LINCOLN AND THE CONSTITUTION

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Spring, 2024

I. Lincoln's early years

    A. Small-town lawyer
    B. Member of Whig party
    C. No detectable constitutional philosophy during this time

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. Pre-war consensus: slavery was a local (not a federal) matter

III. Slavery in the Territories

    A. Open constitutional question – source of much dispute
    B. The Missouri Compromise (1820)
    C. The Compromise of 1850 (popular sovereignty doctrine)
    D. Kansas – Nebraska Act (1854) (repeals the Missouri Compromise)

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

V. Lincoln's opposition to slavery

VI. 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

VII. 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. Chief Justice Roger Taney develops theory of "substantive due process"

VIII. Lincoln's Reaction to Dred Scott Decision

A.   Purposes of Supreme Court opinions

      1. Resolve specific case – (Supreme Court cannot be defied)
      2. Provide guidance for future cases – (Supreme Court can be challenged)

B.   Legitimacy of Court's guidance depends on facts and circumstances

C.   Constitutional interpretation not sole prerogative of Supreme Court

D.   Open question: do all aspects of Supreme Court decisions have to be totally accepted?

IX. 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.   Lincoln's solution: send ex-slaves back to Africa
D.   Lincoln: Declaration of Independence is all about long-term potential

X. The Election of 1860

A.   Republicans are anti-slavery, but not for interfering with existing slave states
B.   Four person race
C.   Lincoln sweeps electoral college, but gets narrow popular vote win

XI. The Gap Period (November, 1860 – March, 1861)

A.   President Buchanan's inaction
B.   Proposed 13th Amendment: the Corwin Amendment
C.   Major distinction between Corwin Amendment and actual 13th Amendment

XII. Lincoln's First Inaugural Address

A.   Tries to reassure the South
B.   Argues that secession is unconstitutional
      1. All governments (and the Union) are perpetual
      2. Our Union predated the Constitution
      3. Election results must be respected
      4. Allowing secession means our form of government is impossible
      5. Secession is the essence of anarchy
C.   "I will do my job"
D.   Plea for reconciliation ("give me a chance")

XIII. The South's Compact Theory

A. States predated – and survived after – the Constitution

XIV. The Matter is Resolved

A. Appomattox Court House
B. Supreme Court (Texas v. White) (1869)
C. Split decision on status of states
  1. Jefferson Davis was correct – states were independent before the Constitution was adopted (Article VII)
  2. Lincoln was correct – states were no longer independent after the Constitution was adopted (Supremacy Clause)

XV. Lincoln Takes Strong Executive Actions (Spring, 1861)

A. Congress not in session
B. Some actions were clearly authorized by law or the Constitution
C. Many actions, however, were constitutionally suspect

XVI. Bases for Lincoln's Constitutionally Suspect Actions

A. Oath of Office
  1. Lincoln's view: Constitution = Union
  2. Oath justifies him taking emergency actions (but not with respect to slavery)
  3. Union replaces Declaration of Independence as Lincoln's lodestar
B. "Take Care" clause
C. Secession cannot be tolerated – it would be the end of representative gov't
D. Congress and Supreme Court ratify Lincoln's actions

XVII. The Prize Cases (March, 1863)

A. Civil wars are often not declared wars
B. President must, at times, act to defend the country without Congress' approval
C. Confederacy was not a "country"
D. Constitution is not a suicide pact

XVIII. Lincoln and Habeas Corpus

A. Authorized Gen. Scott to suspend habeas corpus "if the public safety required it"
B. One of our oldest rights
C. Article I, sec. 9: unclear who can suspend it (Congress or the President?)
D. Lincoln says: "I can"
E. Lincoln's use of constitutional silence
F. The Merryman Case
  1. Taney's opinion: President cannot do this
  2. Lincoln's reaction: Chief Executive must prioritize enforcement sequence
  3. Congress ratifies Lincoln's suspensions

XIX. Emancipation Proclamation

A. Deteriorating war situation
  1. Prompts consideration of freeing some slaves
  2. Slaves: a military asset

B.   Freed slaves only in Confederate-controlled territory
C.   Source of Lincoln's power: Article II – the Commander-in-Chief clause
D.   Issued as a matter of military necessity; not on moral grounds
E.   Changed 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" – a "bad" executive order

XX.   Civil Liberties During Wartime

A.   The Vallandingham Case
B.   Limits on free speech during wartime?
C.   Lincoln's June 12, 1863, letter
        1. Constitution operates differently during war-time
        2. Pre-emptive arrests permissible

XXI. Lincoln's Constitutional Legacy

A.   An indissoluble Union

B.   A strong President during times of crisis

C.   Constantly striving for equality

D.   A flexible Constitution

RECOMMENDED READING

Dirck, Brian R., **Lincoln and the Constitution**

Farber, Daniel, **Lincoln's Constitution**

Widmer, Ted, **Lincoln on the Verge**