JOSEPH STORY AND THE AMERICAN CONSTITUTION pdf

1: Joseph Story - Wikiquote

Joseph Story and the American Constitution has 1 rating and 1 review. Charles said: This book is rich, dense, detailed and extraordinary in its depiction.

North and South Carolina: WE next come to the consideration of the history of the political organization of the Carolinas. That level region, which stretches from the 36th degree of north latitude to Cape Florida, afforded an ample theater for the early struggles of the three great European powers, Spain, France, and England, to maintain or acquire an exclusive sovereignty. Various settlements were made under the auspices of each of the rival powers, and a common fate seemed for a while to attend them all. The grantees were created absolute Lords Proprietaries, saving the faith, allegiance, and supreme dominion of the crown; and invested with as ample rights and jurisdictions, as the Bishop of Durham possessed in his palatine diocese. The charter seems to have been copied from that of Maryland, and resembles it in many of its provisions. It authorized the proprietaries to enact laws with the assent of the freemen of the colony, or their delegates; to erect courts of judicature; to appoint civil officers; to grant titles of honour; to erect forts; to make war, and in cases of necessity to exercise martial law; to build harbours; to make ports; to erect manors; and to enjoy customs and subsidies imposed with the consent of the freemen. The proprietaries immediately took measures for the settlement of the province; and at the desire of the New England settlers within it, whose disposition to emigration is with Chalmers a constant theme of reproach, published proposals, forming a basis of government. In , the proprietaries obtained from Charles the Second a second charter, with an enlargement of boundaries. It recited the grant of the former charter, and declared the limits to extend north and eastward as far as the north end of Currituck river or inlet, upon a straight westerly line to Wyonoak creek, which lies within or about 36 degrees 30 minutes of north latitude; and so west in a direct line as far as the South seas; and south and westward as far as the degrees of 29 inclusive of northern latitude, and so west in a direct line as far as the South seas. It also gave them power to make laws, with the assent of the freemen of the province, or their delegates, provided such laws were consonant with reason, and, as near as conveniently, may be agreeable to the laws and customs of the realm of England. Many other provisions were added, in substance like those in the former charter. Probably there were many circumstances attending this transaction, which are now unknown, and which might well have moderated the severity of the reproach, and furnished, if not a justification, at least some apology for this extraordinary instance of unwise and visionary legislation. It provided, that the oldest proprietary should be the palatine, and the next oldest should succeed him. Each of the proprietaries was to hold a high office. The rules of precedency were most exactly established. Two orders of hereditary nobility were instituted, with suitable estates, which were to descend with the dignity. The provincial legislature, dignified with the name of Parliament, was to be biennial, and to consist of the proprietaries or their deputies, of the nobility, and of representatives of the freeholders chosen in districts. They were all to meet in one apartment, like the ancient Scottish parliament, and enjoy an equal vote. No business, however, was to be proposed, until it had been debated in the grand council, which was to consist of the proprietaries and forty-two counsellors, whose duty it was to prepare bills. No act was of force longer than until the next biennial meeting of the parliament, unless ratified by the palatine and a quorum of the proprietaries. All the laws were to become void at the end of a century, without any formal repeal. The Church of England which was declared to be the only true and orthodox religion was alone to be allowed a public maintenance by parliament. But every congregation might tax its own members for the support of its own minister. Every man of seventeen years of age was to declare himself of some church or religious profession, and to be recorded as such; otherwise he was not to have any benefit of the laws. And no man was to be permitted to be a freeman of Carolina, or have any estate or habitation, who did not acknowledge a God, and that God is to be publicly worshipped. In other respects there was a guaranty of religious freedom. Such was the substance of this celebrated constitution. It is easy to perceive, that it was ill adapted to the feelings, the wants, and the opinions of the colonists. The introduction of it, therefore, was resisted by the people, as much as it could be; and indeed, in some respects, it was found impracticable. Thus perished the labours of Mr.

Locke; and thus perished a system, under the administration of which, it has been remarked, the Carolinians had not known one day of real enjoyment, and that introduced evils and disorders, which ended only with the dissolution of the proprietary government. After James the Second came to the throne, the same general course was adopted of filing a quo warranto against the proprietaries, as had been successful in respect to other colonies. The proprietaries, with a view to elude the storm, prudently offered to surrender their charter, and thereby gained time. In April, , the proprietaries made another system of fundamental constitutions, which embraced many of those propounded in the first, and, indeed, was manifestly a mere amendment of them. These constitutions for experience does not seem to have imparted more wisdom to the proprietaries on this subject contained the most objectionable features of the system of government, and hereditary nobility of the former constitutions, and shared a common fate. They were never generally assented to by the people of the colony, or by their representatives, as a body of fundamental laws. What regulations the people found applicable, they adopted at the request of their governors; but observed these on account of their own propriety and necessity, rather than as a system of laws imposed on them by British legislators. The legislatures continued to remain distinct down to the period, when a final surrender of the proprietary charter was made to the crown in Cape Fear seems to have been commonly deemed, in the commissions of the governor, the boundary between the two colonies. By the surrender of the charter, the whole government of the territory was vested in the crown; it had been in fact exercised by the crown ever since the overthrow of the proprietary government in ; and henceforward it became a royal province; and was governed by commission under a form of government substantially like that established in the other royal provinces. At a little later period [], for the convenience of the inhabitants, the province was divided; and the divisions were distinguished by the names of North Carolina and South Carolina. The form of government conferred on Carolina, when it became a royal province, was in substance this. It consisted of a governor and council appointed by the crown, and an assembly chosen by the people, and these three branches constituted the legislature. The governor convened, prorogued, and dissolved the legislature, and had a negative upon the laws, and exercised the executive authority. All laws were subject to the royal approbation or dissent; but were in the mean time in full force. On examining the statutes of South Carolina, a close adherence to the general policy of the English laws is apparent. As early as the year , a large body of the English statutes were, by express legislation, adopted as part of its own code; and all English statutes respecting allegiance, all the test and supremacy acts, and all acts declaring the rights and liberties of the subjects, or securing the same, were also declared to be in force in the province. All and every part of the common law, not altered by these acts, or inconsistent with the constitutions, customs, and laws of the province, was also adopted as part of its jurisprudence. An exception was made of ancient abolished tenures, and of ecclesiastical matters inconsistent with the then church establishment in the province. There was also a saving of the liberty of conscience, which was allowed to be enjoyed by the charter from the crown, and the laws of the Province. The law of descents of intestate real estates, of wills, and of uses, existing in England, thus seem to have acquired a permanent foundation in the colony, and remained undisturbed, until after the period of the American Revolution. In respect to North Carolina, there was an early declaration of the legislature [] conformably to the charter, that the common law was, and should be in force in the colony. All statute laws for maintaining the royal prerogative and succession to the crown; and all such laws made for the establishment of the church, and laws made for the indulgence to Protestant dissenters; and all laws providing for the privileges of the people, and security of trade; and all laws for the limitation of actions and for preventing vexatious suits, and for preventing immorality and fraud, and confirming inheritances and titles of land, were declared to be in force in the province. Annals, , ; Marsh. Ramsay treats these successive constitutions as of no authority whatsoever in the province, as a law or rule of government. But in a legal point of view the proposition is open to much doubt.

JOSEPH STORY AND THE AMERICAN CONSTITUTION pdf

2: Joseph Story: Commentaries on the Constitution of the United States: Table of Contents

*Joseph Story and the American Constitution: A Study in Political and Legal Thought with Selected Writings [James McClellan, Stephen B. Presser] on www.enganchecubano.com *FREE* shipping on qualifying offers.*

When, indeed, I look back upon your judicial labors during a period of thirty-two years, it is difficult to suppress astonishment at their extent and variety, and at the exact learning, the profound reasoning, and the solid principles which they everywhere display. Other judges have attained an elevated reputation by similar labors, in a single department of jurisprudence. But in one department, it need scarcely be said that I allude to that of constitutional law, the common consent of your countrymen has admitted you to stand without a rival. From two great sources, however, I have drawn by far the greatest part of my most valuable materials. These are, The Federalist , an incomparable commentary of three of the greatest statesmen of their age, and the extraordinary Judgments of Mr. Chief Justice Marshall upon constitutional law. The former have discussed the structure and organization of the national government, in all its departments, with admirable fulness and force. The latter has expounded the application and limits of its powers and functions with unrivalled profoundness and felicity. The Federalist could do little more than state the objects and general bearing of these powers and functions. The masterly reasoning of the Chief Justice has followed them out to their ultimate results and boundaries with a precision and clearness approaching, as near as may be, to mathematical demonstration. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers by ingenious subtitlies and learned doubts. Story has a chapter on Maine, but he does not have one on Vermont. Book II[edit] In the second book, Story discusses the history of the American Revolution and the Confederation , and highlights the shortcomings of the Articles of Confederation. In Chapter 4, Story enters into a discourse on "who is the final judge, or interpreter, in Constitutional controversies. Chapters 6 through 43 deal with the all the provisions of the original Constitution of the United States. Chapter 25 deals with the constitutionality of a national bank. Chapter 26 deals with the authority of Congress to make roads, canals, and other internal improvements. Chapter 44 deals with the Amendments to the Constitution. Many reflections naturally crowd upon the mind at such a moment,â€”many grateful recollections of the past, and many anxious thoughts of the future. The past is secure. The seal of eternity is upon it. The wisdom which it has displayed and the blessings which it has bestowed, cannot be obscured; neither can they be debased by human folly or human infirmity. The future is that which may well awaken the most earnest solicitude, both for the virtue and the permanence of our republic. The fate of other republicsâ€”their rise, their progress, their decline, and their fallâ€”are written but too legibly on the pages of history, if indeed they were not continually before us in the startling fragments of their ruins. They have perished, and perished by their own hands. Prosperity has enervated them, corruption has debased them, and a venal populace has consummated their destruction. This appendix appears at the end of the first volume of the second, third, fourth and fifth editions. Cooley added three chapters dealing with the emancipation of the slaves, the Fourteenth Amendment and impartial suffrage. By Joseph Story, LL. Dane Professor of Law in Harvard University.

JOSEPH STORY AND THE AMERICAN CONSTITUTION pdf

3: Joseph Story - Wikipedia

By Justice Joseph Story Based on a public domain edition HTML, javascript and footnote coding are proprietary to Lonang Institute and are not in the public domain.

Jump to navigation Jump to search He who seeks equity must do equity. Joseph Story September 18, â€” September 10, was an American lawyer and jurist who served on the Supreme Court of the United States from to Quotes[edit] [O]ur constitutions of government have declared that all men are born free and equal, and have certain inalienable rights, among which are the right of enjoying their lives, liberties, and property, and of seeking and obtaining their own safety and happiness. Motto of the Salem Register. Reported in William W. May not the miserable African ask, "Am I not a man and a brother? Guelzo , Chapter One It has often been matter of regret in modern times that, in the construction of the Statute of Limitations, the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the Statute; that instead of being viewed in an unfavourable light as an unjust and discreditable defence, it had not received such support as would have made it what it was intended to be, emphatically a Statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transaction may be forgotten, or be incapable of explanation by reason of the death or removal of witnesses. Morrison, 1 Peters, Sup. I will not say with Lord Hale, that "the law will admit of no rival, and nothing to go even with it;" but I will say, that it is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favours, but by a lavish homage. Be brief, be pointed, let your matter stand Lucid in order, solid and at hand; Spend not your words on trifles but condense; Strike with the mass of thought, not drops of sense; Press to close with vigor, once begun, And leave, how hard the task! Volume 5 , p. The militia is the natural defence of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. And yet, though this truth would seem so clear, and the importance of a well regulated militia would seem so undeniable, it cannot be disguised, that among the American people there is a growing indifference to any system of militia discipline, and a strong disposition, from a sense of its burthens, to be rid of all regulations. How it is practicable to keep the people duly armed without some organization, it is difficult to see. There is certainly no small danger, that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all the protection intended by this clause of our national bill of rights. Commentaries on the Constitution of the United States , p. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. Equity Jurisprudence, 1st ed. I am not able to understand how it can be correctly said in a legal sense, that an action will not lie even in the case of a wrong or a violation of a right, unless it is followed by some perceptible damage which can be established as a matter of fact; in other words, that injuria sine damno is not actionable. On the contrary, from my earliest reading I have considered it laid up among the very elements of the common law, that wherever there is a wrong there is a remedy to redress it; and that every injury imports damage in the nature of it; and if no other damage is established, the party injured is entitled to a verdict for nominal damages. If these Commentaries shall but inspire in the rising generation a more ardent love of their country, an unquenchable thirst for liberty, and a profound reverence for the constitution and the union, then they will have accomplished all that their author ought to desire. Let the American youth never forget that they possess a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of

life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people in order to betray them. Commentaries on the Constitution of the United States, 2d ed. This passage was not in the first edition, but in all later editions.

JOSEPH STORY AND THE AMERICAN CONSTITUTION pdf

4: Commentaries on the Constitution of the United States - Wikipedia

Joseph Story (September 18, - September 10,) was an American lawyer and jurist who served on the Supreme Court of the United States from to , during the Marshall Court and early-Taney Court eras.

Early life[edit] Story was born at Marblehead, Massachusetts. His father was Dr. Story also fathered seven children from his first marriage. At Marblehead he chastized a fellow schoolmate and Harris responded by beating him in front of the school; his father withdrew him immediately afterward. He later read law under Samuel Putnam in Salem. He was admitted to the bar at Salem, Massachusetts in Story was also writing poetry and, in , published "The Power of Solitude", one of the first long poems by an American. In he was elected to the Massachusetts House of Representatives , serving until , when he succeeded a Crowninshield son to represent Essex County in the Congress , serving from December to March He re-entered private practice in Salem; and was again elected to the state House of Representatives, where he was chosen Speaker in Oliver, died in June , shortly after their marriage and two months after the death of his beloved father. They had seven children but only two, Mary and William Wetmore Story , would survive to adulthood. Their son became a noted poet and sculptorâ€”his bust of his father was mounted in the Harvard Law School Libraryâ€”who would later publish The Life and Letters of Joseph Story 2 vols. He was chosen by President James Madison to succeed William Cushing , who had died 14 months earlier. Story swore his oath and assumed office on February 3, Chief Justice John Marshall led this effort, but Story had a very large share in the remarkable decisions and opinions issued from until Of the opinions issued at this time, Story wrote more than any justice but Marshall. The most significant of his early opinions were clearly those of Fairfax Devisee v. In Fairfax, the Court was forced to consider the constitutionality of the Confiscation Act, passed by the state of Virginia to take land from citizens who had sympathized with the British during the Revolution. However, the work of establishing this Union was still in its infancy and as such Marshall and Story still encountered resistance. The notion that the Supreme Court headed a national judiciary was still not widely accepted at this point. The resulting case, Martin v. Story, once again speaking for the unanimous majority, ruled that the Court possessed the jurisdiction to rule on such issues. Ironically, just as Fletcher v. Peck was the case that first brought Story into contact with the Supreme Court, it was his opinion that would expand that prior holding. The manner in which Story framed the American republic is profoundly indicative of his philosophy. Story argued that the language of the Constitution made it clear that federal power and consequently the power of the Supreme Court was necessarily supreme and uniform. Regarding the nominal issue of the case, whether the Supreme Court possessed appellate jurisdiction over the states, Story argued that the Court must possess such jurisdiction. Without national oversight over local courts the law could become discordant. The case can be compared to both Marbury v. Madison and Fletcher v. Just as the former first asserted the claim of judicial review, Martin v. Much like Fletcher v. Calhoun, Story saw state sovereignty as a threat to the stability of the American empire. To that end, asserting the sovereignty of the people of the United States, rather than that of the states, was integral to forming the national republic that Story desired. While Story was the staunchest ally and friend of the former, his relations with Taney were hardly so amicable. This was further augmented with the replacement of the Chief Justice by Taney, another Jacksonian Democrat. Story was forced to come to grips with his new position in the Jacksonian court in, Proprietors of the Charles River Bridge v. Proprietors of Warren Bridge. This case involved the grant from the Massachusetts legislature, of a year charter of a bridge to a group of private citizens over the Charles river. This grant was made with the provision that after the investors collected tolls for 40 years, the bridge would fall into public hands. The success of the Charles River Bridge, coupled with the growth of the cities of Boston and Charlestown, led the Massachusetts legislature to prompt the creation of the Warren Bridge, in almost the exact location, but free of toll. The creation of a new free bridge, next to the previous one, was objectionable to the owners of the previous bridge, who launched a suit claiming the creation of a new bridge violated their rights. Following the death of the chief justice and the arrival of the Age of Jackson, Story for the first time on the bench, seemed out of step with the rest of the Court. Story, writing for the minority, noted "I stand upon the old law. Woodward to argue that the charter

must be read expansively and as such granted exclusive rights which could not be violated without impairing the obligation of contracts, forbidden under the Contracts Clause of Article 1 Section 10 of the Constitution. Story noted that perhaps the greatest irony of the case was that the Taney who wrote in favor of the Warren Bridge, claimed that granting exclusive rights to the Charles River Bridge Company would harm the community. To Story, the irony was the same legislature that granted said monopoly to the Charles River Bridge Company did so on the basis that a bridge would benefit the public. Story argued one ought not to second guess the motives of the legislature, only examine the charter which was to be understood expansively. Oddly, both Taney and Story claimed that their views ought to prevail as it was required for economic growth and development. Taney stressed the wellbeing of the community as the primary impetus for economic growth, while Story stressed the security of contracts as a necessary condition for investment. Specifically, as the slave trade had been long pronounced illegal, if the Court were to find that these were free kidnapped Africans, their Spanish captors would be susceptible to prosecution. The Spaniards had claimed that under a treaty, the United States was obligated to return Spanish property, the ship and the slaves. However, Story noted that as the Africans were clearly obtained through fraud, i. Perhaps the best illustration of the relative lack of significance of the opinion is reflected in the vote in which Story was joined by all justices but Baldwin. Despite the Southern dominance of the Court at this time, the justices sided with Story and the Africans. To the Court, the Amistad Case involved a clear violation of the prohibition of the slave trade. Unlike the rather thorny issues of slavery in the United States which the Court would attempt to decide later, this issue presented a clear problem and remedy. Pennsylvania , in which he wrote for the majority in Story was forced to consider the constitutionality of a Pennsylvania personal liberty law which placed procedural requirements on those seeking to extradite fugitive slaves. Story, despite his hatred of slavery, sided with the southern justices to declare the Pennsylvania law unconstitutional. However, despite the outcome as appearing entirely in favor of the South, a more accurate assessment can be gleaned from the text and time period. Concerning the former, Story argued that fugitive slaves were addressed in the Article 4 Section 2. Despite the fact that slavery was not mentioned, Story concluded that it was all too clear that the clause was meant to secure runaway slaves for southern slaveholders. He went on to note, "The full recognition of the right and title was indispensable to the security of this species of property in all the slaveholding States; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted that it constituted a fundamental article, without the adoption of which the Union could not have been formed. Consequently, Story had an obligation to honor the deal struck at the Constitutional Convention. Further insight is provided by the political activity of southerners of the day. Robert Baker notes, "Story chose the path that he believed best supported a strong Union and rejected the natural right of slaveholders to the people they claimed as property. His opinion confirmed the rights of southern pro-slavery advocates, yet at the same time maintained that despite their aggressive claims, the Court would only validate slavery not expand its privileges. Though the resulting bargain would likely have pleased neither abolitionists nor slaveholders, it best symbolized the position of Story, who though he no longer enjoyed a Court aligned with his own views, still carved out a compromise that preserved a strong federal Union. A major impact of the opinion was that it opened the path for refusal of cooperation with Federal laws; it said that states cannot impede Federal agents from enforcing Federal laws, but at the same time, states were not required to enforce Federal laws themselves. This is known as the anti-commandeering doctrine. Though still embroiled in his struggle with Roger Taney, Story achieved his last great victory in Swift v. This case concerned a bill of exchange, essentially a promise of payment, given from a businessman in New York, in exchange for land in Maine. However, the individuals who received the bill of exchange, Jarius Keith and Nathaniel Norton, did not own the land in question. Story, ever the nationalist, had long despised using state statutes as authoritative when he deemed federal common law a much more preferably alternative. Simply put, Story longed to place more power in the hands of judges, in particular federal judges, instead of local legislatures. Though Story, writing for the unanimous majority, rejected the fraudulent Bill of Exchange, this remains less significant than his development of federal common law. As aforementioned, section 34 of the Federal Judiciary Act of held that courts were bound to local state statutes. Story, though had long desired to establish federal common law, had

been unable to sway sufficient support to the cause. In Swift, he finally rallied sufficient support to chip away at the barrier. He noted, "This section 34 of the Judiciary Act , upon it sure intendment and construction, is strictly limited to local statutes and local usages of the character before started, and does not extend to contracts and other instruments of a commercial nature. Integral to the creation of a more centralized state was federal regulation of commerce. Story viewed his own legal science as a more appropriate guiding for commercial regulation than state legislatures. In he moved from Salem to Cambridge and became the first Dane Professor of Law at Harvard University , meeting with remarkable success as a teacher and winning the affection of his students, who had the benefit of learning from a sitting Supreme Court justice. He was a prolific writer, publishing many reviews and magazine articles, delivering orations on public occasions, and publishing books on legal subjects which won high praise on both sides of the Atlantic. The commentaries are divided into three sections, the first two concerning the colonial origins of the confederation and revolution, and the final section concerns the origins of the Constitution. Within his Commentaries Story, in particular, attacks notions of state sovereignty. Even at this moment when his time on the Court was drawing towards a close, Story remained concerned with the welfare of the Union. His guide to the Constitution stressed the sovereignty of the people rather than the states, and extensively attacked those elements, i. Significance[edit] Justice Story remains one of the most significant figures in early American constitutional history. Of the many justices of the Marshall Court, only the chief justice himself wrote more opinions than Story. In the 33 years that Story sat on the Court, he would transition from being an ally of Marshall to the last of an old race. Joseph Story, throughout his time on the Marshall and Taney courts, championed the notion of legal science. He believed that the Union could be made stronger through the proper application of law, in particular proper application necessitated uniformity of application. Story was in many respects a creature of New England; however, his chief aim was the creation of a strong Union. Consequently, several of his opinions, such as Prigg, emerge as efforts to protect the Union, despite some of the distasteful consequences. While aspects of his jurisprudence would fall into the minority with the rise of Jackson, he continued to guide the Constitutional dialogue through cases like Prigg and Swift.

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The importance of the subject will hardly be doubted by any persons, who have been accustomed to deep reflection upon the nature and value of the Constitution of the United States. I can only regret, that it has not fallen into abler hands, with more leisure to prepare, and more various knowledge to bring to such a task. Imperfect, however, as these Commentaries may seem to those, who are accustomed to demand a perfect finish in all elementary works, they have been attended with a degree of uninviting labour, and dry research, of which it is scarcely possible for the general reader to form any adequate estimate. Many of the materials lay loose and scattered; and were to be gathered up among pamphlets and discussions of a temporary character; among obscure private and public documents; and from collections, which required an exhausting diligence to master their contents, or to select from unimportant masses, a few facts, or a solitary argument. Indeed, it required no small labour, even after these sources were explored, to bring together the irregular fragments, and to form them into groups, in which they might illustrate and support each other. From two great sources, however, I have drawn by far the greatest part of my most valuable materials. These are, The Federalist, an incomparable commentary of three of the greatest statesmen of their age; and the extraordinary Judgments of Mr. Chief Justice Marshall upon constitutional law. The former have discussed the structure and organization of the national government, in all its departments, with admirable fulness and force. The latter has expounded the application and limits of its powers and functions with unrivalled profoundness and felicity. The Federalist could do little more, than state the objects and general bearing of these powers and functions. The masterly reasoning of the Chief Justice has followed them out to their ultimate results and boundaries, with a precision and clearness, approaching, as near as may be, to mathematical demonstration. The Federalist, being written to meet the most prevalent popular objections at the time of the adoption of the Constitution, has not attempted to pursue any very exact order in its reasoning; but has taken up subjects in such a manner, as was best adapted at the time to overcome prejudices, and win favour. Topics, therefore, having a natural connexion, are sometimes separated; and illustrations appropriate to several important points, are sometimes presented in an incidental discussion. I have transferred into my own pages all, which seemed to be of permanent importance in that great work; and have thereby endeavoured to make its merits more generally known. The reader must not expect to find in these pages any novel views, and novel constructions of the Constitution. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers by ingenious subtleties and learned doubts. My object will be sufficiently attained, if I shall have succeeded in bringing before the reader the true view of its powers maintained by its founders and friends, and confirmed and illustrated by the actual practice of the government. The expositions to be found in the work are less to be regarded, as my own opinions, than as those of the great minds, which framed the Constitution, or which have been from time to time called upon to administer it. Upon subjects of government it has always appeared to me, that metaphysical refinements are out of place. A constitution of government is addressed to the common sense of the people; and never was designed for trials of logical skill, or visionary speculation. The reader will sometimes find the same train of reasoning brought before him in different parts of these Commentaries. It was indispensable to do so, unless the discussion was left imperfect, or the reader was referred back to other pages, to gather up and combine disjointed portions of reasoning. In cases, which have undergone judicial investigation, or which concern the judicial department, I have felt myself restricted to more narrow discussions, than in the rest of the work; and have sometimes contented myself with a mere transcript from the judgments of the court. It may readily be understood, that this course has been adopted from a solicitude, not to go incidentally beyond the line pointed out by the authorities. In dismissing the work, I cannot but solicit the indulgence of the public for its omissions and deficiencies. With more copious materials it might have been made more exact, as well as more satisfactory. With more leisure and more learning it might have been wrought up more in the spirit of political philosophy. Such as it is, it may not be

wholly useless, as a means of stimulating abler minds to a more thorough review of the whole subject; and of impressing upon Americans a reverential attachment to the Constitution, as in the highest sense the palladium of American liberty. The present work is an abridgment, made by the author, of his original work, for the use of Colleges and High-schools. It presents in a compressed form the leading doctrines of that work, so far as they are necessary to a just understanding of the actual provisions of the constitution. Many illustrations and vindications of these provisions are necessarily omitted. But sufficient are retained to enable every student to comprehend and apply the great principles of constitutional law, which were maintained by the founders of the constitution, and which have been since promulgated by those, who have, from time to time, administered it, or expounded its powers. I indulge the hope, that even in this reduced form the reasoning in favour of every clause of the constitution will appear satisfactory and conclusive; and that the youth of my country will learn to venerate and admire it as the only solid foundation, on which to rest our national union, prosperity, and glory. We have now finished our brief survey of the origin and political history of the colonies; and here we may pause for a short time for the purpose of some general reflections upon the subject. Plantations or colonies in distant countries are either, such as are acquired by occupying and peopling desert and uncultivated regions by emigrations from the mother country; or such as, being already cultivated and organized, are acquired by conquest or cession under treaties. There is, however, a difference between these two species of colonies in respect to the laws, by which they are governed, at least according to the jurisprudence of the common law. If an uninhabited country is discovered and planted by British subjects, the English laws are said to be immediately in force there; for the law is the birthright of every subject. So that wherever they go, they carry their laws with them; and the new found country is governed by them. This proposition, however, though laid down in such general terms by very high authority, requires many limitations, and is to be understood with many restrictions. Such colonists do not carry with them the whole body of the English laws, as they then exist; for many of them must, from the nature of the case, be wholly inapplicable to their situation, and inconsistent with their comfort and prosperity. There is, therefore, this necessary limitation implied, that they carry with them all the laws applicable to their situation, and not repugnant to the local and political circumstances, in which they are placed. Even as thus stated, the proposition is full of vagueness and perplexity; for it must still remain a question of intrinsic difficulty to say, what laws are, or are not applicable to their situation; and whether they are bound by the present state of things, or are at liberty to apply them in future by adoption, as the growth or interests of the colony may dictate. The English rules of inheritance, and of protection from personal injuries, the rights secured by Magna Charta, and the remedial course in the administration of justice, are examples as clear perhaps as any, which can be stated, as presumptively adopted, or applicable. And yet in the infancy of a colony some of these very rights, and privileges, and remedies, and rules, may be in fact inapplicable, or inconvenient, and impolitic. It is not perhaps easy to settle, what parts of the English laws are, or are not in force in any such colony, until either by usage, or judicial determination, they have been recognized as of absolute force. In respect to conquered and ceded countries, which have already laws of their own, a different rule prevails. In such cases the crown has a right to abrogate the former laws, and institute new ones. But until such new laws are promulgated, the old laws and customs of the country remain in full force, unless so far as they are contrary to our religion, or enact any thing, that is malum in se; for in all such cases the laws of the conquering or acquiring country shall prevail. This qualification of the rule arises from the presumption, that the crown could never intend to sanction laws contrary to religion or sound morals. But although the king has thus the power to change the laws of ceded and conquered countries, the power is not unlimited. His legislation is subordinate to the authority of parliament. He cannot make any new change contrary to fundamental principles; he cannot exempt an inhabitant from that particular dominion, as for instance from the laws of trade, or from the power of parliament; and he cannot give him privileges exclusive of other subjects. Justice Blackstone, in his Commentaries, insists, that the American colonies are principally to be deemed conquered, or ceded countries. His language is, "Our American Plantations are principally of this latter sort, [i. And, therefore, the common law of England, as such, has no allowance or authority there; they being no part of the mother country, but distinct, though dependent dominions. The doctrine of Mr. Justice Blackstone, may well admit of serious doubt upon general principles. But it is

manifestly erroneous, so far as it is applied to the colonies and plantations composing our Union. In the charters, under which all these colonies were settled, with a single exception, there is, an express declaration, that all subjects and their children inhabiting therein shall be deemed natural-born subjects, and shall enjoy all the privileges and immunities thereof; and that the laws of England, so far as they are applicable, shall be in force there; and no laws shall be made, which are repugnant to, but as near as may be conveniently, shall conform to the laws of England. Now this declaration, even if the crown previously possessed a right to establish what laws it pleased over the territory, as a conquest from the natives, being a fundamental rule of the original settlement of the colonies, and before the emigrations thither, was conclusive, and could not afterwards be abrogated by the crown. It was an irrevocable annexation of the colonies to the mother country, as dependencies governed by the same laws, and entitled to the same rights. And so has been the uniform doctrine in America ever since the settlement of the colonies. The universal principle and the practice has conformed to it has been, that the common law is our birthright and inheritance, and that our ancestors brought hither with them upon their emigration all of it, which was applicable to their situation. The whole structure of our present jurisprudence stands upon the original foundations of the common law. We thus see in a very clear light the mode, in which the common law was first introduced into the colonies; as well as the true reason of the exceptions to it to be found in our colonial usages and laws. It was not introduced, as of original and universal obligation in its utmost latitude; but the limitations contained in the bosom of the common law itself, and indeed constituting a part of the law of nations, were affirmatively settled and recognized in the respective charters of settlement. Thus limited and defined, it has become the guardian of our political and civil rights; it has protected our infant liberties; it has watched over our maturer growth; it has expanded with our wants; it has nurtured that spirit of independence, which checked the first approaches of arbitrary power; it has enabled us to triumph in the midst of difficulties and dangers threatening our political existence; and by the goodness of God, we are now enjoying, under its bold and manly principles, the blessings of a free, independent, and united government. In respect to their interior polity, the colonies have been very properly divided by Mr. Justice Blackstone into three sorts; viz. Provincial, Proprietary, and Charter Governments. The constitutions of these depended on the respective commissions issued by the crown to the governors, and the instructions, which usually accompanied those commissions. The crown also appointed a council, who, besides their legislative authority, were to assist the governor in the discharge of his official duties; and power was given him to suspend them from office, and, in case of vacancies, to appoint others, until the pleasure of the crown should be known. The commissions also contained authority to convene a general assembly of representatives of the freeholders and planters; and under this authority provincial assemblies, composed of the governor, the council, and the representatives, were constituted; the council being a separate branch or upper house, and the governor having a negative upon all their proceedings, and also the right of proroguing and dissolving them; which assemblies had the power of making local laws and ordinances, not repugnant to the laws of England, but as near as may be agreeable thereto, subject to the ratification and disapproval of the crown. The governors also had power, with advice of council, to establish courts, and to appoint judges and other magistrates, and officers for the province; to pardon offences, and to remit fines and forfeitures; to collate to churches and benefices; to levy military forces for defence; and to execute martial law in time of invasion, war, and rebellion. Appeals lay to the king in council from the decisions of the highest courts of judicature of the province, as indeed they did from all others of the colonies. Under this form of government the provinces of New-Hampshire, New-York, New-Jersey, Virginia, the Carolinas, and Georgia, were governed as we have seen for a long period, and some of them from an early period after their settlement. These as we have seen were granted out by the crown to individuals, in the nature of feudatory principalities, with all the inferior royalties, and subordinate powers of legislation, which formerly belonged to the owners of counties palatine. Yet still there were these express conditions, that the ends, for which the grant was made, should be substantially pursued; and that nothing should be done or attempted, which might derogate from the sovereignty of the mother country. In the proprietary government the governors were appointed by the proprietaries, and legislative assemblies were assembled under their authority; and indeed all the usual prerogatives were exercised, which in provincial governments belonged to the crown. Three only existed at the

period of the American Revolution; viz. The former had this peculiarity in its charter, that its laws were not subject to the supervision and control of the crown; whereas in both the latter such a supervision and control were expressly or impliedly provided for. Justice Blackstone describes them, 1 Comm. They have a governor named by the king, or, in some proprietary colonies, by the proprietor, who is his representative or deputy. They have courts of justice of their own, from whose decisions an appeal lies to the king and council here in England. Their general assemblies, which are their house of commons, together with their council of state, being their upper house, with the concurrence of the king, or his representative the governor, make laws suited to their own emergencies. They could not be justly considered, as mere civil corporations of the realm, empowered to pass by-laws; but rather as great political establishments or colonies, possessing the general powers of government, and rights of sovereignty, dependent, indeed, and subject to the realm of England; but still possessing within their own territorial limits the general powers of legislation and taxation. The only charter governments existing at the period of the American Revolution were those of Massachusetts, Rhode-Island, and Connecticut. The first charter of Massachusetts might be open to the objection, that it provided only for a civil corporation within the realm, and did not justify the assumption of the extensive executive, legislative, and judicial powers, which were afterwards exercised upon the removal of that charter to America. And a similar objection might be urged against the charter of the Plymouth colony. But the charter of William and Mary, in , was obviously upon a broader foundation, and was in the strictest sense a charter for general political government, a constitution for a state, with sovereign powers and prerogatives, and not for a mere municipality. By this last charter the organization of the different departments of the government was, in some respects, similar to that in the provincial governments; the governor was appointed by the crown; the council annually chosen by the General Assembly; and the House of Representatives by the people. But in Connecticut and Rhode-Island the charter governments were organized altogether upon popular and democratical principles; the governor, council, and assembly being annually chosen by the freemen of the colony, and all other officers appointed by their authority. The circumstances, in which the colonies were generally agreed, notwithstanding the diversities of their organization into provincial, proprietary, and charter governments, were the following. They enjoyed the rights and privileges of British born subjects; and the benefit of the common laws of England; and all their laws were required to be not repugnant unto, but, as near as might be, agreeable to the laws and statutes of England. This, as we have seen, was a limitation upon the legislative power contained in an express clause of all the charters; and could not be transcended without a clear breach of their fundamental conditions. A very liberal exposition of this clause seems, however, always to have prevailed, and to have been acquiesced in, if not adopted by the crown. Practically speaking, it seems to have been left to the judicial tribunals in the colonies to ascertain, what part of the common law was applicable to the situation of the colonies; and of course, from a difference of interpretation, the common law, as actually administered, was not in any two of the colonies exactly the same. The general foundation of the local jurisprudence was confessedly composed of the same materials; but in the actual superstructure they were variously combined, and modified, so as to present neither a general symmetry of design, nor an unity of execution.

JOSEPH STORY AND THE AMERICAN CONSTITUTION pdf

6: American Minute: Justice Joseph Story - Fairfax Free Citizen

Get this from a library! Joseph Story and the American Constitution; a study in political and legal thought with selected writings.. [James McClellan] -- Includes material on the Dartmouth College case and the contract clause.

Representative, then was elected Massachusetts Speaker of the House. At age 32, he was appointed as the youngest Justice on the U. Joseph Story served on the Supreme Court for 34 years. He helped establish the illegality of the slave trade in the Amistad case, Georgia, , Justice Joseph Story wrote March 4, Thanks be to God, the Court can wash their hands clean of the iniquity of oppressing the Indians and disregarding their rights. Unfortunately, the Democrat President ignored the decision. There never has been a period of history, in which the Common Law did not recognize Christianity as lying at its foundation. I have read it with uncommon satisfaction. I think its tone and spirit excellent. Christianity â€¦ is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public â€¦ It is unnecessary for us, however, to consider the establishment of a school or college, for the propagation of â€¦ Deism, or any other form of infidelity. Such a case is not to be presumed to exist in a Christian country â€¦ Justice Story continued: Why may not laymen instruct in the general principles of Christianity as well as ecclesiastics â€¦ We cannot overlook the blessings, which such laymen by their conduct, as well as their instructions, may, nay must, impart to their youthful pupils. Why may not the Bible, and especially the New Testament, without note or comment, be read and taught as a Divine Revelation â€¦ its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated? What is there to prevent a work, not sectarian, upon the general evidences of Christianity, from being read and taught in the college by lay teachers? It may well be asked, what is there in all this, which is positively enjoined, inconsistent with the spirit or truths of the religion of Christ? Are not these truths all taught by Christianity, although it teaches much more? Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? James Madison, 4th President of the U. We are not to attribute this prohibition of a national religious establishment to an indifference to religion in general, and especially to Christianity which none could hold in more reverence than the framers of the Constitution â€¦ At the time of the adoption of the Constitution, and of the Amendment to it now under consideration, the general, if not the universal, sentiment in America was, that Christianity ought to receive encouragement from the State so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation â€¦ But the duty of supporting religion, and especially the Christian religion, is very different from the right to force the consciences of other men or to punish them for worshiping God in the manner which they believe their accountability to Him requires â€¦ The rights of conscience are, indeed, beyond the just reach of any human power. They are given by God, and cannot be encroached upon by human authority without a criminal disobedience of the precepts of natural as well as of revealed religion â€¦ Justice Story continued: The real object of the First Amendment was not to countenance, much less to advance Mohammedanism, or Judaism, or infidelity, by prostrating Christianity, but to exclude all rivalry among Christian sects and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government. In some of the States, Episcopalians constituted the predominant sect; in other, Presbyterians; in others, Congregationalists; in others, Quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy, if the national government were left free to create a religious establishment. The only security was in the abolishing the power â€¦ But this alone would have been an imperfect security, if it had not been followed up by a declaration of the right of the free exercise of religion â€¦ Thus, the whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their own sense of justice and the State constitutions. Joseph Story, an American lawyer and jurist who served on the Supreme Court of the United States from to George Peter Alexander Healy [Public domain], via Wikimedia Commons Like a race track

with 13 lanes, each State expanded religious freedom at its own speed. This is similar to today, where: The importance of this article will scarcely be doubted â€¦ The militia is the natural defense of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep â€¦ standing armies in time of peace â€¦ from â€¦ the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. The right of the citizens to keep and bear arms has justly been considered, as the palladium defense of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will â€¦ enable the people to resist and triumph over them â€¦ Story warned further: And yet â€¦ it cannot be disguised, that among the American people there is a growing indifference to any system of militia discipline â€¦ that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all the protection intended by this clause of our national bill of rights. About the Author William Federer is the author of this series. Federer is a nationally known speaker, best-selling author, and president of Amerisearch, Inc.

JOSEPH STORY AND THE AMERICAN CONSTITUTION pdf

7: Justice Joseph Story on Common Law Origins of the United States Constitution ()

Amendment II. Document Joseph Story, Commentaries on the Constitution 3:Â§Â§ Â§ The importance of this article will scarcely be doubted by any persons, who have duly reflected upon the subject.

The importance of the subject will hardly be doubted by any persons, who have been accustomed to deep reflection upon the nature and value of the Constitution of the United States. I can only regret, that it has not fallen into abler hands, with more leisure to prepare, and more various knowledge to bring to such a task. Imperfect, however, as these Commentaries may seem to those, who are accustomed to demand a perfect finish in all elementary works, they have been attended with a degree of uninviting labour, and dry research, of which it is scarcely possible for the general reader to form any adequate estimate. Many of the materials lay loose and scattered; and were to be gathered up among pamphlets and discussions of a temporary character; among obscure private and public documents; and from collections, which required an exhausting diligence to master their contents, or to select from unimportant masses, a few facts, or a solitary argument. Indeed, it required no small labour, even after these sources were explored, to bring together the irregular fragments, and to form them into groups, in which they might illustrate and support each other. From two great sources, however, I have drawn by far the greatest part of my most valuable materials. These are, The Federalist, an incomparable commentary of three of the greatest statesmen of their age; and the extraordinary Judgements of Mr. Chief Justice Marshall upon constitutional law. The former have discussed the structure and organization of the national government, in all its departments, with admirable fulness and force. The latter has expounded the application and limits or its powers and functions with unrivalled profoundness and felicity. The Federalist could do little more, than state the objects and general bearing of these powers and functions. The masterly reasoning of the Chief Justice has followed them out to their ultimate results and boundaries, with a precision and clearness, approaching, as near as may be, to mathematical demonstration. The Federalist, being written to meet the most prevalent popular objections at the time of the adoption of the Constitution, has not attempted to pursue any very exact order in its reasonings; but has taken up subjects in such a manner, as was best adapted at the time to overcome prejudices, and win favour. Topics, therefore, having a natural connexion, are sometimes separated; and illustrations appropriate to several important points, are sometimes presented in an incidental discussion. I have transferred into my own pages all, which seemed to be of permanent importance in that great work; and have thereby endeavoured to make its merits more generally known. The reader must not expect to find in these pages any novel views, and novel constructions of the Constitution. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers by ingenious subtleties and learned doubts. My object will be sufficiently attained, if I shall have succeeded in bringing before the reader the true view of its powers maintained by its founders and friends, and confirmed and illustrated by the actual practice of the government. The expositions to be found in the work are less to be regarded, as my own opinions, than as those of the great minds, which framed the Constitution, or which have been from time to time called upon to administer it. Union subjects of government it has always appeared to me, that metaphysical refinements are out of place. A constitution of government is addressed to the common sense of the people; and never was designed for trials of logical skill, or visionary speculation. The reader will sometimes find the same train of reasoning brought before him in different parts of these Commentaries. It was indispensable to do so, unless the discussion was left imperfect, or the reader was referred back to other pages, to gather up and combine disjointed portions of reasoning. In cases, which have undergone judicial investigation, or which concern the judicial department, I have felt myself restricted to more narrow discussions, than in the rest of the work; and have sometimes contented myself with a mere transcript from the judgments of the court. It may readily be understood, that this course has been adopted from a solicitude, not to go incidentally beyond the line pointed out by the authorities. In dismissing the work, I cannot but solicit the indulgence of the public for its omissions and deficiencies. With more copious materials it might have been made more exact, as well as more satisfactory. With more leisure and more learning it might have been wrought up more in the spirit of political philosophy. Such as it is, it may not be

wholly useless, as a means of stimulating abler minds to a more thorough review of the whole subject; and of impressing upon Americans a reverential attachment to the Constitution, as in the highest sense the palladium of American liberty.

8: Joseph Story: Commentaries on the Constitution of the United States: Preface

Commentaries on the Constitution of the United States is a three-volume work written by Associate Justice of the Supreme Court of the United States Joseph Story and published in

9: Amendment II: Joseph Story, Commentaries on the Constitution 3:Â§Â§

Joseph Story: Commentaries on the Constitution of the United States: Book 1 Chapter 1 Joseph Story: Commentaries on the Constitution of the United States privacy policy.

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