



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 6: The Civil War/Reconstruction Era – Powers of the National Government

Timothy Farrar, “Adequacy of the Constitution” (1862)¹

Secession and civil war shook the faith of many Americans in their constitutional and political institutions. Constitutional commentators in the United States and abroad suggested that disunion exposed deep flaws in the American constitutional system. Many Republicans thought the departure of the South, the traditional home of Jeffersonian and Jacksonian constitutional theory, created an opportunity for reconsidering some constitutional fundamentals and perhaps for shaking off inherited constitutional orthodoxies. Sidney George Fisher and other constitutional critics argued that the Constitution was inadequate to the needs of the nation and should no longer be regarded as binding. “A Government that cannot supply the wants, satisfy the intelligence, or accomplish the objects of a people so eager, so impulsive, so educated as ours,” Fisher wrote, “cannot be permanent.” Other Republicans stood by the Constitution. Timothy Farrar in “Adequacy of the Constitution” maintained that the Constitution remained the proper source of government authority, if correctly interpreted and constitutional powers properly employed. Farrar declared, “The provisions of the Constitution are the measure of the powers of the Government, and adequate to all the purposes for which it was made.”

Timothy Farrar (1788–1874) was a former law partner of Daniel Webster, a former New Hampshire state judge, and prominent lawyer and writer. For Farrar, the war called forth the national powers that had lain dormant in the Constitution. He insisted that the time had finally arrived for the nation to recover the Constitution of the Federalists from the subversive theories of the anti-Federalists who had unfortunately dominated national politics for six decades. Unlike Fisher, Farrar thought that the politicians, not the Constitution, had failed the ultimate test. “The Adequacy of the Constitution” offered a theory of constitutional interpretation that Farrar believed would render the Constitution adequate for the future.

For Farrar, unlimited national power was already built into the Constitution, ready to be used. Is Farrar’s view of how to make the Constitution “adequate” to the crisis consistent with its design or with the arguments of earlier advocates of expansive national power? Farrar and Fisher come to different conclusions about how to remedy the problems in the constitutional system. Do they agree about constitutional problems? How do we know when the Constitution is not working and in need of reengineering? When is better management all that is required?

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 When . . . the Constitution was accepted by the people, and went into actual operation, the same class of politicians that had objected to its acceptance because it had some power, now endeavored to make it, by construction, as destitute of power as they had before insisted that it ought to be, but was not. For this cause, almost every act of Congress and of the government was impugned and resisted, not only before, but often after its enactment, on the assumed ground, that it was not warranted by the powers of the Constitution. To avoid or modify these contests, the friends of the Constitution were still kept under a constant temptation to claim and exercise as little power as possible, instead of being driven to assert and defend its plenary adequacy to all the purposes of its creation. By the successful progress of the government, this state of things has been prolonged to the present time, so that the adequacy of the Constitution to the exigencies of government and the preservation of the Union, has not hitherto been exhibited and proved in practice, nor fully asserted and insisted on by its friends, even in theory. But the time has arrived when the practical test is being applied, and when of course the theory should be

¹ Excerpt taken from Timothy Farrar, “Adequacy of the Constitution,” *New Englander* 21 (January 1862): 51–73.



particularly examined, with a view to its capacity for endurance. It may result in a more perfect assurance that the prize is worth the contest. . . .

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These [enumerated] powers are conferred in the broadest, most ample, and unrestricted terms, and may be used to the full extent of all the physical power and material resources of the nation, if the present or any future exigency should require it. They are adequate to the defense of the Union, if the nation is, for they bestow all that the nation has. None of these powers have ever been called into exercise, to their full extent, and it may be hoped they never will be. But our fathers saw the impropriety of any attempt to limit them, so long as they could not limit the exigency which might call for them. . . .

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There is but one . . . instance where the Constitution has attempted to place any civil right, beyond the control of the military power in time of war, internal or external, and that regards the quartering of troops in private houses, without the consent of the owner. This should be previously regulated by law. But if Congress should continue to neglect this duty, as they have many others, and a case should arise in which the *salus populi* should, clearly and unequivocally, demand its overthrow, who shall say that even this right, Constitution and all, for the time being, would not rightfully be swept by the board. The whole is to be sure under the control of the President, in whom is vested the executive power. The law martial, like the law civil, is to be "faithfully executed" by him. But it is to be executed, like all other law, under the high responsibilities of his office, for the safety of the people, and the preservation of their Government. . . .

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The provisions of the Constitution are the measure of the powers of the Government, and adequate to all the purposes for which it was made. Our fathers made it and put it into successful operation, under circumstances vastly more discouraging than those in which we are now called upon to defend it. If we fail of performing worthily the part devolving upon us, as our fathers did not the part devolving upon them, we shall prove ourselves unworthy of them, and unworthy of the rich inheritance they have left us.