

**THE
TRIAL OF THE CONSTITUTION**

by
Sidney George Fisher

**William S. Hein & Co., Inc.
Buffalo, New York
2003**

Library of Congress Cataloging-in-Publication Data

Fisher, Sidney George, 1809-1871.

The trial of the Constitution / by Sidney George Fisher.

p. cm.

Originally published: Philadelphia : J.B. Lippincott, 1862.

Includes bibliographical references.

ISBN 1-57588-775-4 (cloth : alk. paper)

1. United States--Politics and government--1861-1865. 2. United States--History--Civil War, 1861-1865. 3. Slavery--United States. I. Title.

JK216.F53 2003

342.73'029--dc21

2003045297

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Printed in the United States of America.

THE TRIAL OF THE CONSTITUTION.

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TRIAL OF THE CONSTITUTION.

BY

SIDNEY GEORGE FISHER,

AUTHOR OF

"THE LAW OF THE TERRITORIES," "THE LAWS OF RACE AS
CONNECTED WITH SLAVERY," ETC. ETC.

"Stand ye in the ways, and see and ask for the old paths, where is the good way, and walk
therein, and ye shall find rest for your souls." JER. 6: 16.



NEGRO UNIVERSITIES PRESS
NEW YORK

Originally Published in 1862
by J. B. Lippincott & Co.

Reprinted 1969 by
Negro Universities Press
A DIVISION OF GREENWOOD PUBLISHING CORP.
NEW YORK

Library of Congress Catalogue Card Number 69-18977

PRINTED IN UNITED STATES OF AMERICA

P R E F A C E.

As passing events are referred to in the following pages, it is proper to state that the third, fourth and fifth chapters, except a few additions and alterations, were written before the first and second. My original design was to write an essay on the constitutional provision for suspending the Writ of Habeas Corpus; and it was suggested by Mr. Binney's first pamphlet on that subject,—the reasoning of which, notwithstanding my deference to such high authority, did not satisfy my mind. Some weeks before the appearance of Mr. Binney's second pamphlet, my argument on the Habeas Corpus was finished; but the writing of it, and the events of the war, had suggested reflections on other parts of the Constitution. I was much impressed by the fact, that Mr. Binney and others had thought it necessary to write on the subject at all; that the law should be unsettled and disputed on questions of such vital importance as the power of the Government to defend the public safety, and the security afforded, by the Constitution, to personal liberty.

Why is the law unsettled? Why can no man tell what are the actual, undoubted powers of the Government? Is it not because our system is new and untried; and that now, when it is for the first time subjected to the test of a severe

ordeal, its defects are becoming manifest,—defects hitherto unsuspected? No such questions have arisen under the English Constitution for nearly two centuries.

Following the course of reasoning thus suggested, one topic opened the way to another, until at length I ended where the work more appropriately begins,—with a discussion of the nature of the Constitution itself, and of the powers which it does or must grant to the Government, over itself, and over the Union.

Books, laws, facts, even words and phrases, sometimes assume a new aspect, when seen through the medium of feelings produced by important events and a novel situation. Like many others, I had been content to sit at the feet of the learned doctors of our law, and accept their interpretation as correct. But the war has shed new light on the principles and meaning of our Constitution, and revealed in it imperfections, perhaps also powers, scarcely perceived by its makers, and hidden from the superficial and unsuspecting glances of the people, during our long period of prosperity and peace.

I yielded with reluctance to the reasoning, by which some of the opinions asserted in this book are, in my judgment, sustained. If that reasoning can be refuted, no one will be more gratified than myself. I offer my views to the public with unfeigned diffidence. I consider it a duty to offer them, because, if true, they are important; and I believe them to be true. I do not advocate, I state them. Reason looks for truth only, not expediency; well knowing that what is false cannot be expedient; well knowing, too, that a Government founded on falsehood, cannot endure. What is false in our

Constitution, or in the interpretation of it, should be got rid of; for thus only can it be preserved.

The flight of events is now so rapid, that he who wishes to influence opinion must speak quickly, and cannot therefore bestow much time on careful and artistic execution. This work was begun in February last, and completed in October,—a period long enough for one of larger size, had not the writing of it been frequently interrupted. Besides its other faults, it has some, therefore, attributable to haste,—redundancies, repetitions, perhaps some mistakes in facts and references. For these I crave the indulgence of my readers, should I be lucky enough to have any. If the book contains any substance of truth, inelegance of form may be forgiven.

NOVEMBER 22, 1862.

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