

Appendix to the Opinion of the Court

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The reaction of the Northern press to the proposed Fourteenth Amendment was unusual. There was no careful consideration of the meaning of the specific phrases constituting the Amendment's five sections. Instead, editorial comment focused on the broad political implications of the document within the context of an assumed understanding of the term "civil rights."

An examination of editorials in leading newspapers during the period of congressional debate over the Fourteenth Amendment fails to reveal a consensus as to the meaning of that provision. Instead, there were at least three broad views of the intent embodied in the proposal, each of which was closely tied to partisan leaning. The proposed amendment seems to have served as a symbol for many of the divisive issues of the day.

During the winter and spring of 1866, the wartime Union coalition of Republicans and Democrats was beginning to dissolve. President Johnson's vetoes of the Freedman's Bureau bill on February 19, and of the Civil Rights bill on March 27, marked the beginning of an open split within the Union coalition over the meaning of Reconstruction. It is therefore impossible to separate editorial commentary on the import of the proposed Fourteenth Amendment from the broader question of the proper approach to Reconstruction.

An analysis of press commentary is further confounded by the amendment's obscure origin. On April 29 the Joint Committee on Reconstruction (the Committee of Fifteen) reported out to the House a draft of the amendment in its present five section format. Following congressional action it was sent to the states in mid-June (procedural irregularities render the exact date indeterminate). However, each of the sections of the proposal initially had been reported to the House and Senate as independent amendments during January, February and March. Commentary is scarce in May and June because the editorials refer back to positions taken earlier. Commentary in February and

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March on the separate, independent amendments was overshadowed by discussion of the veto override fights with respect to the Freedman's Bureau bill and the Civil Rights bill of 1866. These veto override attempts were momentous; the successful override of the Civil Rights bill veto was reportedly only the second in the history of the nation.¹

During this period the newspapers and journals were openly allied with political factions. The *New York Tribune* and the *Chicago Tribune* were avowedly radical Republican in editorial outlook. The *World* of New York called itself the mouthpiece of the Democratic party and the *New York Times* attempted to defend the Union coalition. The *Nation* considered itself to be the most thoughtful radical Republican journal of the time. Interesting comment from afar was supplied by the *London Times*, whose editors staunchly supported President Johnson and the Democrats, and by the *Idaho Statesman*, which supported the Union coalition.

According to the radical Republican press, the "Reconstruction Amendment"—the five-section May draft—should have been the legal basis for reconstructing the southern states into fitting, permanent members of the Union. It was to be a guarantee that another Civil War would be impossible. These journals felt the draft could not accomplish these objectives; it was a "feeble thing."² At the same time, the Democratic press criticized the proposed amendment as embodying everything that was wrong with radical Republican politics: it was imprecise, it threatened the federal system and it was hypocritical. The Democrats charged that the proposed amendment was part of a radical scheme to establish national political hegemony. The Union, or moderate, press argued that whatever the precise meaning of the proposed amendment, it was interpreted by the Northern populace as a radical document and that it would serve as a rallying point for radical candidates in the forthcoming congressional elections.

1. *Chicago Tribune*, Apr. 7, 1866, at 2, col. 1; *London Times*, Apr. 30, 1866, at 10, col. 1. Although the veto of the Freedman's Bureau bill ignited a controversy between the President and the radicals, it was not until the announcement by Senators Dixon, Hendricks, Norton and Nesmith and Congressmen Randall, Doolittle, Browning and Cowan (all Johnsonites) that they would hold a separate convention apart from the National Union Party Convention that the Union coalition officially split. *N. Y. Tribune*, June 27, 1866, at 4, col. 4. The division which burst into flame in February had been smoldering for a long time: "The political crisis now existing in the United States is not a mere Constitutional struggle between the PRESIDENT and the Legislature. It involves practical questions of vital importance to the future well-being of the Union, and brings to a definite issue the conflicting policies which throughout the war, and even before the war commenced, were contending for mastery in the North." *London Times*, Mar. 10, 1866, at 9, col. 4.

2. *Chicago Tribune*, May 5, 1866, at 2, col. 1.

In the view of the radical Republican press, the proposed amendment in its composite form suffered from most of the defects that each section had suffered in the earlier (January through April), independent form. Bolting the several proposals into a package might even compound the problem. Labeling the proposed amendment a "small affair," an editorial in the *Chicago Tribune* read in part:

The proposition as it stands embraces a reenactment of the Civil Rights law [of 1866] in the form of a constitutional amendment, and a reenactment of the existing test oath in the form of a law of Congress. Both of these provisions are surplusage, and the latter is calculated to irritate the Southern people without producing any corresponding benefit. The provisions relating to the basis of representation and the payment of the rebel war debts, are wise and just, and no reasonable man can object to them.³

The *New York Tribune* was also unenthusiastic:

The Amendment now before the Senate is too complicated and cumbrous. It needs a Philadelphia lawyer to expound and elucidate it. That section which proposes a general disenfranchisement of ex-Rebels till 1870 is (we presume) to be stricken out, as we trust it may be. It will never amount to anything in practice if retained.⁴

The radical press felt trapped. On the one hand, it could not oppose a measure which repudiated the rebel war debt (Section 4) and which limited a state's federal representation according to its denial of the vote to its inhabitants (Section 2). Yet, on the other hand, it saw the Test Oath (Section 3), especially in the harsher House version of the amendment, as politically inopportune. Moreover, it saw nothing in any of the sections which would force a shift in the basis of political power in the South. Finally, the radical press was very sensitive to the Democratic charge that Section 1 of the proposed amendment retroactively ensured the constitutionality of the Civil Rights bill. The Republicans had argued that Section 2 of the Thirteenth Amendment provided Congress with the necessary authority to protect civil rights:⁵ slavery, according to the radical press, constituted discrimination by allowing some men rights denied to others.⁶ The next step in Recon-

3. *Id.*

4. *N. Y. Tribune*, May 28, 1866, at 4, col. 3.

5. *Id.*, Apr. 6, 1866, at 4, col. 4; *Chicago Tribune*, Apr. 12, 1866, at 2, col. 1; 2 NATION 422-23 (1866).

6. See *Chicago Tribune*, Feb. 21, 1866, at 2, col. 1; *id.*, Feb. 28, at 2, col. 1; *N. Y. Tribune*, Jan. 17, 1866, at 4, col. 3; *Id.*, Mar. 1, at 4, col. 3; *Id.*, Apr. 6, 1866, at 4, col. 4: "And if Congress cannot secure to the negro the simple rights guaranteed to him by this [Civil Rights] bill, it cannot in any way enforce the constitutional prohibition of Slavery. A law against murder, which should be construed as excepting throat-cutting, would be as

struction, according to the radicals, should be to provide southern blacks with effective political power—something the Thirteenth Amendment did not do. The continuing theme of the radical Republican press was that the proposed amendment would not provide such political power, thus failing to advance Reconstruction.⁷

The Democratic press agreed that the proposed amendment would not guarantee blacks political power. The one provision directly addressed to this matter was the second section, which would penalize states that refused to grant blacks the suffrage on racial grounds. But this section was so loosely drafted that it would be easy to evade. As early as February 2, the *World* pointed out that the use of a literacy test or the imposition of property qualifications would have the same effect as blatant discrimination, and although effectively barring blacks from voting, either would be constitutional.⁸ Since the proposal would not further the openly stated radical goals, the Democratic press was convinced that it had a hidden purpose.⁹ The *World* was convinced that the Republican leadership had little love for blacks save for the votes they represented.¹⁰ Furthermore, rank and file Republicans were not sophisticated enough to understand their leadership. The *World* stated this clearly in its analysis of the Civil Rights measure:

The Republicans stand for the Civil Rights bill from a rude sense of natural justice. It seems to them that the government having freed the negro, is bound to protect them; that its power to compel their obedience and use them as soldiers, implies a reciprocal obligation to defend them from oppression. With the mass

effective as an interpretation of the great amendment which should authorize Congress to prohibit slavery, but deny to it the power to secure civil rights to the enslaved.”

7. The NATION's kindest editorial on the subject began: “The Committee of Fifteen, after six months of constant labor and anxious thought, have presented their final report to Congress . . . A great majority of that party [Republican] would, we are convinced, prefer that Congress should go further than the committee have ventured to recommend, but they will none the less cordially support the propositions of the committee, so far as they go.” 2 NATION 744 (1866).

8. N. Y. World, Feb. 2, 1866, at 4. Since the Thirteenth Amendment had abolished slavery and thus the three-fifths rule, Southern states would return to Congress with larger delegations than before the war (the ex-slaves being counted as whole persons, not the three-fifths of a person mandated by Article I, Section 2). Republicans felt that something should be done to prevent a state from gaining seats in Congress and the Electoral College on the basis of inhabitants who were systematically denied the franchise. The problem was that the loose wording of the various proposed “Representation Amendments” left loopholes. “It is because the [Representation] amendment settles so little and can be so easily evaded that it is so particularly objectionable.” London Times, Feb. 15, 1866, at 9, col. 5. Universal suffrage was at all times a separate issue.

9. “They [radical leaders] are not so much misguided as designing.” London Times, Jan 5, 1866, at 6, col. 6.

10. N. Y. World, Jan. 24, 1866, at 4.

of Republicans, it is not a question of constitutional right, but of common sense.¹¹

According to the Democrats, the Republican leadership in time of peace was only compounding its wartime constitutional perversions. During the war, the *World* charged that “conscription, arrests without any legal process whatever, the entire overthrow of every guarantee of constitutional liberty, the utter prostration of the judicial power, and the execution of citizens by military commissions” were among Republican crimes.¹² Following the war, the extension of the war powers interpretation of the Constitution into peacetime to justify the occupation of the South and the refusal to admit Southern delegates to Congress were ongoing corruptions.¹³ The *World* charged that the real purpose of the proposed amendment was to keep the South out of the Union, thus keeping Southern electoral votes out of the Electoral College—to prolong disunion. The Republican leadership would do so by cleverly shifting the public blame for disunion to the Southern whites.¹⁴ They could reenter the Union by ratifying the proposed amendment, but in the process they would be voting their own disenfranchisement under Section 3. The *World* predicted that the result of the Amendment would not be an increase in civil rights:

If no more legitimate channel [of political activity] is opened to the Southern politicians, they may weave the whole South into a vast system of affiliated secret societies, into which they could draw a larger proportion of the Southern population than the Fenians have of our Irish population into theirs.¹⁵

The only positive result of the proposed amendment, according to the *World*, was that it was an admission that Reconstruction was beyond the contemporary powers of Congress. Judging the northern population to contain about equal proportions of radical Republicans and Democrats, the decision on Reconstruction would be made by the conservative Republicans,¹⁶ an assessment with which the *New York Tribune* agreed.¹⁷

The moderates during the winter and spring of 1866 were those who still supported the Union coalition, conservative Republicans and a variety of Democrats. In their view, the chief objective of national policy should have been the restoration of political stability. The pro-

11. *Id.*, Apr. 6, 1866, at 4.

12. *Id.*, Mar. 6, 1866, at 4.

13. *Id.*

14. *Id.*, Apr. 30, 1866, at 4.

15. *Id.*, May 5, 1866, at 4.

16. *Id.*, May 21, 1866, at 4; *Id.*, May 30, 1866, at 4.

17. *N. Y. Tribune*, May 29, 1866, at 4, col. 3.

posed amendment in its composite form was to be supported because it was unobjectionable. The *New York Times* stated this viewpoint in phraseology which recalled the previous discussion of the independent amendments:

Four of these amendments met no opposition in the Union ranks. Every member of the Union Party had declared himself in favor of the section guaranteeing an equality of civil rights, of that basing representation on voters, of the one repudiating the rebel debt and of the last giving Congress power to make these amendments effective by legislation.¹⁸

The one objectionable item, Section 3—the disenfranchising of ex-rebels until 1870—was opposed by the *New York Times* because it would prolong unrest and hinder economic recovery in the South. According to the *New York Times*, the composite amendment was no accident; it was the carefully contrived product of Thaddeus Stevens. He was allegedly interested only in the disenfranchisement section and therefore sandwiched Section 3 inside the four unobjectionable sections and ramrodded the package through the House without debate by calling for the previous question (the “gag” law). On this crucial procedural vote, Stevens’ support came from radical Republicans and Democrats, the latter apparently trying to make the proposed amendment as obnoxious to the states as possible.¹⁹ After the Senate modified the harsh language of Section 3, the *New York Times* supported the proposal:

The amendments [the five sections of the Fourteenth] to the Constitution, as they now stand, will not encounter strenuous objection from any quarter. All are willing to submit to the States the question whether they will concede to Congress the power to prevent unequal State legislation touching the civil rights of citizens of the United States.²⁰

This assertion by the *New York Times* on May 31 could have been an accurate assessment of the political status of the proposed amendment only if by “civil rights” the *New York Times* was referring to something other than the month and a half old Civil Rights Act. The

18. N. Y. Times, May 14, 1866, at 4, col. 2. Editorials in the *New York Times* tended to be vitriolic—especially so when the subject was Congressman Thaddeus Stevens. It is misleading to focus on the late April-first week of May editorials before Section 3 was softened in the Senate for the *New York Times’* analysis of civil rights and the Fourteenth Amendment. Once the amendment ceased to be solely the product of Mr. Stevens, the *New York Times* changed its position.

19. *Id.*, May 12, 1866, at 4, col. 3; *Id.*, May 14, 1866, at 4, col. 2-3; see also London Times, May 28, 1866, at 7, col. 4; the *New York World* defense for the Democratic voting behavior which appeared on May 12, 1866, at 4.

20. N. Y. Times, May 31, 1866, at 4, col. 4.

radical Republicans would hardly be willing to submit their hard won veto-override victory to a popular referendum. The Democratic press saw the amendment as a broad challenge to the federal system: It would permit interminable congressional meddling in internal state affairs. In short, the *New York Times* saw the Civil Rights Act and the proposed Fourteenth Amendment as two quite different things. Yet, if "civil rights" meant something more than the recently enacted Civil Rights Act, it is difficult, if not impossible, to define precisely what this crucial term was thought to mean. There simply was no discussion of it in the context of any section of the proposed amendment. The term did acquire a general meaning within the context of the political arguments, but as with the amendment itself, the political context provides three different definitions of "civil rights." The one common point in these different views was that each dealt with the possibility of a distinction between political and civil rights.

The radical Republican press rejected any attempt to separate civil from political rights: "The distinction between civil and political rights is an illusory one; at any rate, the ballot is necessary to the secure enjoyment of all other rights. . . ." ²¹ The primacy of political power formed the core of the radical Republican analysis of Reconstruction. Editorial after editorial repeated the view that Southern blacks would be free only when they had effective suffrage. ²² Variations in this theme indicate the broad radical conception of civil rights. The *New York Tribune* called these rights "equal human rights;" ²³ any interference with them would be a reinstatement of slavery.

In February and March, before the composite Fourteenth Amendment had been drafted, the *Nation* attacked the proposed civil rights and representation amendments as fatally flawed unless they were to be coupled with universal suffrage. ²⁴ The *Nation* was quite specific in arguing that universal suffrage meant more than a simple guarantee that all males could vote. Effective suffrage, according to its editorials, in-

21. N. Y. Tribune, Mar. 8, 1866, at 4, col. 4.

22. For editorials covering most of the radical arguments, see generally 2 NATION 70-71, 134, 422-23 (1866).

23. This phrase appears in an editorial explaining that the Constitution was an incomplete document. "Mr. Jefferson is, and ought to be, held in sincere reverence by all Radicals because of his agency in basing the Declaration of Independence on the broad, comprehensive, eternal principles of Equal Human Rights." N.Y. Tribune, Apr. 9, 1866, at 4, col. 3. A later editorial implies that the full extent of these rights will only be recognized gradually: "Let us rejoice friends of Equal Rights that our country has taken a long stride forward on the road to that goal where, Law being identical with Right, every one upholds and blesses Law as the guardian of his interest and his freedom." *Id.*, Apr. 10, 1866, at 4, col. 4.

24. 2 NATION at 161.

cluded free speech so that voters could make intelligent choices. The “guarantee” of permanent peace would come when Southern society had accepted this political order:

If we want peace at the South, and permanent peace, we must in some way or other first of all familiarize the mass of the people with the idea of law as an irresistible power to which all must bow, and which throws the same amount of protection over the meanest as well as the proudest black or white. If this can only be done by force, force we must have to do it, and, until this is done, the first step has still to be made in the re-organization of Southern society.²⁵

The rule of law would be considered present, according to the *Nation*, when Henry Ward Beecher could read a *New York Tribune* article to a public gathering in a Southern city and later sell the paper.²⁶

The *Chicago Tribune* argued that black self protection via the ballot box required that the North first ensure political divisions within the Southern white community. The real slaves in the South, according to the *Chicago Tribune*, were the poor whites, “pitiable mental cripples,” who blindly followed the leadership of the planter aristocracy.²⁷ Elections in the South had not served as an assurance of representation; rather they were a ratification of the existing imbalance of political power.²⁸ Poor whites had to be educated to recognize their own political and economic interests. The *Chicago Tribune* estimated southern white illiteracy to be at least 50%.²⁹ If the white community were fractured, blacks would be able to protect themselves with the ballot. “Civil rights” was therefore an expansive concept for the radical Republicans. It included equality before the law, political power and the means to make the political power effective: free speech and education. Their lack of enthusiasm for the proposed amendment and attacks upon it for inadequacy suggest that the radical press thought the amendment would not mandate their conception of civil rights. Only

25. *Id.*, Jan. 18, 1866, at 70-71.

26. *Id.* at 70.

27. *Chicago Tribune*, Feb. 24, 1866, at 2, col. 2.

28. *Id.*

29. *Id.*, Apr. 19, 1866, at 2, col. 1. The *New York Tribune* extended this argument in a different direction: “[T]here were, in 1850, no less than 568,182 free adults in the Slave States who could neither read nor write, of whom 226,898 were men and 341,284 were women; which accounts, in our opinion, first, for the folly of the Southern men in going into the Rebellion, and, secondly, for the greater devotion of the Southern women to it—the zeal of both being attributable [*sic*] and proportionate to their ignorance; . . .”

That, as from the past history of the ruling classes, we have no right to expect that they will educate the poor, it is our duty to do so (and our safety lies in doing so) ourselves. . . .”
Feb. 13, 1866, at 4, col. 5.

the radical papers continually referred to the first section of the proposed amendment as a reenactment of the Civil Rights bill. They were belittling it in hopes of forcing Congress to draft something more profound.

The moderate, or Union, press implied through its arguments that there was a distinction between civil and political rights, but that this division was temporary. With an improving economy, the operation of a free market would gradually draw the former slaves into full citizenship. Criticism by the radical press that political power had to precede economic power for the market to work was not given much credence. The most important objective of Reconstruction, in the moderate view, should be to guarantee the political stability needed to encourage economic investment:

Individual effort may not suffice fully to cope with devastation so universal as that which the South brought upon itself, but to the extent of its ability it would be forthcoming if the political complications were so far disposed of as to leave room for the venture. By means of this nature, more than by any conceivable legislation, the *just supremacy* of the North would be established. Prejudice would gradually disappear before the beneficent sway of Northern capital, administered by Northern heads and hands, and the political unity of the sections would be insured by interests as strong and diversified as those which render East and West indissoluble.³⁰

The moderate press distrusted the radical emphasis on legislation. "The 'guarantees' for the future," are, according to the *Idaho Statesman*, "idle buncombe. There can be no guarantees but law, and law may be changed or abolished at any time by the power that made it."³¹ Nonetheless, the Union papers supported the Civil Rights bill³² and the proposed amendment. Indeed, the *Statesman* characterized those members of Congress who supported the Civil Rights bill veto-override as being opposed to "throwing away the results of the war."³³ The concept of "civil rights" for the Union press was not well developed, and it was certainly less inclusive than the radical conception. The following description of the Civil Rights bill is indicative:

One of the strong points the copperhead press and stump speakers will attempt to make in the campaign will be to represent that the bill established negro suffrage. They will insist that

30. N. Y. Times, May 22, 1866, at 4, col. 5.

31. Idaho Statesman, Jan. 27, 1866, at 2, col. 1.

32. The *New York Times* withheld support until mid-May, but thereafter began to support the bill. *E.g.*, N. Y. Times, May 26, 1866, at 4, col. 3.

33. Idaho Statesman, Apr. 21, 1866, at 2, col. 2.

it gives the ballot to negroes, Chinamen and all other classes hitherto excluded from the privilege They will continue to perversely misrepresent the provisions of the bill and howl "negro suffrage" and "negro equality" whenever it is spoken of The bill makes all persons born in the United States (excluding Indians not taxed) citizens of the Republic, but only places them under the protection of the laws, and gives them the power to maintain their personal rights Their [Democratic and copperhead] action places them where they belong: in opposition to the administration of justice between men.³⁴

A generalization justified by a reading of the editorials in the *New York Times* and the *Idaho Statesman* during this period is that civil rights were those protections required by a person entering the job market. Economic success would, in time, be rewarded with participation in politics—a privilege. Economic failure would preclude active political participation. "Civil rights" were therefore more inclusive than the property protections of the Civil Rights bill, and the public was being asked to grant Congress these wider powers of protection. The *New York Times* was considerably more sanguine about black potential for self-advancement than the *Statesman*.

The Democratic press argued that a distinction should be made between political and civil rights, and that civil rights only had meaning within the definition of specific laws: where laws differed, rights differed. According to the *World*, the whole purpose of a federal system of government was to allow local communities to legislate for their own particular needs, be they universal suffrage or polygamy. Radical Republicans would jeopardize the ability of communities to differ in solving local problems by giving the federal government the power to define civil rights.³⁵ Radicals were mistaken, according to the *World*, if they thought that federal law and the federal judiciary would be able to protect blacks from discrimination and prejudice. Blacks were presently protected in two ways: through the justice and benevolence of their fellow men, and through the self-interest of communities needing their labor.³⁶ Radical Republicans relying on faulty information supplied by "cotton thieves, speculators, and other irresponsible or untrustworthy persons"³⁷ had subjugated the former slaves to the Freedman's Bureau which, rather than protecting them, was forcing these hapless blacks to labor on land recently acquired by venial northerners. The ballot would not protect blacks as long as they were

34. *Id.*, June 26, 1866, at 2, col. 2.

35. *N. Y. World*, Mar. 28, 1866, at 4; *id.*, Apr. 6, 1866, at 4; *id.*, Mar. 15, 1866, at 4.

36. *Id.*, Feb. 9, 1866, at 4.

37. *Id.*, Jan. 4, 1866, at 4.

dependents, and radicals had merely substituted dependence on the federal government for dependence on masters.³⁸ In the long run, the *World* argued, black interests were tied to those of southern whites. The best course of action, according to the Democrats, would be for the federal government to restore the ex-rebels to their civil and political rights through the restoration of civil government in the Southern States.

The fact that the discussion of the proposed amendment proceeded at such a general level cannot simply be an accident. There was no perceived need to consider the language of the proposed amendment carefully and in detail. It was as if everyone knew what the language meant. What needed to be discussed were the broad *political* issues and the justifications for partisan preferences. The conclusion can be drawn that the proposed amendment functioned essentially as a political symbol. If it is so perceived, some logic could be attached to the three very different interpretations of its purpose.

The one point on which all editorialists agreed was that the South had to be returned to civilian rule. Beyond that there was little agreement because there were such profound differences in philosophy, especially in the variant conceptions of the crucial term "civil rights." For the radical press, the proposed amendment symbolized national indecision—it made no firm commitment to restructure the South. The moderate press, still hoping to preserve the Union coalition, could support the amendment after the Senate modified the Test Oath because it would serve as a vague symbol around which people could be rallied in an effort to restore political and economic stability. The Democratic press, seething at the way the radicals in Congress had challenged and unseated Democrats, saw the vagueness of the proposed amendment as symbolic of the shadowy way radical leaders were trying to tighten their grip on the national offices.

A final source of support for this interpretation of editorial opinion came in July 1868. If one assumes that the proposed amendment was a symbol of the political issues of 1866, then it is not surprising that in 1868 ratification was considered relatively unimportant: *the issues had significantly changed and old symbols were no longer newsworthy.*³⁹ This attitude was reflected across the entire political spectrum: the *Nation*

38. *Id.*, Jan. 29, 1866, at 4, and Feb. 14, 1866, at 4.

39. The political issues of 1868 included: the nearly successful impeachment of President Andrew Johnson, the forthcoming presidential election of 1868, Reconstruction, the potential ramifications of the habeas corpus cases then before the Supreme Court, assassinations and murders in the South and industrial development.

reported ratification as a secondary news item of the week;⁴⁰ the *New York Times* buried the announcement on page five;⁴¹ the *New York Tribune* devoted one line to the announcement;⁴² the *London Times* in a one line announcement tersely reported ratification;⁴³ and the *World* argued that procedural requirements not having been satisfied, the Fourteenth Amendment was in fact not yet ratified.⁴⁴

40. 7 NATION at 61.

41. N. Y. Times, July 16, 1868, at 5, col. 3.

42. N. Y. Tribune, July 20, 1868, at 1, col. 6.

43. London Times, Aug. 3, 1868, at 12, col. 1.

44. N. Y. World, July 21, 1868, at 1 (announcement of Secretary Seward's proclamation); July 23, 1868, at 4 (editorial detailing the procedural irregularities). The problem stemmed from the fact that since Ohio and New Jersey had rescinded their ratification of the amendment following a change in party control of the state legislatures, Secretary Seward waited until a sufficient number of the Reconstruction governments in the Southern States ratified the amendment to yield the requisite proportion of *all* states. The Democrats did not consider the Reconstruction governments to be valid state governments. Neither did President Johnson, but he recognized the "states" as having ratified the amendment. Secretary Seward's wording of the letter to President Johnson indicates some of the unease: "[N]otices and certificates have also been received by the Secretary of State, that the same proposed amendment has been ratified by the Legislatures of the States respectively of Arkansas, Florida and North Carolina, which notices and certificates last mentioned were received from the newly-constructed and established authorities, assuming to be and acting as the Legislatures and Governors of the said States of Arkansas, Florida and North Carolina." N. Y. Times, July 16, 1868, at 5, col. 4.