

CONSTITUTION 101

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

JACOB HOWARD, SPEECH INTRODUCING THE 14TH AMENDMENT TO THE SENATE (1866)

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SUMMARY

Michigan Senator Jacob Howard was a leading Republican in the Reconstruction Congress. He helped draft and pass the 13th Amendment, abolishing slavery. He also served on the Joint Committee on Reconstruction and supported the Civil Rights Act of 1866—our nation's first major civil right law. Most importantly, when Senator William Pitt Fessenden, Chair of the Joint Committee on Reconstruction, fell ill, Howard took over as the chief spokesperson for the 14th Amendment in the Senate. In this new role, Howard introduced this transformational amendment before a packed Senate gallery on May 23, 1866. His speech was published on the front pages of various newspapers, including *The New York Times* and *The New York Herald*. In his speech, he offered a powerful vision of nationally protected rights—drawing on Justice Bushrod Washington's influential circuit court opinion in *Corfield v. Coryell* (1823) and exploring the “privileges or immunities” of U.S. citizenship that the new amendment would protect against abuses by the states. As Howard argued, these “privileges or immunities” of U.S. citizenship included key liberties enshrined in the Bill of Rights. While the original Bill of Rights only applied to abuses by the national government, Howard explained that the 14th Amendment would extend those protections to cover state abuses.

Excerpt

Congress tasked the Joint Committee on Reconstruction with studying the conditions in the ex-Confederate states and recommending policies to address them. The joint resolution creating [the Joint Committee on Reconstruction] intrusted them with a very important inquiry, an inquiry involving a vast deal of attention and labor. They were instructed to inquire into the condition of the insurgent States, and authorized to report by bill or otherwise at their discretion. . . .

Section 1 of the Fourteenth Amendment addresses abuses by the states. It will be observed that [the Fourteenth Amendment's Privileges or Immunities Clause] is a general prohibition upon all the States, as such, from abridging the privileges and immunities of the citizens of the United States. That is its first clause, and I regard it as very important. It also prohibits each one of the States from depriving any person of life, liberty, or property without due process of law, or denying to any person within the jurisdiction of State the equal protection of its laws.

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The Fourteenth Amendment protects key rights against state abuses; it shares some language with Article IV of the Constitution. The first clause of this section relates to the privileges and immunities of citizens of the *United States* as such [T]o put the citizens of the several States on an equality with each other as to all fundamental rights, a clause was introduced in the Constitution [Article IV] declaring that “the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.” . . .

To understand the rights protected under the Fourteenth Amendment, we might look to how similar language in Article IV has been interpreted over time; the Supreme Court hasn't set out an authoritative interpretation of this part of the Constitution; Justice Bushrod Washington offered the most famous interpretation of Article IV in a lower-court decision called *Corfield v. Coryell*. It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States. . . . I am not aware that the Supreme Court have ever undertaken to define either the nature or extent of the privileges and immunities thus guaranteed. . . . But we may gather some intimation of what probably will be the opinion of the judiciary by returning to a case adjudged many years ago in one of the circuit courts of the United States by Judge Bushrod Washington of the Supreme Court; and I will trouble the Senate but for a moment by reading what the very learned and excellent judge says about these privileges and immunities of the citizens of each State in the several States. It is the case of *Corfield v. Coryell*.

In *Corfield v. Coryell*, Justice Washington concluded that Article IV covered a range of important rights. Judge Washington says: “The next question is, whether this act infringes that section of the constitution which declares that ‘the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?’ The inquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which



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are clearly embraced by the general description of privileges deemed to be fundamental: to which may be added, the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each state, in every other state, was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old articles of confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different states of the Union.'"

These "privileges" and "immunities" also include the key rights enshrined in the Bill of Rights' first eight amendments. Such is the character of the privileges and immunities spoken of in the section of the fourth article of the Constitution. To these privileges and immunities, whatever they may be—for they are not and cannot be fully defined in their entire extent and precise nature—to these should be added the personal rights guaranteed and secured by the first eight amendments of the Constitution; such as the freedom of speech and of the press; the right of the people peaceably to assemble and petition the Government for a redress of grievances; a right appertaining to each and all of the people; the right to keep and to bear arms; the right to be exempted from the quartering of soldiers in a house without consent of the owner; the right to be exempt from unreasonable searches and seizures, and from any search or seizure except by virtue of a warrant issued upon a formal oath or affidavit; the right of an accused person to be informed of the nature of the accusation against him, and his right to be tried by an impartial jury of the vicinage; and also the right to be secure against excessive bail and against cruel and unusual punishments. . . .

As originally ratified, the Bill of Rights did not apply to the states, and Congress had no power to enforce its key protects; so, the states could violate these rights with impunity; the Fourteenth Amendment was designed, in part, to check the states when they abuse these key rights; in other words, it applies important rights like those in the Bill of Rights to abuses by the states; and the Fourteenth Amendment's Enforcement Clause (Section 5) grants Congress new power to pass laws to enforce these protections. Now, sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. They are not powers granted by the Constitution to Congress, and of course do not come within the sweeping clause of the Constitution authorizing Congress to pass all laws necessary and proper for carrying out the foregoing or granted powers, but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered year to year. The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. How will it be done under the present amendment? As I have remarked, they are not powers granted to Congress, and therefore it is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that

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additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that “the Congress shall have power to enforce by appropriate legislation the provisions of this article.” Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution.

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

