

A Twist in History

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DEMOCRACY REBORN: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America

By Garrett Epps

Henry Holt. 333 pp. \$27.50

The 14th Amendment was "by far the most sweeping and complex change ever made in the original Constitution," argues Garrett Epps in this valuable history of the amendment's adoption. Over time, he writes, it has "changed almost every detail of our national life." A University of Oregon law professor and former Washington Post reporter who has published two novels, Epps brings crisp writing to a story whose political complexities and obscure cast of characters pose tall hurdles for any popular history.

Epps appreciates and tries to take advantage of the difficulty. Recent bestselling books on the founders have created a misleading historical imbalance, he explains, because the due process and equal protection clauses -- nowadays the 14th Amendment's two most important provisions -- suggest that "the source of our rights is not Philadelphia 1787 but Washington 1866." He laments that "many literate Americans understand the original Framers and their world, but know virtually nothing of the second framers," his term for the men who brought forth the trio of post-Civil War constitutional amendments.

"Democracy Reborn" is a major effort to redress that imbalance in attention paid to the founders and their heirs. Epps begins his story just after Andrew Johnson succeeded the assassinated Abraham Lincoln as president, and Epps's portrayal of Johnson is devastating. Congress had already sent the 13th Amendment, which abolished slavery, to the states for ratification, but huge challenges loomed. "If Johnson had possessed some shred of Lincoln's skill and flexibility, the history of Reconstruction might have been very different," he writes. Instead, "the accidental president" proved himself "profoundly wrongheaded and politically inept" as the nation undertook the Herculean tasks of readmitting the defeated Southern states into the union and protecting the newly freed slaves.

Most present-day readers may not appreciate just how profoundly different the post-Civil War world was from today's America. The Constitution of 1787 embodied the original framers' view that representation was "something that a small body of voters did for the larger body of citizens," and "even in the north, most states did not allow black men to vote." In addition, anyone seeking to understand the post-Civil War debates over the terms of reunification must realize that familiar words and phrases -- even "civil rights" -- often had quite different meanings in 1866.

Epps's greatest challenge is to depict the congressional figures who bested the obstinate Johnson by enacting measures that began to establish true legal equality for persons of color. Johnson rejected "the idea that black people -- or any nonwhite Americans -- were really citizens of the United States." But many members of Congress disagreed. The best-known is Massachusetts Sen. Charles Sumner, an important prewar opponent of slavery, but he contributed little to the 14th Amendment's final form. Similarly, Pennsylvania Rep. Thaddeus Stevens was probably Congress's most influential member, but Epps acknowledges that he too "contributed little to the specifics of the new design."

Those obstacles make it difficult to cast either man as a memorable figure, but Epps also features two fascinating immigrants who influenced the wider political debate without holding office at the time. Carl Schurz, a politically savvy German-born Union Army veteran, toured the South after the war and warned that, military defeat notwithstanding, white Southerners intended "to preserve slavery in its original form as much and as long as possible" or instead to employ some other form of "physical compulsion which would make the negro work." Robert Dale Owen, a Scottish-born social reformer who helped found the Smithsonian Institution, impressed Stevens with the draft of an amendment to grant black voting rights and limit white Southerners' political power.

Epps calls Owen's handiwork "the mother document" of the eventual 14th Amendment, but as Stevens pushed the process forward, an amendment introduced by Ohio Rep. John Bingham added the most crucial language: the due process and equal protection clauses. Some of Owen's provisions were weakened or deleted -- suffrage for black men was left to the 15th Amendment, which prohibited racial discrimination in voting -- and the twists and turns of the congressional process fully test Epps's narrative skills.

Epps admits that, in its final form, "the new amendment was an ungainly construct" that "promised radical change in the Constitution created by the Framers" by undermining "states' rights," but did so in obscure, "oracular language." He argues that the amendment drastically altered the balance of power between the federal government and the states, and he rues "the inability of contemporary Americans to grasp that their Constitution was changed by the second founders." As an example, he cites the late Chief Justice William H. Rehnquist's declaration in a 2000 majority opinion that "limitations are necessary to prevent the Fourteenth Amendment from obliterating the Framers' carefully crafted balance of power between the States and the National Government." To Epps, changing that balance was exactly what the second framers set out to do.

"Democracy Reborn" ends without recounting the amendment's ratification by the states, the further battles between Johnson and Congress -- including an impeachment that failed to remove him from office -- or how the Supreme Court in the late 19th century prefigured Rehnquist's stance by negating Bingham's key phrases. A reader is left suspecting, and regretting, that Epps's publisher forced him to truncate a richer and more extensive manuscript, but "Democracy Reborn" is nonetheless a stimulating work of history.