

TEACHERS AS HISTORIANS:  
TEACHING AMERICAN HISTORY SEMINAR

Landmark Supreme Court  
Cases, 1801-1920

*Reacting to Old Agendas...*

*... Dealing With New Agendas*

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# OVERARCHING THEMES

- Constitutional Decision Making is
    - Interpretation
    - Interpretation in a Context
    - Contexts Change
      - Society
      - Politics
      - Governmental Policies
      - Justices on the Court
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# OVERARCHING THEMES

- These Changes Are Reflected in Constitutional Decisions and Doctrine
  - The Court Goes Through “Eras”
    - The Marshall Era
    - The Taney Era
    - The Post-Civil War Era
    - The Era of “Steel and Steam”
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# COMPROMISES AT THE CONVENTION: ENDURING QUESTIONS OF CONSTITUTIONAL LAW

The Constitution as a “Philosophical Document”

The Constitution as a “Political Document”

- John Roche: Overarching Goals of Delegates
  - Specific Compromises
    - Congressional Representation
    - Voting
    - New States
    - Slavery
    - Federalism
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# COMPROMISES AT THE CONVENTION: ENDURING QUESTIONS OF CONSTITUTIONAL LAW

## Congressional Representation

- *Article I, 2, 2; 3, 2*
- Structural Protection of States & Federalism

## Voting

- *Article I, 2, 1*
- “The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.”

# COMPROMISES AT THE CONVENTION: ENDURING QUESTIONS OF CONSTITUTIONAL LAW

## Slavery

- *Article I, 2, 3*

“Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. ”

- *Article I, 9, 1*

“The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.”

- *Article I, 9, 1*

“No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”

# COMPROMISES AT THE CONVENTION: ENDURING QUESTIONS OF CONSTITUTIONAL LAW

## **New States**

- *Article IV, 3, 1*
- “New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.”

## **Federalism**

- *Article I, 8, 18*
- “To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.”

# THE “MARSHALL ERA”

- Early Courts
  - Marshall’s Nomination and Confirmation
    - Context
    - Adams’ Goals
    - Prerequisites to Pursue Those Goals
  - Overarching Themes of Marshall’s Jurisprudence
    - Judicial Supremacy
    - National Supremacy
    - Protection of Property Rights
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# THE “MARSHALL ERA”

## Judicial Supremacy

- Judicial Review Over National Actions

*Marbury v. Madison* (1803)

- Context
- Substance

- Judicial Review Over the Federal System

*Martin v. Hunter’s Lessee* (1816)

*Cohens v. Virginia* (1821)

- Strategic Commonalities
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# THE “MARSHALL ERA”

## National Supremacy

- Deference To Congress
- Broad Rendering of Powers

*McCulloch v. Maryland* (1819)

- Context
- Substance

*Gibbons v. Ogden* (1824)

- But...

*Willson v. Blackbird Creek* (1829)

# THE “MARSHALL ERA”

## Protection of Private Property

- Recall
  - Liberal Principles
  - Articles of Confederation

- Article I, 10

*Fletcher v. Peck* (1810)

*Dartmouth College v. Woodward* (1819)

- But...

*Barron v. Baltimore* (1833)

# THE “TANEY ERA”

## “Jacksonian Democracy”

- Expanding Suffrage
  - Westward Expansion
  - Emphasis on “States Rights” and “Police Powers”
    - Tenth Amendment
    - Limited National Power (Bank Veto)
  - Marshall Dies in 1835
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# THE “TANEY ERA”

## Themes of Taney’s Jurisprudence

- Expand State “Police” Power
  - *New York v. Miln* (1837)
  - *Charles River Bridge Co. v. Warren Bridge Co.* (1837)
- Narrow National Power
  - *Dred Scott v. Sanford* (1857)
- Some Modification – and Rejection – of Marshallian Vision
- *But...* Judicial Power
  - *Dred Scott*
  - *Cooley v. Board of Wardens* (1852)

THE CIVIL WAR *OR*  
THE WAR BETWEEN THE STATES?

*A Result of Political Compromises  
at the Convention*

- Scope of National Power
  - Status of New States
  - Slavery
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# THE CIVIL WAR *OR* THE WAR BETWEEN THE STATES?

A Result of Different Constitutional Visions

- **Nationalist (Marshall)**
  - Sovereignty in the People
  - Broad Reading of Enumerated and Implied Powers
  - Tenth Amendment a Truism
  - Supremacy Clause of Art. VI
- **Dual Federalist (Taney)**
  - Sovereignty in States
  - Narrow Reading of Enumerated and Implied Powers
  - Tenth Amendment a Principled Limitation on National Power

*Both visions flow from the “political constitution”*

# THE CIVIL WAR *OR* THE WAR BETWEEN THE STATES?

## “Crisis” Constitutional Decision Making

- *The Prize Cases* (1863)
- *Ex Parte Vallandigham* (1864)
- *Ex Parte Milligan* (1866)

## Take-Away:

- Permanent Union
  - *Inter arma silent leges*
  - Onset of More Powerful National Government
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# THE CIVIL WAR!

*Thirteenth:* “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

*Fourteenth:* “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

*Fifteenth:* “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

*All had “enforcement” provisions*

# *AGENDAS OLD AND NEW IN NEW TIMES*

The Task of the Post-Civil War Court:

Craft a New Role for Itself in New Times

- Minister to Remaining Issues of the Old Agenda
  - Federalism
  - Race
- Deal with New Issues Arising from
  1. Constitutional Change
  2. Demands of a New Era

# *AGENDAS OLD AND NEW IN NEW TIMES*

## **Race**

- Unquestionably the Reason for the Civil War Amendments
  - Miller in *Slaughterhouse Cases* (1873)
- Application
  - *The Civil Rights Cases* (1883)
  - *Plessy v. Ferguson* (1896)
  - *Guinn v. U.S.* (1915)

Overarching Irony: Not Do Much to Improve Conditions of Newly Freed Slaves or Descendants... or Women

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# *AGENDAS OLD AND NEW IN NEW TIMES*

## **Property Rights: Limit States**

- Tool: 14<sup>th</sup> Amendment: “No state shall...”
- Recall: *The Slaughterhouse Cases* (1873)
- Bradley and Field’s Dissents Become Law
  - *Allgeyer v. Louisiana* (1897)
  - *Lochner v. New York* (1905)
  - *Adkins v. Children’s Hospital* (1923)

*Lead to “New Deal Crisis”*

# *AGENDAS OLD AND NEW IN NEW TIMES*

## **Property Rights: Limit National Government**

- Tool: The Commerce Clause
- Recall Marshall in *Gibbons*
- But, a Series of Cases Limit Federal Regulatory Power
  - *Pollock v. Farmers' Loan and Trust* (1895)
  - *U.S. v. E.C. Knight* (1895)
  - *Hammer v. Dagenhart* (1918)

*Lead to "New Deal Crisis"*

# *AGENDAS OLD AND NEW IN NEW TIMES*

## **By The End of the 1910s, New Issues Peeking Out**

- Freedom of Speech
  - *Schenck v. U.S.* and *Abrams v. U.S.* (1919)
- Incorporation of Bill of Rights
- National Power in Times of International Crisis

Old Issues, New Issues, Horizon Issues...

... A Constitutional Drama Unfolding in Never-Ending Acts

# OVERARCHING THEMES

- Some Issues/Questions Are Permanent; Some Emerge
    - Permanent Questions: Arise Out of Compromises at the Constitutional Convention
    - Emerging/New Questions:
      - Societal Changes
      - Constitutional Changes
  - Seldom Do Constitutional Questions “Go Away”
    - Often Yield New Issues (Morphing)
    - Short-Term, Temporal Answers Open to New Challenges
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