

LINCOLN AND THE CONSTITUTION

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I. Lincoln's early years

- A. Small-town lawyer
- B. Member of Whig party

II. Slavery and the Constitution

- A. Fugitive Slave Clause (Art. IV, Sec. 2)
- B. Three Fifths Clause (Art. I Sec. 2)
- C. Slave trade protection (Art. I, Sec. 9)
- D. Consensus: slavery was a local (not a federal) matter

III. Slavery in the Territories

- A. The Missouri Compromise (1820)
- B. The Compromise of 1850 (popular sovereignty doctrine)
- C. Kansas – Nebraska Act (1854) (repeals the Missouri Compromise)

IV. Lincoln's opposition to the Kansas-Nebraska Act

V. Lincoln's constitutional argument against slavery

- A. Framers were, at heart, anti-slavery
- B. Declaration of Independence sets out our nation's moral vision
- C. Picture of apple of gold in a silver frame

VI. The Dred Scott Case

- A. Worst Supreme Court decision of all time?
- B. Holding #1: Blacks are not citizens
- C. Holding #2: Congress cannot prohibit slavery in the territories
- D. Substantive Due Process

VII. Lincoln's Reaction to Dred Scott Decision

- A. Purposes of Supreme Court opinions
 - 1. Resolve specific case
 - 2. Provide guidance for future cases

- B. Legitimacy of guidance depends on facts and circumstances
- C. Constitutional interpretation not sole prerogative of Supreme Court
- D. Or, is this a recipe for anarchy?

VIII. Lincoln-Douglas Debates (Fall, 1858)

- A. Douglas: “Lincoln wants immediate and total equality for blacks”
- B. Lincoln sticks by his belief in the Declaration of Independence
- C. But argues that being anti-slavery does not imply he was for total equality
 - 1. Opposes immediate social and political equality between the races
 - 2. Solution: send ex-slaves back to Africa
- D. Lincoln: Declaration of Independence is all about long-term potential

IX. The Election of 1860

X. The Gap Period (Nov., 1860 – March, 1861)

- A. Buchanan’s inaction
- B. Proposed 13th Amendment: the Corwin Amendment

XI. First Inaugural Address

- A. Secession is unconstitutional
- B. All governments (and the Union) are perpetual
- C. Our Union predated the Constitution
- D. Election results must be respected
- E. Secession is the essence of anarchy
- F. Plea for reconciliation (“give me a chance”)

XII. The South’s Compact Theory

XIII. The Matter is Resolved

- A. Appomattox Court House
- B. Supreme Court (Texas v. White) (1869)
- C. Split decision on historical record of status of states
 - 1. Jefferson Davis correct (before the Constitution is adopted)
 - 2. Lincoln correct (after the Constitution is adopted)

XIV. Lincoln’s actions (Spring, 1861)

- A. Authorized actions
- B. Constitutionally suspect actions

XV. Bases for Lincoln’s actions

- A. Oath of Office
 - 1. Lincoln’s view: Constitution = Union

- 2. Union replaces Declaration of Independence as his lodestar
- 3. Does not extend to acting on slavery
- B. “Take Care” clause
- C. Supremacy clause
- D. Congress and Supreme Court ratify Lincoln’s actions

XVI. The Prize Cases

- A. President must, at times, act to defend the country
- B. Civil wars are often not declared wars
- C. Confederacy was not a “country”
- D. Constitution is not a suicide pact

XVII. Lincoln’s Transformation of the Office of President

XVIII. Lincoln and Habeas Corpus

- A. Authorizes General Scott to suspend it “if the public safety required it”
- B. One of our oldest rights
- C. Article I, sec. 9: unclear who can suspend it
- D. Lincoln says: “I can”
- E. The Merryman Case
 - 1. Taney’s opinion
 - 2. Lincoln’s reaction
 - 3. Lincoln’s prioritization argument

XIX. Emancipation Proclamation

- A. Slaves: a military asset
- B. Freed slaves only in Confederate-controlled territory
- C. Article II: Commander-in-Chief power
- D. Issued as a matter of military necessity; not on moral grounds
- E. Changes focus of the War
- F. A powerful – but unstable – executive order
- G. Leads to adoption of the 13th Amendment
- H. Lincoln’s “Order of Retaliation”

XX. Civil Liberties During Wartime

- A. The Vallandigham Case
- B. Military Trials in the North
- C. Limits on free speech during wartime?
- D. Lincoln’s June 12, 1863, letter

XXI. Lincoln’s Constitutional Legacy

