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**William Lawrence: Perspectives of a
Reconstruction Republican on the 14th
Amendment**

Jeremy D. Burkhart

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William Lawrence was an influential figure in local, state, and national politics. He is known for many things – impeaching Andrew Johnson, creating the United States Department of Justice, starting the American Red Cross, and, of most importance to this article, ratifying the 14th Amendment. Lawrence played a prominent role in securing passage of the 14th Amendment, yet there is very little written about Lawrence. This author has attempted to change that by doing field research in Lawrence’s hometown of Bellefontaine, Ohio. By examining the more obscure, unpublicized writings of Lawrence as well as his regularly-cited Congressional speeches, this author hopes to provide a comprehensive look at Lawrence’s views of the Fourteenth Amendment. In the end, perhaps Fourteenth Amendment jurisprudence will be slightly more accurate.

Life Before Congress

William Lawrence came from a distinguished family, being able to claim both George Washington and Oliver Cromwell as relatives.¹ He was born in Mt. Pleasant, Ohio on June 26, 1819. William’s father, Joseph Lawrence, was orphaned as a child. After serving a seven year apprenticeship to a Blacksmith, and while still a youth, Joseph Lawrence fought in Capt. Senezet’s company of Philadelphia Guards during the War of 1812. His father² worked as a mechanic for the early years of William’s childhood, but eventually purchased a farm and ran a blacksmith

¹ The Lawrences were descendants of Sir Robert Lawrence of Ashton Hall in Lancashire, England. His grandson, James Lawrence, married Matilda Washington, who belonged to the family from which George Washington was descended. The Lawrences were distinguished in English politics. One of them was a second cousin to Oliver Cromwell, and served as Lord President of the Protector’s Council and as a member of the House of Lords. *Lawrence on Taxation and Representation*, BELLEFONTAINE REPUBLICAN, Feb. 2, 1866. Obituary, *Hon. Judge William Lawrence*, LOGAN COUNTY INDEX, May 11, 1899 (hereinafter “Obituary”).

² William Lawrence’s father, Joseph Lawrence, was a soldier in Capt. Senezet’s company of Philadelphia Guards during the War of 1812. Obituary .

shop.³ William dutifully assisted his father in these endeavors, although he “never relinquished his determination to become a factor in the walks of life demanding broad and keen intellectuality.”⁴ William excelled at his studies, even writing a book on surveying before he was even thirteen.⁵

In 1836, Lawrence enrolled in Franklin College in New Athens, Ohio. There, Lawrence may have encountered John Bingham, who also graduated from Franklin.⁶ During his time at Franklin, Lawrence was likely influenced by Rev. John Walker, the founder of the college and a staunch abolitionist.⁷ Lawrence graduated with a Bachelor of Arts in 1838, and was honored as the class valedictorian.⁸ Following college, he apprenticed in the study of law⁹ and attended law school at Cincinnati,¹⁰ where he devoted 16 hours a day to his studies.¹¹

³ Gen. Robert P. Kennedy, *THE HISTORICAL REVIEW OF LOGAN COUNTY, OHIO* 240, S.J. Clarke Publishing Co. , Chicago (1903).

⁴ *Id.* at 240. “Although he was frequently summoned to aid in the labors of his father’s farm, he never fell behind his class, but was distinguished for the ease with which he mastered the sciences and the elegance of his translations of the Greek and Latin Language.”

⁵ Obituary. Lawrence also spent a summer working as a clerk for a local merchant, in which he picked up the business knowledge he used so frequently as a lawyer in private practice. Kennedy at 240.

⁶ Richard L. Aynes, *The 39th Congress (1865-1867) and the 14th Amendment: Some Preliminary Perspectives*, 42 AKRON L. REV. 1019, note 36 (2009).

⁷ Lawrence likely would have had Walker as a teacher. Walker’s class in “General History” included discussions of liberty as manifested in the Magna Carta, the English Petition of Right, the English Declaration Rights, writings of John Locke, American history, the Declaration of Independence, the Fifth Amendment Due Process Clause, and other matters related to freedom and law. *Id.*, citing Erving E. Beauregard, REVEREND JOHN WALKER, RENAISSANCE MAN 71 (1990).

⁸ Obituary.

⁹ Lawrence studied under James L. Gage of McConnellsville, Ohio, the “oldest and ablest member of the McConnellsville Bar.” Kennedy at 241.

¹⁰ Lawrence also worked as a school teacher during his time in law school in order to become self-reliant. *Id.*

¹¹ Kennedy at 241. While in law school, Lawrence’s interest in chemistry led him to attend lectures at the Ohio Medical College. His studies led him to conclude that: “Teleology and entaxiology alike prove the existence of a physical essence, a real, substantial, intelligent force, pervading all space, and this is God . . .”

After being admitted to the state bar, Lawrence worked as a reporter for the *Ohio State Journal* in the Ohio House of Representatives for the 1840-1841 session.¹² In this position, Lawrence made contacts that greatly benefitted him in both his professional and political career and gained insight into the rules and tactics of legislative debate that would make him a formidable opponent in the years to come.¹³ During this time, Lawrence also served as a correspondent for the *Zanesville Republican* and *McConnellsville Whig Standard*.

In the summer of 1841, Lawrence moved to Bellefontaine, Ohio – the city he would call home for the rest of his life. There, he practiced law in partnership with some of the leading Republicans of the day, including Benjamin Stanton and William West.¹⁴ Lawrence was well known for his profound knowledge of the law,¹⁵ and even studied medicine for two years “in order that this knowledge might be of benefit to him in his legal practice.”¹⁶ Lawrence’s legal

¹² *Id.*

¹³ *Id.*

¹⁴ From 1841 to 1843, Lawrence partnered with Benjamin Stanton, who would later become a Congressman and the Lieutenant Governor of Ohio. Lawrence also trained William H. West, with whom he would partner from 1854 to 1861. West came to Bellefontaine in 1850 for the express purpose of studying law under Lawrence. West served in the Ohio House of Representatives in 1857 and 1861 and in the Ohio Senate in 1863. West would go on to serve as Attorney General for Ohio, and later, an Ohio Supreme Court justice. West lost his eyesight while on the Court, but continued to be a political force. West was nominated for Governor in 1877, but took a controversial stance in a major railroad strike that cost him the election. West was best known for his speaking abilities, leading to his nickname, “Blind Man Eloquent.” West gave the nomination speech for William Blaine at the 1884 Republican National Convention. The speech is considered by many political scientists and historians to be one of the finest political speeches in U.S. history. If Blaine had won the Presidency, West was to have been his Attorney General. http://www.co.logan.oh.us/museum/Logan_County_History/logan_county_history.html.

¹⁵ *Id.* at 242. See Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 VA. L. REV. 947, 994 (1995), calling Lawrence “one of the most careful lawyers among the Republican proponents [of the Civil Rights Act of 1875];” Michele Landis Dunbar, “Overtaken by a Great Calamity:” *Disaster Relief and the Origin of the American Welfare State*, 23 LAW & HIST. REV. 387, 401 (2005), referring to Lawrence as “something of a constitutional scholar.”

¹⁶ Kennedy at 242. Lawrence even published articles on medical subjects, including one on “Clithrophobia.” Lawrence maintained that disease was “produced by the presence or of something which should be absent, or by the absence of some element which should be present, and that remedies should seek to remove the former and supply the latter.” Lawrence advocated nutrition in harmony with nature, saying that “the only proper articles of diet are such as nature produces in the climate in which we live.” Citing the case of Blackberries, Lawrence pointed out how they ripened at a time “when their anti-cathartic qualities are needed to counteract tendencies in the system requiring them.” Part of Lawrence’s views on medicine appear to be religiously-based: “God provided

knowledge was widespread. A compilation of all his legal briefs would make “several, good-sized volumes.”¹⁷ Early in his career, a contemporary of Lawrence’s described his professional reputation:

Scarcely an important case has been tried in Logan county in which he has not been retained in some stage of its progress . . . He never resorts to an unfair advantage, even in the most desperate cause. His intercourse with his brethren of the profession is characterized by the utmost candor, integrity, and frankness. He is polite and respectful to the court, mild and gentlemanly in his examination of witnesses, and courteous in his address and deportment to the jury, which qualities have rendered him a general favorite at the bar.¹⁸

Not surprisingly, Lawrence had the distinction of arguing several cases before the U.S. Supreme Court. In *Holden v. Joy* (1872), *Morton v. Nebraska* (1874), and *Leavenworth, Lawrence and Galveston Railroad Company v. United States* (1875),¹⁹ he sought to secure congressional control over the sale of public lands.²⁰ In 1877 he argued on behalf of the Republican electors of South Carolina and Oregon before the electoral commission appointed to resolve the contested Rutherford B. Hayes-Samuel Tilden presidential election, helping to secure the electoral votes for Hayes, and thus the Presidency.²¹ Lawrence’s passion for the law was apparent to all who knew him. A contemporary of Lawrence’s, the Hon. E. Graham Haywood, said: “I believe when his call comes ‘at the sound of the last trump’ he will have a

in each climate the food that man needs. He who cans for the winter green corn, berries, and summer vegetation . . . changes the plans of Providence, and those who consume such preparations, incur the danger of receiving the penalties of violated law.” Obituary.

¹⁷ Obituary.

¹⁸ Kennedy at 244.

¹⁹ Lawrence argued on behalf of the United States, having been appointed to this role by U.S. Attorney General George Henry Williams. Described as “one of the greatest land suits ever heard,” Lawrence helped to regain 960,000 acres of land to the nation and its settlers. *Id.*

²⁰ Christina Doyle, William Lawrence, American National Biography.

²¹ *Id.*; Kennedy at 244.

law book in his hands.”²² Other notable legal accomplishments of Lawrence’s include his definition of “reasonable doubt,” which was said by a judge of the time to be the best in the books,²³ and his jury instructions on cases involving chloroform, which was copied by a treatise on Medical Jurisprudence.²⁴ In addition, Lawrence was one of the lawyers who helped found the Ohio State Bar Association.²⁵

Lawrence was first married in 1843 to Cornelia Hawkins,²⁶ who died only three months after the ceremony.²⁷ He then married Caroline Miller,²⁸ who had been a roommate of Mrs. John Sherman,²⁹ the wife of the Secretary of the Treasury under President Rutherford B. Hayes.³⁰ In total, Mr. and Mrs. Lawrence had seven children.³¹ John M. Lawrence went on to

²² Obituary. Haywood was eerily prophetic. Lawrence was stricken down while in the office of a judge in Kenton, OH, preparing law briefs for a case he was greatly interested in. *Id.*

²³ Biographical Record of Auglaize, Logan and Shelby counties 119 (Portman Bros. 1892).

²⁴ *Id.*, citing Wharton and Stille, MEDICAL JURISPRUDENCE.

²⁵ Portrait and Biographical Record of Auglaize, Logan and Shelby counties 117 (Chapman Bros. 1892).

²⁶ Lawrence met Hawkins, said to be “an excellent lady of rare intelligence,” while in McConnellsville where they both taught school. Cornelia’s father, Hon. William Hawkins, was also a judge. Obituary.

²⁷ *Id.*

²⁸ Caroline’s father, David Miller, was a staunch of the Presbyterian Church. Because there was no Presbyterian minister in Bellefontaine at that time, he arranged for the Rev. J. L. Polk to travel by horseback 8 miles into town to perform the ceremony. The ceremony was very small, and only attended by the immediate families as well as two of Lawrence’s contemporaries. *Lawrence-Miller Golden Wedding Anniversary Celebration. Judge and Mrs. William Lawrence “At Home,” BELLEFONTAINE DAILY EXAMINER, March 15, 1895.* Caroline’s brother, Merrill Miller, was a Rear Admiral in the United States Navy. Kennedy at 247.

²⁹ Her maiden name was Cecelia Stewart. Caroline and Cecelia were roommates at Granville (Ohio) Presbyterian Female Seminary. *Lawrence-Miller Golden Wedding Anniversary Celebration. Judge and Mrs. William Lawrence “At Home,” BELLEFONTAINE DAILY EXAMINER, March 15, 1895.*

³⁰ Jim Hoffman, *Crimes for Impeachment Brief Written by Bellefontaine Judge During 1868*, BELLEFONTAINE EXAMINER, circa 1998

³¹ Only six lived to adulthood. The seventh, Clay Lawrence, was named by Cassius Clay, the famous Kentucky abolitionist. Clay was in Bellefontaine during the presidential campaign of 1860, where he was advocating the election of Abraham Lincoln. As a visitor of much distinction, Judge Lawrence had Clay over to his home one evening. During the visit, Lawrence invited Clay to go upstairs and see his baby boy. As he looked into the child’s face Clay asked, “Have you named the child yet?” When Lawrence replied that no name had yet been decided upon, Clay asked for a family Bible and in a blank space wrote the words “Cassius Marcellus Clay Lawrence.” The baby was called Clay, but it only lived until the following January. BELLEFONTAINE WEEKLY EXAMINER, April 4, 1902

become a prominent attorney in his own right, and although he never held office, was known to be a “staunch republican.”³² John went to law school with President Taft³³ and ended up marrying Mary Van Devanter, the sister of U.S. Supreme Court Willis Van Devanter.³⁴

Lawrence began his long career in public service in 1842 when he became Commissioner of Bankruptcies for Logan County.³⁵ He then served as County Prosecutor from 1845-1846.³⁶ For the next ten years, Lawrence served in the Ohio General Assembly, both in the House and Senate.³⁷ Notably, Lawrence authored the Ohio free banking law, which served, in part, as a model for the national banking act.³⁸ While in the Senate, Lawrence’s peers selected him to be reporter of the Supreme Court of Ohio.³⁹ Lawrence may also have served as President Pro Tem of the Senate, although this author was unable to confirm as there were two William Lawrences in the Ohio Senate in 1856.⁴⁰

³² *Grim Reaper Summons Attorney John M. Lawrence of This City*, BELLEFONTAINE WEEKLY INDEX REPUBLICAN, Sept. 18, 1913.

³³ John Lawrence and William Howard Taft both graduated from Cincinnati Law School in 1880. *Id.*

³⁴ *Id.* Justice Devanter also attended Cincinnati law school, graduating the year after Lawrence. Lawrence was not the only one who made connections there. Devanter was appointed to the Supreme Court by President Taft.

³⁵ Obituary.

³⁶ *Id.*

³⁷ Lawrence was elected to the Ohio House in 1846, and again in 1847. He was elected to the Senate in 1848, where he served until becoming a judge. Obituary.

³⁸ Kennedy at 242.

³⁹ Kennedy at 243. As Reporter, Lawrence prepared the 20th volume of the Ohio Reports. He was distinguished for his clear, concise summaries of the cases as well as the efficiency in which he arranged the cases. The *Cincinnati Atlas*, whose editor was also a lawyer, has this to say about the 20th volume: “For the first time in the Ohio Reports an attempt has been made in this volume to reduce the arrangement of the decisions to something like a system. A decision is made as follows: 1. Criminal Cases. 2. Civil Cases. 3. Chancery cases. Interspersed throughout the work are the notes of the reporter, referring to previous cases in the Ohio Reports upon the same points, as well as to the reports of the other states, a service which cannot fail in every particular to recommend itself favorable to the consideration of all the members of the legal profession.” *Id.*

⁴⁰ See DEFIANCE DEMOCRAT, Apr. 19, 1856. William Lawrence (D) was an Ohio Senator from Guernsey County. He also served one term in the U.S. House of Representatives, as a member of the 35th Congress (1857-1859). After Congress, Lawrence served again in the Ohio Senate, and later as President of the Board of Directors of the Ohio Penitentiary.

Lawrence involvement with politics was not limited to holding public office.⁴¹ Before he was a Congressman, Lawrence owned and operated a partisan newspaper, the Logan County Gazette,⁴² and was an accomplished journalist.⁴³ Lawrence also served as an editor of the Cleveland Western Law Monthly from 1861-1864. Along with William West, Lawrence would help turn Bellefontaine into a Republican stronghold.⁴⁴ In 1852, as a member of the Whig Party, he was a candidate for presidential elector on the Gen. Winfield Scott electoral ticket.⁴⁵ Lawrence was unsuccessful, as Scott lost the election to Franklin Pierce. In 1854, the Know-Nothing party nominated Lawrence as a candidate for Congress, with a certainty of success, but he declined it because he could not endorse their opposition to immigrants or their proscription for religious opinions.⁴⁶

In 1856, Lawrence was elected the Logan County Common Pleas Court Judge.⁴⁷ When he first took the bench, a newspaper article predicted he would make “one of the most popular judges on the bench,” and described him as having “peculiar fitness” for the position.⁴⁸ As a

⁴¹ Lawrence took an interest in politics from an early age. During the presidential campaign of 1840, when Lawrence was only 20, he is reported to have made “stump speeches” in several counties of Ohio. Biographical Record of Auglaize, Logan and Shelby counties 121 (Portman Bros. 1892).

⁴² Lawrence served Editor of the *Gazette* from 1845 to 1847. The paper was eventually bought by William West and William Hubbard, who turned it into the *Logan County Republican*, which eventually became the *Bellefontaine Republican*. This was one of the first, if not the first, pro-Republican newspaper in Ohio. K. Todd McCormick, A Brief History of Logan County, Ohio, http://www.co.logan.oh.us/museum/Logan_County_History/logan_county_history.html, accessed on May 23, 2010.

⁴³ See Joseph P. Smith, ed., *History of the Republican Party in Ohio* (1898), for a comprehensive list of Lawrence’s scholarly works. In one of his biographical sketches, it was said of him: “Had Mr. Lawrence done nothing for the world save what he gave to the public in the written articles, he would even then be entitled to distinction and to the gratitude of his fellow men.” Kennedy at 246.

⁴⁴ *Id.*

⁴⁵ ZANESVILLE DAILY COURIER, Sept. 7, 1852. John Bingham was also on the Scott electoral ticket. *Id.*

⁴⁶ Biographical Record of Auglaize, Logan and Shelby counties 123 (Portman Bros. 1892).

⁴⁷ *Id.*

⁴⁸ *Judge Lawrence*, LOGAN COUNTY GAZETTE, Mar. 14, 1857. Of course the neutrality of this article might reasonably be questioned as Lawrence was a former editor of the *Gazette*. Lawrence was also said to have maintained a good relationship with the incumbent whom he was replacing: “[O]ne of the most peculiar and at the

judge, he served with “unswerving integrity and a masterful grasp of every problem which presented itself for solution.”⁴⁹ It appears that Judge Lawrence did not disappoint, as some called for his appointment to the Ohio Supreme Court in 1861. A newspaper article advocating Lawrence for the position described him as such: “[H]e is an able lawyer, a ripe scholar, a great student, and man of unflinching integrity . . . he is just such a man as would distinguish himself upon the bench of the Supreme Court of Ohio and would reflect honor, dignity, upon the position and the State.”⁵⁰

While announcing his nomination for district judge, another newspaper had this to say: “Judge Lawrence is too well and favorably known to our citizens to require any eulogy from us. He is better qualified for Judge than any other man in the district, and we doubt, whether his superior can be found in the state.”⁵¹

Lawrence sat on the bench until 1864, with an interlude for service in the army during the Civil War. Judge Lawrence became Colonel Lawrence, commanding the 84th Ohio Volunteer Infantry.⁵² The 84th served in Maryland during the summer of 1862, providing security for the area around Cumberland and New Creek, and preventing rebels from moving supplies into Confederate territory.⁵³ During this time, Lawrence also served as President of a court-martial, which was said to have tried “many important cases.”⁵⁴ After the 84th returned to

same time pleasant features of our republican institutions is strongly manifested in the good feeling – we might say intimacy – which is observed to exist between the late Judge Metcalf and the present incumbent.” *Id.*

⁴⁹ Kennedy at 243.

⁵⁰ DAILY ZANESVILLE COURIER, Sept. 2, 1861. The article went on to call Lawrence a “good Union man.”

⁵¹ *District Convention*, MARYSVILLE TRIBUNE, Sept. 18, 1861.

⁵² Kennedy at 243. Lawrence’s son, Joseph A. Lawrence, was also a soldier in the war, enlisting in B Co., 132nd Ohio Volunteer Infantry, where he served for four months. *History of Logan County, Ohio* (1880).

⁵³ 84th *Regiment Ohio Volunteer Infantry*, <http://www.angelfire.com/oh4/civwar/14thohio/84ovi.html>.

⁵⁴ Obituary.

Ohio, Lawrence continued to do his part on the home front, speaking at Union rallies to raise public support and money for the war effort.⁵⁵ In 1863, Lawrence was appointed by President Lincoln to be District Judge of Florida, but declined to accept.⁵⁶ Lawrence was elected to Congress in 1864. It is Lawrence's time as a member of the 39th Congress (1866-1868) that is of particular significance to this paper.

Debate about Reconstruction Power

Even before Civil War guns were silenced, the nation was debating about how to re-incorporate the Confederacy into the Union. President Lincoln advocated a moderate approach, creating little embarrassment for the South while admitting them into the Union as quickly as possible. After Lincoln's death, his successor, Andrew Johnson, attempted to continue that policy. Johnson favored minimal conditions for Southern re-admittance, namely passage of the 13th Amendment.⁵⁷ With that occurring in December 1865, Johnson declared Reconstruction to be at an end. However, the Republicans in Congress did not share the President's sentiment.

Congress and the President disagreed on which branch had the power to end Reconstruction. Johnson firmly believed that, as Commander-in-Chief, he could unilaterally set the terms of Reconstruction⁵⁸ pursuant to the Executive Branch's war power.⁵⁹ Lawrence

⁵⁵ An article in the *Marysville Tribune* on July 29, 1863, announces a "Grand Union Rally" at the Marysville Fair Grounds. Lawrence, along with Col. Charles Anderson, and Hon. William West, were listed as keynote speakers. Those attending were directed to bring their own dinners and eat them in "true soldier style." Noting the important nature of the rally, the announcement said, "We rally for our country, not for a party." *Union Rally*, MARYSVILLE TRIBUNE, July 29, 1863

⁵⁶ *Id.*

⁵⁷ W. Sherman Rogers, *The Black Quest for Economic Liberty*, 48 HOW. L.J. 1, 39 (2004)

⁵⁸ Johnson felt that the Southern states' secession was presumptively invalid. As such, they were entitled to representation in Congress as soon as order could be restored and elections held. In other words, the South had never actually left the Union. Stephen G. Calabresi, *The Unitary Executive During the Second-Half Century*, 26 HARV. J.L. & PUB. POL'Y 667, 739 (2003).

saw Johnson's actions as a usurpation of power, and later supported Johnson's impeachment on such grounds.⁶⁰ Republicans, like Lawrence, saw Reconstruction as inherently Congress' responsibility. The war was over, and the Constitution charged Congress with "guarantee[ing] to every state . . . a Republican Form of Government."⁶¹ The Republicans eventually won out, taking supermajorities in both houses in the 1866 elections⁶² – enough to override Presidential vetoes,⁶³ and ultimately impeach the President.

The Bellefontaine Republican chronicled Lawrence's views on Congress' duty to restore the states:

"Mr. Lawrence then maintained that the ordinances of secession were void: that no State was out of the Union, but all lawful State government was destroyed in the rebel States; that when the rebel government were overthrown, the people were left without State governments; that it is the duty of Congress to guarantee a republican State

⁵⁹ "The President shall be Commander in Chief of the Army and Navy of the United States . . . when called into actual Service of the United States. U.S. CONST. art II, § 2, cl. 1.

⁶⁰ *See infra* note

⁶¹ U.S. CONST., art. 4, § 4.

⁶² The 1866 elections centered almost entirely on the issue of the 14th Amendment, with Republicans battling against Democrats and Johnson's National Union Party. "Seldom, declared the New York Times had a political contest been conducted 'with so exclusive reference to a single issue.'" Mark S. Scarberry, *Historical Considerations and Congressional Representation for the District of Columbia: Constitutionality of the D.C. House Voting Rights Bill in Light of Section Two of the Fourteenth Amendment and the History of the Creation of The District*, 60 ALA. L. REV. 783, 845-846 (2009) (quoting

ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877, 228-80 (1988).

The importance of the 1866 elections was evident to the people at the time. The *Urbana Citizen* had this to say in an editorial discussing the importance of re-nominating Judge Lawrence for Congress:

The Congressional election this fall is one of great importance, and as far as practicable the present Republican members should be returned. The District can certainly gain nothing by a change of Representative, and if any body [sic] has any aspirations in that direction, it would be well for them to curb their ambition, at least for the present. There is too much at stake in our Congressional elections this fall to get up a strife in this or any other District in the State about men. "Measures, not men" should be the motto of the Republican party in the coming contest . . .

Judge Lawrence, BELLEFONTAINE REPUBLICAN, May 25, 1866.

⁶³ Although the Republicans had held this power even before the election. In the spring of 1866, for the first time in American history, Congress overrode a presidential veto in order to pass the Civil Rights Act of 1866. Calabresi, *supra* note 2, at 742.

government, and that until this is done, there can be no lawful State government. Traitors will at once control them . . .⁶⁴

Lawrence was said to have quoted numerous authorities to support his position, including the rebel State constitutions, arguing that because none had provided a method for resuming government (or even contemplating the government's destruction), only the authority of Congress could properly restore states.⁶⁵ Demonstrating his knowledge of Constitutional law, Lawrence cited *Luther v. Borden* for the proposition that Congress (as opposed to the President) was the sole arbiter of what government is the established one in a state.⁶⁶ Furthermore, Lawrence argued that the nation had an inherent right to continued existence. Part of this right to "national life" was the power to set up new State governments when the old ones were destroyed.⁶⁷

Why Lawrence Did Not Support Re-admittance For the Rebel States in 1866

The key issue in the election of 1866 was how to proceed with Reconstruction. The Democrats were said to have supported immediate and unconditional admission of the Southern states back into the Union.⁶⁸ Lawrence, along with other Republicans, argued that more safeguards and protections were needed before Southern representatives could be re-instated in Congress. During a campaign speech in the fall of 1866, Lawrence set out his reasoning.

⁶⁴ *Speech of Mr. Lawrence*, BELLEFONTAINE REPUBLICAN, Feb. 23, 1866.

⁶⁵ *Id.*

⁶⁶ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866, citing *Luther v. Borden*, 48 U.S. 1 (1849).

⁶⁷ *Id.*

⁶⁸ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

First, Lawrence argued that if a state was unable to govern itself without military authority, it was surely unfit to govern others.⁶⁹ He used Johnson's own words against him, citing the President's proclamation that the insurrection was over, then pointing out Johnson's instruction to his generals that martial law was still in effect.⁷⁰ As further evidence of the chaotic circumstances found in the South, Lawrence recounted the daily murders taking place in some states.⁷¹ Secondly, Lawrence warned how readmitting the states would essentially create a military autocracy.⁷² Because the South was occupied by the military, the army controlled the newspapers and elections. Ipso facto, the Army determined who would represent those states in Congress. Lawrence felt such a system was dangerous: "If the halls of Congress are to be filled by military power, then is the grave of our liberties already dug."⁷³

Lastly, Lawrence spotlighted the Southern tendency to elect those who had led the rebellion. Such people were ineligible to serve in Congress because they could not take the "test oath,"⁷⁴ which required federal officials to swear they had never engaged in criminal or

⁶⁹ *Id.*

⁷⁰ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866. "The President's proclamation does not remove martial law, or operate in any way upon the Freedmen's Bureau. *Id.*, citing telegram from Andrew Johnson to General Tillson, April 17, 1866.

⁷¹ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

⁷² Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

⁷³ *Id.*

⁷⁴ Called the "Ironclad Test Oath," the war-inspired law required "every person elected or appointed to any office ... under the Government of the United States ... excepting the President of the United States" to swear or affirm that they had never previously engaged in criminal or disloyal conduct. Those government employees who failed to take the 1862 Test Oath would not receive a salary; those who swore falsely would be prosecuted for perjury and forever denied federal employment. Congress made the Test Oath mandatory for all its members in 1864. The Senate took the measure a step farther, requiring Senators to "subscribe" to it by signing a printed copy. In order so that former Confederates could serve in Congress, an alternative oath, which did not require the affirmation of past fidelity, was made optional in 1868. In 1884, Congress repealed the Ironclad Test Oath. United States Senate: Oath of Office, http://www.senate.gov/artandhistory/history/common/briefing/Oath_Office.htm (last visited May 17, 2010).

traitorous conduct.⁷⁵ He cited the election of Alexander Stephens, Vice President of the Confederacy, and Herschel V. Johnson, a Confederate Senator, to Congress.⁷⁶ Lawrence believed the danger of the rebels to be no less than when they wore the gray uniforms of the Confederacy: “They now propose to take possession of Congress in order that they may accomplish in the nation’s Cabinet what they failed to accomplish on the battlefield.”⁷⁷ To prevent such a result, Lawrence argued for ratification of the 14th Amendment, what he called “security for the future.”⁷⁸

Democrats, who supported immediate admittance of southern Congressmen, believed, among other things, that it was unconstitutional to refuse southern States their seats in the Senate. The Constitution provides, “[N]o state, without its Consent, shall be deprived of it’s [sic] equal Suffrage in the Senate.”⁷⁹

Views on the Fourteenth Amendment

Section 2 – The Question of Representation

Lawrence felt very strongly about the right of all male citizens to vote (We will forgive him for his antiquated views on female suffrage). He thought representation should be apportioned among all adult male citizens so that “one vote in South Carolina would have no more power than one in Ohio,”⁸⁰ an obvious reference to the three-fifths compromise laid out

⁷⁵ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ U.S. CONST., art. 5.

⁸⁰ *Judge Lawrence on Taxation and Representation*, BELLEFONTAINE REPUBLICAN, Feb. 2, 1866.

by the Framers. Critical of the Rebel states, Lawrence said that the extra representatives which the South would be getting now that all black males contributed towards congressional representation was a “premium for treason.”⁸¹ He, along with other Radical Republicans of the day, felt that if a state chose to deny voting rights to a class of people then “no class should have political power for them.”⁸² Using logic, illustrated his point:

If we take the whole population of each State as the number which measures the right of representation, and suppose that the white men alone of the Southern States cast the votes of the States, a brief calculation will show that one hundred of the white inhabitants of South Carolina will have as much power through their Representatives as two hundred and forty of the people of Iowa. . . If it be that the colored race of the South are all wholly disenfranchised because wholly unfit for the right of suffrage, it is also true that the white voters of South Carolina are not about two and a half times better fitted to exercise that right wisely and patriotically than the people of Iowa.⁸³

⁸¹ *Id.* In *Richardson v. Ramirez*, Justice Thurgood Marshall elaborated on the purpose behind Section 2 of the 14th Amendment:

The Republicans who controlled the 39th Congress were concerned that the additional congressional representation of the Southern States which would result from the abolition of slavery might weaken their own political dominance. There were two alternatives available-either to limit southern representation, which was unacceptable on a long-term basis, or to insure that southern Negroes, sympathetic to the Republican cause, would be enfranchised; but an explicit grant of suffrage [sic] to Negroes was thought politically unpalatable at the time. Section 2 of the Fourteenth Amendment was the resultant compromise. It put Southern States to a choice-enfranchise Negro voters or lose congressional representation.

418 U.S. 24, 73 (1974), (citing Bonfield, *The Right to Vote and Judicial Enforcement of Section Two of the Fourteenth Amendment*, 46 CORNELL L.Q. 108, 109 (1960); H. FLACK, THE ADOPTION OF THE FOURTEENTH AMENDMENT 98, 126 (1908); B. KENDRICK, JOURNAL OF THE JOINT COMMITTEE OF FIFTEEN ON RECONSTRUCTION 290-291 (1914); J. JAMES, THE FRAMING OF THE FOURTEENTH AMENDMENT 185 (1956); Van Alstyne, *The Fourteenth Amendment, the 'Right' to Vote, and the Understanding of the Thirty-ninth Congress*, 1965 SUP.CT.REV. 33, 44 (1965)).

Other solutions to the issue of negro suffrage were presented by Presidents Lincoln and Johnson. Lincoln maintained that the voting right should be “conferred on the very intelligent, and on those who serve our cause as soldiers.” Andrew E. Taslitz, *Hate Crimes, Free Speech, and the Contract of Mutual Indifference*, 80 B.U. L. REV. 1283, note 456 (1999) (Quoting Lincoln’s last public address in Washington D.C. on April 11, 1865, John Gabriel Hunt, THE ESSENTIAL ABRAHAM LINCOLN 339 (1993). In an 1865 letter to the Governor of Mississippi, Johnson recommended: "If you could extend the elective franchise to all persons of color who can read the Constitution in English and write their names, and to all persons of color who own real estate valued at at least two hundred and fifty dollars, and pay taxes thereon, you would completely disarm the adversary [Radical Republicans], and set an example the other states will follow." John Hope Franklin, *Reconstruction After the Civil War* 42, U. Chicago Press (1961)

⁸² *Judge Lawrence on Taxation and Representation*, BELLEFONTAINE REPUBLICAN, Feb. 2, 1866.

⁸³ *Id.*

He gave no opinion as to the power of Congress to interfere if a state did deny suffrage to some, although the newspaper article describing his speech said that such an event might render a Guarantee Clause challenge proper.⁸⁴

Section 3 – Preventing Former Rebels from Holding Office

Lawrence was a proponent of section three of the 14th Amendment which prevented former rebels from holding public office, unless by the consent of two-thirds of Congress.⁸⁵ Calling it “security for the future,” Lawrence said that “[a] rebel with perjury on his lips and treason in his heart [was] an unsafe depository of official power.”⁸⁶ True to his eloquent nature, Lawrence used vivid language to convey the disgust he felt at the idea: “Did our ‘brave boys in blue’ fight only that traitors might enjoy office?”⁸⁷ “Let them wait till the grass has grown green on the graves of the murdered dead of Andersonville.”⁸⁸

⁸⁴ “The United States shall guarantee to every State in this Union a Republican Form of Government . . .” U.S. CONST. art. IV, § 4.

⁸⁵ U.S. CONST. amend. XIV, § 3. It provides: “No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability. *Id.*”

⁸⁶ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866

⁸⁷ *Id.* Lawrence uses the phrase “brave boys in blue” throughout the speech. *Id.*

⁸⁸ *Id.* Lawrence references Andersonville throughout the speech. The same paragraph ends with more incendiary Andersonville language: “Let them wait till the long roll in the Pension Office can be completed, where you may turn over page after page of names with the melancholy words affixed, “Starved to death at Andersonville.”

Section 4 – No Compensation for Slave Owners and No Debt Relief⁸⁹

Judge Lawrence adamantly opposed compensation to slave owners for constitutionally mandated emancipation. On January 17, 1866, Lawrence actually proposed a Constitutional Amendment to the House for *only* this purpose. Lawrence’s proposed version used similar language as that which was eventually ratified, differing only in that the judiciary was given power to enforce the provision through a grant of jurisdiction to the federal courts for cases arising under such.⁹⁰ On March 26 of that year, he addressed Congress “at length” on the subject.⁹¹ Lawrence’s principle arguments incorporated both law and policy. As to the legal basis for compensation, he pointed out that slaves were not property at common law,⁹² and that no state that had abolished slavery had ever reimbursed the owners.⁹³ Policy wise, Lawrence

⁸⁹ U.S. CONST. amend. XIV, § 4. It provides: “The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.” *Id.*

⁹⁰ Lawrence’s Amendment provided:

Neither Congress nor any State shall ever authorize, provide for, or make payment to any person or persons on account of the emancipation of any slave or slaves in the United States, or as compensation therefor . . . Congress shall have the power to enforce this article by appropriate legislation, and the judicial power of the United States shall extend to all cases arising under this article and the laws made in pursuance thereof. *Id.*

⁹¹ *Remarks of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, circa March 26, 1866.

⁹² Lawrence was not the only judicial scholar to share this view. Most famously, in *Somerset’s Case*, Lord Mansfield declared that slavery was so odious that it could not be supported without positive law – that is, common law could not support it. 20 Howell St. Tr. 1 (K.B. 1772). Similarly, Judge Mills, writing for the Kentucky Court of Appeals, held that the right to property in slaves was “a right existing by positive law of a municipal character, without foundation in the law of nature, or the unwritten and common law.” *Rankin v. Lydia*, 9 Ky. (2 A.K. Marsh.) 467, 3 (1820).

⁹³ Lawrence was partially correct. While New York and New Jersey did not actually compensate owners when they abolished slavery in 1799 and 1804, respectively, these states abolished slavery gradually, thus allowing slaveholders to “recoup their investment” by providing them with decades of labor from their eventually-to-be-freed slaves. Douglas Harper, *Slavery in the North*, available at <http://www.slavenorth.com/slavenorth.htm>.

said that the national debt could not bear the burden of paying for all freed slaves, which would require one-fourth of all taxable property contained in the slave states.⁹⁴

Lawrence also advocated that part of 14th Amendment which prohibited the repudiation of debts and pensions incurred by Confederate states and rebels in furtherance of the revolt.⁹⁵ He promoted this part of the amendment out of practicality as much as principal. Once the Southerners were re-admitted to Congress, they would have a majority (when combined with the northern Democrats), and would pass laws repudiating their war debt. Lawrence cited statements made by Southern candidates, who pledged to do just that if elected.⁹⁶ The Republic would have to pass the amendment before it could allow into power “men who would repudiate . . . every obligation which loyalty requires.”⁹⁷

Lawrence urged immediate passage of both provisions, citing Schurz’s Report⁹⁸ and a recent proposal by the Virginia legislature to take an inventory of all the slaves of the States,

⁹⁴ “Our national debt was nearly three thousand million dollars, and it would require us to increase that debt one thousand two hundred million of dollars to pay for the slaves. If we would avoid repudiation we must forever prohibit the possibility of this . . .” *Remarks of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, circa March 26, 1866.

⁹⁵ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

⁹⁶ Lawrence describes one speech made by a Virginia candidate: “I am opposed to the Southern States being taxed at all for the redemption of this debt, either directly or indirectly, and if elected to Congress, I will oppose all such measures, and I will vote to repeal all laws that have heretofore been passed for that purpose and in doing so I do not consider that I violate any obligation to which the South was a party. *Id.*”

⁹⁷ *Id.*

⁹⁸ In the summer of 1865, Andrew Johnson sent Carl Schurz, a German-born Union General, to report on the condition of the Southern states as part of a Special Commission. Edward Cary, *Carl Schurz*, N.Y. TIMES, Jan. 24 1897, at SM2. Schurz relayed to Johnson the Southern opinion on compensation: “There are abundant indications in newspaper articles, public speeches, and electioneering documents of candidates, which render it eminently probable that on the claim of compensation for their emancipated slaves the Southern States, as soon as readmitted to representation in Congress, will be almost a unit.” Garrett Epps, *The Undiscovered County: Northern Views of the Defeated South and the Political Background of the Fourteenth Amendment*, 13 TEMP. POL. & CIV. RTS. L. REV. 411, 420 (quoting SIDNEY ANDREWS, THE SOUTH SINCE THE WAR I (William Loren Katz ed., Arno Press 1969) (1866)). Some comments given were, “[T]he gov’tment won’t take away all our niggers for nothing,” and, “[t]he Const’ution makes niggers prop’ty, and gov’tment is bound to pay for them.” Epps, at 420-421, quoting Andrews at 218.

with a view to receive payment.⁹⁹ Lawrence pleaded for urgency, highlighting that such an Amendment would not be passed when “rebel Representatives fill these Halls.”¹⁰⁰

Privileges and Immunities Clause

There is much debate in Academia, and currently in the Supreme Court,¹⁰¹ about what role the Privileges and Immunities Clause of the 14th Amendment should play. Lawrence’s views on the subject can certainly be cited as evidence of what that clause was meant to do – at the least in his role as a member of the proposing 39th Congress, and even more so in light of the fact that he was one of the lead Republicans of the day. In a speech before the people of Piqua (Ohio) on August 15, 1866, Judge Lawrence made an impassioned case for the necessity of Republican victory in the upcoming election.¹⁰² In doing so, Lawrence explained the provisions of the 14th Amendment, including the effect of the Privileges and Immunities Clause:

But what are the “privileges and immunities” which no state shall abridge? These words . . . have been construed and their meaning fixed by the decisions of the courts. . . . [I]t is shown that they do not include the right of suffrage, but that This is confined to those privileges and immunities which are in their nature fundamental, which belong of right to citizens of all free Government, *and which have at all times been enjoyed by the citizens of the several States which compose this Union* from the time of their becoming free, independent and sovereign. They may all be compared under the following general heads: Protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kinds, and to pursue and obtain happiness, and safety, subject, nevertheless, to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or reside in any other State for purposes of trade, agriculture, professional pursuits, or otherwise claim the benefit of the writ of habeas corpus, to institute and maintain actions of any kind in the Courts of the State, to take, hold, and dispose of

⁹⁹ *Remarks of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, circa March 26, 1866.

¹⁰⁰ *Id.*

¹⁰¹ See *McDonald v. City of Chicago*, currently being decided by the U.S. Supreme Court.

¹⁰² *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866

property, either real or personal, and an exemption from higher taxes or impositions that are paid by the other citizens of the state, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of principles deemed to be fundamental.¹⁰³

Based on his speech, Lawrence appears to be declaring that the 14th Amendment will secure to citizens of one state, the rights already guaranteed by the Constitution to citizens of the several states.¹⁰⁴ In that same speech, Lawrence describes the Citizenship Clause¹⁰⁵ as being “unnecessary,” although he says it was “well to make it an unalterable law so that the children born here of parents coming from Germany and Ireland, and other nations, should never be denied the rights or character of citizens by any law of the land.”

Other scholars who have studied Lawrence have similarly concluded that he intended the 14th Amendment to incorporate the Bill of Rights against the States.¹⁰⁶ This author came across a newspaper article that seems to point to the privileges and immunities as the intended essence of the Amendment – the clause that would ensure blacks were afforded liberties. While not speaking to Lawrence’s views, this article is evidence of what the populace thought the 14th Amendment would do:

The 1st sec. of the amendment declares that . . . “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” Should this amendment become part of the Constitution of the United States, Congress could define one of the privileges of the citizens of the United States to be that of

¹⁰³ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866 (citing Brightly’s Digest) (emphasis added).

Of note, Lawrence cited this exact same passage during a speech before Congress several months earlier. *See* CONG. GLOBE, 39th Cong., 1st Sess. 1835 (1866) (statement of Rep. Lawrence) (citing Brightly’s Digest).

¹⁰⁴ The text would seem to support this theory: “No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States . . .” U.S. CONST., amend XIV, § 1.

¹⁰⁵ “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” *Id.*

¹⁰⁶ *See* Bryan H. Wildenthal, *Nationalizing the Bill of Rights: The Original Understanding of the Fourteenth Amendment in 1866-1867*, 68 OHIO ST. L.J. 1509, 1624 & n. 378.

voting. Suppose Congress should so declare, we ask the Journal how Ohio would prevent a negro from voting in Ohio. By the proposed amendment, Ohio is asked to surrender her right to abridge the privileges of a citizen of the United States, no matter what Congress may determine those rights or privileges to be.¹⁰⁷

This article came from a Democratic newspaper in Piqua, Ohio, part of Lawrence's Congressional District. Clearly, the newspaper had its concerns about the 14th Amendment. Moreover, these concerns are directed at the Privileges and Immunities Clause. Thus, it would seem that that Clause was the intended basis for enforcing Constitutional liberties against the states.

Lawrence's Intent to Apply the 2nd Amendment Against the States

Of particular interest to modern scholars is Lawrence's view on whether the 14th Amendment was meant to incorporate the 2nd. While this author's research has not uncovered any direct references made by Lawrence on the subject, he alludes to his views in various speeches. In a speech before the House in April of 1866 on the importance of passing the Civil Rights Act of 1866, Lawrence spoke of the "inherent and inalienable rights, pertaining to every citizen, which cannot be abolished or abridged by State constitutions or laws:"

All the law writers agree that every citizen has certain "absolute rights," which include – '*The right of personal security*, the right of personal liberty, and the right to acquire and enjoy property. These rights have been justly considered and frequently declared by the people of this country to be natural, inherent, and inalienable.'¹⁰⁸

Shortly thereafter, Lawrence expresses the idea that incident to these rights is the

¹⁰⁷ *The Journal and Negro Suffrage*, PIQUA DEMOCRAT, Sept. 12, 1866.

¹⁰⁸ CONG. GLOBE, 39th Cong., 1st Sess. 1832-1833 (1866) (statement of Rep. Lawrence) (emphasis added) (citing 1 James Kent, *Commentaries on American Law* 590 (Boston, Little, Brown & Co. 1826)). Later in this speech, Lawrence again references a "right of personal security." *Id.*

means to carry them out. “When the law granteth anything to anyone that also is granted without which the thing itself cannot be.”¹⁰⁹ He explains, “[i]t is idle to say that a citizen shall have the right to life, yet to deny him the right to labor, whereby alone he can live. It is a mockery to say that a citizen may have a right to live, and yet deny him the right to make a contract to secure the privilege and the rewards of labor.” Considering Lawrence’s view that personal security was an inherent right, he likely would have supported a right to bear arms for self-defense as a means to protect this right.¹¹⁰

Supporting this view are Lawrence’s remarks describing [the] “present necessity for this bill.”¹¹¹ He quotes the testimony of Gen. Alfred H. Terry, Commander of the military district of Virginia, describing the danger that would be faced by Unionists in that state if military protection was withdrawn: “I do not think they would receive any adequate protection for their rights of person and property from the courts, and I think that they would be persecuted through the machinery of the courts, as well as privately.”¹¹² When asked if he thought the Unionists would be safe, Terry replied, “I think not.”

Moreover, Terry made direct reference to blacks who possessed weapons for self-defense. Terry told of how Virginia officials and ordinary citizens had implored him to take away the arms of blacks.¹¹³ Interestingly, Terry also alluded to the possibility of an armed black resistance if their military protection was removed: “I should say there would be danger

¹⁰⁹ CONG. GLOBE, 39th Cong., 1st Sess. 1832-1833 (1866) (statement of Rep. Lawrence) (citing Lord Coke, *Oath before the Justices*, 12 Co., 130.

¹¹⁰ *See id.*

¹¹¹ CONG. GLOBE, 39th Cong., 1st Sess. 1832-1833 (1866) (statement of Rep. Lawrence).

¹¹² *Id.* at 1833.

¹¹³ *Id.* at 1834. I have received that information [that blacks possessed guns] from citizens of Virginia, including state officers, who have entreated me to take the arms of the blacks away from them.” When asked who those officers were, Terry replied: “Some were members of the present Legislature. I have also been asked to do so by public meetings held in one of the counties.”

that the blacks would commit those acts which an oppressed people, sooner or later, commit against their oppressors.”¹¹⁴ Lawrence went on to cite many instances where blacks were intimidated, threatened, and/or left without protection in the Reconstruction South.¹¹⁵

Lawrence’s remarks on the absolute right of personal security and his illustrations of the dangers the Unionists faced in the South may support the theory that he thought the 14th Amendment would incorporate the 2nd Amendment. However, they are not conclusive. The fact that Unionists required protection from the federal government does not necessarily speak to their need for firearms. Unionists could have been protected simply by preventing the states from taking away their fundamental rights – life, liberty, due process, property. Furthermore, Lawrence was speaking in support of the Civil Rights Act, not the 14th Amendment.¹¹⁶ However, based on Lawrence’s talk of “absolute rights,” it appears that he would have viewed the right to bear arms for self-defense as a natural right. In other words, even if not specifically included in the Constitution, the right to own a gun was a natural right which the government did not have the power to take away.

Lawrence’s speech before Congress in 1874 provides the most definitive proof of Lawrence’s thoughts on what the 14th Amendment would do. When declaring the

¹¹⁴ *Id.*

¹¹⁵ “[T]he reconstructed traitors openly cursing loyal men, and threatening them with shooting or hanging . . .” *Id.* at 1835, citing letter from W.G. Brownlow, Governor of Tennessee. Lawrence also cited a chilling recounting from Kentucky. One case of the shooting of two negroes and robbing them of all their families had occurred, and upon the arrest of the perpetrators of the act by the agents of the bureau they were discharged on a writ of *habeas corpus* sued out and tried before the circuit judge of the State court. Another case where a party of white men went to the house of an old negro nearly eighty years of age . . ., robbed him of his money, and kicked him to death. They then raked coals from the fire and putting him on them, roasted first one side, then the other. They also burnt two other nearly to death, putting out the eye of one, and boasted that they had not only intended to drive out the negroes, but intended to drive out certain whites.” CONG. GLOBE, 39th Cong., 1st Sess. 1835 (1866) (statement of Rep. Lawrence), quoting CINCINNATI COMMERCIAL, Feb. 26, 1866.

¹¹⁶ CONG. GLOBE, 39th Cong., 1st Sess. 1832 (1866) (statement of Rep. Lawrence). Still, since the 14th Amendment was passed to make the Civil Rights Act constitutional, it seems that remarks on one, could be used as evidence of intent for the other.

Amendment's purpose, Lawrence repeats the words of Rep. John Bingham, chief architect of the 14th Amendment: "The proposition . . . is simply a proposition to arm the Congress of the United States with the power to enforce the bill of rights as it stands in the Constitution."¹¹⁷ To drive home the point, Lawrence invoked Thaddeus Stevens: "[T]he Constitution limits only the action of Congress and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States so far, that the law which operates upon one man shall operate equally upon all."¹¹⁸ Lawrence's statements here provide much support for 2nd Amendment incorporation.

Voting

Lawrence's views on voting would likely conflict with the current Supreme Court interpretation. In promoting the 14th Amendment to those in his Congressional district, Lawrence addressed the state's continued power to regulate suffrage, which was an apparent concern of the people as evidenced by Lawrence's frequent references to it in the speech: "This section [14th Amendment], therefore, leaves each state free to determine for itself who shall vote, and does not confer upon or secure to any one the right to vote or hold office."¹¹⁹

Lawrence cited Ohio's Attorney General for the proposition that voting was not a right of U.S. citizens:

¹¹⁷ 2 Cong. Rec. 412 (Jan. 6, 1874) (statement of Rep. Lawrence) (citing Cong. Globe, 39th Cong., 1st Sess., 1095 (statement of Rep. Bingham)).

¹¹⁸ Cong. Rec. 412 (Jan. 6, 1874) (statement of Rep. Lawrence) (citing Cong. Globe, 39th Cong., 1st Sess. 2459 (May 8, 1866) (statement of Rep. Stevens)).

¹¹⁹ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866. Lawrence went on to further explain the Amendment's effect on voting: "[I]t grants no right. It says, however, to the state of South Carolina and other slave states, true, we leave where it has been left for righty years the right to fix the elective franchise, but you must not abuse it. If you do, the Constitution will impose upon you a penalty, and will continue to inflict it until you shall have corrected your actions." *Id.*

No error can be graver than the argument that *the right to vote* is one of the constituent-elements of American citizenship. The Constitution uses the word citizen only to express the political quality of the individual in his relations to the nation . . . The child in the cradle and the father in the Senate are equally citizens of the United States, and as to voting or holding office, as that privilege is not essential to citizenship, so the deprivation of it by law is not a deprivation of citizenship – no more so in the case of a negro than in case of a white woman or child.¹²⁰

Lawrence also pointed out that citizens were not always voters and voters not always citizens: “Women and children are citizens, but not voters. In Michigan, until recently, and in Illinois, unnaturalized foreigners vote, although they are not citizens.”¹²¹ Lawrence argued that states should never forfeit their right to “fix the elective franchise,” because doing so would infringe upon their sovereignty.¹²² Although Lawrence felt that states had the power to exclude blacks from voting, while in Congress he voted for negro suffrage within the District of Columbia as well as the U.S. territories,¹²³ acts that were within Congress’ Constitutional power.¹²⁴ Lawrence’s political opponents used these votes in favor of negro suffrage to stir up opposition against him, especially in the case of the D.C. suffrage law, where the vast majority of residents reportedly opposed the measure.¹²⁵

¹²⁰ *Id.*, citing Ohio Attorney General _____ Bates, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

¹²¹ Speech of William Lawrence to the people of Piqua, Ohio, *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

¹²² “Ought the domestic rights of the States to be infringed upon by Congress, so far as to regulate the restrictions and qualifications of their voters.” *Id.*

¹²³ *Voters Remembers That William Lawrence Voted for Negro Suffrage – And That – He Will Vote for It in Ohio if Re-elected to Congress*, PIQUA DEMOCRAT, Oct. 3, 1866. The Paper, clearly biased, went on to say, “All who want negroes to vote in Ohio, should vote for William Lawrence. *Id.*”

¹²⁴ U.S. CONST., art. IV, § 3, cl. 2. “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .”

¹²⁵ *The Hon. Wm. Lawrence of Ohio, His Record in Congress*, PIQUA DEMOCRAT, Sept. 26, 1866. The article reported that a vote of District residents showed 35 were in favor of extending voting rights to blacks, as opposed to 6,521 against. *Id.*

What might be considered hypocritical is Lawrence's opposition to a proposed Congressional resolution that would have fixed regulation of the elective franchise with the states. On December 18, 1865, Rep. Anthony Thornton of Illinois submitted the following resolution to the House:

Resolved, That any extension of the elective franchise to persons in the States, either by Act of the President or of Congress, would be an assumption of power which nothing in the Constitution of the United States would warrant, and that, to avoid every danger of conflict, the settlement of this question be referred to the several states.¹²⁶

Lawrence opposed the measure, despite his views that that states had the power to determine voting rights. Only eight months later, Lawrence declared in a campaign speech: "Now, I hold that the States have the right, and always have had it, to fix the elective franchise within their own States, and I hold that this does not take it from them."¹²⁷ This author can only speculate as to the reasons for the irreconcilable positions. Perhaps Lawrence really did believe the federal government had the power to regulate voting, but chose to conceal his views either because (1) Like any good politician he wanted to be re-elected,¹²⁸ or (2) He did not think the country's citizenry was ready for such an enlargement of federal powers. In other words, since the Republican goal in 1866 was ratification of the 14th Amendment, Lawrence might simply have been choosing his battles wisely. There is support for the latter notion. While advocating the Amendment on the campaign trail in 1866, Lawrence proclaimed:

¹²⁶ *Lawrence Votes Against Allowing the States the Right to Regulate the Elective Franchise*, PIQUA DEMOCRAT, Oct. 3, 1866.

¹²⁷ Speech of William Lawrence to the people of Piqua, Ohio (Aug. 15, 1866), *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

¹²⁸ One must remember that these statements were made in a campaign speech. Furthermore, they were made in Piqua, to a crowd that may have been politically suspicious of Lawrence. Piqua had a Democratic newspaper, so the town had at least enough residents affiliated that party to support such an endeavor. At the same time, it was common for cities in that era to have newspapers of all political persuasions. Lawrence's hometown had the Bellefontaine Republican.

Ought the domestic rights of the States be infringed upon by Congress, so far as to regulate the restrictions and qualifications of their voters? How many States would adopt such a proposition? How many would allow Congress to come within their jurisdiction to fix the qualifications of their voters? Would New York? Would Pennsylvania? Would the Northwestern States? I am sure not one of them would. Therefore, if you should take away the right which now is and always has been exercised by the States, of fixing the qualifications of their electors, instead of getting nineteen States, which is necessary to ratify this amendment, you might possibly get five.¹²⁹

Miscellaneous Views

Judge Lawrence was also a champion for Civil War veterans. In a speech before Congress on July 10, 1866, he urged support for a bill that would give bounties to Union veterans:

Mr. Chairman, I have voted for the soldiers' bounty bill and for an increase of pensions as a part of the justice which remains to be rendered to the brave soldiers who sacrificed the comforts of home and periled life for the preservation of the Union. I am willing to go yet further to pay them the debt of gratitude and justice the nation owes them. I am ready to advocate and vote for pensions to the needy soldiers of the War of 1812, already too long neglected by Congress. For these objects I would spare no fair taxation to do justice to brave and patriotic men. . .¹³⁰

Of note, Congressmen also used the worthy occasion of the Bounty Bill to give themselves a raise.¹³¹ After the Senate attached the increased pay Amendment to the House Bounty Bill, Lawrence nobly demanded a separate vote on the two provisions, but was overruled by a majority of his peers, who closed discussion, and passed the two propositions as one.¹³²

¹²⁹ Speech of William Lawrence to the people of Piqua, Ohio (Aug. 15, 1866), *Speech of Judge Lawrence*, BELLEFONTAINE REPUBLICAN, Sept. 21, 1866.

¹³⁰ *The Soldiers – The Bounty Bill – The Salary of Members of Congress*, BELLEFONTAINE REPUBLICAN, Aug. 10, 1866

¹³¹ Congress could still increase its pay effective immediately in 1866. Although the 27th Amendment had been submitted to the States as part of the proposed Bill of Rights on September 25, 1789, it was not ratified until May 7, 1992. U.S. CONST., amend. XVII

¹³² *The Soldiers – The Bounty Bill – The Salary of Members of Congress*, BELLEFONTAINE REPUBLICAN, Aug. 10, 1866.

Lawrence was later criticized as being hypocritical for accepting the increased compensation.¹³³ One newspaper called him a “bounty jumper,”¹³⁴ for having enlisted at \$3,000 per year but then taking the pay increase of \$5,000 which Congress had voted on.¹³⁵

Although unrelated to a discussion on the Fourteenth Amendment, Lawrence was vehemently opposed to income tax, believing that property was the appropriate basis. It appears Lawrence felt that participants in a free-market economy should have no disincentives to being productive.¹³⁶

Other Accomplishments

Lawrence distinguished himself in Congress, and his reputation in Washington D.C. was just as fine as it was in Logan County, Ohio. A Cincinnati newspaper, while giving an overview of the Representatives who comprised the House Judiciary Committee, had this to say about him: “William Lawrence, of Ohio, is one of your thin, wiry, active, determined men,

¹³³ Lawrence was lambasted by a Democratic newspaper in the days leading up to the 1866 election:

Judge Lawrence, the Radical member of Congress from the Fourth District, and now before the people for re-election, voted against the Congressman’s Bounty Bill – the 24,000 extra [amount difficult to ascertain] – alleging, in a speech made up in Piqua, that “it was objectionable in itself,” and he added, “for one I will demand the repeal of this increased compensation and will advocate it and will introduce a bill for that purpose.” Would it be regarded as a clear appreciation of right and duty in such a member, after reprobating it, to walk over to the Treasury and draw the very funds which he had stigmatized as “objectionable in itself?” Yet he did so. PIQUA DEMOCRAT, Oct. 3, 1866.

There were also reports that the bounty compensation structure discriminated against whites. The PIQUA DEMOCRAT reported that the Bounty Bill gave \$50 to white men with two years of service, \$300 to black men, and \$4,000 for Congressmen. *The Bounty Bill*, PIQUA DEMOCRAT, Oct. 3, 1866. This author was unable to confirm or refute this assertion

¹³⁴ A “bounty jumper” was one who enlisted in the Union or Confederate army only to collect a bounty, or signing bonus, and then leave. Calling Lawrence a bounty jumper was fallacious as he served his country honorably. See *infra* section “Life Before Congress.”

¹³⁵ “Judge Lawrence is a “bounty jumper. He enlisted for \$3,000 per year, and jumped the bounty and took \$5,000.” *Bounty Jumpers*, PIQUA DEMOCRAT, Oct. 3, 1866.

¹³⁶ “Let us protect industry, guard labor from taxation, impose no burdens on the labor of the citizen or mechanic, which can be avoided. Let capital and wealth bear its burdens on just principles.” *Judge Lawrence on Taxation and Representation*, BELLEFONTAINE REPUBLICAN, Feb. 2, 1866.

whom you cannot bully or bribe. Out of his clear, laughing eye there looks forth an honest purpose, and his active brain is continually at work in some investigation of principals.”¹³⁷

Lawrence was known for his speaking abilities, and was occasionally called on by other members of Congress to help them prepare addresses.¹³⁸ During floor debates, even Lawrence’s opponents recognized his legal and constitutional genius, frequently asking him questions in much the same way as a law student would engage his professor.¹³⁹

Lawrence was also responsible for the Department of Justice, having authored the original bill that led to its creation.¹⁴⁰ Some have said that Lawrence’s greatest accomplishment was passage of the Lawrence Bill in 1876, which made railroad companies receiving credit through federal bonds responsible for payments into a fund to reduce government liability, securing a \$150 million indemnity for the government.¹⁴¹ Also while in Congress, Lawrence authored a bill giving each Civil War veteran 160 acres from the alternative reserved sections of railroad grants, which doubled the land allowance of the

¹³⁷ *Sketches of Congressmen – A Graphic Description of the Judiciary Committee*, JANESVILLE (WI) GAZETTE, June 12, 1867, quoting a correspondent of the CINCINNATI COMMERCIAL.

¹³⁸ The *Petersburg Daily Index* reported that Rep. Benjamin Butler (R-MA) asked Lawrence for assistance in drafting a speech. The newspaper was using the event to disparage Butler rather than to praise Lawrence: “Forney declares that Butler drafted William Lawrence of Ohio, to aid him in getting up his speech. This is not the first time Butler has drawn on others’ resources to well his own.” *Chips, Personal and Political*, PETERSBURG DAILY INDEX, April 7, 1868

¹³⁹ See e.g. CONG. GLOBE, 41st Cong., 2nd Sess. 1710 (March 5, 1870) (exchange between Rep. Hawkins and Rep. Lawrence).

¹⁴⁰ In 1867, as a member of the House Judiciary Committee, Lawrence directed an inquiry into the creation of a “law department” headed by the Attorney General and composed of the various department solicitors and district attorneys. In 1868, Lawrence authored the bill that ultimately created the United States Department of Justice. However, this first bill died in Congress due to the Congress’ concern with the impeachment of President Johnson. In the following Congress, the issue was brought back to the table. Rep. Thomas Jenckes of Rhode Island introduced a bill to create the Department of Justice on February 25, 1870. Though Lawrence did not write this bill, it incorporated many of the ideas from Lawrence’s previous bill, and he gave the bill his full support. Kennedy at 244.

¹⁴¹ Christina Doyle, William Lawrence, American National Biography.

original Homestead Act.¹⁴² He was the first Representative to urge that public lands should not be able to be disposed of by Indian treaties to railroad companies, and his efforts led to the March 3, 1871 act prohibiting such treaties.¹⁴³

He is famous, or infamous, for helping to lead the charge against Andrew Johnson. Lawrence wrote “A Brief of Authorities Upon the The Law of Impeachable Crimes and Misdemeanors,” which was adopted by Benjamin Butler in his opening argument on behalf of the Committee charged with prosecuting the President.¹⁴⁴ Lawrence argued that legal precedent established an impeachable offense as “one in its nature or consequence subversive of some fundamental or essential principle of government or highly prejudicial to the public interest.”¹⁴⁵ He said that impeachment was permissible where “the public interests imperatively demand it,” citing Johnson's interference with congressional Reconstruction as such an occasion.¹⁴⁶ Lawrence detailed Johnson’s “sabotage” of Reconstruction in a speech before the House on December 13, 1867:

Chief among the crimes against the Constitution and laws, then, are these: that on the “extraordinary occasion” presented by the surrender of the rebel armies, the President refusing to “convene both Houses of Congress,” in order that he might usurp powers exclusively belonging to them, created the office of provisional governor, defined its duties, and imposed their performance on men holding by the tenure of his pleasure on a salary fixed by his will and paid in violation of law: That he instituted a military or provisional government through the agency of unauthorized civil officers in seven States, not merely for purposes of military government but to usurp the rightful and exclusive power of Congress of establishing civil governments . . . His military power, the veto power, the power of appointment to and removal from office, the power of amnesty and pardon were all degraded to accomplish his ends. For the same purpose he

¹⁴² *Id.*

¹⁴³ Portrait and Biographical Record of Auglaize, Logan and Shelby counties 117 (Chapman Bros. 1892).

¹⁴⁴ One law writer, commenting on Lawrence’s brief, said this: “In all that great trial there is no more accurate and precise learning than is to be found in the brief of authorities upon the law of impeachable crimes and misdemeanors, prepared by Hon. William Lawrence, of Ohio, which was adopted by Mr. Butler.” Obituary.

¹⁴⁵ Christina Doyle, William Lawrence, American National Biography.

¹⁴⁶ *Id.*

refused to faithfully execute the laws for the punishment of treason and surrendered to rebels the nation's property of the value of many million dollars.¹⁴⁷

Lawrence left Congress in 1877, but was only just beginning to contribute to the country. From 1880-1885, he served as the first Comptroller of the United States treasury.¹⁴⁸ From this position, he authored a book, "Decisions of the First Comptroller," which was later used by the Japanese in setting up their treasury department.¹⁴⁹ Ever the legal scholar, Lawrence was asked to resolve a fairly novel legal issue as Comptroller. Could James Robinson, a Congressman from Ohio who had recently been elected as Ohio Secretary of State, serve in both capacities simultaneously? Lawrence, who was charged with approving Congressmen's accounts, found nothing to prevent Robinson from holding both offices, saying there was no incompatibility between the two offices.¹⁵⁰

Lawrence was also instrumental in helping to start the American Red Cross. At the organization's founding, Clara Barton told Lawrence, "Forever must I hold you as the pioneer of the Red Cross in America."¹⁵¹ Lawrence had helped to gain an audience for Ms. Barton with President Arthur in 1881,¹⁵² whom she convinced to recommend to the Senate U.S. participation in the International Red Cross.¹⁵³ Arthur did, the Senate agreed and thus was born the American Red Cross. Lawrence served as its first Vice President.¹⁵⁴

¹⁴⁷ CONG. GLOBE, 40th Cong., 2nd Sess. 184 (Dec. 13, 1867) (statement of Rep. Lawrence).

¹⁴⁸ Kennedy at 244.

¹⁴⁹ Jim Hoffman, *Crimes for Impeachment Brief Written by Bellefontaine Judge During 1868*, BELLEFONTAINE EXAMINER, circa 1998.

¹⁵⁰ *General Robinson to Remain in Congress*, UNION COUNTY JOURNAL, Jan. 29, 1885.

¹⁵¹ *Logan Countian Red Cross Pioneer*, BELLEFONTAINE EXAMINER, date unknown.

¹⁵² *Id.* Mrs. Lawrence was also present at that meeting, and appears to have played a part in helping Ms. Barton in her efforts. *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

He was also a proud veteran, and worked to keep the legacy of the war alive.¹⁵⁵

Lawrence was a charter member of Burnside's Post No. 8, Department of the Potomac, G.A.R. in Washington D.C., and also its first commander.¹⁵⁶ Between practicing law and holding national office, Lawrence also found time to organize the Bellefontaine National Bank, and serve as its president from 1871 until 1896.¹⁵⁷

Lawrence passed away on May 8, 1899, at the age of 79. Having made such a huge impact on his community, town, and country, Lawrence is not most famous for his role in passing the 14th Amendment. However, his motivations for supporting the bill, and his purpose in helping to pass it, are instructive in modern constitutional jurisprudence. William Lawrence's legacy is best described by one of his biographers.

He has done things worthy to be written; he has written things that are worthy to be read; and by his life has contributed to the welfare of the republic and the happiness of mankind.¹⁵⁸

¹⁵⁵ Lawrence delivered many "Decoration Day" addresses, and often spoke at GAR reunions. Biographical Record of Auglaize, Logan and Shelby counties 119 (Chapman Bros. 1892).

¹⁵⁶ Obituary.

¹⁵⁷ Kennedy at 245.

¹⁵⁸ *Id.* at 239.