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Commentary: 14th Amendment Laid Foundation of Civil Liberties

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Abstract

They had just glued the world back together, and within a year it was threatening to come apart again.

That might sound like a description of the Arab Spring, or even the fall of the Soviet Union. In fact, it's what happened 150 years ago in the United States. [*excerpt*]

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They had just glued the world back together, and within a year it was threatening to come apart again.

That might sound like a description of the Arab Spring, or even the fall of the Soviet Union. In fact, it's what happened 150 years ago in the United States.

The Civil War had been brought to a close, slavery abolished, and the American Union restored. Sort of. The problem was that the postwar Reconstruction that followed the collapse of the Confederacy and the death of Abraham Lincoln turned out to be a good deal harder to manage, or even imagine, than anyone had dreamt.

Here was the dilemma: The defeated Confederacy was gone, but the Southern white population was by no means reconciled to the loss of either the war or slavery. The 3.9 million black slaves in the South might be free, but the Southern states believed they could set rules for the future that would lock Southern blacks, if not into actual slavery, then into a peonage very like it.

And what could the victorious federal government do about it?

The Constitution contains no directions on how to conduct a civil war, much less what to do afterward. The Constitution contained language (in Article 4) about securing the "Privileges and Immunities of Citizens," but this was usually understood as requiring each state to grant to citizens of other states the same rights it granted its own residents. It said nothing about what those rights were, or whether the federal government had any enforcement power. It wasn't even clear what was meant by *citizens*.

The defeated Southerners took shameless advantage of this. They promptly elected to Congress former Confederate generals and politicians, talked freely about making the federal government pick up the tab for the Confederacy's war debt, and, far from extending any "privileges and immunities of Citizens" to the freed slaves, they erupted into two massive and bloody race riots in New Orleans and Memphis.

No one had ever written a handbook about how to manage a reconstruction, so if the ensuing 12 years of what we call Reconstruction (1866-1877) look as if no one had a clear idea of how to subdue Southern truculence, the truth is no one did. No wonder that after 1877, exhausted Northerners simply gave up, and let Southerners impose a regime of racial apartheid that survived until after World War II.

Yet every losing season has its victories, and Reconstruction's most important victory - and its longest reach to our own times - came in the form of the 14th Amendment.

The hinge on which everything in Reconstruction would turn was the question of what the Constitution meant by *citizens*. There are four vague references to citizens in the Constitution, but no definition.

In 1857, the Supreme Court tried to impose a definition of citizenship in the infamous Dred Scott decision, denying that black people, by virtue of African descent, could be citizens. This was good news to Southerners after the Civil War, since it meant that no Southern state was obligated to give freed blacks the vote, the right to sit on juries, or give testimony in court.

The 14th Amendment, drafted in large measure by John Bingham, a Republican congressman from Ohio, in 1866, opened a path around Reconstruction's obstacles.

First, it finally provided a constitutional definition for citizenship: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." No matter what their race, language, or parents might be, being born on United States soil made you a citizen - something which very plainly included the former slaves.

Second, the "privileges or immunities" of citizenship were spelled out as security of "life, liberty, or property," the "due process of law," and "the equal protection of the laws." No longer could state authorities insist that the federal government had no power to intervene on behalf of the victims of political violence.

Third, any state that tried to deny U.S. citizens the right to vote in federal elections would lose its representation in Congress.

Finally, no Confederate official could "hold any office, civil or military" without a two-thirds approval from Congress, and under no circumstances would the federal government "assume or pay any" of the Confederacy's debt.

Other amendments to the Constitution are more famous than the 14th - the 10 amendments that make up the Bill of Rights; the 13th, which abolished slavery; the 19th, which guaranteed women's voting rights. But the 14th, with its language of "equal protection" and "due process" has been the foundation of some of the most important civil liberties debates of our times, from *Brown v. Board of Education* to race quotas in college admissions. It has been shrunken to limit its application strictly to federal actions, and inflated to justify sweeping federal powers. But no one can deny the 14th Amendment's profound significance.

Whatever else Reconstruction did wrong, it did this right.

Allen C. Guelzo will be among the panelists discussing "The History and Legacy of the 14th Amendment" at 6:30 p.m. Tuesday at the National Constitution Center. To register, call 215-409-6700 or visit constitutioncenter.org/debate.

http://articles.philly.com/2016-05-09/news/72935725_1_confederacy-14th-amendment-slavery