

“Honest Jake” Howard

By Bruce A. Barton

In 1854, Jacob Merritt Howard wrote multiple resolutions against slavery which were combined as the election platform of a new political party. Eleven years later, his two-sentence joint congressional resolution was added to the United States Constitution.

On a sunny and humid July 6 in 1854, 16 men—representing each of 15 Michigan counties—convened around a small table in an oak grove at what is now the corner of Franklin and Second streets in Jackson. They met approximately 200 feet away from a hastily erected speaker’s platform, in front of which 3,000–5,000 men and women were gathered. It was the first official meeting of the Republican Party, afterward known as the “Under the Oaks Convention.”¹

The men around that table were the committee on resolutions of the convention, led by Detroit Whig political party member, lawyer, and former state Representative Jacob M. Howard, who had prepared several resolutions for consideration. The resolutions were read, approved by the committee, and adopted for presentation to the entire convention, where later they were combined and adopted almost unanimously as the first platform of a new political party named by the resolutions as the “Republican Party.”²

The purpose of the convention was to protest recent actions of Congress supporting the institution of slavery in the United States. But more than protest, the convention was intended to begin organized political opposition



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to slavery, which Howard's resolutions called "a great moral, social and political evil," "a violation of the rights of man as man," and "a perpetual war upon its victims." The Civil War was only the military portion of the war on slavery. In effect, the organized war against slavery began as a political battle in Michigan in 1854. War was declared by the resolutions prepared by Howard and approved by the Under the Oaks Convention.³

Howard was born on July 10, 1805, in the town of Shaftsbury, located in the southwest corner of Vermont. His father was a farmer, and early in his life, Howard assisted on the farm. Later, he attended Williams College, graduating in 1830. He studied law in Massachusetts, then moved to Detroit—at that time the territorial capital of Michigan. He was admitted to the Michigan bar in 1833.⁴

In 1835, Howard married Catherine Shaw from Ware, Massachusetts. Until her death in 1866, she would be with him in public life as he used his substantial skills as a writer and public speaker to change history.

In Michigan, Howard became involved in the Whig political party. He was attorney for the city of Detroit in 1834 and served in the Michigan House of Representatives from 1838 to 1842, when he decided not to run for reelection. He participated in the controversy known as the Toledo War both as an advocate and as a soldier. As a member of the legislature, he participated in revising state statutes, railroad legislation, and attempts to investigate and regulate so-called "wildcat banks."⁵

Jackson newspaper editor Charles DeLand, who would later command the First Volunteer Michigan Sharpshooters Regiment in the Civil War, and Prosecuting Attorney Austin Blair, who would be Michigan's war governor, had planned the anti-slavery Under the Oaks Convention and were surprised at the huge attendance. Another surprise was the nomination of Howard, called "Honest Jake" by his nominator, to be Michigan's first Republican attorney general. Howard attempted to decline the nomination but was persuaded to run, and the entire slate nominated at the convention was swept into state offices in 1854.⁶ Howard would remain Michigan attorney general until 1861, when he replaced Kingsley S. Bingham as a U.S. senator. He served in the Senate until 1871, shortly before his death on April 2 of that year.⁷

Throughout his public life, Howard also maintained a private practice. Perhaps his most well-known litigation was appearance in *The King's Grant*, a case that involved what is

now Brady Park at Sault Ste. Marie in northern Michigan. Plaintiffs in the case hired him in 1860, not long before the beginning of the Civil War. He would represent them until the case was decided against his clients by the United States Supreme Court in 1867.⁸

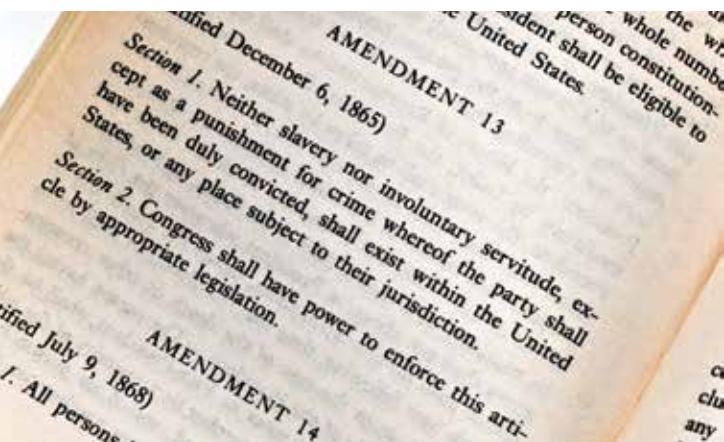
Howard's private practice did nothing to diminish his opposition to slavery. As an attorney appearing before the federal circuit court in a matter involving the fugitive slave law, he predicted the Civil War by calling slavery "a challenge to a conflict of arms," which he said "would sooner or later be accepted."⁹

Howard was given substantial assignments in Congress. At a time when railroads were expanding westward, he was appointed chairman of the Committee on Pacific Railroads, the largest Senate committee. He served on the prestigious Judiciary Committee and the committees on Military Affairs and Private Land Claims, gaining a reputation for working closely with President Abraham Lincoln.¹⁰

Among other activities, Howard sponsored and promoted passage of the False Claims Act, sometimes known as "the Lincoln Law," and known today as a "whistleblower law." Under this legislation as enacted in 1863, a private plaintiff acting in the name of the government, with evidence of fraud against the government, could sue a defendant and receive a portion of the recovery. That law, with many amendments, is still in effect today, and law firms often advertise for clients with knowledge of fraud in government programs.¹¹

Howard participated in preparing and promoting the Thirteenth, Fourteenth, and Fifteenth amendments to the U.S. Constitution. He wrote as the first section of the Fourteenth

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Amendment: "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."¹² That language is controversial today, but was needed to reverse the worst decision in the history of the United States Supreme Court—the 1857 *Dred Scott*¹³ case, which indicated that persons of color brought to the United States from Africa as slaves, as well as their descendants and family members, even if becoming free, could never be U.S. citizens.

Howard excelled as an orator both in and outside Congress. But his greatest contribution to history was writing and promoting the two-sentence joint congressional resolution, which would become the Thirteenth Amendment to the U.S. Constitution.¹⁴

One of the ironies of history is that if President Lincoln had been assassinated a few months earlier than April 15, 1865, the Thirteenth Amendment might not have been approved by Congress with the constitutionally required two-thirds vote of each house. The amendment was approved by the Senate on April 8, 1864,¹⁵ but did not have the necessary votes to pass in the House of Representatives.¹⁶

Support for the amendment was included in the platform of the Republican Party in the 1864 presidential election, which Lincoln won by a substantial margin. When Congress returned from holiday break in January, the president sent a strong message urging passage of the amendment. The Congressional Record for January 1865 contains numerous lengthy arguments by congressmen for and against the amendment. A motion to table and a motion for reconsideration of the previous House vote came before the final vote on January 31, by which submission to the states for ratification of the Thirteenth Amendment was narrowly approved in the exact language proposed by Jacob Howard.¹⁷

Eleven days after President Lincoln's death, a funeral procession in his honor weaved its way through the streets of central Detroit. Only a few days before the president's death, Detroit and the rest of the nation had celebrated the surrender

of General Robert E. Lee and the Confederacy. The procession took more than an hour to pass any given point, ending at a speaker's platform in the Campus Martius. There, Sen. Howard gave one of his most eloquent orations in front of an estimated 30,000 spectators.¹⁸ The speech was printed in full on the front page of the *Detroit Free Press*.

For millions of Americans, Howard's two sentences, called the Thirteenth Amendment, were a second Declaration of Independence:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.¹⁹ ■



After 50 years in the practice of law—the first 15 in the Jackson County Prosecutor's Office and the balance in private general practice—Bruce A. Barton closed his office and retired in 2011. He had served terms as president of the Prosecuting Attorneys Association of Michigan, chairperson of the SBM Criminal Law Section and Criminal Jurisprudence Committee, and chairperson of the Representative Assembly. Since then, he has spent time in historical writing and research.

ENDNOTES

1. Stocking, ed, *Under the Oaks* (Detroit: Detroit Tribune, 1904), ch 4.
2. *Id.*
3. *Id.*
4. US Government Printing Office, *Biographical Directory of the United States Congress 1774–2005* (2005) <<https://www.gpo.gov/idsys/pkg/GPO-CDOC-108hdoc222/pdf/GPO-CDOC-108hdoc222.pdf>> (accessed June 6, 2016); Republican Centennial Committee of Shaftsbury, *The Story of Shaftsbury, Vermont* (Town Republican Centennial Committee, 1954).
5. *Id.*
6. *Under the Oaks*, ch 4.
7. *Biographical Directory of the United States Congress*.
8. "The King's Grant" at Sault Ste. Marie is State Bar's 14th Legal Milestone, 70 Mich B J 826 (1991).
9. Barnes, *History of Congress: The 40th Congress of the United States 1867–1869* (New York: W. H. Barnes & Co, 1871), vol 1.
10. Howard, *In Memoriam: Jacob M. Howard of Michigan* (Washington, DC, 1906).
11. 31 USC 3729 *et seq.*
12. US Const, Am XIV.
13. *Scott v Sanford*, 60 US 393; 15 L Ed 691 (1854).
14. 1864 Senate Joint Resolution 16.
15. Congressional Globe, 38th Congress, 1st Session, (Washington, DC, April 8, 1864), p 1,490.
16. Congressional Globe, 38th Congress, 1st Session (Washington, DC, June 15, 1864), p 2,995.
17. Congressional Globe, 38th Congress, 2nd Session (Washington, DC, January 31, 1865), p 531.
18. Howard, *Obsequies to the Late President: The Oration of Hon. J. M. Howard in Full*, *Detroit Free Press* (April 26, 1865), p 1.
19. US Const, Am XIII.