



Line by Line: A Journal of Beginning Student Writing

Volume 10 | Issue 1

Article 3

December 2023

The Amendments that Mended America

Julia Redder
University of Dayton

Follow this and additional works at: <https://ecommons.udayton.edu/lxl>

Recommended Citation

Redder, Julia (2023) "The Amendments that Mended America," *Line by Line: A Journal of Beginning Student Writing*: Vol. 10: Iss. 1, Article 3.

Available at: <https://ecommons.udayton.edu/lxl/vol10/iss1/3>

This Article is brought to you for free and open access by the Department of English at eCommons. It has been accepted for inclusion in Line by Line: A Journal of Beginning Student Writing by an authorized editor of eCommons. For more information, please contact mschlangen1@udayton.edu, ecommons@udayton.edu.

The Amendments that Mended America

Writing Process

After reading Eric Foner's *A Short History of Reconstruction*, I began gathering sources about the Reconstruction amendments: the Thirteenth, Fourteenth, and Fifteenth. I collected sources that covered a large span of history and was able to construct my analysis of the Reconstruction amendments and how different interpretations changed throughout time.

Course

ASI120

Semester

Spring

Instructor

Dr. Elizabeth Mackay

Year

2023

The Amendments that Mended America

Julia Redder

This historiography examines interpretations of the Constitutional Amendments passed during the Reconstruction era. Between the years of 1863 and 1877, three amendments were ratified to aid the rebuilding of postwar America. This is significant because the Thirteenth, Fourteenth, and Fifteenth Amendments helped establish foundations for the rights and citizenship of formerly enslaved people following their emancipation. They set the legal groundwork to defend black Americans against the abundance of civil rights violations burdening them in the years that followed. Utilizing texts from throughout the early 1900s until modern times, I have gathered several sources analyzing the three Reconstruction amendments. I divide and organize these sources into two subsections: “Historical Context” and “Early Shortcomings or Consequences of These Amendments.” In the first section, different texts offer context for them from unique perspectives, allowing me to more deeply examine the amendments and their impact on Reconstruction as a whole. The second subsection refers to the challenges of enforcing them, as well as reasons why Reconstruction failed to establish the fullest extent of change in American society; this revolution would be finalized almost a century later during the Civil Rights Movement. Overall, these sources all illuminate the amendments in different ways, showing how they both enshrined rights and ideas central to the United States and challenged efforts to mend the nation. A closer analysis of these sources reveals that the best interpretation is Category II. Its examination of the early shortcomings and consequences of the amendments offers the most nuanced and critical consideration of the Reconstruction amendments.

Category I: Historical Context for Amendments

Although I do not find this to be the most effective category in this historiography, these sources provide important historical context for the amendments. The first source in this category is Claude Bowers’s scholarly work

titled *The Tragic Era: The Revolution after Lincoln* in which he writes extensively on the Reconstruction era.¹ For the purpose of this historiography, I focus on Section VI, which contains his discussion of the Fourteenth Amendment in its early stages of proposal. Thaddeus Stevens, a congressman and Radical Republican, introduced what would eventually become the Fourteenth Amendment. His proposal included a section requiring the disenfranchisement of Confederate supporters up until 1870, which would have eliminated most southerners from the ballot. For Stevens, this was the more lenient adaptation; according to Bowers, he originally wanted the exclusion to last until 1876 and include local, state, and national elections. Bowers argues that Stephens faced many criticisms for his proposal and its harsh punishment on the South. Congress instead accepted a more moderate representative's section: Confederates were banned from holding national office. The amendment was eventually passed by Congress and added to the Constitution, but not without the apparent disapproval of President Andrew Johnson. Bowers focuses much of his writing on individuals and how their actions affected Reconstruction. His book attributes credit to representatives, politicians, and other actors that influence the amendments and era, which provides this historiography with additional context for the amendment, as well as to the people behind it. It also helps illuminate what this amendment could have been, compared to what it is. Although it is a useful source for providing history of the Fourteenth Amendment, Bowers's work does not go into extensive details about its effects or consequences.

The second source in this interpretive category is Herman Ames's book, in which he describes the history of the amendments to the Constitution in the earlier years of the United States.² In Sections 123-131, he closely examines the Thirteenth, Fourteenth, and Fifteenth Amendments, providing crucial information on their foundations. After the passage of the Thirteenth Amendment, Ames writes that "the conflict over the status of the negro was by no means ended when he became free."³ He introduces the need for the Fourteenth Amendment, which emerged over questions regarding the citizenship and rights afforded to African Americans. These unresolved conflicts over the status of black society led to the passage of both the Fourteenth and Fifteenth Amendments after 1865. The Fourteenth Amendment also marks the birth of the Equal Protection and Due Process clauses, which made great strides for expanding the civil liberties of America as a whole, in addition to advancing the status of black people during

¹ Claude G. Bowers, *The Tragic Era: The Revolution after Lincoln* (Cambridge: Houghton Mifflin Company, 1929), 112-115.

² Herman V. Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of Its History* (New York: Central Book Co., 1968), 218.

³ Ames, 218.

and after Reconstruction. Ames also writes about the most influential people in the drafting and amending process, namely Radical Republican representative Thaddeus Stevens. Not only does Ames describe the history of the amendments, but he also examines their influence on Reconstruction. He relies on congressional records and the actual text of the amendments to support his interpretations. This source is useful due to his explanations of these three amendments and their immediate impacts on American society; however, it does not deliver the nuanced and critical view that other sources, especially those discussed below, do.

This category's next source is written by Eric Foner, a distinguished scholar of Reconstruction history.⁴ Foner examines abolition movements, specifically in the antebellum era, to provide essential context for the Reconstruction amendments. Conflicts over slavery additionally raised questions that challenged traditional definitions of ideas such as citizenship, personal liberty, and "Americanness." Foner writes that abolitionists should be credited for their early ideas that would later become enshrined in the Constitution after the war, including the emphasis on citizenship determined by birthplace (i.e., African Americans being considered Americans, a contradiction to the *Dred Scott* ruling). They also defined the rights possessed by *all* Americans and established the concept of equality before the law for all races, in addition to pioneering the idea that the national government could enforce freedom, not only take it away. Foner additionally credits formerly enslaved people and black soldiers, whose influence he claims many historians neglect, for their impact on the issues addressed by the three amendments, which is a different perspective from what other sources offer. After describing these contributions, Foner summarizes the significance of the amendments: "[They] transformed the Constitution from a document primarily concerned with federal-state relations... into a vehicle through which members of vulnerable minorities could stake a claim to substantive freedom."⁵ Foner relies on many Supreme Court cases and writings by other historians for evidence, in addition to some of his own previous publications. This article is valuable because it describes the amendments' roots in the antebellum era and the influence they had on legal and civil views on American society. This context is useful; however, he does not assess their flaws. Foner's analysis focuses on the framework of the creation of the amendments and the early impact they had, but he does not examine their effects to the extent that other sources do.

⁴ Eric Foner, "The Strange Career of the Reconstruction Amendments," *The Yale Law Journal* 108, no. 8 (1999), 2003–9. <https://doi.org/10.2307/797380>.e

⁵ Foner, 2006.

In the final source in this category, Lucy and Charles Zeier describe the history of the ratifications of the three Reconstruction amendments, specifically examining the role that Tennessee plays in their passage.⁶ The Thirteenth Amendment was first introduced by President Abraham Lincoln during his presidency in 1863. In 1865, it passed relatively easily and was added to the Constitution. Zeier and Zeier write that the Fourteenth Amendment, however, unleashed a multitude of political, legal, and social conflicts. It was proposed by the Republican Congress to permanently enshrine the contents of the Civil Rights Act of 1866 in the Constitution. It broadly defined what citizenship meant; African Americans were now considered American in the language of the Constitution. Like Foner, then, Zeier and Zeier explain that this additionally nullified the notorious *Dred Scott* ruling. A section of the Fourteenth Amendment disenfranchised Confederates, another spark that ignited violence and chaos in Tennessee. In order to be readmitted into the Union, southern states had to ratify these amendments. This sense of forced ratification and lack of representation, the Zeiers suggest, combined with the exclusion of Confederates from the ballot, raised questions over the validity of its passage. Despite these doubts and the resistance of Tennessee Confederates, their approval of this amendment reestablished them as a state. The authors' focus on one specific state gives a new and enlightening perspective to the ratification and implementation of the amendments. Additionally, they write about Tennessee's Republican governor Brownlow during the early years of Reconstruction and his contribution to it. This source relies on historical evidence and records to illustrate the struggles of Reconstruction and the role these amendments played. By narrowing their focus on Tennessee, it allows Zeier and Zeier to conduct a more comprehensive study of the amendments. This is a valuable analysis; however, for the purpose of this historiography, its limited view does not give the nuanced examination that other sources do.

Category II: Early Shortcomings or Consequences of Amendments

Category II contains the best interpretations of the Reconstruction amendments because by analyzing the shortcomings and consequences that they had on the legal, political, and social state of America, these sources illuminate the amendments in a unique and nuanced way. The first source in this category is the law review titled "Irresponsible Government by Constitutional Amendment."⁷

⁶ Lucy Dunaway Zeier and Charles D. Zeier, "Tumultuous Times: Tennessee's Passage of the Reconstruction Amendments to the U.S. Constitution," *Tennessee Historical Quarterly* 73, no. 2 (2014), 90–115, <http://www.jstor.org/stable/43746589>.

⁷ George Stewart Brown, "Irresponsible Government by Constitutional Amendment," *Virginia Law Review* 8, no. 3 (1921-1922), 157-166.

Written in 1921, George Brown provides commentary about the recent passage of the Nineteenth Amendment, which granted universal suffrage to women in the United States. Although that amendment was not a product of Reconstruction, Brown uses the Reconstruction amendments, specifically the Fifteenth, as a comparison for his analysis. His examination of the Nineteenth Amendment focuses on the perspective that the federal government, by forcing women's suffrage upon state and local districts, was overstepping its boundaries and impeding on the sovereignty of states. Brown introduces the amendments passed during Reconstruction as a comparison: "the sole sanction for these three reconstruction amendments rests on revolution, force under the war power. ... [O]f these, the Fifteenth is a model for, and claimed to be a conclusive precedent for the legality of, the Nineteenth."⁸ He emphasizes the importance that the political and historical context of Reconstruction played on the passage of those three amendments. The turmoil of postwar America required the national government to usurp greater power to sustain the Union, which allowed the three amendments to pass. As Brown writes in a time of significantly more stability, he questions the authority of the federal government to impose suffrage upon states. This provides a unique and enlightening interpretation of the amendments passed during the Reconstruction era, unlike the previous sources. Brown's comparison illuminates the actions of the federal government and the circumstances surrounding the ratification of the amendments. He utilizes legal interpretations and court cases as evidence to support his interpretations. Thus, Brown's parallel between the Fifteenth and Nineteenth Amendments is an example of how these sources positively contribute to the historiography by giving a more nuanced analysis of the amendments.

The second source in this category was written by the historian Joseph James, in which he analyzes the questionable proceedings that led to the ratification of the Fourteenth Amendment.⁹ Although it is a moot point due to the many legal and civil foundations rooted in the amendment and the solidified acceptance of it, he still writes that understanding its history is important, especially when studying the Reconstruction era. James first describes the amendment and its most essential parts, including the Due Process and Equal Protection clauses and the role it played in establishing citizenship and rights for African Americans. The Fourteenth Amendment underwent an unusual ratification process due to the unstable political nature of postwar America. Some southern states that had seceded from the Union were operating under federal military rule; six of them

⁸ Brown, 158.

⁹ Joseph B. James, "Is the Fourteenth Amendment Constitutional?" *Social Science* 50, no. 1 (1975), 3–9, <http://www.jstor.org/stable/41959713>.

approved the amendment. James writes that, during the time of political uncertainty, 30 out of the 37 recognized states were counted as ratifying the Fourteenth Amendment, but the validity of the approval was questioned for 10 of those states.¹⁰ The qualifications of some of those approving states were challenged by opponents of the amendment, thus putting its constitutionality in question. James uses several congressional sources, as well as historiographical writings on Reconstruction as evidence for this article, including a few that I have included in this historiography. These provide James's writing with credible evidence and analyses, making this more successful than the sources in Category I. This article contributes an additional layer of context to the Fourteenth Amendment from an alternative view. Addressing the constitutionality of such a widely accepted amendment, despite its controversy in its beginning, brings a unique perspective and critical examination to this analysis that shows the effectiveness of this source.

For this category's next source, Michael Vorenberg challenges the argument that broader language in the Reconstruction amendments would have made a significant difference in the effectiveness of that era.¹¹ Many historians identify the Constitution, including its amendments, as a main obstacle preventing African Americans from achieving a fuller extent of civil rights in the following 100 years. Vorenberg begins by establishing context for the limited language in the amendments; they stated what the government could not do, rather than using broader, more inclusive words. For example, the federal or state governments could *not* deny the right to vote on the basis of race, as opposed to the alternative proposal: granting all citizens the same rights, privileges, and equal protection.¹² The latter phrasing leaves more room for interpretation, which traditional historians argue would have better secured rights and protections, specifically for black Americans during Reconstruction. Despite this, he writes that "developments, some deeply rooted in American legal culture and some the unintended consequences of the Civil War, combined to counteract or undermine the potential for far-reaching change that *any* change of the constitutional text might have made."¹³ Vorenberg attributes these developments to the renewal of judicial power instead of legislative committee hearings, explaining that while congressional hearings would have analyzed the text and origins of the amendments, federal courts would have not, due to the nineteenth century tradition of separating politics and judicial doctrine. This, according to

¹⁰ James, 4.

¹¹ Michael Vorenberg, "Imagining a Different Reconstruction Constitution," *Civil War History* 51, no. 4 (2005), 416-426, <https://doi.org/10.1353/cwh.2005.0069>.

¹² Vorenberg, 417.

¹³ Vorenberg, 418.

Vorenberg, dismisses the claim that the mere language of the amendments would have been enough to guarantee civil and political liberties to African Americans, which is a perspective that differs from other sources. Throughout this article, he cites historical interpretations and landmark court cases to support his argument. Vorenberg presents an interesting interpretation of these three amendments in their historical context, which are valuable to this historiography. His counterfactual approach illuminates the amendments in a new way that shows a more nuanced interpretation of Reconstruction.

Finally, in this last source in Category II, Brandwein describes the “new political history” of the Reconstruction era, offering her dissent from traditional historian interpretations.¹⁴ She describes the conventional legal-historical view; that 1877 marked the end of Reconstruction due to the Supreme Court’s use of the “state action” doctrine, which originated in the amendment language. The state action doctrine refers to the idea that the Fourteenth and Fifteenth Amendments only protect people’s rights from government infringement, preventing the federal government from punishing violent acts of white supremacy. Brandwein argues that the Republicans in power did not abandon Reconstruction policies in 1877 but persisted with efforts to protect black rights. Reasons for the supposed decline of Reconstruction policies include the Panic of 1873, economic depression, and subsequent loss of Republican power in Congress. As the article title suggests, Brandwein also writes about a lost jurisprudence of rights and Reconstruction. She breaks it down into three elements, but it overall protected rights and suffrage for blacks, as well as their physical safety. Brandwein examines this lost jurisprudence and summarizes her arguments about the death of Reconstruction, attributing it to factors such as extreme white supremacist violence, economic depression, and political inadequacies, but concludes by emphasizing her disagreement with the conventional view; state action doctrine restricting the federal government was *not* a reason for its end. Brandwein cites judicial rulings to illustrate the social and political consequences of these elements while arguing her legal interpretation. This is useful regarding the effectiveness and enforcement of the amendments by analyzing it from a new perspective—one that differs from the other sources. Brandwein’s disagreement with traditional historical interpretations makes this source more successful by illuminating a more critical examination of the amendments and their role in the social consequences of Reconstruction.

In conclusion, the sources that describe the early shortcomings or consequences of the Reconstruction amendments are the best and most effective

¹⁴ Pamela Brandwein, “A Lost Jurisprudence of the Reconstruction Amendments,” *Journal of Supreme Court History* 41, no. 3 (2016), 329–46.

interpretive category. Since they analyze the flaws or failures of the amendments, and not only their context or ratification, the sources in Category II offer the most nuanced and critical interpretations. These sources are especially important because in order to fully understand Reconstruction, one must consider many factors and circumstances surrounding the amendments. These three amendments are more than just legal documents; the language, loopholes, enforcement, and interpretations all have substantial consequences on the social and political status of the United States, especially during the turmoil of that postwar period. Furthermore, the amendments may have established some protections for black Americans after the Civil War, but they still faced many significant social and legal challenges that would persist throughout the following century leading up to the Civil Rights movement. The significance of these amendments is obvious for the study of Reconstruction, but they are also essential when looking at the political implications and the development of race relations up to the present day.

Bibliography

- Ames, Herman Vandenburg. *The Proposed Amendments to the Constitution of the United States during the First Century of Its History*. New York: Central Book Co., 1968.
- Bowers, Claude G. *The Tragic Era: The Revolution after Lincoln*. Cambridge: Houghton Mifflin Company, 1929.
- Brandwein, Pamela. "A Lost Jurisprudence of the Reconstruction Amendments." *Journal of Supreme Court History* 41, no.3 (2016): 329–46.
- Brown, George Stewart. "Irresponsible Government by Constitutional Amendment," *Virginia Law Review* 8, no. 3 (1921-1922): 157-166.
- Foner, Eric. "The Strange Career of the Reconstruction Amendments." *The Yale Law Journal* 108, no. 8 (1999): 2003–9. <https://doi.org/10.2307/797380>.
- James, Joseph B. "Is the Fourteenth Amendment Constitutional?" *Social Science* 50, no. 1 (1975): 3–9. <http://www.jstor.org/stable/41959713>.
- Vorenberg, Michael. "Imagining a Different Reconstruction Constitution." *Civil War History* 51, no. 4 (2005): 416-426. <https://doi.org/10.1353/cwh.2005.0069>.

Zeier, Lucy Dunaway, and Charles D. Zeier. "Tumultuous Times: Tennessee's Passage of the Reconstruction Amendments to the U.S. Constitution."

Tennessee Historical Quarterly 73, no. 2 (2014): 90–115.

<http://www.jstor.org/stable/43746589>.