



## ***THE MISSING 13TH AMENDMENT***

### **"Titles of Nobility and Honor"**

In 1789, the House of Representatives compiled a list of possible Constitutional Amendments, some of which would ultimately become our "Bill of Rights." The House proposed seventeen; the Senate reduced the list to twelve. During this process that **Senator Tristrain Dalton** (Mass.) proposed an Amendment seeking to prohibit and provide a penalty for any American accepting a "title of nobility" (RG 46 Records of the U.S. Senate). Although it wasn't passed, this was the first time a "title of nobility" amendment was proposed.

Twenty years later, in January, 1810, Senator **Reed** proposed another "title of nobility" Amendment (History of Congress, Proceedings of the Senate, p. 529-530). On April 27, 1810, the Senate voted to pass the 13th Amendment by a vote of 26 to 1; the House resolved in the affirmative 87 to 3; and the following resolve was sent to the States for ratification:

"If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

The Constitution requires three-quarters of the states to ratify a proposed amendment before it may be added to the Constitution. When Congress proposed the "title of nobility" Amendment in 1810, there were seventeen States, thirteen of which would have to ratify for the Amendment to be adopted. According to the National Archives, the following is a list of the twelve States that ratified, and their dates of ratification:

Maryland, Dec. 25, 1810  
Kentucky, Jan. 31, 1811  
Ohio, Jan. 31, 1811  
Delaware, Feb. 2, 1811  
Pennsylvania, Feb. 6, 1811  
New Jersey, Feb. 13, 1811  
Vermont, Oct. 24, 1811  
Tennessee, Nov. 21, 1811  
Georgia, Dec. 13, 1811  
North Carolina, Dec. 23, 1811

Massachusetts, Feb. 27, 1812  
New Hampshire, Dec. 10, 1812

Before a thirteenth State could ratify, the War of 1812 broke out with England. By the time the war ended in 1814, the British had burned the Capitol, the Library of Congress, and most of the records of the first 38 years of government. Whether there was a connection, between the proposed "title of nobility" Amendment and the War of 1812 is not known. However, the momentum to ratify the proposed Amendment was lost in the tumult of war.

Then, four years later, on December 31, 1817, the House of Representatives resolved that President **Monroe** inquire into the status of this Amendment. In a letter dated February 6, 1818, President **Monroe** reported to the House that the Secretary of State **Adams** had written to the governors of Virginia, South Carolina and Connecticut to tell them that the proposed Amendment had been ratified by twelve States and rejected by two (New York and Rhode Island), and asked the governors to notify him of their legislature's position. (House Document No. 76)

(This, and other letters written by the President and the Secretary of State during the month of February, 1818, note only that the proposed Amendment had not yet been ratified. However, these letters would later become crucial because, in the absence of additional information, they would be interpreted to mean that the Amendment was never ratified)

On February 28, 1818, Secretary of State Adams reported the rejection of the Amendment by South Carolina [House Doc. No. 129]. There are no further entries regarding the ratification of the 13th Amendment in the Journals of Congress; whether Virginia ratified is neither confirmed nor denied. Likewise, a search through the executive papers of **Governor Preston** of Virginia does not reveal any correspondence from Secretary of State **Adams**. (However, there is a journal entry in the Virginia House that the Governor presented the House with an official letter and documents from Washington within a time frame that conceivably includes receipt of **Adams'** letter.) Again, no evidence of ratification; none of denial.

However, on March 10, 1819, the Virginia legislature passed Act No. 280 (Virginia archives of Richmond, "misc." file, p. 299 for micro-film):

"Be it enacted by the General Assembly, that there shall be published an edition of the Laws of this Commonwealth in which shall be contained the following matters, that is to say; the Constitution of the united States and the amendments thereto. ..."

What was , by law, to be included in the re-publication (a special edition) of the Virginia Civil Code? The Virginia legislature had already agreed that all "Acts" were to go into effect on the same day - the day that the "Act" to re-publish the Civil Code was

enacted. Therefore, the 13th Amendment's official date of ratification would be the date of re-publication of the [Virginia Civil Code](#): March 12, 1819.

The Delegates knew Virginia was the last of the 13 States that were necessary for the ratification of the [13th Amendment](#). They also knew that there were powerful forces allied against this ratification so they took extraordinary measures to make sure that it was published in sufficient quantity (4,000 copies were ordered, almost triple their usual order), and instructed the printer to send a copy to [President James Monroe](#), as well as [James Madison](#) and [Thomas Jefferson](#). (The printer, [Thomas Ritchie](#), was [bonded](#). He was required to be extremely accurate in his research and his printing, or he would forfeit his bond.)

In this fashion, Virginia announced the ratification; by publication and dissemination of the [Thirteenth Amendment](#) of the Constitution.

There is a question as to whether Virginia ever formally notified the Secretary of State that they had ratified this [13th Amendment](#). Some have argued that because such notification was not received (or at least, not recorded), the Amendment was therefore not legally ratified. However, printing by a legislature is prima facie evidence of ratification.

Further, there is no Constitutional requirement that the Secretary of State, or anyone else, be officially notified to complete the ratification process. The Constitution only requires that three-fourths of the States ratify for an Amendment to be added to the Constitution. If three-quarters of the States ratify, the Amendment is passed. Period. The Constitution is otherwise silent on what procedure should be used to announce, confirm, or communicate the ratification of amendments. Knowing they were the last State necessary to ratify the Amendment, the Virginians had every right to announce their own and the nation's ratification of the Amendment by publishing it on a special edition of the Constitution, and so they did.

Word of Virginia's 1819 ratification spread throughout the States and both Rhode Island and Kentucky published the new Amendment in 1822. Ohio first published in 1824. Maine ordered 10,000 copies of the Constitution with the [13th Amendment](#) to be printed for use in the schools in 1825, and again in 1831 for the [Census Edition](#). [Indiana Revised Laws](#) of 1831 published the [13th Article](#) on p. 20. Northwestern Territories published in 1833. Ohio published in 1831 and 1833. Then came the Wisconsin Territory in 1839; Iowa Territory in 1843; Ohio again, in 1848; [Kansas Statutes](#) in 1855; and Nebraska Territory six times in a row from 1855 to 1860.

So far, [David Dodge](#) (Researcher) has identified eleven different States or Territories that printed the Amendment in twenty separate publications over forty-one years.

And more Editions that include the [13th Amendment](#) are sure to be discovered. Clearly, [Dodge](#) is onto something. You might be able to convince some of the people, or maybe even all of them, for a little while, that this [13th Amendment](#) was never ratified. Maybe

you can show them that the ten legislatures which ordered it published eighteen times we've discovered (so far) consisted of ignorant politicians who don't know their amendments for their ... ahh, Articles. You might even be able to convince the public that our forefathers never meant to "outlaw" public servants who pushed people around and accepted bribes or special favors to "look the other way." Maybe. But before you do, there's an awful lot of evidence to be explained.

### **THE AMENDMENT DISAPPEARS**

In 1829, the following "note" appears on p. 23, Vol. 1 of the "New York Revised Statutes:"

"In the edition of the 'Laws of the U.S,' before referred to, there is an amendment printed as Article 13, prohibiting citizens from accepting titles of nobility or honor, or presents, offices, & c. from foreign nations. But, by a message of the president of the United States of the 4th of February, 1818, in answer to a resolution of the house of representatives, it appears that this amendment had been ratified only by 12 states, and therefore had not been adopted. See vol. iv of the printed papers of the 1st session of the 15th Congress, No. 76."

In 1854, a similar "note" appeared in the 'Oregon Statutes.' Both "notes" refer to the 'Laws of the United States, 1st vol. p. 73' (or 74).

It's not yet clear whether the 13th Amendment was published by 'Laws of the United States, 1st Vol.,' prematurely, by accident, in anticipation of Virginia's ratification, or as a part of a plot to discredit the Amendment by making it appear that only twelve States had ratified. Whether the 'Laws of the United States, Vol. 1' (carrying the 13<sup>th</sup> Amendment) was re-called or made-up is unknown. In fact, it's not even clear that the specified volume was actually printed - the *Law Library* of the *Library of Congress* has no record of it's existence.

However, because the "notes," the authors reported no further references to the 13<sup>th</sup> Amendment after the Presidential letter of February, 1818, they apparently assumed that the ratification process had ended in failure at that time. If so, they neglected to seek information on the Amendment after 1818, or at the State level, and therefore missed the evidence of Virginia's ratification. This opinion - assuming that the Presidential letter of February, 1818, was the last word on the Amendment - has persisted to this day.

In 1849, Virginia decided to revise the 1810 'Civil Code of Virginia' (which had contained the 13th Amendment for 30 years). It was at that time that one of the

Code's Revisers (a lawyer named 'Patton') wrote to the Secretary of the Navy, **Williams B. Preston**, asking if this Amendment had been ratified or appeared by mistake.

**Preston** wrote to **J.M. Clayton**, the Secretary of State, who replied that this Amendment was not ratified by a sufficient number of States. This conclusion was based upon the information that Secretary of State **J.Q. Adams** had provided the House of Representatives in 1818, before Virginia's ratification in 1819. (Even today, the *Congressional Research Service* tells anyone asking about the 13th Amendment this same story: That only twelve States, not the requisite thirteen, had ratified.) However, despite **Clayton's** opinion, the Amendment continued to be published in various States and Territories for at least another eleven years (the last known publication was in the Nebraska Territory in 1860).

Once again the 13th Amendment was caught in the riptides of American politics. South Carolina seceded from the Union in December of 1860, signaling the onset of the Civil War. In March, 1861, **President Abraham Lincoln** was inaugurated.

Later in 1861, another proposed amendment, also numbered thirteen, was signed by **President Lincoln**. This was the only proposed Amendment that was ever signed by a president. That resolve to amend read:

"ARTICLE THIRTEEN, No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."

In other words, **President Lincoln** had signed a resolve that would have permitted slavery, and upheld States' rights. Only one State, Illinois, ratified this proposed Amendment before the Civil War broke out in 1861.

In the tumult of 1865, the original 13th Amendment was finally removed from our Constitution. On January 31, another 13th Amendment (which prohibited slavery in Sect. 1, and ended the States' Rights in Sect. 2) was proposed. On April 9, the Civil War ended with **General Lee's** surrender. On April 14, President **Lincoln** (who, in 1861, had signed the proposed Amendment that would have allowed slavery and States' Rights) was assassinated. On December 6, the "new" 13th Amendment loudly prohibiting slavery (and quietly surrendering States' Rights to the federal government) was ratified, replacing and effectively erasing the original 13th Amendment that had prohibited "titles of nobility" and "honors".

## **SIGNIFICANCE OF REMOVAL**

To create the present oligarchy (rule by lawyers) which we now endure, the lawyers first had to remove the 13th "titles of nobility" Amendment that might otherwise have kept them in check. In fact, it was not until after the Civil War and after the disappearance of this 13th Amendment, that American Bar Association began to appear and exercise political power.

Since the unlawful deletion of the 13th Amendment, the newly developing Bar Associations began working diligently to create a system wherein lawyers took on a title of privilege and nobility as "Esquires" and receive the "honor" of offices and positions (like District Attorney or Judge) that only lawyers may now hold. By virtue of these titles, honors, and special privileges, lawyers have assumed political and economic advantages over the majority of U.S. Nationals. Through these privileges, they have nearly established a two-tiered citizenship in this Nation where a majority may vote, but only a minority (lawyers) may run for political office. This two-tiered citizenship is clearly contrary to Americans' political interests, the Nation's economic welfare, and the Constitution's egalitarian spirit.

At the very least, this missing 13th Amendment demonstrates that two centuries ago, lawyers were recognized as enemies of the people and Nation. Some things never change.

## **THOSE WHO CANNOT RECALL HISTORY ...**

In his farewell address, **George Washington** warned of:

"... change by usurpation; for through this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

In 1788, **Thomas Jefferson** proposed that we have a "*Declaration of Rights*" similar to Virginia's. Three of his suggestions were "*freedom of commerce against monopolies*," "*trial by jury in all cases*" and "*no suspensions of the habeas corpus*."

No doubt **Washington's** warning and **Jefferson's** ideas were dismissed as redundant by those who knew the law. Who would have dreamed our legal system would become a monopoly against freedom when that was one of the primary causes for the rebellion against **King George III**?

Yet, the denial of trial by jury is now common place in our Courts, and habeas corpus, for crimes against the State, has been suspended. (By crimes against the State, we refer to "*political crimes*" where there is no injured party and the corpus delicti [evidence] is equally imaginary.)

The authority to create monopolies was judge-made laws by Supreme Court Justice **John Marshall**, et.al. during the early 1800's. Judges (and lawyers) granted to themselves the power to declare the "Acts" of the People "un-Constitutional", waited until their decision was grandfathered, and then granted themselves a monopoly by creating the Bar Associations.

Although Art. VI of the U.S. Constitution mandates that Executive Orders and Treaties are binding upon the States ("... and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."), the Supreme Court has held that the Bill of Rights is not binding upon the States, and thereby resurrected many of the complaints enumerated in the "Declaration of Independence," exactly as **Thomas Jefferson** foresaw in "*Notes on the State of Virginia*", Query 17, p. 161, [1784]:

"Our rulers will become corrupt, our people careless ... the time for fixing every essential right on a legal basis is [now] while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going downhill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion."

We await the inevitable convulsion.

Only two questions remain: Will we fight to revive our Rights? Or will we meekly submit as our last remaining Rights expire, surrendered to the Courts, and perhaps to a "New World Order"?

## **MORE EDITIONS FOUND**

We have received information from a researcher in Indiana, and another in Dallas, who have found five more editions of statutes that include the Constitution and the missing 13th Amendment.

These editions were printed by: Ohio, 1819; Connecticut (one of the States that voted against ratifying the Amendment), 1835; Kansas, 1861; and the Colorado Territory, 1865 and 1867.

These finds are important because:

1. they offer independent confirmation of Dodge's claims; and
2. they extend the known dates of publications from Nebraska, 1860 (Dodge's most recent find), to Colorado in 1867.

The most intriguing discovery was the 1867 Colorado Territory edition which includes both the "missing" 13th Amendment, and the current 13th Amendment (freeing the slaves), on the same page. The current 13th Amendment is listed as the 14th Amendment in the 1867 Colorado edition.

## ARGUMENTS

Imagine a Nation which prohibited at least some lawyers from serving in government. Imagine a government prohibited from writing laws granting "honors" (special privileges, immunities, or advantages) to individuals, groups, or government officials. Imagine a government that could only write laws that applied to everyone, even themselves, equally. It would mean a government unable to pass special interest legislation, grant tax breaks to some at the expense of others, or routinely rule in favor of one class at the expense of another. It would mean true political equality, not only between individual citizens, but even between the citizens and their government. It would mean a government that was effectively prohibited from exploiting its own people. It has never been done before. Not once. But it has been tried: In 1810 the Congress of the United States proposed a 13th Amendment to the U.S. Constitution that might have given us just that sort of equality and political paradise. The story begins (again) in 1983, when **David Dodge** and **Tom Dunn** discovered an 1825 edition of the Maine Civil Code which contained the U.S. Constitution and a 13th Amendment which no longer appears in the Constitution:

"If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall without the consent of Congress, accept and retain any present pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

This Amendment would have restricted at least some lawyers from serving in government, and would prohibit legislators from passing any special interest legislation, tax breaks, or special immunities for anyone, not even themselves. It might have

guaranteed a level of political equality in this Nation that most people can't even imagine. Since 1983, researchers have uncovered evidence that:

1. The 13th Amendment prohibiting "titles of nobility" and "honors" appeared in at least 30 editions of the Constitutions of the United States which were printed by at least 14 States or Territories between 1819 and 1867; and
2. This Amendment quietly disappeared from the Constitution near the end of the Civil War.

Either this Amendment:

1. Was unratified and mistakenly published for almost 50 years; or
2. Was ratified in 1819, and then illegally removed from the Constitution by 1867.

If this 13th Amendment was not ratified and mistakenly published, the story has remained unnoticed in American history for over a century. If so, it's at least a good story - an extraordinary historical anecdote.

On the other hand, if **Dodge** is right and the Amendment was truly ratified, the Amendment has been subverted from our Constitution. If so, this "missing" Amendment would still be the Law, and this story could be one of the most important stories in American History. Whatever is the answer, it's certain that something extraordinary happened to our Constitution between 1819 and 1867.

## PROS AND CONS

Of course, there are two sides to this issue. **David Dodge**, the principal researcher, argues that this 13th Amendment was ratified in 1819 and then was subverted from the Constitution near the end of the Civil War. **U.S. Senator George Mitchell** of Maine, and **Mr. Dane Hartgrove** (Acting Assistant Chief, Civil Reference Branch of the National Archives) have argued that the Amendment was never properly ratified and only published in error.

There is some agreement. Both sides agree the Amendment required the support of at least thirteen States to be ratified. Both sides agree that between 1810 and 1812, twelve States voted to support ratification.

The pivotal issue is whether Virginia ratified or rejected the proposed Amendment. **Dodge** contends that Virginia voted to support the Amendment in 1819, and so the Amendment was truly ratified and should still be a part of our Constitution. **Senator Mitchell** and **Mr. Hartgrove** disagree, arguing that Virginia did not ratify.

Unfortunately, several decades of Virginia's Legislative Journals were misplaced or destroyed (possibly during the Civil War; possibly during the 1930's). Consequently, neither side has found absolute proof that the Virginia legislature voted for (or against) ratification,

A series of letters exchanged in 1991 between **David Dodge**, **Senator Mitchell**, and **Mr. Hartgrove** illuminate the various points of disagreement. After **Dodge's** initial report of a "missing" Amendment in the 1825 Maine Civil Code, **Senator Mitchell** explained that this edition was a one-time publishing error:

"The Maine Legislature mistakenly printed the proposed Amendment in the Maine Constitution as having been adopted. As you know, this was a mistake, as it was not ratified."

Further,

"All editions of the Maine Constitution printed after 1820 [sic] exclude the proposed Amendment; only the originals contain this error."

**Dodge** dug deeper and found other editions (there are 30, to date) of State and Territorial Civil Codes that contained the missing Amendment, and thereby demonstrated that the Maine publication was not a "*one-time*" publishing error.

## **YES, VIRGINIA, THERE IS A RATIFICATION**

After examining **Dodge's** evidence of multiple publication of the "*missing*" Amendment, **Senator Mitchell** and **Mr. Hartgrove** conceded that the Amendment had been published by several States and was ratified by twelve of the seventeen States in the Union in 1810. However, because the Constitution requires that a three-quarters vote of the States to ratify an Amendment, **Mitchell** and **Hartgrove** insisted that the 13th Amendment was published in error because it was passed by only twelve, not thirteen States.

**Dodge** investigated which seventeen States were in the Union at the time the Amendment was proposed, which States had ratified, which States had rejected the Amendment, and determined that the issue hung on whether one last State (Virginia) had or had not, voted to ratify.

After several years of searching the Virginia State Archives, **Dodge** made a crucial discovery: In spring of 1991, he found a misplaced copy of the 1819 Virginia Civil Code which included the "*missing*" 13th Amendment. **Dodge** notes that, curiously:

"There is no public record that shows this Code [the 1819 Virginia Civil Code] exists. It is not cataloged as a holding of the **Library of Congress** nor is it in the **National Union Catalog**. Neither the State Law Library nor the law school in

Portland were able to find any trace that this book exists in any of their computer programs." 1/\*

Dodge sent photo-copies of the 1819 Virginia Civil Code to Senator Mitchell and Mr. Hartgrove, and explained that:

"Under legislative construction, it is considered prima facie evidence that what is published as the official Acts of the legislature are the official Acts."

By publishing the Amendment as ratified in an official publication, Virginia demonstrated:

1. that they knew that they were the last State whose vote was necessary to ratify the 13th Amendment;
2. that they had voted to ratify the Amendment; and;
3. that they were publishing the Amendment in a special edition of their Civil Code as an official notice to the world that the Amendment had indeed been ratified.

Dodge concluded:

"Unless there is competing evidence to the contrary, it must be held that the Constitution of the United States was officially amended to exclude from its body of citizens any who accepted or claimed a title of nobility or accepted any special favors. Foremost in this category of ex-citizens are bankers and lawyers."

## RATIONALES

Undeterred, Senator Mitchell wrote that:

"Article XIII did not receive the three-fourths vote required from the States within the time limit to be ratified."

(Although his language is imprecise, Senator Mitchell seems to concede that although the Amendment had failed to satisfy the "*time limit*," the required three-quarters of the States did vote to ratify. It should be noted that there was no time limit given to ratify this (1810) Amendment as published in II Stat 613).

Dodge replies:

"Contrary to your assertion ... there was no time limit for Amendment ratification in 1811. Any time limit is now established by Congress in the Resolves for proposed Amendments."

In fact, ratification time limits didn't start until 1917, when Section 3 of the Eighteenth Amendment stated that:

"This Article shall be inoperative unless it shall have been ratified ... within seven years from the date of submission, to the States by Congress."

A similar time limit is now included on other proposed Amendments, but there was no specified time limit when the 13th Amendment was proposed in 1810 or ratified in 1819.

**Senator Mitchell** remained determined to find some rationale, somewhere, that would defeat **Dodge's** persistence. Although **Senator Mitchell** implicitly conceded that his "*published by error*" and "*time limit*" arguments were invalid, he continued to grope for reasons to dispute ratification:

"... regardless of whether the State of Virginia did ratify the proposed Thirteenth Amendment, on March 12, 1819, this approval would not have been sufficient to amend the Constitution. In 1819, there were twenty-one States in the United States and any amendment would have required approval of sixteen States to amend the Constitution. According to your own research, Virginia would have only been the thirteenth State to approve the proposed amendment."

Dodge replies:

"Article V [amendment procedures] of the Constitution is silent on the question of whether or not the framers meant three-fourths of the States at the time the proposed amendment is submitted to the States for ratification, or three-fourths of the States that exist at some future point in time. Since only the existing States were involved in the debate and vote of Congress on the Resolve proposing an Amendment, it is reasonable that ratification be limited to those States that took an active part in the Amendment process."

Dodge demonstrated this rationale by pointing out that:

"**President Monroe** had his Secretary of State, [ask the] governors of Virginia, South Carolina, and Connecticut, in January, 1818, as to the status of the Amendment in their respective States. The four new States (Louisiana, Indiana, Mississippi, and Illinois) that were added to the Union between 1810 and 1818 were not even considered."

[It should be noted that pursuant to a Resolution of the House of Congress, **James Monroe** made inquiries of ratification of the 13th Amendment by South Carolina and Virginia on February 4, 1818 (CIS U.S. Serial Set Index - Misc. 446 (15-1) ASP038)]

From a modern perspective, it seems strange that not all States would be included in the ratification process. But bear in mind that our perspective is based on life in a stable Nation that's added only five new States in this century - about one every eighteen years. However, between 1803 and 1821 (when the 13th Amendment ratification drama unfolded), they added eight States - almost one new State every two years.

This rapid national growth undoubtedly fostered national attitudes different from our own. The government had to be filled with the euphoria of a growing Republic that expected to quickly add new States all the way to the Pacific Ocean and the Isthmus of Panama. The government would not willingly compromise or complicate that growth potential with procedural obstacles; to involve every new State in each on-going ratification could inadvertently slow the Nation's growth.

For example, if a territory petitioned to join the Union while an Amendment was being considered, its access to statehood might depend on whether the territory expected to ratify or reject a proposed Amendment. If the territory was expected to ratify the proposed Amendment, government officials who favored the Amendment might try to accelerate the territory's entry into the Union. On the other hand, those opposed to the Amendment might try to slow or even deny particular territory's statehood. These complications could unnecessarily slow the entry of new States into the Nation, or restrict the Nation's ability to pass new Amendments. Neither possibility could appeal to politicians. Whatever the reason, the House of Representatives resolved to ask only South Carolina, and Virginia for their decision on ratifying the 13th Amendment - they did not ask for the decisions of the four new States. Since the new States had Representatives in the House who did not protest when the resolve was passed, it's apparent that even the new States agreed that they should not be included in the ratification process.

In 1818, the President, the House of Representatives, the Secretary of State, the four "*new*" States, and the seventeen "*old*" States, all clearly believed that the support of just thirteen States was required to ratify the 13th Amendment. That being so, Virginia's vote to ratify was legally sufficient to ratify the "*missing*" Amendment in 1819 (and would still be so today).

## INSULT TO INJURY

Apparently persuaded by **Dodge's** various arguments and proofs that the "*missing*" 13<sup>th</sup> Amendment had satisfied the Constitutional requirements for ratification, **Mr. Hartgrove** (National Archives) wrote back that Virginia had nevertheless failed to satisfy the bureaucracy's procedural requirements for ratification:

"Under current legal provisions, the Archivist of the United States is empowered to certify that he has in his custody the correct number of state certificates of ratification of a proposed constitutional amendment to constitute its ratification by the United States of America as a whole. In the nineteenth century, that function was performed by the Secretary of State. Clearly, the Secretary of State never received a Certificate of Ratification of the Title of Nobility Amendment from the Commonwealth of Virginia, which is why that Amendment failed to become the Thirteenth Amendment to the United States Constitution."

This is an extraordinary admission.

**Mr. Hartgrove** implicitly conceded that the 13th Amendment was ratified by Virginia and satisfied the Constitution's ratification requirements. However, **Hartgrove** then insists that the ratification was nevertheless justly denied because the Secretary of State was not properly notified with a "*Certificate of Ratification*." In other words, the government's last, best argument that the 13th Amendment was not ratified boils down to this: Though the Amendment satisfied the Constitutional requirement for ratification, it is nonetheless missing from our Constitution simply because a single, official sheet of paper is missing in Washington. **Mr. Hartgrove** implies that despite the fact that three-quarters of the States in the Union voted to ratify an Amendment, the will of the legislators and the people of this Nation should be denied because somebody screwed up and lost a single "*Certificate of Ratification*." This "*Certificate*" may be missing because either:

1. Virginia failed to file a proper notice, or;
2. the notice was "lost in the mail"; or;
3. the notice was lost, unrecorded, misplaced, or intentionally destroyed, by some bureaucrat in Washington, D.C..

This final excuse insults every American's political rights, but **Mr. Hartgrove** nevertheless offers a glimmer of hope: If the National Archives –

"... received a Certificate of Ratification of the Title of Nobility Amendment from the Commonwealth of Virginia, we would inform Congress and await further developments."

In other words, the issue of whether this 13th Amendment was ratified and is, or is not, a legitimate Amendment to the U.S. Constitution, is not merely a historical curiosity – the ratification issues is still alive. [2/\\*](#)

But most importantly, **Hartgrove** implies that the only remaining argument against the 13th Amendment's ratification is a procedural error involving the absence of a "*Certificate of Ratification*."

**Dodge** countered **Hartgrove's** procedure argument by citing some of the ratification procedures recorded for other States when the 13th Amendment was being considered. He notes that according to the Journal of the House of Representatives, (11th Congress, 2nd Session, at p. 241), a "letter" (not a "Certificate of Ratification") from the Governor of Ohio announcing Ohio's ratification was submitted not to the Secretary of State, but rather to the House of Representatives where it "*was read and ordered to lie on the table.*" Likewise, "*The Kentucky ratification was also returned to the House, while Maryland's earlier ratification is not listed as having been returned to Congress.*"

The House Journal implies that since Ohio and Kentucky were not required to notify the Secretary of State of their ratification decisions, there was likewise no requirement that Virginia file a "*Certificate of Ratification*" with the Secretary of State. Again, despite arguments to the contrary, it appears that the "*missing*" Amendment was Constitutionally ratified and should not be denied because of some possible procedural error.

## **QUICK, MEN TO THE ARCHIVES!**

Each of **Senator Mitchell's** and **Mr. Hartgrove's** arguments against ratification have been overcome or badly weakened. Still, some of the evidence supporting ratification is inferential; some of the conclusions are only implies. But it's no wonder that there's such an austere sprinkling of hard evidence surrounding this 13th Amendment. According to "*The Gazette*" (1/10/91), the **Library of Congress** has 349,402 none catalogued rare books and 13.9 million un-cataloged rare manuscripts. The evidence of ratification seems tantalizingly close but remains buried in those masses of un-cataloged documents, waiting to be found. It will take some luck and some volunteers to uncover the final proof. We have an Amendment that looks like a duck, walks like a duck, and quacks like a duck, but because we have been unable to find the eggshell from which it hatched in 1819, **Senator Mitchell** and **Mr. Hartgrove** insist that we can't ... quite ... absolutely prove it's a duck, and therefore, the government is under no obligation to concede that it's a duck.

Maybe so ....

But if we can't prove it's a duck, they can't prove it's not. If the proof of ratification is not quite conclusive, the evidence against ratification is almost nonexistent, largely a function of the government's refusal to acknowledge the proof. We are left in the

peculiar position of boys facing bullies in the schoolyard. We show them proof that they should again include the "*missing*" 13th Amendment on the Constitution; they sneer and jeer and taunt us with cries of "*make us*". Perhaps we shall. The debate goes on. The mystery continues to unfold. The answer lies buried in the archives.

If you are close to a State Archive or a large library anywhere in the U.S.A., please search for editions of the U.S. Constitution printed between 1819 and 1870. If you find more evidence of the "*missing*" 13th Amendment. please contact:

[Last Known Mailing Address (1992)]

David Dodge  
P.O. Box 985  
Taos, New Mexico 87571

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## **Foot Notes**

*\*/1* It's worth noting that **Rick Donaldson**, another researcher, uncovered certified copies of the 1865 and 1867 editions of the Colorado Civil Codes which also contain the missing Amendment. Although these editions were stored in the Colorado State Archive, their existence was previously un-cataloged and unknown to the Colorado archivists.

*\*/2* This raises a fantastic possibility. If there's insufficient evidence that Virginia did ratify in 1819, there is no evidence that Virginia did not. Therefore, since there was no time limit specified when the Amendment was proposed, and since the government clearly believed only Virginia's vote remained to be counted in the ratification issue, the current state legislature of Virginia could theoretically vote to ratify the Amendment, send the necessary certificates to Washington, and thereby add the Amendment to the Constitution.

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## **Post Script**

As you have read, several "*Territories*" of the United States had the "*Title of Nobility*" Amendment published in their Territorial Codes. If those Territories were like the Territory of Alaska, the Legislature of those Territories were required to submit their Territorial Codes to the U.S. Congress for approval. If this was so, we need to locate the "*Organic Laws*" of those Territories to verify this requirement and if found, the Congress

(in its approval of those Territorial Codes) has given its acknowledgement and approval that the "*Title of Nobility*" Amendment was ratified.



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