duties of both prosecutor and judge. Finally, the only appeal from the judgment of the military court was to the President himself. The most benign interpretation of this travesty of justice is that the government was yielding to the public's demand for swift retribution. In the minds of some observers, there was a more sinister reason for these unusual proceedings. To them, the silencing of the conspirators (who were hooded and manacled during much of their trial), the shooting of Booth, and the mysterious disappearance of several pages of Booth's diary suggested that the plot against Lincoln was orchestrated by Radical Republicans eager to eliminate Lincoln and just as eager to cover their own tracks.

In condemning Mary Surratt, the government was casting its net beyond Booth and his inner circle. Her guilt was largely by association. Her son, John H. Surratt, Jr., was a friend of Booth and a blockade runner for the Confederacy; and both Atzerodt and Payne had stayed briefly at her boarding house in Washington. The two principal witnesses against her, John M. Lloyd and Louis J. Weichmann, knew more than Mrs. Surratt did about Booth's activities; they were fortunate enough, however, to cut a deal with the government for their inconsistent and perjured testimony. In fleeing the country, John Surratt left his mother to be a symbolic victim of public wrath. As both a Southerner and a Roman Catholic, she belonged to two of the nation's most hated minority groups.

Although they pronounced the sentence of death upon Mary Surratt, the members of the tribunal did not believe it would ever be carried out. Along with the sentence, the tribunal also drafted a plea that President Johnson spare her because of her age and sex. We can not be certain that Johnson ever saw that plea; however, we do know that he refused to see Mrs. Surratt's daughter on the day of the execution and flatly denied the intercession of Stephen A. Douglas's widow. (After the execution, Johnson observed that Mary Surratt had kept the nest that hatched the egg.) So certain was the hangman that his victim would be spared that he put only five knots in her noose instead of the customary seven.

By the time that John Surratt was finally apprehended and brought back to the United States for trial in 1867, the sort of military tribunal that had condemned his mother had been declared illegal by the Supreme Court. In the course of his civil trial, his mother's chief accusers gave markedly different testimony than they had two years earlier. Also, the perspective of time made much of the circumstantial evidence against Mrs. Surratt seem less damning than it had in the immediate aftermath of the Lincoln assassination. It is an open question whether it was the nature of the military tribunal or merely the climate of public opinion that had sealed her fate. Nevertheless, her son, who was far more intimately involved with Booth, was freed by a hung jury in a civilian court two years after his mother's death. John Surratt lived the balance of his life in obscurity, dying on April 21, 1916. As the novelist David Robertson has pointed out, he lived long enough to see the depiction of Lincoln's murder in *The Birth of a Nation*.

We need shed no tears over George Atzerodt, David Herold, and Lewis Payne. They probably got what they deserved, even if the means were irregular. However, the fate of Mary Surratt demonstrates the dangers of using a military tribunal against civilian defendants. Once such a practice has been accepted, we cannot be certain that only the obviously guilty will suffer. To justify the suspension of civil liberties as a wartime necessity when no war has been declared puts us on the slippery slope to tyranny. In *1984*, George Orwell showed us how a perpetual state of war makes it easier to control the behavior of a nation's own citizens. That may be one of the reasons why the Constitution gives the power to declare war to the Congress. Time and again over the last 60 years, Congress has abrogated that responsibility by approving protracted military operations without declaring war. That has happened again in the so-called War on Terrorism.

Although those ignorant of history (mostly government spokesmen and cable-news anchors) would have us believe that the nation has never before been threatened by terrorist organizations that do not represent a nation state, the Framers of the Constitution did envision a situation in which the vagueness of the enemy made a precise declaration of war impossible. The concern at that time was piracy on the high seas. (In fact, piracy is one of only three crimes specifically mentioned in the Constitution.) When the early republic was threatened by piracy, we did not invade the native countries of suspected pirates or indiscriminately kill civilians in nations believed to be harboring them. And we certainly did not institute military tribunals that could be used against our own citizens. Rather, the Framers authorized the president to grant letters of marque and reprisal, which would target specific enemies and permit the use of private sources to effect their elimination. Congressman Ron Paul has argued for just such an approach to the piracy represented by Osama bin Laden and his henchmen.

The use of military tribunals in the "War on Terrorism" has gained widespread national acceptance because public opinion was understandably inflamed by the atrocities committed on September 11, 2001. We should, however, remember that the Constitution exists, at least in part, to put a brake on public passions. Neither the legal lynching of Mary Surratt nor the imposition of military justice against the actual accomplices in Lincoln's murder was necessary to preserve the nation. If anything, our existence as a republic was harmed both by this precedent and by the earlier abuses of the Great Emancipator himself. How fitting that the legacy of Lincoln is being cited to justify the current regime's end run around the Constitution.

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Power, Legitimacy, and the 14th Amendment

by Joseph E. Fallon

The justification for the vast, intrusive, and coercive powers employed by the government of the United States against its citizens—from affirmative action to hate-crimes legislation, from multilingualism to multiculturalism, from Waco to Ruby Ridge—is the 14th Amendment to the U.S. Constitution adopted in 1868, or, more specifically, the authority conferred upon Washington, explicitly or implicitly, by the "privileges and immunities" and "equal protection" clauses of that amendment.

Like the emperor's new clothes, however, the 14th Amendment does not exist. It was never constitutionally ratified, and,

thus, acts of the government of the United States that are based on the 14th Amendment are actually illegitimate.

Despite its subsequent "interpretation" by the federal judiciary to mandate federal intervention in state and local affairs, the original aim of the 14th Amendment was to ensure the political and economic hegemony of the Northern states over the South. This was why Lincoln and Northern business interests waged total war against the South for four years: to transform the United States from a constitutional republic into a continental empire.

Section Two of the 14th Amendment permitted the disenfranchisement of Southern white men "for participation in the rebellion." Since the word "participation" could mean anything from serving in the Confederate Army, to using the Confederate postal service, to paying taxes to the Confederate government, or even failing to rebel against the Confederate authorities, it could be used by the North to deny the right to vote to virtually the entire adult, white-male population of the South.

Section Three sought to expel the South from every level and branch of government by denying Southern white men "who having taken an oath . . . to support the Constitution of the United States . . . engaged in insurrection or rebellion [against the United States] . . . or [had] given aid or comfort to the enemies thereof" (essentially the entire leadership of the South) the right to hold political or appointive offices, either civilian or military, in state or federal governments. Again, the North could define "engaged" and "given aid or comfort" to bar anyone and everyone.

Section Four protected Northern politicians, military leaders, and businessmen who perpetrated financial fraud in the course of the war from future prosecution and ensured that the North would never have to pay reparations for the theft and destruction it committed against the South.

The 14th Amendment made a mockery of the U.S. Constitution. Sections Two and Three blatantly violated the Due Process Clause of the Fifth Amendment by denying nine million Southerners their political and civil rights on what President Andrew Johnson declared was "an accusation so vague as to be scarcely intelligible and found to be true upon no credible evidence." In addition, Section Three was an *ex post facto* law specifically prohibited by Article I, Section 9 of the U.S. Constitution. And Section Four violated both the Due Process and the Just Compensation Clauses of the Fifth Amendment.

Not surprisingly, when the 14th Amendment was introduced in Congress on June 13, 1866, as House Joint Resolution 127, it was opposed by members from the Southern states. Since Article V of the U.S. Constitution stipulated that an amendment proposed by Congress had to be approved by two-thirds majorities in both Houses, Southern votes ensured the proposed amendment would be defeated.

To prevent that, the Radical Republicans who controlled Congress unilaterally changed the composition of Congress in order to procure the needed majorities. In violation of the Constitution's Article I, Sections 2, 3, and 5, and in particular Article V ("that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate"), they unlawfully excluded the 61 representatives and 22 senators from the Southern states. Moreover, they counted the votes of West Virginia and Nevada—both unconstitutional entities created by Lincoln as part of his war measures.

Even after taking these steps, however, the proposed amendment still faced defeat in the Senate by one vote if the vote of Sen. John P. Stockton of New Jersey, an outspoken critic of the 14th Amendment, was counted. So the Radical Republicans unlawfully expelled him from the Senate as well.

The votes in both the House and Senate approving the proposed 14th Amendment were, therefore, fraudulent. Since President Andrew Johnson opposed the amendment, the initial fraud was compounded by the subsequent refusal of Congress to present the 14th Amendment to the President for his approval as mandated by Article I, Section 7 of the U.S. Constitution.

Once Congress has approved an amendment, Article V stipulates that ratification by three fourths of the states is required for adoption. On June 16, 1866, Congress submitted the unlawfully proposed 14th Amendment to the legislatures of all 36 states, including the Southern states excluded from Congress, for ratification. With the admission of Nebraska into the Union on March 1, 1867, as the 37th state, the number of states needed for ratification was 28.

By March 1, 1867, 12 States had rejected the 14th Amendment. This left only 25 states, three fewer than the U.S. Constitution required for adoption. Later, Maryland and California both voted to reject the amendment, while three states that had ratified it—New Jersey, Ohio, and Oregon—rescinded their respective ratifications, citing voter fraud. While Congress rejected these rescissions, the damage had been done. The 14th Amendment had been constitutionally defeated.

The Radical Republicans reacted by enacting three laws between March 2 and July 19, 1867, known as the Reconstruction Acts. These laws reflected the attitude of Northern "constitutionalists" like Sen. James Doolittle of Wisconsin, who declared that, since "the people of the South have rejected the constitutional amendment," the North should "march upon them and force them to adopt it at the point of the bayonet"; "until they do adopt it," the North should rule the South by military force.

With the Reconstruction Acts, Congress declared "no legal state governments" existed in ten Southern states, even though Congress had officially recognized these state governments as legitimate since 1865. The adoption of the 13th Amendment abolishing slavery depended upon ratification by seven of these states—Alabama, Arkansas, Georgia, Louisiana, North Carolina, South Carolina, and Virginia—for the required three-fourths majority. Branding them "rebel" states, Congress proceeded to abolish their governments. The South was divided into five military districts and, in blatant violation of both Article I, Section 9, of the U.S. Constitution and the U.S. Supreme Court's decision in *Ex parte Milligan* three months earlier, was placed under martial law. This action, motivated by malice for the South and contempt for the U.S. Constitution, has bequeathed to the United States an interesting and ironic legacy.

If the South had "no legal state governments" after 1861 (as Congress maintained in 1867 following the defeat of the 14th Amendment), then the 13th Amendment was never constitutionally ratified in 1865. Slavery, therefore, is still a lawful institution in the United States. On the other hand, if the South had legal governments (as Congress affirmed in 1865 when the South ratified the 13th Amendment), then the 14th Amendment was constitutionally defeated in 1867. Therefore, all subsequent legisla-

tive and executive acts and judicial decisions based upon the 14th Amendment are null and void.

Without the 14th Amendment, the federal government is deprived of a principal source of its power. Most, if not all, of the laws, regulations, and rulings pertaining to affirmative action, desegregation, "hate crimes," multilingualism, multiculturalism, U.S. citizenship, voting, reapportionment, religion, education, housing, welfare, states' rights, and territorial powers are based almost exclusively on the 14th Amendment. Even the immigration policy pursued since 1965 is justified, to a significant extent, by the 14th Amendment.

Through violence, intimidation, coercion, and fraud, through martial law, through congressional threats to confiscate and redistribute all the property of Southern whites, through removal of Southern governors and judges, and through congressional repeal of state laws requiring a majority of registered voters for the adoption of a new state constitution, Congress successfully created "provisional governments." By 1868, these provisional governments had duly ratified the 14th Amendment (Congress having made ratification a requirement for readmission into the Union). However, under Article V of the U.S. Constitution, only states in the Union can ratify an amendment. Since Congress declared that these provisional governments were not states in the Union and, thus, had denied them representation in Congress, the provisional governments could not ratify this amendment. Therefore, the 14th Amendment remains unratified.

Led by the states of Mississippi and Georgia, Southern whites attempted to have the constitutionality of the Reconstruction Acts—and, by implication, the ratification of the 14th Amendment—reviewed by the U.S. Supreme Court. The Court agreed and, in 1868, heard legal arguments in *Ex parte McCardle*. When the justices indicated that they were favorably disposed toward the South's constitutional argument, the Radical Republicans in Congress enacted legislation removing this subject from the Court's jurisdiction. This was the only *constitutional* act undertaken by the Radical Republicans in their relentless attempt to impose the 14th Amendment. According to Article III, Section 2, of the U.S. Constitution, the appellate jurisdiction of the U.S. Supreme Court is limited by "such Exceptions, and under such Regulations as the Congress shall make."

After 1868, the federal government has not permitted any serious legal challenge to the constitutionality of the 14th Amendment. To do so would risk dismantling the entire apparatus of the federal government in a single stroke, depriving federal officeholders—Democrats and Republicans, judges, politicians, and bureaucrats—of the powers and perks they enjoy and expect.

The government of the United States, as established by the U.S. Constitution in 1789, was effectively abolished by the 14th Amendment. In its place was substituted a regime that resembles the absolutist centralized state envisioned by Thomas Hobbes in *Leviathan*. It is the type of political system Patrick Henry and other Founding Fathers had warned against—a consolidated government ruled by demagogues for the benefit of special interests.

It was natural for the post-14th Amendment government of the United States to expand from a continental empire, in which the states of the Union had been effectively reduced to mere administrative units of the federal government, to one whose reach would be, in the words of neoconservative ideologues William Kristol and Robert Kagan, nothing less than "benevolent global hegemony." And it was a relatively simple matter, then, for the government of the United States to go from inflicting death and destruction at Waco to inflecting death and destruction on Iraq, Yugoslavia, and Afghanistan. Washington emulates Imperial Rome, of whom it was said, "They create a desert and call it peace."

Thanks to folly, hubris, and the 14th Amendment, the government of the United States is faithfully following in the footsteps of ancient Rome—from republic to empire to oblivion.

Joseph E. Fallon writes from Rye, New York.

LABOR

All Play and No Work

by Marian Kester Coombs

A kid today, if he aspires to anything other than slack itself, aspires to one of three "crafts": acting, sports, or rock 'n' roll. He wants either to play a part, to play a game, or to play guitar. He wants to be a player. The work ethic has been replaced by the shirk-and-perks ethic: "I'd rather be [insert *doing anything but my job* here]." Girls just wanna have fun, the kids are alright, life's a beach, and thank God it's Friday in America!

Actress Helena Bonham Carter recalls in an interview,

> I kept thinking I was somebody out of a film. All my career choices were based on films, like *Born Free*—I was going to be a gamekeeper. There was *Charlie's Angels*, I was going to be a secret agent. Then *My Brilliant Career*, and I was going to be a writer. Then I sort of figured, "Well, no, it's probably the acting which is what I want to do."

Actors are still at pains to stress, at least to interviewers, how hard they "work" and how seriously they take their "work." They recount how they have trained for months to learn to ride cutting horses or studied for weeks to be able to deliver lines of dialogue in a foreign tongue. So it sounds unusual to hear actress Yancy Butler's admission: "People keep asking me where I learned the martial arts with my vicious kicks [for her new TV show]. The truth is that I fake it. I don't have a clue about that stuff."

Films are made about the making of films, and soon there may be films made about the making of films about the making of films. Why not? In the film about the making of *Apocalypse Now* (*Hearts of Darkness*), we see Francis Ford Coppola fighting the Philippine government over the disposition of its helicopters: He needs them for the napalm scene, and the government needs them to fight a guerrilla insurgency in the south. Coppola indignantly decries the "ludicrous-