

Reconstruction & the Constitution

How the Civil War and Reconstruction Remade the Constitution

Shortly after the ratification of the Fifteenth Amendment, a Republican senator characterized the three Reconstruction amendments as a “constitutional revolution,” and many scholars, including Eric Foner, have described them as the nation’s “second founding.” Not only did these amendments introduce concepts such as “equal protection of the law” and “the right to vote” into the Constitution; they also transformed the balance of power between the states and the federal government by vesting in the latter more authority to define and protect Americans’ rights. Each amendment explicitly empowered Congress to enforce its provisions “by appropriate legislation,” and between 1866 and 1875, Congress passed five major acts to implement aspects of the amendments. Litigation naturally ensued, and in a series of decisions beginning in 1872, the Supreme Court narrowly interpreted, and thereby limited the effectiveness of, the amendments.

The twelve topics selected by the moderators (listed on the next page) were chosen to provide seminar participants an opportunity to delve into the historical circumstances and ideological context that shaped the ideas and concepts embodied in the amendments, the implementing legislation and the decisions of the Supreme Court. Although only white males voted on the amendments in Congress and penned the opinions issued by the Court, neither Blacks nor white women were mere silent onlookers. They were deeply involved in the debates and legal battles. Their ideas and perspectives, as expressed in meetings (such as the Colored Conventions), speeches and writings (including newspaper editorials and the critiques of Supreme Court decisions by the Black Brotherhood of Liberty in their 1889 publication, *Justice and Jurisprudence*), will enhance the scope of many of the topics.

The final meeting of the seminar will be a collaborative discussion of how the amendments have been interpreted and applied in the last 100 years.

Presentation Topics and Schedule

- October 6 Introductions and administrative matters
- Jay & Margaret: Constitutional and Congressional Antecedents
 to the Second Founding
- October 13 The *Dred Scott* decision (1857) and the Emancipation
 Proclamation (1863)
- Thirteenth Amendment and the Civil Rights Act of 1866
- October 20 Fourteenth Amendment (part 1): birthright citizenship and
 “privileges and immunities of citizens of the United States”
- Fourteenth Amendment (part 2): “due process” and “equal
 protection”
- October 27 Fourteenth Amendment (part 3): Sections 2, 3 and 4
- Fifteenth Amendment
- Nov. 3 Black Voices (Frederick Douglass, et al.)
- Legislative Enactments to enforce the Reconstruction
 Amendments (including the Enforcement Acts and the Civil
 Rights Act of 1875)
- Nov. 10 Supreme Court decisions 1873-1883 [including the
 Slaughterhouse Cases (1873) and the *Civil Rights Cases* (1883)]
- The Brotherhood of Liberty and *Justice and Jurisprudence* (1889)
- Nov. 17 *Plessy v. Ferguson* (1896)
- Supreme Court decisions through 1906
- Nov. 24
or Dec. 1 Collaborative presentation/discussion on the
 application/interpretation of the amendments over the last 100
 years

Resources

(to be updated periodically by the moderators)

REQUIRED READING: Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (2019)

N.B.: The end Notes of this book reference many pertinent books and articles.

Other Resources

Eric Foner, *Reconstruction: America's Unfinished Revolution* (2014) 612 pages
or
A Short History of Reconstruction (2014) 260 pages

(Both books have extensive bibliography and notes.)

Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court and the Betrayal of Reconstruction* (2008) [The Supreme Court case is *United States v. Cruikshank* (1875)]

Steve Luxenberg, *Separate: The Story of Plessy v. Ferguson, and America's Journey From Slavery to Segregation* (2019)

The Colored Conventions Movement -- Black Organizing in the Nineteenth Century, P. Gabrielle Foreman, et al., eds. (March 2021)

Heather Cox Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the Post-Civil War North* (2001)

James Oakes, *The Crooked Path to Abolition -- Abraham Lincoln and the Antislavery Constitution* (2021)

Sean Wilentz, *No Property in Man: Slavery and Antislavery at the Nation's Founding* (2018)