

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 6: The Civil War and Reconstruction—Individual Rights/Property/Contracts/Slavery

Emancipation and Property Rights in Slaves

Emancipation raised questions about the property rights of slaveholders. Many Americans thought that uncompensated emancipation violated the takings clause of the Fifth Amendment. Senator Edgar Cowan of Pennsylvania maintained federal laws emancipating the slaves of Confederate supporters violated the due process rights of slaveholders. Representative Fernando Wood of New York declared that federal laws or constitutional amendments abolishing slavery “appropriate[d] private property without due compensation, or confiscate[d] it without the formality of trial and condemnation.” Lincoln and his political allies initially supported compensation. The federal law abolishing slavery in the District of Columbia compensated slaveholders. Compensation schemes were abandoned as the Civil War dragged on. The Confiscation Act of 1862, the Emancipation Proclamation, and the Thirteenth Amendment freed slaves without offering any compensation to slaveholders.

The Thirteenth Amendment raised an unanticipated constitutional question about the status of contracts for the sale of slaves made before 1865. The Thirteenth Amendment plainly outlawed and made legally unenforceable all contracts for slavery made after that provision was ratified. In *Osborn v. Nicholson* (1871), the Supreme Court ruled that contracts for slaves made before the Thirteenth Amendment was ratified were legally enforceable. The judicial majority held that persons who bought slaves before 1865 on the nineteenth-century equivalent of the installment plan had a legal obligation to pay the remaining purchase price. “Whatever we may think of the institution of slavery viewed in the light of religion, morals, humanity, or a sound political economy,” Justice Noah Swayne stated, “as the obligation here in question was valid when executed, sitting as a court of justice, we have no choice but to give it effect.”

OXFORD
UNIVERSITY PRESS