

### **Cleveland State University** EngagedScholarship@CSU

Cleveland State Law Review

Law Journals

1963

## One Century after the Emancipation Proclamation

Wilson G. Stapleton

Follow this and additional works at: https://engagedscholarship.csuohio.edu/clevstlrev

Part of the Civil Rights and Discrimination Commons

How does access to this work benefit you? Let us know!

#### Recommended Citation

Wilson G. Stapleton, One Century after the Emancipation Proclamation, 12 Clev.-Marshall L. Rev. 566 (1963)

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

# One Century After the Emancipation Proclamation

#### Wilson G. Stapleton\*

On January 1st, 1863, Abraham Lincoln, then President of the United States, dedicated to the proposition that a nation could not exist and reach its rightful place in the sun, half slave and half free, issued the Emancipation Proclamation, which declared in essence that as a matter of law all peoples in these United States of America were forever free.

Yet over these last one hundred years there have been many times when these emancipated peoples and their freeborn descendants must have felt, and oftentimes still feel, that they are like to the legendary Sisyphus who was condemned to the eternal task of rolling a heavy stone uphill, only to find that it rolled down on him when he reached the summit.

This is not to say that there has not been progress made toward the realization of freedom in fact as well as in law. But the progress has been slow and arduous, highlighted by the various Supreme Court decisions, each of which in its turn solidified legally the Proclamation and the amendments to the Constitution of the United States which guarantee the rights of all its citizens.

Yet it was not until 1948 that the Supreme Court said that restrictive covenants as to land based upon race, creed, or color could not be enforced in any court, because such enforcement would deprive the citizen of the rights guaranteed him under the 5th and 14th amendments. This destroyed the somewhat anomalous position taken shortly prior thereto by our own Supreme Court of Ohio, in the *Perkins* case, in which case the Court had ruled that, while a Negro congregation in its corporate form could own property, its pastor, by reason of restrictive covenants in the deed, could not occupy the home on the property set aside for his own use.

The novelist, Owen Wister, in his classic, The Virginian, narrates a scene where the villain has uttered some ugly epi-

1

<sup>\*</sup> Dean, Cleveland-Marshall Law School.

<sup>[</sup>This is the text of the address given by Dean Stapleton at the Special Convocation to celebrate the one-hundredth anniversary of the Emancipation Proclamation, at Wilberforce University.]

thets. The victim, turning on his tormentor, challenged him—"When you say that, smile." And the author follows with this thought—"The letter of the law means nothing until the spirit gives it life."

The sad fact remains that today, one hundred years after a declaration of right supplemented by legal decisions too numerous to mention, in many areas there is still not a full infusion of the spirit to implement the law, an infusion which in its highest degree would resolve the general strife to which we as a people have been subject over the years.

What then can we expect in evaluating the years to come, taking into account that with which we are faced today.

Let us be frank. In spite of an overwhelming number of all peoples bolstered by a government which seeks to implement the full letter of the law, we have our extremists on both sides. On the one hand we have an impatient people who, suffering from the compounded cruelties and wrongs of some three hundred years, say "How long must we endure?" and who, impatient, and often against the counsel and wisdom of their own leaders, take the law into their own hands. They say in many jurisdictions, "Where is our right to vote?", realizing that a voteless people is a voiceless people. They say in all jurisdictions, "Where is our equal opportunity?"

And on the other hand there are those who, nurtured on hate and prejudice, will not recognize the hard facts of the law, both moral and man made, and continue to sabotage it. This segment is tragic in its own thinking, for these are the products of a private educational world who, as the lyricist in the musical, South Pacific, puts it, "have been carefully taught to hate." And there is a large in-between group best characterized by an observation of H. L. Mencken, an astute critic of the American scene, who said:

Astounding hypocrisy is the chief symbol of American life which leads us habitually, and upon all subjects that most intimately concern us, to formulate two distinct sets of opinions, one of which we mouth magnificently, and the other of which we cherish and put into practice in secret. On the one hand, in almost any field you choose, there is the doctrine that is sweet-sounding; and on the other hand there is the doctrine that will work.

Is it small wonder, to many thinking men who believe in right, that it is an age of confusion! And this confusion is compounded in part by reason of the rapid strides that have been made in the fields of science, while adherence to moral values has lagged behind. Were we to adhere individually and collectively to the Ten Commandments brought down by Moses, there would be little need for other law to govern our human relations. But two thousand years after these Commandments and one hundred years after the Emancipation Proclamation we are often akin to the Siwash Indian on the banks of Puget Sound watching the lighthouse and soliloquizing,

Lighthouse, him light flash, him bell sound, him whistle blow, fog roll in just the same.

Many changes have taken place in our world, not only in the last 100 years, but in our lifetime. I recall as a boy, as many of you must do, the relatively simple, sedate, self-sufficient world in which we were reared. Mine was in part a farm boyhood where little cash money was needed, for within the boundaries of the freehold most that was needed was grown or manufactured on the place. My grandfather could make a pair of shoes from the self-tanned hide of the steer which he had raised for meat, and if a neighbor needed a new barn or other structure, the rest of the community joined in a raising bee, building from scratch with hand-hewn logs and boards from their own timber. Game and fish were plentiful, the land was fruitful, and the simple dictates of existence were more than met. Nor was it a barren life. Boys of that day, albeit they were held to a quota of chores, had time to spare to enjoy and know the wonders and mysteries of the great outdoors, and the sociables of the day more than satisfied the recreational urge.

Slowly the pattern changed. I saw the first automobile come, which in time was to make impossible the long, glorious coasting downhill on sled and toboggan. Central heating to replace the open fireplace in each room, the telephone, the electric light—these and many other modern things changed the manner of living. Families broke up as younger people migrated to new frontiers that they had heard about, and the urban atmosphere overshadowed the rural.

And today in the space of a short lifetime we have been catapulted into the space age with all the attendant scientific progress in the allied fields which has made this possible. When I visited an exhibit, a few weeks back, of the wonders of this new age, and found it almost impossible to comprehend most of

them, I began to wonder if my confusion were not almost as great as that of the Siwash Indian who could not comprehend the enveloping fog when to his mind so many safeguards had been set up against it.

And my lack of comprehension as to physical changes is more than matched by a lack of comprehension concerning our collective ability as a free people to implement fully the letter of the Proclamation.

Dr. Johnson was once asked by his biographer Boswell, "Which is better, man or woman?" To which Johnson countered, "Which man, which woman?"

I wish I could tell you today, that tomorrow's judgment of each of us by all, would be based on this concept of "Which man, which woman?" and with the use of the same criteria upon which to base such judgment. Then indeed would we all really be free. But neither I nor anyone else can promise as of tomorrow this freedom in fact in all parts of our Nation. It will come, I am convinced, as surely as I stand here, and its coming will be speeded by those intelligent people who now by their thoughts and deeds are hastening the day.

But before that day dawns in all its reality, there will still be heartache and misunderstanding. And just as a ship needs safe harbor to refit in time of storm, so man must have refuge in the sense that he can reflect, reorganize and again set forth. Such refuge for you and me lies, I believe, in the adoption of a philosophy which can be a mainstay in troubled times.

One thing is sure—man himself does not change too much. He is bad, he is good. He has the same hopes and aspirations that he has always had; from age to age he is subject to the same trials, he participates in the same triumphs. And he, cast in the image of his maker, is a thinking machine capable of making the decisions he always has to make. So, to meet the challenge of today and of the future, in which he could readily become confused, he must make use of his God-given abilities to establish a philosophy the implementation of which will be his mainstay in the days to come.

Our first Thanksgiving in this country was not only a day of thanks, but in a sense a day of rejoicing. Men and women, not knowing what the future would bring, still gathered together to thank God for their having survived the confusions and the rigors with which they had been beset. The harvest was in. But to remind each of what he had been through and of what he might expect, five grains of corn were served separately, to recall the rationing to which all had been subjected and to which all might still be subject in the future.

Today as each in his own way offers thanks on any particular day, some three hundred plus years after our beginnings, I offer you five symbolic grains of corn to consider. And in the consideration and adoption of their inherent philosophy, you may well find, as I have found, a strength to meet whatever comes, and rays of sun to pierce the fog of confusion.

The first of these is a belief in God—a belief in a divine being. The atheist, the agnostic who will have no part of this concept, say, "Prove." For you and me proof is not necessary. But let us assume that we have the two above hypotheses, each of which, for the sake of argument, can be called untenable. It nevertheless seems to me that it gives man greater comfort to believe in a supreme being, to whom he can take his bewilderment, than it is not to believe. And much as a child is strengthened and supported through confidence in father and mother, so we as men in a troubled world can find comfort in this belief.

And as I look about me at the orderly world in which we live, albeit its seeming confusion—as I see the succession of the seasons—as I see the flower unfold—there can be no question in my mind but that there is a master plan, guided from above. To me this first symbolic kernel is paramount.

My second kernel is belief in country. Whether our ancestors came over three hundred years ago or a generation ago, with the exception of the native Indians, we are all immigrants or descendants of immigrants. We came for many reasons, to find new opportunity, to escape oppression, to free ourselves from the burden of class distinction—whatever the reason, we have by our aggregate efforts created the best atmosphere in which to live that is known today. I do not say that we have perfection, but if we are remiss, then the way to overcome our difficulties is not to strike at the roots of our greatness by tearing it down. Rather should we, in the forum, in our daily life, in our treatment of our fellow man, in respect for our law and our institutions, in our approach to our individual political and religious beliefs, have a positive and not a negative attitude.

If we as individuals become surfeited with our own success, if we forget the principles that our predecessors espoused, if we

eschew the inherent moral precepts in the Emancipation Proclamation, then surely we shall fall before other ideologies, just as the greatness of Rome was laid waste by the barbaric hordes from the East. We must believe in this homeland which has given so much to us and to which we owe the full measure of devotion.

I offer my third kernel—belief in our fellowman. On the facade of a temple in Boston, graven in large letters, there appears the following: "Dedicated to the fatherhood of God and the brotherhood of man." It is a noble thought, but for its full implementation, as I have said, there is much to be done. There are times when I take a dim view of Brotherhood days and Brotherhood weeks, for I am minded of a sermon I once heard in which the pastor said, "These men pray in church on Sundays and on their neighbors the rest of the week."

Napoleon made his mark in history on many counts, many of them bad. But he had his good traits. On one occasion he was walking with one of his Marshals, and was approached by a woman carrying a basket of wash on her head. The Marshal would have elbowed the woman into the street, but he was pulled aside by Napoleon with the admonition, "Marshal, respect the burden!"

We must believe in our fellowman, we must respect his individual burden; we must recognize that he and we are each in his own way seeking to achieve a common end, and we must give real and not lip-service to this concept.

The Gestalt theory is best illustrated by the following: Visualize four matchsticks. Each is an entity in its own form. Yet put them together in a certain way and we have a square form, something that did not exist before. The whole is greater than its parts. If we have belief in our fellowman, as indicated by our deeds as well as our words, the society in which we live will in the aggregate be a whole that is infinitely greater than its several parts.

My fourth kernel—belief in one's own self. There is not a man here who has not had his problems, who has not had those low moments when his attitude is "What the hell!" The strong man meets those problems and rises above them. The fact that man is distinguished from other primates by reason of his thinking processes makes evident the means through which he can overcome adversity and move ahead. A poet named William

Ernest Henley sums up this philosophy in these twelve lines in a poem which he titled "Invictus"—unconquered.

Out of the night that covers me
Black as the pit from pole to pole
I thank whatever Gods may be
For my unconquerable soul
In the fell clutch of circumstance
I have not winced nor cried aloud
Under the bludgeonings of chance
My head is bloody but unbowed
It matters not how strait the gate
How charged with punishment the scroll
I am the master of my fate
I am the Captain of my soul

Believe in yourself, and, damning the personal torpedoes directed against you, set full steam ahead to the achievement of that which life has in store for you.

And the fifth and last of these symbolic kernels that I offer is—belief in the future; no matter what that future may hold for you either individually or collectively. It has been written, "It was the best of times, it was the worst of times; it was the age of wisdom, it was the age of foolishness; it was the epoch of belief, it was the age of incredulity; it was the season of light, it was the season of darkness; it was the Spring of hope, it was the Winter of despair." It could well be written of our times, yet it had particular reference to the period of the French revolution, when heads were rolling, and when chaos and confusion held sway.

Yet out of that period grew a better time. While the millenium of perfection is still a dream, we must not be less constant in our faith in the future than were those who traveled the road before us.

And to you ladies and gentlemen gathered together at this convocation to commemorate a truly historic milestone in our national life, and in a larger sense, to pay tribute to the greatness of the man who conceived it, I offer these symbolic grains of corn, with the hope that you may find some help in this expressed philosophy, even as I have, against that not far distant day when the letter of the law will be fully implemented by the spirit, in every corner of this land of ours.