

**THE ADOPTION OF THE
FOURTEENTH
AMENDMENT. EXTRA
VOLUME XXVI**

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The adoption of the Fourteenth amendment. Extra Volume XXVI by Horace Edgar Flack

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HORACE EDGAR FLACK

**THE ADOPTION OF THE
FOURTEENTH
AMENDMENT.
EXTRA VOLUME XXVI**

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IN
HISTORICAL AND POLITICAL SCIENCE

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XXVI

THE ADOPTION
OF THE
FOURTEENTH AMENDMENT

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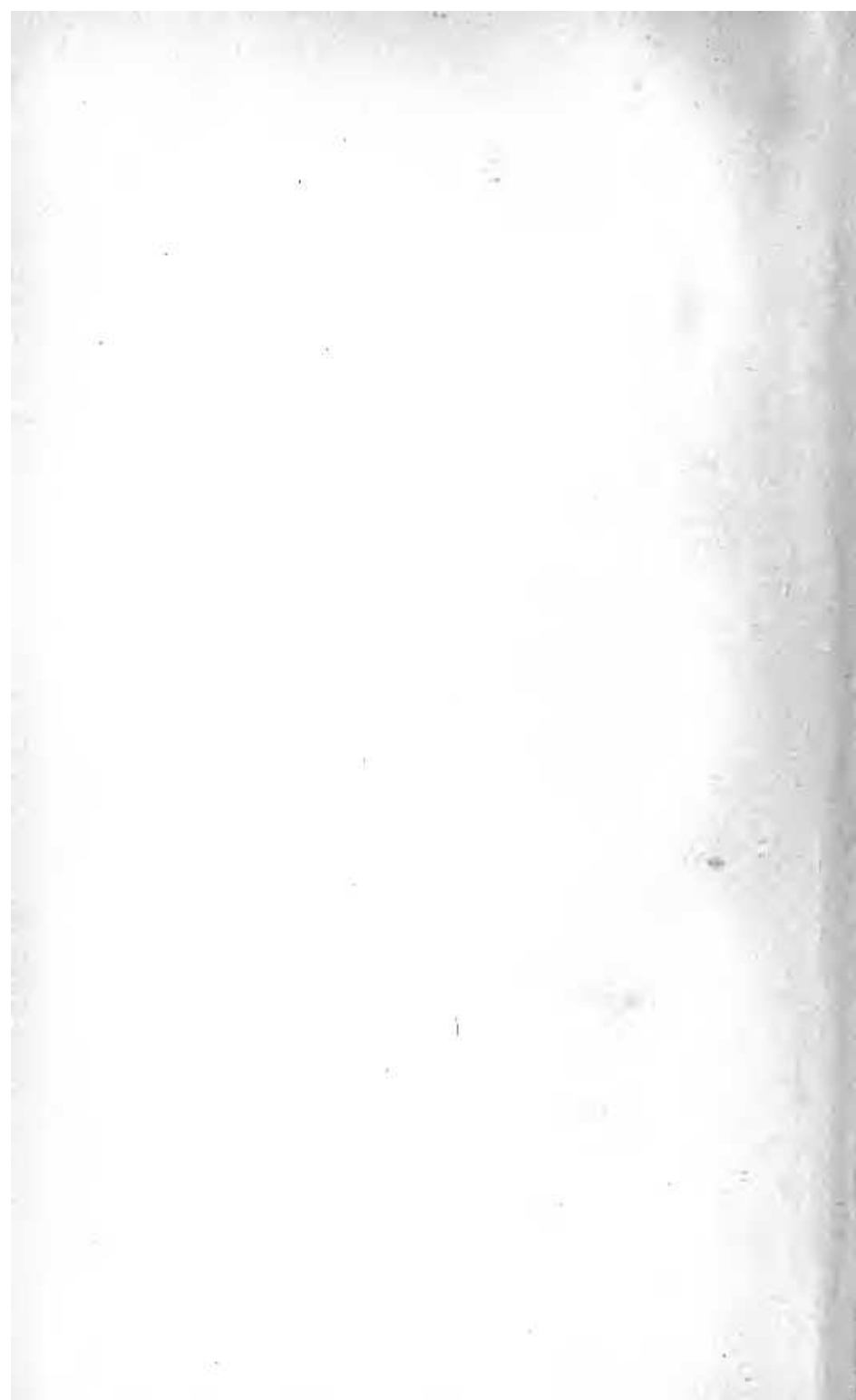
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PREFACE.

The Supreme Court of the United States, in the Slaughter House Cases, declared that the privileges and immunities of citizens guaranteed by the Fourteenth Amendment are those which they possess as citizens of the United States and not those which they enjoy by virtue of state citizenship. This decision means that those privileges and immunities which flow from state citizenship must rest for their security and protection where they have heretofore rested, namely, upon the States. In *Maxwell vs. Dow* the Court declared that the privileges and immunities of citizens of the United States do not include those enumerated in, and secured against violation on the part of the Central Government by the first eight Amendments to the Federal Constitution. The same Court, in the Civil Rights Cases, declared that Congress cannot enact direct, affirmative legislation for the enforcement of the Fourteenth Amendment and can enact only remedial legislation.

The decisions in the above cases have given to the Fourteenth Amendment a meaning quite different from that which many of those who participated in its drafting and ratification intended it to have. The decisions in the Slaughter House and Civil Rights Cases especially have been criticized on this ground. Treatises have been written on the judicial construction of the Amendment, but thus far no effort has been made to give anything like a complete or exhaustive study of the historical incidents connected with its proposal and adoption. An examination, therefore, of the circumstances under which this addition to our fundamental instrument of government was made, and the discovery from them, if possible, of the desires and expectations of its framers and supporters, becomes an interesting and important constitutional inquiry. This has

also necessitated an examination of the legislation preceding the proposal of the Amendment and that enacted for its enforcement. The purpose of this study is to pass historical judgment as to the purpose and object of the Amendment, the powers intended to be granted to the Federal Government as well as those to be prohibited the States, and not to pass political judgment. Furthermore, it is not the purpose of the study to consider the effect of the limited construction given the Amendment, but unquestionably it has had the effect of preserving our dual form of government as established by the Constitution of 1789, and, although the Federal Government has to-day, under the Fourteenth Amendment, greater powers than it possessed under the old Constitution, there has been no revolutionary change in the respective powers of the States and the General Government. Those who believe this dual form of Government best, all things being considered, must thank the Judicial, and not the Legislative, Department for preserving it. No opinion has been expressed as to whether the limited construction given the Amendment has been or will be to the best interests of the country, but the assertion may be ventured that the South has welcomed the position taken by the Supreme Court.

The chief sources used have been the Congressional Globe and Record, the Reports of Committees, especially those of the Reconstruction Committee, the Journal of the Reconstruction Committee, the Journals and Reports of the Legislatures of the several States, and contemporary newspapers. References to other sources will be found in the foot-notes. It may be said that the Journal of the Reconstruction Committee has, for the first time, been used to any considerable extent in connection with a study of the Fourteenth Amendment.

The first eleven Amendments to the Constitution of the United States were intended as checks or limitations on the Federal Government and had their origin in a spirit of jealousy on the part of the States. This jealousy was