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WHO WOULD HAVE THOUGHT . . .  
THE UNLIKELY LEGAL HISTORY OF THE 14TH AMENDMENT, 1866–1890

Jonathan Lurie (Rutgers University)

**DESCRIPTION:** This seminar will explore some intriguing questions about the early history of the 14th Amendment. These include issues of intent, application, original understanding, and purpose. How clear were these issues in the decades that followed the Amendment's creation? The seminar will start by examining the full text of this complex Amendment, not just the well-known parts of section 1. It will then focus on the period between 1866, when the Amendment went to the states for ratification, and 1890, when the Supreme Court handed down *Chicago, Milwaukee and St. Paul Railway Co. v. Minnesota* — a truly significant decision, though less about what the Amendment said than what it had come to mean.

**INSTRUCTOR:** **Jonathan Lurie** is Professor of History and Adjunct Professor of Law at Rutgers University (Newark). His research interests include American legal history and late 19th-century American political history. Lurie is author of *The Chase Court: Justices, Rulings, and Legacy*, a two-volume history of the U.S. Court of Appeals for the Armed Forces (*Arming Military Justice and Pursuing Military Justice*), and *The Slaughterhouse Cases* (co-authored with Ronald Labbé) — as well as numerous articles, book chapters, and book reviews. He is now at work on a biography of William Howard Taft and a study of Taft's tenure as Chief Justice. Professor Lurie may be reached by email at [jlurie@andromeda.rutgers.edu](mailto:jlurie@andromeda.rutgers.edu). Messages can also be relayed by the staff of the Institute for Constitutional Studies (see contact information above).

**MEETING DATES AND TIMES:** **Thursday evenings**, 6:00–9:00 p.m., October 5, 12, 19, and 26, November 2 and 9. The seminar meets in the auditorium of the Federal Judicial Center, located in the **Thurgood Marshall Federal Judiciary Building**, One Columbus Circle NE, Washington, DC (next to Union Station). You will have to go through a metal-detector at the main entrance. Then walk past the sign that says “South Lobby” and check in at the guards' desk (where you'll need to show a government-issued ID, such as a driver's license, though they will also have a list of the seminar participants). The auditorium is on the Concourse level.

**SYLLABUS**

- **Some suggested background readings:**
  1. Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction* (Norton, 1974)
  2. Richard N. Current, *Those Terrible Carpetbaggers* (Oxford Univ. Press, 1998)
  3. Eric Foner, *A Short History of Reconstruction, 1863-1877* (Harper & Row, 1990)

4. Michael K. Curtis, *No State Shall Abridge. The Fourteenth Amendment and the Bill of Rights* (Duke Univ. Press, 1986)
5. Harold M. Hyman and William Wiecek, *Equal Justice Under Law: Constitutional Development 1835-1875* (Harper & Row, 1982)
6. William Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Harvard Univ. Press, 1988)
7. William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Univ. of North Carolina Press, 1996)
8. Phillip Paludan, *A Covenant with Death: The Constitution, Law and Equality in the Civil War Era* (Univ. of Illinois Press, 1975)
9. William Wiecek, *The Lost World of Classical Legal Thought: Law and Ideology in America, 1886-1937* (Oxford Univ. Press, 1998)

- **Session I (October 5, 2006)**  
**Introduction**

**Required Reading:** Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery and the Thirteenth Amendment* (Cambridge Univ. Press, 2001)

**Tentative topics to be discussed:**

- a) The Civil War and Lincoln's transformation;
- b) The Thirteenth Amendment (Vorenberg's interpretation)
- c) Why another amendment?

- **Sessions II and III (October 12 and October 19, 2006)**  
**The 14th Amendment: First Judicial Articulation**

**Required Reading:**

- a) The 14th Amendment (entire text)
- b) Ronald Labbé and Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*, abridged paperback edition (Univ. Press of Kansas, 2005)
- c) *Slaughterhouse Cases I* (1873)
- d) *Slaughterhouse Cases II (Butchers' Union Co. v. Crescent City Co. [1884])*

- **Sessions IV and V (October 26 and November 2, 2006)**  
**Justice Miller and the 14th Amendment**

**Required Reading:**

- a) Michael A. Ross, *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court during the Civil War Era* (LSU Press, 2003)
- b) *Bradwell v. Illinois* (1873)
- c) *Minor v. Happersett* (1875)
- d) *Munn v. Illinois* (1877)

- e) *Davidson v. New Orleans* (1878)
  - f) *Hurtado v. California* (1884)
- **Session VI (November 9, 2006)**  
**Interpreting the 14th Amendment: Transformation?**

**Required Reading:**

- a) *Civil Rights Cases* (1883)
  - b) *Yick Wo v. Hopkins* (1886)
  - c) *Chicago, Milwaukee and St. Paul Railway Co. v. Minnesota* (1890)
- **Note:** An additional session may be added to discuss subsequent developments in the history of the 14<sup>th</sup> Amendment or for participants to present oral reports on research projects.

**ONLINE SOURCES FOR THE SUPREME COURT DECISIONS:**

<i>Slaughterhouse Cases</i> 83 U.S. 36 (1873)	<a href="http://supreme.justia.com/us/83/36/case.html">http://supreme.justia.com/us/83/36/case.html</a>
<i>Bradwell v. Illinois</i> 83 U.S. 130 (1873)	<a href="http://supreme.justia.com/us/83/130/case.html">http://supreme.justia.com/us/83/130/case.html</a>
<i>Minor v. Happersett</i> 88 U.S. 162 (1875)	<a href="http://supreme.justia.com/us/88/162/case.html">http://supreme.justia.com/us/88/162/case.html</a>
<i>Munn v. Illinois</i> 94 U.S. 113 (1877)	<a href="http://supreme.justia.com/us/94/113/case.html">http://supreme.justia.com/us/94/113/case.html</a>
<i>Davidson v. New Orleans</i> 96 U.S. 97 (1878)	<a href="http://supreme.justia.com/us/96/97/case.html">http://supreme.justia.com/us/96/97/case.html</a>
<i>Hurtado v. California</i> 110 U.S. 516 (1884)	<a href="http://supreme.justia.com/us/110/516/case.html">http://supreme.justia.com/us/110/516/case.html</a>
<i>Butchers' Union Co. v. Crescent City Co.</i> 111 U.S. 746 (1884)	<a href="http://supreme.justia.com/us/111/746/case.html">http://supreme.justia.com/us/111/746/case.html</a>
<i>Civil Rights Cases</i> 109 U.S. 3 (1883)	<a href="http://supreme.justia.com/us/109/3/case.html">http://supreme.justia.com/us/109/3/case.html</a>
<i>Yick Wo v. Hopkins</i> 118 U.S. 356 (1886)	<a href="http://supreme.justia.com/us/118/356/case.html">http://supreme.justia.com/us/118/356/case.html</a>
<i>Chicago, Milwaukee and St. Paul Railway Co. v. Minnesota</i> 134 U.S. 418 (1890)	<a href="http://supreme.justia.com/us/134/418/case.html">http://supreme.justia.com/us/134/418/case.html</a>

**Note:** Other online sources of decisions include the Legal Information Institute at Cornell Law School <<http://supct.law.cornell.edu/supct/index.html>> and LexisNexis (if you have access).

**ADDITIONAL INFORMATION:**

There is **no tuition or other charge for this seminar**, though participants will be expected to acquire the assigned books on their own.

This is a graduate-level seminar. Although it is designed primarily for graduate students in history, political science, and related disciplines, law students, advanced undergraduates, and legal practitioners are welcome to join the seminar with the permission of the instructor. All participants will be expected to complete the assigned readings and participate in seminar discussions. **Space is limited and advanced registration is required.**

Although ICS cannot offer academic credit for this seminar, students may be able to earn graduate credit through their home departments by completing an independent research project in conjunction with the seminar. Please consult with your advisor and/or director of graduate studies about this possibility. If requested in advance, Prof. Lurie will also advise participants on research topics and provide an evaluation of their participation in the seminar.

#### **ABOUT ICS:**

The **Institute for Constitutional Studies** is the nation's premier university-based institute dedicated to ensuring that future generations of Americans understand the substance and historical development of the U.S. Constitution. Located at the George Washington University and associated with the GWU Law School, ICS is co-sponsored by the American Historical Association, Organization of American Historians, American Political Science Association, and Association of American Law Schools. ICS prepares younger scholars and college instructors to convey to their readers and students the important role the Constitution has played in shaping American society. ICS also provides a national forum for the preparation and dissemination of humanistic, interdisciplinary scholarship on American constitutional history.



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