

Summer 2013

Lincoln: Reformer or Revolutionary? An Analysis of Lincoln's Legacy as Compared to the Political Ideals of the American Revolution

Hayley Elizabeth Patterson
University of Southern Mississippi

Follow this and additional works at: https://aquila.usm.edu/masters_theses



Part of the [American Politics Commons](#)

Recommended Citation

Patterson, Hayley Elizabeth, "Lincoln: Reformer or Revolutionary? An Analysis of Lincoln's Legacy as Compared to the Political Ideals of the American Revolution" (2013). *Master's Theses*. 511.
https://aquila.usm.edu/masters_theses/511

This Masters Thesis is brought to you for free and open access by The Aquila Digital Community. It has been accepted for inclusion in Master's Theses by an authorized administrator of The Aquila Digital Community. For more information, please contact Joshua.Cromwell@usm.edu.

The University of Southern Mississippi

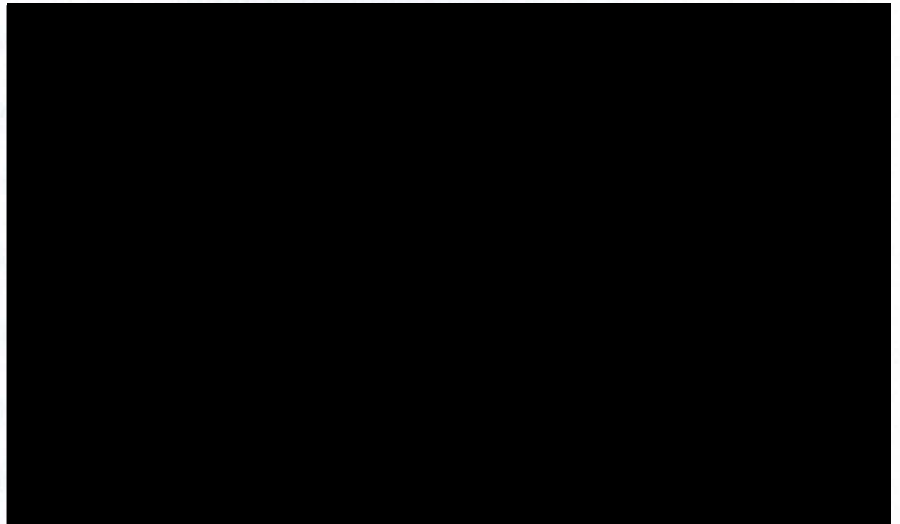
LINCOLN: REFORMER OR REVOLUTIONARY?
AN ANALYSIS OF LINCOLN'S LEGACY AS COMPARED TO
THE POLITICAL IDEALS OF THE AMERICAN REVOLUTION

by

Hayley Elizabeth Patterson

A Thesis
Submitted to the Graduate School
of The University of Southern Mississippi
in Partial Fulfillment of the Requirements
for the Degree of Master of Arts

Approved:



Dean of the Graduate School

August 2013

ABSTRACT

LINCOLN: REFORMER OR REVOLUTIONARY? AN ANALYSIS OF LINCOLN'S LEGACY AS COMPARED TO THE POLITICAL IDEALS OF THE AMERICAN REVOLUTION

by Hayley Elizabeth Patterson

August 2013

Despite the fact that his greatest legacies departed from American traditions, Abraham Lincoln coveted the political ideals espoused by the Founding Fathers. As president, Lincoln inherited the unprecedented challenges that resulted from decades of politicians tabling the insoluble problem of slavery. He operated within the realms of constitutionally allocated authority to meet those challenges. Where the Constitution provided no direction, Lincoln developed solutions that more closely resembled the political philosophies of the American Revolution than any of his political opponents' alternative solutions. The unprecedented circumstances he faced not only enabled Lincoln to reconcile the right to freedom as described in the Declaration of Independence to the Constitution, but they also made such reconciliation necessary. Lincoln's efforts to secure freedom for all American citizens with that amendment epitomize one of the firmest movements forward in American civil rights history. His successors' efforts to do the same for the right to equality fell short of that success. Although noble in purpose, the Fourteenth Amendment failed to achieve its intended purpose and inadvertently altered the American political system from the Union Lincoln strove to preserve. The unintended effects of the Fourteenth Amendment marked a strong departure from the political philosophies of Abraham Lincoln and of the Founding Fathers.

ACKNOWLEDGMENTS

The committee members for this thesis are greatly appreciated: Dr. Kate Greene, Dr. Allan McBride, and Dr. Marek Steedman. Their time and opinions were instrumental for the completion of this project.

Sincerest gratitude goes to Diane Cook for the preliminary editing of this paper and to Joel Gordon for providing invaluable opinions and recommendations for it. Inexpressible thanks are due to Dr. Marek Steedman for his adjustments, revisions, suggestions, and directions. This certainly would have remained incomplete without his encouragement and support.

TABLE OF CONTENTS

ABSTRACT.....	ii
ACKNOWLEDGMENTS.....	iii
LIST OF ILLUSTRATIONS.....	v
CHAPTER	
I. INTRODUCTION.....	1
II. TO WHAT EXTENT WAS THE POLITICAL THEORY OF ABRAHAM LINCOLN A DEPARTURE FROM, OR ELABORATION OF, THE PRINCIPLES THAT ANIMATED THE AMERICAN REVOLUTION AND THE FRAMING OF THE CONSTITUTION?.....	4
What Factors and Influences Contributed to the Political Philosophy of the American Revolution? Lincoln's Personal Political Theory	
III. DID LINCOLN OR HIS POLITICAL OPPONENTS MORE ACCURATELY REFLECT THE POLITICAL IDEALS OF THE FOUNDING FATHERS?.....	42
Who Were Lincoln's Opponents? What Were the Alternatives to Lincoln's Views? One Possible Solution to Solve the Crisis and Preserve the Union	
IV. DO THE RECONSTRUCTION AMENDMENTS EMBODY LINCOLN'S POLITICAL PHILOSOPHY?.....	65
Why Were the Reconstruction Amendments Necessary? The Fourteenth Amendment Alters the Federal Structure Does the Fourteenth Amendment Embody the Political Ideals of Abraham Lincoln?	
V. CONCLUSION.....	85
REFERENCES.....	87

LIST OF ILLUSTRATIONS

Figure

1. Election Results of 1860 Presidential Election.....43
2. Provisions of the Bill of Rights Incorporated Under the Due Process Clause.....71

CHAPTER I

INTRODUCTION

Did Abraham Lincoln reflect the political ideals that animated the American Revolution? The importance of determining how Lincoln's views compared to the views of the founding generation lies in the simple fact that Lincoln changed America. While Lincoln was only actively involved in passing the Thirteenth Amendment, he set in motion the passage of the Fourteenth and Fifteenth Amendments. These amendments not only abolished slavery and extended the rights and protections of the Constitution to every person born or naturalized in the United States, but they also provided the authority for the federal government to be involved in issues previously under the sole discretion of the states. From the time of Lincoln's administration forward, the power of the federal government grew progressively stronger and the breadth of its coverage stretched increasingly farther. Do these changes represent a departure from the original plan for the United States, or do they simply represent the actualization of philosophies preordained by the Founding Fathers? A consideration of Lincoln's devotion to the principles that motivated the American Revolution indicates how near or far the United States is today in regards to the republic that the Framers of the Constitution had in mind.

Lincoln's political theory can be compared to the ideologies that drove the founding of the United States in order to demonstrate that Lincoln honored the Constitution and the Declaration as closely as he possibly could have given the evolving and unprecedented conditions of the United States. Although the Constitution and Declaration of Independence clearly identify some of the motivating principles of the American Revolution, the debates and writings of the Founding Fathers must also be

considered when determining all of the intentions they had for the nation they were forming. Where the founding documents were silent or seemed to be in opposition, it appears that Lincoln weighed the Framers' intent against his constitutional responsibilities to forge policies that ultimately preserved the Union and bridged a gap between the antebellum nation and the modern day United States that otherwise could not have been crossed without severing the Union.

In contrast to his political rivals, it appears that Lincoln's ideals focused on the preservation of the Union, while the ideals espoused by his political peers would have led to the ultimate division of the United States. The crises facing Lincoln and his fellow political leaders were beyond the scope of what was specifically prescribed for in the Constitution. The Constitution provided no obvious solution as to how to solve the issues of slavery and secession, and the speeches, writings, and political debates of that time illustrate the various positions that developed in regards to those problems. While his political rivals suggested constitutionally allowable solutions, the policies they derived from the Constitution would not have held the union together after the states attempted to secede. Adopting an equally constitutional yet different approach to the problems, Lincoln applied the intent of the Framers to the broader purposes described in the Declaration of Independence and Constitution to develop the ideals he eventually utilized in preserving the United States.

When studying the influence of the ideals of the American founding on Abraham Lincoln, the Reconstruction Amendments on the United States must also be considered. Through them, the Constitution was expanded pursuant to the Declaration of Independence to apply full rights of freedom and equality to all men born or naturalized

in the United States. However, the Framers of the Constitution neither intended nor drafted the Constitution to include the increasing involvement of the federal government into the affairs of the states. These developments, though unintended, arose incidentally to fulfilling the purpose of the Reconstruction Amendments. While Lincoln would have approved of the intended purpose of those amendments, their unintended results would have likely earned his disapproval.

Lincoln assumed the full responsibility of solving a dilemma that the Founders knew was inevitable but cautiously postponed answering. Having no precedent to rely on and no clear direction in the founding documents, Lincoln took a constitution that was drafted for thirteen states and broadened it to cover an expanding nation. More than his political rivals, he adhered to the political philosophy of the Founding Fathers while still allowing the Constitution to apply to more people, land, and situations than the Founders could ever have envisioned. However, the political consequences stemming from Lincoln's actions not only failed to give effect to the ideals of the Founding Fathers, but they also failed to preserve the nation in the form Lincoln attempted to preserve it.

CHAPTER II

TO WHAT EXTENT WAS THE POLITICAL THEORY OF ABRAHAM LINCOLN
A DEPARTURE FROM, OR ELABORATION OF, THE PRINCIPLES
THAT ANIMATED THE AMERICAN REVOLUTION AND THE
FRAMING OF THE CONSTITUTION?

In order to effectively compare Abraham Lincoln's political philosophy to that of the founding generation of Americans, the founding generation's principles must first be understood. Many factors must be considered: no single political ideal dominated that time. Various philosophies blended with the emerging culture of the colonies to form a political philosophy distinct to the American Revolution.

What Factors and Influences Contributed to the Political Philosophy
of the American Revolution?

The Events Leading up to the Revolution

The American Revolution was a tumultuous period politically, religiously, and economically. For over two centuries, the colonies had grown and developed in their own distinct fashion. Legislatures were established and laws were passed. Entrepreneurs emerged and businesses flourished. Churches were built and religions expanded. In the midst of these positive growths, changes across the globe began to shape the domestic scene in the colonies. The absence of British officials in America made the enforcement of the laws difficult, and the colonists struggled to develop other forms of law enforcement.¹ Mercantilism stifled the free market, and the colonists resisted the burden

¹ *Encyclopaedia Britannica Profiles: The American Presidency*, s.v. "United States: History > Colonial America to 1763 > Imperial organization," Encyclopaedia Britannica, 2013.

of it.² The increasing tension between the colonies and England caused factions to break away from the Church of England and found new denominations, leading to religious bickering and dissention.³

Several specific circumstances existed within this general framework that had particularly strong influences in prompting the colonists into a revolution. The primary issue giving rise to the revolution was taxation without representation. The British Parliament passed a number of taxes and acts against the colonies without allowing them to have a representative present in Parliament.⁴ The petitions and complaints made to the Crown were ignored. When the colonists reacted by establishing their own legislatures and rejecting the British Parliament, Britain responded by sending troops to police the colonies, which caused tremendous outrage. The crown allowed the removal of legal trials from the colonies to Britain, limiting the protection and recourse the colonists had against British entities.⁵ The use of force, including the quartering of troops, by the British government against its own citizens produced strong resentment among the colonists. The cynicism towards authoritarian, non-representative government that resulted from those situations developed into a strong influence on the Revolution and the drafting of the founding documents.

² For a more in-depth discussion of the development of the American free market and how it influenced the Revolution, see Joyce Appleby's "The Social Origins of American Revolutionary Ideology," *Journal of American History* 64, no. 4 (March 1978): 935-958.

³ One of several sources detailing the religious developments in the Revolutionary period is Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought*, (Princeton: Princeton University Press, 1994).

⁴ A more specific list would include the Navigation Acts, the Revenue Act of 1764, Stamp Act of 1765, The Declaratory Act of 1766, The Townshend Taxes of 1767, and the Intolerable Acts, all of which are discussed at www.ushistory.org.

⁵ This was enacted under the Administration of Justice Act of 1774, which was one of the Intolerable Acts. The Act is detailed at www.ushistory.org.

The Prevailing Philosophical Ideologies Motivating the Constitutional Convention

Republicanism. Republicanism stands as one of the basic political ideologies motivating the American Revolution. Inherited by the colonists from their British forefathers, republicanism draws on the experiences of past republics to determine the best methods of self-government. Strong elements of republicanism exist in most of the discourse arising from the American Revolution. James Madison pointed out in the Federalist No. 39,

The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government.⁶

While republicanism recognizes that individuals have certain rights, it focuses on the citizens' relationship to the state and their exercise of civic virtue to create protections for those individual liberties. Republicanism condemns governmental corruption. Considering the abuses the colonists felt from the British crown, it is not difficult to determine why this ideology was a popular influence during that time.

Republican ideology rests on the premise that citizens will promote civic virtue over their own private interests. Many of the Founding Fathers wrestled with that assumption. As John Adams stated in his letter to Mercy Warren, "Every man must seriously set himself to root out his Passions, Prejudices and Attachments, and to get the better of his private Interest. The only reputable Principle and Doctrine must be that all

⁶ James Madison, "Federalist No. 39: The Conformity of the Plan to Republican Principles," *The Independent Journal* (January 18, 1788) <http://www.constitution.org/fed/federa39.htm>.

Things must give Way to the public.”⁷ But As James Madison pointed out in the Federalist No. 10, human nature cannot fully overcome private interests, and those interests will manifest themselves as factions in government.⁸ His recommendation that a large republic and a federal system could limit the influence of factions influenced the division of power into a federal system in the United States.

For the purpose of limiting corruption, the Framers also relied on the ideas of John Locke, which were more fully described by Montesquieu: the powers and functions of government should be separated into different branches and have a system of checks and balances on each other to prevent any one branch from violating the rights of the citizens.⁹ The Framers evidently considered those principles as they drafted the Constitution. As Madison said in the Federalist No. 48, “... A mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.”¹⁰ The Founding Fathers therefore intricately divided the government into the legislative, executive, and judicial branches and arranged a system of checks and balances to limit each branch.

Distrust of a strong central government is one of the dominant themes of republicanism. Madison discussed the concern over the strength of the central

⁷ John Adams to Mercy Warren, April 16, 1776, in *Founding Families: Digital Editions of the Papers of the Winthrops and the Adamses*, ed. C. James Taylor, (Boston: Massachusetts Historical Society, 2007) <http://www.masshist.org/ff/>.

⁸ Madison, “Federalist No. 10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection,” *The New York Daily Advertiser* (November 22, 1787) www.constitution.org/fed/federa10.htm.

⁹ Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws* (Cambridge: Cambridge University Press, 1989 [1748]).

¹⁰ Madison, “Federalist No. 48: These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other,” *The New York Packet* (February 1, 1788), <http://constitution.org/fed/federa48.htm>.

government in the Federalist No. 39, in which he detailed the constitutional provisions to determine that the United States government was a combination of national, or consolidated, power, and federal power, or power divided between the states. While a monarch could unilaterally infringe on the rights of his people, the leaders in a republic, belonging to the citizens through an electoral process, could not as easily interfere with those rights. A limited executive, as well as an elected legislature, helped to curb the advantage of a central government. The laws of a republic, being statutes drafted by a legislature and written constitutions ratified by the people, would arise from the populace rather than being forced down on it from an authoritarian head. Republican ideals offered many solutions to the problems the colonies faced prior to the Revolution.

Liberalism. Although most of the colonists had a basic republican foundation of thought, the growing influence of liberalism separated them from their British counterparts. Liberalism is a social contract theory largely developed by John Locke over a hundred years prior to the American Revolution, as a justification of the Glorious Revolution in England. Although the ideas contained in liberal thought sprouted around the time of the Enlightenment, they were not fully established in a political system until the American Revolution.¹¹

The foundation of liberalism lies in the belief that people are born free, that they are born equal, and that they are born with certain inherent rights, such as the right to property, subject to natural laws. The fact that Thomas Jefferson chose to specifically describe these points in the Declaration of Independence illustrates the weight of their importance on the minds of the Founding Fathers. Of course, at the time the phrase was

¹¹ This is not to suggest that the liberal ideals were received by all Americans. Many factions still regarded the monarchy as a superior governing system.

penned in the Declaration, the idea applied only to white landed men. Outside of the correspondence of John and Abigail Adams, little evidence exists that the rights of women were discussed during the Revolutionary period. Although all but two states during the Revolution provided the right to vote to free blacks, the fact that most of the black population was held as slaves illustrates that the idea of people born free, equal, and with certain unalienable rights extended only to a narrow definition of "people."¹²

Liberal thought rests heavily on the concept of freedom. Locke suggests that people in the state of nature are "born into a state of perfect freedom."¹³ He defines natural freedom as being free of any superior power and not submitting to any government or individual, but only to the laws of nature or to one's own reason.¹⁴ Translated into a society, that freedom means not being subject to any government other than one to which a person has consented and being ruled only by laws passed by a legislature established by that society. Liberalism demands that if any liberties are lost, it must be a justifiable necessity. The Framers of the Constitution wrote the Bill of Rights specifically for the purpose of preserving liberties of the citizens.

Liberalism also holds that all people are born equal. The equality that Locke describes is a much broader term than simply physical or material equality. He describes equality from the perspective of the state of nature, where everyone is born equally entitled to the uses and advantages of nature, without subordination or subjection to another person.¹⁵ After leaving the state of nature, equality is explained as legal equality,

¹² Lex Renda, "Between Freedom and Bondage: Race, Party, and Voting Rights in the Antebellum North: Review," *Journal of Interdisciplinary History* 41, No.1 (Summer 2010).

¹³ John Locke, *Second Treatise of Government*, ed. C. D. Macpherson (Indianapolis: Hackett Publishing, 1980 [1690]) 8.

¹⁴ *Ibid.*, 17.

¹⁵ *Ibid.*, 8.

where the laws apply to every citizen in the same manner. Equality, although implied, was not directly addressed in the Constitution until the Reconstruction Amendments were added.

The significance of property to a liberal philosopher cannot be overstated because in liberal thought, the sole function of a government revolves around protecting each citizen's property rights. The right to property that Locke describes includes more than simply possessions. He states that God gave the whole Earth to all men, and that all men have a right to their own self, and to their own labor, and to whatever of the Earth they can mix their labor with to justify their claim of right to that thing.¹⁶ Property in this sense includes life and any endeavors pursued in it in addition to the things accumulated by a person. The Fourth and Fifth Amendments specifically protect the property interests of the American citizens.¹⁷

The cornerstone of liberalism as a social contract theory is that people give up a degree of their inherent rights to form a political society in exchange for the preservation of their remaining rights. The government so formed only has power over the people to the extent they consent to it. Since people cannot give more power than they have, and they do not have absolute power over themselves, a government can only have limited powers, and those powers are designated for the sole purpose of protecting the rights of the citizens. If the government ceases to protect those rights, the people have the right to dissolve the contract. The limitations expressed in the Ninth and Tenth Amendments

¹⁶ John Locke, *Second Treatise of Government*, ed. C. D. Macpherson (Indianapolis: Hackett Publishing, 1980 [1690]) 19.

¹⁷ U.S. Constitution, amend IV, V.

demonstrate the limitations imposed on the government by the Framers of the Constitution.¹⁸

Liberalism does not protect the government the way it protects the rights of the individual citizens. While the citizens under a liberal system have individual rights and inherent freedom, the government they establish is extremely limited. Liberalism suggests that a government has authority only to the extent that people consent to be governed by it and that its powers are limited to the privileges that the people give it for the purpose of protecting their rights. Should the government violate that social contract, the citizens have the right to dissolve the government and establish a new one.¹⁹ The belief that citizens can resist an oppressive government and form a new one was the primary ideology prompting the American Revolution.

A Cumulative Revolutionary Ideology

Historians and political theorists dispute whether liberalism or republicanism provided the primary influence during the Revolution. The ideologies have certain qualities in common, but also contradict one another in some regards. While they both emphasize individual rights and limited government, liberalism suggests that personal liberties decrease as a person enters into a social contract with the government. Republicanism, in contrast, suggests that it is the citizens' endeavors in society that maximize their liberty. Also, the justification of the pursuit of self-interest promulgated by liberalism stands in stark contrast to the concept of sacrificing self-interest for the sake of civic virtue advocated by republicanism.

¹⁸ U.S. Constitution. IX, X.

¹⁹ John Locke, *Second Treatise of Government*, ed. C. D. Macpherson (Indianapolis: Hackett Publishing, 1980 [1690]) 111.

While the traditional opinion held that republicanism was the dominant influence of the Revolution, a compelling justification for liberalism as the fundamental ideal developed in the latter half of the twentieth century. As Joyce Appleby states,

If the Revolution was founded in a frenzy over corruption, out of fear of tyranny, and with hopes for redemption through civic virtue, where and when are scholars to find the sources for the aggressive individualism, the optimistic materialism, and the pragmatic interest-group politics that became so salient so early in the life of the new nation?²⁰

Other philosophers have agreed with Appleby. Louis Hartz declared liberalism the dominant ideology of America, to the exclusion of republicanism and other ideologies.²¹

Those two ideologies were not the only influences of the Revolution. Certain ascriptive qualities of the period also pervaded the creation of the government. The Protestants' view that God created them in a superior manner to Catholics, Jews, Muslims, and non-believers; the masculine opinion that men should dominate over women; and the Caucasian opinion that white people were morally and intellectually superior to other races all influenced the formation of the United States as well. As Rogers M. Smith has said,

Although liberal democratic ideas and practices have been more potent in America than elsewhere, American politics is best seen as expressing the interaction of multiple political traditions, including liberalism, republicanism, and multiple ascriptive forms of Americanism which have collectively comprised American political culture, without any constituting it as a whole.²²

²⁰ Joyce Appleby, "The Social Origins of American Revolutionary Ideology," *Journal of American History* 64, no. 4 (March 1978): 944.

²¹ Louis Hartz, *The Liberal Tradition in America*, (New York: Harcourt, Brace, and World, Inc., 1955).

²² Rogers M. Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *American Political Science Review* 87, no. 3 (September 1993): 550.

In actuality, the two ideologies and the ascriptive qualities of American society seem to have combined into a cumulative ideology unique to the situation the colonies faced. While the Declaration of Independence proclaims the United States' dedication to liberal ideals, the Constitution, by structuring the government in a way that limits the powers of the federal government to specifically enumerated powers, demonstrates a republican agenda. One document establishes a basis of free and equal, self-governing people and declares their natural rights while the other provides structure and limits the government those people create in order to protect the rights of the people. Religion, racism, and gender bias affected how those documents were regarded throughout American history. J.G.A. Pocock suggests the influences of American society such as Christianity and liberalism actually prohibited the United States from following a classical republican path.²³ Similarly, Barry Alan Shain has suggested that Protestant developments and the agricultural communal lifestyles of the colonists more strongly shaped the Revolutionary political environment than any political ideals.²⁴ While the influence of the burgeoning Protestant landscape and the agrarian nature of Revolutionary America should not be overlooked, they should not overshadow the influence of the political ideals of the day. The ascriptive elements of the populace and the combination of the two political philosophies comprise a distinctive American political ideology.

The genius of the Framers of those documents lies in their ability to balance the ideologies and ascriptive persuasions of the early Americans into one revolutionary plan

²³ J.G.A. Pocock, *Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, (Princeton: Princeton University Press 1975).

²⁴ Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought*, (Princeton: Princeton University Press, 1994).

of government. Their shortcoming exists in their failure to address every critical issue to which those influences spoke. In particular, the questions of slavery, equality, and secession, which would be clearly decided under the Declaration of Independence, seem to have been avoided when the Constitution was being written.

When examining why those issues were treated differently by the Constitution than they were by the Declaration, it is important to understand how the two documents relate to each other. The Declaration of Independence does exactly what its name says; it declares the purpose of the United States. The Constitution sets out the plan by which the Declaration is enacted.

The key distinction between the two documents is that the Constitution was designed to be changeable, while the Declaration was not. The Founding Fathers drafted, signed, and preserved the Declaration by placing it in a hall to be honored henceforth. It declares the ultimate ends to which the United States ascribes. It is idealistic. By contrast, the Constitution was drafted to be changeable. Its purpose is to create the most reasonable method of achieving the goals of the Declaration of Independence. For that reason, the Framers drafted the Constitution with clauses containing processes for amending it as changes became necessary. Even at its creation, the Framers of the Constitution understood that a constitution is a living instrument that must develop with the society it governs. In fact, in some instances, the Framers even drafted laws into the Constitution with the idea that it would be changed in the future.

Although they were both created for the purpose of ensuring the duration of the United States, the two documents are not always in perfect accord. While the Declaration states that all men are created equal with an unalienable right to liberty, the Constitution

initially provided safeguards to the practice of slavery and made no mention of the rights of women, and secession, while proclaimed a right and a duty by the Declaration of Independence, is not condoned by the Constitution.

The treatment of these issues in the Constitution, based on the debates during the Constitutional Convention and ratification, was strategic. The Framers had an immediate goal to establish a union between the states. In an effort to reach that goal, they settled only the most basic and most pressing issues by defining the functions of the federal government, structuring its branches, and carefully preserving the most essential rights of the people.

Before they would agree to ratification of the Constitution, the states whose economies relied on slavery demanded certain protections for their way of life.²⁵ Furthermore, even if the delegates had agreed to abolish slavery, none of the Framers provided a reasonable plan for what to do with the slaves after their liberation. The idea of extending equal legal and social status to the black race did not arise as a serious consideration, the idea that they could exist in the United States as a second class of citizen was infeasible, and the plan to colonize the freed slaves was too expensive and involved for the Framers to undertake while they were still trying to form a government for the states. Therefore, the Framers set aside the issue of abolishing slavery and focused on compromising between the slaveholding states and the free states in order to establish a constitution.

²⁵ Many of the debates regarding slavery during the Constitutional Convention occurred around August 22, 1787 and can be read at The Avalon Project at Yale Law School, "Notes on the Debates at the Federal Convention, 1787: August 22, 1787," Lillian Goldman Law Library. http://avalon.law.yale.edu/subject_menus/debcont.asp.

Their compromise resulted in three constitutional protections of slavery that would have a limiting effect on the practice. In Article I, Section 2, the Constitution allowed slaves to be counted as three-fifths of a vote for purposes of representation.²⁶ That concession provided the slaveholding states with the population they needed to maintain some power in the House of Representatives. That compromise also provided the slave states with a disproportionate influence in the Electoral College. Furthermore, the Constitution guaranteed the slave trade would continue until 1808, which allowed the trade to continue, but also functioned as an expiration to it.²⁷ Lastly, the Fugitive Slave Clause required any state to return an escaped slave to its rightful owner.²⁸

Because of the compromises over the slavery issue, the debate exists as to whether the Constitution was a pro-slavery document or an anti-slavery document. In fact, it is even debated as to whether the Declaration is pro-slave or anti-slave. In its initial draft, the Declaration condemned the slave trade as an act of tyranny by the King. By its final draft, the Founding Fathers had re-written the clause so that the slave trade was not the stated example of tyranny, but was replaced with “inciting of insurrection among slaves” as the grievance against the throne.²⁹ Many of the Framers did not want to include even the word “slavery” in the Constitution because it contrasted against the republican and liberal ideals, as the ratification debates reveal. However, the Constitutional Convention adhered more strongly to the purpose of unifying the new

²⁶ U.S. Constitution, art. I, § 2.

²⁷ U.S. Constitution, art. I, § 9.

²⁸ U.S. Constitution, art. IV, § 2.

²⁹ David Waldstreicher, “The Mansfieldian Moment: Slavery, the Constitution, and American Political Traditions,” *Rutgers Law Journal* 43, no.3 (Fall/Winter 2013): 480. Jefferson was unhappy about the transition of the Declaration as an anti-slavery document in draft form to pro-slavery in publication, as his autobiography and subsequent writings indicated.

nation than it did to settling the issue of slavery, so it accepted the concessions between the slaveholding South and the slavery-hating North.

After months of debating and bargaining, the states ratified the Constitution. However, ratification did not mean all of the issues had been settled. Ideological differences among the Framers gave way to party politics. The long-term issues such as slavery, universal equality, and secession were cautiously deferred to later generations. Less than one century later, the full weight of those issues would come to land squarely on the shoulders of Abraham Lincoln.

Lincoln's Personal Political Theory

Lincoln served as an active political figure well before his election as President. He was elected to four terms in the Illinois House of Representatives and to one term in the United States Congress in the House of Representatives.³⁰ His years as a legislator remained basically uneventful, as politics go, giving only a few notable speeches and an occasional writing to commemorate his career during those years. Although he began his political career as a Whig, he eventually joined the newly-formed Republican Party, upon whose platform he was able to attain a presidential nomination. Throughout his career, Lincoln advocated for the protective tariff, the national bank, internal improvements, and the restriction and eventual abolition of slavery.³¹

During the years following the Revolution, the United States became increasingly polarized by the issue of slavery. Upon Lincoln's election, the slaveholding states immediately seceded. Their withdrawal from the Union left Lincoln with the unprecedented issue of what to do with a Civil War, secession, and slavery. Looking to

³⁰Russell Freedman. *Lincoln: A Photobiography* (New York: Clarion Books, 1987).

³¹ *Ibid.*

the Constitution for authority and to the Declaration of Independence for direction, Lincoln tackled the challenge of preserving the Union during its greatest crisis.

Throughout his life, Lincoln declared his devotion to the Declaration of Independence and to the Constitution. However, he spent the most critical years of his life caught between the two. Where the Declaration of Independence proclaimed his ideals, the Constitution ordered his actions to other ends. As long as he was able, Lincoln balanced the two. However, he eventually found himself at the critical juncture where the two documents finally and ultimately diverged. Faced with the choice of either abandoning the principles of the Declaration or of adapting the Constitution, Lincoln relied on what he considered the Framers' intentions to be and changed the Constitution. In doing so, he brought the Constitution even more closely aligned with the Declaration of Independence, which it was intended to enforce.

The theory of constitutional interpretation Lincoln demonstrated is referred to by contemporary scholars as "constitutional aspiration."³² This theory holds that individuals can identify the higher political ideals and intentions of the Framers in the Constitution. Constitutional aspirationists may conclude that certain provisions of the Constitution were merely compromises made by the Framers to achieve immediate needs, while they believed that the issues would be ultimately abrogated at a future time. This allows for certain words and phrases to be construed in the light of what the Framers meant, even though the words themselves may starkly contrast with what the Framers believed. This theory lies somewhere between a strict textualist interpretation of the Constitution and a non-textual, subjective interpretation of it.

³² Herman Belz, "Abraham Lincoln and American Constitutionalism," *The Review of Politics* 50, no. 2 (Spring 1988): 182.

Executive Powers

Although it is less talked about in contemporary society than his other accomplishments, Lincoln's expansion of executive powers is one of his major legacies as president. Prior to Lincoln's administration, most of the notable statesmen were legislators, such as Henry Clay, Daniel Webster, and John C. Calhoun, while the immediately preceding presidents were barely noteworthy; Van Buren, Harrison, Tyler, Polk, Taylor, Fillmore, Pierce, and Buchanan.³³ From Lincoln forward, however, a considerable shift towards a strong executive emerges. While there is no indication that the Framers of the Constitution intended that shift to occur, the ambiguity of the provisions relating to the executive branch provided ample opportunity for it to gain strength.

Although writings and discussions on the importance of having a limited executive branch survive from the time of the drafting of the Constitution, the notes from the Constitutional Convention indicate that relatively little attention was placed on that department otherwise. Compared to the other two branches of government, very little of the Constitution focuses on the Executive. In a letter to George Washington, James Madison's words demonstrate how little the Framers concerned themselves with it: "A National Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed."³⁴ Although Hamilton dedicated several of his

³³ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 33.

³⁴ James Madison to George Washington, April 16, 1787, [http://www.let.rug.nl/usa/documents/1786-1800/the-anti-federalist-papers/james-madison-to-george-washington-\(april-16-1787\).php](http://www.let.rug.nl/usa/documents/1786-1800/the-anti-federalist-papers/james-madison-to-george-washington-(april-16-1787).php).

Federalist Papers to the topic of the executive branch, The Framers gave less consideration to the powers of the president, particularly in times of war, than to the legislative and judicial branches.

The lack of specific grants and limits on the powers of the executive enabled Lincoln to pull off the political feats he accomplished. Confronted with unprecedented problems to solve and bound by oath to solve them, Lincoln looked to the ambiguity of Article II of the Constitution to find the authority to carry out the tasks he felt compelled by law to perform. Article II, Section 2, Clause 1 states: "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;" and Section 3 states, "... He shall take care that the laws be faithfully executed..."³⁵ Although Article I deals specifically with the legislature, Section 9 states, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."³⁶ Abraham Lincoln depended on those provisions for the authority to suspend the writ of habeas corpus and issue the Emancipation Proclamation.

From the outset of the Civil War, Lincoln exercised his role as Commander in Chief with great zeal, pushing the limits of the constitutional checks and balances. From raising troops, to calling a blockade, to taking money from the treasury for the troops' support, Lincoln absorbed many of the functions typically reserved for the legislative branch. These acts, being performed during war time and for the purpose of preserving the Union, were within the realm of what Lincoln considered to be his duties as Commander in Chief. Although some argue that Lincoln violated the intentions of the

³⁵ U.S. Constitution art. II, § 2 and 3.

³⁶ U.S. Constitution art. I, § 9.

Framers by invoking such powers as part of the executive branch even though the Constitution does not allocate those powers to that department, it cannot be denied that the Framers did leave a lot to interpretation by not stating exactly what the duties of the Commander in Chief include, and by not stating exactly what is meant by “take care that laws be faithfully executed.”

Lincoln’s suspension of the writ of habeas corpus survives as one of the most touted examples of his expanded use of executive power. In April of 1861, Lincoln ordered the suspension of the writ based on what he considered to be necessary to the preservation of the Union.³⁷ Justice Taney of the Supreme Court challenged the President’s suspension of the writ by pointing out that he had overreached his authority, and he was bound to “take care that the laws be faithfully executed.”³⁸ In his well-known response, Lincoln replied, “Are all the laws but one to go unexecuted, and the government itself go to pieces, lest that one be violated?”³⁹ He then stated that he did not believe he had violated any laws. He believed that the suspension was ordered pursuant to public necessity, and even though the clause regarding it is located in Article I, which specifically addresses the Legislative Branch, he claimed that the Constitution does not state which branch has the authority to suspend the writ. Claiming he believed he acted within appropriate authority, he ignored the Supreme Court’s ruling that he lacked authority to suspend the writ.⁴⁰

³⁷ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 103.

³⁸ *Ibid.*, 26.

³⁹ *Ibid.*

⁴⁰ *Ex parte Merryman*, 17 F. Cas. 144 (1861).

While successive presidents have been compared to Lincoln's example to justify their broadening of executive powers, a distinction may be made for Lincoln's actions not only because of the legitimate crisis he faced, but also because of his subsequent behavior.⁴¹ Lincoln did not simply try to justify his actions as being within his authority, as his successors have done; rather, he claimed that necessity had required the acts, then he appealed to Congress, explained what he did and why, and asked for Congress to ratify his behavior.⁴² In that regard, Lincoln did not intend to extend the authority of the President beyond what the Constitution allowed, but out of necessity simply executed the constitutional process in reverse order.

The broadening of executive powers would arguably be outside the realm of what the Framers intended, as it goes beyond the specifically allocated powers they granted to it. However, it can likewise be argued that Lincoln fulfilled the role the Framers had in mind exactly as they had assumed a president should, insofar as they did not know the capacities in which a future executive might have to act. That may be precisely why the Constitution contains broad yet vague powers: It would be senseless for the Founding Fathers to charge a president with the responsibility to preserve and defend the Constitution, then not extend him the powers with which to fulfill that responsibility.

In contrast to where Lincoln expanded presidential powers in the areas where the Constitution was vague enough to allow it, Lincoln also exercised restraint where the Constitution was clear that the executive should have no power. For example, when

⁴¹ Theodore Roosevelt even went so far as to categorize presidents as either "Lincoln Presidents" or "Buchanan Presidents" based on how fervently they exercised their executive powers. Buchanan Presidents strictly construed the Constitutional limits on executive power and used undue restraint, while Lincoln Presidents used the available Constitutional authority to expand the powers of the office to the fullest extent. See Theodore Roosevelt, *An Autobiography* (New York: Charles Scribner's Sons, 1913).

⁴² William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008), 103, citing Louis Fisher, *Presidential War Power* (Lawrence: University Press of Kansas, 1995) 48.

General John C. Fremont issued an emancipation order, Lincoln rescinded it, even though he personally approved of the action.⁴³ Lincoln explained that he believed the authority to issue the order belonged solely to the legislature. Congress could pass such a law and he would vote for it if he was in Congress, he said, but he could not allow an executive officer to exercise a legislative function.⁴⁴ Because the Constitution clearly reserves the legislative function to that branch, Lincoln did not want to encroach on that function. In respecting those limits, Lincoln behaved in accord with the Framers' intent.

Secession

As soon as Lincoln was elected, the slave states began seceding from the Union. Uncertainty arose as to whether the states had a right to secession or not, as to whether a president could fight secession or not, and as to what the president could do if he did oppose secession. Nowhere in the Constitution had the Framers prescribed action for that situation.

From his first inaugural address forward, Lincoln rejected the notion that the states have any right to secession.⁴⁵ The South claimed a right to secession through two arguments: The first held that secession was a legitimate right under the Constitution. Lincoln rebutted their claims with a lawyerly constitutional argument. Primarily, he

⁴³ Fremont held the post of Commander of the Western Department, which included in its territory the volatile border state of Missouri. As commander of that department, he issued an emancipation order that would free all slaves in that area whose owners did not declare loyalty to the Union. That act far exceeded his authority and violated the Constitution. Lincoln's own Emancipation Proclamation, by contrast, was issued under his authority as Commander in Chief and pursuant to the emergency war powers described in the Constitution. To honor Fremont's emancipation order would have clearly violated the Constitution and would have alienated Kentucky and other border states, exaggerating a war that Lincoln at that time hoped would be a short-lived ordeal. Conversely, the war was so full-blown by 1863 that Lincoln felt the Emancipation Proclamation was strategically necessary as a tactic to deflate the Confederate cause and bring an end to the war.

⁴⁴ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 29-30.

⁴⁵ *Ibid.*, 21.

claimed the states have no status other than their status as states under the Union and, therefore cannot claim a right under the Constitution if they are apart from it.⁴⁶ On that point, *Texas v. White* (1869) was litigated over the sale of treasury bonds by the Confederate government.⁴⁷ Validating Lincoln's argument, the Supreme Court held that the Constitution does not permit states to unilaterally secede from the United States, and that the ordinances of secession, and any acts of the legislatures within seceding states intending to give effect to such ordinances, are null and void.

The second argument held that secession was a revolution, which Jefferson Davis claimed in his inaugural address was a right asserted in the Declaration of Independence.⁴⁸ Lincoln acknowledged the right of revolution in his inaugural address, but distinguished that right from the situation of the Civil War in this way, "If, by the mere force of numbers, a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would, if such right were a vital one. But such is not our case."⁴⁹ He elaborated by pointing out that no constitutional right had been violated to justify the states' demand for revolution. Therefore, he considered the seceding states to be in rebellion and rejected the legality of their claim to secession. James Madison also made the same distinction

⁴⁶ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 147.

⁴⁷ 74 U.S.700, 1869.

⁴⁸ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 148.

⁴⁹ Abraham Lincoln, "First Inaugural Address, March 4, 1861," in *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953), 4:267. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu/l/lincoln/>.

between secession and revolution that Lincoln did, although he cautioned against the use of force by the nation against separate states.⁵⁰

The right to secession significantly impacted the ratification debates of the Constitution. Several states hesitated to ratify the Constitution because they wanted to retain their sovereignty.⁵¹ As with most of the other key issues during the Revolution, the antagonism behind the debate existed between those who wished to preserve state sovereignty and those who wanted to create a national government. Patrick Henry and the men who became known as the “anti-federalists” argued against ratification for that specific reason. During the ratification debates, it was made clear by Madison, Hamilton, John Jay, and other federalists that the states were relinquishing their sovereignty when they consented to the Constitution, and the Constitution would not provide a right to secede, because a right to withdraw is inconsistent with the purpose of the Constitution.⁵² Although the choice to form a Union eventually prevailed over the choice to remain sovereign states, the tension between those contrasting ideologies persisted and manifested itself in other areas of politics, as the Civil War clearly demonstrated.

The importance of secession to Lincoln arose from more than just the division of states from one another. In his opinion, Lincoln saw secession as the destruction of free government. In his statement to Congress on July 4, 1861, Lincoln stated, “It was with deepest regret that the Executive found the duty of employing the war power, in defense

⁵⁰ James Madison to Daniel Webster, 15 March 1833, in *The Founders' Constitution* vol. 1, Ch. 3, Doc. 14 (Chicago: University of Chicago Press, 1987), available at <http://press-pubs.uchicago.edu/founders/documents/v1ch3s14.html>.

⁵¹ The Avalon Project at Yale Law School, “Notes on the Debates at the Federal Convention, 1787: May 31, 1787,” Lillian Goldman Law Library. http://avalon.law.yale.edu/subject_menus/debcont.asp (accessed December 10, 2012).

⁵² Akhil Amar, “Conventional Wisdom—A Commentary by Prof. Akhil Amar,” *The New York Times*, (September 18, 2005), Available at <http://www.law.yale.edu/news/1850.htm>. (accessed January 10, 2013).

of the government, forced upon him. He could but perform this duty, or surrender the existence of the government.”⁵³ In fact, when he spoke about his military decisions, Lincoln pointed out that his choices were often different from what the military experts might have chosen because his decisions were not oriented around a simple military victory, but around the preservation of the Union.⁵⁴ His statements demonstrate that Lincoln felt burdened both by his responsibility to preserve the mangled Union, and also by his obligation to use military force to do so.

Lincoln drew much of the authority he used to fight secession from the presidential war powers, which neither itemized what the president could do nor detailed what he could not do. Because the Framers had not fully described those powers, Lincoln took it upon himself to establish them.

In a similar manner, Lincoln also drew his authority to prevent secession from the presidential oath of office. In fact, Lincoln seemed to believe that the oath left him with no option but to fight secession. Before taking the oath, Lincoln stated,

You have no oath registered in Heaven to destroy the government, while I shall have the most solemn one to ‘preserve, protect, and defend’ it. That is: You are still in a realm of calculation and choice; I will be in the different moral realm of necessity. You can act differently; I cannot. The moral claim upon me is categorical; on you, hypothetical; for me, imperative, for you, discretionary. I will take a most solemn oath— you will have no such oath. My oath will be “registered in Heaven— you have no such heavenly registration for any purpose of yours. I cannot alter my course of action— you are not prevented from altering yours.”⁵⁵

The fact that Lincoln drew his authority from the oath of office in itself represents a distinction from other presidents. The constitutional lawyer Edward Corwin stated that

⁵³ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 28.

⁵⁴ *Ibid.*, 53.

⁵⁵ *Ibid.*, 25.

Lincoln's treatment of the oath as a source of power was an "outstanding precedent."⁵⁶ While it is recognized that the presidential oath is the only oath that requires the taker to swear to "preserve, protect, and defend the Constitution of the United States," the oath itself does not purport to grant any powers beyond what the Constitution itself has already granted.⁵⁷ The fact that other presidents did not rely on the responsibility bestowed by the oath in no way alters the fact that the Framers found it justifiable to charge the office of the executive with those duties.

Slavery

Of all his effects on America, Lincoln's legacy regarding slavery remains the most significant and most recognized. When analyzing Lincoln's political philosophy on this issue, one can easily become confused about his position regarding it. For most of his life, Lincoln spoke against the practice from a moral viewpoint, but when it came to enforcing the laws that supported slavery such as the Fugitive Slave Clause, he protected it. During his debates, he stated quite clearly that he had no intention of interfering with the practice where the Constitution allowed it, and that abolition was not his personal goal. But in 1865, Lincoln drove the Thirteenth Amendment through Congress, forever abolishing slavery from American soil. Even though Lincoln advanced the cause of the black race in America more than any other individual ever did, he declared on several occasions that he felt the white race was superior to it in every way.

Many contradictions exist between Lincoln's words and his actions regarding slavery. For purposes of determining his philosophy, one must give deference to what he

⁵⁶ William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008) 28. The oath sworn by soldiers claims that they will, "support and defend the Constitution."

⁵⁷ *Ibid.*, citing Daniel Farber, *Lincoln's Constitution* (Chicago: University of Chicago Press, 2003) 128.

actually did. In the words of George Bernard Shaw, “What a man believes may be ascertained, not from his creed, but from the assumptions on which he habitually acts.” In that regard, Lincoln’s personal philosophy should be assessed based on what he did concerning slavery, most notably his Emancipation Proclamation and the Thirteenth Amendment.

As demonstrated in most areas of his political career, the most apparent characteristic of Lincoln’s philosophy is his devotion to the Constitution and Declaration of Independence. Throughout his life and career Lincoln stated that he revered the Declaration, and he made a conscious effort to honor the Constitution. He believed that his personal convictions were secondary to his commitment to the Constitution and the Declaration. Even though he had never budged from his personal moral view that slavery was wrong, he criticized Maine for not giving up an escaped slave pursuant to the Fugitive Slave Clause because the Constitution prescribed the states to do so.⁵⁸ Although he abhorred slavery, he recognized as a candidate for Senate that he had no power to abolish the practice in the states where it existed.⁵⁹ He believed that where the Constitution spoke, citizens and states were compelled to honor it, even if they disagreed with it.

The problem for Lincoln arose from where the Constitution offered no guidance, or where it seemed to be in conflict with itself. Herman Belz noted, “The inference can be drawn that Lincoln viewed the Declaration of Independence as the nation’s primary

⁵⁸ Doris Kearns Goodwin. *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon and Schuster, 2005), 92.

⁵⁹ Abraham Lincoln, “First Debate with Stephen A. Douglas at Ottawa, Illinois, August 21, 1858,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 3:2. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu/l/lincoln/>.

constitutive document, and as the source of the substantive principles of the Constitution.”⁶⁰ The analogy Lincoln provided for how he deemed the two documents to relate to each other is this: “The assertion of that principle [the Declaration] at that time, was the word ‘fitly spoken,’ which has proved an ‘apple of gold’ to us. The Union and the Constitution are the picture of silver, subsequently framed around it. The picture was made, not to conceal, or destroy, the apple, but to adorn, and preserve it.”⁶¹ That analogy suggests that the Declaration was the pinnacle of Lincoln’s political philosophy, and the Constitution was the method of enforcing the Declaration.

The problems arose where the two documents were not in agreement. Specifically, Lincoln’s dilemma became how to uphold the constitutional protections to slavery when slavery itself was tearing apart the government that the Constitution created. In the early years of the United States, the Constitution seemed designed to lead to the eventual abolition of slavery, which would in turn create national unity on the issue. Instead, by the 1850s, the issue became even more divisive than ever before. Lincoln illustrated that problem in his “House Divided” speech. The possible solutions, as he saw them, were either to abolish slavery in all of the country or to nationalize it.⁶² In either case, the country had to be in agreement on the issue. The reality of that decision was simple: if the nation chose to abolish slavery, it must change the Constitution; if it chose to nationalize slavery, the nation must destroy the Declaration of Independence.

⁶⁰ Herman Belz, “Abraham Lincoln and American Constitutionalism,” *The Review of Politics* 50, no. 2 (Spring 1988): 181.

⁶¹ Abraham Lincoln, “Fragment on the Constitution and the Union, January 1861,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 4:169. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu/l/lincoln/>.

⁶² Abraham Lincoln, “A House Divided: Speech at Springfield, Illinois, June 16, 1858,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 2:461. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu/l/lincoln/>.

In Lincoln's own estimation, his political philosophy derived wholly from the Declaration of Independence. In a speech he gave in Philadelphia at the beginning of his first term in office, he stated,

I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence.... It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that all should have an equal chance. This is the sentiment embodied in that Declaration of Independence.⁶³

In that expression, Lincoln explained that not only did he believe abolishing slavery was in accord with the Declaration, but he also believed the Founders intended for freedom to extend to all men when they drafted the Declaration. He believed the black race was entitled to all of the natural rights of the Declaration, those being life, liberty, and the pursuit of happiness. However, he said at other times that he did not desire to make the black man his social equal. Lincoln further stated that he believed the black race was inferior in intellect, morality, and color, but that, "in the right to eat the bread, without the leave of anybody else, which his own hand earns, he is my equal ... and the equal of every living man."⁶⁴

In his first debate against Douglas, Lincoln drew on his interpretation of the Founders' intentions when he stated,

⁶³ Abraham Lincoln, "Speech in Independence Hall, Philadelphia, Pennsylvania, February 22, 1861." *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 4:241. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu//lincoln/>.

⁶⁴ Abraham Lincoln, "First Debate with Stephen A. Douglas at Ottawa, Illinois, August 21, 1858," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 3:2. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu//lincoln/>. Also noteworthy is Lincoln's support of women's suffrage decades before it became popular to support that movement. In a letter to *The Sangamo Journal* on June 13, 1836, he stated his support for sharing government privileges with anyone who shares its burdens, such as paying taxes. In that letter, Lincoln specifically distinguished his belief that the rights extend to white citizens.

Now, I believe if we could arrest the spread, and place it where Washington, and Jefferson, and Madison placed it, it would be in the course of ultimate extinction, and the public mind would, as for eighty years past, believe that it was in the course of ultimate extinction. The crisis would be past and the institution might be let alone for a hundred years, if it should live so long, in the States where it exists, yet it would be going out of existence in the way best for both the black and the white races.⁶⁵

Lincoln may have correctly assumed their intentions. Although Thomas Jefferson, George Washington, James Madison, and other Founding Fathers all owned slaves, they also spoke against the practice. James Madison called it “the most oppressive dominion ever exercised by man over man.”⁶⁶ In a letter to Robert Morris, Washington wrote, “there is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it.”⁶⁷ Jefferson stated that he had hoped that the post-Revolutionary generation would have so appreciated the liberty of the new country that they would have taken up the cause to share it with all oppressed people.⁶⁸

However, not all of the Founding Fathers condemned slavery. They heatedly debated the issue of slavery during the Constitutional Convention. While Luther Martin of Maryland stated that slavery was “inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution,” John Rutledge of South Carolina stated that “Religion and humanity have nothing to do with the question. Interest alone is the governing principle with nations.... If the Northern

⁶⁵ Lincoln, “First Debate with Stephen A. Douglas at Ottawa, Illinois, August 21, 1858,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 3:2. Available electronically at *The Abraham Lincoln Association* .

⁶⁶ Matthew Spalding, Ph.D., “How to Understand Slavery and the American Founding,” *The Heritage Foundation: Leadership for America* (August 26, 2002). Available at <http://www.heritage.org/research/reports/2002/08/how-to-understand-slavery-and-americas> (accessed January 12, 2013).

⁶⁷ Spalding, *Ibid.*

⁶⁸ William Freehling, “The Founding Fathers and Slavery,” *The American Historical Review* 77, no. 1 (Feb. 1972): 84.

States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.”⁶⁹ Oliver Ellsworth, a Connecticut delegate who later served as the third Chief Justice of the Supreme Court, offered a slightly moderate view by pointing out that the morality and wisdom of the practice is best left to the discretion of the states, as it had been under the Articles of Confederation.

Ellsworth’s view became the eventual prevailing opinion of the convention, although the delegates made some concessions to the slaveholding states and drafted a few federal protections to the practice into the Constitution. However, the protections were oriented around providing limited protection to the practice of slavery in the states where it already existed. In doing so, the Constitution appeared to prevent the slave trade from expanding to new territories and, furthermore, gave an expiration date to the slave trade.⁷⁰ Interestingly, the Constitution never uses the words “slavery” or “slave.” Madison stated in his notes from the convention that the delegates “thought it wrong to admit in the Constitution the idea that there could be property in men.”⁷¹ These facts considered, one can infer that the Founders hoped to set slavery on the eventual course to abolition.

⁶⁹ The Avalon Project at Yale Law School, “Notes on the Debates at the Federal Convention, 1787: August 21, 1787,” Lillian Goldman Law Library. http://avalon.law.yale.edu/subject_menus/debcont.asp (accessed December 15, 2012).

⁷⁰ The reverse interpretation of the limitation on the slave trade is that it had the effect of increasing the value of the slaves already present in the United States. Furthermore, by the time it was extinguished, the United States had a domestic population of slaves sufficient to support the practice indefinitely.

⁷¹ Matthew Spalding, Ph.D., “How to Understand Slavery and the American Founding,” *The Heritage Foundation: Leadership for America* (August 26, 2002). Available at <http://www.heritage.org/research/reports/2002/08/how-to-understand-slavery-and-americas> (accessed January 12, 2013).

If the Constitution itself was not telling enough, the legislation passed during the Founders' time clearly suggests that the early American politicians wanted slavery to eventually end. Vermont, Pennsylvania, and Massachusetts all supported abolition prior to the ratification of the Constitution.⁷² Congress passed the Northwest Ordinance in July 1787, decreeing slavery illegal in the Northwestern Territories.⁷³ Even though all but one state had ceased the importation of slaves, Congress passed the law to officially ban slave importation in 1807, which would take effect in 1808.⁷⁴ In addition to the states in the north that abolished slavery, Virginia passed a law in 1782 to simplify the emancipation process for slaveholders.⁷⁵ The Missouri Compromise followed in 1820, which allowed the United States to admit Missouri as a slave state only if it admitted Maine as a free state. It also prohibited slavery in the Louisiana territory above the 36 °30 North parallel, although that by default allowed slavery into the rest of the Louisiana territory.⁷⁶ The purpose of the Compromise was to maintain the balance between the slave and non-slave states in Congress.

As the Founding Fathers died out and succeeding generations came to power, the United States strayed farther and farther from the course of ultimately extinguishing

⁷² "Events Leading to War - A Civil War Timeline," *The Civil War Home Page*, <http://www.civil-war.net/pages/timeline.asp>.

⁷³ Doris Kearns Goodwin. *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon and Schuster, 2005), 110. Although slavery was prohibited in that territory, Indiana passed an indentured black servant law to allow the basic practice to continue. Illinois soon broke away as a separate state, not as much out of moral opposition to slavery, but in racist opposition to increasing black populations. Nevertheless, the dispute over slavery in the Midwest was a solid example of how precarious the Constitutional limits on slavery really were. This is also discussed in William Freehling, "The Founding Fathers and Slavery," *The American Historical Review* 77, No. 1 (Feb. 1972): 87-88.

⁷⁴ "US Law Abolishing Transatlantic Slave Trade Takes Effect," OUPblog, Oxford University Press, <http://blog.oup.com/2012/01/slave-trade/>.

⁷⁵ J. William Harris. "The Demise of Slavery," *Freedom's Story*, TeacherServe©, National Humanities Center. <http://nationalhumanitiescenter.org/tserve/freedom/1609-1865/essays/demslave.htm>.

⁷⁶ Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon and Schuster, 2005), 110.

slavery. Congress passed the Compromise of 1850 to alleviate sectional disputes over slavery. In the Compromise, the United States admitted California as free, the Fugitive Slave Act became more stringent, and the then-territories of Utah and New Mexico received the right to vote through popular sovereignty to become slave or free states.⁷⁷ The debate escalated in 1854, when Congress passed the Kansas Nebraska Act. The Act basically repealed the Missouri Compromise by allowing the people in the territories of Kansas and Nebraska to choose whether their territories would be admitted as slave states or free states.⁷⁸ The rush to claim the territories as either slave or free led to fighting and skirmishes in those areas. The political proponents of the Act, led by Stephen Douglas, claimed that the Act allowed popular sovereignty and, thus, democracy to rule where the Constitution was silent. Many Americans found the Act problematic because it went against the prior federal legislation that had banned slavery in those territories. The *Dred Scott* decision in 1857 further fueled the issue by declaring that the Missouri Compromise had no effect on the matter, since the Constitution gave Congress no authority to set laws in the states, and the United States acquired Missouri after the ratification of the Constitution.⁷⁹

At this point, most American politicians were not sure how to settle the slavery problem, particularly, how to balance the slaveholders' property interests against the quickly-fading intention of the Framers, which had been to gradually contain and eliminate slavery. Many were afraid to alienate their constituents by taking a side and, therefore, hid behind the premise of popular sovereignty. The question divided political

⁷⁷ Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon and Schuster, 2005), 110.

⁷⁸ *Ibid.*, 160.

⁷⁹ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

parties, as the Whigs dissolved and the Republicans emerged, and the Democrats divided into northern and southern camps. Abolitionists heralded the southern slave owners as racist hypocrites, while the slave owners criticized the abolitionists, who had moral convictions but no practical plan for execution, as radical idealists.

Amidst the growing dissension, Abraham Lincoln's personal moral viewpoint was gradually realized in the platform of the Republican Party, and he received its nomination to run for president. Prior to the nomination, Lincoln had made no secret of his feelings on slavery. In his first debate with Douglas, he stated,

This declared indifference, but, as I must think, covert real zeal for the spread of slavery, I cannot but hate. I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world— enables the enemies of free institutions, with plausibility, to taunt us as hypocrites— causes the real friends of freedom to doubt our sincerity, and especially because it forces so many really good men amongst ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence, and insisting that there is no right principle of action but self-interest.⁸⁰

Despite Lincoln's personal feelings, there had been no clear course of action prescribed for solving the dilemma of slavery. During his campaign for Senate prior to being nominated for the presidency, he remarked on his uncertainty as to how the situation should be handled. At first, he skirted the issue by stating, "We have a means provided for the expression of our belief in regard to Slavery— it is through the ballot box— the peaceful method provided by the Constitution."⁸¹ He admitted that he first thought it would be reasonable to collect all of the African slaves in an area then ship

⁸⁰ Abraham Lincoln, "First Debate with Stephen A. Douglas at Ottawa, Illinois, August 21, 1858," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 3:2. Available electronically at *The Abraham Lincoln Association*.

⁸¹ Abraham Lincoln, "Speech at Elwood, Kansas, November 30, 1859," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 3:496. Available electronically at *The Abraham Lincoln Association*.

them to a separate colony, although that would be prohibitively expensive and would likely be fatal to all deported slaves.⁸² At that time, he flatly refused the possibility of liberating the slaves and making them socially and politically equal to white men, and recognized the impracticality of liberating them and leaving them socially and politically unequal. Although many people of diverse political orientations discussed the idea of colonization, the financial and moral support never came together to enable such a massive and expensive project.

Lincoln's initial recommendation seems to corroborate the sentiments of the Founding Fathers. In his *Notes on the State of Virginia*, Thomas Jefferson provides the same plan; although he recognizes certain positive qualities about the black race, the white man's prejudice and the black man's memory of his former bondage would prohibit the two races from living in harmony after abolition, and a separate colony for freed slaves would be the best solution.⁸³ In private correspondence, James Madison expressed the same ideas.⁸⁴

In sum, Lincoln's resolve that slavery should end adequately reflected that of many of the Founding Fathers. His inclination that the two races would struggle to live in peace after abolition was also supported by several of the Founding Fathers. A practical solution for what could be done about slavery, however, was neither obvious to Lincoln nor provided by the Founding Fathers.

⁸² Abraham Lincoln, "First Debate with Stephen A. Douglas at Ottawa, Illinois, August 21, 1858," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 3:2. Available electronically at *The Abraham Lincoln Association*.

⁸³ Thomas Jefferson, "Notes on the State of Virginia, Queries 14 and 18, 137-43, 162-63, 1784," in *The Founders' Constitution* vol. 1, Ch. 10, Doc. 9 (Chicago: University of Chicago Press 1987), available at <http://press-pubs.uchicago.edu/founders/documents/v1ch10s9.html>.

⁸⁴ James Madison, "James Madison to Robert J. Evans, June 15, 1819," *The Founders' Constitution* vol. 1, Chap. 15, Doc. 65, (Chicago: University of Chicago Press, 1987). Available at <http://press-pubs.uchicago.edu/founders/documents/v1ch15s65.html>.

The question of whether Lincoln aligned with the Founders over the question of slavery is further complicated by the fact that the question of slavery, in the political realm, did not simply include the question of whether a man should be able to hold another man as property. Both the North and the South believed the Constitution supported their cause. In fact, it has been held by many historians that the question of slavery was as much, if not more so, about the issue of states' rights than the rights of the enslaved people.⁸⁵

Under a revisionist's viewpoint, the political arguments over the issue of slavery during the Civil War suggest that, to the southern states, the slavery issue was essentially about states' rights. Should the federal government be allowed to encroach on the rights of individuals and states, in the absence of a constitutional right to do so? The southern states viewed the problem of slavery as a problem of protecting the republican values of limiting the central government and protecting the citizens.⁸⁶ The North, under this same argument, was concerned about the South having an unfair advantage economically and, when employing the three-fifths clause, politically.

James Oakes has explored this traditional interpretation of the slavery dispute and has rejected it, stating that the early attempts by the Republican Party to limit slavery clearly indicate that the war was actually about slavery itself.⁸⁷ He rejects the idea that the political bargaining over congressional balance and states' rights took precedent over the issue of slavery. The gradual efforts towards emancipation through the first and second

⁸⁵ James Oakes, "The War of Northern Aggression," *Jacobin, a Magazine of Culture and Polemic* 7/8 (Summer 2012) Available at <http://jacobinmag.com/2012/08/the-war-of-northern-aggression/>.

⁸⁶ Even if defending the republican concepts of limited government and preservation of individual property rights, the South did not embody or proclaim to defend all republican ideals explicitly.

⁸⁷ Oakes, "The War of Northern Aggression," *Jacobin, a Magazine of Culture and Polemic* 7/8 (Summer 2012) Available at <http://jacobinmag.com/2012/08/the-war-of-northern-aggression/>.

Confiscation Acts, and later the Emancipation Proclamation, are evidence of what the war was actually about, according to Oakes. The statements in South Carolina's "Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union" support his claim. In that declaration, delegates at South Carolina's secession convention state that causes of secession included "an increasing hostility on the part of the non-slaveholding States to the institution of slavery," and also the failure of states in the north to "fulfill their constitutional rights" of returning fugitive slaves.⁸⁸ In Lincoln's second inaugural address, he even recognizes the cause by stating, "One eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was, somehow, the cause of the war."⁸⁹

However, the traditional revisionist view of the Civil War and Oakes's own ideas do not exclude one another. The argument over slavery can be justifiably identified as containing several issues. While the South clearly had an economic interest in preserving the practice of slavery, the arguments made by Southern congressmen indicate that the attack on slavery was, in the eyes of the South, an attack by the federal government on the rights of the states and, thus, an attack on the republican form of government to which the states had consented. The North, while definitely interested in dismantling the power

⁸⁸ James P. Loewen, "Five Myths About Why the South Seceded," *The Washington Post Opinions*, February 25, 2011. Accessed March 4, 2013, http://www.washingtonpost.com/outlook/five-myths-about-why-the-south-seceded/2011/01/03/ABHr6jD_story.html, citing the Confederate States of America, "Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union," (April 26, 1852), which is available at http://avalon.law.yale.edu/19th_century/csa_scarsec.asp.

⁸⁹ Abraham Lincoln, "Second Inaugural Address, March 4, 1865," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 8:333. Available electronically at *The Abraham Lincoln Association*.

of the slave states, sought to eliminate slavery by arguing that the sentiments in the Declaration of Independence, the principles of universal freedom and political equality, should prevail. Neither the North nor the South could decide how to handle the issue of the slave owners' property rights. The issue of slavery, then, was not only the moral argument concerning human rights, but was also the embodiment of the long-standing struggle between the ideologies that had animated the founding of the United States. The plethoric burden that fell on Abraham Lincoln included not only the decision of whether or not to abolish slavery, but it also included the question of how to balance the political philosophies that stimulated the Revolution in the areas in which the Founders had been unable to reach a compromise.

Immediately after Lincoln's election, the slavery dispute erupted into Civil War. The decision that all other American statesmen before him had cautiously avoided confronted the new president. Drawing his duty to preserve and defend the Union from the oath of office, his authority to issue an order as Commander in Chief from Article II, Section 2 of the Constitution, and his political standard from the Declaration of Independence, Lincoln issued the Emancipation Proclamation on January 1, 1863.

Lincoln issued the Proclamation as a military order, declaring that all of the slaves in areas in rebellion at the time of the Proclamation would be freed as the Union army took control of the area.⁹⁰ This shifted the Confederate slaves to the status of free Union citizens, which was a significant military strategy. However, slaves in the Union, in previously conquered areas, and in non-rebellious areas remained unaffected by the

⁹⁰ Avalon Project at Yale Law School. "The Emancipation Proclamation: January 1, 1863," Lillian Goldman Law Library. http://avalon.law.yale.edu/19th_century/emancipa.asp (accessed December 15, 2012).

Proclamation. Lincoln intended to avoid provoking the border states with the Proclamation. Therefore, slavery remained legal in the Union.

Because the Emancipation Proclamation did not abolish slavery in the Union, and because Lincoln feared his authority to issue it may be questioned in the future, he forcefully advocated for the passage of a constitutional amendment outlawing slavery before the South surrendered. Lincoln's duty, in his own estimation and in the oath he held so closely, included the preservation and defense of the Constitution. Knowing the Civil War needed to end, but also recognizing that the very issue causing the war would still exist even if the United States restored the South to the Union, Lincoln advocated for the passage of an amendment to outlaw slavery before accepting any terms of peace with the South.⁹¹

Prior to this time, in 1861, Lincoln had voiced his support for the proposed Corwin Amendment, which was designed to prevent the border states from seceding by prohibiting any amendments that would limit or abolish the state institutions of slavery.⁹² His support for the amendment evidences Lincoln's primary obligation to preserving the Union, even against his own moral opinion. If he could have saved the Union without abolishing slavery, he would have. However, the Corwin Amendment never passed and it was apparent by 1865 that the Union could no longer exist with slavery. Lincoln

⁹¹ There is occasional criticism of Lincoln regarding the passage of the Thirteenth Amendment in this manner. On the one hand, Lincoln argued that the Confederacy could not secede because there was no Constitutional right to secession. However, he promoted the passage of the Thirteenth Amendment through Congress prior to reconciling the Southern states with the rest of the Union, thereby preventing their votes to count in the Congressional debates. The defense to this criticism is that Congress supported the Amendment with the constitutionally required 2/3 supermajority of the voting members present (a quorum was established), and the Confederate states did eventually ratify the Amendment in sufficient numbers to satisfy the Constitutional requirement that 3/4 of all states ratify an amendment for its adoption.

⁹² William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008).

championed the passage of the Thirteenth Amendment, abolishing slavery from the United States, in 1865.

The problem of slavery which the Founders had been unable to settle was finally resolved. The inalienable right to liberty, as identified in the Declaration, at last became reconciled to the Constitution. Over the next few years, the passage of the Fourteenth and Fifteenth Amendments would attempt to do the same for the right to equality.

In sum, Lincoln repeatedly proclaimed and acted on his reverence for the Declaration of Independence and the Constitution. Where his actions have been considered constitutionally controversial, the Constitution provided or implied authority for his actions, even if it did not expressly grant it. In the areas of executive powers, secession, and slavery, Lincoln aspired to fulfill the principles of the Founding Fathers as he believed them to be. The Declaration, in Lincoln's estimation, proclaimed the ultimate American ideals and the Constitution provided the methods for achieving those ideals. Where the two were not in perfect accord, the Constitution, through the processes provided by its Framers, should be changed and brought into accord with the Declaration.

CHAPTER III

DID LINCOLN OR HIS POLITICAL OPPONENTS MORE ACCURATELY
REFLECT THE POLITICAL IDEALS OF THE FOUNDING FATHERS?

The debate over slavery contained several different sides. Some people argued for the same outcome but on the basis of different rationales. Some had the same moral opinions but different ideas as to how to enforce those ideas. While most people felt their opinion properly reflected the Founders of the American Revolution, they did not all have the same fundamental goal as the Founders. In this aspect, Lincoln shares with the Founders the priority of preserving the Union at all costs.

Who Were Lincoln's Opponents?

The 1860 presidential election featured four major political parties and a few smaller parties. The People's Party and the Liberty Party garnered less than one percent of the popular vote and were not serious contenders in the election. The primary competition existed between the Democratic Party, which split into a northern faction and a southern faction; the Constitutional Union Party; and the Republican Party. While each party's platform contained statements about its positions towards various political topics, the parties' treatment of slavery was essentially the divisive issue.

The 1860 election divided along geographic lines. The North primarily supported the Republicans or the Northern Democrats, while the South focused on the Constitutional Union Party and the Southern Democrats. The fracture between the Northern and Southern Democrats certainly weakened both factions' positions and ultimately opened the doors for a Republican victory.

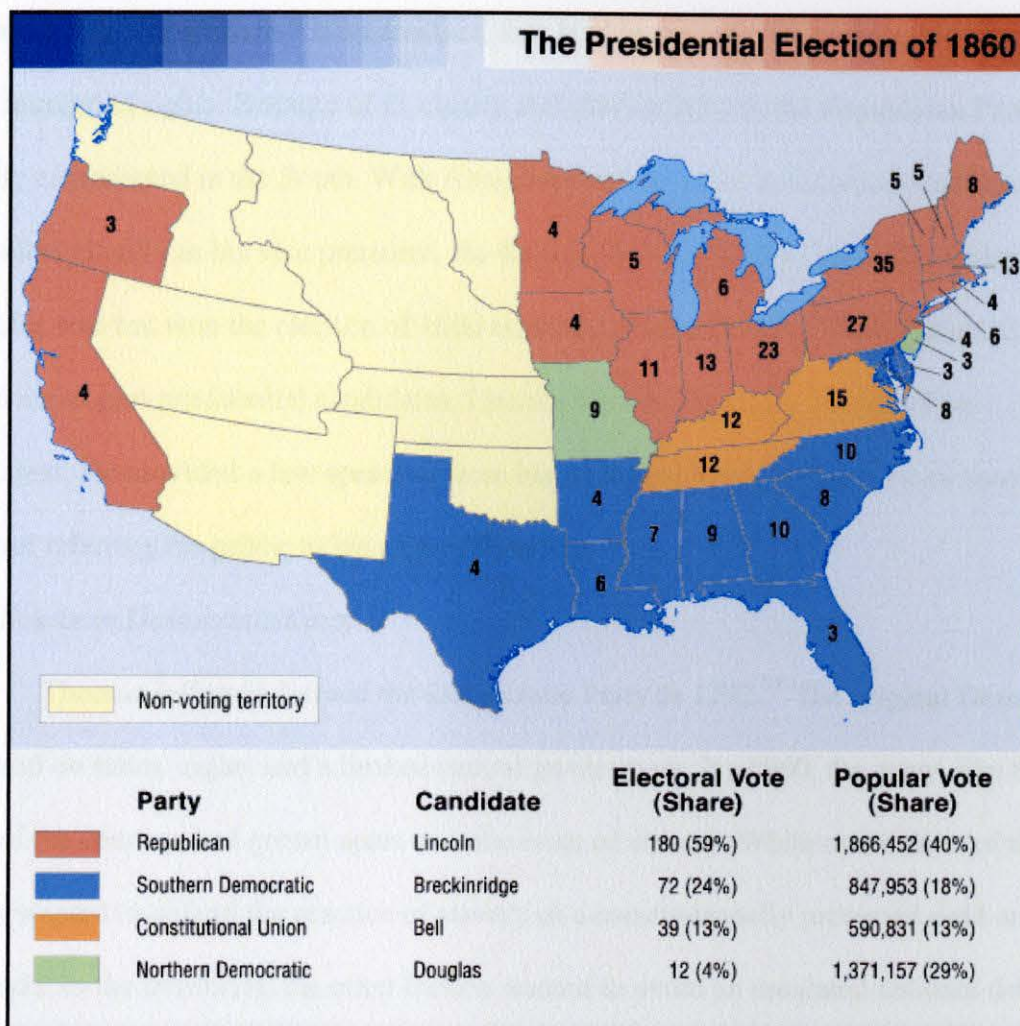


Figure 1: Election Results of 1860 Presidential Election. The Figure breaks down the voter support of each candidate by state, with numerical data listed below.
 Source: "USAH035-H.gif," Maps101.com.

The Republican Party

The Republican Party developed in the 1850s in response to the debate over the Kansas Nebraska Act.⁹³ The party consisted of a mixture of Whigs, members of the former Free Soil Party, and abolitionists. While most of the Republican Party platform revolved around containing slavery, the party platform also focused on building a

⁹³ "The Origins of the Republican Party," ushistory.org, Independence Hall Association, <http://www.ushistory.org/gop/origins.htm>.

railroad, improving internal infrastructure, free land in the west for settlers, high tariffs, and immigrant rights. Because of its clearly anti-slave platform, the Republican Party barely campaigned in the South. With Abraham Lincoln as its presidential candidate and Hannibal Hamlin as his vice president, the Republicans carried less than 40 percent of the popular vote but won the election of 1860 with 180 electoral votes.⁹⁴ In keeping with the tradition of past presidential candidates, Lincoln did not campaign for himself as president. He provided a few speeches from his front porch but offered no new speeches, instead referring the public to his past publications.

The Southern Democratic Party

Thomas Jefferson formed the Democratic Party in 1792.⁹⁵ The original Democrats focused on states' rights and a limited central government. By 1860, the party, like the rest of the country, had grown apart over the issue of slavery. While one faction of the party wanted to defend the practice of slavery as a constitutionally protected right and extend it to the territories, the other faction wanted to avoid an escalated national debate by allowing the territories to decide for themselves whether or not slavery should exist in their borders. The faction supporting slavery broke off and formed the Southern Democrats. They nominated John C. Breckenridge as their presidential candidate.⁹⁶ Although the Southern Democrats had the second highest support in electoral votes with 72, the party earned only 18 percent of the popular vote. William Lowndes Yancey provided many of the campaign speeches for the Southern Democrats.

⁹⁴ *Dave Leip's Atlas of U.S. Presidential Elections*, "1860 Presidential General Election Results," last modified April 28, 2013, <http://uselectionatlas.org/RESULTS/national.php?year=1860>.

⁹⁵ *Encyclopaedia Britannica*, s.v. "Democratic Party," *Encyclopaedia Britannica*, 2013.

⁹⁶ *Dave Leip's Atlas*, *Ibid*.

The Constitutional Union Party

The Constitutional Union Party included a conglomerate of the remnants of the Know Nothing Party and former Whigs who preferred not to take a stand on the issue of slavery. Established in 1860, the party had as its platform nothing more than a pledge to uphold the Constitution as it was written, believing that if the slavery issue was ignored, it would eventually subside.⁹⁷ The party elected John Bell as its presidential candidate. The Constitutional Union Party was one of the two major parties campaigning in the South. With about 13 percent of the popular vote, the only electoral votes the Constitutional Union Party carried were the 39 votes of the border states.⁹⁸

The Northern Democratic Party

The faction of Democrats that supported popular sovereignty as a solution to the slavery problem became the Northern Democrats. They hoped to avoid alienating their constituency by directly taking a side and therefore advocated letting each state vote for itself about whether to allow slavery within its borders or not. The Northern Democrats provided the major competition for the Republican Party in the North, and neither of the two parties campaigned much in the South. Led by Stephen Douglass, the Northern Democrats received about 30 percent of the popular vote but only 12 electoral votes.⁹⁹

What Were the Alternatives to Lincoln's Views?

Amidst the turmoil that pervaded the Union during the 1860s election, many political opinions existed as to how to best handle the issue of slavery. Even among his

⁹⁷ The American Presidency Project, "Constitutional Union Party Platform of 1860," ed. Gerhard Peters and John T. Woolley. Accessed February 12, 2013. Available at <http://www.presidency.ucsb.edu/ws/?pid=29571>.

⁹⁸ *Dave Leip's Atlas of U.S. Presidential Elections*, "1860 Presidential General Election Results," last modified April 28, 2013, <http://uselectionatlas.org/RESULTS/national.php?year=1860>.

⁹⁹ *Ibid.*

own party members, Lincoln's views did not have unanimous support. While a comparison of the Founding Fathers and Abraham Lincoln suggests that Lincoln lived up to the intentions the Founders had for the United States, such a limited comparison does not indicate whether Lincoln's actions resembled the Founders' opinions more closely than other opinions of the time. Assuming Lincoln's actions were within the range of what the Founders might have deemed an acceptable course for the United States, did his actions more accurately reflect the Founders than the alternative courses suggested at that time?

Free Soilers

Not every abolitionist wanted to end slavery for humanitarian reasons. Some advocated ending slavery for reasons that were as equally racist as the slaveholders'. Largely comprised of the remnants of the Free Soil Party of the 1850s, this group of citizens wanted to limit the spread of slavery but only to arrest the spread of the black population into other territories.

Immediate Abolition: Abandon the Constitution

While some abolitionists, like Lincoln, wanted to contain slavery where it existed, cut off additional federal support to it, and thereby choke it gradually out of existence, other abolitionists were not willing to be so patient. Those who favored immediate abolition grew disappointed at the complacency of those favoring gradual abolition, and became more outspoken than their more moderate party members.

William Lloyd Garrison was one of the proponents of immediate abolition. Born to a merchant sailing master, Garrison's family struggled for money when his father

abandoned them during his early childhood.¹⁰⁰ Garrison apprenticed at several jobs, eventually working at a newspaper. As a young man, Garrison joined the abolitionist movement and is best known for founding various anti-slavery societies and for his newspaper, *The Liberator*, an anti-slavery newspaper used to promote abolitionist sentiments, which he published for thirty years.¹⁰¹

Like many of the Founding Fathers, Garrison's initial idea for solving the slavery issue included gradually emancipating the slaves and colonizing the freed slaves. As previously discussed, James Madison and Abraham Lincoln both stated at times that colonization seemed to be the best, if only, course to follow after freeing the slaves. John Randolph and Henry Clay even founded a society to promote the idea and raise funds for it. Although the stated goal of the society was to create a happy and peaceful colony in Africa as a home of freed slaves, the underlying goal of the society actually included shipping the free blacks overseas to further protect the practice of slavery in the United States and reduce the tension between freed blacks and whites. Realizing the racial undertones of the organization, Garrison quickly recanted that opinion, stating that even if a colony in Africa would eventually have a positive result, it would be nothing more than tyranny and racism that led to its founding, and he could not support it.¹⁰²

After Garrison abandoned the idea of colonization, he advocated total and immediate emancipation of slaves and abolition of the practice. Many problems with immediate emancipation existed. According to the Census, the United States was home

¹⁰⁰ PBS.org, "William Lloyd Garrison," available at <http://www.pbs.org/wgbh/aia/part4/4p1561.html> (accessed March 14, 2013)

¹⁰¹ PBS.org, Ibid.

¹⁰² William Lloyd Garrison, "Exposure of the American Colonization Society," *THOUGHTS ON AFRICAN COLONIZATION: or an Impartial Exhibition of the Doctrines, Principles and Purposes of the American Colonization Society. Together with the Resolutions, Addresses and Remonstrances of the Free People of Color* (Boston, 1852).

to about 4 million slaves, with a total population numbering about 31 million. If emancipated at once, 13 percent of the population would change from slave to free. Should the United States recognize the freed slaves as full citizens, endowed to stand on equal legal footing with other white men? This dilemma seems to have been one of the reasons the Founding Fathers stalled on the issue of emancipation. For example, Jefferson proposed emancipation plans for Virginia, but could not reconcile himself or his political peers to the idea that the freed slaves should or could be fully equal citizens.

Even though free blacks had the right to vote in many states in the 1790s, that right had diminished in most states over the following decades. By the 1860s, even those who hated slavery remained unconvinced that the black men should be given the same legal status as white men. Garrison, however, felt that blacks had the full capacity to be as productive and efficient as white people, and saw no reason why they should not be regarded as full legal citizens. The Founding Fathers had not been so convinced, and the unsettled question of what rights a freed slave should have become one of the primary reasons the slavery issue was tabled for future generations.

Slaveholders felt that their slaves were property, and under the Constitution they should be compensated if their slaves were removed from their ownership by the government. Garrison fervently opposed that notion in his Declaration of the National Anti-Slavery Convention. He stated that slavery, being an infringement on natural law, should not be compensated, and that the slaveholders have no true right to property in another man. Further, he suggested that the slave is not being destroyed, but improved, by

emancipation, because his value as a free laborer would be greater than that of a man in bondage.¹⁰³

The idea of a compensated emancipation existed even at the founding of the United States. In 1790, when Franklin's Pennsylvania Abolition Society petitioned Congress to go to the verge to extinguish slavery, Eldridge Gerry of Massachusetts stated that Congress need only offer to purchase the slaves from the slaveholding states with money raised from selling lands in the West.¹⁰⁴ The idea emerged in Congress and elsewhere repeatedly throughout the nineteenth century, even by Jefferson and Madison, although it never materialized into an actuality. Its failure to become reality is due in part to the fact that Southerners did not want to part with their property and also because the prohibitive expense the project would incur.

These issues seem to have been the same reasons why the Founding Fathers did not promote immediate abolition when they established the United States government. While many of the Founding Fathers could agree with the abolitionists that slavery was wrong, few would agree that the blacks should be treated as equal citizens if emancipated. Fewer still were willing to undertake the inevitable upheaval of taking the slaves from the slaveholders. The abolitionists wanted nothing less. In fact, where the Founding Fathers fought to create a union of states, many abolitionists supported secession of slave holding states as a way to rid the remaining union of slavery. In sum,

¹⁰³ William Lloyd Garrison, "Declaration of the National Anti-Slavery Convention," December 14, 1833, available at <http://teachingamericanhistory.org/library/document/declaration-of-the-national-anti-slavery-convention/>.

¹⁰⁴ Betty L. Fladeland, "Compensated Emancipation; A Rejected Alternative," *The Journal of Southern History* 42, no. 2 (May 1976): 171.

although the abolitionists and Founding Fathers had some opinions in common, their ultimate goals were not common, and to some extent were even contrary to each other.

The abolitionists, like Lincoln, believed that the rights proclaimed in the Declaration of Independence should be extended to all men. However, not all abolitionists agreed with Lincoln that the Constitution could be used to enforce the statements of the Declaration. Some abolitionists believed that the Constitution, in form, extended those rights to all men, but in practice fell short of actually protecting those rights. Others believed that the Constitution itself was not designed to extend those rights to all men and therefore was insufficient to govern all free people.

Garrison was among the abolitionists who disfavored the Constitution. In fact, he approved of secession as a means to destroy the Constitution and the pro-slavery government he believed it promoted. He repeatedly uttered the lines from the Declaration of Independence as the justification for his anti-slavery position. He distrusted politics as the cure for the slavery problem, and believed instead that changing the morality of men was the most likely solution to the problem. His fervency, while endearing to those who were like-minded, often created a wedge between him and others with even a slight difference of opinion. His belief that the Constitution was a pro-slavery document that could not help the abolitionists' cause set him in a life-long opposition to Frederick Douglass, another staunch abolitionist, who stated that the Constitution could be used for the purpose of emancipation.¹⁰⁵

¹⁰⁵ PBS.org, Ibid.

Immediate Abolition: Preserve the Constitution

Douglass, like some abolitionists, believed it was more possible to abolish slavery inside the Union than outside it. He believed that the Constitution was designed to eventually eliminate slavery and the flexibility of the Constitution allowed the United States to outlaw slavery under it, as had already been done in eighteen states at the time of the election.¹⁰⁶ He also believed that secession would preserve slavery in the seceding states, and he strongly opposed that outcome. Douglass, like Lincoln, hoped to use the Constitution to achieve the ends of the Declaration of Independence. However, their priorities differed: where Douglass wanted to preserve the Union for the purpose of ending slavery, Lincoln sought to end slavery for the purpose of saving the Union. This manifested itself in the fact that Douglass advocated for immediate abolition, and was often frustrated at Lincoln's willingness to approach the situation gradually.

The Founding Fathers condoned slavery in order to establish the United States. Abraham Lincoln chose to abolish slavery in order to save it. Some abolitionists considered preserving the Union so long as it would end slavery. The most radical abolitionists, however, advocated destroying the United States in order to achieve abolition. They had no tolerance for the Constitution of the Founding Fathers and no patience for Lincoln's restrained approach to abolish slavery. Their singular goal was emancipation, and they, unlike Lincoln or the Founding Fathers, would sacrifice the nation to achieve it.

¹⁰⁶ "Abolitionists William Lloyd Garrison and Frederick Douglass," *Smithsonian: National Portrait Gallery*, <http://www.npg.si.edu/edu/brush/guide/unit3/abolut.html>.

Nationalized Slavery or Secession

Most members of the Southern Democrats wanted to end the dispute over slavery by either nationalizing it or seceding to protect it. The party strongly supported secession as a means to protect the practice. The most zealous of its advocates held the reputation of "Fire-eaters" and the outspoken William Lowndes Yancey became one of the most prominent members of that group.

Yancey grew up under the direction of an abusive abolitionist step father.¹⁰⁷ Perhaps because of his negative influence, Yancey moved to the South and advocated for the rights of slaveholders. Initially, Yancey was a unionist, but over the years he evolved into one of the staunchest supporters of both secession and slavery.

Yancey argued that the issue of states' rights comprised a fundamental element of the debate about slavery. He accused the North of aggressing against the South's way of life for economic and political purposes.

We are in a position to ask you to yield. What right of yours, gentlemen of the North, have we of the South ever invaded? What institution of yours have we ever assailed, directly or indirectly? What laws have we ever passed that have invaded, or induced others to invade, the sanctity of your homes, or to put your lives in jeopardy, or that were likely to destroy the fundamental institutions of your States? The wisest, the most learned and the best among you remain silent, because you cannot say that we have done this thing.¹⁰⁸

He continued his argument for slavery by declaring that the Framers designed the Constitution to protect the minorities, and the South depicted precisely the type of minority they sought to protect. If the North attempted to impede the practice of slavery,

¹⁰⁷ J. Mills Thornton. "Yancey, William Lowndes," *American National Biography Online*, (Feb. 2000), <http://www.anb.org/articles/04/04-01080.html>.

¹⁰⁸ William Lowndes Yancey, "His Speech of Protest in the Charleston Convention; 1860," *The World's Famous Orations: America, II, (1818-1865)*, (Funk and Wagnalls, 1906), available at www.bartleby.com/268/.

it would violate its compact with the other states. He included in his argument the claim that the Framers of the Constitution held the protection of private property as a paramount concern.

The belief that the Framers designed the Constitution to protect private property is not unfounded. From the earliest political traditions of the American Revolution forward, the preservation of private property has been a fundamental responsibility of government. The Southern Democrats diverge on this issue in their belief that the states retained sufficient autonomy after ratifying the Constitution to justify secession whenever they felt the government violated those property rights.¹⁰⁹ They believed that when the states ratified the Constitution, they only delegated certain rights to the federal government, and reserved all other rights, including their sovereignty. Those who opposed secession, relying on the ratification debates, proclaimed that states had no right to secede. They believed the states relinquished their autonomy when they ratified the Constitution and joined the Union, and therefore had no sovereign rights to preserve by backing out of the Constitution. By attempting to secede, the states were not protecting their rights, but were actually rebelling.

While it is true that the Framers created many constitutional protections for private property and state's rights, Yancey overlooked the fact that the Framers seemed to oppose slavery in most other aspects in the Constitution. They set an expiration to the slave trade. The only national document addressing slavery between the Declaration of Independence and the Constitution was the Northwest Ordinance of 1787, which

¹⁰⁹ The constitutional theory behind this is laid out briefly and concisely by Jefferson Davis in "Resolutions on the Relations of States: February 2, 1860," *The Papers of Jefferson Davis*, vol 6, available at <http://jeffersondavis.rice.edu/Content.aspx?id=81>.

prohibited slavery in the territories of the Northwest.¹¹⁰ The Southern Democrats selectively adopted some of the Framers' ideals, such as the liberal philosophy of protecting private property and the republican ideal of limited central government, but shunned the larger framework into which the Framers placed those ideals. Like Garrison, Yancey held some opinions in common with the Founding Fathers, but ultimately diverged from their fundamental aspirations.

Yancey also believed he had a constitutionally superior argument over the position of other Democrats, creating the rift in that party that led them to form a Northern Democrat and Southern Democrat party for the 1860 election. He fiercely advocated against popular sovereignty because he believed it would allow people to prohibit slavery in a territory. He boasted in the authority of Supreme Court and celebrated Chief Justice Taney's opinion from *Dred Scott*, in which the Supreme Court declared that a slave taken into a free territory would remain a slave. He also emphasized the fact that Congress had no authority to declare a territory as free or slave after the Constitution was ratified. Yancey accused Douglas and the Northern Democrats of trying to subvert the Supreme Court's authority through the doctrine of popular sovereignty.¹¹¹ The Southern Democrats preferred to allow slavery in the territories until the territory applies for statehood, where the Northern Democrats believed a territory should be allowed to vote slavery out of its boundaries prior to applying for statehood. At that time, the territory could petition to be admitted as either a free state or a slave state, and should be received as such. Yancey's refusal to compromise within his own party opened the

¹¹⁰ Keith L. Dougherty and Jac C. Heckelman, "Voting on Slavery at the Constitutional Convention," *Public Choice* 136, no. 3/4 (Sept. 2008): 295.

¹¹¹ Yancey, "His Speech of Protest," *Ibid.*

divide within it that literally enabled their mutual rival, the Republicans, to take the election.

Ignore the Issue

Despite the chaos caused by the issue of slavery in the United States, some people did not take a position on the issue. Most of them joined in the Constitutional Union Party, which had the slightest showing in the Electoral College in the 1860 election of any major party. Although it had some popular support in most states, especially in the South, it carried only three Border States in the Electoral College. The conservative party platform sought to rally the bickering nation into unity by promoting the Constitution and celebrating the bonds that the states had in common. Basically, it was hoped by the party members that if the slavery debate was ignored, the disagreement would abate and the crisis would subside.

The Constitutional Union Party nominated John Bell to run as President. Neither he nor his vice president campaigned to any significant degree, hoping instead to draw support from the moderate factions of other parties by default. The party opposed the Southern Democrats because it did not believe secession was necessary. The Constitutional Unionists believed the Constitution provided ample protection for slavery. The party likewise rejected the popular sovereignty of the Northern Democrats because it had little effect towards settling any controversies in the areas where the government had allowed it to function. The Constitutional Unionists considered the abolitionists to be extremists and did not approve of their doctrine either. Despite opposing all other parties' positions, the Constitutional Unionists provided no remedy of their own.

Although the Constitutional Union Party behaved as similarly to the Founding Fathers as any of the parties of the 1860s did, their platform did not reflect the intended goal the Founding Fathers had in mind for the United States. The Founding Fathers compromised on the issue of slavery to the ends of establishing a government, then set the issue aside. Similarly, the Constitutional Unionists hoped to ignore the issue and preserve the country. However, the Founding Fathers did not intend to ignore the issue forever; they simply intended to delay the decision until it was necessary to settle the issue. They prohibited slavery in the Northwest Territory, demonstrating that they intended to contain the practice. They further limited the slave trade by establishing its expiration at a point in time beyond ratification of the Constitution. As has been described above, most of the Framers stated privately and publically that they hoped for the eventual end of slavery.

By refusing to address the issue when it became ripe for decision, the Unionists may have carried on the tradition of action set in motion by the Founding Fathers, but they fell short of the Founding Fathers' intentions for the nation. Left to John Bell and the Constitutional Unionists, the United States would have inevitably split because the party provided no solution to the divisions that were growing increasingly deeper between the states. To the extent that the party would have allowed the demise of the United States, the Constitutional Unionists opposed the Founding Fathers' ideals as much as any other position yet discussed.

Allow the Territories to Decide Their Own Status through Popular Sovereignty

For the Americans who had no direct interest in owning slaves or in freeing them, but who hoped to end the dispute over the issue, the best available solution was popular

sovereignty. Popular sovereignty removed the decision from the hands of the legislature and placed it in the hands of the people it affected most, the people living in the territories. The leading proponent of popular sovereignty was Stephen Douglas.

Stephen Douglas was a lawyer who entered politics early in his life. Although he lived in the free state of Illinois and was growing in political clout there, he inherited as a dowry a plantation and slaves in Lawrence County, Mississippi.¹¹² Douglas continued to receive income from the plantation throughout his life, but hired a property manager to handle the affairs of the plantation so that he rarely visited it.

During his career as senator, Douglas promoted railroad construction in hopes that it would lead to balancing regional economies and easing sectional tensions. To gain support for his railroad, Douglas had to maintain favor with both the slave states and the free states. To avoid alienating either faction, Douglas promoted the notion of popular sovereignty. The premise of popular sovereignty held that the people in the territories should be allowed to vote on the issues affecting them, particularly slavery, without interference by Congress. It seemed to contain the solution of moderation; by allowing local people to choose their status, the federal government did not have to take a stand on the issue and would not alienate any of its citizens. Douglas, like Lincoln, wanted to preserve the Union at all costs. He viewed secession as criminal and he also believed popular sovereignty would allow the dispute over slavery to abate so that the Union would remain intact. However, instead of appeasing both sides of the slavery debate, popular sovereignty actually alienated both sides. The slave-holding states expressed

¹¹² Guide to the Stephen A. Douglas Papers: 1764-1908, *Special Collections Research Center*, University of Chicago Library, <http://www.lib.uchicago.edu/e/scrc/findingaids/view.php?eadid=ICU.SPCL.DOUGLASSA>.

disappointment that the federal government was not protecting slavery in the territories, and the non-slave states felt angry that popular sovereignty would allow slavery into the territories where Congress had previously prohibited it.

Douglas seemed genuinely interested in popular sovereignty because it promoted self-government. He claimed that democracy was his agenda, and whether the people voted for slavery or against it did not matter to him. When other politicians tried to pass a constitution that would allow slavery in the Kansas Territory, Douglas, a slave owner, did not support it because he believed it was not the will of the people. He was affirmed when the voters in the territory rejected the Lecompton Constitution.

Douglas's views on popular sovereignty reflect his conviction that the Founders specifically reserved certain rights to the states when they drafted the Constitution. He believed slavery was a moral issue that fell into the category of reserved rights, and that the citizens of a state or territory, not the federal government, should be allowed to determine whether or not to allow it in their state or territory.

Now, I hold that Illinois had a right to abolish and prohibit slavery as she did, and I hold that Kentucky has the same right to continue and protect slavery that Illinois had to abolish it. I hold that New York had as much right to abolish slavery as Virginia has to continue it, and that each and every State of this Union is a sovereign power, with the right to do as it pleases upon this question of slavery, and upon all its domestic institutions.¹¹³

In his debates with Lincoln, Douglas charged Lincoln with trying to push his moral views on others by prohibiting the spread of slavery. Lincoln, of course, claimed to be protecting the design of the Constitution and subsequent legislation by limiting slavery

¹¹³ Abraham Lincoln and Stephen Douglas, "Speech at Ottawa: August 21, 1858" *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953), 1. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu/l/lincoln/>

to the states where it existed at ratification and limiting its spread according to the Northwest Ordinance and Missouri Compromise.

Douglas believed popular sovereignty contained a constitutionally sound doctrine in line with the ideals of the Founding Fathers. To an extent, it reflected those principles that inspired the American Revolution such as limited federal government and self-government. The Founding Fathers such as Jefferson staunchly advocated involving every white man in government and encouraged the exercise of government on the most local levels possible to encourage participation. However, the Framers carefully drafted many checks and balances in the Constitution to offset the potential harms of enabling the masses to have a voice. The Founders wanted citizens to have a voice in government, but they did not want the government to be susceptible to every whim of the people. Popular sovereignty encouraged people to use local laws to incapacitate federal laws if they found them unsatisfactory.

Furthermore, popular sovereignty, as proposed to address the issue of slavery in the territories, would have effectively challenged the prior decisions of the Founders. Although *Dred Scott* interpreted the Constitution as prohibiting Congress from making laws in the territories after ratification of the Constitution, many of the men who drafted the Constitution were active in Congress when the Northwest Ordinance and other legislation affecting the territories was passed. It is unlikely that the Founding Fathers would have supported a doctrine such as popular sovereignty that basically incapacitated the legislation they drafted and passed.

The movement for popular sovereignty suffered a setback when the Supreme Court issued its opinion in *Dred Scott*. It basically stated that neither Congress nor the

territorial legislatures had authority to prohibit slavery in a territory. Without overtly criticizing the decision, Douglas continued to promote popular sovereignty as he campaigned for president by encouraging people who wanted to prohibit slavery to pass legislation “unfriendly” to it.¹¹⁴ This suggestion later became known as his “Freeport Doctrine.”

Aside from the Constitutional aspects of popular sovereignty, Douglas did not believe that the rights contained in the Declaration of Independence extended to the black population. In his debate at Galesburg, Douglas proclaimed that the Declaration was not written to be applied to black men.

I tell you that this Chicago doctrine of Lincoln’s—declaring that the negro and the white man are made equal by the Declaration of Independence and by Divine Providence—is a monstrous heresy. The signers of the Declaration of Independence never dreamed of the negro when they were writing that document. They referred to white men, to men of European birth and European descent, when they declared the equality of all men.... When that Declaration was put forth every one of the thirteen colonies were slaveholding colonies, and every man who signed that instrument represented a slaveholding constituency. Recollect, also, that no one of them emancipated his slaves, much less put them on an equality with himself, after he signed the Declaration. On the contrary, they all continued to hold their negroes as slaves during the revolutionary war.... When you say that the Declaration of Independence includes the negro, you charge the signers of it with hypocrisy. I say to you, frankly, that in my opinion this government was made by our fathers on the white basis. It was made by white men for the benefit of white men and their posterity forever, and was intended to be administered by white men in all time to come....¹¹⁵

¹¹⁴ Abraham Lincoln and Stephen Douglas, “Second Debate with Stephen A. Douglas at Freeport, Illinois: August 27, 1858” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953), 3. Available electronically at The Abraham Lincoln Association, <http://quod.lib.umich.edu//lincoln/>.

¹¹⁵ Abraham Lincoln, “Debate at Galesburg, October 7, 1858,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953), 3: 216, 220. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu//lincoln/>.

When stating his support of the Dred Scott decision, Douglas said also that if the Founding Fathers had intended to declare blacks equal to whites, they would have abolished slavery in order to conform to the Declaration of Independence. He stated no sympathy for the delicate political condition under which the Constitution was drafted.

Lincoln vehemently disagreed with Douglas. In the same debate, Lincoln countered Douglas, "I believe the entire records of the world, from the date of the Declaration of Independence up to within three years ago, may be searched in vain for one single affirmation, from one single man, that the negro was not included in the Declaration of Independence..."¹¹⁶ In support of Lincoln's position, it must be noted that the Declaration suffered many drafts and revisions. If the surviving text reads that "all men are created equal," when there was ample opportunity for it to be refined to, "all white men are created equal," it must be deduced that the drafter, revisers, and signors of the Declaration must have meant that "all men," without exclusion of any racial category, "are created equal."¹¹⁷

Douglas and the Northern Democrats, like the Southern Democrats, revered the principles from the American founding that promoted a limited federal government and local autonomy, or self-government. The two parties correctly identified those as fundamental tenets of the Constitution. In fact, the inclination towards exercising power locally without increasing the federal power beyond the limited arenas in which the Constitution authorizes it to act arguably represented the ideals of the American Revolution more clearly than the actions taken by Lincoln, which effectively

¹¹⁶ Abraham Lincoln, "Debate at Galesburg, October 7, 1858," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953), 3: 216, 220. Available electronically at *The Abraham Lincoln Association*, <http://quod.lib.umich.edu/l/lincoln/>.

¹¹⁷ Declaration of Independence (1776).

strengthened the federal government that the Founders so clearly tried to limit. However, the solution of popular sovereignty presented problems in application and would have led to discord between local laws and federal laws. It would have ultimately offended the Supremacy Clause of the Constitution. It would not have alleviated the tension between the slave states and free states, nor would it have removed the sting of *Dred Scott* from the territories that wished to prevent slavery within their boundaries. As Lincoln saw it, the biggest problem with popular sovereignty was that it allowed territories to permit slavery where the Framers had carefully limited it from existing.

One Possible Solution to Solve the Crisis and Preserve the Union

Compared to the alternative party platforms, Lincoln's views most closely align to the Founding Fathers' and the ideals that animated the American Revolution. While each party had certain opinions that derived from the Founding generation, the probable outcome for the United States under each alternative would have been contrary to the ultimate goal of the Founding Fathers.

The idea of colonizing the freed slaves came with a huge price tag and overwhelming impracticality. Even though the Founding Fathers expressed interest in that plan, it was not a realistic solution. The other method of handling the slavery problem expressed by the Founding Fathers was to ignore the problem. That too was an impractical solution to the problem by 1860, because the tension between the slave states and the free states had mounted to such a level that it could not be ignored any longer. The states could not continue as half free, half slave, as the Founders had allowed them to be, because the tension had grown to intense between them and the *Dred Scott* decision would not protect the free states from the rights of the slave holders.

Secession, either by the free states to escape the practice of slavery, or by the slave states to protect the practice, was totally contrary to the fundamental goals of the Founding Fathers. Destroying the Union and the Constitution to preserve self-interest or moral convictions directly opposed the purpose for which the Founders strove, which was the creation of a Union. Nationalizing slavery also contradicted the intentions of the Founders, because it violated the goals expressed in the Declaration of Independence and made a hypocrisy of the United States, which proclaimed to be the pinnacle of freedom and democracy in the world. Additionally, the actions taken by the Founding Fathers and the limitations they expressed through the Northwest Ordinance and the Constitution demonstrate that they opposed the spread of slavery.

The two alternatives to Lincoln's actions closest to the Founding Fathers' were immediate abolition or allowing popular sovereignty to determine the issue in the territories. Popular sovereignty reflected the self-government that was so valued by the Founding Fathers, but it did not function as a solution to the slavery issue. The tension between slave states and free states still existed when popular sovereignty was practiced in the territories. Slaveholders could still travel with their slaves into free territories and require the slaves to be recognized as property, offending the efforts of the anti-slave residents. Furthermore, it only allowed anti-slave populations to limit slavery by passing local laws to suppress the practice that was protected by federal cases and laws.

The problem with immediate abolition was that it would have firmly divided the nation at a time when it was precariously and delicately united. Prior to the Thirteenth Amendment, abolition would have violated a constitutionally protected right and would have deprived the slaveholders of their constitutionally protected property. It also would

have resolved the problem of slavery only to create the problem of freed blacks who lacked legal equality. Although abolition was the ultimate proper course for the United States, immediate abolition would have created the war that most Americans still hoped to avoid, and likely would have led to legitimate secession, since the violation of constitutional rights was one of the justifiable grounds for revolution Lincoln described.

Without providing direct guidance on how to navigate the problems of slavery and sectional disputes, the Framers declared their aspirations for the United States and their limitations on how those objectives might be reached. Abraham Lincoln read the aspirations in the Declaration of Independence and the limitations in the Constitution and developed a solution to reconcile the two documents more closely than they had been in history and to preserve the government they established.

CHAPTER IV

DO THE RECONSTRUCTION AMENDMENTS EMBODY

LINCOLN'S POLITICAL PHILOSOPHY?

Before attempting the reconciliation of the South with the North, Lincoln strongly promoted the adoption of the Thirteenth Amendment. Prior to passing the amendment, Lincoln made it clear that he believed the Constitution as it was written was sufficient to govern the United States: "Continue to execute all the express provisions of our national constitution, and the Union will endure forever – it being impossible to destroy it, except by some action not provided for in the instrument itself."¹¹⁸ However, the duration and intensity of the Civil War persuaded him that an amendment was necessary to end the fighting and prevent future disputes over the same issue. With the passage of the Thirteenth Amendment, the uncertainties about the constitutional treatment of slavery dissolved: the states amended the Constitution and declared unequivocally that there would no longer be a right to own slaves in the United States. The Thirteenth Amendment finally resolved an issue that had divided the nation since its founding.

Promptly after the Thirteenth Amendment passed, Abraham Lincoln did also. His death did not stall the civil rights momentum, though. The four million slaves emancipated by the amendment remained in legal limbo: they were no longer property of other citizens, but they were not considered equals with them, either. Many of the Founding Fathers hesitated to support the emancipation process because they doubted whether emancipated slaves would be treated equally by the country that had for

¹¹⁸ Herman Belz, "Abraham Lincoln and American Constitutionalism," *The Review of Politics* 50, no. 2 (Spring 1988): 181, citing Abraham Lincoln, "First Inaugural Address, March 4, 1861."

centuries refused to recognize their right to freedom. Congress designed the Fourteenth and Fifteenth Amendments to ensure that they could be.

Passed in 1868, the Fourteenth Amendment guaranteed citizenship to all persons born and naturalized in the United States. Its passage nullified the controversial *Dred Scott* decision. The Fourteenth Amendment prohibits states from making any laws abridging the rights of citizens of the United States and from depriving any person of life, liberty, or property without the due process of law. The Amendment declares that no person shall be denied equal protection of the laws and it further declares that all the people, black or white, shall be counted as a whole person for purposes of congressional representation. It also contains provisions addressing the remaining Civil War issues, such as prohibiting persons formerly involved in rebellion against the United States from holding an office in it without Congressional approval. It also addresses the payment of Civil War debts.

Congress passed the Fifteenth Amendment in 1870 to prohibit anyone from being denied the right to vote on account of race, color, or previous condition of servitude. The Although Lincoln only participated in the passage of the Thirteenth Amendment, its passage directly led to the adoption of the Fourteenth and Fifteenth Amendments, because the legal status of the slaves freed under the Thirteenth Amendment was unclear otherwise. Thirteenth, Fourteenth, and Fifteenth Amendments collectively are known as the Reconstruction Amendments. The United States adopted them for the purpose of securing legal equality and freedom for all people born or naturalized in the United States. Congress is specifically granted the authority to enforce all provisions contained within them.

Why Were the Reconstruction Amendments Necessary?

James Madison is credited with saying, "If men were angels, no government would be necessary."¹¹⁹ The same may be said of the Reconstruction Amendments. If the states had willingly acknowledged the natural rights described in the Declaration of Independence, the Reconstruction Amendments would not have been necessary. However, the states did not willingly extend freedom, equality, and equal protection to all men. In fact, the Civil War demonstrated just how far the states would go to avoid providing those rights. Because the states would not recognize the natural rights on their own, the Reconstruction Amendments protected those rights.

As soon as the Thirteenth Amendment passed, the former slave states developed laws regarding the rights of newly emancipated slaves. Known as Black Codes, these laws granted certain rights to the black population, who, though freed by the Thirteenth Amendment, still lacked full legal citizenship. However, the Black Codes did not provide the same rights to blacks as white people possessed. For example, the Black Codes contained anti-miscegenation laws, which provided blacks with the right to a legal marriage, but restricted them from marrying members of the white race. The codes provided some rights to courts, but limited the blacks from serving as witnesses or on juries against white people. Basically, the former slave states used the codes to insure that, regardless of emancipation, the white race still maintained a position of superiority over the black race.

¹¹⁹ James Madison, "Federalist No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments," *The Independent Journal* (February 6, 1788) <http://www.constitution.org/fed/federa51.htm>.

Congress attempted to rectify those problems by passing the Civil Rights Act of 1866. The Act established citizenship for all persons born in the United States and provided that all persons within the United States would have the same rights regarding contracts, court access, and equal protection of the laws, regardless of their race and the state in which they live.¹²⁰ However, the Act lacked enforcement provisions, leaving Congress no way to implement it. Because it was unclear whether Congress had authority to legislate over civil rights in such a broad way, the Act was soon replaced by the remaining Reconstruction Amendments.

The Fourteenth and Fifteenth Amendments sought to remedy the disparity caused by the Black Codes. Since the Thirteenth Amendment guaranteed liberty to all people, the Fourteenth Amendment provided legal equality and offered protection of life, liberty, and property to all men. The Fifteenth Amendment protected the right to vote, ensuring citizens of the right to self-government and the liberty that stems from that privilege. The purpose of those amendments was to ensure that all citizens of the United States would have the same basic rights regardless of a state's attempts to infringe on them.

The Fourteenth Amendment Alters the Federal Structure

Thurgood Marshall has said that while, "the Union survived the Civil War, the Constitution did not... In its place arose a new, more promising basis for justice and equality, the Fourteenth Amendment."¹²¹ Although it is debatable whether the Fourteenth Amendment fulfilled the promise of justice and equality, Marshall could not have

¹²⁰ Civil Rights Act of 1866, 14 Stat. 27-30 (1866).

¹²¹ Herman Belz, "Abraham Lincoln and American Constitutionalism," *The Review of Politics* 50, no. 2 (Spring 1988): 169, citing the Remarks of Thurgood Marshall at the Annual Seminar of the San Francisco Patent and Trademark Law Association in Maui, Hawaii, 6 May 1987, pp. 7-8. Available at http://www.thurgoodmarshall.com/speeches/constitutional_speech.htm.

overstated the impact of that amendment on the constitutional structure; the Fourteenth Amendment drastically changed the nature of constitutional law. Prior to its passage, the boundary between what was a state issue and what was a federal issue seemed somewhat distinct. Whenever a state or the federal government acted beyond their constitutional rights, the Supreme Court could determine with relative ease that they had exceeded their authority. Since the ratification of the Fourteenth Amendment, the difficulty in differentiating a state issue from a federal issue significantly increased. The formula used by the Supreme Court to determine if the federal government has sufficient authority to intervene in a particular area may be considered both complex and subjective. The predictability in determining whether legislative functions belong to the state or the federal government decreased considerably after the passage of the Fourteenth Amendment. Because of the Fourteenth Amendment, the federal government now has authority in many of the areas in which it previously had no authority under the original Constitution.

While the Thirteenth and the Fifteenth Amendments seem fairly concise and address a narrow range of issues, the Fourteenth Amendment addresses several issues and basically creates many more. Even though on its face it simply protects life, liberty, and property and guarantees due process and equal protection of the laws, the question of what each of those protections and guarantees means has led to a great percentage of modern constitutional law cases. The Supreme Court has interpreted Fourteenth Amendment as a source of authority for the federal government to enforce certain parts of

the Bill of Rights against the states if it has a sufficient interest in doing so.¹²² Therefore, the federal government may have the opportunity to intercede in affairs that were, prior to the passage of the Fourteenth Amendment, reserved to the states but not enforceable against them.

For example, the Fourteenth Amendment prohibits a state from abridging an individual's right to life, liberty, and property. Among other rights, that provision has been construed to include the right to privacy. However, the amendment does not define privacy. Does the protected right to privacy include reproductive decisions? Under that right, can a state limit the types of sexual activity in which a person engages? Does the protection include information privacy, privacy over the home, and abortion? A plethora of cases have been tried regarding the scope of just that one right, and it remains unsettled. Since the amendment does not clearly define what privacy includes, it is therefore unclear how far the federal protection of that unbounded right extends. This is true not only of the right to privacy: the same example may be made of various other rights that are not enumerated, such as the right to travel or the right to autonomy.

The guarantee of equal protection has likewise presented extensive issues, such as what constitutes state action, what racial classifications are justifiable, how taxation and economic regulations should be apportioned, and other issues. The broad terms and the undefined rights protected under the amendment significantly increased the authority of the federal government.

¹²² For a brief explanation of this, see U.S.Courts.gov, "Judicial Interpretation of the Fourteenth Amendment," at <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/JudicialInterpretationFourteenthAmendment.aspx>.

Year Amendment Incorporated	Constitutional Provision	Supreme Court Case
1897 Fifth	Just compensation clause	<i>Chicago, Burlington, Quincy Railroad Co. v. Chicago</i>
1925 First	Freedom of speech	<i>Gitlow v. New York</i>
1931 First	Freedom of the press	<i>Near v. Minnesota</i>
1932 Sixth	Right to counsel (in capital cases)	<i>Powell v. Alabama</i>
1937 First	Freedom of assembly/petition	<i>DeJonge v. Oregon</i>
1940 First	Free exercise clause	<i>Cantwell v. Connecticut</i>
1947 First	Establishment clause	<i>Everson v. Board of Education</i>
1948 Sixth	Right to a public trial	<i>In re Oliver</i>
1949 Fourth	Protection against unreasonable search and seizure	<i>Wolf v. Colorado</i>
1958 First	Freedom of expressive association	<i>NAACP v. Alabama</i>
1961 Fourth	Exclusion of unlawfully seized evidence	<i>Mapp v. Ohio</i>
1962 Eighth	Prohibition on cruel and unusual punishments	<i>Robinson v. California</i>
1963 Sixth	Right to counsel (non-capital felonies)	<i>Gideon v. Wainwright</i>
1964 Fifth	Right against self-incrimination	<i>Malloy v. Hogan</i>
1964 Fourth	Warrant requirements	<i>Aguilar v. Texas</i>
1965 Sixth	Right to confront adverse witnesses	<i>Pointer v. Texas</i>
1966 Sixth	Right to an impartial jury	<i>Parker v. Gladden</i>
1967 Sixth	Right to a speedy trial	<i>Klopfer v. North Carolina</i>
1967 Sixth	Right to obtain favorable witnesses	<i>Washington v. Texas</i>
1968 Sixth	Right to a trial by jury in non-petty criminal cases	<i>Duncan v. Louisiana</i>
1969 Fifth	Prohibition of double jeopardy	<i>Benton v. Maryland</i>
1972 Sixth	Right to counsel in imprisonable non-felony cases	<i>Argersinger v. Hamlin</i>
1996 First	Right to petition for redress of grievances	<i>Edwards v. South Carolina, Romer v. Evans</i>
2010 Second	Right to keep and bear arms	<i>McDonald v. Chicago</i>

Figure 2: Provisions of the Bill of Rights Incorporated Under the Due Process Clause. The table shows the years in which certain provisions of specific amendments were incorporated under the Due Process Clause. The column on the right identifies the landmark case of each incorporation. Source: "Judicial Interpretation of the Fourteenth Amendment," U.S.Courts.gov. Available at <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/JudicialInterpretationFourteenthAmmendment.aspx>

The Fourteenth Amendment's guarantee of due process has generated a large percentage of the litigation arising under this amendment. The courts have repeatedly had to examine both the procedural nature of that right and the substantive protections it offers. Furthermore, it is through the guarantee of due process that the Supreme Court has authorized the federal government to enforce certain provisions of the Bill of Rights against the states.

Although not all of the provisions have been deemed enforceable by the Supreme Court, many of the rights have been incorporated. So far, parts of the First, Second, Fourth, Fifth, and Sixth Amendments have all been incorporated through the Due Process Clause, meaning the federal government can enforce those rights against the states.¹²³ It has also determined that the rights apply differently to territories.¹²⁴

Although initially limited, the Fourteenth Amendment developed a broader application.

This does not suggest that the Fourteenth Amendment has given the federal government unbridled access to all of the affairs of the state, nor has it been the only avenue of increased federal involvement in areas originally reserved to the states.¹²⁵ Initially, the Supreme Court narrowly construed the amendment and it had very little influence on limiting discrimination. In the *Slaughter-House Cases*, which were among the earliest cases involving the Fourteenth Amendment, the Supreme Court determined that the Privileges and Immunities Clause did not protect the rights conferred by state

¹²³ U.S.Courts.gov, "Judicial Interpretation of the Fourteenth "Amendment," at <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/JudicialInterpretationFourteenthAmmendment.aspx>.

¹²⁴ This was decided over the course of several lawsuits known as the Insular cases, which offered the early debates on the phrases "incorporated" and "fundamental rights."

¹²⁵ See *Hurtado v. California*, 110 US 516 (1884).

citizenship.¹²⁶ To extend federal protection to the rights of state citizenship, the Court suggested, would give the federal government power to protect all civil rights that previously were reserved to the states. Under the banner of protecting states' rights, the Court adopted a very narrow application of the Fourteenth Amendment. The dissenting opinion, which pointed out that the Fourteenth Amendment is broad enough to protect all fundamental and natural rights, demonstrated the logic that would provide the basis for future cases in which the Fourteenth Amendment would be applied through substantive due process to protect not only the rights of black citizens, but especially of corporate interests.¹²⁷

Congress again attempted to alleviate the effects of discrimination by passing the Civil Rights Act of 1875, which guaranteed equal treatment in all public accommodations and transportation.¹²⁸ Within only a few years, a group of cases known as the *Civil Rights Cases* determined the Act to be unconstitutional, as the Court determined that Congress had no authority under the Fourteenth Amendment to limit discrimination by private individuals.¹²⁹ Justice Harlan's dissent in that case warned that allowing private discrimination would have an impact on public transportation and amenities. At approximately the same time, the Supreme Court ruled that the Fourteenth Amendment did not protect against the right to bear arms or the right to assemble, as both of those were rights intended for the states for the purpose of limiting the federal government.¹³⁰ Then, in 1896, the Supreme Court upheld state-sponsored racial segregation in *Plessy v.*

¹²⁶ The Slaughter-House Cases, 83 U.S. 36 (1873).

¹²⁷ *Ibid.*, (Fields, Swayne, and Bradley dissenting.)

¹²⁸ Civil Rights Act of 1875, 18 Stat. 335 (1875).

¹²⁹ Civil Rights Cases, 109 U.S. 3 (1883).

¹³⁰ U.S. v. Cruikshank, 92 U.S. 542 (1876).

Ferguson.¹³¹ These decisions and the narrow application of the Fourteenth Amendment gave way to Jim Crow laws and discriminatory policies such as “separate but equal” that stifled the civil rights movement for the next half century. Furthermore, by defending states’ rights at the expense of protecting equality, defenders of states’ rights inadvertently inherited a stigma of defending racism, whether they were actually advocating racism or not.

During the first half of the twentieth century, the federal government began to use other constitutional avenues for protecting civil rights, such as the Commerce Clause. Harkening back to Harlan’s dissents in earlier cases, Congress argued that discrimination affected interstate commerce and under the authority of that clause passed legislation to curb discriminatory practices by businesses. Where the Fourteenth Amendment only addressed state action, the Commerce Clause actually spoke to the behavior of actors outside of the state and federal government. The Civil Rights Act of 1964 and the Voting Rights Act of 1965, together with the Commerce Clause, did far more for protecting equality of freed slaves during those years than the Fourteenth Amendment did.¹³²

As it continued to apply the Commerce Clause in broad terms, the Court also adopted a more active application of the Fourteenth Amendment and began to use the amendment more liberally to achieve its policy goals. When strictly applied, the Fourteenth Amendment granted the federal government very little access to limiting discrimination. To be effective, the Fourteenth Amendment depended on a Court’s willingness to actively apply it. When applied broadly enough to protect the rights of

¹³¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

¹³² The Civil Rights Act of 1964, 78 Stat. 241 (1964); The Voting Rights Act of 1965, 42 U.S.C. §1973 (1965).

freed slaves, the Amendment was broad enough to protect the interests of corporations as well, as it was interpreted to do several times over the successive decades.¹³³

The Supreme Court experiences cycles during which it is more or less likely to extend the authority of the federal government under the Fourteenth Amendment. For example, the Court initially construed the amendment very narrowly, rendering it almost ineffective against discrimination. This application of the Constitution is referred to as originalism, meaning that the Court asserts the Framers' intent or the original meaning of the document at the time it was written.¹³⁴ Eventually, the Supreme Court moved toward a broadened application of the Amendment, not only in regards to privacy rights, but in regards to other rights as well, inadvertently increasing the power of the federal government. At the beginning of the twentieth century, the Court applied the Fourteenth Amendment broadly to protect the right to contract. The Warren and Burger Courts frequently demonstrated this type of judicial activism, in which they applied the Fourteenth Amendment, and the Commerce Clause as well, as broadly as they needed to in order to reach their desired policy outcomes.¹³⁵ In the 1980s, the Supreme Court under Rehnquist returned to an era dominated by originalist interpretations, rejecting the authority of Congress to legislate in many areas and limiting the federal government's authority once again. Rehnquist believed that the purpose of the Fourteenth Amendment was to rectify issues regarding areas of race, slavery, and civil rights, and he rejected the idea that other issues fell within the scope of what the Fourteenth Amendment was

¹³³ See *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886) and *Lochner v. New York*, 198 U.S. 45, 75-76 (1905) as two examples.

¹³⁴ Robert C. Post and Reva B. Siegel, "Originalism as a Political Practice: The Right's Living Constitution," *Faculty Scholarship Series*, Paper 171 (January 1, 2006), Available at http://digitalcommons.law.yale.edu/fss_papers/.

¹³⁵ *Ibid.*

intended to protect.¹³⁶ His court, therefore, gave a more limited application of protection under the amendment. The Court under Roberts has thus far continued the Rehnquist tradition of a predominantly originalist approach to judicial review, even though it did incorporate the Second Amendment under the Due Process Clause in *McDonald v. Chicago*.¹³⁷

The way the court interprets and applies the Constitution is not necessarily indicative of its political affiliation. For example, during the first forty years of the twentieth century, the Court was politically conservative, but actively applied the Constitution to achieve its policies. This period is referred to as the *Lochner* era, during which the Courts repeatedly defended the right to contract and to economic freedom even against legislation that would otherwise protect individuals from certain employment practices.¹³⁸ *Lochner* is notable not only because it is a demonstration of a judicially active yet politically conservative decision, but also because it illustrates an instance of judicial activism outside the scope of privacy rights, which are often mischaracterized as the sole basis for judicially active decisions.

Does the Fourteenth Amendment Embody the Political Ideals of Abraham Lincoln?

Having established that Lincoln embodied the political philosophies of the Founding Fathers to the extent that his political environment allowed him, the question becomes whether the amendments he set in motion likewise reflect those ideals. The

¹³⁶ For example, in his opinion in *U.S. v. Lopez*, Chief Justice Rehnquist pointed out that permitting Congress to legislate on gun possession, which is reserved to the states under the Second Amendment, would basically be turning the police powers over to federal control, 514 U.S. 549 (1995).

¹³⁷ 561 U.S. 3025 (2010).

¹³⁸ The era draws its name from the landmark decision *Lochner v. New York*, 198 U.S. 45, 75-76 (1905). Jamin Raskin, 2012, "The Ghost of *Lochner* Sits on the Supreme Court and Haunts the Land," *Huffington Post*, April 2, http://www.huffingtonpost.com/jamie-raskin/the-ghost-of-lochner-sits_b_1398073.html.

Reconstruction Amendments were intended to ensure that the basic rights expressed in the Declaration of Independence would extend to both blacks and whites. The United States set the amendments in place to protect against the abuses of the states. The amendments also intended to create a degree of uniformity between the states regarding civil liberties.

The central idea of the political public opinion as expressed in the Declaration of Independence, according to Lincoln, revolved around the equality of all men. The principle was intended as “a standard maxim for a free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence.”¹³⁹ There is little question that Lincoln would have supported an amendment to secure legal equality for all men. However, the debate exists as to whether the Fourteenth Amendment achieves that goal. To the extent that the Fourteenth Amendment did not effectively secure legal equality to all men, Lincoln would have approved of it in theory but not in its actual application.

Lincoln cautioned against the effects of changing the Constitution

Despite his support for the Thirteenth Amendment, Lincoln opposed changes to the Constitution in general. He stated of amending the Constitution:

No slight occasion should tempt us to touch it, better not take the first step, which may lead to a habit of altering it. Better, rather, habituate ourselves to think of it, as unalterable... New Provisions would introduce new difficulties, and thus create, and increase appetite for, still further change.¹⁴⁰

¹³⁹Herman Belz, “Abraham Lincoln and American Constitutionalism,” *The Review of Politics* 50, no. 2 (Spring 1988): 181, citing Abraham Lincoln, “Speech at Springfield, June 26, 1857,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 2:406. Available electronically at *The Abraham Lincoln Association* .

¹⁴⁰Herman Belz, *ibid*, citing Abraham Lincoln, “Speech in United States House of Representatives on Internal Improvements,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al.

Several issues warrant his caution. Although the Fourteenth Amendment may have been necessary to establish citizenship and legal equality for all men, it certainly opened the doors to “new difficulties” and “further change.” These difficulties and changes, not the purpose of establishing equality, provide the basis for criticisms of the amendment.

Lincoln demonstrated his willingness to change the Constitution only when it was absolutely necessary. In fact, Lincoln expressed a strict constructionist view of the Constitution except when the strains of war absolutely demanded a more active application of its provisions. Had the preservation of the Union not been threatened, it is doubtful Lincoln would have exercised any authority under the war powers, and by his own estimation, he would not have amended the Constitution. While Lincoln stated that he despised slavery and found it morally wrong, he expressed that he ended slavery for the purpose of saving the Union.

If I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it would help to save the Union.¹⁴¹

He believed the posterity of the Union was linked to its fidelity to the original form of the document that created it.

Prior to passing the Thirteenth Amendment, Lincoln recognized that if the freedom of men depended on the goodwill of the states, it would never be guaranteed.

(New Brunswick, NJ: Rutgers University Press, 1953) 1:480. Available electronically at *The Abraham Lincoln Association*.

¹⁴¹ Abraham Lincoln, “Letter to Horace Greeley, August 22, 1862,” *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 388. Available electronically at *The Abraham Lincoln Association*.

Even before emancipation, Lincoln knew that the same was true for the other natural rights expressed in the Declaration. He, like the Founding Fathers, anticipated that legal equality between black and white citizens would only be secure if the federal government enforced it.

Although it may be assumed that Lincoln would have supported an amendment to guarantee legal equality, it does not necessarily follow that the Fourteenth Amendment serves the purpose he would have wanted it to convey. Lincoln cautioned against changing the Constitution and the government, and the Fourteenth Amendment significantly altered the federal structure. To be effective, the Court had to broaden the amendment so widely that it allowed federal authority into affairs traditionally reserved to the states. It also led to the increasing responsibility of the Supreme Court, and despite those changes, it did not fully achieve universal legal equality. While he would have supported an amendment to secure citizenship, it is doubtful that Lincoln would have approved of the Fourteenth Amendment that was actually ratified. Even though he personally hated slavery, he was willing to allow it to continue in order to preserve the Union as the Founders created it. In the same way, it can be assumed that Lincoln would have allowed the discrimination and race riots that erupted after the Civil War instead of altering the federal structure to secure civil rights. Based on his hesitation to end slavery until it was absolutely necessary, it is reasonable to assume that Lincoln would have supported only a limited amendment, narrowly tailored to establish the citizenship of persons born or naturalized in the United States, and he would have disagreed with the inclusion of due process and equal protection into the Fourteenth Amendment.

The Amendment changed the balance of power between the federal and state governments. Critics to the Fourteenth Amendment argue that it infringes on states' rights by allowing the federal government to legislate on issues that the Constitution originally reserved to the states. The priority of protecting the states' rights became a fundamental concern during the founding of the United States, when the Framers of the Constitution debated for months about how to structure the Constitution so that the states formed a Union without completely submitting to a singular national identity. They intricately balanced the powers of government between the national and state levels, clearly delineating the functions of the national government and reserving all of the others to the states. Believing that the states were the best defenders of civil rights, the Founders limited the federal government from involvement into those affairs. It is difficult to argue that any of the Framers would have approved of subsequent amendments that altered the precarious balance of powers of the original documents.

Whether Lincoln would have opposed the broadened federal authority that developed under the Fourteenth Amendment deserves consideration because Lincoln often receives criticism for his willingness to strengthen the executive powers of the United States. However, Lincoln exercised an increased presidential authority only out of necessity to preserve the ultimate constitutional goal, that being the preservation of the Union, and he did so within the realms of what he understood to be constitutionally allowable actions.

Because the states had proven that they would not voluntarily recognize full legal equality of all men and would not extend the rights of due process and the equal protection of the laws unless compelled to do so, the Fourteenth Amendment served a

necessary function. The provisions giving the federal government the authority to enforce the Bill of Rights against the state were indispensable to reconciling the Declaration of Independence to the Constitution. Because Lincoln hesitated to amend the Constitution to abolish slavery even after the issue of slavery caused four years of civil war, he would have amended the Constitution to extend political equality only to the extent that the nation required such an amendment.

However, the necessity of the Fourteenth Amendment does not automatically imply that Lincoln would have approved of the Supreme Court's application of it. The amendment, as written, serves a reasonably limited purpose; the amendment, in application, has a much broader impact. On its face, the Fourteenth Amendment does not include the far-reaching effects it has been construed to have. It states, "nor shall any State deprive any person of life, liberty, or property, without due process of law..." As it was drafted, the guarantee covers only the procedural aspects of due process, such as fair trials, reasonable fines, and consistent rules of evidence. While it is likely Lincoln would not have approved of due process being included in the Amendment, he almost certainly would have disagreed with the way that clause has been applied.

Only through the subsequent interpretations of the courts did the guarantee of due process absorb a substantive component, and through that substantive component of the Due Process Clause did the federal government gain power over the affairs previously reserved to the states. Through its active interpretation, the amendment has been applied to more situations than the drafters of it ever intended. Lincoln would have particularly opposed that expansion.

The substantive element of due process determines the rights to which the Due Process Clause will apply. Those may include the enumerated rights described in the Bill of Rights, rights of insular minorities, or rights related to the political processes. Subject matter may arise under substantive due process in one of two ways: as a fundamental right or through the protection of a legitimate state interest. The courts may determine that a right is so fundamental to the American people that it should be protected by the Due Process Clause. If a right is determined to be fundamental or if the affected group belongs to a suspect classification, the Court will apply a test of strict scrutiny, which means the law infringing on that right must be narrowly tailored to serve a compelling state interest in order to survive.¹⁴² If the right is not a fundamental right, then the law affecting it is examined under a more lenient standard, which generally asks whether the law is rationally related to a legitimate state interest.¹⁴³ Through these two avenues, the Supreme Court draws much of its authority to review legislation from the premise of substantive due process. Because it was not written into the amendment, most critics of the Fourteenth Amendment claim that the expansion of federal authority pursuant to substantive due process caused the overextension of the amendment.

If the courts had maintained a strict construction of the amendment, they would have preserved the limitations imposed on the federal government by the Founders. The Fourteenth Amendment would have provided access only to the procedural rights of due process, and the ambiguity that has arisen over what other rights it covers would not exist. Because he favored constitutional change only when necessary and only in the most

¹⁴² Legal Information Institute, "Equal Protection: An Overview," Cornell University Law School, available at http://www.law.cornell.edu/wex/equal_protection.

¹⁴³ *Ibid.*

limited way to achieve a specific outcome, a reasonable assumption holds that Lincoln would likely have disapproved of the Fourteenth Amendment as written, and almost certainly would have opposed the broad and active application of it.

The amendment changed the responsibility of Supreme Court. The increased demand for judicial review caused by the Fourteenth Amendment also gives rise to criticism. Although the Supreme Court comprises the third branch of government and it serves a legitimate purpose, Lincoln cautioned against any action that would remove governance from the legislature, which is elected, and place it with the judiciary, which is appointed.

The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, the people will have ceased to be their own rulers.¹⁴⁴

Since its passage, the Fourteenth Amendment has created an immense body of litigation. It has been cited in more cases than any other amendment. Within that caseload, the Supreme Court has had to decide numerous times whether state law or federal law should prevail over an issue. By deciding which laws stand and which rights are protected, the Supreme Court has developed more authority over the laws than it possessed prior to the Fourteenth Amendment. It is able to make decisions based on morality and policy, instead of being limited to rational examinations of the laws and the Constitution. The increased authority of the Supreme Court represents one particular outcome that Lincoln cautioned Americans against.

¹⁴⁴ Herman Belz, "Abraham Lincoln and American Constitutionalism," *The Review of Politics* 50, no. 2 (Spring 1988): 181, citing Abraham Lincoln, "First Inaugural Address," *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press, 1953) 4:263. Available electronically at *The Abraham Lincoln Association*.

The amendment led to legislative inefficiency. The legislative process has been affected by the amendment also. Whether an issue may be considered federal or whether it is reserved to the states remains an uncertain question. States will pass legislation that is overturned in favor of federal laws, and Congress will pass laws that the Supreme Court will strike down as unconstitutional. That hindrance to the legislative function of the government represents another reason why Lincoln would have disapproved of the Fourteenth Amendment. He boasted in the structure and functions of the Constitution and would have disfavored anything leading to confusion of its intricate and efficient balance.

The Fourteenth Amendment Has Not Fulfilled the Ideals of Abraham Lincoln

Even if Lincoln may have voted to ratify the Fourteenth Amendment, he would have been dismayed at its effects on the American political system. He strove to adhere to the Constitution in its original form and to preserve the government as the Founders arranged it. Although he allowed for changes when they were absolutely necessary, he relied on a strict adherence to tradition in almost every situation. Had Lincoln foreseen that the Fourteenth Amendment would actually do very little to protect equality, and that it instead would lead to significant increases in federal authority to the detriment of the states, he would have opposed the amendment. He would likely have concluded that since the Founders determined that civil rights are best left to the discretion of the states, the federal government should only control them when they affect an interest that is otherwise constitutionally allocated to the federal government. The Lincolnian legacy sought to preserve the Union; the Fourteenth Amendment, for better or for worse, significantly altered it.

CHAPTER IV

CONCLUSION

Accurately comparing Lincoln's political philosophy to that of the Founding Fathers may be difficult because of the disparity that exists between what men claim to believe and what they ultimately do. Furthermore, the compromises that are struck between competing factions and the circumstances that affect the decisions that are made can skew or even totally distort the actual intentions people have. After taking those factors into consideration and examining their words and actions, the Founding Fathers and Abraham Lincoln can reasonably be assessed as sharing the same political ideals. Both parties revered the liberal ideals of the Declaration of Independence and the republican structure and safeguards of the Constitution. Both were forced to make concessions in order to establish and preserve the United States. By and large, Lincoln attempted to act only within the boundaries set out by the Framers of the Constitution in order to preserve the rights they had so adamantly asserted in the Declaration of Independence.

Although his political opponents all derived their opinions from constitutional interests which were grounded in liberal or republican ideals, only Lincoln held as his utmost goal the preservation of the Union. Just as the Founding Fathers were willing to compromise their personal moral views of slavery in order to establish the Constitution, Lincoln was willing to handle slavery in whatever way was necessary to preserve the Union. Lincoln, more so than any of his political rivals, reflected the ultimate ideals of the Founding Fathers.

It is undisputed that Lincoln desired to establish the principles of the Declaration of Independence as a political reality in the United States. Although he honored the Constitution as it was written and opposed changes to it, Lincoln demonstrated his willingness to amend the Constitution in order to end the Civil War and dissolve the dilemma that had divided the nation throughout its history. However, the amendments that passed after his death, specifically the Fourteenth Amendment, went beyond the vision Lincoln had for the United States. While he wanted to secure legal equality and preserve the natural rights for all men, he did not want to alter the nature of the government and the Constitution. The Fourteenth Amendment, narrowly applied, does not solve the problems of political inequality, and loosely applied, significantly alters the balance of powers between the federal government and the states. Because of those reasons, and because Congress eventually learned to stifle the effects of discrimination through avenues besides the Fourteenth Amendment, the Fourteenth Amendment should not be considered as a reflection of Lincoln's political ideals.

BIBLIOGRAPHY

- Adams, John. John Adams to Mercy Warren, 16 April 1776. In *Founding Families: Digital Editions of the Papers of the Winthrops and the Adamses*, edited by C. James Taylor. Boston: Massachusetts Historical Society, 2007. Also available online at <http://www.masshist.org/ff/>.
- Amar, Akhil. "Conventional Wisdom--A Commentary by Prof. Akhil Amar." *New York Times*, September 18, 2005. Available at <http://www.law.yale.edu/news/1850.htm>. (accessed January 10, 2013).
- The American Presidency Project. "Constitutional Union Party Platform of 1860." Edited by Gerhard Peters and John T. Woolley. Available at <http://www.presidency.ucsb.edu/ws/?pid=29571>. (accessed February 12, 2013).
- Appleby, Joyce. "The Social Origins of American Revolutionary Ideology." *Journal of American History* 64, no. 4 (March 1978): 935-958.
- Avalon Project at Yale Law School. Lillian Goldman Law Library. http://avalon.law.yale.edu/subject_menus/debcont.asp (accessed December 10, 2012).
- Balkin, Jack. "History Lesson." *Legal Affairs: The Magazine at the Intersection of Law and Life* (July/August 2002).
- Belz, Herman. "Abraham Lincoln and American Constitutionalism." *The Review of Politics* 50, no. 2 (Spring 1988): 169-197.
- . "Lincoln's Construction of the Executive Power in the Secession Crisis." *The Journal of the Abraham Lincoln Association*. (Winter 2006).
- Civil Rights Act of 1866*. 14 Stat. 27 (1866).

The Civil Rights Act of 1875. 18 Stat. 335 (1875).

The Civil Rights Act of 1964. 78 Stat 241 (1941).

The Civil Rights Cases. 109 U.S. 3 (1883).

"Events Leading to War - A Civil War Timeline." The Civil War Home Page.

<http://www.civil-war.net/pages/timeline.asp> (accessed June 14, 2013).

Dave Leip's Atlas of U.S. Presidential Elections, "1860 Presidential General Election Results." Last modified April 28, 2013.

<http://uselectionatlas.org/RESULTS/national.php?year=1860>.
<http://uselectionatlas.org/RESULTS/national.php?year=1860> (accessed March 3, 2013).

Davis, Jefferson. "Resolutions on the Relationship Between the States: February 1860."

The Papers of Jefferson Davis. Vol 6. Available at

<http://jeffersondavis.rice.edu/Content.aspx?id=81> (accessed April 23, 2013).

"Declaration of Independence." 1776.

"Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union." (April 26, 1852). Available at

http://avalon.law.yale.edu/19th_century/csa_scarsec.asp.

Dougherty, Keith L. and Jac C. Heckelman, "Voting on Slavery at the Constitutional Convention," *Public Choice* 136, no. 3/4 (Sept. 2008): 293-313.

Dred Scott v. Sandford. 60 U.S. 393 (1857).

Dueholm, James A. "Lincoln's Suspension of the Writ of Habeas Corpus: An Historical and Constitutional Analysis." *Journal of the Abraham Lincoln Association* 29, no. 2 (Summer 2008). Available at

<http://quod.lib.umich.edu/j/jala/2629860.0029.205?rgn=main;view=fulltext>.

Encyclopaedia Britannica, s.v. "Democratic Party," *Encyclopaedia Britannica*, 2013.

Available at <http://www.britannica.com/EBchecked/topic/157244/Democratic-Party>.

Encyclopaedia Britannica Profiles: The American Presidency, s.v. "United States:

History > Colonial America to 1763 > Imperial organization," *Encyclopaedia Britannica*, Inc., 2013. Available at <http://www.britannica.com/presidents/article-77690>.

Ex parte Merryman, 17 F. Cas. 144 (1861).

Fladeland, Betty L. "Compensated Emancipation; A Rejected Alternative." *The Journal of Southern History* 42, no. 2 (May 1976): 169-186.

Freedman, Russell. *Lincoln: A Photobiography*. New York: Clarion Books, 1987.

Freehling, William W. "The Founding Fathers and Slavery." *The American Historical Review*, February 1972: 81-93.

Garrison, William Lloyd. "Declaration of the National Anti-Slavery Convention."

December 14, 1833. Available at

<http://teachingamericanhistory.org/library/document/declaration-of-the-national-anti-slavery-convention/>.

Garrison, William Lloyd, "Exposure of the American Colonization Society."

THOUGHTS ON AFRICAN COLONIZATION: or an Impartial Exhibition of the Doctrines, Principles and Purposes of the American Colonization Society.

Together with the Resolutions, Addresses and Remonstrances of the Free People of Color. Boston, 1852.

Goodwin, Doris Kearns. *Team of Rivals: The Political Genius of Abraham Lincoln*. New York: Simon and Schuster, 2005.

"Guide to the Stephen A. Douglas Papers: 1764-1908." *Special Collections Research Center*. University of Chicago Library. Available at <http://www.lib.uchicago.edu/e/scrc/findingaids/view.php?eadid=ICU.SPCL.DOUGLASSA>.

Harris, J. William. "The Demise of Slavery." *Freedom's Story: TeacherServe*©. National Humanities Center. June 14, 2013. Available at <http://nationalhumanitiescenter.org/tserve/freedom/1609-1865/essays/demslave.htm>.

Harrison, John. "The Lawfulness of the Reconstruction Amendments." *The University of Chicago Law Review* 68, no. 2 (Spring 2001): 375-462.

Hartz, Louis. *The Liberal Tradition in America*. New York: Harcourt, Brace, and World, Inc., 1955.

Hurtado v. California, 110 US 516 (1884).

Jefferson, Thomas. "Notes on the State of Virginia, Queries 14 and 18, 137-43, 162-63." *The Founders' Constitution*. Vol. 1, Ch. 10, Doc. 9. Chicago: University of Chicago Press, 1784. Available at <http://press-pubs.uchicago.edu/founders/documents/v1ch10s9.html>. (accessed January 4, 2013).

Kleinerman, Benjamin A. "Lincoln's Example: Executive Power and the Survival of Constitutionalism." *Perspectives on Politics*. December 2005. Available at <http://www.apsanet.org/imgtest/PerspectivesDec05Kleinerman.pdf>.

Legal Information Institute. "Equal Protection: An Overview." Cornell University Law School. Available at http://www.law.cornell.edu/wex/equal_protection.

Lincoln, Abraham. *The Collected Works of Abraham Lincoln*. Edited by Roy P. Basler et al. New Brunswick, N.J: Rutgers University Press, 1953. Available electronically at *The Abraham Lincoln Association*. <http://quod.lib.umich.edu/l/lincoln/>.

Lochner v. New York. 198 U.S. 45 (1905).

Locke, John. *Second Treatise of Government*. editor C. D. Macpherson. Indianapolis: Hackett Publishing, 1980 [1690].

Loewen, James P. "Five Myths About Why the South Seceded." *Washington Post*, February 25, 2011. Accessed March 4, 2013.

http://www.washingtonpost.com/outlook/five-myths-about-why-the-south-seceded/2011/01/03/ABHr6jD_story.html.

Madison, James. "The Federalist #10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection." *The New York Daily Advertiser*. November 22, 1787. Also available at www.constitution.org/fed/federa10.htm.

—. "The Federalist No. 39: The Conformity of the Plan to Republican Principles." *The Independent Journal*. January 18, 1788. Also available at <http://www.constitution.org/fed/federa39.htm>.

—. "The Federalist No. 48: These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other," *The New York Packet* February 1, 1788. Available at <http://constitution.org/fed/federa48.htm>. (accessed January 4, 2013).

- . “The Federalist No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” *The Independent Journal* February 6, 1788. Available at <http://www.constitution.org/fed/federa51.htm>.
- . James Madison to Daniel Webster. March 15, 1833. In *The Founders' Constitution*. Vol. 1, Ch. 3, Doc. 14. Chicago: University of Chicago Press, 1987. Available at <http://press-pubs.uchicago.edu/founders/documents/v1ch3s14.html>. (accessed February 26, 2013).
- . James Madison to George Washington. April 16, 1787. Available at [http://www.let.rug.nl/usa/documents/1786-1800/the-anti-federalist-papers/james-madison-to-george-washington-\(april-16-1787\).php](http://www.let.rug.nl/usa/documents/1786-1800/the-anti-federalist-papers/james-madison-to-george-washington-(april-16-1787).php).
- . James Madison to Robert J. Evans. June 15, 1819. In *The Founders' Constitution*. Vol. 1, Chap. 15, Doc. 65. Chicago: University of Chicago Press, 1987. Available at <http://press-pubs.uchicago.edu/founders/documents/v1ch15s65.html>.
- Marshall, Thurgood. “Remarks of Thurgood Marshall at the Annual Seminar of the San Francisco Patent and Trademark Law Association in Maui, Hawaii.” May 6, 1987. pp. 7-8. Available at http://www.thurgoodmarshall.com/speeches/constitutional_speech.htm.
- McCoy, Drew R. "Lincoln and the Founding Fathers: A Reconsideration." *Journal of the Abraham Lincoln Association* 16, no. 1 (Winter 1995): 1-13.
- McDonald v. Chicago* 561 U.S. 3025 (2010).
- Miller, William Lee. *President Lincoln: Duty of a Statesman*. New York: Alfred A. Knopf, 2008.

- Montesquieu, Charles Secondat Baron de. *The Spirit of Laws*. Cambridge: Cambridge University Press, 1989 [1748].
- Oakes, James. "The War of Northern Aggression." *Jacobin: A Magazine of Culture and Polemic* 7/8 (Summer 2012). Available at <http://jacobinmag.com/2012/08/the-war-of-northern-aggression/>. (accessed February 2, 2013).
- PBS.org. "William Lloyd Garrison." Available at <http://www.pbs.org/wgbh/aia/part4/4p1561.html> (accessed March 14, 2013).
- Plessy v. Ferguson* 163 U.S. 537 (1896).
- Pocock, J.G.A. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton, NJ: Princeton University Press, 1975.
- Post, Robert C. and Reva B. Siegel, "Originalism as a Political Practice: The Right's Living Constitution." *Faculty Scholarship Series*, Paper 171 (January 1, 2006). Available at http://digitalcommons.law.yale.edu/fss_papers/.
- Renda, Lex. "Between Freedom and Bondage: Race, Party and Voting Rights in the Antebellum North: A Review." *Journal of Interdisciplinary History* 41, no.1 (Summer 2010): 154-156.
- Roosevelt, Theodore. *An Autobiography*. New York: Charles Scribner's Sons, 1913.
- Rozansky, Jeremy. "Lincolnian Conservatism." *Counterpoint: The University of Chicago's Conservative Quarterly*. (Winter 2012).
- Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886)
- Shain, Barry Alan. *The Myth of American Individualism: The Protestant Origins of American Political Thought*. Princeton: Princeton University Press, 1994.

Sinopoli, Richard C. "Liberalism, Republicanism, and the Constitution." *Northeastern Political Science Association*. (Spring 1987) 331-352.

The Slaughter-House Cases 83 U.S. 36 (1873).

Smith, Rogers M. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *American Political Science Review* 87, no. 3 (September 1993): 549-566.

Smithsonian: National Portrait Gallery. "Abolitionists William Lloyd Garrison and Frederick Douglass." Available at <http://www.npg.si.edu/edu/brush/guide/unit3/abolut.html>. (Accessed June 14, 2013).

Spalding, Matthew, Ph.D. "How to Understand Slavery and the American Founding." *The Heritage Foundation: Leadership for America*. August 26, 2002. Available at <http://www.heritage.org/research/reports/2002/08/how-to-understand-slavery-and-americas>. (accessed February 20, 2013).

Spaulding, Norman W. "Constitution as Countermonument: Federalism, Reconstruction, and the Problem of Collective Memory." *Columbia Law Review* 103, no. 8 (December 2003): 1992-2051.

Texas v. White 74 U.S.700 (1869).

Thornton, J. Mills. "Yancey, William Lowndes." *American National Biography Online*. February 2000. Available at <http://www.anb.org/articles/04/04-01080.html>.

United States Constitution. 1787.

USAH035-H.gif.

<https://www.google.com/search?biw=1280&bih=685&q=presidential+election+of+1860&tbm=isch&tbs=simg:CAQSnwEJE3YX7U7DXYUaigELELCMpwgaeAo6CAESFNQG1QbSBssG->

[AX7BaYHhgehB_1AFGiDoaFx138RplbUqyqTczAh9tmSoZAtqVYm9M6DLOGYgWAo6CAESFNQG1QbSBssG-AX7BaYHhgehB_1AFGiDoaFx1](https://www.google.com/search?biw=1280&bih=685&q=presidential+election+of+1860&tbm=isch&tbs=simg:CAQSnwEJE3YX7U7DXYUaigELELCMpwgaeAo6CAESFNQG1QbSBssG-AX7BaYHhgehB_1AFGiDoaFx138RplbUqyqTczAh9tmSoZAtqVYm9M6DLOGYgWAo6CAESFNQG1QbSBssG-AX7BaYHhgehB_1AFGiDoaFx1) (accessed May 3, 2013).

U.S.Courts.gov. "Judicial Interpretation of the Fourteenth Amendment." Available at <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/JudicialInterpretationFourteenthAmmendment.aspx> (accessed May 3, 2013).

USHistory.org. "The Origins of the Republican Party." Independence Hall Association. Available at <http://www.ushistory.org/gop/origins.htm> (accessed June 14, 2013).

"US Law Abolishing Transatlantic Slave Trade Takes Effect." OUPblog. Oxford University Press (January 23, 2012). <http://blog.oup.com/2012/01/slave-trade/>.

U.S. v. Cruikshank 92 U.S. 542 (1876).

U.S. v. Lopez, 514 U.S. 549 (1995).

The Voting Rights Act of 1965. 42 U.S.C. §1973 (1965).

Waldstreicher, David. "Slavery, the Constitution, and American Political Traditions."

Rutgers Law Journal 43, no. 3 (Fall/Winter 2013): 471-485.

Yancey, William Lowndes . "His Speech of Protest in the Charleston Convention 1860."

The World's Famous Orations. Edited by William Jennings Bryan. New York:

Funk and Wagnalls, 1906. Available www.bartleby.com/268/.