

### American Founding Son: John Bingham and the Invention of the Fourteenth Amendment

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## Review

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**Magliocca, Gerard N.** *American Founding Son: John Bingham and the Invention of the Fourteenth Amendment.* New York University Press, \$39.00  
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### The Man Who Put Equility into the Contitution

In 1947 Supreme Court Justice Hugo Black wrote a memorable dissent in *Adamson v. California* (332 U.S. 46, 68-123). He insisted that the Fourteenth Amendment required the various states to strictly heed the Bill of Rights—the first eight amendments to the U.S. Constitution.

Black studied the amendment's history. In concluding that its framers intended to hold the states to the same standards that the Bill of Rights imposed on the federal government, he resurrected from history's scrap heap Ohio's John A. Bingham, who turned out to have been the driving force behind the crucial first section of the Fourteenth Amendment. Bingham, a member of the Joint Committee on Reconstruction, wrote the words that conferred national and state citizenship on "all persons born or naturalized in the United States," and that barred states from passing laws that would "abridge the privileges or immunities of citizens of the United States," or "deprive any person of life, liberty, or property without due process of law," or deny any person "the equal protection of the laws."

Several years after Black's dissent, Jacobus tenBroek published *The Antislavery Origins of the Fourteenth Amendment* (University of California Press, 1951). This path-breaking study demonstrated that the intellectual framework undergirding the amendment had been constructed before the Civil War by slavery's most resolute opponents. They dared to imagine a Constitution that no longer upheld slavery but instead required equal rights for all. Amplifying Black, tenBroek concluded that Bingham, more than any other individual, combined "the various strands of abolitionist constitutional development" to create the Fourteenth Amendment's first section.

Until now, however, we have lacked an adequate biography of Bingham. This lacuna has just been filled by Gerard N. Magliocca. He dubs Bingham the “Founding Son”—the man who repaired the flawed work of the Founding Fathers and made equal citizen rights part of the Constitution. Without Bingham, writes Magliocca, “there would have been no Fourteenth Amendment as we know it” (186). His handiwork is the most important part of the Constitution. Bingham also coined that now-common phrase, the “Bill of Rights.”

Bingham’s views of race and slavery were incubated in the stern context of the Associate Presbyterian Church, often called “Seceders” because they “rejected mainline Presbyterianism” (8). This denomination’s small Franklin College, which closed almost a century ago, became “the fountain-head of the abolition sentiment of eastern Ohio” (9). There Bingham met and befriended a fellow student, Titus Basfield, a former slave who had endured ghastly hardships. Unlike most future leaders of the Republican party, Bingham regarded African Americans as “his social and political equals” (16).

First elected to the House of Representatives in 1854, following passage of the Kansas-Nebraska Act, the lawyer-politician Bingham quickly emerged as a leading Republican radical. He championed “the absolute equality of all” and insisted that no “word of caste” polluted the Constitution’s “great charter of our rights” (56, 64). He saw the war as proof positive of slavery’s iniquity, and he resolved to work for a postwar constitutional settlement that removed all doubt regarding equal citizen rights.

Bingham’s demand that the Fourteenth Amendment take priority created an odd anomaly in the pioneering modern studies of Reconstruction that appeared during the 1960s. In the eyes of historians Eric McKittrick and Michael Les Benedict, Bingham was a “conservative” who obstructed the Republican Reconstruction agenda. Magliocca rejects this interpretation, and correctly sides with a spirited recent volume, *Democracy Reborn: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America* (Holt, 2007), written by his fellow legal scholar, Garrett Epps.

Bingham’s focus in 1866 and 1867 was rewriting the Constitution. When he deviated tactically from the Republican consensus—in being willing to delay equal voting rights and in opposing the Civil Rights Bill of 1866—he did so because he saw the amendment as the essential centerpiece of Reconstruction.

He wanted civil rights incorporated into the Constitution before it became a legislative matter, and he subsequently accepted equal voting rights as a means to secure the amendment's ratification.

*American Founding Son* is plainly a labor of love. And the word "labor" deserves emphasis. Eighty-five densely annotated pages of endnotes buttress a relatively slender text that totals fewer than two hundred pages. Absent any extensive collection of Bingham manuscripts, Magliocca has scoured industriously for sources. He often must read between the lines of public speeches to learn more about the private man. And because he has chosen to write a biography, he must write about aspects of Bingham's life that are tangential to the main story of equal constitutional rights, including his role as a prosecutor of Lincoln's assassins and his long tenure as ambassador to Japan from 1873 to 1885.

Magliocca notes that Americans remember selectively. They honor the political achievements of the Founding Fathers but have little curiosity about the military history of the Revolution. By contrast, armchair generals continue to refight the battles of the Civil War but they disdain political history. Except for Lincoln, the political leaders of his era are "largely unknown" (1). This may be especially the case for those who championed equal citizen rights. For almost a century, their work was written off as a fool's errand.

Eventually that would change. During the several decades following Justice Black's 1947 dissent, the Supreme Court moved on a broad front to expand the so-called doctrine of incorporation—that is, the requirement that states adhere to the Bill of Rights. This revolution in jurisprudence breathed life into the Civil Rights Movement. Without doubt, the "father of the Fourteenth Amendment" would have been gratified.

*Daniel W. Crofts is completing a new book, Lincoln's Plea for Peace: The Would-Be Thirteenth Amendment and the Coming of the Civil War.*