

The Second Founding: How the Civil War and Reconstruction Remade the Constitution

By Eric Foner
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Introduction

Eric Foner's *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* provides a glimpse into the historical and racial contexts that have shaped many of the foundational legal underpinnings of the Reconstruction amendments and their implications for the United States today. The book describes the adoption process of the Thirteenth, Fourteenth, and Fifteenth Amendments. This period is known as the “second founding” of America, as it established equality in American law and amended the U.S. Constitution. One crucial part of the “second founding” was the Fourteenth Amendment, an aspirational law that gave full citizenship to men at the state and federal levels regardless of race. Specifically, the Privileges and Immunities Clause of the Fourteenth Amendment was added to restrain the power of the states and require them to uphold fundamental rights, including those in the Bill of Rights. However, U.S. Supreme Court decisions have diminished the Fourteenth Amendment's significance, prioritizing protection of early militias that later evolved into lynch mobs and Ku Klux Klan assemblies.

In *The Second Founding*, Eric Foner illustrates how apprehensions were first formed in the 1800s and persistently reverberate into the 21st century. His work illuminates the enduring repercussions from the abolition of American slavery, demonstrating that contemporary society and law continue to grapple with its aftermath. By delving into the historical, legal, and political narratives of the time, this book provides a nuanced comprehension of America's past, wherein a systematically

racist government curtailed the freedoms and rights of African Americans, resulting in pervasive violence and injustice. This legacy profoundly influences contemporary interpretations of U.S. Supreme Court decisions, underscoring the persistent relevance of this historical epoch in shaping modern jurisprudence and societal discourse.

Eric Foner, a DeWitt Clinton Professor Emeritus of History at Columbia University, stands as a luminary in the field of Civil War studies. Honored with a Pulitzer Prize for his seminal work *The Fiery Trial: Abraham Lincoln and American Slavery*, Foner's expertise transcends conventional historical narratives. His research interests lie at the intersection of intellectual, political, and social history, particularly in the context of American race relations. Foner offers a unique perspective in that he provides a racialized perspective that questions historical legacy and tradition, discovers the root intentions and ideals of the times, and considers these ramifications in modern society. In his own words, “understanding American society today is impossible without knowledge of the Reconstruction period that took place a century and a half ago” (Foner 2019, xxi).

Book Contents

Each chapter of Foner's narrative weaves together historical analysis and political decisions, shedding light on the pervasive influence of racist governmental practices that placed constraints on the recently enacted amendments. Chapter 1 explores the Thirteenth Amendment establishment, which constitutionalized the end of slavery unless duly convicted of a crime. Foner argues that

citizenship alone does not guarantee equality, evidenced by historical and current discrimination against African Americans. Black Codes, for example, exemplify the ways institutional racism and restrictive laws have limited the freedom of African Americans throughout history. Such laws highlight the inherent danger of the prisoner exemption within the Thirteenth Amendment, as it has been used as a justification for the denial of rights throughout the criminal justice system.

Chapter 2 focuses on the Fourteenth Amendment, a pivotal moment in American public administration that sought to define African Americans as equal citizens under the law and promote constitutional equality in a comprehensive and democratic manner. Additionally, the amendment aimed to address issues that arose from the aftermath of the Civil War, establish consensus on citizenship, and explicitly outline the rights of formerly enslaved individuals. Foner highlights the significance of the Privileges and Immunities Clause as a prime example of the far-reaching rights envisioned by Republican lawmakers while crafting the Fourteenth Amendment. The clause is paramount to the broader objective of securing fundamental rights and protections for all citizens, regardless of race, ethnicity, or social status.

In chapter 3, Foner provides an account of the enactment of the Fifteenth Amendment, which granted African American men the right to vote, and the subsequent apprehension surrounding equity. Foner illuminates the political risks associated with Black people voting during the Reconstruction era, as acts of violence were increasingly prevalent. State militias, acting as agents of terror, organized lynch mobs to inflict harm upon African Americans. These same mobs later formed the Ku Klux Klan, a group primarily responsible for perpetuating violence to reinforce white supremacist ideologies. The escalation of such violent actions instigated conversations surrounding the U.S. federal government's obligation to ensure the physical safety of its citizens.

In chapter 4, Foner brings his arguments to a close and presents a comprehensive illustration of how the U.S. Supreme Court continuously restricted the scope of the "second founding." Specifically, he sheds light on how U.S. Supreme Court decisions fundamentally altered the original intentions of the newly constructed amendments. The primary example he provides is the *Slaughterhouse Cases* (83 U.S. 36) with the U.S. Supreme Court's interpretation of the Fourteenth Amendment that severely limited the Privileges and Immunities

Clause. Here, the U.S. Supreme Court made a distinction between state and national citizenship, treating them as exclusive entities, contrary to their intended interconnected relationship. This narrow interpretation of the clause led to a significant curtailment of the rights of U.S. citizens, as witnessed through continual enactment of violence and torture against African American people. The Fourteenth Amendment's erosion impedes modern social equity efforts, partly due to the narrow interpretation of the Privileges and Immunities Clause.

Overall, Foner's specific focus on the implications of the Privileges and Immunities Clause provides a nuanced perspective on the book's central theme. Each chapter significantly contributes to the overarching narrative of racist governmental practices and their enduring consequences. A concentrated examination of the Privileges and Immunities Clause becomes imperative for its pivotal role in the ongoing quest for social equity within public administration. Navigating through its implications uncovers relevance in fostering transformative changes that resonate with present-day challenges. This aligns with the broader objective of the book, which is to illuminate the historical roots of racial dynamics in the U.S. federal government and its lasting influence on contemporary policies.

A Focus on the Privileges and Immunities Clause

Throughout the book, Foner consistently underscores that the Fourteenth Amendment solidified equality as a constitutional prerogative. A remarkable strength lies in Foner's portrayal of the racist political figures, governmental agencies, and systems actively oppressing individuals with nonwhite skin. This vivid depiction adds a palpable dimension to the narrative, offering readers a stark understanding of the challenges faced during that volatile era.

Foner extends his focus on the Fourteenth Amendment toward the protections of fundamental rights, such as the right to marry, own property, and have access to education through his discussions of the Privileges and Immunities Clause, which holds significant implications for fairness and justice within the realm of public administration today. For example, in the landmark case of *McDonald v. City of Chicago, III* (2010), the U.S. Supreme Court sought to determine the constitutionality of a handgun ban imposed by two cities in Illinois. The U.S. Supreme Court affirmed the applicability of

the Second Amendment to the states via the Fourteenth Amendment. Using a historical perspective, the U.S. Supreme Court discerned the intent of the Fourteenth Amendment framers was to safeguard the right to bear arms for self-defense. Historical instances of violence targeting African Americans during the post-Civil War era were cited as evidence supporting this decision. The U.S. Supreme Court clarified its stance on the Privileges and Immunities Clause, asserting that there was no imperative to reconsider the strict interpretation established in the *Slaughterhouse Cases*. Modern jurisprudence, exemplified by the *McDonald* case (2010), underscores the enduring relevance of biased historical considerations, such as those surrounding the Privileges and Immunities Clause, in shaping contemporary debates on constitutional rights.

While the strict interpretation of the Privileges and Immunities Clause remains unchanged, acknowledging its historical significance forms a cornerstone for understanding and navigating the complexities of contemporary constitutional rights. Foner's exploration of the Privileges and Immunities Clause unveils the transformative potential for equality, fairness, and social justice in public administration. Embracing a faithful interpretation of this clause, particularly its implications for fundamental rights like education and safety, becomes a catalyst for social equity efforts, ensuring equal access and representation, combating racism, and bolstering diversity in bureaucracy. This is crucial for promoting diversity within governmental organizations, advancing social equity matters on a national scale, and fostering the public's trust in government in a way that leads to the coproduction of democratic goals.

Conclusion

What distinguishes Foner's work is his adeptness at historical and legal complexities and his illumination of their profound real-world implications. This synthesis of academic rigor and tangible outcomes serves as a tes-

tament to Foner's ability to offer readers a profoundly enriching scholarly experience. For scholars interested in learning the historical perspectives, legal arguments, and intentions behind the amendments, chapters 1–3 provide such details and perspectives. Chapter 4 invites legal scholars to consider how historical rulings reverberate into the present, influencing today's policies and decisions.

The Second Founding should be required reading for public servants actively involved in reforming the judicial and criminal systems, engaging in social equity endeavors, or serving marginalized populations. Foner's depiction of the Reconstruction era deserves attention among public administration scholars who work to prioritize social equity work. The book's scope and focus offer value to public administration students who seek to understand the historical underpinnings of racial dynamics within the U.S. federal government, which exert a lasting influence on present-day governmental operations and policies.

Public administrators serve the Constitution as it was written in 1787, and more importantly, as it was redefined during the "second founding," which sought to extend fundamental rights and citizenship to all individuals born on American soil. Regrettably, the persistence of institutional racism and the presence of jurisprudence that perpetuates violence, ranging from the abhorrent lynchings orchestrated by the Ku Klux Klan to the ongoing occurrence of school shootings with insufficient national safeguards, undermine the efficacy and effectiveness of public service. *The Second Founding* equips public administrators with a conceptual framework to advocate for equal treatment under the Fourteenth Amendment.

Reference

McDonald v. City of Chicago, Ill., 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394 (1872)

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