

# ‘Transforming Our Democracy: John Bingham’s Fourteenth Amendment’

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“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

A man named John Bingham wrote that sentence—the second sentence of the Fourteenth Amendment.

Because of that sentence, the freedom of speech cannot be infringed in any state, same-sex couples have a right to marriage, women have a right to bodily privacy, and criminal defendants must be provided counsel.

More than any other person, John Bingham is the reason why these rights are recognized rights of this land.

John Bingham attended an integrated school, an unusual phenomenon in the 1800’s made usual today through his efforts. There, he became friends with a black classmate. That friend was former slave Titus Basfield – one of the first black people to earn a college degree in Ohio. Their relationship instilled a sense of human dignity in Bingham, and the Fourteenth Amendment that Bingham would one day write instilled human dignity in the Constitution.

Remember: The Constitution was *not* agnostic about slavery; our founding document supported slavery. It not only denied an all too alienable five fifths of personhood, but it also gave additional representation for people held as property, excluded from the places of sovereign power that their labor built.

Before the 14<sup>th</sup>, the Bill of Rights did not apply to the states. States could, and states did, violate the freedoms of speech, religion, and the press.

But the Fourteenth Amendment declared, “no more.” The words that Bingham wrote reached back to the Declaration of Independence and made the belief that “all men are created equal” a constitutionally valid belief. The words that Bingham wrote injected the Constitution with the legal dignity of every human person.

People cannot participate in a democracy if their dignity can be compromised, if their worth can be questioned, or if their rights can be denied.

But when dignity becomes unalienable, when worth becomes unquantifiable, and when rights become undeniable then democracy becomes possible. That’s what the 14<sup>th</sup> Amendment was meant to achieve – the possibility of democracy.

You and I can’t fulfill our roles as equal citizens if there are inequalities between us because of our color or our sex or who we love or who we worship. That’s why the Fourteenth Amendment was so transformational. Section 1 does not speak of white and black or men and women. It speaks of persons; with that word, it includes everyone and excludes none, and that was transformational.

Professor Akhil Amar of Yale Law School once observed that “many of us are guilty of a kind of curiously selective ancestor worship—one that gives too much credit to James Madison and not enough to John Bingham.”

On this Law Day, we should consciously remember the person who transformed our democracy. Because he loved his friend, he worked to change a document that denied his friend’s dignity into one that affirmed it. Because he loved his country, he worked to transform it from a land of slaves and masters to a land of persons.

As an American, I am very proud of that. As a person, I am very thankful for that.

And as for the obstacles America faces, I leave you with this inquiry to answer the questions before us all: “What would Bingham do?”

Ladies and Gentlemen: Let’s follow his example by making an example of ourselves. Thank you.