

IOWANS AND THE FOURTEENTH AMENDMENT

By Robert Rutland

One hundred and sixty-five years after its ratification, the Constitution of the United States appears to be a symbol of stability among political instruments. Throughout those 165 years the ideas of the Founding Fathers have indeed weathered well. It is a tribute to their insight and wisdom to note the relatively few attempts made to alter the basic document. Since the Bill of Rights became law in 1791, only twelve other amendments have been ratified. Two of these were approved by 1804. Sixty-one years elapsed before the next three were ratified as a part of the Reconstruction policy of Congress between 1865 and 1870. These — the Thirteenth, Fourteenth, and Fifteenth Amendments — were designed to elevate the Negro from slavery to full citizenship. When the "reconstruction statesmen began rapidly to pass away early in the seventies as if burnt out by the very intensity of their zeal," the amending process lay dormant.¹ Not until 1913 was the Constitution again amended. But the three Reconstruction amendments had left their mark, and even though Hermann von Holst, in his constitutional history, may have overemphasized the role of the Negro, the passing of time has seen prodigious efforts to raise the Negro's status through constitutional devices.

The Supreme Court of the United States is expected to make a significant decision on the educational status of the American Negro within the next six months. Although several barriers to complete freedom of education have been lowered for the Negro, the use of "separate schools" in many states has now been challenged. Advocates for the abandonment of segregation contend that despite the Fourteenth Amendment to the Constitution, Negro citizens are discriminated against in violation of the "equal protection of the laws" clause. The issue has long been building to a climax. It appears that the Supreme Court must finally face the problem squarely and decide whether or not the concept of a dual school system deprives one class of Americans of their constitutional rights.

When the Fourteenth Amendment was proposed in Congress early in

¹ A. M. Schlesinger, *New Viewpoints in American History* (New York, 1922), 120.

1866, it was generally presumed to be a measure designed to give federal protection to the private and civil rights of Negroes. These rights "were presumably those enumerated in more detail in the Civil Rights Act," which Congress had passed over President Johnson's veto on April 9, 1866.² But did the Iowan of 1866 so regard the proposed constitutional amendment? How did the Iowa newspaper editors and politicians, the two best sources of contemporary opinion, view the proposed amendment?

An analysis of contemporary opinion in Iowa regarding the need for the Fourteenth Amendment, and what that amendment would encompass, requires a divorcement of all modern implications from those which confronted the Iowan in 1866-1868. In those postwar years the Negro population of the state was slowly increasing; at the end of the decade 5,762 Negroes were reported in the federal census. Thus, during the period under consideration, the personal contacts of Iowans with Negroes were slight except along the banks of the two great rivers which form the eastern and western boundaries of the state. Along the rivers the Negro population of Iowa found employment at the waterfronts, frequently as barbers, tailors, and handymen. By far the largest concentration of Negroes in Iowa was in Lee County, where 1,479 resided in 1869.³ The greatest population element centered in southeastern Iowa. Farther north and west, few Negroes were encountered, and many counties left blank the space reserved for "Colored Population" on their census rolls.

With a relatively small Negro population in their midst, Iowans were not seriously disturbed by the transition from slavery to freedom. Had the question of freedom for the Negro remained aloof from political discussion, the attention paid to the Negro in Iowa during the 1860's might have been slight indeed. From the achievement of statehood until 1858, Iowa had been lenient toward the Negro while still offering restraints to his complete freedom. Negro children were excluded from the public schools, but the property of colored persons was exempted from school taxes. Following adoption of a new constitution in 1857, the General Assembly provided for the education of Negro children in separate schools unless white parents in the district gave unanimous consent to holding classes for both white and Negro pupils in the same school. Although this act was declared unconsti-

² Alfred H. Kelly and Winfred A. Harbison, *The American Constitution* (New York, 1948), 461.

³ *Census of Iowa . . . 1869* (Des Moines, 1869), 72.

tutional, evidence indicates that the ban on mixed classes was not universally observed. Subsequent legislative acts in 1860, 1862, and 1866 called for the instruction of all children without regard to race or color.⁴

Unfortunately for the status of the Negro, the race question had become an issue in Iowa party politics long before the outbreak of the Civil War. Predominantly Democratic during the territorial period and in early statehood, Iowans gradually leaned toward the abolitionist views of prominent Republican leaders. By 1860 the Republicans were definitely increasing their popularity, while the Democratic party was on the decline. During the bitter presidential campaign of that year the slavery issue was paramount. After the firing on Fort Sumter, Republican newspapers in Iowa tended to favor a more outspoken stand on slavery than that taken by the national administration, while Democratic editors were equally confident that freedom for the slaves would be ruinous.

The motives for opposition to the Negro in Iowa were principally economic. To the Irish and German workers in the northeastern river counties of Iowa, the threat of cheap Negro labor seemed to be a sword hanging over their source of daily wages. There was, of course, considerable name-calling by both parties. "Black Republican" and "Nigger-loving Republican" were pat phrases for the Democrats, and the Republicans were ready with "Copperhead" and "Traitor." In the exchange of words and in the voting, the Republicans came off the better, and by 1865 every major state office and all of Iowa's congressional delegation came from Republican ranks.

In these circumstances, the Fourteenth Amendment and much of the so-called Reconstruction program became party issues in Iowa, as they were elsewhere in the Union. Even with the Thirteenth Amendment freeing the slaves already proclaimed, Iowa's constitution denied the franchise to Negroes, although the proper steps were soon taken to amend that provision. Since both the proposed Fourteenth Amendment and the alteration of the Iowa constitution were being ratified at about the same period, the single issue of Negro suffrage apparently became fixed in the public's mind in regard to both the federal and state amendments. A canvass of newspapers from virtually every section of the state during the years when the proposed

⁴ The statutes and case referred to in this paragraph are cited and discussed in Dorothy Schaffter, "The Iowa 'Civil Rights Act,'" *Iowa Law Review*, 14:63, 64-5 (December, 1928). See also Leola Nelson Bergmann, "The Negro in Iowa," *Iowa Journal of History and Politics*, 46:50 (January, 1948).

constitutional amendment was under discussion has revealed little political apostasy. Neither party chose to bend an inch in conceding the possibility of truth in the opponents' arguments. It is significant, however, that both parties regarded the Fourteenth Amendment as relating only to Negro suffrage, the validity of the national debt, and the representation of the states in Congress. Other matters, such as the use of separate schools, did arise occasionally; however, the right of the Negro to vote was the supreme issue.

Shortly after the House of Representatives passed the proposed constitutional amendment, a special correspondent for the *Dubuque Herald*, probably the leading Democratic newspaper in Iowa at the time, sent in an alarming report. "The 'amendment' not only proposes that negroes shall be made citizens in all the southern states, but it disfranchises the whole white population of the south," the reporter declared. "Its whole intent is to permanently dissolve the Union, revolutionize the government and concentrate all its powers in the hands of the radical faction."⁵ Without alluding to the amendment, the Democratic Council Bluffs *Weekly Bugle* published a simultaneous denunciation of the Republican party that had called for a change of administration in 1860. The change had come, said the *Bugle* editor: "and now, the tax payers of the North . . . are paying the following enormous amounts to keep them [Negroes] in clothes and feed them:

. . . School Marms for Niggers 21,000

School Houses for Niggers 300,000. . . ."⁶

The editor of the Cedar Rapids *Cedar Valley Times* was a Republican who took a calmer view of affairs. He asserted that the tension between the Negroes and whites in the South would ease, "providing it is not too much tinkered at." He was satisfied with the Civil Rights Bill and the Freedmen's Bureau, and conceded that the North "cannot expect the South to at once give their former slaves all the rights and privileges guaranteed them in the Civil Rights bill." Forcefulness was the answer. "Let the South know that this must and *will* be done, and the level [of equality] will be found at [a] not distant period in the future."⁷

At the Republican state convention held in the summer of 1866 the civil rights of Negroes came up for discussion. Before adjourning, the convention adopted a resolution which was widely distributed and printed in most

⁵ *Dubuque Weekly Herald*, May 23, 1866.

⁶ *Council Bluffs Weekly Bugle*, May 24, 1866.

⁷ *Cedar Rapids Cedar Valley Times*, May 17, 1866.

of the Iowa newspapers that adhered to the Republican cause. The resolution declared that "the first and highest duty of our free Government is to secure to all its citizens, regardless of race, religion or color, equality before the law, equal protection from it, equal responsibilities to it, and to all that have proved their loyalty by their acts, an equal voice in making it."⁸

The Iowa General Assembly had adjourned *sine die* in April, 1866, and thus was powerless to act on the proposed amendment until 1868. There was every prospect, therefore, that the amendment would be ratified by other states and become a part of the Constitution before the next General Assembly convened. Perhaps this long time span accounts for the absence of any protracted newspaper debate over the amendment. An even more probable explanation is the apathy, then as now, toward the long process of ratification when other issues seem to be more vital and pressing.

To many Democratic editors in the Midwest and Middle Atlantic states, the concern of the Radicals in Congress for Negro suffrage concealed a sinister motive — political domination of the South. Several Democratic organs, including the influential *Chicago Times*, were ready to concede the franchise to the Negro as inevitable. The remarks of a Cedar Rapids editor seemed to give credence to the Democratic charges: "We enter our solemn protest against the Copperhead [Democratic] party stealing our nigger, just as we have got him in a condition in which he can be of some use to us, and setting him to work for that party which fired on our rear while we were fighting, to get him on grounds where he could take care of himself and assist us."⁹ Only two weeks earlier, the same newspaper had posed the question: what if the Fourteenth Amendment should fail? Declaring that the North had shown little vindictive spirit, the newspaper warned the South that northern patience was wearing thin:

If, then, the amendment should not be ratified, we find the country in the same condition it has been since the close of the war: a condition bordering very nearly on the anarchical. . . . But we cannot remain thus; parties are now arrayed in opposition, the one asking admission of rebels into Congress and allowing them all the privileges given to loyal men; the other demanding certain restrictions in these privileges and enjoyments. . . . [I]f they persist in refusing . . . and . . . if they thus insist upon being

⁸ *Ibid.*, July 12, 1866.

⁹ *Ibid.*, Nov. 29, 1866.

banished or hung, there are laws to cover these cases and a Government loyal and powerful enough to execute them.¹⁰

The Council Bluffs *Weekly Nonpareil* also saw in the amendment a crushing of the "conspicuous rebels," but was less threatening in tone. "That amendment will guarantee equality before the law to all men, an equitable basis of representation," punish rebels, and obliterate the Confederate debt. The editor concluded the amendment was necessary because it "puts these things in the Constitution beyond the jurisdiction of State authority."¹¹

Before the year ended, the Cedar Rapids editor believed the problem of the freedmen could be solved. The best solution was "to provide ways and means for their education." Northern benevolence could not be depended on, nor could each state be expected to make provisions for Negro education. This would be particularly true in the South, where "the prejudices against caste and color would exist as before, so that to carry out any provision for educating the freedmen by the States, would be impracticable and wholly inoperative." Then came the solution:

The only practical plan is to give them the *privilege of educating themselves*, and this can be done by conferring upon them the *elective franchise*. . . . Give the Freedmen, then, a controlling voice in the municipal affairs of the States of which they are citizens, and we will see the Free School system spring up all over the South, thus benefiting not only the colored citizens, but also that class denominated the "poor whites," whose education has always been as limited, and their influence upon society as pernicious as that of the blacks. . . .¹²

The Dubuque *Herald's* Washington correspondent also had his view on the effect of Negro suffrage. After mentioning the bill before Congress that gave Negroes in the District of Columbia the franchise he declared the Washington Negroes were already "making no end of boasts of what they are going to do when they get control of the city government." He predicted that soon "white children will be compelled to sit with filthy negro children in all the public schools in Washington — and how much longer after that will we have to wait for the inauguration of the filthy practice of miscegenation?"¹³

¹⁰ *Ibid.*, Nov. 15, 1866.

¹¹ Council Bluffs *Weekly Nonpareil*, Dec. 1, 1866.

¹² Cedar Rapids *Cedar Valley Times*, Dec. 6, 1866.

¹³ Dubuque *Weekly Herald*, Dec. 26, 1866.

Another indication of the Iowa view of the Fourteenth Amendment in 1866 comes from the diary of Charles Mason, former Chief Justice of the Iowa Supreme Court. Mason spent much of his time in Washington, where he had a lucrative law practice and was a frequent caller at the White House. He alludes to the amendment as "distasteful" to many northern Republicans and predicted that its introduction would "enable us to overthrow the radical power there."¹⁴ Mason thought the amendment, which he viewed as a suffrage device, would "certainly be now rejected." He doubtless carried this conviction when he was the Democratic nominee for the governor's post in Iowa during the ensuing campaign of 1867.

From the river city of Davenport, where local circumstances were a factor in any discussion of the Negro, there came a demand for an additional amendment. The nature of the proposal indicates an assumption, on the writer's part at least, that the Fourteenth Amendment did not go beyond protection of the Negro franchise. Civil rights for the Negro, the editorial declared, were in jeopardy because the constitutional status of the Civil Rights Bill was in doubt. "The short way and the only way to the root of the whole difficulty is through an amendment to the Constitution," which could be added to Section 10 of the first Article, declaring: "No State shall enact any law, or attempt the enforcement of any existing enactment or regulation, under the provisions of which any citizen may be disfranchised, or deprived of any civil or political right, or privilege, or immunity, on account of race or color."¹⁵ For the editor the problem of the freedmen had a second solution. This was an alteration of Section 2 of Article 4 of the Constitution by adding a clause, which would state: "And no citizen shall in any State be denied the exercise of the elective franchise, or be deprived of any privileges or immunities on account of race or color; but all citizens shall be in all respects equal before the law."

At times the problems of the Negro in the South appear to have been a nuisance to Iowans. Some looked back longingly to the time before the Civil War when the Mississippi had been an avenue of commerce to the South. "Instead of quarreling about military reconstruction bills, and other questions of no importance to the people, and being divided off into hostile political parties, we ought all to be united," the *Jefferson Era* com-

¹⁴ Charles Mason Remey (ed.), *Life and Letters of Charles Mason* (12 typescript vols., Washington, 1939), 8:963-4.

¹⁵ Davenport *Weekly Gazette*, Jan. 8, 1867.

mented, "working for the greatest good to all, striving to arrange amicable commercial relations with the people of the Southern States."¹⁶ Implicit in this advice was a brusque demand from agrarian sources in central Iowa for more attention to farm prices and home affairs. The fact that Jefferson, and Greene County, were without a Negro population might account for this impatience with what seemed to be a remote problem.

Shortly before the 1867 gubernatorial campaign in Iowa, the *Davenport Gazette* gave its approbation to a list of resolutions reportedly passed at a Petersburg, Virginia, meeting. The resolves favored impartial suffrage, equal taxation, and further declared: "That not one dollar of the public money shall be appropriated for the education of the white child unless another dollar is appropriated along side of it for the education of the black child."¹⁷ Once the political campaigns had been launched, however, there seems to have been a tendency to "play down" the Negro question in some newspapers, and to raise it in others. "Will the Iowa City Republican please tell us whether negro suffrage is an issue this summer?" the *Iowa City State Press* demanded.¹⁸ The *Press* was edited by John P. Irish, a Democratic member of the state House of Representatives, who constantly reminded his readers that his party was against the adoption of the state Negro suffrage amendment. As for the national question of Negro suffrage, Irish had earlier warned that by giving four million Negroes "voice and influence in the government . . . while their weight will not be felt in the social or industrial scale, it will count heavily in the average of crime and they will be an element to be moulded under the hand of any ambitious villain. . . ."¹⁹

Despite the outcry from the Democrats, Iowa voters gave heavy majorities to the Republicans who were committed to passage of the state suffrage amendment and support of the federal program of the Radical Republicans in Congress. Buoyed by the ballot box, the Republicans moved ahead with their state program and ratification of the federal amendment. Outgoing Governor William M. Stone noted in his last message to the General Assembly that Iowa schools were open to all youth, regardless of their color. He went on to commend the Fourteenth Amendment as a device "designed

¹⁶ *Jefferson Era*, Apr. 5, 1867.

¹⁷ *Davenport Weekly Gazette*, May 15, 1867.

¹⁸ *Iowa City State Press*, July 31, 1867.

¹⁹ *Ibid.*, May 1, 1867.

to secure in a more permanent form the dear bought victories achieved in the mighty conflict" of recent memory.²⁰ In his inaugural address, Governor Samuel Merrill urged the General Assembly to place before the state's voters the Negro suffrage amendment to the Iowa constitution, but he did not mention the federal amendment.²¹

Before the General Assembly had acted on the federal amendment, the most influential newspaper in the state took the view that the amendment had already been adopted. The Fourteenth Amendment "has been ratified by the legislatures of twenty-two States — more than three-fourths of all the States now in the Union — and is therefore adopted," the *Des Moines Iowa State Register* announced.²² Such a pronouncement, from the leading newspaper and voice of the Republican party in Iowa, seemed to indicate that the issue was settled. The impeachment trial of President Andrew Johnson was crowding other news from Iowa newspapers, and when the ratification of the Fourteenth Amendment came up for debate in the General Assembly it was scarcely reported. The paucity of real information and the failure to report debates in the General Assembly journals thwart the efforts made to learn the legislative opinion of the measure. However, it is significant that the *Senate Journal* alludes to the Fourteenth Amendment as the proposal "in regard to representation, reconstruction and the national debt."²³ A newspaper account of the debate on the final day of discussion reveals that at least one Senator was critical of the amendment. Senator B. B. Richards was quoted as saying that Congress "wrapped up some bad sections with some good, and asks us to adopt or reject the whole. They have presented a bitter pill sugar-coated to us and say take it as a whole or not at all." Richards added that the manner of presenting the amendment "in this way was designedly, infamously and wickedly" a congressional error.²⁴ Despite Richards' remarks, the amendment passed the final reading, 34 to 9.

After the amendment had been approved by the General Assembly it was reprinted in the *Oskaloosa Herald*, which appended an out-of-state comment from the *Chicago Tribune*:

²⁰ *Oskaloosa Herald*, Jan. 23, 1868.

²¹ *Ibid.*

²² *Des Moines Iowa State Register*, Feb. 19, 1868.

²³ *Senate Journal*, 1868, 112.

²⁴ *Des Moines Iowa State Register*, Mar. 18, 1868.

The country has waited for the ratification of the 14th amendment until most of its provisions have been superseded by other legislation. If the existing policy of Congress is carried out, it will make very little difference whether it is ratified. The clause relating to the public debt is now the only important provision contained in it, and this is rather a declaration of a purpose than a rule of action. . . .²⁵

The *Herald* editor took no issue with the *Tribune* verdict, and apparently agreed with the Illinois newspaper.

Until the Negro suffrage issue was settled in Iowa, later in 1868 and in favor of the Negro, the question of social and political equality was infrequently mentioned in state newspapers. The *Hamilton Freeman* wanted to separate opinion on suffrage and "nigger equality." "To say that because we will not recognize social equality we will deny to men the same privileges [sic] which we ourselves possess under the law, is a very poor argument indeed."²⁶ After the Negroes had been granted the franchise in November by a majority of more than 24,000 votes, the *Dubuque Herald* concluded that "the word 'white' had become an abomination. It must be expunged from the constitution of every state in the union. It cannot be any more seen on the records of the country when contradistinguished from black. . . . Nigger, whole nigger, and nothing but nigger, must be the order of the day."²⁷

Perhaps one reason why the "separate but equal" question was not prominent in Iowa newspapers during the period of ratification is accounted for in the prevailing practices. The antislavery societies and abolition organs had created a favorable climate of opinion toward common school education in parts of Iowa as early as 1856. The editor of the *Iowa City Republican* did an unusual thing in 1867 when he lauded the Democratic school board in Iowa City, which had for "more than eleven years [made certain that] colored children have had just the same access to our schools as any others. . . ."²⁸ The school superintendent in Jackson County overruled the Otter Creek board of directors in 1867 and ordered the admittance of Negro children to county schools.²⁹ Cases of expulsion of Negro pupils,

²⁵ *Oskaloosa Herald*, Mar. 26, 1868.

²⁶ Quoted in *Marshalltown Times*, July 18, 1868.

²⁷ *Dubuque Weekly Herald*, Dec. 19, 1868.

²⁸ *Iowa City Republican*, Sept. 18, 1867.

²⁹ *Dubuque Weekly Herald*, Jan. 30, 1867.

and of the maintenance of a private teacher for Negro children, were known in Polk and Van Buren counties in 1868.³⁰ But known instances of discrimination were brought to light, and soon the offending school boards were under attack from the press and presumably from public opinion.

The issue of separate schools in Iowa was determined in favor of the Negroes in the case of *Clark v. The Board of Directors*,³¹ which arose in Muscatine in 1867. The Muscatine school board was maintaining a "separate school for colored children, in a comfortable building, with proper furniture and provided with a competent teacher." Alexander Clark sent his daughter to the school for white children, where she was denied admittance on the ground that "public sentiment in said independent district is opposed to the intermingling of white and colored children in the same schools. . . ." The Muscatine District Court did not uphold the school board in its action. Upon appeal to the Iowa Supreme Court the right of a school board to withhold educational facilities from any Negro youth was denied. Similar decisions were handed down in two separate school cases in 1875, and the question was apparently settled.³²

Although the incidents in 1867 and 1868 involving the separate schools did not arise from a public discussion or from public sentiment regarding the Fourteenth Amendment, their outcome is germane because they indicate the prevailing attitude toward Negro education in Iowa. An 1873 case involving the denial of equal accommodations to a Negro on a common carrier was decided favorably for the quadroon plaintiff, and the Fourteenth Amendment was cited in the state Supreme Court opinion as a basis for the decision.³³ The General Assembly passed an act in 1884, implementing federal legislation, which is known as the Iowa Civil Rights Act.³⁴

Whether citizens in other states accepted the Fourteenth Amendment at face value when it was ratified can only be determined by individual state studies. It is noteworthy, however, that by 1882 the Negro had been deprived of many of the rights the constitutional amendment had been expected to make permanent; and, in a Supreme Court case heard during

³⁰ Des Moines *Iowa State Register*, Jan. 29, Feb. 19, 1868.

³¹ 24 *Iowa Reports*, 266 (1868).

³² *Smith v. The Directors of the Independent School District of Keokuk*, 40 *Iowa Reports*, 518 (1875); *Dove v. The Independent School District of Keokuk*, 41 *Iowa Reports*, 689 (1875).

³³ 37 *Iowa Reports*, 145 (1873).

³⁴ *Laws of Iowa*, 1884, Chap. 105.

1882, Roscoe Conkling successfully argued that the due process and equal protection clauses were meant to protect "corporations as well as humans."³⁵ The effectiveness of the Fourteenth Amendment as an agency of protection for the individual citizen was further obscured by the Supreme Court decision on *Plessy v. Ferguson* in 1896. In its decision the Court held that while the amendment was primarily adopted "to enforce the absolute equality of the two races before the law," certain conditions were not intended. The Court held that laws requiring the separation of races might be enacted by the "state legislatures in the exercise of their police power."

The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.³⁶

The Supreme Court may conceivably outlaw the dual school system as incompatible with its present understanding of the "equal protection of the laws" guaranty of the Fourteenth Amendment. It could perhaps achieve almost the same practical result while abiding by precedent by imposing a heavy burden of proof on those states attempting to provide "separate but equal" schools.

This educational issue, which has both international as well as national overtones, was not the concern of Iowans during the Reconstruction period. From the available evidence it may be assumed that Iowa newspaper editors, lawyers, and legislators — and probably the general public — regarded the Fourteenth Amendment at the time of its ratification as a device primarily to aid Negroes but also aimed at the supporters of the late Confederacy. The amendment was expected to give the Negro a voice in public affairs through the ballot, to punish recalcitrant southern states by curbing their representation in Congress, and to put the validity of the national debt beyond question. If these Iowans discussed the meaning of "equal protection of the laws" or "privileges and immunities of citizens," it has not been discovered. The Iowan of Reconstruction days seems to have accepted the amendment as another of those devices used by Congress, as Governor Stone had said, "to secure in a more permanent form the dear bought victories" of the recent Civil War.

³⁵ Kelly and Harbison, *American Constitution*, 462.

³⁶ 163 *United States Reports*, 544 (1896).