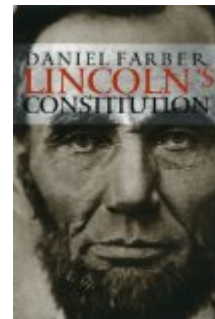


**Daniel Farber.** *Lincoln's Constitution*. Chicago: University of Chicago Press, 2003. ix + 240 pp. \$14.00, paper, ISBN 978-0-226-23796-1.



**Reviewed by** Donald K. Pickens

**Published on** H-USA (December, 2003)

## Awesome Abraham

A famous historian visited my undergraduate university half a century ago and announced that, except for a minor item or two such as a history of the quartermaster corps, the major work on the Civil War was completed. Since then several significant books have been published. Daniel Farber's *Lincoln's Constitution* is one of them.

Of course, in the meantime, the historiographic ground has shifted. Starting with Thomas N. Bonner's "Civil War Historians and the 'Needless War' Doctrine," the scholarly community has asked different questions but with an emerging consensus that Lincoln indeed made a difference. [1] Since the 1950s and the rise of the civil rights movement, the scholarly assumptions regarding the causation of the Civil War have changed. Slavery as *the* causal factor for the conflict is now regarded as paramount. Thomas J. Pressly in his *Americans Interpret Their Civil War* (1962) noted that contemporary political, constitutional, and ethnic concerns often dictated the popular and current interpretations. In recent years, Lincoln's historical reputation has improved along with a

clearer understanding of slavery's role in the approaching civil war. As with many major points of contention in U.S. history, the issues were cast in constitutional terms. The coming of the Civil War was no exception.

Now, in 2003, one can recognize how deeply Lincoln brooded over the true meaning of the war. His Second Inaugural Address was a meditation on the war's meaning. Slavery, he said, "constituted a peculiar and powerful interest. All knew that this interest was, somehow, the cause of the war." The "somehow" has been endlessly explored by generations of historians, professional and amateur. Lincoln saw earlier than many of his contemporaries and later Americans the real transformation that the war brought; however, as Phillip Shaw Paludan in *A People's Contest: The Union and Civil War, 1861-1865* (1988) noted, the people of the Union supported that transformation although the implications were not recognized until years later.

Lincoln saw it clearly on July 4, 1861. "On the side of the Union, it is a struggle for maintaining in the world, that form and substance of govern-

ment, whose leading object is, to elevate the condition of men--to lift artificial weights from all shoulders--to clear the paths of laudable pursuit for all--to afford all, an unfettered start, and a fair chance, in the race of life." The Union victory meant a new nation. The complex interactions of war, constitutional arguments, and slavery meant a new American nation-state with a reformed federalism.

Now, in a slim volume, Daniel Farber, the Sho Sato Professor of Law at the University of California, Berkeley, and the Henry J. Fletcher Professor of Law at the University of Minnesota, unpacks this fascinating subject. Author of *Desperately Seeking Certainty: The Misguided Quest For Constitutional Foundations* (2002), among other books, Farber recognizes the difficulties of writing an analysis of constitutional issues which on closer examination reveal something more than a legal position. His research includes the standard items in the field. His narrative uses elements of post-modernism. He breaks chronology, using a present-day perspective. Farber maintains that Lincoln rightly anticipated the constitutional doctrines of 2003.

The issue was the nature of the union and slavery. Many Americans, past and present, have argued that Lincoln's policies often violated the letter and spirit of the Constitution. "What prevented these unauthorized executive actions from becoming a threat to the entire constitutional order was Lincoln's willingness to seek congressional ratification and face the legal consequences if it was not forthcoming" (p. 24). He sought congressional support in that time of crisis. Lincoln did not live in the new nation that he helped construct but his contributions are evergreen, as Merrill Peterson in *Lincoln in American Memory* (1994) illustrated. After the war, nearly everything changed. Individual and institutional evasions of that change lasted nearly a hundred years. Recently Akhil Reed Amar's *The Bill of*

*Rights: Creation and Reconstruction* (1998) chronicles that constitutional transformation.

According to Farber, Lincoln's vision was a powerful one that combined nationalism and democracy, a major hallmark of the nineteenth century. I agree. At the time, power, not sovereignty, was the key issue. The rise of a states'-rights position, which aided in the defense of slavery, made secession attractive. At the same time anti-slavery and abolitionism became vital presences in American life and politics. The two concepts (or expressions) are not the same historical factor. Anti-slavery advocates usually sought a political solution, restricting the "peculiar institution" to the states where it existed; such was the position of the Republican party in 1860. They also resisted the southern position on other policy issues. Many people in the anti-slavery coalition were racists. Influenced by William Lloyd Garrison, abolitionists contented that slavery was a moral/religious issue and that the slaves had a natural right to freedom and they should become citizens of the Republic. The Civil War constitutional amendments were examples of their success and provided the legal foundations which later became the civil rights movement of the twentieth century. In the fullness of time Lincoln's vision prevailed.

Farber ultimately is a supporter of Lincoln and so am I. "Lincoln never flinched from stern measures but he never forgot the need to keep the juggernaut in check. In his ability to combine ruthless pragmatism and a deep fidelity to principle, he may have been unique" (p. 199). Of course Lincoln's uniqueness might damage Farber's thesis. "It was Lincoln's character--his ability, judgment, courage, and humanity--that kept the Union through the war with the Constitution intact. It was as much dumb luck as anything that placed Lincoln in the White House in this critical time. To expect another Lincoln would be foolish" (p. 200). In *The Cycles of American History* (1986), Arthur M. Schlesinger Jr. observed that the United States

and its interpreters (historians and politicians) have endlessly pondered the issue: was the nation an experiment that would inevitably fail or would it fulfil its destiny of greatness? In his writings, in his policies, and in his personality, Lincoln moved between these two theories; at the Civil War's end and at his death, Lincoln defined the nation as one of destiny with a new birth of freedom. The term "awesome" is overused and cheapened in American political culture; however, the word applies to Abraham Lincoln. To paraphrase Hegel, Lincoln was a world-historical figure who, in large measure, "created" the second United States--a country predicated on democratic nationalism--as opposed to the "first" United States, which was a federal union, with George Washington as its popular icon and the indispensable man.

As fine a book as *Lincoln's Constitution* is, and it is very good book indeed, the book cannot stop the everlasting flood of Civil War scholarship that moves across the American moral landscape. Hegel's slaughter bench of history reminds the reader that the ultimate questions of what happened and what does it mean are still valid. *Lincoln's Constitution*, however, is a valuable addition to historical understanding. Lincoln was awesome.

Note

[1]. *The Journal of the History of Ideas* 17:2 (April 1956): pp. 193-216.

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**Citation:** Donald K. Pickens. Review of Farber, Daniel. *Lincoln's Constitution*. H-USA, H-Net Reviews. December, 2003.

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