choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

APPORTIONMENT OF REPRESENTATION

With the abolition of slavery by the Thirteenth Amendment, African-Americans, who formerly counted as three-fifths of a person, would be fully counted in the apportionment of seats in the House of Representatives, increasing as well the electoral vote, and there appeared the prospect that the readmitted Southern states would gain a political advantage in Congress when combined with Democrats from the North. Because the South was adamantly opposed to African-American suffrage, all the congressmen would be elected by whites. Many wished to provide for the enfranchisement of African-Americans and proposals to this effect were voted on in both the House and the Senate, but only a few Northern states permitted African-Americans to vote and a series of referenda on the question in Northern States revealed substantial white hostility to the proposal. Therefore, a compromise was worked out, to effect a reduction in the representation of any state that discriminated against males in the franchise.[2075]

No serious effort was ever made in Congress to effectuate § 2, and the only judicial attempt was rebuffed.[2076] With subsequent constitutional amendments adopted and the use of federal coercive powers to enfranchise persons, the section is little more than an historical curiosity.[2077]

[2075] *See generally* J. James, The Framing of the Fourteenth Amendment (1956).

[2076] Saunders v. Wilkins, 152 F.2d 235 (4th Cir. 1945), *cert. denied*, 328 U.S. 870 (1946).

[2077] The section did furnish a basis to Justice Harlan to argue that inasmuch as § 2 recognized a privilege to discriminate subject only to the penalty provided, the Court was in error in applying § 1 to questions relating to the franchise. *Compare* Oregon v. Mitchell, 400 U.S. 112, 152 (1970) (Justice Harlan concurring and dissent-