

M. J. PERRY, *We the People: the Fourteenth Amendment and the Supreme Court*, Oxford University Press, New York/ Oxford, 1999, 275 p.

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The Fourteenth Amendment to the Constitution of the United States was enacted after the Civil War to end the oppression of ex-slaves by the former Confederate states. Therefore, it stated: “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”. Since its ratification in 1868, the text has been linked to themes like racial segregation, race-based affirmative action, sex-based discrimination, homosexuality, abortion and physician-assisted suicide. Many rulings of the U.S. Supreme Court, for example *Roe v. Wade* concerning abortion, about these controversial issues were based on the Fourteenth Amendment, although most of them seem far removed from the preoccupations of the Fourteenth Amendment’s Framers. In this context, it was to be expected that the Court is blamed for usurping the function of the elected legislatures by declaring state laws unconstitutional on such shaky grounds. Matthew Perry has chosen not to go for some easy criticism of the court. Instead, he has tried to find out what norms were originally established in 1868 and what norms later accreted to it, norms that were never established by a

Constituent Assembly, but have become part of the ‘constitutional bedrock’. To legal historians, the most interesting chapter of this book is chapter 3 about the norms originally established by the Fourteenth Amendment. Yet, the other chapters may in the end be more stimulating reading, as they show how the ship of the constitution, once it was out of its harbour, has sailed into new directions. Matthew Perry shows in these chapters that much of the criticism against the Court as an undemocratic institution is unjustified. The Justices of the Court may have gone beyond the original text of the Fourteenth Amendment, but their rulings have not gone beyond the “premises that... have become such fixed and widely affirmed and relied-upon... features of the life of our political community that they are, for us, constitutional bedrock”. For the author these premises even have a ‘lexical priority’ over an older duly established constitutional norm. Not everyone will agree with this, and it is a pity that the author offers no arguments against the idea that the original intent of the constitution’s framers should always prevail. Another drawback of this book is the very articulate thinking of the author. He explores many possibilities, but sometimes that does not add much to his ideas. His book would have been better, if it were shorter.