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GARDEN STATE CLE LESSON PLAN

A 2.5 credit course

HOW A RAILROAD LAWYER BECAME THE GREAT EMANCIPATOR

With

Prof. Paul Finkelman
Albany Law School; Author

And

Robert Ramsey, *Author*
Garden State CLE Senior Instructor

Program description

Did Lincoln deserve his reputation as the Great Emancipator? Did he free the slaves? Why did he wait so long? What were the consequences of the Emancipation Proclamation? These and other questions will be explored by Paul Finkelman, John Hope Franklin Visiting Professor of Legal History, during the Robert R. Wilson Lecture entitled "How a Railroad Lawyer Became the Great Emancipator: Abraham Lincoln, and the Problem of Ending Slavery."

I. Introduction

- **1948 article attacking Lincoln and the Emancipation Proclamation calling it an “incomprehensible legal document”**
- **Lincoln was greatest writer of his time**
- **Lincoln was competent, successful lawyer**
- **Came to presidency knowing that emancipation could not be on his agenda**
- **At inauguration – told 7 slave states that he would not interfere with slavery in the states where it exists and has no right or inclination to do so**
- **His position reflects conception of American constitution in 1861 – no one believed that President or congress had power of slavery in the states because it was a state institution and regulated by state law**
- **5th amendment – “takings problem” – government cannot take private property without just compensation – too costly for federal government to take possession of that many slaves throughout the slave states**
- **Lincoln simply stated the obvious that this was a state issue not a federal issue**
- **Lincoln believed he could not go beyond the constitution merely because he did not wish to do so**
- **“If slavery is not wrong, then nothing is wrong.” – Lincoln’s ongoing belief about slavery**
- **Proposed legislation condemning slavery as a freshman legislator**
- **Proposed emancipation for Washington DC even though he had no support**
- **Never thought slavery should continue**
- **Difference between feeling slavery is wrong and knowing it is wrong vs. as President cannot do anything about it**
- **Wanted to bring 7 confederate states back into the union**
- **Confederate states seceded over slavery – slavery was the cornerstone of the confederacy**
- **Lincoln would not let new slave states come into the union**
- **After Lincoln became President 4 more states seceded**
- **War begins**
- **Immediately calls for Lincoln to end slavery**
- **5 conditions must be met before Lincoln could address ending slavery**

- **Constitutional theory – without one Lincoln does not know where he is going**
- **Must have political support in Congress**
- **Must have popular support in the North**
- **Must secure loyal slaves states to protect Lincoln's hold in the North – cannot win the war without KY, MO, and MD**
- **Must win the war**
- **Lincoln believed emancipation was not the way to win the war but was a logical fruit of victory in the war – only after winning the war can he consider emancipation**

II. Constitutional theory

- **1861 Supreme Court with 6 Justices appointed by democrats/slavery party – all pro slavery**
- **If Lincoln does not have constitutional theory, then Supreme Court would overturn Emancipation Proclamation**

III. Congressional Support

- **Lincoln must still have support of Congress**
- **Must be backed by popular support in the North**
- **Lincoln carried majority of voters in Northern states**
- **In some states Douglass had almost 50% of votes**
- **Must secure border states in order to win the war**

IV. How the War Lead to Emancipation

- **Frederick Douglas makes speeches about emancipation of slaves**
- **May 23 1861 after war begins – 3 slaves escape in VA; Major Carey goes to get slaves – denied by Gen. Butler; Gen. Butler says that they are contrabands of war and that the fugitive slave law did not apply to foreign countries – would not release slaves unless slave owner would come to Fort Monroe and swear an oath to the United States; slaves remained free – this was the first constitutional theory leading to the emancipation proclamation**
- **Pro slavery mobs in MD**
- **Contraband theory began to set out how emancipation would happen**
- **Due to the contraband theory slaves begin running to US Army lines – became free people – transformed from property to person**

- **Army needed workers and the slaves needed jobs – 100,000 African American men and women working for US Army by end of 1861**
- **Former slaves had to be fed, housed, and clothed – Army only had uniforms to clothe that many people**
- **August 1861 – Butler’s policy accepted by the Secretary of War and Secretary of the Army issues an order stating that they should accept all contrabands coming from the confederacy**
- **Congress passed 1st Confiscation Act which allows for the emancipation of slaves as Butler had done**
- **End of August – another General declares all slaves in Missouri are free – Lincoln says rescind order because MO is part of the US and therefore the constitution applies – government cannot take private property for public use this way – General ignores Lincoln**
- **Lincoln receiving letters to address General’s order**
- **Ultimately General is removed from his command**
- **Lincoln believes that if you are going to end slavery, must do it in a constitutional manner**
- **Took Lincoln 1.5 years to pass Emancipation Proclamation**

V. Move toward Military

- **Military situation begins to change**
- **Late 1861 – US begins 6 months of military success**
- **Nov 1861 seizure of S.C. Sea Islands – confederacy begins shrinking**
- **Spring 1862 – January – US Army General moves to KY and captures Ft. Henry and Ft. Donaldson – now has major forts of KY and TN and Cumberland Rivers**
- **6 months later Nashville falls, Baton Rouge, and Little Rock all fall**
- **Spring 1862 – Gen. Butler transferred to be commander of New Orleans; Navy sealed off every southern port on Atlantic Ocean except Charleston and Wilmington, NC – confederates have hard time getting to Atlantic**

VI. Congress moving against slavery

- **Passes law freeing all slaves in DC – compensation \$300 per slave**
- **Confiscation Act only applies to slaves in DC when war began**
- **Those slaves that came to DC after war started – automatically freed**

- **Congress ends slavery in federal territories**
- **Congress passes resolution that if loyal slave states will end slavery then federal government will provide compensation to slave masters**
- **Lincoln meets with Southern representatives – urging for compensated emancipation**
- **Gen. Hunter declares emancipation in his military district – Lincoln immediately countermands based on theory that Major General’s don’t make policy rather right is reserved to the President and Lincoln was not yet sure how and when to end slavery**
- **Lincoln meets with border state congressmen – tells them that General Hunter’s order was well liked by the north and further imposes on them to return to their states and end slavery otherwise incidents of war could not be avoided – slavery will be gone and they will have nothing valuable as a result**
- **2 days later these southern congressmen publish a letter denouncing Lincoln**
- **Next day Lincoln begins to draft Emancipation Proclamation**
- **4 days later 2nd Confiscation Act signed by Lincoln**
- **Congress is on board**
- **Lincoln meets with cabinet and says will issue Emancipation Proclamation**
- **In NY – editor of NY Tribune writes editorial urging Lincoln to end slavery**
- **Lincoln wrote a letter to the editor and says that his goal is to preserve the union - no matter if ending slavery or not – that is his duty as President but that does not minimize his personal view that all men should be free**
- **Lincoln preparing for popular support to end slavery – setting the stage to end slavery**
- **Cannot free slaves until secures KY**
- **Cannot free slaves until wins war – otherwise not worth doing**
- **1 week later US wins victory at Battle of Antietam**
- **2 days later Lincoln issues preliminary Emancipation Proclamation – on January 1 I will free all the slaves unless all the confederate states return to the union – Lincoln gives them a last chance**

- **3 weeks earlier Gen. Hunter was able to enlist slaves who were emancipated – allowed to train and fight for the Army as soldiers –Militia Act approved this in August 1862**
- **Lincoln knew confederates would not return to US because US enlisted Black soldiers**

VII. When All Conditions were Met

- **Lincoln issued Bill of Lading for delivery of freedom to 3 million people**
- **Gen. Sherman's march to the sea is one of the greatest liberation of human beings in the history of the world until the allies marched on Berlin**