

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF POLITICAL SCIENCE

Political Science 388
The Constitution and the Civil War

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For a survey of the constitutional history of this period students should read the appropriate chapters in Carl B. Swisher, American Constitutional Development (2nd ed, 1954, chs 12-16) or Alfred H. Kelly and Winfred A. Harbison, The American Constitution (rev ed, 1955, chs 14-20). A more detailed account will be found in Charles Warren, The Supreme Court in United States History (rev ed, 1926, Vol II), which contains valuable materials on the circumstances of and response to Supreme Court opinions. Students who have not already done so should familiarize themselves with C. Herman Pritchett's The American Constitution and Edward S. Corwin's The Constitution of the United States, Annotated (G.P.O., 1953).

I. The Perpetuation of Our Political Institutions

The Declaration of Independence
The Constitution of the United States of America

Federalist Papers Nos. 1, 10, 15, 49

Abraham Lincoln, "The Perpetuation of Our Political Institutions: Address Before the Young Men's Lyceum of Springfield, Illinois, January 27, 1838," Roy Basler (ed), Abraham Lincoln: His Speeches and Writings, p. 76

Harry V. Jaffa, Crisis of the House Divided (1959), ch 9

II. The Supreme Court, Union, Slavery

Federalist Paper No. 78
Marbury v Madison 1 Cr. 137 (1803)

Prigg v Pennsylvania 16 Pet. 539 (1842) (Story and Taney opinions)

Strader v Graham 10 How. 82 (1851)
Dred Scott v Sanford 19 How. 393 (1857) (Taney and Curtis opinions)

Ableman v Booth 21 How. 506 (1859)
Kentucky v Dennison 24 How. 66 (1861)

Lincoln, "The Dred Scott Decision: Speech at Springfield, Illinois, June 26, 1857," Basler, p. 352
_____, "First Inaugural Address, March 4, 1861," Basler, p. 579
_____, "Address Delivered at the Dedication of the Cemetery at Gettysburg, November 19, 1863," Basler, p. 734

Lincoln, "Fragment: The Constitution and the Union," Basler, p. 514

Jaffa, Crisis of the House Divided, chs 2,3, 11-20, appendix 2

Recommended

Andrew Jackson, Veto of the Bank Bill, July 10, 1832, Henry S. Commager, Documents of American History (6th ed, 1958), No. 147

III. War and Reconstruction

Lincoln, "Message to Congress in Special Session, July 4, 1861,"
Basler, p. 594

James G. Randall, Constitutional Problems Under Lincoln (1926), chs 2,
3, 6-8, 16, 20

Prize cases 2 Black 635 (1863)

Ex parte Merryman 17 Fed. Cases 144 (1861), Commager, Documents, No. 209

Ex parte Milligan 4 Wall 2 (1866)

Cummings v Missouri 4 Wall 277 (1867)

Ex parte Garland 4 Wall 333 (1867)

Mississippi v Johnson 4 Wall 475 (1867), Commager, Documents, No. 259

Texas v White 7 Wall 700 (1869)

Recommended

Lincoln, Letter to Erastus Corning, June 12, 1863, Basler, p 699

Edward S. Corwin, The President, Office and Powers, ch 6

Sumner's Resolutions on the Theory of Secession and Reconstruction,
February 11, 1862, Commager, Documents, No. 212

IV. The Civil War Amendments

A. The Intention of the Framers

Slaughter House Cases 16 Wall 36 (1873)

Alexander M. Bickel, "The Original Understanding and the Segregation
Decision," 69 Harvard Law Review 1 (1955)

William Crosskey, Politics and the Constitution, chs 31-32

Charles Fairman, "Does the Fourteenth Amendment Incorporate the
Bill of Rights? The Original Understanding," 2 Stanford
Law Review 5 (1949)

Recommended

(For those students who wish to pursue the question of the intention of the framers the following are the major items in the secondary literature in addition to those cited above)

Horace E. Flack, *The Adoption of the Fourteenth Amendment* (1908)
Joseph B. James, *The Framing of the Fourteenth Amendment* (1956)
Arnold J. Lien, *Concurring Opinion: The Privileges and Immunities Clause of the Fourteenth Amendment* (1957)
Robert J. Harris, *The Quest for Equality*

Howard J. Graham, "The Early Anti-Slavery Backgrounds of the Fourteenth Amendment," *Wisconsin Law Review*, 1950, 479, 610
"The Conspiracy Theory of the Fourteenth Amendment," 47 *Yale Law Journal* 371; 48 *Yale Law Journal* 171 (1938); reprinted in 1 *SECL* (Selected Essays on Constitutional Law) 236

John P. Frank and Robert F. Munro, "The Original Understanding of 'Equal Protection of the Laws,'" 50 *Columbia Law Review* 153 (1950)

Hugo Black, "The Adoption of the Fourteenth Amendment," *Adams v California* 332 US 46, Appendix, 92-123 (1947)

Charles Fairman, "The Supreme Court and the Constitutional Limitations on State Governmental Authority," 21 *University of Chicago Law Review* 40 (1953)

William Crosskey, "Charles Fairman, 'Legislative History,' and the Constitutional Limitations on State Authority," 22 *University of Chicago Law Review* 1 (1954)

Charles Fairman, "A Reply to Professor Crosskey," 22 *University of Chicago Law Review* 144 (1954)

B. Substantive Due Process

Hepburn v Griswold 8 Wall 603 (1870)
Legal Tender Cases 12 Wall 457 (1871)

Munn v Illinois 94 US 113 (1877)

Davidson v New Orleans 96 US 97 (1878)

Chicago, R. & St. P. Ry. Co. v Minnesota 134 US 418 (1890)

Lochner v New York 198 US 45 (1905)

Recommended

Edward S. Corwin, "The Basic Doctrine of American Constitutional Law," 1 *SECL* 101

_____, "The Doctrine of Due Process of Law After the Civil War," 1 *SECL* 203

Charles G. Haines, "The History of Due Process of Law After the Civil War," 1 *SECL* 268

Walton H. Hamilton, "Affectation with the Public Interest," 2 *SECL* 494

C. Negro Rights

U.S. v Reese 92 US 211 (1876)
U.S. v Cruikshank 92 US 512 (1876)
Strauder v West Virginia 100 US 303 (1880)
Ex parte Virginia 100 US 339 (1880)
US v Harriss 106 US 629 (1883)
Civil Rights Cases 109 US 651 (1884)
Ex parte Yarbrough 110 US 651 (1884)

Plessy v Ferguson 163 US 537 (1896)

Recommended

The Freedman's Bureau Act, 1865, Commager, Documents, No 245
Black Codes of Mississippi and Alabama, 1865, Commager,
Documents, Nos. 246, 247
Veto of Freedman's Bureau Bill, 1866, Commager, Documents, No 251
Veto of the Civil Rights Act, 1866, Commager, Documents, No. 253