

# Widener University Delaware Law School

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## What The Actions Of Abe Lincoln Continue To Teach Us Today

Michael J. Slinger



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# What the Actions of Abe Lincoln Continue to Teach Us Today

by MICHAEL J. SLINGER\*

## I INTRODUCTION

Whenever I tell law professors or attorneys that I teach a course titled *Legal Issues of the American Civil War*, I uniformly get the same reaction: "That sounds fascinating, I would love to sit in on your course." The follow-up question is often: "Are there enough Civil War legal issues to sustain an entire course?" I respond by telling them three things:

- 1) There are more legal issues arising from the Civil War era than I can do justice to in my three credit class.
- 2) The material I teach is not only interesting from a historical perspective, but can also teach us important lessons that will help us better understand and perhaps solve some of the legal issues we face today.
- 3) Law students are woefully unaware of legal history and how it has shaped the jurisprudence and politics of today. To remedy this situation, I think legal history courses such as mine should be required elements of the law school curriculum.

The fact that most people don't understand why our past experiences help to illuminate our present controversies provides ample evidence as to why it is important that we teach legal history to future lawyers.

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## II WHAT I TEACH

This course examines the legal issues that arose as a prelude to, during, or immediately after the American Civil War. Many of these issues fundamentally shaped future United States jurisprudence on questions such as the use of executive power, and some continue as controversies and unsettled questions that challenge our legal system today.

A few examples of Civil War era legal issues that have reappeared as unsettled questions in U.S. legal history include: the use of military tribunals to try non-military personnel accused of crimes; the balancing of civil liberties vs. national security issues; and the use and possible abuse of executive powers.

The Civil War era offers myriad legal issues for my class to examine including: states' rights vs. federal authority; the right of states to secede from the Union; slavery in America (including eventual emancipation); the use and limits of presidential powers in wartime; and international law issues that affected the politics and conduct of the war.

In addition, the Civil War resulted in the government suspending the civil liberties of thousands of American citizens through the denial of constitutionally protected individual rights. Some examples: the use of military tribunals against civilians; the punishment and suppression of civil dissent; the censorship of newspapers; and suspending the writ of habeas corpus.

My course also examines: the role of the three branches of government during and immediately after wartime; the treatment of prisoners of war; the establishment of a military draft; the creation of the first federal income tax; the role of military and martial law; governmental confiscation of various types of property; amnesty, pardons, and loyalty oaths; the legal system of the Confederate States of America; war crimes and treason charges; the impeachment of the president; as well as legal issues that arose during Reconstruction and the legacy of the Civil War on American law and society.

We study these issues from both legal and historical perspectives. Students are encouraged to think about how these issues and concepts came into being as well as how they have evolved through American history and jurisprudence to the present time.

Our overall objective is to examine and discuss how the United States and its legal and political systems were shaped by the events that occurred prior to, during, and immediately after the Civil War era. We explore how the development of American law was fundamentally affected from the country's founding by differing interpretations of the U.S. Constitution and by moral, economic, and political forces as they existed in the early Republic. We discuss how the outcome of these issues, culminating in a brutal civil war, led to the creation of the America we live in today.

### III WHAT STUDENTS READ

There is no casebook that covers all of the topics we examine and although many court cases are very important to this course, they are only a part of the picture. Statutes, codes, and, of course, the U.S. Constitution play vital parts, as do the politics of the time, the attitudes of the people, and the history of what actually happened. Therefore, I ask the class to read a variety of books and articles. The articles and text of laws that I select are placed on my TWEN course page organized by subject. In addition, I assign the following texts: 1) Daniel Farber, *Lincoln's Constitution* (2003); 2) Eric Foner, *A Short History of Reconstruction* (1990); 3) Earl M. Maltz, *Slavery and the Supreme Court, 1825-1861* (2009); 4) Brian McGinty, *Lincoln and the Court* (2008); 5) James F. Simons, *Lincoln and Chief Justice Taney: Slavery, Secession, and the President's War Powers* (2006); 6) Jennifer L. Weber, *Copperheads: The Rise and Fall of Lincoln's Opponents in the North* (2006).

Students consistently tell me how much they enjoy the diversity of the readings. They also appreciate the fact that all of the assigned texts together cost far less than the average casebook. Students pay too much for casebooks and I am happy to give them a financial break.

### IV HOW I CONDUCT THE CLASS

Although I present the material in a traditional way (i.e., lecture utilizing PowerPoint), in every class session I ask many questions that lead to spirited discussions among the students. These discus-

sions are the part of the course I enjoy most. It is exciting to see students passionately arguing about important questions such as the right of a president to act unilaterally and arguably against the U.S. Constitution during times of war. Students test each other's beliefs, but in my course are required to do so by backing their arguments with legal authority and philosophy including public policy considerations.

## V GRADING

Students are evaluated on the following criteria: 1) Active class participation (10% of grade); 2) Two short quizzes during the semester (10% of grade); 3) A research paper based on a legal issue that has its roots in events that led to or were part of the American Civil War or Reconstruction. It is permissible (but not required) to compare and analyze a legal issue from the American Civil War with subsequent legal and/or historical events (65% of grade); 4) A 10-minute in-class presentation summarizing or highlighting the research paper (15% of grade).

## VI CONCLUSION

Teaching this course has been a joy for me. It weds my life-long interest in history with my belief that all Americans, but particularly lawyers, should have an understanding of how past events impacted our legal system and have influenced us into becoming the country we are today. Americans are far less likely to see the liberties we hold dear erode if we take the time to understand the actions of the past and their effect on the United States and its people.

Many of my students select *Legal Issues of the American Civil War* because they say they want something a bit different from the majority of courses available in law school. My course evaluations tell me that most of them believe their perspectives on the law and how it is used were enlightened by this class.

I am inspired by a comment I received this year from a past enrollee who is now a practicing attorney. He wrote: "Until your class,

I had thought of law only as a professional career, not as an intellectual pursuit. Since [then], I have become more and more interested in justice and peace and all the gray areas between, which were common themes as we studied the legal and political impact of Lincoln's presidency." I believe this comment offers a strong brief as to why all law students should take courses in legal history.