto override, is titled, "*An Act supplementary to an Act entitled* "An *Act to provide -for the more efficient Government of the Rebel States," passed* on *the second day of March, eighteen hundred and sixty-seven, and the Act supplementary thereto, passed on the twenty-third day of March, eighteen hundred and sixty-seven."*

It begins with a rather interesting acknowledgement:

> "That it is hereby declared to have been the true intent and meaning of the act of the second day of March, one thousand eight hundred and sixty-seven, entitled "An act to provide for the more efficient government of the rebel States," and of the act supplementary thereto, passed on the twenty-third day of March, in the year one thousand eight hundred and sixty-seven, that the governments then existing in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas were not legal State governments ; and that thereafter said governments, if continued, were to be continued subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress."

If there was any question that the First Reconstruction Act didn't impose martial law on the ten offending states, it is made abundantly clear, two years after the war is concluded.

This Act continues and allows military officers, so delegated, to remove civil officers of the state government, subject, of course, to review by higher authority. It also sets up review to determine a parson's qualification, under the guidelines, rather than the previous reliance on the oath, and extends the restrictions laid out in the oath of March 23, 1867, "executive and judicial" to include all "civil offices" held under the state government.

The Fourth Reconstruction Act was enacted on March 11, 1867 (See Appendix).

This Act provided that elections could be held for representatives in the House of Representatives at the same time that they were ratifying their constitution. This Act was received by the frustrated President Johnson, who acknowledged receipt of the Act on February 28, 1868, and took no further action, allowing that "after ten days (Sundays excluded)", the Act would be passed without further action.

These acts begin to answer the question set out above as to why a state would vote to ratify an amendment that would deny them the representatives of their own "chusing". The coercion to achieve the goals set out by the Congress, for Reconstruction, were

meant to impose absolute control over the southern states; impose martial law, extending even to the removal of civil officers; and, to manipulate, by any means necessary, the ratification of the Fourteenth Amendment to the Constitution, so long as it appeared, as much as possible, to be consistent with Article V of the Constitution.

The Judiciary Act of March 3, 1863 (See Appendix)

This Act was the codification of Lincoln's suspension of habeas corpus. It was the first of a number of acts enacted during and after the Civil War that were to change the nature of justice, and, undermine the principle of "judicial review" established by Justice Marshall in 1803 (Marbury v. Madison 5 US 137), which set the precedence for judicial review, when a question arose over the constitutionality of a matter before the court. Marshall soundly reasoned that when a dispute arose over constitutionality between the Legislative Branch and the Executive Branch, it was up to the third, the independent, Judicial Branch to make the determination as to constitutionality.

the Legislative and Judicial branches of government were able to undermine this Presidential prerogative, through legislation, judicial decisions, and, refusal of judicial consideration.

The Judiciary Act of May 11, 1866 (See Appendix)

This Act extended habeas corpus cases and procedure, and, moved certain cases out of state courts and into federal circuit courts, providing a jurisdiction that had not previously existed. This act amended the Judiciary Act of March 3, 1863.

The Judiciary Act of February 5, 1867 (See Appendix)

In early 1867, the Congress passed a Judicial Act that amended the original Judicial Act of 1789, the first organization of the Judicial Branch of the government. It is titled:

> *An Act to amend "An Act to establish the judicial Courts of the United States," approved September twenty-fourth, seventeen hundred and eighty-nine.*

This first section of this Act is procedural to Habeas Corpus. The second section, however, removes from any State court any action that draws into "question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, or where is drawn into question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States...", and puts it under the Supreme Court. To wit:

> *"That a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United 'States, and the decision is against their validity, or where is drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their*

being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity, or where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute of or commission held or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court of the United States,.."

Congress, no doubt, had concerns over the constitutionality of Reconstruction, and prepared the groundwork for both habeas corpus and any laws that challenged the validity of the actions of the Executive, or laws repugnant to the Constitution.

On April 15, 1867, the State of Georgia filed an action against Secretary of War Stanton (State of Georgia v. Stanton 73 U.S. 50), which is court of original jurisdiction, as per this Act (Judiciary Act of February 5, 1867). The case was filed to challenge the constitutionality of the First (March 2, 1867) and Second (March 23, 1867) Reconstruction Acts, both of which had been vetoed by President Johnson and overridden by the requisite two-thirds vote of both houses of Congress.

Clearly, there was disagreement as to the constitutionality of the two acts. Congress felt that they were constitutional in that they passed them and then passed them, again, to override the veto. On the other hand, the President understood them to be unconstitutional and vetoed them, giving his reasoning.

Equally clearly, the Supreme Court stepped away from the "judicial review" doctrine established by Marshall and suggested that a judicial veto (siding with the President) would be like a Presidential Veto, which could be overridden by the Congress.

To skirt the issue, the Court decided that the Act of Congress (February 5, 1867) which gave original jurisdiction to the Supreme Court was done so to allow the Court to decide whether the Congress had the authority to enact laws repugnant to the Constitution. The court dismissed the matter "for want of jurisdiction". Henceforth, unconstitutional acts of Congress could not be questioned.

The above acts, both Reconstruction and Judicial, are the more significant acts by the Congress, with subsequent support from the Supreme Court, which began the decline of obedience to the Constitution. Their purpose, against the will of the then President, Andrew Johnson, was to force the "rebel states" into absolute submission to the Congress. This would allow federal manipulation of states' rights, including voting, new constitutions, politics and the very nature of the south into subservience to the federal government. Ultimately, this would lead to the formation of the Klu Klux Klan in an effort to regain some of what Congress had stolen from the politics of the south.

It would also lay the foundation for the illegal (though it cannot be challenged in court), ratification of the Fourteenth Amendment to the Constitution.

* * * * * * *

What the Fourteenth Amendment says

> Section 1--All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 2--Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
>
> Section 3--No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
>
> Section 4--The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.
>
> Section 5--The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

* * *

First, we will look at Section 1, "A*ll persons born or naturalized... and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they*

reside." seems to impose dual citizenship -- of the United States and of the State. There is no doubt that there was not a class of citizen known as "*citizen of the United States*" prior to the Fourteenth Amendment, so it appears that this is imposed on those "*subject to the jurisdiction*" of the United States, while effecting no change to anyone who is not "*subject to the jurisdiction thereof*".

To better understand this, it goes on to say that, *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..."* These "privileges and immunities" are found in Article IV, Section 2, of the Constitution, "*The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States*". So, why would these "privileges and immunities" have to be conferred by the Fourteenth Amendment, if the Constitution has already conferred them? And, why would the Amendment word it so as to apply only to "citizens of the United States"? It prohibits the state from making or enforcing any law that would abridge "the privileges and immunities of citizens of the United States", though it is silent on that part already conferred by Article IV, Section 2. It cannot, and it need not, confer that which already exists, so, it is applicable ONLY to those who have become "citizens of the United States" by virtue of the Amendment, and is worded only to that affect. Note that it says nothing about "rights".

Since it has created a new class of citizen, "citizen of the United States"', it, was intended to extend federal (United States) jurisdiction into the "privileges and immunities" (as well as due process) requirements, to those who were being made new citizens of both a federal and state nature. Otherwise, it would be surplus, or, unnecessary, verbiage. It is difficult to understand that something as important as an amendment to the Constitution would not be well considered, and therefore, any unnecessary verbiage would be included, without cause.

In addition, though those people affected by the Amendment are also granted state citizenship, the prerogative of state citizenship was already conferred by the Constitution (See Dred Scott v. Sandford, below). The "privileges and immunities" were already in place, though not changed by this Amendment (See Twining v. State of New Jersey, below).

Now, Section 2 of the Fourteenth Amendment has a bit of a conundrum. If those subject to the jurisdiction of the United States were made citizens, then why would not the Indians be included? The Amendment clearly excludes "Indians not taxed". Were they not "subject to the jurisdiction of the United States"? If so, and if the Fourteenth Amendment made them "citizens of the United States", why would they not be counted in conjunction with the determination of the apportioning of Representatives?

Intent of the Fourteenth Amendment

Perhaps a review of the legislative record (legislative intent) will provide some insight into what the purpose of the Amendment was. After all, if there is a clear intent in the passage of a law, or ratification of an Amendment, that must be what the law, or

Amendment, means. It is not to be changed by opinion, rather, it is to be what was intended at the time it became law.

The following quotes are from the Congressional Globe, the record of the business of Congress (prior to the Congressional Record), Senate hearings, May 30, 1866, discussing the proposed Fourteenth Amendment (Pages 2090 - 2902).

The Congressional Globe, May 30, 1866, The United States Senate debating the proposed Fourteenth Amendment to the Constitution.

The first point of discussion is whether the phrase "Indians not taxed" should be included in Section one, of the proposed Amendment. The discussion is about just who is able to qualify as "subject to the jurisdiction of the United States": [Note: underscores are mine, brackets [**] are for clarification; quotes from the Congressional Globe are indented.]

> *Mr. Howard: [at page 2890]*
> ***
> *This will not, of course, include persons born in the United States who were foreigners, aliens, who belong to the families of embassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. <u>It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States</u>. This has long been a great desideratum [something that is desired or felt to be essential. gh] in the jurisprudence and legislation of this country.*

This appears to be addressed to clarify (or include) those who are considered as outside of the protections of the Constitution. [See Dred Scott discussion, below]

> *Mr. Howard: [at page 2890]*
> *I hope that amendment [Indian not taxed] to the amendment [14th] will not be adopted. Indians born within the limits of the United States, and who maintain their tribal relations, are not, in the sense of this amendment, born subject to the jurisdiction of the United States. There are regarded, and always have been in our legislation and jurisprudence, is being quasi foreign nations.*

Consider that those who were citizens of a State were also under a jurisdiction other than the United States, both before and after the War.

> *Mr. Doolittle: [at page] 2892*
> *I moved this amendment because it seems to me very clear that there is a large mass of Indian population who are clearly subject to the jurisdiction of the United States who ought not to be included as citizens of the United States. All the Indians upon reservations within the several states are most clearly subject to our jurisdiction, both civil and military. We appoint civil agents who have control over them on behalf of the government. We have our military commanders in the neighborhood of the reservations, who have complete*

control. For instance, there are seven or 8000 Navajos at this moment of your the control of General Carleton, in New Mexico, upon the Indian reservations, managed, controlled, fed at the expense of the United States, and fed by the War Department, managed by the War Department, and at a cost to this government of almost a million and a half dollars every year. Because it is managed by the War Department, paid out of the commissary fund and out of the appropriations for quartermasters stores, the people do not realized the enormous expense which is upon their hands.

This argument is to fail, since the amendment to the amendment will fail, since it is unnecessary. Jurisdiction is the issue at hand, and though there is a degree of jurisdiction, it will not satisfy the necessary jurisdiction as expressed in section one of the amendment.

Mr. Trumbull: [at page 2893]
It cannot be said of any Indian who owes allegiance, partial allegiance and if you please, to some other government that he is " subject to the jurisdiction of the United States."

If there is "partial allegiance" to another entity, then he is not "subject to the jurisdiction of the United States". Pretty straight forward.

Mr. Johnson: [at page 2893]
*****
The Senate are not to be informed that very serious questions have arisen, and some of them have given rise to embarrassments, as to who are citizens of the United States, and what are the rights which belong to them as such; and the object of this amendment is to settle that question. I think, therefore, with the committee to whom the matter was referred, and by whom the report had been made, that it is very advisable in some form or other to define what citizenship is; and I know no better way of accomplishing that than the way adopted by the committee. The Constitution as it now stands recognizes a citizenship of the United States. It provides that no person shall be eligible to the Presidency of the United States except a natural born citizen of the United States or one who was in the United States at the time of the adoption of the Constitution; it provides that no person shall be eligible to the office of Senator who has not been a citizen of the United States for nine years; but there is no definition in the Constitution as it now stands as to citizenship. Who is a citizen of the United States is an open question. The decision of the courts and the doctrine of the commentators is that every man was a citizen of a State becomes ipso facto a citizen of the United States; but there is no definition as to how citizenship can exist in the United States except through the medium of a citizenship in a State.
*****
If there are to be citizens of the United States entitled everywhere to the character of citizens of the United States there should be some certain definition of what citizenship is, what has created the character of citizens as between himself and the United States, and the amendment says that citizenship may

depend upon birth, and I know of no better way to give rise to citizenship than the fact of birth within that territory of United States, born of parents who at the time or subject to the authority of the United States. I am, however, by no means prepared to say, as I think I have intimidated before, that being born within the United States, independent of any new constitutional provision on the subject, creates the relation of citizen to the United States.

"[A]s to who are citizens", well, that is the very matter determined by the Dred Scott Court, "The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives." That is what has been, to this point in our history, the definition of both "citizen of the United States" and "people".

Birth was not a factor as much as parentage. For instance, a person both elsewhere and "been seven Years a Citizen of the United States: qualifies, on that point, to be a Representative in the House of Representatives. Similarly, the Senate requires "nine Years" as a citizen. Birth, obviously, was not a factor, heritage was.

Finally, Mr. Johnson says that birth in the United States does not confer citizenship, heretofore. Hence, the need for the amending -- to open up a new class of citizen.

Mr. Johnson: [at page 2894]
***
In a apportioning the representation, as you propose to do by virtue of the second section, you exclude from the basis "Indians not taxed." What does that mean? The honorable member from Illinois says that that is very uncertain. What does it mean? It means, or would mean, if inserted in the first section, nothing, according to the honorable member from Illinois. Will, if it means nothing inserted in the first section it means nothing were it is proposed to be inserted in the second section. But I think my friend from Illinois will find that these words are clearly understood and have always been understood; they are now almost technical terms. They are found, I think, in nearly all the statutes of the subject; and if I am not mistaken, the particular statute upon which my friend from Illinois so much relied as one necessary to the peace of the country, the civil rights bill, has the same provision in it, and that bill, I believe was prepared altogether, or certainly principally, by my friend from Illinois. I read now from the civil rights bill as it passed:

> *"that all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens."*

This is, without a doubt, a conundrum. It is never fully answered, though it appears that some in the Senate wish to confer citizenship on anybody in the world, except Indians, while others do not understand why Indians should be excepted, especially only in the second section.

Mr. Van Winkle: [at page 2894]
If the senator will permit me, I wished to remind them of a citation from a decision of the supreme court that the himself made here, I think, when the veto of the civil rights bill was under discussion; and if I correctly understand it, as you read it, the supreme court decided that these untaxed Indians were subjects, and distinguish between subjects and citizens.

At least, we have admission that the Indians are "subjects" and, therefore, subject to the jurisdiction, hence the need to mitigate their inclusion in the first section, and exclude them from the second section.

Mr. Howard: [at page 2895]
*****
I think the language as it stands is sufficiently certain and the exact. It is that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

I concur entirely with the honorable senator from Illinois, and holding that the word "jurisdiction," as here employed, ought to be construed so as to imply a full and complete jurisdiction on the part of the United States, coextensive in all respects with the constitutional power of the United States, whether exercised by Congress, by the executive, or by the judicial department. . .

So, we have, as has been pointed out, "birth" brought into the equation of citizenship, coupled with "jurisdiction". That jurisdiction, however, must be full and complete. This would include those who were freed by the 13th Amendment, former slaves freed by other means, and, foreigners who, by their immigrating to the United States, have subjected themselves to the "complete jurisdiction", by virtue of their guest status.

Mr. Howard:[at page 2896]
*****
The courts of the United States have had occasion to speak on this subject, and from time to time they have declared that the Indians are subjects of the United States, not citizens; and that is the very word in your amendment where they are" subject to the jurisdiction" of the United States. Why, sir, what does it mean when you say that a people are subject to the jurisdiction of the United States? Subject, first, to its military power; second, subject to its political power; third, subject to its legislative power; and who doubts our legislative power over the reservations upon which these Indians are settled?

Mr. Howard provides three forms of jurisdiction: military; political; and, legislative. The Constitution makes no provision for either of the first two, and only limited provision for the third. This, then, would imply that the requisite jurisdiction, as required by the amendment, does not exist on any but those who were both "citizens of the United States", and those of that nature, and citizens of the respective states.

The debate now moves on to consideration of the need for the Fourteenth Amendment:

Mr. Fessenden: [at page 2896]
I thought the Senator was speaking of this first part of the section, the amendment, not the whole.

Mr. Doolittle:
No, sir; that is proposed by the senator from Michigan. As I understand, a member from Ohio, Mr. Bingham, who in a very able speech in the House maintained that the civil rights bill was without any authority in the Constitution, brought forward the proposition in the House of Representatives to amend the Constitution so as to enable Congress to declare the civil rights of all persons and that constitutional amendment, Mr. Bingham being himself one of the committee of 15, was referred by the House to the committee, and from the committee and has been reported. I say I have a right to infer that it was because Mr. Bingham and others of the House of Representatives and other persons upon the committee had doubts, at least, as to the constitutionality of the civil rights bill that this proposition to amend the constitution now appears to give it validity and force. It is not an imputation upon any one.

Mr. Grimes: It is an imputation upon every member who voted for the bill, the inference being legitimate and logical that they violated their oaths and knew they did so when they voted for the civil rights bill.

Mr. Doolittle: The Senator goes too far. What I say is that they had doubts.

Mr. Fessenden: I will say to the Senator one thing: whatever may have been Mr. Bingham's motives in bringing it forward, he brought it forward some time before the civil rights bill was considered at all and had it referred to the committee, and it was discussed in the committee long before the civil rights bill was passed. That I will say to him further, that during all the discussions in the committee that I heard, nothing was ever said about the civil rights bill in connection with that. It was placed on entirely different grounds.

Mr. Doolittle: I will ask the senator from Maine this question: if Congress, under the Constitution now has the power to declare that" all persons born in the United States, and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States," what is the necessity of amending the Constitution at all on this subject?

Mr. Fessenden: I do not choose that the Senator shall get off from the issue he presented. I meet him right there on the first issue. If he wants my opinion upon other questions, he can ask it afterward. He was saying that the committee of fifteen brought this proposition forward for a specific object.

Mr. Doolittle: I said the committee of fifteen brought it forward because they had doubts as to the constitutional power of Congress to pass the civil rights bill.

Mr. Fessenden: Exactly; and I say, in reply, that if they had doubts, no such doubts were stated in the committee of fifteen, and the matter was not put on that ground at all. There was no question raised about the civil rights bill.

Mr. Doolittle: Then I put the question to the Senator: if there are no doubts, why amend the Constitution on that subject?

Mr. Fessenden: That question the Senator may ask to suit himself. It has no reference to the civil rights bill.

Mr. Doolittle: That does not meet the case at all. If my friend maintains that at this moment the Constitution of the United States, without amendment, gives all the power you ask, why do you put this new amendment into it on that subject?

Mr. Howard: If the Senator from Wisconsin wishes an answer, I will give him one such as I am able to give.

Mr. Doolittle: I was asking the Senator from Maine.

Mr. Howard: I was a member of the same committee, and the Senator's observations apply to me equally with the Senator from Maine. We desired to put this question of citizenship and the rights of citizens and freedmen under the civil rights bill beyond the legislative power of such gentlemen as the Senator from Wisconsin, who would pull the whole system up by the roots and destroy it, and expose the freedmen again to the oppressions of their old masters.

Mr. Williams: [at page 2897]
***
In one sense, all persons born within the geographical limits of the United States are subject to the jurisdiction of the United States, but they are not subject to the jurisdiction of the United States in every sense. . . All persons living within a judicial district may be said, in one sense, to be subject to the jurisdiction of the court in that district, but they are not in every sense subject to the jurisdiction of the court until they are brought, by proper process, within the reach of the power of the court. I understand the words, "subject to the jurisdiction of the United States," to mean fully and completely subject to the jurisdiction of the United States.

Mr. Salisbury: I do not presume that any one will pretend to disguise the fact that the object of this first section is simply to declare that negroes shall be citizens of the United States. There can be no other object in it, I presume, then a further extension of the legislative kindness and beneficence of Congress towards that class of people.

> *"The poor Indian, whose untutored mind,*
> *Sees God in clouds, or heirs him in the wind,"*

> *was not thought of. I say this not meaning it to be any reflection upon the honorable committee who reported the amendment, because for all the gentlemen composing it I have a high respect personally; but that is evidently the object. I have no doubt myself of the correctness of the position, as a question of law, taken by the honorable Senator from Wisconsin; but, sir, I feel disposed to vote against this amendment, because if these negroes are to be made citizens of the United States, I can see no reason in justice or in right why the Indians should not be made citizens. If our citizens or to be increased in this wholesale manner, I cannot turn my back upon that persecuted race, among whom are many intelligent, educated men, who embrace as fellow-citizens the negro race.*

Regardless of whether, as Mr. Fessenden say, it was brought up even before the "civil rights bill", there must be a serious question as to the constitutionality of the "bill", otherwise, the actions to secure an amendment to the Constitution are moot.

The argument that the bill could be pulled "up by its roots and destroy[ed]" does not hold water. Citizenship cannot be revoked, as had been established by the Supreme Court. Therefore, those who were granted citizenship by the "civil rights bill" were secured in what had been granted to them.

It is far more likely that they were concerned that, eventually, the civil rights bill would be overturned as unconstitutional, absent an amendment granting the Constitution the authority of providing for citizenship.

At this point in time, the Judiciary Act of March 3, 1863, had already diverted any challenge to the Constitution or laws of the United States directly to the Supreme Court. No lower court could raise the question, and the Supreme Court could determine which cases it would hear.

The Indian issue comes forward again, in an endeavor to place them on the same ground as those to whom the Amendment is directed (negroes).

The question was called on the amendment: [at page 2897]

> *"All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States and of the state wherein they reside."*

The amendment lost: 10 Yeas; 30 Nays

Through this entire debate, consisting of 13 pages and over 31,000 words, no mention is made to the effect that the Amendment would change, in any way, the character of those who were citizens of their respective States and citizens of the United States

As the debate continued, consideration of the extension of prohibition to holding office in the states, as denied in section three, enhances the fact that those who were, prior to

the amendment, citizens of a State would be denied representation of officers of their own choosing, with total disregard for Article IV, Section 4 of the Constitution, which guarantees "every State in this Union a Republican Form of Government."

Clearly, the reformers in Congress were set upon undermining the basic principles of the Constitution. There can be little doubt that there were questions as to the constitutionality of the "civil rights bill" (Civil Rights Act of 1866).

Clearly, they demonstrated little concern for the provision of Article IV, Section 4.

Clearly, as addressed in the ratification (above), they had little regard for Article V of the Constitution, providing for only (legal) states to participate in the ratification process.

There is little doubt that "a new nation" had been created by the Legislative Branch of government, with total disregard for what had preceded it.

What is a citizen of the United States?

Prior to the Fourteenth Amendment

Dred Scott v. Sandford - 60 U.S. 393 (1856)

As recently as ten years before the Fourteenth Amendment was submitted to the States by the Congress, an historical, and often referred to, case was heard by the Supreme Court.

Scott was born a slave, in Missouri. As such, he was not a citizen. His "owner" laid hands on Scott, his wife and 2 children. Scott sued Sandford for assault. Scott was awarded his freedom by a Saint Louis County, Missouri, Circuit Court. The case was appealed to the State Supreme Court and reversed. The Circuit Court then reheard the case. Scott made exception to the instructions to the jury. The jury then ruled against Scott. Based upon the "Exception".

The case eventually ended up in the Supreme Court. In its decision (below), the Court pointed out that Scott had claimed to be a citizen of Missouri, which would give him standing to sue Sandford. It found that though Scott was not a citizen of Missouri, or, of the United States, that standing for the Court to hear the case was based upon the Courts acting on the fact that the question of citizenship was not in the plea that brought the matter before the Court.

You will see that even though Scott had no standing, the Court decided to hear the case, anyway. If you do not challenge jurisdiction (Sandford's obligation), the Court may assume jurisdiction.

Chief Justice Taney delivered the opinion of the Court. Excerpts are from that decision.

"That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated. If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court."

Since the matter of citizenship was not in the plea that brought the matter before the Court, the Court will not rule on Scott's standing.

However, the Court now finds that it has a forum to define just what a citizen is -- a point that had only been addressed in rather ambiguous terms in the Constitution, and not since addressed by the Congress, or the Court.

Taney goes on to ask this important question:

*"Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the **rights**, and privileges, and immunities, guaranteed by that instrument to the citizen? "*

Further defining the question, he says:

"The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States.

While the decision covers many aspects, and many ways, of addressing the question, I will provide only those that are concise and indicative of the sense of the Court and the decision held to.

*"The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the **rights***

*and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no **rights** or privileges but such as those who held the power and the Government might choose to grant them. "*

Well, there is an interesting phrase, used in the discussion of the Fourteenth Amendment by the Senate, "remained subject to their authority".

*"In discussing this question, we must not confound the **rights** of citizenship which a State may confer within its own limits, and the **rights** of citizenship as a member of the Union. It does not by any means follow, because he has all the **rights** and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the **rights** and privileges of the citizen of a State, and yet not be entitled to the **rights** and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its **rights**. But this character of course was confined to the boundaries of the State, and gave him no **rights** or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these **rights** and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The **rights** which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can by naturalizing an alien invest him with the **rights** and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the **rights** of a citizen, and clothed with all the **rights** and immunities which the Constitution and laws of the State attached to that character.*

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

*The question then arises, whether the provisions of the Constitution, in relation to the personal **rights** and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endow him with the full **rights** of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?*

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts."

*It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, **but for no one else**. And the personal **rights** and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen **rights** and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to **rights** of person and **rights** of property; it made him a citizen of the United States.*

Well, that makes pretty clear who could not be a "citizen of the United States". So, let us look, from the other side, at who was a "citizen of the United States".

*"It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State, whose **rights** and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their **rights** by force of arms.*

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class

of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

Now, clearly, it is those who initiated the fight for independence that are of the class recognized by the Constitution as "citizens of the United States". Many have pointed out that one of the first to "die for the cause" was a negro named Crispus Attucks, who was shot to death in the "Boston Massacre", in 1770. This, however, in the eyes of the Court, does not qualify him as one of the people -- for which the country was intended.

Though the decision of the Court continues to give examples of just how the Court perceived this relationship, I would prefer to not include too many more of the over one-hundred and ten thousand words in the Decision. There are some words, however, that warrant our attention in fully understanding what was intended by the founding of this nation, and so I will provide these few paragraphs:

"The language of the Declaration of Independence is equally conclusive:

It begins by declaring that, 'when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.'

It then proceeds to say: 'We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable ***rights****; that among them is life, liberty, and the pursuit of happiness; that to secure these* ***rights****, Governments are instituted, deriving their just powers from the consent of the governed.'*

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men-high in literary acquirements-high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by

others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

Therefore, an attempt to apply the standards upon which this nation was founded to the morality of today, or, even, of 1856, when this case was heard, would be to deny the intention of the founders. This does not preclude the utilization of the Fifth Article (Amendment Process) of the Constitution to effect change, which was to be partially achieved eleven years later. It simply explains what a "citizen of the United States" was, prior to the Fourteenth Amendment.

We have already discussed the Fourteenth Amendment, how it was ratified, and what its intent was, according to the debates in Congress. So, perhaps, to full understand the effect of the Fourteenth Amendment, we must look at how "citizen of the United States" was perceived, after the date of ratification.

Subsequent to the Fourteenth Amendment

Now that we have visited, and, hopefully, understood just what "citizen of the United States" meant, prior to the Fourteenth Amendment, we need to find a Supreme Court decision that will provide insight into what affect the Fourteenth had, supported, of course, by both the decision and what we found to be the "legislative intent" when the Amendment was being prepared to be sent to the states for ratification.

First, let us visit whether a "citizen of the United States", under the Fourteenth Amendment was conferred "rights" along with "privileges and immunities". It would

seem to the casual observer that rights would also be included in what was granted by the 14th, however, we can look, again, to the Supreme Court to fully understand what was granted -- and, what was not granted.

Minor v. Happersett, 88 U.S. 162 (decided in 1874).

At issue was whether the Fourteenth Amendment conveyed the right to vote to a woman, since she was made "a citizen of the United States" by that Amendment. Understand that many states did not recognize woman as being full citizens and they were denied the right to vote, own land, sue in court, inherit property, or hold office, or portions of some of these restrictions, depending on the state.

Understand that this case was heard just seven years after the ratification of the 14th Amendment, and all parties were fully aware of the Amendment, its interpretation and ramifications. They lived the times, unlike those of us who have to search back to find the intent of laws and amendments.

The case introduces the problem with the following opening:

> The fourteenth amendment to the Constitution of the United States, in its first section, thus ordains:
>
> > 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.'
>
> And the constitution of the State of Missouri thus ordains:
>
> 'Every male citizen of the United States shall be entitled to vote.'

Minor, as described by the Court, set forth the following:

> Mr. Francis Minor(with whom were Messrs. J. M. Krum and J. B. Henderson), for the plaintiff in error, went into an elaborate argument, partially based on what he deemed true political views, and partially resting on legal and constitutional grounds. These last seemed to be thus resolvable:
>
> 1st. <u>As a citizen of the United States, the plaintiff was entitled to any and all the 'privileges and immunities' that belong to such position however defined; and as are held, exercised, and enjoyed by other citizens of the United States</u>.
>
> 2d. <u>The elective franchise is a 'privilege' of citizenship, in the highest sense of the word. It is the privilege preservative of all rights and privileges; and especially of the right of the citizen to participate in his or her government</u>.

3d. The denial or abridgment of this privilege, if it exist at all, must be sought only in the fundamental charter of government,-the Constitution of the United States. If not found there, no inferior power or jurisdiction can legally claim the right to exercise it.

4th. But the Constitution of the United States, so far from recognizing or permitting any denial or abridgment of the privileges of its citizens, expressly declares that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'

5th. If follows that the provisions of the Missouri constitution and registry law before recited, are in conflict with and must yield to the paramount authority of the Constitution of the United States.

The Court (in the decision) then posed the question:

> The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone.

In providing an answer to the question, we find:

> Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States [Preamble to the Constitution],' and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth [Declaration of Indpendence], and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever [Articles of Confederation].
>
> Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen-a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.
>
> * * *

Other proof of like character might be found, but certainly more cannot be necessary to establish the fact that sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship. The amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her. That she had before its adoption.

If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direct question is, therefore, presented whether all citizens are necessarily voters.

The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

It certainly is nowhere made so in express terms. The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. The members of the House of Representatives are to be chosen by the people of the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature. Senators are to be chosen by the legislatures of the States, and necessarily the members of the legislature required to make the choice are elected by the voters of the State. Each State must appoint in such manner, as the legislature thereof may direct, the electors to elect the President and Vice-President. The times, places, and manner of holding elections for Senators and Representatives are to be prescribed in each State by the legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators. It is not necessary to inquire whether this power of supervision thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme until Congress acts.

The amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.

It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was coextensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be protected. But if it was not, the contrary may with propriety be assumed.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power. Thus, in New Hampshire, 'every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of twenty-one years of age and upwards, excepting paupers and persons excused from paying taxes at their own request,' were its voters; in Massachusetts 'every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds;' in Rhode Island 'such as are admitted free of the company and society' of the colony; in Connecticut such persons as had 'maturity in years, quiet and peaceable behavior, a civil conversation, and forty shillings freehold or forty pounds personal estate,' if so certified by the selectmen; in New York 'every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election . . . if during the time aforesaid he shall have been a freeholder, possessing a freehold of the value of twenty pounds within the county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State;' in New Jersey 'all inhabitants . . . of full age who are worth fifty pounds, proclamation-money, clear estate in the same, and have resided in the county in which they claim a vote for twelve months immediately preceding the election;' in Pennsylvania 'every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election;' in Delaware and Virginia 'as exercised by law at present;' in Maryland 'all freemen above twenty-one years of age having a freehold of fifty acres of land in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of thirty pounds current money, and having resided in the county in which they offer to vote one whole year next preceding the election;' in North Carolina, for senators, 'all freemen of the age of twenty-one years who have been inhabitants of any one county within the State twelve months immediately preceding the day of election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election,' and for members of the house of commons 'all freemen of the age of twenty-one years who have been inhabitants in any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes;' in South Carolina 'every free white

> man of the age of twenty-one years, being a citizen of the State and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot), hath been a resident within the election district in which he offers to give his vote six months before said election, and hath paid a tax the preceding year of three shillings sterling towards the support of the government;' and in Georgia such 'citizens and inhabitants of the State as shall have attained to the age of twenty-one years, and shall have paid tax for the year next preceding the election, and shall have resided six months within the county.'
>
> * * *
>
> And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.' The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?

So, clearly, from this decision, rendered shortly after the Fourteenth Amendment was ratified, we see that there is a distinction between "rights" and "privileges and immunities", and that any grant of right would require a constitutional amendment to confer it on any other than "We the People".

This does beg the question of whether the Fifteenth Amendment confers more than the right to vote. Does it also confer the right to hold office, when the requisite for that office is "Citizen of the United State" [Art. I. Section 2, clause 2, and, Art. I, Section 3, clause 3, Constitution], and, "a natural born Citizen of the United States" [Art. II, Section 1, clause 5, Constitution], unless such "right" is specifically conferred?

Next, we will visit a Supreme Court decision that defines the distinction between a Citizen of the United States and a Citizen of one of the States.

That case was heard by the Supreme Court in 1908, forty-one years after ratification of the Fourteenth Amendment. The Court had not substantially addressed just what a "citizen of the United States", or, a citizen of a state was prior to:

Twining v. State of New Jersey - 211 U.S. 78 (1908).

The case had two distinct elements, at least pertinent to this discussion. First was whether there was jurisdiction, under the Fourteenth Amendment, to a state citizen

(State Citizen, in the popular, today, vernacular); the other was, what did the Fourteenth Amendment extend to a "citizen of the United States". The second is brought up only to address subsequent claims that Twining was overturned, by the Supreme Court, at a later date (this will be discussed, later).

Albert C. Twining and David C. Cornell were indicted by a Grand Jury, and, convicted of providing "false papers" to a state banking examiner. They were sentenced to prison terms, and Twining appealed the action of the New Jersey Court. He held that the requirement to turn over papers to the examiner, absent a court order, denied him "due process" under the Fourteenth Amendment.

Justice Moody provided the decision of the court. In summing up the case, he posed the following:

> *". . . whether such a law [state law] violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty, or property without due process of law. In order to bring themselves within the protection of the Constitution it is incumbent on the defendants to prove two propositions: First, that the exemption from compulsory self- incrimination is guaranteed by the Federal Constitution against impairment by the states; and, second, if it be so guaranteed, that the exemption was in fact impaired in the case at bar. The first proposition naturally presents itself for earlier consideration. If the right here asserted is not a Federal right, that is the end of the case. We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws.*

Well, that last point, "If the right here asserted is not a Federal right, that is the end of the case.", will lead to the final decision of the Court, though we must first look at why they denied Twining the protection, under the Fourteenth Amendment, that he sought.

The Court brought out that two states, Iowa and New Jersey, had provisions that did not allow compulsory testimony against one's self, and, that those two did have limits on compulsory testimony, though not as broad as the other states. This was felt to satisfy the intent, since it was a state decision based upon their view of the intention of the Fifth Amendment ("No person . . . shall be compelled in any criminal case to be a witness against himself"), that established the right of the state to enact a law requiring the turning over of the papers to the examiner.

So, the question resolved itself to whether the federal interpretation of the Fifth Amendment was superior to the state law, and, if so, under what circumstances.

Since Twining and Cornel were both citizens of New Jersey, and the case was not between parties of different states, or any other qualifiers for federal intervention, they retained their status as state citizens, dealing with the laws of that state, without "Federal right[s]" being conferred to them.

Let's separate the points of significance in this case:

1. Is there a difference between state citizens and "citizens of the United States", as established by the Fourteenth Amendment?
2. If so, to what extent does the Fourteenth Amendment confer rights to those who are protected thereby?

The Court goes on to give us some insight into the second point.

> *"It is obvious . . . that it has been supposed by the states that, so far as the state courts are concerned, the privilege had its origin in the Constitutions and laws of the states, and that persons appealing to it must look to the state for their protection. Indeed, since, by the unvarying decisions of this court, the first ten Amendments of the Federal Constitution are restrictive only of national action, there was nowhere else to look up to the time of the adoption of the 14th Amendment, and the state, at least until then, might give, modify, or withhold the privilege at its will."*

So, the states were within their rights, as they existed prior to the Fourteenth Amendment, and that those rights did not, until the Fourteenth was ratified, include the restrictive first ten amendments. Essentially, they are conferring all rights of those first ten amendments, to those who so qualify, for the protections afforded by the Fourteenth.

The Court continues:

> *"The 14th Amendment withdrew from the states powers theretofore enjoyed by them to an extent not yet fully ascertained, or rather, to speak more accurately, limited those powers and restrained their exercise. There is no doubt of the duty of this court to enforce the limitations and restraints whenever they exist, and there has been no hesitation in the performance of the duty. But, whenever a new limitation or restriction is declared, it is a matter of grave import, since, to that extent, it diminishes the authority of the state, so necessary to the perpetuity of our dual form of government, and changes its relation to its people and to the Union."*

So, the Court recognizes an obligation to "enforce the limitations and restraints whenever they exist". This implies that they are addressing both points, mentioned above. First, to determine the extent of the authority (jurisdiction of the state) imposed by the Fourteenth; and, Second, to determine to what extent the first ten amendments convey obligations to the state.

The Court continues:

> *"The defendants contend, in the first place, that the exemption from self incrimination is one of the privileges and immunities of citizens of the United States which the 14th Amendment forbids the states to abridge. It is not argued*

> *that the defendants are protected by that part of the 5th Amendment which provides that 'no person . . . shall be compelled in any criminal case to be a witness against himself,' for it is recognized by counsel that, by a long line of decisions, the first ten Amendments are not operative on the states."*

Twining has asserted that he is of the nature of a "citizen of the United States", and, therefore, the state may not abridge those "privileges and immunities". He has declared a status as a "citizen of the United States".

The Court then, referring to a previous case (subsequent to the Fourteenth Amendment), IN RE SLAUGHTER-HOUSE CASES, 83 U.S. 36 (1872), and citing with the decision of that case, given by Justice Miller, in affirming that there were two classes of citizen.

> *"The 14th Amendment, it is observed by Mr. Justice Miller, delivering the opinion of the court, removed the doubt whether there could be a citizenship of the United States independent of citizenship of the state, by recognizing or creating and defining the former. ' It is quite clear, then,' he proceeds to say, 'that there is a citizenship of the United States and a citizenship of a state, which are distinct from each other and which depend upon different characteristics or circumstances in the individual.*

So, this Court is affirming what the Court decided 34 years prior, in that there are distinct differences between the "citizenship of the United States and a citizenship of a State". One case shortly after the ratification of the Fourteenth Amendment, and another, three decades later, that affirms the conclusion. Can there be any doubt as to the existence of a distinction between the two?

The Court, after a lengthy discussion of "due process". Concludes:

> *The decisions of this court, though they are silent on the precise question before us [due process], ought to be searched to discover if they present any analogies which are helpful in its decision. The essential elements of due process of law, already established by them, are singularly few, though of wide application and deep significance. We are not here concerned with the effect of due process in restraining substantive laws, as, for example, that which forbids the taking of private property for public use without compensation. We need notice now only those cases which deal with the principles which must be observed in the trial of criminal and civil causes. Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction.*

And, they conclude that the court that has jurisdiction over the parties will prevail in a conflict of interpretation. Since they leave the interpretation to the state court, there must be an absence of federal jurisdiction in the current case. The Court sees Twining and Cornell to be state citizens, therefore, not afforded the" privileges and immunities", meaning that federal jurisdiction fails to include them -- an absence of federal jurisdiction.

In affirming that view, the Court said:

> *"Much might be said in favor of the view that the privilege was guaranteed against state impairment as a privilege and immunity of national citizenship, but, as has been shown, the decisions of this court have foreclosed that view."*

They tighten up on that conclusion, to wit:

> *We do not pass upon the conflict, because, for the reasons given, we think that the exemption from compulsory self-incrimination in the courts of the states is not secured by any part of the Federal Constitution.*

Now, this would not be true if the case involved a party of one state against a party from another state, nor would it be true in the extension of "privileges and immunities" conferred by the Fourteenth Amendment, to "citizens of the United States".

So, we can conclude that the "citizen of the United States" is a separate and distinct entity than the citizen of a state. That the jurisdiction of the United States Supreme Court extends only to those who have been brought into jurisdiction by the Constitution (parties of different states, etc.) or by virtue of they being the subjects brought into that jurisdiction by the Fourteenth Amendment.

Malloy v. Hogan, 378 U.S. 1 (1964)

Some have offered that Malloy v. Hogan, a 1964 Supreme Court decision, overturned Twining v. State of New Jersey.

Since we can expect that there will be a persistence to continue that claim, let's look at just what Malloy really did overturn, at least with regard to Twining.

Though there are some rather serious questions that might rise to consideration of whether the Ashwander Doctrine might have been some of the consideration in this case, since Malloy was on probation from a previous conviction at the time of the incident which this case encompasses it, we will not venture into that arena. Our only question here is whether Twining was overturned, or, if only partially overturned, which portions of Twining were overturned.

So, from the Court's decision, delivered by Justice Brennan, At 378 US 1, 4-6:

> *The extent to which the Fourteenth Amendment prevents state invasion of rights enumerated in the **first eight Amendments** has been considered in numerous cases in this Court since the Amendment's adoption in 1868. Although many Justices have deemed the Amendment to incorporate all eight of the Amendments, the view which has thus far prevailed dates from the decision in 1897 in Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 , which held that the Due Process Clause requires the States to pay just compensation for private property taken for public use. It was on the authority of that decision that the Court said*

in 1908 in Twining v. New Jersey, supra, that "it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, because a denial of them would be a denial of due process of law." 211 U.S., at 99.

The Court has not hesitated to re-examine past decisions according the Fourteenth Amendment a less central role in the preservation of basic liberties than that which was contemplated by its Framers when they added the Amendment to our constitutional scheme. Thus, although the Court as late as 1922 said that "neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the States any restrictions about `freedom of speech'. . .," Prudential Ins. Co. v. Cheek, 259 U.S. 530, 543, three years later Gitlow v. New York, 268 U.S. 652 , initiated a series of decisions which today hold immune from state invasion every First Amendment protection for the cherished rights of mind and spirit - the freedoms of speech, press, religion, assembly, association, and petition for redress of grievances.

*Similarly, Palko v. Connecticut, 302 U.S. 319 , decided in 1937, **suggested** that the rights secured by the Fourth Amendment were not protected against state action, citing, 302 U.S., at 324 , the statement of the Court in 1914 in Weeks v. United States, 232 U.S. 383, 398 , that "the Fourth Amendment is not directed to individual misconduct of [state] officials." In 1961, however, the Court held that in the light of later decisions, it was taken as settled that ". . . the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth . . . ." Mapp v. Ohio, 367 U.S. 643, 655. Again, although the Court held in 1942 that in a state prosecution for a noncapital offense, "appointment of counsel is not a fundamental right," Betts v. Brady, 316 U.S. 455, 471; cf. Powell v. Alabama, 287 U.S. 45, only last Term this decision was re-examined and it was held that provision of counsel in all criminal cases was "a fundamental right, essential to a fair trial," and thus was made obligatory on the States by the Fourteenth Amendment. Gideon v. Wainwright, 372 U.S. 335, 343 -344.*

So, what had been considered, in the various decisions mentioned, regarded what provisions of the first eight amendments, and, to what extent, were considerations of this Court. Nowhere, in this decision, does the question of jurisdiction, as addressed in Twining, come into consideration, let alone reversal.

It might be worthy of consideration, however, that when the Court said, "that the rights secured by the Fourth Amendment were not protected against state action", that the state was inclusive of not just the body politic, but, perhaps, all agencies within the governmental institution. Was this a roundabout way of applying the Ashwander Doctrine?

John Bad Elk v. U S, 177 U.S. 529 (1900)

Much of the discussion about the Supreme Court and its decisions suggests that the Supreme Court has always rendered decisions that are not Constitutional. I bring this case up solely to demonstrate that there are decisions that appear to be very consistent with the wording of the Constitution and its early amendments, as interpreted by normal people.

Understand that some might consider the ramifications of this decision to be rather appalling. We have been conditioned by the press and the government to accept a condition; a value, that is inconsistent with what the Framers intended and how such rigid regards to retraction on government were held to, in times past.

The case has to do with warrants. The Fourth Amendment is the only portion of the Constitution to address warrants, and has this to say:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

The requirement for the determination of" probable cause" must be considered in light of the historical, not the currently suggested, requirement. Probable cause was determined by a Grand Jury, or, by a sworn affidavit of someone who was witness to a crime. It was not based upon speculation, conjecture, or any other motivation that might be based upon prejudice or other personal motivations.

Absent a lawful warrant, two policemen were sent to arrest John Bad Elk.

Bad Elk informed them that he would be willing to go with them in the morning, whereupon the policemen insisted that he go with them, now. Bad Elk then picked up his rifle and shot the armed deputy, who had not drawn his weapon, killing him.

John Bad Elk was convicted of murder and sentenced to death. He appealed to the State Supreme Court, which upheld the decision of the lower court. He then filed with the Supreme Court. The Court then heard the case, and ruled.

The initial conviction was based upon, and the appeal granted on the instruction given to the jury, by the judge in the original trial, which read:

> *'The deceased, John Kills Back, had been ordered to arrest the defendant; hence he had a right to go and make the attempt to arrest the defendant. The defendant had no right to resist him. It is claimed on the part of the defendant that he made no resistance, and he was willing to go with the officer in the morning. I charge you, of course, that the officer, John Kills Back, had a right to determine for himself when this man should go to the agency with him.*

> * * *'In this connection I desire to say to you, gentlemen of the jury, that the deceased, being an officer of the law, had a right to be armed, and for the purpose of arresting the defendant he would have had the right to show his revolver. He would have had the right to use only so much force as was necessary to take his prisoner, and the fact that he was using no more force than was necessary to take his prisoner would not be sufficient justification for the defendant to shoot him and kill him. The defendant would only be justified in killing the deceased when you should find that the circumstances showed that the deceased had so far forgotten his duties as an officer, and had gone beyond the force necessary to arrest defendant, and was about to kill him or to inflict great bodily injury upon him, which was not necessary for the purpose of making the arrest.'*

The defendant, John Bad Elk, had asked that the instruction to the jury be:

> *'From the evidence as it appears in this action, none of the policemen who sought to arrest the defendant in this action prior to the killing of the deceased, John Kills Back, were justified in arresting the defendant, and he had a right to use such force as a reasonably prudent person might do in resisting such arrest by them.'*

Now, which of these two instructions to the jury would be supported by the concept of justice envisioned by the Framers? The whole issue hinges on a most important concept in the establishment of this country, Liberty. Liberty cannot be denied by people in government, it can only be denied by "due process", which is an historical series of requirements, properly applied, that may deprive one of his Liberty.

This is apparent by the Decision of the Court, which remanded the case back to the original court, for a new trial, making these observations:

> *"At common law, if a party resisted arrest by an officer without a warrant, and who had no right to arrest him, and if in the course of resistance the officer was killed, the offence of the party resisting arrest would be reduced from what would have been murder, if the officer had the right to arrest, to manslaughter. . ."*
>
> *". . .an arrest made with a defective warrant; or one issued without affidavit; or one that fails to allege a crime is without jurisdiction, and one who is being arrested may resist arrest and break away. If the arresting officer is killed by one who is resisting, the killing will be no more than involuntary manslaughter."*
>
> *"...where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction when the officer had the right to make the arrest, from what it does if the officer had no right. What might be murder in*

the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed."

As an additional note in support of the perspective of the right to resist arrest, let me provide a provision from the Texas Penal Code, enacted in 1973:

§9.31 (C) The use of force to resist arrest or search is justified:

(1) If, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest; and
(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

Both the John Bad Elk case and the Texas Penal Code support the recognized right to defend not only your life, but also, your liberty. There has never been a lawful enactment that would remove these most basic rights. If one were enacted contrary to these principles, it would, without question, be a violation of the Constitution and the state constitution, where life and liberty are fundamental to the entire concept of our government.

And, clearly, with John Bad Elk, the Supreme Court ruled in obedience to the Constitution, and not simply to justify the government in its actions.

What has all of this lead to?

Administrative Agencies

Administrative agencies had become a part of the structure of government, early on. Their first heyday, however, came under the F. D. Roosevelt administration.

During the Great Depression, hundreds of agencies were established, some quite small, and other providing jobs for tens, or hundreds, of thousands of people. Roads, parks, national monuments, and utilities, were projects under many of the various agencies.

Though the legitimacy (constitutionality) of some of these agencies was questioned, by 1936, a classic case went before the United States Supreme Court. The significance of the case is not so much the decision that was delivered by the court, rather, that one of the Justices, Brandeis, recorded what had become the policy of the Court in dealing with whether it would rule on the constitutionality of a matter before it, which was contrary to the policy established in 1803, by Justice Marshall in Marbury v. Madison (See Judicial Review, above).

Many agencies run roughshod over people and their rights. Without being privy to the real authority of the agencies, they became involved, only to find that in so doing, they had removed themselves from the protection of the Constitution.

The case worthy of our consideration is:

Ashwander v Tennessee Valley Authority - 297 U.S. 288 (1936)

Though administrative agencies existed prior to this case, the "Ashwander Doctrine" described herein became the premise upon which the Fourth Branch of government would be created (Administrative Procedures Act, below).

The case involves an effort by shareholders of the Alabama Power Company to annul a contract that was selling large portions of the operation, facilities, and franchises, of the Power Company to the Tennessee Valley Authority, a federal agency.

The outcome was based upon principles (policies?) developed in previous decisions, and the final decision was that the contracts were binding.

Justice Brandeis, in a concurring opinion, gave us the meat that is so necessary to understand what had eroded, over time, the limitations imposed on the federal government by the Constitution.

In his concurring opinion, he explains that he agrees but sees that the Court should not have heard the case. He then goes on to provide the real sockdolager [a decisive blow or argument. gh], when he says, (citations omitted):

> *The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:*

The string of cases that has allowed the shift away from ruling on constitutionality had been addressed previously, in the decisions of both the Court and Brandeis.

> *1. The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.*

It is interesting that he says "a party beaten in the legislature", as if other than the legislators are a part of the contest for the enactment of a bill. But, there it is, constitutionality cannot be challenged, except as a last resort.

If this is true, we need to know by what means the Court can avoid such ruling of constitutionality. So, Brandeis will explain the Courts options.

2. The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.'

Well, there is the first one. Unlike Marshall, the court has decided it cannot anticipate a question of constitutionality, if they can rule on any other aspect of the case.

3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'

Here, he is saying that if they are to rule on the constitutionality, it will not give us any guidance for future conduct, rather, they will narrow the scope to as little as possible.

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground.

My father used to say, "When you want an excuse, any excuse is good enough!" Apparently, the court has found the same. If there is anything within the case that will allow them a way to avoid the constitutionality, they will go directly to that "excuse", subordinating constitutionality to statutes and general law. Remember, you cannot challenge the statutes or general law, as per number 1, above, unless you have an adversarial relationship with the agency.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. In Fairchild v. Hughes, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In Massachusetts v. Mellon, the challenge of the federal Maternity Act was not entertained although made by the commonwealth on behalf of all its citizens.

This is a rather interesting determination on the part of the Court. They have provided a couple of examples, from existing cases. There is another that is appalling, and is discussed Some Thoughts on the 27th Amendment, where the Amendment stated that no raise in pay of the Congress could go into effect until the next session of Congress. Congress enacted a law that gave them annual pay raises, if they did not vote them

down. The act was challenged by a congressman and some taxpayers. The Court determined that they had no standing.

Consider, if you will, that if a member of a law enforcement agency, or, the military, felt that a law that required him to do something was unconstitutional, he would have no standing to challenge that law. I am sure that Hitler would have been very pleased with such a policy.

> *6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.*

Now, this one, though the shortest of the seven, is, perhaps, the most damaging. Let's look at it from the perspective of, say, obtaining a driver's license. Well, first, you have to complete an application. If the application is approved, you have just availed yourself of the benefits of having the driver's license.

Did you ask for deductions on your W-4 income tax form? Is that availing yourself to a benefit? Were you told that you had to file an application regarding "wetlands" on your property? Have you filled out any application, to any government, in which you were not requesting to avail yourself of some benefit?

Think of the ramifications of this most serious of the entire policy. Does it apply to states, as well as the federal government? Is there anything that you do, when you deal with the government, where you are not attempting to "avail" yourself of a benefit?

This will be discussed more, later.

> *7. 'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided. I am aware that, on several occasions, this Court passed upon important constitutional questions which were presented in stockholders' suits bearing a superficial resemblance to that now before us. But in none of those cases was the question presented under circumstances similar to those at bar [before the Court. gh]. In none, were the plaintiffs preferred stockholders. In some, the Court dealt largely with questions of federal jurisdiction and collusion. In most, the propriety of considering the constitutional question was not challenged by any party. In most, the statute challenged imposed a burden upon the corporation and penalties for failure to discharge it; whereas the Tennessee Valley Authority Act (16 U.S.C.A. 831 et seq.) imposed no obligation upon the Alabama Power Company, and under the contract it received a valuable consideration. Among other things, the Authority agreed not to sell outside the area covered by the contract, and thus preserved the corporation against possible serious competition. The effect of this agreement was equivalent to a compromise of a doubtful cause of action. Certainly, the alleged invalidity of the Tennessee Valley Authority Act was not a matter so clear as to make compromise*

illegitimate. These circumstances present features differentiating the case at bar from all the cases in which stockholders have been held entitled to have this Court pass upon the constitutionality of a statute which the directors had refused to challenge. The cases commonly cited are these:

And, this last "rule" continues to detail many subtle means by which the Court has avoided ruling on the constitutionality of statutes and other acts.

If you have read some Supreme Court decisions, they have obfuscated the avoidance of constitutionality in their wording. It is often very difficult to identify the real reason for their decision, and almost impossible to determine if they really did rule on constitutionality, or not.

Administrative Procedure Act of 1946

We have been taught that the Congress of the United States makes the laws. After all, we elected them to legislate, to make those laws that are necessary for the government to exist and to do its job. But the question arises -- does Congress make those laws that we are bound to?

Well, for nearly 150 years, the Congress did make the laws. But, then, they got too busy with other things and found that they did not have time to do what they were elected to do, rather, they opted to delegate the authority to make the laws to others, giving them more time to socialize with their friends and local lobbyists. Of course, they rationalize their actions as the way that they have found to work the best to conduct their duties for us. They have put the specific authority for making most laws into the hands of those who are, well, more experienced and more qualified to make those laws than the Congressmen, themselves, and they, for the most part, are completely unknown to us.

I realize that this is a hard nut to swallow, so we must begin looking at a law that was enacted in 1946. This law was passed by the Congress, but, it was also the beginning of the end of Congress 'wasting their time' doing what they were being paid to do.

We will begin with a brief legislative timeline of the Administrative Procedure Act. In 1937, a Presidential committee recommended "separation of investigating/prosecuting functions from decision making functions". So, the first recommendation to deal with Administrative agencies was to separate their functions. The Act, which claimed to address these concerns, was first submitted in 1939, under the title, Walter-Lagan administrative procedure bill. It passed Congress, but was vetoed by then President Franklin Roosevelt. It was again submitted to Committee in 1941, went through numerous hearings, and was resubmitted again in 1944, with no action taken. It was submitted, again, as Senate Bill 7 (SB. 7) in 1945. This Act was passed into law in 1946.

During the course of submission, review and resubmission, a number of statements were made in defense of the procedure being used to, well, refine the Procedures Act. In an article by Wills Smith, a member of the North Carolina Bar and President of the

American Bar Association, he said. "*A bill of that character in these days required a background of preparation to achieve such acceptance*."

Let me point out, here, that within the Congressional Record, many Bar associations, attorneys and CPAs (Certified Public Accountants) were shown to be supportive of the Act. Why not? It created a lucrative field from whence they could broaden their client base.

We can look at years of legislative practices that demonstrate that legislation will be submitted, objected to, refused, revised, resubmitted, and on and on, until the concept has been rendered acceptable. This does not mean that what is first passed will be the ultimate result. More often, it is simply a way for the Congress to "get their foot in the door", and, once we, the People, have gotten used to the existence of such and such a program, they can then 'adopt' revisions to bring it up to where it was intended to be, in the first place.

The Bill, "Administrative Procedure Act", was submitted by Representative Pat McCarran, Democrat, Nevada, who gave us some insight into its purpose, when he said (from the Congressional Record, March 12, 1946):

> "*We have set up a fourth order in the tripartite plan of government which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches; but since that time we have set up fourth dimension, if I may so term it, which is now popularly known as administrative in nature. So we have the legislative, the executive, the judicial, and the administrative."*
>
> *"Perhaps there are reasons for that arrangement. We found that the legislative branch, although it might enact a law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. These rules and regulations are the very things that impinge upon, curb, or permit the citizen who is touched by the law, as every citizen of this democracy is.*
>
> *"This is not a Government of man. It is a Government of law; and this law is a thing which, every day from its enactment until the end of time so for is this Government is concerned, will touch every citizen of the Republic.*
>
> *"Senate bill 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government. It is designed to provide guarantees of due process in administrative procedure.*

> *"The subject of the administrative law and procedure is not expressly mentioned in the constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code.*
>
> *"Problems of administrative law and procedure have been increased and aggravated by the continued growth of the Government, particularly in the executive branch.*

Therefore, they have set up the fourth branch of government. The Constitution established three branches of government. It also provided means for amendments to the Constitution. The provision for amendments was intended to modify the Constitution, if it were judged to be insufficient for the purposes. It did not give the legislative branch, or, the executive branch, the authority to establish a fourth branch of government -- that bridged the gap between the legislative and executive, and, created its own judicial branch.

Note, also, that he suggests that hundreds of thousands of Americans will benefit by the creation of these administrative agencies. He does, however, recognize that there is no "body of such law" in the Constitution, though he does not prescribe a proper remedy.

Finally, he acknowledges that the problem is created by the "continued growth of the Government, particularly in the executive branch". So, I suppose, we are to accept that the founding fathers intended for the executive branch to extend 'outward' and touch every aspect of our lives.

Later, on May 24 (Congressional Record), Representative John Gwynne of Iowa provides insight into what "rule making" is, when he said:

> "*After a law has been passed by the Congress, before it applies to the individual citizens there are about three steps that must be taken. First, the bureau having charge of enforcement must write rules and regulations to amplify, interpret, or expand the statute that we passed; rulemaking, we call it. Second, there must be some procedure whereby the individual citizen who has some contact with the law can be brought before the bureau and his case adjudicated... Finally, there must be some procedure whereby the individual may appeal to the courts from the action taken by the bureau."*

"Amplify, interpret, or expand"? Pretty much a free hand to extend their authority where the Founding Fathers never contemplated such power. But, there you have it. The agencies have become "rule maker" (legislator), judiciary, and overseer of their own activities.

When we think of the Bill of Rights, we think of those areas where the government cannot intrude into our lives. Those Rights are preserved and sacred. To assume that the government has created a "bill of rights" within the purview of the administrative agencies is about as preposterous as can be imagined. Most of the Rights protected by the Bill of Rights have fallen prey to the administrative agencies' rules, policies, and

regulations. The Due process that is assured by the Constitution is subordinated to agency tribunals rather than courts established in accordance with Article III of the Constitution.

The federal agencies have been established in such a way that their regulations have the effect of law, though they were promulgated by the agencies. Though most actions by the agencies are subject to review by the Supreme Court, we need to understand what the Court has said, with regard to review of matters that come before it.

You will find that this Act, coupled with the Ashwander "rules", provides a system whereby the Constitution has been eliminated from the equation of our Constitutional Republic.

A Rather Confusing Form of Jurisdiction

Many have contended that we are under "Roman Civil Law" or have found ourselves under "Maritime (or Admiralty) Jurisdiction".

Of the latter, they will argue that full capitalization of proper nouns is indicative (proof positive) of the jurisdiction, however, US Code seems to exclude that possibility, in that it provides a description of those areas included within that jurisdiction, to wit:

> **18 U.S.C. § 7: Special maritime and territorial jurisdiction of the United States defined**
>
> The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:
>
> (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
>
> (2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.
>
> (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

(9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act -

(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

(B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities. Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.

To assume that this jurisdiction can be applied to those of us who walk upon the land (not flying or floating) is contrary to the very wording of the law (US Code).

Now, to the former, Roman Civil Law: We can probably best define this form of law as an arbitrary set of rules of which we are bound to abide, under penalty of fine,

imprisonment, or both. In that sense, it is very much like how we perceive the laws that apply to us, today.

Substantial differences, however, exist. The most significant is the source of laws. In Rome, the Emperor or the Senate, neither of which was chosen by the people, made the laws. The Emperor came to power by influence, birth, or force. The Senate was comprised of those of wealth. Often, the Senate acquiesced to the Emperor under threat of death. So, the very arbitrariness become apparent when some men are assumed all-powerful, and can dictate laws to serve themselves, though occasionally enacting laws to appease the masses. No guidelines or restraints were imposed, except to the extent perceive by the rulers due to uprisings or other causes of consideration. There was no constitution establishing limitations of power.

At first glance, it would appear to some that this is exactly what we have, today. This is not what we have, though, and that will be addressed, shortly. First, however, we must establish the foundation for what has happened, primarily as a result of the ratification of the Fourteenth Amendment.

Within our current legal system, there are laws, rules, and what is often referred to as "positive law".

The first, laws, are enactments by the legislative body, or actions by administrative agencies, presented to us as laws. Basically, this is a lay term for what we generally perceive as the enactments of the legislative branch of both state and federal government.

The second, rules, are the authority granted under the Administrative Procedures Act of 1946 (above), et seq, and apply to those who are subject to the respective Administrative Agencies. In any action brought against someone, it may appear that the United States, acting in that capacity, is one of the parties, while the defendant is the other party. Well, this would appear to be the entire of the US government as plaintiff -- the full force of government -- unless we look a little deeper. To understand just what this means, let's look at:

Title 28, US Code - JUDICIARY AND JUDICIAL PROCEDURE:

> 28 U.S.C. § 3002: Definitions
> (15) “United States” means-
> (A) a Federal corporation;
> (B) an agency, department, commission, board, or other entity of the United States; or
> (C) an instrumentality of the United States.

Note that any federal corporation (incorporated under federal law rather than state law); any agency (now, there is the key), et al; or, any instrumentality, can be a party to an action under the name of "United States".

There are fifty "titles" in the US Code. For the most part, each of the "laws" defined in those titles refers to an agency within which the "rulemaking" authority lies. For example, Title 26 refers to the "Internal Revenue Code; Title 12 refers to "Banks and Banking". Each title may refer to an administrative agency responsible for "enforcement" of the rules within that title, sub-title, chapter, section, etc.

If you are charged with a crime, there will be a nexus to one of these titles that places you under the jurisdiction of one of the many hundreds of agencies. Absent that nexus, there is no jurisdiction.

Let me explain a situation that I was involved in that began to point the way to understanding just what the nexus is, and how it can be created.

While In Waco, Texas, I received a "power of attorney" from David Koresh. The power of attorney was never refuted by the government, even in the Emergency Petition for Writ of Mandamus [seeking an order to require], for me to have access to "my client", that we filed. In denying the writ, the judge made reference to "have not exhausted all administrative remedies". Unfortunately, at the time, I did not realize the significance of this, nor could the attorney I was working with (the Petition was filed as in propria persona - "for one's self") could not answer my specific question as to the meaning of that phrase.

Later, upon my return to Florida, I revisited "Ashwander v. TVA" (above) and began to wonder if I had, somehow, either sought a benefit from an administrative agency, or, had been duped into accepting the appearance that I had. The Petition had demanded that the FBI (and other agencies) allow me access to the person who had given me power of attorney. I had not disclaimed the FBI, or done anything in the Petition to demonstrate that I had no relationship with them. I had not answered the Denial of the Petition with anything that would separate me from any ties to that agency. So, unfortunately, I could not test my theory, though I have not forgotten the possibility that the nexus was created by my failure to contest it.

If we return to Dred Scott (above), since Sandford had not properly challenged Scott's status and right to sue, the court accepted that acquiescence and accepted jurisdiction in the matter. Silence was acceptance.

An opportunity to test at least a part of this theory arose shortly thereafter. I had been charged with riding my motorcycle without a license and without tags on the motorcycle, prior to Waco. Though the story is rather lengthy (What if I'm Arrested?), I will get to the point.

I have often heard patriots wondering how to get into common law courts. There were many theories, such as not going before the bar, challenging jurisdiction by virtue of the flag, admiralty jurisdiction, etc., and many others. The night before my appearance, I began wondering if it might be better to assume that I was already in common law jurisdiction and seek a way out of that jurisdiction, based upon the concept of common law and proper jurisdiction.

In court, I rejected the offer from the public attorney to represent me. During the hearing, the judge set a jury trial date and then sought to Faretta me (determine if I was competent to represent myself). Well, if I were to send a "representative" to any gathering, it would be acquiescence to the legitimacy of the gathering. So, I told the judge that I need not be represented in this court, though I would answer his question if I felt like answering them. I also "objected" to the proceedings, though the judge continued to talk over my objection. After my persistent attempts, he finally allowed me to continue, where I challenged the jurisdiction with:

> *"I am the moving party today, and I am the plaintiff and I set forth a demand for Habeas Corpus for the record, I cannot find an injured party to summon for trial and I want an order for the Sheriff to bring the injured party before the court. I need an order from the court to tell the Sheriff to bring forth the injured party.*
>
> *"If this charge is criminal then the injured party must present himself with a sworn statement of the injury.*
>
> *"If the nature is civil, then the original contract to which I am alleged to be a party to and have violated must be brought forward."*

Though the wording may not be legally correct, it had the desired effect. The judge asked the prosecutor to "nolle prosequi" (not prosecute the case) and asked me to leave the courtroom.

Since I had not acknowledged any relationship to any administrative agency (department of motor vehicles), I had not allowed the nexus to exist, or be created. This seemed to substantiate my theory, though I have had no opportunity to test, further, that theory. However, I accept that I have found that the court must create the nexus, and, absent that nexus, must abandon prosecution, or respond according to the proper laws.

Now, let's look at Twining (above) and see if we can understand our relationship with the US government. Clearly, by that case, there are two classes of citizen. One retains the rights of the original "citizen of the United States" (See Dred Scott v. Sanford, above) as intended by both the Declaration of Independence and the Constitution, prior to the ratification of the Fourteenth Amendment. This referred to a citizen of New Jersey in Twining, and is outside of the jurisdiction of the federal court, at least as far as the Fourteenth Amendment extended the first eight amendments to the Constitution, to those newly created "citizens of the United States". So, can we surmise, perhaps correctly, that a new form of jurisdiction has evolved from the Fourteenth Amendment?

Often, I have heard the assertion that the United States Supreme Court ignore the Constitution. I included a Supreme Court decision, John Bad Elk v. United States (1900, above) to demonstrate the fallibility of that claim. There can be little doubt that the Fourth Amendment to the Constitution was strictly adhered to in that decision.

This, however, occurred long before Ashwander (above), where the court (Justice Brandeis) explained the policy, or guidelines, established by the Court. By the nature of his presentation those guidelines, it is clear that the policy had been in formulation for a period of years prior to that case. Clearly, an "end run" around the Constitution had been in the works, for quite some time.

Now, that, coupled with the Administrative Procedures Act, providing rulemaking authority for agencies, created new government The question arises, however, of just how that new government could, in obedience to the Constitution, induce people into a jurisdiction that was inconsistent, and, in fact, contrary to the Constitution.

So, we return to Twining and understand that there must be a nexus for the federal courts to have jurisdiction. We also have the provision in Article I, Section 10, clause 1, of the Constitution, which provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." If we simply regard the last as a prohibition against the federal government passing any law that impairs the obligation of contracts, we find that, minimally, the federal government will not step in to void a contract that is otherwise not illegal (as oppose to unlawful). Therefore, if I contract, written, verbal, implied, or otherwise created, then the federal government can do nothing to impair the obligation created thereby.

So, let's suppose that I seek out a job. After an interview, I am accepted and handed a bunch of papers. Among them is one identified by the government form number "W-4". While filling out that form, I see that if I claim dependants, they will take less money out of the withholding. Well, presumably, if I were filling out the form, I would want to exempt myself, though to be sure, they have provided that you must "claim": that exemption by requesting (asking for a benefit?) that you be exempted. Now, I am tied to the Administrative Agency known as the Internal Revenue Service.

To compound this "obligation" created by the contract (most contracts require signatures of both parties, however, you will find that in any government agency contract, there is no provision for the government to proffer a signature) has a statement at the bottom that provides that you are willing to suffer the penalties of perjury, if you have made any false statements on the form. In that same statement, you have made yourself, under penalty of perjury, a "taxpayer". Heck, I was not a taxpayer before I got the job. Why am I willing to make myself one simply because I want to exchange work for money? The word, however, is singular to the Tax Code (Title 26, US Code). So, at this point I have created at least two separate nexuses to an Administrative Agency.

So, can we test this theory? Again, I must resort to personal experience.

Over the years (since 1984, the last time I paid income tax), I have, on occasion, been contacted by the IRS regarding allegedly owed taxes. Three times by mail (not the dunning letters, rather, specifically worded letters -- the dunning ones, I simply throw away) and once in person. Of all of these, they have never attempted to garnishee my

wages. To understand how I have avoided that nexus, I will quote a portion of my letter in response, when I am contacted:

> *Ms. [blank];*
>
> *I am in receipt of an envelope addressed to my name at my mailing address, though it appears to misstate that I am a taxpayer. If you had reviewed your file with my name on it, you would have found correspondence previously sent by me regarding my status* [this refers a previous letter sent under the same circumstances as this one -- I have sent them nothing that was generated by me without being responsive to their initiation of communication].
>
> *You have made the assumption that I am a taxpayer, though in the previous letter referenced, and at this time, I state, again, that your own records, specifically, your IMF file (Individual Master File) with my name on it, or by whatever name this file might currently be referred as, makes clear that I am not a taxpayer and that I have no relationship or obligation with regard to the information included in the instant envelope.*

So, let me repeat, though I have worked at a number of different jobs, I have not had any garnishment filed, nor have any proceedings been filed against me. The only liens that I was aware of were "released", after the (then) statutory eight years.

I have never initiated any action or activity against the IRS, as then I would have to sever a nexus that I created. This seems to be tangible proof of the theory. The nexus is denied, and the jurisdiction appears to not exist.

So, the questions arise, are there two sets of laws? Are there two classes of people?

Based upon the above, it appears that the answer to both questions is, yes!

That would mean that those who subscribe to the court system, as it now stands, find that they are bound by the "laws" that are written, and bound, also, by the rules of the court. For them, all remedy is from administrative agencies operating under the guise of the United States.

The other faction, the Constitutionalists, who believe that no federal law applies to them, are jumping to a conclusion created by the objection to the apparent status quo. How can we divide the laws into those that apply to us, and those that do not?

In researching for both this article and others that I have written, I have had to go back into the Congressional Globe and the original Acts of Congress. In the Acts of Congress, in the fifteen, or so, years that I have gone through (dated prior to and during the Civil War), I have found none, until during that war, that operate on an individual, unless, of course, they were enacted to afford protection to the government, or, to directly deal with the enumerated powers (Article I, Section 8, clauses 1 through 16). The Alien and Sedition Acts; Copyright and patent protection laws, Postal laws, etc., have served only

to afford such protections, and do not become "rules" of obedience imposed on us by government.

It wasn't until the Reconstruction Acts that rights were taken away, though there was no punishment associated with the loss of rights. Today, however, under the guise of the Food and Drug Administration, the right to smoke marijuana has been made "illegal", under agency rules, when less than a century ago, while marijuana was sold without prescription, it took an amendment to the Constitution to deny us the right to drink alcohol.

Another effect of the Fourteenth Amendment - Corporations

First, we need to review a bit of history. Many have claimed that the East India Trading Company, and other entities supported by the Crown, were corporations. However, they were not. They were privileged by the Crown and were given extra-normal powers, since the Crown benefitted directly by their profitability.

At the time of the creation of the United Sates, there were only two forms of corporation. Each was distinct and had a purpose relative to governance of those subject to it. So, we will begin by understanding what was, then:

> From Webster's 1828 Dictionary:
>
> **Corporation** n. - A body politic or corporate, formed and authorized by law to act as a single person; a society having the capacity of transacting business as an individual. Corporations are *aggregate* or *sole*. *Corporations aggregate* consist of two or more persons united in a society which is preserved by succession of members, either forever, or till the corporation is dissolved by the power that formed it, by death of all its members, by surrender of its charter or franchises, or by forfeiture. Such corporations are the mayor and aldermen of cities, the head fellows of a college, the dean and chapter of a cathedral church, the stockholders of a bank or insurance company, &c. *A corporation sole* consists of one person only and his successors, as a king or a bishop.
>
> Corporate, a. - [L. *corporatus*, from *corporer*, to be shaped into a body, from corpus, body]:
> United in a body or community, as a number of individuals who are empowered to transact business as an individual formed into a body; as a *corporate* assembly, or society; a *corporate* town.

The *corporation sole* derived its authority from divine right. Considering the times, this was quite acceptable to many, and, to some, the Church still retains that authority.

Corporations aggregate, however, were bodies of people who participated in a governmental, or, quasi governmental function, through voluntary or chance of birth or residence occurrences. These established laws, rules, etc., by enactment of the whole body, or a select leadership consisting, most often, of more than one person. This also

applies to what is referred to as "the corporate capacity of the state". Any government has such corporate capacity. Nations, states and counties, created by constitutions or charters, have such capacity. Smaller entities, such as cities and towns, are created by application to a larger body.

Corporations, as we know them today, did not exist. The power to sue and be sued, and the power to contract, was held by trusts and companies, though any rights, privileges, or immunities, had to be specifically bestowed. Shares of ownership could be divided and sold, in these entities, though not in the corporations of the day.

After the ratification of the Fourteenth Amendment, and the creation of the new entity under the federal government, we see the introduction, under federal authority, of a new definition of "person" (all persons born or naturalized in the United States) which includes corporations within the definition. Unlike prior times, no specific grant of right, privilege, or immunity need be conferred; it is now blanket to corporations, by virtue of them being persons, under the guise of "citizen of the United States".

Compare this with the Supreme Court definition of "citizen of the United States", and is very specific exclusion of all but those who were of the class who declared independence from Great Britain.

A new class was created, and then the rights, privileges, and immunities were granted to a whole new class of entity that cannot, in the broadest stretch of the imagination, be considered people. Since then, they have been granted the right to freedom of speech, to affect the outcome of elections, and many others rights that were intended, originally, to apply to a specific group of people. Soon, they might even be conferred the right to vote.

So, we go from Webster's 1828 Dictionary to the current Black's Law Dictionary (Fifth Edition) to see the changing nature of the status of corporations:

> An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals. Such entity subsists as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law.

Unlike the companies and trusts of the past, this new entity (or person) has an immunity, granted by government that excludes its members from liability, except in certain cases. It might best be described as "super person" created by the federal (or state) government.

And, since a corporation is created based upon an application to the appropriate entity, it is subject, of course, to the rules of that agency. However, the government does not utilize that authority to address problems within corporate structures. Instead, it allows them even more privileges, such as freedom of speech, to allow them to sway voters in the election process, without the constraints that we may, as people, have imposed on us.

Conclusion

From the ratification of the Constitution, where fears of a federal imposition of laws on all of the states, overriding any state court, thereby nullifying the function of state government, through today, we have seen the fears of those Framers manifest by the ratification of the Fourteenth Amendment. Even those in support of the Constitution assured us that the limited powers of government would never intrude upon the rights of the states and the people, and that their respective "Republican Form of Government" would be guaranteed (Art IV, Sec 4).

With the ratification of the Fourteenth Amendment, the groundwork was laid to subvert the state's rights, as well as those of the people, violating the intent of the Constitution and those who ratified it.

Though the steps were small and infrequent, those intent on making a single nation, without regard to the rights of the member states of that original Union, have managed to subvert and destroy that which evolved from our separation from Great Britain.

The first step was the destruction of the intent explained in Dred Scott, that the "citizens of the United States" were a singular group of people who had defied British authority to remove rights that were secured by the British Constitution. These "people" were diluted and the foundation necessary for a true nation, common heritage and culture, were subordinated to an all inclusive acceptance of foreign cultures to undermine the fundamental integrity of the nation.

The next step was to subordinate the people of the various states to an expanding role of the federal judiciary by extension of the federal "bill of rights" (each state already had their own bills of right), intended as protection from federal intrusion, to impose upon the states, and their people, the federal interpretation of what was right, or wrong.

This included an implied jurisdiction, as explained in Twining, only where there was submission to that new class of citizen, though has been ignored more by the people than the courts, since that time. If there is not a federal case that deals with such a matter, in nearly a century, the true relationship is obscured by time, and, ignored by those who have not realized its existence.

The step that completed the embracing of this new concept of government was the creation of administrative agencies, to make rules which are not "positive law", though are presented to the people as "laws" enacted by Congress (positive law), and apply to all people. The nexus of the relationship between the people and the administrative

agencies is obscured in Court decisions, leading us to believe that the laws do apply to us, when, in fact, they do only if we acquiesce to that nexus, which we blindly accept because the government would prefer that we know no better.

The final step in assurance of obedience to the federal government is accomplished by encouraging other institutions, whether local, state, or educational, to believe that our relationship to the federal government is absolute and unquestionable.

In the local and state governments, the federal government presents both authority (under color of law) to the agencies of those governments and funding to support the agency's administration of "federal law" (rules), supporting the false conclusion of true authority in the imposition of those rules. The agencies, having been duped into that belief, are willing to go to any extent to "enforce federal laws", oblivious to their true nature, creating a buffer between the people and reality.

The latter, the educational institutions, from primary (local schools) through higher (colleges and universities) education, receive funds, curriculum, and mandates from the federal government which reinforce the concept of federal authority, and, in the latter, even teaching Constitutional law (concentrating on recent stare decisis (case law) and administrative law, with a total disregard for common law (a concept adopted by both state and federal governments at the formation of the country).

As we can see, incremental changes have effectively perverted what was our birthright to little less than the monarchy we separated from, 230 years.

Thus, through a series of incremental changes in the nature of government, we have found that the concept upon which this nation was founded, and was assured, by both sides, to be the intent of the federal union, we have become more subject to arbitrary rule than those brave colonists who threw off the yoke of arbitrary power, in favor of a government that was intended to be, truly, for the people, were every subject to, or could ever have conceived to be, the result of their efforts.

They would, without a doubt, be appalled at what we have become -- as should we.

Appendix

Oath of Office Act - July 2, 1862

An Act to prescribe an Oath of Office, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the year United States of America in Congress assembled, That hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and being entitled to any of the salary or other emoluments thereof, take and subscribed the following oath or affirmation: "I, A B, to solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have

been a citizen thereof; that I have voluntarily given no aid, countenance, council, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor an attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of the evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God;" which said oath so taken and signed, shall be preserved among the files of the court, House of Congress, or Department to which the said office may appertain. And any person who shall falsely take the said oath shall be guilty of perjury, and on conviction, in addition to the penalties now prescribed for that offense, shall be deprived of his office and rendered incapable forever after of holding any office or place under the United States.

Approved, July 2, 1862

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Reconstruction Act I - March 2, 1867

An Act to provide for the more efficient Government of the Rebel States.

WHEREAS no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and were as it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore,

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

Sec. 2. *And be it further enacted*, That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

Sec. 3. *And be it further enacted*, That it shall be the duty of each officer assigned as aforesaid, to protect all persons in their rights of person and property, to suppress insurrections, disorder, and violence, and to punish, or cause to be punished, all just disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try the offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void.

Sec. 4. *And be it further enacted*, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of a military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: *Provided*, that no sentence of death under the provision of this act shall be carried into effect without the approval of the President.

Sec. 5. *And be it further enacted*, That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been a resident in said State for one year previous to the day of such election, except such as may be disenfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

Sec. 6. *And be it further enacted*, That until the people of said rebel States shall be by law admitted to representation and the Congress of the United States, any civil governments which may exist in therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional government all persons shall be entitled to vote, and none others are entitled to vote, under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third *article* of said constitutional amendment.

Schuyler Colfax
Speaker of the House of Representatives

La Fayette S. Foster
President of the Senate, pro tempore

Vetoed by the President, over-ridden by 2/3 vote of both Houses of Congress

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Reconstruction Act II - March 23, 1867

An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I, _____ do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the State of _____ ; that I have resided in said State for _____ months next preceding this day, and now reside in the county of or the parish of _____, in said State (as the case may be) ; that I am twenty-one years old ; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or, as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do so help me God"; which oath or affirmation may be administered by any registering officer.

SEC. 2. *And be it further enacted*, That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such State by the commanding general I giving to each representation in the ratio of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the Same Dumber of members as represented the territory now constituting Virginia in the most numerous, branch of the legislature of said State in the year eighteen hundred and sixty, to be apportioned as aforesaid.

SEC. 3. *And be it further enacted,* That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under this act. Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates, as aforesaid, the words "For a convention", and those voting against such a convention shall have written or printed on such ballots the words "Against a convention". The persons appointed to superintend said election, and to make return of the votes given thereat, as herein provided, shall count and make return of the votes given for and against a convention ; and the commanding general to whom the same shall have been returned shall ascertain and

declare the total vote in each State for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: Pro*vided,* That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

SEC. 4. *And be it further enacted,* That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said election ; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of' the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble 'in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act, and the act to which it is supplementary; and when the same shall have been so framed; said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of' thirty days from the date of notice thereof, to be given by said convention ; and the returns thereof shall be made to the commanding general of the district.

SEC. 5. *And be it further enacted,* That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one half of all the registered voters voting upon the question of such ratification, the president of the convention. shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall moreover appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified, electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

Sec. 6. *And be it further enacted,* That all elections in the States mentioned in the said "Act to provide for the more efficient government of the rebel States," shall, during the operation of said act, be by ballot; and all officers making the said registration of voters and conducting said elections shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled " An act to prescribe an oath of office ": *Provided,* That if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending and being thereof duly convicted shall be subject to the pains, penalties, and disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

Sec. 7. *And be it further enacted,* That all expenses incurred by the several commanding, generals, or by virtue of any orders issued, or appointments made, by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

Sec. 8. *And be it further enacted,* That the convention for each State shall prescribe the fees, salary, and compensation to be paid to all delegates and other officers and agents herein authorized or necessary to carry into effect the purposes of this act not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property in such State as may be necessary to pay the same.

Sec. 9. *And be it further enacted,* That the word "article," in the sixth section of the act to which this is supplementary, shall be construed to mean "section."

SCHUYLER COLFAX,
Speaker of the House of Representatives.

B. F. WADE,
President of the Senate pro tempore.

Vetoed by the President, over-ridden by 2/3 vote of both Houses of Congress

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Johnson's Veto of the First Reconstruction Act March 2, 1867

To the House of Representatives:

I have examined the bill "to provide for the more efficient government of the rebel States" with the care and the anxiety which its transcendent importance is calculated to awaken. I am unable to give it my assent for reasons so grave that I hope a statement of them may have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest.

The bill places all the people of the ten States therein named under the absolute domination of military rulers; and the preamble undertakes to give the reason upon which the measure is based and the ground upon which it is justified. It declares that there exists in those States no legal governments and no adequate protection for life or property, and asserts the necessity of enforcing peace and good order within their limits. Is this true as matter of fact?

It is not denied that the States in question have each of them an actual government, with all the powers- executive, judicial, and legislative-which properly belong to a free state. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs. An existing de facto government, exercising such functions as these, is itself the law of the state upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established state illegal is to say that law itself is unlawful.

The provisions which these governments have made for the preservation of order, the suppression of crime, and the redress of private injuries are in substance and principle the same as those which prevail in the Northern States and in other civilized countries. .

The bill, however, would seem to show upon its face that the establishment of peace and good order is not its real object. The fifth section declares that the preceding sections shall cease to operate in any State where certain events shall have happened.

These events are, first, the selection of delegates to a State convention by in the election at which negroes shall be allowed to vote; second, the formation of a State constitution by the convention so chosen; third, the insertion into the State constitution of a provision which will secure the right of voting at all elections to negroes and to such white men as may not be a disenfranchised for rebellion or felony; fourth, the submission of the constitution for ratification to negroes and white men not disenfranchised, and its actual ratification by their vote; fifth, the submission of the State constitution to the Congress for examination and approval, and the actual approval of it by that body; sixth, the adoption of a certain amendment to the Federal Constitution by a vote of the Legislature elected under the new constitution; seventh, the adoption of said amendment by a sufficient number of other States to make it a part of the Constitution of the United States.

All these conditions must be fulfilled before the people of any of these States can be relieved from the bondage of military domination; but when they are fulfilled, then immediately the pains and penalties of the bill are to cease, no matter whether there be peace and order or not, and without any reference to the security of life or property. The excuse given for the bill in the preamble is admitted by the bill itself not to be real. The military rule which it establishes is plainly to be used, not for any purpose of order or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

I submit to Congress whether this measure is not in its whole character, scope, and object without precedent and without authority, in palpable conflict with the plainest provisions of the Constitution, and utterly destructive to those great principles of liberty and humanity for which our ancestors on both sides of the Atlantic have shed so much blood and expended so much treasure.

The ten States named in the bill are divided into five districts. For each district an officer of the Army, not below the rank of a brigadier-general, is to be appointed to rule over the people; and he is to be supported with an efficient military force to enable him to perform his duties and enforce his authority. Those duties and that authority, as defined by the third section of the bill, are "to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish or cause to be punished all disturbers of the public peace or criminals."

The power thus given to the commanding officer over all the people of each district is that of an absolute monarch. His mere will is to take the place of all law. The law of the States is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of State authority to be null and void. He alone is permitted to determine what are rights of person or property, and he may protect them in such way as in his discretion may seem proper. It places at his free disposal all the lands and goods in his district, and he may distribute them without let or hindrance to whom he pleases. Being bound by no State law, and there being no other law to regulate the subject, he may make a criminal code of his own; and he can make it as bloody as any recorded in history, or he can reserve the privilege of acting upon the impulse of his private passions in each case that arises. He is bound by no rules of evidence; there is, indeed, no provision by which he is authorized or required to take any evidence at all. Everything is a crime which he chooses to call so, and all

persons are condemned whom he pronounces to be guilty. He is not bound to keep and record or make any report of his proceedings. He may arrest his victims wherever he finds them, without warrant, accusation, or proof of probable cause. If he gives them a trial before he inflicts the punishment, he gives it of his grace and mercy, not because he is commanded so to do. .

It is plain that the authority here given to the military officer amounts to absolute despotism. But to make it still more unendurable, the bill provides that it may be delegated to as many subordinates as he chooses to appoint, for it declares that he shall "punish or cause to be punished". Such a power has not been wielded by any monarch in England for more than five hundred years. In all that time no people who speak the English language have borne such servitude. It reduces the whole population of the ten States-all persons, of every color, sex, and condition, and every stranger within their limits-to the most abject and degrading slavery. No master ever had a control so absolute over the slaves as this bill gives to the military officers over both white and colored persons. .

I come now to a question which is, if possible still more important. Have we the power to establish and carry into execution a measure like this? I answer, certainly not, if we derive our authority from the Constitution and if we are bound by the limitations which it imposes.

This proposition is perfectly clear, that no branch of the Federal Government - executive, legislative, or judicial - can have any just powers except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This broad principle limits all our functions and applies to all subjects. It protects not only the citizens of States which are within the Union, but it shields every human being who comes or is brought under our jurisdiction. We have no right to do in one place more than in another that which the Constitution says we shall not do at all. If, therefore, the Southern States were in truth out of the Union, we could not treat their people in a way which the fundamental law forbids.

Some persons assume that the success of our arms in crushing the opposition which was made in some of the States to the execution of the Federal laws reduced those States and all their people -the innocent as well as the guilty- to the condition of vassalage and gave us a power over them which the Constitution does not bestow or define or limit. No fallacy can be more transparent than this. Our victories subjected the insurgents to legal obedience, not to the yoke of an arbitrary despotism.

Invasion, insurrection, rebellion, and domestic violence were anticipated when the Government was framed, and the means of repelling and suppressing them were wisely provided for in the Constitution; but it was not thought necessary to declare that the States in which they might occur should be expelled from the Union. Rebellions, which were invariably suppressed, occurred prior to that out of which these questions grow; but the States continued to exist and the Union remained unbroken. In Massachusetts, in Pennsylvania, in Rhode Island, and in New York, at different periods in our history, violent and armed opposition to the United States was carried on; but the relations of those States with the Federal Government were not supposed to be interrupted or changed thereby after the rebellious portions of their population were defeated and put down. It is true that in these earlier cases there was no formal expression of a determination to withdraw from the Union, but it is also true that in the Southern States the ordinances of secession were treated by all the friends of the Union as mere nullities and are now acknowledged to be so by the States themselves. If we admit that they had any force or

validity or that they did in fact take the States in which they were passed out of the Union, we sweep from under our feet all the grounds upon which we stand in justifying the use of Federal force to maintain the integrity of the Government. . .

I need not say to the representatives of the American people that their Constitution forbids the exercise of judicial power in any way but one -that is, by the ordained and established courts. It is equally well known that in all criminal cases a trial by jury is made indispensable by the express words of that instrument. . . .

An act of Congress is proposed which, if carried out, would deny a trial by the lawful courts and juries to 9,000,000 American citizens and to their posterity for an indefinite period. It seems to be scarcely possible that anyone should seriously believe this consistent with a Constitution which declares in simple, plain, and unambiguous language that all persons shall have that right and that no person shall ever in any case be deprived of it. The Constitution also forbids the arrest of the citizen without judicial warrant, founded on probable cause. This bill authorizes an arrest without warrant, at the pleasure of a military commander. The Constitution declares that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury." This bill holds every person not a soldier answerable for all crimes and all charges without any presentment. The Constitution declares that "no person shall be deprived of life, liberty, or property without due process of law." This bill sets aside all process of law, and makes the citizen answerable in his person and property to the will of one man, and as to his life to the will of two. .

The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this obligation is not palpably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority?

The purpose and object of the bill - the general intent which pervades it from beginning to end - is to change the entire structure and character of the State governments and to compel them by force to the adoption of organic laws and regulations which they are unwilling to accept if left to themselves. The negroes have not asked for the privilege of voting; the vast majority of them have no idea what it means. This bill not only thrusts it into their bands, but compels them, as well as the whites, to use it in a particular way. If they do not form a constitution with prescribed articles in it and afterwards elect a legislature which will act upon certain measures in a prescribed way, neither blacks nor whites can be relieved from the slavery which the bill imposes upon them. Without pausing here to consider the policy or impolicy of Africanizing the southern part of our territory, I would simply ask the attention of Congress to that manifest, well-known, and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority, or power to regulate such subjects for any State. To force the right of suffrage out of the hands of the white people and into the hands of the negroes is an arbitrary violation of this principle.

The bill also denies the legality of the governments of ten of the States which participated in the ratification of the amendment to the Federal Constitution abolishing slavery forever within the jurisdiction of the United States and practically excludes them from the Union. If this assumption of the bill be correct, their concurrence can not be considered as having been legally given, and the important fact is made to appear that the consent of three-fourths of the States - the requisite number - has not been constitutionally obtained to the ratification of that

amendment, thus leaving the question of slavery where it stood before the amendment was officially declared to have become a part of the Constitution.

That the measure proposed by this bill does violate the Constitution in the particulars mentioned and in many other ways which I forbear to enumerate is too clear to admit of the least doubt. .

It is a part of our public history which can never be forgotten that both Houses of Congress, in July, 1861, declared in the form of a solemn resolution that the war was and should be carried on for no purpose of subjugation, but solely to enforce the Constitution and laws, and that when this was yielded by the parties in rebellion the contest should cease, with the constitutional rights of the States and of individuals unimpaired. This resolution was adopted and sent forth to the world unanimously by the Senate and with only two dissenting voices in the House. It was accepted by the friends of the Union in the South as well as in the North as expressing honestly and truly the object of the war. On the faith of it many thousands of persons in both sections gave their lives and their fortunes to the cause. To repudiate it now by refusing to the States and to the individuals within them the rights which the Constitution and laws of the Union would secure to them is a breach of our plighted honor for which I can imagine no excuse and to which I can not voluntarily become a party. . . .

ANDREW JOHNSON.

Washington, March 2, 1867

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Reconstruction Act III - July 19, 1867

An Act supplementary to an Act entitled "An *Act to provide -for the more efficient Government of the Rebel States", passed* on *the second day of March, eighteen hundred and sixty-seven, and the Act supplementary thereto, passed on the twenty-third day of March, eighteen hundred and sixty-seven.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to have been the true intent and meaning of the act of the second day of March, one thousand eight hundred and sixty-seven, entitled "An act to provide for the more efficient government of the rebel States," and of the act supplementary thereto, passed on the twenty-third day of March, in the year one thousand eight hundred and sixty-seven, that the governments then existing in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas were not legal State governments ; and that thereafter said governments, if continued, were to be continued subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress.

Sec. 2. *And be it further enacted,* That the commander of any district named in said act shall have power, subject to the disapproval of the General of the army of the United States, and to have effect till disapproved, whenever in the opinion of such commander the proper administration of said act shall require it, to suspend or remove from office, or from the performance of official duties and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office or duty in such district

under any power, election, appointment or authority derived from, or granted by, or claimed under, any so-called State or the government thereof, or any municipal or other division thereof, and upon such suspension or removal such commander, subject to the disapproval of the General as aforesaid, shall have power to provide from time to time for the performance of the said duties of such officer or person so suspended or removed, by the detail of some competent officer or soldier of' the army, or by the appointment of some other person, to perform the same, and to fill vacancies occasioned by death, resignation, or otherwise.

SEC. 3. *And be it further enacted,* That the General of the army of the United States shall be invested with all the powers of suspension, removal, appointment, and detail granted in the preceding section to district commanders.

SEC. 4. *And be it further enacted,* That the acts of the officers of the army already done in removing in said districts persons exercising the functions of civil officers, and appointing others in their stead, are hereby confirmed: Provided, That any person heretofore or hereafter appointed by any district commander to exercise the functions of any civil office, may be removed either by the military officer in command of the district, or by the General of the army. And it shall be the duty of such commander to remove from office as aforesaid all persons who are disloyal to the government of the United States, or who use their official influence in any manner to hinder, delay, prevent, or obstruct the due and proper administration of this act and the acts to which it is supplementary.

SEC. 5. *And be it further enacted,* That the boards of registration provided for in the act entitled 11 An act supplementary to an act entitled I An act to provide for the more efficient government of the rebel States, , passed March two, eighteen hundred and sixty-seven, and to facilitate restoration," passed March twenty-three, eighteen hundred and sixty-seven, shall have power, and it shall be their duty before allowing the registration of any person, to ascertain, upon such facts or information as they can obtain, whether such person is entitled to be registered under said act, and the oath required by said act shall not be conclusive on such question, and no person shall be registered unless such board shall decide that he is entitled thereto; and such board shall also have power to examine, under oath, (to be administered by any member of such board,) any One touching the qualification of any person claiming registration ; but in every case of refusal by the board to register an applicant, and in every case of striking his name from the list as hereinafter provided, the board shall make a note or memorandum, which shall be returned with the registration list to the commanding general of the district, setting forth the grounds of such refusal or such striking from the list : Provided, That no person shall be disqualified as member of any board of registration by reason of race or color.

SEC. 6. *And be it further enacted,* That the true intent and meaning of the oath prescribed in said supplementary act is, (among other things,) that no person who has been a member of the legislature of any State, or who has held any executive or judicial office in any State, whether he has taken an oath to support the Constitution of the United States or not, and whether he was holding such office at the commencement of the rebellion, or bad held it before, and who has afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, is entitled to be registered or to vote; and the words "executive or judicial office in any State " in said oath mentioned shall be construed to include all civil offices created by law for the administration of any general law of a State, or for the administration of justice.

SEC. 7. *And be it further enacted,* That the time for completing the original registration provided for in said act may, in the discretion of the commander of any district be extended to

the first day of October, eighteen hundred and sixty-seven; and the boards of registration shall have power, and it shall be their duty, commencing fourteen days prior to any election under said act, and upon reasonable public notice of the time and place thereof, to revise, for a period of five days, the registration lists, and upon being satisfied that any person not entitled thereto has been registered, to strike the name of such person from the list, and such person shall not be allowed to vote. And such board shall also, during the same period, add to such registry the names of all persons who at that time possess the qualifications required by said act who have not been already registered; and no person shall, at anytime, be entitled to be registered or to vote by reason of any executive pardon or amnesty for any act or thing which, without such pardon or amnesty, would disqualify him from registration or voting.

SEC. 8. *And be it further enacted,* That section four of said last-named, act shall be construed to authorize the commanding general named therein, whenever he shall deem it needful, to remove any member of a board of registration and to appoint another in his stead, and to fill any vacancy in such board.

SEC. 9. *And be it further enacted,* That all members of said boards of registration and all persons hereafter elected or appointed to office in said military districts, under any so-called State or municipal authority, or by detail or appointment of the district commanders, shall be required to take and to subscribe the oath of office prescribed by law for officers of the United States.

SEC. 10. *And be it further enacted,* That no district commander or member of the board of registration, or any of the officers or appointees acting under them, shall be bound in his action by any opinion of any civil officer of the United States.

SEC. 11. *And be it further enacted,* That all the provisions of this act and of the acts to which this is supplementary shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

B. F. WADE,
President of the Senate pro tempore.

Vetoed by the President, over-ridden by 2/3 vote of both Houses of Congress

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Reconstruction Act IV - March 11, 1868

An Act to amend the Act passed March twenty-third, eighteen hundred and sixty-seven, entitled "An Act supplementary to 'An Act to provide for the more efficient Government of the rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate their Restoration."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter any election authorized by the act passed March twenty-three, eighteen hundred and sixty-seven, entitled "An act supplementary to 'An act to provide

for the more efficient government of the rebel States,' passed March *two,* [second,] eighteen hundred and sixty-seven, and to facilitate their restoration," shall be decided by a majority of the votes actually cast ; and at the election in which the question of the adoption or rejection of any, constitution is submitted, any person duly registered in the State may vote in the election district where he offers to vote when he has resided therein for ten days next preceding such election, upon presentation of his certificate of registration, his affidavit, or other satisfactory evidence, under such re regulations as the district commanders may prescribe.

SEC. 2. *And be it further enacted,* That the constitutional convention of any of the States mentioned in the acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution the registered voters may vote also for members of the House of Representatives of the United States, and for all elective officers provided for by the said constitution; and the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution, shall enumerate and certify the -votes cast for members of Congress.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

B. F. WADE,
President of *the Senate* pro *tempore.*

Indorsed by the President: "Received February 28, 1868."

[NOTE BY THE DEPARTMENT OF STATE. -The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

Judiciary Act of March 3, 1863

An Act relating to Habeas Corpus, and regulating Judicial Proceedings in Certain Cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons detained by him by authority of the President ; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue.

SEC. 2. *And be it further enacted,* That the Secretary of State and the Secretary of War be, and they are hereby, directed, as soon as may be practicable, to furnish to the judges of the circuit and district courts of the United States and of the District of Columbia a list of the names of all persons, citizens of states in which the administration of the laws has continued unimpaired in the said Federal courts, who are now, or may hereafter be, held as prisoners of the United States,

by order or authority of the President of the United States or either of said Secretaries, in any fort, arsenal, or other place, as state or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all those who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of' said jurisdictions, and also the date of each arrest ; the Secretary of State to furnish a list of such persons as are imprisoned by the order or authority of the President, acting through the State Department, and the Secretary of War a list of such as are imprisoned by the order or authority or the President, acting through the Department of War. And in all cases where a grand jury, having attended any of said courts having jurisdiction in the premises, after the passage of this act, and after the furnishing of said list, as aforesaid, has terminated its session without finding an indictment or presentment, or other proceeding against any such person, it shall be the duty of the judge of said court forthwith to make an order that any such prisoner desiring a discharge from said imprisonment be brought before him to be discharged ; and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order; and in case he shall delay or refuse so to do, he shall be subject to indictment for a misdemeanor, and be punished by a fine of not less than five hundred dollars and imprisonment in the common jail for a period not less than six months, in the discretion of the court: *Provided, however,* That no person shall be discharged by virtue of the provisions of this act until after he or she shall have taken an oath of allegiance to the Government of the United States, and to support the, Constitution thereof; and that he or she will not hereafter in any way encourage or give aid and comfort to the present rebellion, or the supporters thereof: *And provided also,* That the judge or court before whom such person may be brought, before discharging him or her from imprisonment, shall have power, on examination of the case, and, if the public safety shall require it, shall be required to cause him or her to enter into recognizance, with or without surety, in a sum to be fixed by said judge or court, to keep the peace and be of good behavior towards the United States and its citizens, and from time to time, and at such times as such judge or court may direct, appear before said judge or court to be further dealt with, according to law, as the circumstances may require. And it shall be the duty of the district attorney of the United States to attend such examination before the judge.

SEC. 3. *And be it further enacted,* That in case any of such prisoners shall be under indictment or presentment for any offence against the laws of the United States, and by existing laws bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judge at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State and War shall for any reason refuse or omit to furnish the said list of persons held as prisoners as aforesaid at the time of the passage of this act within twenty days thereafter, and of such persons as hereafter may be arrested within twenty days from the time of the arrest, any citizen may, after a grand jury shall have terminated its session without finding an indictment or presentment, as provided in the second section of this act, by a petition alleging the facts aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge such prisoner on the same terms and conditions prescribed in the second section of this act: *Provided, however,* That the, said judge shall be satisfied such allegations are true.

SEC. 4. *And be it further enacted,* That any order of the President,, or under his authority, made at any time during the existence of the present rebellion, shall be a defence in all courts to any action or prosecution, civil or criminal, pending, or to be commenced, for any search, seizure, arrest, or imprisonment, made, done, or committed, or acts omitted to be done, under and by

virtue of such order, or under color of any law of Congress, and such defence may be made by special plea, or under the general issue.

SEC. 5. *And be it further enacted, That* if any suit or prosecution, civil or criminal, has been or shall be commenced in any state court against any officer, civil or military, or against any other person, for any arrest or imprisonment made, or other trespasses or wrongs done or committed , or any act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or any act of Congress, and the defendant shall, at the time of entering his appearance in such court, or if such appearance shall have been entered before the passage of this Act, then at the next session of the, court in which such suit or prosecution is pending, file a petition, stating the facts and verified by affidavit, for the removal of the cause for trial at the next circuit court of the United States, to be holden in the district where the suit is pending, and offer good and sufficient surety for his filing in such court, on the first day of its session, copies of such process and other proceedings against him, and also for his appearing in such court and entering special bail in the cause, if special bail was originally required therein. It shall then be the duty of the state court to accept the surety and proceed no further in the cause or prosecution, and the bail that shall have been originally taken shall be discharged. And such copies being filed as aforesaid in such court of the United States, the cause shall proceed therein in the same manner as if it had been brought in said court by original process, whatever may be the amount in dispute or the damages claimed, or whatever the citizenship of the parties, any former law to the contrary notwithstanding. And any attachment of the goods or estate of the defendant by the original process shall hold the goods or estate so attached to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment had it been rendered in the court in which the suit or prosecution was commenced. And it shall be lawful in any such action or prosecution which may be now pending, or hereafter commenced, before any state court whatever, for any cause aforesaid, after final judgment, for either party to remove and transfer, by appeal, such case during the session or term of said court at which the same shall have taken place, from such court to the next circuit court of the United States to be held in the district in which such appeal shall be taken, in manner aforesaid. And it shall be the duty of the person taking such appeal to produce and file in the said circuit court attested copies of the process, proceedings, and judgment in such cause; and it shall also be competent for either party, within six months after the rendition of a judgment in any such cause, by writ of error or other process, to remove the same to the circuit court of the United States of that district in which such judgment shall have been rendered ; and the said circuit court shall thereupon proceed to try and determine the facts and the law in such action, in the same manner as if the same bad been there originally commenced, the judgment in such case notwithstanding. And any bail which may have been taken, or property attached, shall be holden on the final judgment of the said circuit court in such action, in the same manner as if no such removal and transfer had been made, as aforesaid. And the state court, from which any such action, civil or criminal, may be removed and transferred as aforesaid, upon the parties giving good and sufficient security for the prosecution thereof, shall allow the same to be removed and transferred, and proceed no further in the case: *Provided, however,* That if the party aforesaid shall fail duly to enter the removal and transfer, as aforesaid, in the circuit court of the United States, agreeably to this act, the state court, by which judgment shall have been rendered, and from which the transfer and removal shall have been made, as aforesaid, shall be authorized, on motion for that purpose, to issue execution, and to carry into effect any such judgment, the same as if no such removal and transfer had been made. *And provided also,* That no such appeal or writ of error shall be allowed in any criminal action or prosecution where final judgment shall have been rendered in favor of the defendant or respondent by the state court. And if in any suit

hereafter commenced the plaintiff is nonsuited or judgment pass against him, the defendant shall recover double costs.

SEC. 6. *And be it further enacted,* That any suit or prosecution described in this act, in which final judgment may be rendered in the circuit court, may be carried by writ of error to the supreme court, whatever may be the amount of said judgment.

SEC. 7. *And be it further enacted,* That no suit or prosecution, civil or criminal, shall be maintained for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or by or under any act of Congress, unless the same shall have been commenced within two years next after such arrest, imprisonment, trespass, or wrong may have been done or committed or act may have been omitted to be done: *Provided,* That in no case shall the limitation herein provided commence to run until the passage of this act, so that no party shall, by virtue of this act, be debarred of his remedy by suit or prosecution until two years from and after the passage of this act.

APPROVED, March 3, 1863.

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Judiciary Act of May 11, 1866

An Act to amend an Act entitled "An Act relating to Habeas Corpus, *pus, and regulating Judicial Proceedings in certain Cases," approved March third, eighteen hundred and sixty-three.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any search, seizure, arrest, or imprisonment made, or any acts done or omitted to be done during the said rebellion, by any officer or person, under and by virtue of any order, written or verbal, general or special, issued by the President or Secretary of War, or by any military officer of the United States holding the command of the department, district, or place within which such seizure, search, arrest, or imprisonment was made, done, or committed, or any acts were so done, or omitted to be done, either by the person or officer to whom the order was addressed, or for whom it was intended, or by any other person aiding or assisting him therein, shall be held, and are hereby declared, to come within the purview of the act to which this is amendatory' and within the purview of the fourth, fifth, and sixth sections of the said act of March third, eighteen hundred and sixty-three, for all the purposes of defence, transfer, appeal, error, or limitation provided therein. But no such order shall, by force of this act, or the act to which this is an amendment, be a defence to any suit or action for any act done or omitted to be done after the passage of this act.

SEC. 2. *And be it further enacted,* That when the said order is in writing, it shall be sufficient to produce in evidence the original, with proof of its authenticity, or a certified copy of the same; or if sent by telegraph, the production of the telegram purporting to emanate from such military officer shall be prima facie evidence of its authenticity; or if the original of such order or telegram is lost or cannot be produced, secondary evidence thereof shall be admissible, as in other cases.

SEC. 3. *And be it further enacted,* That the right of removal from the State court into the circuit court of the United States, provided in the fifth section of the act to which this is amendatory, may be exercised after the appearance of the defendant and the filing of his plea or other defence in said court, or at any term of said court subsequent to the term when the appearance is entered, and before a jury is empannelled to try the same ; but nothing herein contained shall be held to abridge the right of such removal after final judgment in the State court, nor shall it be necessary in the State court to offer or give surety for the filing of copies in the circuit court of the United States ; but, on the filing of the petition, verified as provided in said fifth section, the further proceedings in the State court shall cease, and not be resumed until a certificate under the seal of the circuit court of the United States, stating that the petitioner has failed to file copies in the said circuit court, at the next term, is produced.

SEC. 4. *And be it further enacted,* That if the State court shall, notwithstanding the performance of all things required for the removal of the case to the circuit court aforesaid, proceed further in said cause or prosecution before said certificate is produced, then, in that case, all such further proceedings shall be void and of none effect; and all parties, judges, officers, and other persons, thenceforth proceeding thereunder, or by color thereof, shall be liable in damages therefor to the party aggrieved, to be recovered by action in a court of the State having proper jurisdiction, or in a circuit court of the United States for the district in which such further proceedings may have been had, or where the party, officer, or other person, so offending shall be found; and upon a recovery of damages in either court, the party plaintiff shall be entitled to double costs.

SEC. 5. *And be it further enacted,* That it shall be the duty of the clerk of the State court to furnish copies of the papers and files in the case to the party so petitioning for the removal; and upon the refusal or neglect of the clerk to furnish such copies, the said party may docket the case in the circuit court of the United States; and thereupon said circuit court shall have jurisdiction therein, and may, upon proof of such refusal or neglect of' the clerk of the State court, and upon reasonable notice being given to the plaintiff, require him to file a declaration or petition therein; and upon his default may order a nonsuit, and dismiss the case at the costs of the plaintiff, which dismissal shall be a bar to any further suit touching the matter in controversy.

APPROVED, May 11, 1866.

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