There is No "Fourteenth Amendment"!

by
David Lawrence

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A MISTAKEN BELIEF -- that there is a valid article in the Constitution known as the "Fourteenth Amendment" --is responsible for the Supreme Court decision of 1954 and the ensuing controversy over desegregation in the public schools of America. No such amendment was ever legally ratified by three fourths of the States of the Union as required by the Constitution itself. The so-called "Fourteenth Amendment" was dubiously proclaimed by the Secretary of State on July 20, 1868. The President shared that doubt. There were 37 States in the Union at the time, so ratification by at least 28 was necessary to make the amendment an integral part of the Constitution. Actually, only 21 States legally ratified it. So it failed of ratification.

The undisputed record, attested by official journals and the unanimous writings of historians, establishes these events as occurring in 1867 and 1868:

1. Outside the South, six States -- New Jersey, Ohio, Kentucky, California, Delaware and Maryland – failed to ratify the proposed amendment.

2. In the South, ten States -- Texas, Arkansas, Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi and Louisiana -- by formal action of their legislatures, rejected it under the normal processes of civil law.

3. A total of 16 legislatures out of 37 failed legally to ratify the "Fourteenth Amendment."

4. Congress -- which had deprived the Southern States of their seats in the Senate -- did not lawfully pass the resolution of submission in the first instance.

5. The Southern States which had rejected the amendment were coerced by a federal statute passed in 1867 that took away the right to vote or hold office from all citizens who had served in the Confederate Army. Military governors were appointed and instructed to prepare the roll of voters. All this happened in spite of the presidential proclamation of amnesty previously issued by the President. New legislatures were thereupon chosen and forced to "ratify" under penalty of continued exile from the Union. In Louisiana, a General sent down from the North presided over the State legislature.

6. Abraham Lincoln had declared many times that the Union was "inseparable" and "indivisible." After his death, and when the war was over, the ratification by the Southern States of the Thirteenth Amendment, abolishing slavery, had been accepted as legal. But

Congress in the 1867 law imposed the specific conditions under which the Southern States would be "entitled to representation in Congress."

7. Congress, in passing the 1867 law that declared the Southern States could not have their seats in either the Senate or House in the next session unless they ratified the "Fourteenth Amendment," took an unprecedented step. No such right -- to compel a State by an act of Congress to ratify a constitutional amendment -- is to be found anywhere in the Constitution. Nor has this procedure ever been sanctioned by the Supreme Court of the United States.

8. President Andrew Johnson publicly denounced this law as unconstitutional. But it was passed over his veto.

9. Secretary of State Seward was on the spot in July 1868 when the various "ratifications" of a spurious nature were placed before him. The legislatures of Ohio and New Jersey had notified him that they rescinded their earlier action of ratification. He said in his official proclamation that he was not authorized as Secretary of State "to determine and decide doubtful questions as to the authenticity of the organization of State legislatures or as to the power of any State legislature to recall a previous act or resolution of ratification." He added that the amendment was valid "if the resolutions of the legislatures of Ohio and New Jersey, ratifying the aforesaid amendment, are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of these States." This was a very big "if." It will be noted that the real issue, therefore, is not only whether the forced "ratification" by the ten Southern States was lawful, but whether the withdrawal by the legislatures of Ohio and New Jersey - - two Northern States -- was legal. The right of a State, by action of its legislature, to change its mind at any time before the final proclamation of ratification is issued by the Secretary of State has been confirmed in connection with other constitutional amendments.

10. The Oregon Legislature in October 1868 -- three months after the Secretary's proclamation was issued -- passed a rescinding resolution, which argued that the "Fourteenth Amendment" had not been ratified by three fourths of the States and that the "ratifications" in the Southern States were "usurpations, unconstitutional, revolutionary and void" and that, "until such ratification is completed, any State has a right to withdraw its assent to any proposed amendment."

What do the historians say about all this? The Encyclopedia Americana states:

> "Reconstruction added humiliation to suffering.... Eight years of crime, fraud, and corruption followed and it was State legislatures composed of Negroes, carpetbaggers and scalawags who obeyed the orders of the generals and ratified the amendment."

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W. E. Woodward, in his famous work, "A New American History?" published in 1936, says:

> "To get a clear idea of the succession of events let us review [President Andrew] Johnson's actions in respect to the ex-Confederate States.
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> "In May, 1865, he issued a Proclamation of Amnesty to former rebels. Then he established provisional governments in all the Southern States. They were instructed to call Constitutional Conventions. They did. New State governments were elected. White men only had the suffrage the Fifteenth Amendment establishing equal voting rights had not yet been passed]. Senators and Representatives were chosen, but when they appeared at the opening of Congress they were refused admission. The State governments, however, continued to function during 1866.
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> "Now we are in 1867. In the early days of that year [Thaddeus] Stevens brought in, as chairman of the House Reconstruction Committee, a bill that proposed to sweep all the Southern State governments into the wastebasket. The South was to be put under military rule.
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> "The bill passed. It was vetoed by Johnson and passed again over his veto. In the Senate it was amended in such fashion that any State could escape from military rule and be restored to its full rights by ratifying the Fourteenth Amendment and admitting black as well as white men to the polls."

In challenging its constitutionality, President Andrew Johnson said in his veto message:

> "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 of 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."
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> Many historians have applauded Johnson's words. Samuel Eliot Morison and Henry Steele Commager, known today as "liberals," wrote in their book, "The Growth of the American Republic": "Johnson returned the bill with a scorching message arguing the unconstitutionality of the whole thing, and most impartial students have agreed with his reasoning."

James Truslow Adams, another noted historian, writes in his "History of the United States":

> "The Supreme Court had decided three months earlier, in the Milligan case, ... that military courts were unconstitutional except under such war conditions as might make the operation of civil courts impossible, but the President pointed out in vain that practically the whole of the new legislation was unconstitutional. ... There was even talk in Congress of impeaching the Supreme Court for its decisions! The legislature had run amok and was threatening both the Executive and the Judiciary."
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> Actually, President Johnson was impeached, but the move failed by one vote in the Senate.

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The Supreme Court, in case after case, refused to pass on the illegal activities involved in "ratification." It said simply that they were acts of the "political departments of the Government." This, of course, was a convenient device of avoidance. The Court has adhered to that position ever since Reconstruction Days.

Andrew C. McLaughlin, whose "Constitutional History of the United States" is a standard work, writes:

> "Can a State which is not a State and not recognized as such by Congress, perform the supreme duty of ratifying an amendment to the fundamental law? Or does a State -- by congressional thinking – cease to be a State for some purposes but not for others?"
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> This is the tragic history of the so-called "Fourteenth Amendment" -- a record that is a disgrace to free government and a "government of law."

Isn't the use of military force to override local government what we deplored in Hungary?

It is never too late to correct injustice. The people of America should have an opportunity to pass on an amendment to the Constitution that sets forth the right of the Federal Government to control education and regulate attendance at public schools either with federal power alone or concurrently with the States.

That's the honest way, the just way to deal with the problem of segregation or integration in the schools. Until such an amendment is adopted, the "Fourteenth Amendment" should be considered as null and void.

There is only one supreme tribunal -- it is the people themselves. Their sovereign will is expressed through the procedures set forth in the Constitution itself.

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