

## 5 RETHINKING LINCOLN

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In the years since his extraordinary death at the close of the Civil War, Abraham Lincoln has been transfigured into an unsailable icon of the American union. Widely unpopular in his own day, and, like any politician, the object of caricature, scorn and ridicule,<sup>1</sup> Lincoln's reputation since as the savior of the Union has been secured. Now, along the river that for four years divided the nation, he is enshrined in his own marble temple, surrounded by his sacred texts and gazing serenely past the Washington Monument toward the imperial Capitol dome erected during his tenure.

Befitting his place among the gods, his mortal deeds have become redemptive works of national righteousness; to doubt their wisdom, or prudence, or legacy is to entertain heresy. Lincoln's means of saving the union have been locked away, removed from scrutiny as the relics of a national saint and martyr. As M.E. Bradford observed, Lincoln has been "placed beyond the reach of ordinary historical inquiry and assessment."<sup>2</sup> Fashionable academics and politicians, from the ideological Left and Right, are still busy "getting right with Lincoln," still at the mourners' bench confessing their faith in the Deliverer. And in their minds, to question Lincoln's method of preserving an American union is to doubt the value of salvaging the union at all, or, worse, to hold some perverse wish that the United States had collapsed into anarchy in 1861 or even to harbor a secret regret that slavery ever ended. Admittedly, to tamper with his reputation seems reckless, a thoughtless or even malicious attempt to pull down one of the few remaining sacred symbols in a cynical and iconoclastic age. But despite his enduring presence in the American pantheon, the immortality of his words carved in stone, and the consuming fire of his principles, his behavior as Chief Magistrate must be open to examination. The legacy of his ideas and conduct, no matter how noble or virtuous his intentions, must be evaluated. We must confront Lincoln's cost to the character of our union, to the integrity of the Presidency as an institution, and to the nation's subsequent domestic and foreign policy.

<sup>1</sup>See David Donald's two essays "Getting Right With Lincoln" and "Abraham Lincoln and the American Pragmatic Tradition" in *Lincoln Reconsidered: Essays on the Civil War Era*, 2nd ed., enlarged (New York: Vintage Books, 1961), pp. 3-18, 128-43.

<sup>2</sup>M. E. Bradford, "The Lincoln Legacy: A Long View," *Modern Age* (Fall 1980): 355.

Lincoln began his administration in 1861 on a note of irony. In his inaugural address, coming after four months of disconcerting silence since his election concerning how he would handle the seceded states, he promised good will and prudential restraint on the part of the North. He also warned of perpetual union and firm resolve. But near the end of his speech, Lincoln inserted an odd word of comfort to the distressed South. He offered this ironic reassurance: "While the people retain their virtue, and vigilance [sic], no administration, by any extreme of wickedness or folly, can very seriously injure the government, in the short space of four years." His Presidency posed no threat to the old Republic as embodied in the Constitution, he promised. And surely, even if it did, the good people of the United States would see to it that he was kept in line, and in four years they would have the opportunity to remove him from office.<sup>3</sup> What injury could this humble rail-splitter possibly inflict on the country in so short a time? The tremendous physical injury of Lincoln's war against his own people, the cost in lives and property, is well known: More than 600,000 soldiers dead and perhaps 20 billion dollars in wealth destroyed. But beyond this immediate and visible cost reaches the enduring legacy of Abraham Lincoln's reasoning and conduct as President, his harm to the limited, constitutional government of the founders' design. In the course of saving the union, he destroyed two confederacies: the one born in 1861 and the one born in 1789.

Lincoln undermined the old Republic in part by substituting for the actual early history of the union his own version of the American founding. Understanding Lincoln the historian is fundamental to understanding his behavior in the crisis of 1861 and his role in "refounding" a consolidated nation. Relying on a selective, and ultimately misleading, version of the founding, Lincoln proposed in his First Inaugural that the union dated from at least the moment Britain's North American colonies had entered into association in 1774 and that it had then been "matured" by both the Declaration of Independence and the Articles of Confederation, only to emerge "more perfect" in the Constitution. The preexisting union had in fact created the Constitution, and not the Constitution the union. This sequence was foundational to Lincoln's argument against disunion and to his subsequent prosecution of the war, for he used this reading of history to reject the legality of secession and to declare any action to secure independence to be "insurrectionary" and "revolutionary."<sup>4</sup>

<sup>3</sup>President Abraham Lincoln, "First Inaugural," March 4, 1861, in *The Collected Works of Abraham Lincoln*, Roy P. Basler, ed. (New Brunswick, N.J.: Rutgers University Press, 1953), 4, p. 270.

<sup>4</sup>*Ibid.*, 264–65.

Lincoln reiterated and developed this point further in his address to a special session of Congress in early July, 1861. At that time he argued that the states retained only those powers reserved to them by the Constitution, as if the Constitution were the authority granting power to the several states instead of the other way around. He repeated his conviction that the union pre-dated even the War for Independence and that therefore it was an organic, perpetual, indivisible whole. "The States," he told Congress, "have their *status* IN the Union, and they have no other *legal status*." Furthermore, he continued, "the Union gave each of them, whatever of independence, and liberty, it has. The Union is older than any of the States; and, in fact, it created them as States."<sup>5</sup> This interpretation naturally found no sympathy among the seceding states on the other side of the Potomac. Confederate President Jefferson Davis responded directly to Lincoln's version of the Founding when he reminded the Confederate Congress that the Constitution ratified in 1789 had been "a *compact between* independent States." The union was not "over" or "above" the states; it was among them and was their creation. As the Tenth Amendment to the Constitution made explicit, any powers the federal government enjoyed were delegated; the rest were reserved to the states and the people. And now the seceding sovereign states had simply withdrawn those delegated powers.<sup>6</sup>

In Lincoln's mind, the union was not only perpetual, antecedent to the Constitution, and the creator of the very states that now sought to leave, it was also a spiritual entity, the mystical expression of a People. In so arguing, Lincoln held to a progressive view of history, of history as the inevitable development and unfolding of a redemptive plan. He and his fellow Unionists transformed the old federation from a practical association of states intended for their mutual defense, order, and prosperity into the embodiment of an ideal, into the vehicle of an abstract principle outside human experience and beyond human capacity. In his Gettysburg Address—in which he significantly dated the founding from 1776, that is, before the Constitution—Lincoln claimed that the American union had emerged in history to achieve a transcendent purpose; the nation was dedicated to an idea, "to the proposition that all men are created equal." As historian Charles Royster notes, to the Unionist mind the single People had been made a

<sup>5</sup>President Abraham Lincoln, "Message to Congress in Special Session," July 4, 1861, *Collected Works*, 4, pp. 432–34.

<sup>6</sup>President Jefferson Davis, "Message to the Confederate Congress," April 29, 1861, in *Democracy on Trial: 1845–1877*, Robert W. Johannsen, ed., in *A Documentary History of American Life*, David Donald, ed. (New York: McGraw-Hill, 1966), 4, pp. 191–96.

nation by their devotion to an overpowering idea. The seceding states betrayed the nation's mystical purpose.<sup>7</sup> A divided union could not fulfill its divinely-appointed role in world history.

Lincoln's progressive view of history and his devotion to America's transcendent mission was evident throughout his political career. As a young lawyer in 1842, Lincoln prophesied that the irrepressible advance of political freedom, initiated with the American Revolution, would one day "grow and expand into the universal liberty of mankind."<sup>8</sup> Later, in 1857, in response to Stephen A. Douglas's more constrained view of equality, Lincoln contended that the Declaration of Independence, a veritable manifesto of universal equality in his skillful hands, had "contemplated the progressive improvement in the condition of all men everywhere."<sup>9</sup> After being elected president, on a visit to Independence Hall, he again proclaimed that the United States was founded on an idea. He testified to his political faith, saying, "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence." The Declaration was a document not limited to these shores but one that promised to lift the burden "from the shoulders of all men" and that gave, as he phrased it, "hope to the world for all future time."<sup>10</sup> In his Annual Message to Congress in 1862, he warned that history had placed an inescapable burden on the people of the United States to preserve liberty not just for themselves and their posterity, but also for a watching world. In Lincoln's expansive vision, the Union side was compelled by the heavy hand of history to extend freedom's dominion and, for the sake of that mission, to preserve the immortal union, "the last best hope of earth."<sup>11</sup>

By his selective use of the American past, his devotion of the nation to an abstract proposition, and his expansive vision of America's role in the world, Lincoln undermined the old federated Republic. He rewrote the history of the founding, and then waged total war to see his version of the past vindicated by success. But in the course of subjugating the "insurrectionary" and "revolutionary" combination in the South, and in creating a unitary nation, he

<sup>7</sup>Charles Royster, *The Destructive War: William Tecumseh Sherman, Stonewall Jackson, and the Americans* (New York: Vintage Books, [1991] 1993), p. 151.

<sup>8</sup>Abraham Lincoln, "Temperance Address to the Springfield Washington Temperance Society," February 22, 1842, *Collected Works*, 1, p. 278.

<sup>9</sup>Abraham Lincoln, "Speech at Springfield, Illinois," June 26, 1857, *Collected Works*, 2, p. 407.

<sup>10</sup>Abraham Lincoln, "Speech in Independence Hall," Philadelphia, February 22, 1861, *Collected Works*, 4, p. 240.

<sup>11</sup>President Abraham Lincoln, "Annual Message to Congress," December 1, 1862, *Collected Works*, 5, p. 537.

also compromised the integrity of the Presidency as a Constitutional office, first by invading the powers of the other two branches and then by assuming further powers nowhere mentioned in the Constitution. He may have claimed that in the midst of an unprecedented national crisis necessity knew no law, but the Constitution in fact recognized the possibility of emergencies and delegated necessary and appropriate powers to the President and Congress. As historian Clinton Rossiter wrote, "The Constitution looks to the maintenance of the pattern of regular government in even the most stringent of crises."<sup>12</sup>

But Lincoln acted alone. From the fall of Fort Sumter in April, 1861, to the convening of a special session of Congress in July of that year, President Lincoln ruled by decree, and on his own initiative and authority he commenced hostilities against the Confederacy. For 11 weeks that spring and early summer, Lincoln exercised dictatorial power, combining within his person the executive, legislative, and judicial powers of the national government in Washington.<sup>13</sup> In his inaugural speech in March he had announced that the union had the right and the will to preserve itself. He promised to secure federal property in the seceding states, to collect all duties and to deliver the mails—all steps short of invasion but intended nevertheless to subjugate the South.<sup>14</sup> He assumed so-called "war powers"—a familiar feature of the modern Presidency, but then a novelty—and proceeded to wage war without a declaration from Congress. The oft-raised concern that Lincoln could not have proceeded otherwise and still have preserved the Union should not obscure the problem of the means he resorted to. The Constitutionality of his acts cannot be, as one historian claimed, "a rather minor issue," for at stake was the integrity of free institutions.<sup>15</sup>

Upon the loss of Fort Sumter in Charleston harbor, Lincoln issued a proclamation calling out a militia of 75,000 troops "in order to suppress . . . combinations" and to enforce the laws, as he said, careful to use Constitutional language and to frame the decree as

<sup>12</sup>Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (New York: Harcourt, Brace and World, [1948] 1963), p. 215.

<sup>13</sup>William A. Dunning concluded that "In the interval between April 12 and July 4, 1861, a new principle . . . appeared in the constitutional system of the United States, namely, that of a temporary dictatorship. All the powers of government were virtually concentrated in a single department, and that the department whose energies were directed by the will of a single man." *Essays on the Civil War and Reconstruction and Related Topics* (New York, 1898), pp. 20f, quoted in Gottfried Dietze, *America's Political Dilemma* (Baltimore, Maryland: Johns Hopkins Press, 1968), p. 34.

<sup>14</sup>Lincoln, "First Inaugural," p. 266.

<sup>15</sup>Rossiter, *Constitutional Dictatorship*, p. 224.

an urgent measure against an insurrection.<sup>16</sup> Jefferson Davis interpreted this call for troops as a declaration of war, noting also that it was manifestly unconstitutional, the exercise by the executive of an expressly legislative power. And President Davis's understanding of the issue was consistent with a narrow reading of the Constitution. The Constitution lists among the powers of Congress the authority "to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions."<sup>17</sup> Even though Lincoln defined secession as an insurrection and as an obstruction of the laws, the Constitution still stood in his way.

Lincoln followed this call four days later with a blockade of Southern ports, expanding it within a week to include Virginia and North Carolina.<sup>18</sup> Again, Lincoln justified his action as an attempt to enforce the laws and collect the revenues. Reasoning according to his logic that the South was still in the union, he again appealed to article I, section 8 of the Constitution, which states that duties had to be "uniform throughout the United States." No section of the union could be exempt from the tariffs. The blockade was a visible declaration of federal sovereignty; it was also an act of war. Within days, Lincoln issued another proclamation, this time calling for more than 40,000 volunteers and substantially increasing the size of the army and the navy.<sup>19</sup> Again, this was a usurpation of Congress's Constitutional powers under article I. Lincoln further infringed on Congressional prerogatives by permitting the military to suspend *habeas corpus* in order to protect "lives, liberty and property."<sup>20</sup> To be sure, the Constitution allows in "cases of rebellion or invasion" for the suspension of the *writ of habeas corpus* for the sake of "public safety."<sup>21</sup> But this extraordinary power is grouped under the responsibilities of the legislative branch. Lincoln even expanded the suspension despite the objections of Supreme Court Chief Justice Roger Taney.<sup>22</sup>

When Lincoln at last convened Congress on July 4, 1861, he reviewed his actions to date and sought formal legislative recognition of the executive decrees he had issued and the broad powers

<sup>16</sup>President Abraham Lincoln, Proclamation of April 15, 1861, *Collected Works*, 4, pp. 331–33.

<sup>17</sup>*U.S. Constitution*, art. I, sec. 8.

<sup>18</sup>President Abraham Lincoln, Proclamations of April 19, 1861 and April 27, 1861, *Collected Works*, 4, pp. 338–39, 346–47.

<sup>19</sup>President Abraham Lincoln, Proclamation of May 3, 1861, *Collected Works*, 4, pp. 353–54.

<sup>20</sup>President Abraham Lincoln, Proclamation of May 10, 1861, *Collected Works*, 4, pp. 364–65.

<sup>21</sup>*U.S. Constitution*, art. I, sec. 9.

<sup>22</sup>Rossiter, *Constitutional Dictatorship*, p. 227.

he had assumed, never acknowledging, however, that he needed such approval.<sup>23</sup> He admitted that his proclamations calling out the militia, blockading Southern ports and increasing the armed forces had been of dubious legality. He explained, however, that he knew Congress would have approved these measures had it been in session and that he had not ventured "beyond the constitutional competency of Congress"—a peculiar defense of his behavior that conceded his guilt. He also finessed his suspension of *habeas corpus* by noting that it had been used "very sparingly" and claimed that, after all, the Constitution was unclear in the first place as to who had the power to suspend the privilege. He made a compelling pragmatic argument as well: should he have scrupulously observed the details of the Constitution while a rebellion destroyed the union? Were, he demanded, "all the laws, *but one*, to go unexecuted, and the government itself go to pieces, lest that one be violated?"<sup>24</sup> In a sense, he was asking if the Constitution had any real meaning apart from the union. But the corollary question for the nation's future was whether the union had any meaning apart from the Constitution.

For the moment, Lincoln had operated largely within the bounds of the Constitution; he had not exercised authority beyond the delegated powers of the federal government as a whole. But over the next four years, in his capacity as commander-in-chief, Lincoln exercised powers not delegated by the Constitution to any branch of government, powers that can properly be called "dictatorial." The list of "irregularities" is long. Lincoln imposed martial law and confiscated property, conscripted the railroads and telegraph lines, spent funds from the Treasury without the benefit of Congressional appropriation, personally arranged for a \$250,000,000 loan, imprisoned 20,000 to 30,000 civilians without due process, arrested and even banished troublesome political foes, restrained speech and assembly, and suppressed more than 300 newspapers. Lincoln also by executive decree initiated conscription and instituted rules of warfare in violation of the delegated powers of the Constitution.<sup>25</sup> Moreover, as the problem of governing conquered territory presented itself, Lincoln outlined a detailed scheme for Reconstruction, created provisional courts, invented the office of military governor, and issued the Emancipation

<sup>23</sup>Dietze, *America's Political Dilemma*, pp. 36–37.

<sup>24</sup>President Abraham Lincoln, "Message to Congress in Special Session," July 4, 1861, *Collected Works*, 4, pp. 429–31 (emphasis added).

<sup>25</sup>U.S. Constitution, art. I, sec. 8. On Lincoln's wartime powers, see Dietze, *America's Political Dilemma*, pp. 34–36; Rossiter, *Constitutional Dictatorship*, pp. 223–39; J.G. Randall, *Constitutional Problems Under Lincoln* (Urbana: University of Illinois Press, 1951).

Proclamation. Whatever its merits as a war measure and as a tool of international diplomacy, the Emancipation Proclamation achieved by executive decree what had never been understood to be within the capacity of the central government in any of its branches. This act of immediate, uncompensated emancipation amounted to an extraordinary exercise of arbitrary executive power.<sup>26</sup> Lincoln later acknowledged that the proclamation had “no constitutional or legal justification, except as a military measure.”<sup>27</sup>

Beyond this abuse of executive power, Lincoln also helped clear the way for the triumph of national consolidation, the kind of unitary government that had been feared by the Anti-Federalists, John C. Calhoun, and the secessionists. This accumulation of power was to be a further enduring cost of Abraham Lincoln and his party to the American Republic. The long and complicated debate over the nature of the union, the struggle between localism and consolidation, was decided by force of arms. Lincoln thereby ended meaningful state sovereignty and removed the states as an effective check on national power and potential tyranny. With the impediment of states’ rights overcome, the old Hamiltonian dream of an activist central government would be fulfilled. From his days as a Whig in the Illinois Legislature in the 1830s, Lincoln was on record as an advocate of costly internal improvements.<sup>28</sup> He was a loyal disciple of Whig leader Henry Clay and his so-called “American System” of national banking, internal improvements, and protective tariffs.<sup>29</sup> As President he explained his vision of an America that would serve the needs of the people. In his address to Congress in July 1861, he proclaimed that the union was fighting a “People’s contest” for the survival of “that form, and substance of government, whose leading object is, to elevate the condition of men,” to remove barriers to success, and to extend equal opportunity.<sup>30</sup> His Whig vision of an energetic central government is clear in his later recommendation of ambitious internal improvements and of a national banking system complete with an inflationary paper currency.<sup>31</sup> Under the political and social opportunities which were afforded by the war, the Republicans crafted, and

<sup>26</sup>Dietze, *America’s Political Dilemma*, p. 39.

<sup>27</sup>Rossiter, *Constitutional Dictatorship*, pp. 226–27 and 237; Donald, *Lincoln Reconsidered*, pp. 188–91 and 203.

<sup>28</sup>Randall, *Constitutional Problems under Lincoln*, p. xxi.

<sup>29</sup>Robert W. Johannsen, *Lincoln, the South, and Slavery: The Political Dimension* (Baton Rouge: Louisiana State University Press, 1991), pp. 14 and 45.

<sup>30</sup>President Abraham Lincoln, “Message to Congress in Special Session,” July 4, 1861, *Collected Works*, 4, p. 438.

<sup>31</sup>President Abraham Lincoln, “Annual Message to Congress,” December 1, 1862, *Collected Works*, 5, pp. 522–23.



Lincoln approved, a raft of nationalist legislation, including a large public debt, an income tax, subsidies to railroads, the bureaucratic Department of Agriculture, and protective tariffs for American business nearing 48 percent.<sup>32</sup> The 20th-century Southern novelist Andrew Lytle aptly summarized Lincoln's consolidationist ambitions when he wrote, "Lincoln, who had always been a Hamiltonian, saw that Hamilton's principles finally triumphed."<sup>33</sup>

In an unsympathetic biography of Lincoln written in 1931, the noted Illinois poet Edgar Lee Masters recognized the wartime President's Hamiltonian disposition and identified one further cost of Abraham Lincoln to our Republic, one that has more to do with his legacy than with his conduct as president, although the precedent was clearly there. Masters observed that Lincoln's name has been used ever since his death as one of the "words of magic." The incantatory power of his name has been used to "perpetuate and strengthen" the kind of nation he forged, a nation of "monopoly and privilege" and of imperialist appetite.<sup>34</sup> Masters, a Midwestern Jeffersonian, charged that Lincoln at heart had been an imperialist. While fondly quoting the Declaration's sacred words about the equality of mankind, "he had ignored and trampled its principles that governments derive their just powers from the consent of the governed." The Gettysburg Address would have been impossible, the irony of it too absurd, if Lincoln had chosen to quote the embarrassing phrase about the consent of the governed rather than the honeyed words about equality. As Masters continued, "Lincoln at Gettysburg could not celebrate such a philosophy, for with all his original, if not perverted, view of things, he knew that it was on this field where the right to set up a new government had received its first deadly blow." The right of self-government—not in the sense of plebiscitary democracy, but rather of local autonomy—had indeed perished on the battlefield of Gettysburg. Contrary to his claim, Lincoln had not fulfilled the promise of the American founding; he had betrayed it.<sup>35</sup>

But conquest did not end with the South. The precedent of subjugation, as Masters sensed, had corrupted the Republic in some essential way. Indeed, Masters even charged that Lincoln's imperialist spirit had been behind the United States' conquest of the Philippines:

<sup>32</sup>Randall, *Constitutional Problems under Lincoln*, p. xxi; Bradford, "The Lincoln Legacy: A Long View," pp. 357–58; Donald, *Lincoln Reconsidered*, pp. 191–94. Donald interprets Lincoln as occupying a minor and passive role in much of this legislation.

<sup>33</sup>Andrew Lytle, "The Lincoln Myth," *The Virginia Quarterly Review* 7 (October 1931): 622.

<sup>34</sup>Edgar Lee Masters, *Lincoln the Man* (New York: Dodd, Mead, 1931), p. 2.

<sup>35</sup>*Ibid.*, pp. 3 and 478.

The abolitionists, the Charles Sumners and the Thaddeus Stevens, who had no conception of liberty, and the conscious imperialists, who had no regard for it, were historically triumphant when McKinley, who was a major in Lincoln's army, by a military order took over the entire Philippine Islands, and its execution resulted in the slaughter of three thousand Filipinos near the walls of Manila.

Following Lincoln's lead, the imperialists of the 1890s launched "America upon the ways of world adventure and conquest."<sup>36</sup>

General Robert E. Lee's foreboding in 1866 that the victorious Union was "sure to be aggressive abroad and despotic at home" soon came true.<sup>37</sup> While some reformers at the turn of the century, even some who admired Lincoln, condemned America's overseas adventures, most of the "uplifters" embraced Lincoln as their model for pious interventionism. Theodore Roosevelt, Woodrow Wilson, and their Progressive army invoked Lincoln's name and sang the *Battle Hymn of the Republic* as they forged a consolidated nation and waged their "war for righteousness" at home and abroad, first in Latin America and then in Europe. Moreover, as Robert Penn Warren reminds us, it was not the image of Washington or Jefferson that the government used to rally the American people during World War II, but that of the beatified Lincoln.<sup>38</sup>

Generations since the War Between the States have suffered the costs of Lincoln's destruction of the old Republic, a more modest federation with a regard for localism and states' rights, a sense of limits, and a relative freedom from foreign entanglement. While the tragedy of the war must be measured as it was experienced, in the loss of homes and sons, in unfathomable heartache, humiliation and spiritual anguish, it must also be measured in its consequences for true liberty. Lincoln often described his task as the effort to salvage for the world at large the American experiment in majoritarianism, opportunity, and egalitarian democracy. But what about the other American experiment, the losing side of Lincoln's progressive history, the original experiment in localism, federalism, and self-rule, the noble attempt at a manageable, constrained, and decentralized government? Surely this was the tradition worth preserving, the tradition to be reclaimed for ourselves and our posterity.

<sup>36</sup>Ibid., pp. 4-5.

<sup>37</sup>Lee stated this concern in reply to a letter from the future Lord Acton. Quoted in Charles Bracelen Flood, *Lee: The Last Years* (Boston: Houghton Mifflin, 1981), p. 143.

<sup>38</sup>Robert Penn Warren, *The Legacy of the Civil War: Meditations on the Centennial* (New York: Random House, 1961), p. 79.