Abraham Lincoln, Lawyers, and the Civil War: Bicentennial Explorations.

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ABRAHAM LINCOLN, LAWYERS, AND THE CIVIL WAR: BICENTENNIAL EXPLORATIONS

George Anastaplo*

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INTRODUCTION

The Bicentennial of Abraham Lincoln's birth has encouraged numerous reconsiderations of both his career and the American Civil War. There are collected here a half-dozen Lincoln-related things that I prepared during 2009 (with the first two coming early in the year, anticipating thereby the Birthday). It can be hoped that all of these things, with a score of others fashioned by me during the past decade, will eventually be parts of a volume, Further Thoughts on Abraham Lincoln.1

Critical to much of the discussion in this Bicentennial collection is the Civil War. Attempts are made to suggest (with some unavoidable repetitions among the parts of this collection) how that great struggle has helped shape the American character, both fulfilling part of the original aspirations of the Country and perhaps distorting somewhat the originally-intended constitutional processes.2


Also worthy of consideration is the influence of these developments upon the law and the legal profession in this Country, especially since Abraham Lincoln was much more of a lawyer than any other President we have had. It is hard to overestimate the influence of the Civil War crises on the law, character, and language of Americans.3

1. THE RISKS AND REWARDS OF CIVIL WAR4

I. The great American Crisis of the House Divided in the nineteenth century is illuminated by, and in turn illuminates, even more ominous crises worldwide in the twentieth century. The Illinois Lincoln-Douglas Debates, in 1858, reflected deep divisions among Unionists throughout the United States. Apprehensive Unionists, especially in the North, considered themselves obliged to take account of the more radical, as well as the more fearful, Southerners of their day.

By the 1850s, a steadily growing number of Northerners were


3. The Lincoln materials drawn on in this collection are taken, for the most part, from THE COLLECTED WORKS OF ABRAHAM LINCOLN (Roy P. Basler ed., 1953). A remarkably useful compendium of a variety of challenging explorations, by hundreds of authors, of the matters touched upon in this Oklahoma City University Law Review collection is provided in LEO STRAUSS AND HIS LEGACY: A BIBLIOGRAPHY (John A. Murley ed., 2005). See also Selected Writings by and about George Anastaplo, www.anastaplo.wordpress.com.

4. This talk, on the Lincoln-Douglas Debates of 1858, was prepared for the January 11, 2009 Works of the Mind Lecture Series of the Basic Program of Liberal Education for Adults, The University of Chicago. The event was taped and broadcast by CAN-TV (Channel 19, Chicago, Illinois), February 15 and February 17, 2009. A follow-up interview of George Anastaplo by Andrew Patner, on Abraham Lincoln, was broadcast by WFMT-Radio, Chicago, Illinois, February 16 and February 22, 2009.
determined not to permit slavery to be steadily expanded geographically and thus made permanent in the United States. The more influential Southerners, on the other hand, had been fearful for decades that slavery would eventually be dismantled nationwide if it should be restricted to the dozen or so States where it had long been legalized. They could not see how their way of life, and indeed their very existence, could be reliably maintained if they lost control of the people of African descent among them (who made up, in several Southern States, half of the population).5

Something like the fearfulness on both sides in this Country in the 1850s could be seen a century later in the wariness with which the NATO powers and the Soviet Union regarded each other; a wariness deepened, at least in the Free World, by ignorance about the severe limitations (material as well as spiritual) of the Soviet Union.6 But we can be thankful that there was no “Fort Sumter” to trigger a worldwide nuclear debacle, however ominous the 1962 Cuban Missile Crisis could seem to some at the time.7 The very worst was somehow avoided by Americans and Russians even without any sustained debates of the caliber of the Lincoln-Douglas confrontation in 1858 and thereafter.

II.

There had been earlier in the twentieth century, however, a European “Fort Sumter,” in the form of the assassination at Sarajevo (in 1914) of the Archduke Francis Ferdinand. The firing on Fort Sumter, in April 1861 (a month after Abraham Lincoln’s Inauguration), seems to have been all that was needed to finish recruiting essential Southerners (especially in Virginia and North Carolina) for the Great Cause. It was obvious at the time that there were some Southerners (especially “the fire-eaters” of South Carolina) as well as some Northerners (such as

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5. In 1860–1861, the first six states that voted for secession had the following proportions of their populations that were of African descent: South Carolina, 57%; Mississippi, 55%; Florida, 44%; Alabama, 45%; Georgia, 44%; and Louisiana, 47%. See HIS SOUL GOES MARCHING ON: RESPONSES TO JOHN BROWN AND THE HARPERS FERRY RAID 169 (Paul Finkelman ed., 1995) [hereinafter HIS SOUL GOES MARCHING ON]; see also infra text accompanying note 22.


7. See ANASTAPLO, HUMAN BEING AND CITIZEN, supra note 2, at 57–58.
disciples of John Brown) who were spoiling for a fight.

Peoples all over Europe, it seemed in 1914, were also spoiling for a fight, so much so that they threw themselves into four years of mindless slaughter (a kind of civil war) that severely damaged Western Civilization. Indeed, the conflict eagerly rushed into, by one country after another in 1914, proved to be the beginning of a new Thirty Years War. Among its dreadful consequences was the rise to power thereafter of the worst elements in Germany, Italy, and Russia, who were then responsible for the massacres of millions of innocent civilians across Europe.\(^8\)

It remains (at least for me) a mystery what Europeans were "thinking of" when they indulged in the four years of obsessive bloodletting to which the Great War was devoted, that suicidal encounter which has recently been usefully described (both in its mammoth follies and in its gallant self-sacrifices) by Janet Morgan in her engaging book, *The Secrets of Rue St. Roch*.\(^9\) The mindlessness, even at times the determined criminal insanity, of that war had been suggested a half-century earlier by the opening pages of Barbara Tuchman's book, *The Guns of August*, recalling a "domestic" drama in London four years before the outbreak of the War:

So gorgeous was the spectacle on the May morning of 1910 when the nine kings rode in the funeral of Edward VII of England that the crowd, waiting in hushed and black-clad awe, could not keep back gasps of admiration. In scarlet and blue and green and purple, three by three the sovereigns rode through the palace gates, with plumed helmets, gold braid, crimson sashes, and jeweled orders flashing in the sun. After them came five heirs apparent, forty more imperial or royal highnesses, seven queens—four dowager and three regnant—and a scattering of special ambassadors from uncrowned countries. Together they represented seventy nations in the greatest assemblage by royalty and rank ever gathered in one place and, of its kind, the last. The

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\(^8\) See Did Anyone "In Charge" Know What He Was Doing? The Thirty Years' War of the Twentieth Century, in **GEORGE ANASTAPLO, CAMPUS HATE-SPEECH CODES, NATURAL RIGHT, AND TWENTIETH CENTURY ATROCITIES** 49–70 (Edwin Mellen Press 1999).

muffled tongue of Big Ben tolled nine by the clock as the cortege left the palace, but on history’s clock it was sunset, and the sun of the old world was setting in a dying blaze of splendor never to be seen again.

In the center of the front row rode the new king, George V, flanked on his left by the Duke of Connaught, the late king’s only surviving brother, and on his right by a personage to whom, acknowledged The Times, “belongs the first place among all the foreign mourners,” who “even when relations are most strained has never lost his popularity amongst us”—William II, Emperor of Germany. Mounted on a gray horse, wearing the scarlet uniform of a British Field Marshal, carrying the baton of that rank, the Kaiser had composed his features behind the famous upturned mustache in an expression “grave even to severity.” Of the several emotions churning his susceptible breast, some hints exist in his letters. “I am proud to call this place my home and to be a member of this royal family,” he wrote home after spending the night in Windsor Castle in the former apartments of his mother. Sentiment and nostalgia induced by these melancholy occasions with his English relatives jostled with pride in his supremacy among the assembled potentates and with a fierce relish in the disappearance of his uncle [that is, Edward VII] from the European scene. He had come to bury Edward his bane; Edward the archplotter, as William conceived it, of Germany’s encirclement; Edward his mother’s brother whom he could neither bully nor impress, whose fat figure cast a shadow between Germany and the sun. [And thus William could say,] “He is Satan. You cannot imagine what a Satan he is!”

We can be reminded by this account (as well as by Janet Morgan’s recent investigations) of what has long been known about the peculiar ferocity of civil wars, especially when one of the parties considers itself mortally threatened.

Perceptive Northerners, in the 1860s, were aware of Southern fearfulness, a fearfulness colored perhaps by guilt about the callous presumptuousness of modern chattel slavery (distinguishable somewhat from ancient slavery, which seemed to depend much more upon the outcomes of wars that put everyone at risk). Southern passions, shaped for a generation in large part by confident "prophets" such as John C. Calhoun, made meaningful public debate hard to sustain, however much such notables as Alexander H. Stephens (of Georgia) opposed Secession, a catastrophe they nevertheless considered themselves obliged to support once their more imprudent fellows prevailed (following the lead of a readily excited South Carolina).

Thus, there was not—indeed, there could not be—in the South in the 1850s anything comparable to the Lincoln-Douglas Debates. A critical concern throughout those 1858 debates in Illinois was about what could usefully (and properly) be said to reassure an apprehensive South without offending too much the ever-deepening anti-slavery sensibilities in the North. Significant concessions had been made in Congress to the South by the Compromise of 1850, which included a substantial strengthening of the Fugitive Slave Act of 1793, an act which had become more and more ineffective as Northern anti-slavery sentiments deepened, a deepening that was challenged by the United States Supreme Court in its 1857 Dred Scott ruling (a ruling which seemed to limit what could ever be done by Congress to control the expansion of slavery into the Territories of the Union).

Slavery could even come to be extolled, by men such as Calhoun and Stephens, as "a positive good" for both master and servant, with Stephens (a friend of Abraham Lincoln from their service together in the
1840s in the House of Representatives) moved, in 1861, to praise the Southern way of life as the peak thus far of Western Civilization. But a persistent uneasiness with slavery remained, seen even in the 1850 Fugitive Slave Act which (like its 1793 predecessor and like the 1787 Constitution itself), could not bear to use the words “slave” and “slavery” but only “fugitive from service or labor.” The framers of the 1861 Confederate Constitution, emphasizing their radical departure from the reticence of their 1787 ancestors (who had evidently expected slavery eventually to wither away), insisted upon using explicitly the language (“slaves” and “slavery”) that had been shunned theretofore in various official documents.14

IV.

Both speakers, in the Lincoln-Douglas Debates, had to reassure the moderate majority in Illinois (as well, eventually, in the North generally). Thus, Lincoln had to “swallow” the Fugitive Slave Act of 1850, even as he continued to indicate that he considered the chattel slavery of his days dreadfully immoral. Thus, also, Douglas had to concede that the people, anywhere in the United States (and especially in the Territories), could exclude slavery if they wished.

We can readily see the foolishness of Southerners who could not—perhaps would not—recognize that President Douglas would do what he could to look out for what they considered their interests so long as they stayed in the Union. The 1858 anti-slavery concessions Douglas had had to make (with respect to his Popular Sovereignty doctrine), in order to be reelected in Illinois, cost him the Southern support he needed to help him secure the Presidency in 1860. On the other hand, the care Lincoln had used in 1858, in distancing himself from outright abolitionism, helped establish him as a moderate Republican who could be elected President in 1860.

Douglas argued, again and again, that Lincoln was not as moderate as he appeared, even going so far as to insist, in the sixth of their seven debates, that Lincoln had “a fertile genius in devising language to

14. See, on the differences in the texts of the 1787 United States Constitution and the 1861 Confederate Constitution, ANASTAPLO, REFLECTIONS ON CONSTITUTIONAL LAW, supra note 2, at 108, 239; see also infra note 26.
conceal his thoughts."15 Lincoln, on the other hand, could say of Douglas, a year after their debates, "He never lets the logic of principle, displace the logic of [that is, the requirements for?] success."16 However all this may have been, Lincoln was adept in presenting himself as a reliable, but moderate, anti-slavery Republican, someone who could be assessed in this fashion by Carl Sandburg in 1926:

It was a year [1860] when Democratic newspapers had pictured Lincoln as oily, simpering, apologetic. Nominal friends said, "He's slick." He was the only thinker and leader in the [Midwest], of wide and commanding strength, who had won a large confidence among the Abolitionist and antislavery forces, without coming out flat-footed for violation of the Fugitive Slave Law.17

V.

It can be debated without end what the People of the United States, especially in the North, really thought about slavery in the 1850s. Certainly, violent action in support of abolitionism could be widely dreaded. Thus, John Brown's October 1859 Harpers Ferry raid, evidently with a view to launching a general liberation of slaves, "had" to be repudiated immediately even by Northern politicians with abolitionist sympathies.

Yet, within a few years after John Brown was hung as a traitor, Union soldiers were routinely marching to the beat of a song celebrating his anti-slavery martyrdom, a song (John Brown's Body), called by some

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“the greatest of the world’s war songs,” the words of which leave Brown virtually canonized. This development can be regarded as somewhat mysterious, especially when one notices that another stirring poem, The Battle Hymn of the Republic, was written to accompany the same music that John Brown’s Body relied upon. We might even see here the pre-War juxtaposition there had been in the North between the more moderate (or spiritual) and the more aggressive (or militant) critics of chattel slavery in the United States.

The violent repudiation of slavery in the United States was anticipated by the peaceful (gradual and compensated) abolition of slavery in the British Empire (in the 1830s), as a part of a worldwide movement against slavery. Even so, it is reported that there are more slaves in the world today than ever before, even though the percentage of the world population that is enslaved has fallen. This suggests that an unscrupulous desire to exploit others remains, and perhaps even more (as Adam Smith argued) the intense desire that human beings have to dominate.

VI.

President Lincoln, from the day of his inauguration (March 4, 1861), considered it necessary to continue to display himself as moderate. Thus, he as President repeated what he had said many times for a decade, that Republicans (however determined they were to keep slavery out of the Territories of the United States) did not mean to have the General Government interfere with slavery in the States where it was already established. Indeed Lincoln had, on the very day John Brown was hanged, told an audience in Kansas, “We cannot object [to Brown’s hanging], even though he agreed with us in thinking slavery wrong. That cannot excuse violence, bloodshed, and treason.”

18. See, on the songs of the Civil War, 2 LIBERTY, EQUALITY & MODERN CONSTITUTIONALISM: A SOURCE BOOK 90 (George Anastaplo ed., 1999); see also Anastaplo, Abraham Lincoln and the American Regime, supra note 1, at 172; infra note 164.


20. HIS SOUL GOES MARCHING ON, supra note 5, at 317; see also Abraham Lincoln, Speech at Elwood, Kansas (Dec. 1, 1859), in 3 THE COLLECTED WORKS OF ABRAHAM
John Brown had been convicted of treason. But one version of the marching song that worshipped him identified as the real traitors those who had executed him, those authorities who were now in armed rebellion against the authority of the United States (and of whom it could be sung, "They hung him for a traitor, themselves the traitor crew"). But Lincoln, during the opening phase of his Presidency, was not yet ready to express much sympathy for abolitionism, however willing he was to question features of the Fugitive Slave Law of 1850 (which, for example, denied the right of a jury trial to anyone apprehended anywhere in the United States as a supposed fugitive slave).

Lincoln obviously recognized, at the outset of his Presidency, that there were still many more Northerners willing to fight (and perhaps die) for the Union than there were to emancipate slaves, no matter how disturbed they may have sometimes been by features of the Fugitive Slave Act. But when Lincoln could plausibly argue (as he did in September 1862) that it had become evident that a blow against slavery in rebellious States would strengthen the military effort of the Union armies, he issued (as Commander in Chief) the Emancipation Proclamation (to take effect on January 1, 1863). Two years later, in his Second Inaugural Address (March 4, 1865), he could recall that, when the war came,

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. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union, even by war; while the government claimed no right to do more than to restrict the territorial enlargement of it.


22. Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865), in 8 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 332. See, on the Second Inaugural Address, GEORGE ANASTAPLO, The Second Inaugural Address, in ANASTAPLO, ABRAHAM LINCOLN, supra note 1, at 243; see also supra note 5; see also infra Conclusion.
 VII. 

The bellicosity of all too many Southerners, grounded in the supposed demands of honor, had had to be reckoned with in the 1840s and 1850s. But also significant was Southern apprehensiveness, especially as white masters imagined what they would do to any rulers who had enslaved them as millions of Africans had been enslaved by them for generations. They were fearful, that is, that their slaves could not be depended on to appreciate the much-proclaimed “positive good” that slavery had chanced to provide generations of benighted Africans in this Country.

Southern leaders, by and large, believed they could not depend on Northerners to look out for the interests of the slaveholding States. And yet it was evident by the 1850s, if not even earlier, that the power of the North, in the National Councils, was steadily growing relative to the South, that North which had more and more abolitionists among that part of the Union which would soon control all branches of the General Government. Southerners could be fearful, no matter what determined moderates such as Lincoln said and perhaps even believed, that their domestic institutions would eventually be interfered with, putting Southerners at great risk physically, as well as financially.

A “way out” had been suggested, in the decades immediately before the American revolution, by John Woolman, an earnest Quaker, a man of intelligent good will whose pious exhortations should have been taken much more to heart by responsible slaveholders, North and South, than they were. He, and men and women like him, drew both on Christian sentiments and British constitutionalism in their efforts to put North American slavery “in the course of ultimate extinction.” It was in that hopeful condition, Lincoln argued (during the 1858 debates with Douglas and elsewhere), that the Founding Fathers had left slavery upon originally establishing the Union and setting its course for the long-run.


24. Critical to this expectation was the Northwest Ordinance of 1787. See, on the Ordinance of 1787, George Anastaplo, *The Northwest Ordinance of 1787: Illinois’ First Constitution*, 75 ILL. B.J. 408 (1965), reprinted in ANASTAPLO, ABRAHAM LINCOLN, supra note 1, at 39; see also infra text accompanying note 108.
We have noticed the reluctance of the Framers to use the terms “slaves” and “slavery” in those places in the Constitution where slaves had to be referred to. Particularly striking is the distinction drawn in Article IV, of the Constitution, between those “who shall flee from Justice” in one State into another State and those “held to Service or Labour in one State, under the Laws thereof,” who escape into another State.25

The original intention, or at least attitude, about slavery, Lincoln argued again and again, can be seen in what was done in the Northwest Ordinance of 1787, the very summer that the Constitution was being drafted—that Organic Law, for the governance of the then-major territory of the United States, which culminated in the insistence, “There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted . . . .”26

Senator Douglas evidently never faced up publicly to the significance of the Northwest Ordinance and what it indicates about the serious opinions among the Founders (in the South as well as in the North) about the limitations (and hence the ultimate extinction) of chattel slavery in North America.27 Much the same can be said about the limitations of the Supreme Court Justices responsible for the Dred Scott ruling in 1857, a ruling which attempted to keep Congress from interfering with the spread of slavery in the Territories of the United States. The successors to leadership in the South, after the Founding Period, could not continue along the path originally suggested by their most illustrious ancestors, deflected therefrom as they were both by the allure of unexpected economic benefits following upon the invention of the cotton gin and by the horrors of the race wars following upon

26. Confederate Congress, Ordinance of 1787: The Northwest Territorial Government, art. VI (July 13, 1787). The term “slavery” can be used unapologetically when chattel slavery is forbidden; see also infra text accompanying note 40; infra note 148.
emancipation in nearby Haiti.\textsuperscript{28}

It should be recognized that Senator Douglas did work vigorously to prevent disunion, especially after it became evident who would be elected President. He was in the Deep South during election week, 1860, seeking to assure apprehensive Southerners about the impending Administration of that "Black Republican," Abraham Lincoln. It can even be said that Douglas worked himself to death, during the opening months of the Lincoln Administration, rallying Loyalists (North and South) to defend the Union.

\textit{IX.}

The response to the 1861 crisis by Stephen A. Douglas was in marked contrast to that by Alexander H. Stephens. Stephens, after arguing vigorously against the proposed Secession by his native Georgia, considered it his duty to accept thereafter the Vice Presidency of the Confederate States of America.\textsuperscript{29} He even went so far as to deliver (in 1861) his famous (or notorious?) "Corner Stone Speech," in which he could insist that African slavery was not only justified but was also critical for the superior civilization that had become available, for the first time anywhere in the world, only in the South, a development that (he said) Thomas Jefferson and his generation of Southerners had not appreciated.\textsuperscript{30}

Alexander Stephens, like John Calhoun before him, relied upon a systematic disparagement of African life to justify what was being done in North America for benighted Africans.\textsuperscript{31} Abraham Lincoln himself could also at times seem to disparage people of African descent, especially when he was pressed to assure apprehensive Unionists that Republicans did not intend to sacrifice the interests of whites for the sake of Africans. A vignette by Henry Thoreau suggests how people of African descent (at least in the Western Hemisphere) might regard their prospects in the white man’s universe:

\begin{quote}

29. See, on Stephens, \textit{ANASTAPLO, ABRAHAM LINCOLN, supra} note 1, at 370.
30. See \textit{infra Part 7}.
\end{quote}
There was wit and even poetry in the negro's answer to the man who tried to persuade him that the slaves would not be obliged to work in heaven: "Oh, you g'way, Massa. I know better. If dere's no work for cullud folks up dar, dey'll make some fur 'em, and if dere's nuffin better to do, dey'll make em shub de clouds along. You can't fool this chile, Massa."

Even so, we should be reminded that Frederick Douglass, the former slave who was one of the most eloquent speakers of his day (and someone who had been repeatedly invoked by Stephen A. Douglas in order to disparage Abraham Lincoln's associations)—Frederick Douglass could say, years later, that Lincoln "was the first great man in the United States with whom [he] talked freely... who in no single instance reminded [him]... of the difference of color" between them. Is this still another instance of the growth in moral stature, as well as in intellectual capacity, that Lincoln was capable of as he confronted "a great civil war" for which he could be considered partly responsible? And dare it be added that that war, despite the follies upon which it depended and to which it contributed—that that terrible war, reinforced (and perhaps deepened) the unique moral foundations (if not even the tragedy-laden spirit) upon which a great people depends, serving thereby to enrich a revolutionary founding begun with great expectations in 1776?

2. PASSION AND RACE RELATIONS IN THE UNITED STATES

I.

We can be helped to see the passions that slavery in the United States aroused by examining critical moments in the careers of Mary Ann Todd of Kentucky and Preston Smith Brooks of South Carolina. These two


34. This talk was prepared for the February 5, 2009 meeting of the Women's Society, Hyde Park Union Church, Chicago, Illinois.
Southerners, of distinguished families, went quite different ways when the American Union was threatened. Critical to their responses were opinions about how slavery and the Nation were to be dealt with.

Mary Todd, of a respectable Lexington family, married a talented Illinois lawyer of lowly origins who knew how to take advantage, again and again, of the opportunities available to him. She is generally remembered as emotionally unstable, especially because of perhaps inherent psychic defects that became even more troubling after her husband was assassinated, difficulties that required her to be hospitalized in 1875 (evidently against her will). The loss of three of her four children (and especially the second loss, while the family lived in the White House) contributed significantly to her distress.55

However loyal she remained to her husband and his cause during the Civil War, she could not help but be disturbed by the sufferings of her family back in Kentucky. A brother-in-law, who had even been offered a commission in the Union Army by her husband, was killed while serving as a general in the Confederate Army (the Army in which three of her half-brothers also served during the War). One can see, in her career, the additional burdens that the Civil War imposed upon those with connections in the Middle States of the Union, burdens intensified by the peculiar demands of having to accommodate to a system of chattel slavery, that system which held in perpetual bondage more than one-seventh of the population of the United States in 1860.

II.

Mary Todd was drawn to Springfield by a sister who was the daughter-in-law of an Illinois governor. She was interested in politics, with talents evident in the provocative “Rebecca Letters” (satirizing a local politician) to which she contributed for newspaper publication.36 Her attractiveness, physical as well as political, is testified to by the courting of her by both Abraham Lincoln and Stephen A. Douglas, among many others.

Lincoln himself, it seems, could become quite troubled at the

36. See, e.g., BAKER, supra note 35, at 94–97; see also SANDBURG, supra note 17, at 280–85.
prospect of marriage. He even seems to have “stood up” his bride before a hastily-arranged marriage was finally entered into a year later. Nine months later their first child was born, the only one to survive to adulthood (and thereafter to a career as a Harvard-trained Chicago lawyer who served in the 1880s as Secretary of War and as an Ambassador to the Court of St. James).  

Mrs. Lincoln must have sometimes been quite difficult to live with, which may help account for Lincoln’s willingness to travel on circuit (as a lawyer) for weeks at a time. She was, in any event, a determined housekeeper who was socially ambitious. Also, she was, especially in the White House, remarkably extravagant, evidently concealing from her husband many of her (somewhat compulsive) purchases of expensive clothing (especially in New York City).

III.

Lincoln, too, could be secretive (which may almost be natural in an exceptional human being)—he could be quite secretive even before he came to suspect that his wife could not be trusted with Secrets of State. But, it seems, he never doubted her loyalty to the Union Cause during the War. She, in turn, could sometimes be harsh in her assessments of Kentucky relatives who sided with the Rebellion.

She could be critical, as well, of various Northerners. Some members of her husband’s Cabinet, he could be reminded again and again, did not meet with her approval. And General Grant could be condemned by her as a “butcher,” because of the high casualties he could accept in pressing his campaigns.

On the other hand, she was on very good terms with Charles Sumner, of Massachusetts, perhaps the most vigorous abolitionist in the Senate during the Civil War. She seems to have been drawn to him in part because of his education in the Classics and his proficiency in the French language (which she shared somewhat). Sumner may also have seemed to her to exhibit the courtliness she admired in the traditional Southern gentleman.

37. See BRIAN DIRCK, LINCOLN THE LAWYER 175 (2007); infra text accompanying note 79.

It seems to have been generally acknowledged by leading Southerners (such as Alexander H. Stephens), in the decades leading up to the Civil War, that Southern leaders during the Founding Period had regarded slavery as no better than “a necessary evil,” to be phased out as circumstances permitted, especially considering what the United States stood for as “the land of the free.” But when it became evident to pre-Civil War Southerners that dismantling their ever-growing slavery system was neither likely nor desirable, respectable Southerners considered themselves (naturally?) obliged to speak of slavery as “a positive good” (for the slaves as well as for their masters). Their critics, on the other hand, could explain this development as the lamentable influence upon Southerners of both fear and greed.39

However that may have been, it had become evident that the Slavery Interests were becoming more and more vulnerable in the National Union, especially as the Republican Party was gaining converts to its insistence in the 1850s that there should be no more Slave States developed in the Territories of the United States. Thus, slavery could be seen as doomed, in the long run, if the policy evident in the Northwest Ordinance of 1787 should be insisted on, legislation which had provided for the only Territory owned at that time by the United States. That is, it had been insisted on in that Articles of Confederation, reenacted thereafter (in 1789) by the First Congress, “There shall be neither slavery nor involuntary servitude in the [Northwest Territory], otherwise than in the punishment of crimes whereof the party shall have been duly convicted . . . .”40

Lincoln, among others, insisted that the Northwest Ordinance was intended to advance the recognition in the Declaration of Independence that “all Men are created equal.” And Southerners could see that the political power of the Free States in the Union was steadily growing. The November 1860 balloting, confirming the anti-extension-of-slavery trend that had been developing for at least a decade, moved the “fire-eaters” of South Carolina to declare their State seceded (in December 1860),

39. See infra Part 7; see also ANASTAPLO, ABRAHAM LINCOIN, supra note 1, at 368 (“‘positive good’ of slavery”). See, on the mystery of evil, infra note 136.
40. Confederate Congress, Ordinance of 1787: The Northwest Territorial Government, art. VI (July 13, 1787); see also supra text accompanying note 26.
beginning thereby an effort that was to include ten other States by May 1861.

V.

The prevailing doctrine among Secessionists in the 1860s seems to have been shaped by John C. Calhoun, of South Carolina (who had died in 1850). This doctrine was reinforced most notably by Alexander H. Stephens, of Georgia, who could speak confidently in 1861 of slavery as the Corner Stone of Southern civilization, a way of life praised by him as the peak worldwide thus far of civilization. The Southerner's identification of their way as chivalrous and otherwise praiseworthy would be bitterly condemned by Charles Sumner in a Senate speech (on June 4, 1860) about "the Barbarism of Slavery," seven months before the resolutions of secession began to be adopted by eleven of the thirty-four states in the Union.

Sumner, four years before, had made his previous speech on the Senate floor, a vigorous attack on slavery and slaveholders. This led, two days later, to a vicious attack upon him, on the Senate floor—an attack on a helpless man that was so unchivalrous as even to suggest to me that that date, May 22, 1856, can be understood to be the day on which the South began to lose the Civil War. That is, the overwhelming majority of the Southerners who commented publicly on this attack applauded what had been done in their name, implicity repudiating thereby what was at the core of their self-esteem and morale as gentleman.

My observations here have been anticipated somewhat by the description of the assault on Sumner by Lord Charnwood in his justly-acclaimed biography of Abraham Lincoln:

41. See infra Part 7.
42. In the debate on the bill for the admission of Kansas as a free state, in an impassioned speech, "The Barbarism of Slavery" . . . , [Sumner] proceeded to set forth his indictment of slavery in its social, moral, and economic as well as political aspects. Many of his friends doubted the wisdom and timeliness of such an utterance on the eve of a presidential election; but it proved of immense influence and was distributed broadcast by the Republican national committee.

18 DICTIONARY OF AMERICAN BIOGRAPHY, supra note 35, at 211.
43. See, on Sumner's assailant, 3 DICTIONARY OF AMERICAN BIOGRAPHY, supra note 35, at 88.
One famous incident of life in Congress must be told to explain the temper of the times. In 1856, during one of the many debates that arose out of [the] Kansas [issue], [Charles] Sumner recited in the Senate a speech conscientiously calculated to sting the slave-owning Senators to madness.

Congressman Preston Brooks, of South Carolina, had an uncle in the Senate; South Carolina, and this Senator in particular, had been specially favoured with self-righteous insolence in Sumner's speech. A day or so later [May 22, 1856] the Senate had just risen and Sumner sat writing at his desk in the Senate chamber in a position in which he could not quickly rise. Brooks walked in, burning with piety towards his State and his uncle, and in the presence, it seems, of Southern Senators who could have stopped him, beat Sumner [several times] on the head with a [cane] with all his might. Sumner was incapacitated by injuries to his spine for nearly five years. Brooks, with a virtuous air, explained in Congress that he had caught Sumner in a helpless attitude because if Sumner had been free to use his superior strength he, Brooks, would have had to shoot him with his revolver. It seems to be hardly an exaggeration to say that the whole South applauded Brooks and exulted.4

Charnwood introduced this "whole disgusting story" by observing,

[I]t ought to be realised that [Southern leaders], men who for the most part were quite kind to their slaves and had long ago argued themselves out of any compunction about slavery, were often exposed to intense verbal provocation. Nevertheless, what followed on Sumner's speech is terribly significant of the depravation of Southern honour.45

Additional information about the aftermath of the Brooks assault, during which the cane used was smashed, is provided by the Dictionary of American Biography:

The Brooks-Sumner episode created intense excitement, most

44. CHARNWOOD, supra note 16, at 104–05 (emphasis added).
45. Id. at 104.
of which was partisan, the North fiercely denouncing Brooks, while Southern states and communities passed resolutions approving his conduct, and presented him with a number of gold-headed canes and at least one gold-handled cowhide. A month after the assault Brooks was charged in a speech by Anson Burlingame [1820–1870], representative from Massachusetts, with cowardice and lack of fair play. Brooks challenged Burlingame to a duel; the latter accepted but named as the place the Canadian side of Niagara Falls, which it was difficult, if not impossible, for Brooks to reach with safety. Brooks said Burlingame might as well have named Boston Common and refused to go. His refusal was of course capitalized in the North as revealing lack of courage. He lived less than a year after this event, dying [of natural causes at age 37] at Brown’s Hotel, Washington, Jan. 27, 1857. He was striking in appearance, six feet in height, said to be the handsomest man in the House, of a winning presence, and, except when under the influence of a hasty temper, gentle and gracious in manner. He is said to have suffered in the last months of his life from the fear that his attack on Sumner had hurt the section he was trying to defend.46

VI.

The determined insensitivity of decent Southerners, in assessing what had been done in their name to Charles Sumner by Preston Brooks, suggests how desperate a decent people can become when dreadfully apprehensive. It also suggests features of the system of slavery that Thomas Jefferson, himself an owner of slaves most of his life, had noticed:

The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an

46. 3 DICTIONARY OF AMERICAN BIOGRAPHY, supra note 35, at 88. See, on the tumultuous career of another passionate anti-slavery Massachusetts-man, John Quincy Adams, ANASTAPLO, THE CONSTITUTIONALIST, supra note 6, at 809.
imitative animal. . . . The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who, permitting one half the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the amor patriae of the other. 47

Slavery, in short, corrupts both masters and slaves.

How deeply engrained such harm can be may be seen many generations later. Thus, someone can parade in our own time as an apostle of Southern gentlemanship, apparently blissfully forgetful of the degrading private exhibitions that had once been indulged in by him for the sake of his immediate gratification, disturbing misconduct very much in the traditions established by the unseemly exploitation of female slaves by their masters. Then there have been (also in our time) the public intimidation of school children and the bombing of churches, in the name of a privileged way of life sanctified by “the Lost Cause.”

The Redemption of the South (also in our time) was anticipated in the revulsion felt by many Southerners upon seeing the measures employed (by the use of dogs and otherwise) in the supposed defense of their “culture.” This healthy response was a far cry from that of the South Carolina constituency which returned Congressman Brooks to office with a much-enhanced majority after his disgraceful attack on Senator Sumner. Also illuminating is how much Southern athletic teams (both university and professional teams) have come to rely on African-American athletes in their desperate pursuit of much-sought-after national recognition.

I have suggested that the beginning of the end, for the South, in the Civil War could be seen on May 22, 1856, in the shamelessly unchivalric assault by an outraged slave-owner on a helpless critic. Some awareness even then of the problem here by Southerners, despite their immediate widespread public acclaim for the assailant, could be seen in the repeated insistence, for several years, that the victim (Charles Sumner) was pretending to be more severely injured than he really was. After all, Southerners were (as Abraham Lincoln repeatedly noticed) as fundamentally decent as their Northern counterparts.

Northern decency did contribute to the steadily increasing opposition, nationwide, to the indefinite perpetuation of slavery. Furthermore, slavery was threatened by the ever-deepening ties established (in North America) between masters and slaves. Many of these relations (including blood ties) depended on chance factors, as did the circumstances that had determined who had been originally kidnapped into slavery in West Africa.

Consider, for example, the ex-slave Elizabeth Keckley, a skilled seamstress, who became an intimate of Mrs. Lincoln in the White House and thereafter. Before that, she had been much-relied-on by Mrs. Jefferson Davis during her husband’s final years in Washington as a Senator from Mississippi. Thus, the longer that people of African descent were here in North America, the more they became like their masters, making it ever harder to justify an indefinite perpetuation of chattel slavery, no matter how it was rationalized.

Mrs. Keckley, because of her skills as a seamstress, had been able to earn enough, on the side, to buy herself out of slavery. And, because of her temperament, she was someone a lady could routinely confide in. Indeed, she reports, the family of Jefferson Davis had invited her to accompany them when he went South to assume the office of the Confederate Presidency.

Elizabeth Keckley had had dreadful experiences as a slave, including being raped by a white master. The son conceived thereby, who was quite light in appearance, was eventually to die serving in the Union Army during the Civil War. Mrs. Keckley and Mrs. Lincoln shared an
interest in spiritualism, attempting thereby to make contact with departed children.

There was eventually published under Mrs. Keckley’s name a book, *Behind the Scenes*, with special emphasis therein upon her wartime service with the President’s wife. Appended to her account are a score of letters she had received from Mrs. Lincoln, in which the President’s widow repeatedly bemoaned her wretched conditions, made even worse by the paltriness of the funds available for her to live on—matters touched on in a letter of November 15, 1867, from Mrs. Lincoln to Mrs. Keckley:

I hope the day *may* arrive when I can return your kindness in more than words. As you are aware of my beloved husband’s great indulgence to me in pecuniary matters, thereby allowing me to indulge in bestowing favors on those whom I considered worthy of it, it is in this respect I feel chiefly the humiliation of my small circumscribed income. If Congress, or the Nation, had given me the four years’ salary, I should have been able to live as the widow of the great President Lincoln should, with sufficient means to give liberally to all benevolent objects, and at my death should have left at least half of it to the freedmen, for the liberty of whom his precious sacred life was sacrificed. In the blissful home where my worshipped husband dwells God is ever merciful, and it is the consolation of my broken heart that my darling husband is ever retaining the devoted love which he always so abundantly manifested for his wife and children in this life. I feel assured his watchful, loving eyes are always watching over us, and he is fully aware of the wrong and injustice permitted his family by a country he lost his life in protecting.

Cannot we hear in this letter the long-suffering melancholy of Southern ladies confident about their worth even as they are obliged (as all too many *were* obliged) to endure systematic neglect by a misdirected community?

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49. Letter from Mary Lincoln to Elizabeth Keckley (Nov. 15, 1867), in Keckley, *supra* note 48, at 349–51. The “four years’ salary” referred to seems to be the compensation that Lincoln would have received during his second Presidential term.
Further indicative of what was happening to Southern slavery in the quarter-century leading up to the Civil War are the personal relations that seem to have been established by Elizabeth Keckley with the family of her former masters. There seems to have been genuine affection for some of them on her part, along with her natural repudiation of the system of slavery. Indeed, personal relations were such that she could, after the War, consent to visit with some women who had once known her as a slave.

Also indicative of the challenges facing a slavery-regime in this Country was the well-established understanding among Southerners that slaves could be permanently emancipated. Was there not always something odd, and ultimately indefensible, in an arrangement that could (even before the Civil War) consider an appreciable and growing number of people of African descent in the United States as forever free? What did that say about the supposed basis in nature for chattel slavery?

How Mrs. Keckley felt about both slavery and emancipation is suggested by her letter of January 1, 1868, to Daniel Alexander Payne, a bishop of the African Methodist Church and President of Wilberforce University (a man who had been born in Charleston, South Carolina, to free parents of color):

Allow me to donate certain valuable relics, to be exhibited for the benefit of Wilberforce University [the Ohio school named for the great British abolitionist], where my son was educated, and whose life was sacrificed for liberty. These sacred relics were presented to me by Mrs. Lincoln, after the assassination of our beloved President. Learning that you were struggling to get means to complete the college that was burned on the day our great emancipator was assassinated, prompted me to donate, in trust to J. P. Ball (agent for Wilberforce College), the identical cloak and bonnet worn by Mrs. Lincoln on that eventful night. On the cloak can be seen the life-blood of Abraham Lincoln. This cloak could not be purchased from me, though many have been the offers for it. I deemed it too sacred to sell, but donate it for the cause of educating the four millions of slaves liberated by our President, whose private character I revere. You well know that I had every chance to learn the true man, being constantly in
the White House during his whole administration. . . . I also
donate the dress worn by Mrs. Lincoln at the last inaugural
address of President Lincoln.50

We can see anticipated here the reverence with which the African-
American community came to regard Abraham Lincoln along with Jesus
and (more recently) John F. Kennedy and Martin Luther King, Jr. (all
martyrs). The "Europeanization" of people of African descent in the
United States is reflected in the names of these four heroes, reminding us
once again how "American" millions of slaves could become, no matter
how different they "had" to be regarded by those who considered
themselves obliged to insist upon enslaving them and their descendants
in perpetuity.

3. THE EVERYDAY LAWYER IN A PRESIDENT FOR THE AGES51

I.

There has been, for much more than a century now, considerable talk
about the career of Abraham Lincoln as a lawyer. Brian Dirck's account,
Lincoln the Lawyer,52 supplements these accounts, relying on long-
familiar materials and drawing on newly-discovered evidence, especially
that provided by the quite productive Lincoln Legal Papers project.53

Professor Dirck, an obviously competent scholar on the history
faculty of Anderson University, has recapitulated, in an informative and
engaging account, what can now be known about Lincoln's legal career.
Thus, there is provided, both for the general reader and for scholars, an
interesting story about the career of an Illinois lawyer between 1836 and
1860 (to the very eve of his departure from Springfield to assume the
Presidency).

We are reminded, by the abundant Dirck citations, of how many
accounts there have indeed been of Abraham Lincoln's career at the

50. Letter from Elizabeth Keckley to Bishop Payne (Jan. 1, 1868), in Keckley, supra
51. This essay was prepared as a book review. It anticipated, in effect, the program
noticed infra note 81.
52. Dirck, supra note 37.
53. See, e.g., Lincoln Legal Papers, The Law Practice of Abraham Lincoln:
bar—and of how detailed (and even specialized) those accounts can be. We are reminded as well that Lincoln spent far more time in court, as a practicing lawyer, than any of the other Presidents who have been lawyers (more than a score of them). 54

II.

Professor Dirck’s general reliability and usefulness make even more intriguing the anomalies suggested by his presentation. Particularly intriguing is what the reader learns about the multitude of debt-collection cases Lincoln was engaged in throughout his career. In most such cases he represented the creditor seeking payment from a defaulting debtor.

The reader is informed about how critical this credit system was for the young Republic, especially in what we now know as the Midwest. It seemed to be essential, that is, that a reliable system of enforcement be available if the ambitious economy of the region was to develop.

What makes the story told in the Dirck book somewhat odd is that the reader learns as well about the traumatic experience the young Lincoln had himself had as a debtor mercilessly hounded by a determined creditor (who, after Lincoln became an established lawyer, eventually became a client of his in pursuit of other defaulting debtors). This experience followed upon a failed business venture, the only major commercial enterprise Lincoln himself ever engaged in, it seems. 55

A substantial part of the Lincoln income for decades came from this kind of practice (as it did for other, perhaps for most, lawyers of the region). Is there available anywhere any account by Lincoln himself of how he felt, and thought, about a line of work which required him to subject others to the kind of vigorous (if not even ruthless) legal compulsion that had once made him feel so desperate (especially as he contemplated the “national debt” he had been so imprudent in acquiring)? 56 The oddness of all this can seem to have been anticipated by the fact that Lincoln’s failed business venture included a tavern, and this despite his own lifelong career as a teetotaler.

It is emphasized by Professor Dirck that Lincoln, after his disastrous

54. DIRCK, supra note 37, at 171.
55. See id. at 54.
56. See id. at 55, 162.
youthful venture, "was not an entrepreneur."57 "Aside from politics," we are told, "Lincoln pursued no living other than the law."58 Earlier we were told,

He never bought into another pig in a poke like [the crippling enterprise of his youth]; in fact, he seldom invested money in any business enterprise. He even avoided the era’s favorite hobby of land speculation. Throughout his life, Lincoln was "frugal to excess," according to one colleague. [William] Herndon observed that Lincoln had “no avarice of the get” but he did have “the avarice of the keep.”

By “the keep” Herndon meant financial prudence, to an excessive degree (at least according to Billy [Herndon]). But we could read a bit deeper and see in this value of personal prudence about money a more professionally driven discretion about the sorts of questions he should ask about the characters of the hundreds of debtors and creditors whom his practice paraded before him.59

It might even be suggested that Lincoln, as Statesman, also very much exhibited an “avarice of the keep.” This could most dramatically be seen in his determination, no matter what the costs, that the United States (under the Constitution of 1787) should retain all of its States and Territories.

III.

Another anomaly is touched upon (not developed) in the Dirck account. This has to do with the fact that Lincoln could be remembered as having had an “‘insane love in telling dirty and smutty stories.’”60 This “gift” of his seems to have been related to Lincoln’s considerable preference, throughout his life, for male company, something which is insisted on by the author. Lincoln relished, evidently even in recollections to the end of his life, the circuit riding he did (with judges,

57. Id. at 162.
58. Id.
59. Id. at 75.
60. Id. at 24; see also, on storytelling, id. at 36, 40, 52.
other lawyers, and court personnel) for weeks at a time outside Springfield. And also, it seems, he evidently liked to trade off-color stories even while President. My suspicion is that a major source of such stories for him then was Ward Hill Lamon, who was with him during his Washington days.  

Lord Charnwood, in his remarkable biography of Lincoln, considered it necessary to deal with this challenge for any appraiser of Lincoln’s character. He quotes a “political associate in Illinois, Mr Leonard Swett, afterwards Attorney-General of the United States,” as writing:

Almost any man, who will tell a very vulgar story, has, in a degree, a vulgar mind. But it was not so with [Lincoln]; with all his purity of character and exalted morality and sensibility, which no man can doubt, when hunting for wit he had no ability to discriminate between the vulgar and refined substances from which he extracted it. It was the wit he was after, the pure jewel, and he would pick it up out of the mud or dirt just as readily as from a parlour table.

Lord Charnwood then adds: “In any case [Lincoln’s] best remembered utterances of this order, when least fit for print, were both wise and incomparably witty, and in any case they did not prevent grave gentlemen, who marvelled at them rather uncomfortably, from receiving the deep impression of what they called his pure-mindedness.” We can be reminded here of the range of stories and language exploited both by Geoffrey Chaucer and William Shakespeare.

Is there any record of Lincoln expressing reservations about this “gift” of his? What, for example, did he say to his son Robert about such things, when he came of age? (Did Robert Lincoln ever comment on this sort of thing?) Is it even possible that such familiarity with the “muck,” and with its exploitation, can help teach one about human nature, somehow contributing thereby to the tough-minded sublimity evident in Lincoln’s greatest speeches?

61. See id. at 150.
62. CHARNWOOD, supra note 16, at 17 (emphasis added).
63. Id.
64. See, e.g., ERIC PARTRIDGE, SHAKESPEARE’S BAWDY (1947).
One might again recall here Stephen A. Douglas's exasperated comment, in 1858, that Lincoln had "a fertile genius in devising language to conceal his thoughts." May there even be seen in the coupling of the high and the low in Lincoln's talk a parallel to the coupling in him of the personal tenderheartedness exhibited on various occasions with the toughness exhibited as President in prodding his generals to engage in their bloodiest battles?

Perhaps we can better understand the mixture in Lincoln of the low and the high, if not even a useful preparation for the high by vigorously indulging in the low, if we recall the uninhibited career of Shakespeare's Prince Hal as part of the preparation for the emergence of King Henry V. Is there in the career of the mature Lincoln anything comparable to the ruthless repudiation of Falstaff that the newly-crowned Henry considered it necessary to exhibit?

IV.

These observations have not been meant as criticisms of Professor Dirck's account but, rather, as queries prompted by his eminently instructive book.

There are, however, slips here and there that it can be useful to notice. A couple of them are generated by how the Emancipation Proclamation is regarded. The author allows himself to seem to endorse what a distinguished historian said, a quarter century ago, in "famously liken[ing the Proclamation] to a 'bill of lading.'" Further on, the author can himself use a tone of disparagement when speaking of the Emancipation Proclamation: "And, of course, there is the writ of garnishment quality in his Emancipation Proclamation."

Such characterizations of the Proclamation fail to comprehend how remarkable it was, not only in its effects but also in its construction. Its critics, generation after generation, are put to the test when they undertake to read it, and especially when they seem to disparage it.

65. Lincoln, supra note 15, in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 261; see also supra text accompanying note 15.
66. DIRCK, supra note 37, at 152.
67. Id. at 169.
68. See, e.g., LEO STRAUSS AND HIS LEGACY: A BIBLIOGRAPHY, supra note 3, at 886.
V.

The gods, the pious may be tempted to observe, trip up those who do not pay to the Emancipation Proclamation a proper respect. Thus, our author slips when, in accounting for some of the language of the Proclamation, he refers to "border states," 69 instead of to the "Middle States" (a designation that Lincoln, with good reason, usually preferred to use).

Then, in the same paragraph (with its further reflections on the limited effects of the Proclamation), the "passage" of the Thirteenth Amendment is spoken of at a time (February 1865) when it still had almost a year to go before its ratification (in December 1865). 70 What was being celebrated on that February 1865 occasion was the Congressional submission of that Amendment to the States for their ratifications, something that Illinois had just been the first to provide. Another mistake in dating, more or less innocent, can be noticed here. It is said that Abraham Lincoln entered the White House in 1860. 71 The author knows better, of course, since he recognizes further on that the Lincoln second term would have ended in March 1869. 72

VI.

We return to the more reliable account offered by the author, that which he undertakes to provide in chronicling Lincoln's career as an Illinois lawyer. It is heartening to see how Lincoln persevered despite both his deprived beginnings and his evidently congenital disposition to "melancholy" (or depression?).

The reader can see, in the way that Lincoln conducted his legal practice, both the magnanimity and the ruthlessness of which he was capable as President. Professor Dirck's account is useful by reminding us of the troubling accommodations one must occasionally make in one's life, in the everyday world, no matter how highminded one may be, if one wants to be truly useful for one's community.

The everyday foundations upon which highmindedness often, if not

69. Dirck, supra note 37, at 167.
70. See id. at 167, 209 n.28.
71. Id. at 166.
72. See id. at 173.
always, rests are repeatedly noticed in Professor Dirck’s account of Lincoln’s decades-long career as a practising lawyer. Indeed, he suggests, "Lincoln’s debt and business litigation was so badly neglected by those early historians [of the Lincoln career] who want[ed] to portray [him] as champion of the poor and oppressed."73

The need for routine accommodation is evident in how President Lincoln always dealt with the slavery issue. Some of his critics, down to our day, do not seem to recognize what Lincoln was very much aware of from the beginning of his Presidency—that there were many more Northerners willing to risk their lives in order to preserve the Union than there were in order to free any slaves.

Slavery itself could be moved against, in the limited but profoundly critical way it was in the Emancipation Proclamation of 1862–1863, only after great sacrifices had been made to save the Union—and only after it became generally evident that something like the Proclamation might be needed to further the Union cause to which so much had already been devoted.

Something of the strategic skills of the seasoned lawyer may be seen in the astute calculations Lincoln made about the stages of his Presidency. But, it should also be recognized, Lincoln’s greatness depended on more than what he had learned from his legal career, however useful, if not even necessary, that career had been for the maturation of the man who would become President.

VII.

Chance played a part, probably a considerable part, in the development of Abraham Lincoln. Chance may be seen as well in what the reader can do with the instructive material Professor Dirck has provided, such as his detailed account of the importance of promissory notes in the commercial world of Lincoln’s time.

One useful thing to be done with this account is to notice that there was decided, at the outset of Lincoln’s career as a lawyer, one of the most important cases in the history of the United States Supreme Court, the 1842 case of Swift v. Tyson.74 This litigation bore on how the law

73. Id. at 208 n.13.
with respect to promissory notes should be developed and applied.

Critical to the ruling of the Court in *Swift* was an assumption, that could be said to have had, for English-speaking lawyers of the day, its roots in the work of William Blackstone (much studied by Lincoln) and of Lord Mansfield (the great commercial judge)—the assumption that there are to be brought to bear, on the regulation of commercial transactions, standards that may be somewhat natural, and hence international, in their scope. This was consistent with the general understanding of the law that Lincoln and his contemporaries seemed to have been taught to respect.

A more "realistic," power-oriented approach to these matters would be promoted by Oliver Wendell Holmes, Jr. and, to some extent, by the more prestigious law schools that were developing in this Country. That alternative approach was ratified, in 1938, by the United States Supreme Court in *Erie Railroad Co. v. Tompkins*, an unfortunate approach which made much of local sovereignty (if not simply of power). That approach is, in this respect, even opposed to the tendency of Lincoln and his colleagues at the bar to promote a system of reliable credit-arrangements countrywide, a system that Professor Dirck has usefully sketched for us.

By 1865, it can be said, the seeds of the "realist" movement in jurisprudence may have been sown—or, at least, the ground for it had been prepared. The generation after the Civil War would see the Holmes approach take root, an approach that would promote a steady depreciation, in the law, of natural right/natural law influences.

It would begin to see as well a radical commercialization of the practice of law, exemplified in our time by the emergence of the mega-law firms. A recognition, perhaps even a ratification, of this commercialization, seems to be evident in the extensive advertising

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permitted to lawyers, who are thus treated as businessmen and businesswomen.\textsuperscript{78}

Professor Dirck was inspired to end his quite useful account of the practice of law in Abraham Lincoln's day with a marvelous passage that can be regarded by us as suggestive of how Lincoln would regard what both the study and the practice of law have become in this country:

[W]hile he was... in the White House and a civil war raged outside its doors, [Lincoln's] son Robert came to him and told him that he intended to enter Harvard Law School. Thinking back to those days on the circuit [in Illinois], shrouded in a nostalgic haze perhaps made all the more wistful by the deadly carnage of the war, Lincoln replied, "If you do, you should learn more than I ever did, but you will never have so good a time."\textsuperscript{79}

Or, as Montesquieu noticed, "Rome, spoiled by the wealth of all the nations, changed its mores."\textsuperscript{80}

4. ABRAHAM LINCOLN, A LAWYER-PRESIDENT\textsuperscript{81}

I.

The last memorable remarks made by Abraham Lincoln, before his Inauguration on March 4, 1861, were on George Washington's birthday, February 22, 1861. Those remarks—his last of note in public as a lawyer-politician—began at Independence Hall in Philadelphia. They were reinforced by what was said later that day at the State Capital in Harrisburg, where the Independence Hall ceremonies were referred to


\textsuperscript{79} Dirck, \textit{supra} note 37, at 175.

\textsuperscript{80} Montesquieu: The Spirit of the Laws 530 (Anne M. Cohler, Basia C. Miller & Harold S. Stone eds., Cambridge Univ. Press 2002).

\textsuperscript{81} These remarks were prepared for an \textit{Abraham Lincoln as Lawyer} panel presented by the Loyola University Chicago School of Law, March 20, 2009. This panel, chaired by David Yellen, Dean of the Law School, included Brian Dirck (author of \textit{Dirck}, \textit{supra} note 37), Mark E. Steiner (author of \textit{Mark E. Steiner, An Honest Calling: The Law Practice of Abraham Lincoln} (2006)), and George Anastaplo (author of \textit{Anastaplo, Abraham Lincoln}, \textit{supra} note 1).
Lincoln, as lawyer, had been shaped by the legal studies dominated in his day by the *Commentaries* of William Blackstone. Thus, Mark E. Steiner has observed, "Lincoln's preparation for the bar largely consisted of reading borrowed treatises. [He] read more than Blackstone's *Commentaries*, but not much more." Critical to his general education were the Bible and some of William Shakespeare's plays.

Also critical to his development, of course, were the language, the institutions, and the prevailing opinions of his Country. How much Lincoln had been shaped by the dominant sentiments of his national community is recognized in his opening remarks at Independence Hall:

I am filled with deep emotion at finding myself standing here in the place where were collected together the wisdom, the patriotism, the devotion to principle, from which sprang the institutions under which we live. You have kindly suggested to me that in my hands is the task of restoring peace to our distracted country. I can say in return... that all the political sentiments I entertain have been drawn, so far as I have been able to draw them, from the sentiments which originated, and were given to the world from this hall in which we stand. I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. (Great cheering.) I have often pondered over the dangers which were incurred by the men who assembled here and adopted that Declaration of Independence—I have pondered over the toils that were endured by the officers and soldiers of the army, who

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82. It is difficult to exaggerate the influences of William Blackstone upon the shaping of American law and American lawyers. See, e.g., ANASTAPLO, THE CONSTITUTIONALIST, supra note 6, at 811; George Anastaplo, Nature and Convention in Blackstone's *Commentaries*: The Beginning of an Inquiry, 22 LEGAL STUD. F. 161 (1998); LEO STRAUSS AND HIS LEGACY: A BIBLIOGRAPHY, supra note 3, at 874.


84. See, on Lincoln and Shakespeare, *infra* Part 7. What, it can usefully be wondered, is central to the Lincolnian understanding of things? See, for Alexander H. Stephen's challenging understanding, not only *infra* Part 7, but also the Conclusion to this set of explorations; see also *infra* note 92.
achieved that Independence.\footnote{Abraham Lincoln, Speech in Independence Hall, Philadelphia, Pennsylvania (Feb. 22, 1861), \textit{in} \textsc{4 The Collected Works of Abraham Lincoln}, \textit{supra} note 3, at 240.}

This recognition is reinforced by what he said, later that day, during an address to the Pennsylvania General Assembly (at Harrisburg):

I have already gone through one exceedingly interesting scene this morning in the ceremonies at Philadelphia. Under the kind conduct of gentlemen there, I was for the first time allowed the privilege of standing in old Independence Hall, [enthusiastic cheering], to have a few words addressed to me there and opening up to me an opportunity of expressing with much regret that I had not more time to express something of my own feelings excited by the occasion—somewhat to harmonize and give shape to the feelings that had been really the feelings of my whole life.\footnote{Abraham Lincoln, Address to the Pennsylvania General Assembly at Harrisburg (Feb. 22, 1861), \textit{in} \textsc{4 The Collected Works of Abraham Lincoln}, \textit{supra} note 3, at 244.}

\textit{II.}

Lincoln, in stressing that he had “never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence,” recognized the primacy (and not only chronologically) of the Declaration among the four great Organic Laws of the United States. The other three such Organic Laws, also featured in early official compilations of the United States Statutes, are the Articles of Confederation, the Northwest Ordinance, and the Constitution.\footnote{See \textit{Four Pillars of Constitutionalism: The Organic Laws of the United States} (Richard H. Cox ed., 1998).} It was the Constitution, framed like the Declaration in Independence Hall, that prescribed the duties and powers that Lincoln was then on his way to Washington to assume.

To stress as he did, in Philadelphia, the Declaration of Independence, rather than the Constitution, was tacitly to recognize why the place is called \textit{Independence} Hall. But he may have run the risk of seeming to provide support to those would-be Secessionists (by that time, clearly in
control of seven States) who had (in effect) invoked the right of revolution drawn on in the Declaration. Of course, Lincoln was obliged to argue, in his Inaugural Address, a fortnight later, that a proper exercise of the right of revolution relies upon just grievances.88

Even so, at Independence Hall, Lincoln does tone down somewhat the language of the Declaration of Independence. Thus, he does not emphasize the “all Men are created equal” recognition, the determined application of which by Northern Abolitionists (as well as by Lincoln himself) to American slaveholding had deeply threatened and aroused Southern Secessionists. Rather, Lincoln reformulated the “created equal” language on this occasion so that it did not seem to be directed primarily at the slavery institutions of the day, suggesting (as an experienced lawyer might, in damping down the passions of the moment), a moderating approach:

I have often inquired of myself, what great principle or idea it was that kept this Confederacy so long together. It was not the mere matter of the separation of the colonies from the mother land; but something in that Declaration giving liberty, not alone to the people of this country, but hope to the world for all the future time. (Great applause.) 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. (Cheers.) This is the sentiment embodied in that Declaration of Independence.89

III.

Confederate States-minded Southerners were being told, in effect, that they had long had available, and had themselves been an integral part (as well as decades-long beneficiaries) of, a quite adequate Union. The Declaration of Independence, which Secessionists were unilaterally attempting to adapt to their immediate efforts, indicates that just causes are needed before a people is entitled to invoke the right of revolution.

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88. See Abraham Lincoln, First Inaugural Address (Mar. 4, 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 262, 267.
89. Lincoln, supra note 85, in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 240. See infra text accompanying note 167.
For weeks Lincoln had been saying what he was to emphasize in his Inaugural Address, that Southerners had no just cause for Secession, especially since spokesmen for the Republican Party kept reassuring them that the incoming Administration did not propose to interfere with slavery in the States where it already existed.

Assurances were thereby repeatedly given that longstanding constitutional arrangements would continue to be respected, those arrangements developed by the Founders who had included so many venerated Southerners. Even so, Lincoln did insist that underlying the Constitution were the principles recognized in the Declaration of Independence. One cannot hope to understand Abraham Lincoln, therefore, unless one has a reliable sense of the Declaration which meant so much to him. 90

It is instructive to notice that the Declaration of Independence recognizes at its outset, as the foundation upon which it purports to build, "the Laws of Nature and of Nature's God." These "Laws" are offered as enduring standards in the light of which constitutions and statutes are to be framed, applied, and amended. Such standards (informed by dictates of prudence) suggest how recognized rights should be understood and applied (and, if need be, temporarily waived).

IV.

The grand principles and high authority invoked at the outset of the Declaration of Independence are followed, therein, by a detailed roster of grievances. This is a lawyerlike compilation which reflects longstanding political and legal controversies among the English-speaking peoples. Various rights, privileges and immunities are taken for granted in developing the grievances set forth in the Declaration.

Some of these rights are recognized throughout the Constitution of 1787, and especially in Sections 9 and 10 of Article I. Still others are recognized in the Bill of Rights amendments ratified in 1791. Particularly instructive, as a valuable reminder of the constitutional and legal system inherited by the People of the United States, is the Ninth

Amendment, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."91

The grievances collected in the Declaration of Independence remind of the decades-long tensions between the North American Colonists and their Mother Country. Lincoln himself, as he made his way to his Inauguration, noticed places where memorable events had happened. Thus, he observed at Trenton, New Jersey (in an address, on February 21, 1861, to the New Jersey Senate):

I am very grateful to you for the honorable reception of which I have been the object. I cannot but remember the place that New-Jersey holds in our early history. In the early Revolutionary struggle, few of the States among the old Thirteen had more of the battle-fields of the country within their limits than old New-Jersey. May I be pardoned if, upon this occasion, I mention that away back in my childhood, the earliest days of my being able to read, I got hold of a small book, such a one as few of the younger members [of this assembly] have ever seen, "Weem’s Life of Washington." I remember all the accounts there given of the battle fields and struggles for the liberties of the country, and none fixed themselves upon my imagination so deeply as the struggle here at Trenton, New-Jersey. The crossing of the river; the contest with the Hessians; the great hardships endured at that time, all fixed themselves on my memory more than any single revolutionary event; and you all know, for you have all been boys, how these early impressions last longer than any others. I recollect thinking then, boy even though I was, that there must have been something more than common that those men struggled for. I am exceedingly anxious that that thing which they struggled for; that something even more than

91. U.S. CONST. amend. IX. See, on the Ninth Amendment, ANASTAPLO, THE CONSTITUTIONALIST, supra note 6, at 818; ANASTAPLO, THE AMENDMENTS TO THE CONSTITUTION, supra note 21, at 461; ANASTAPLO, REFLECTIONS ON FREEDOM OF SPEECH, supra note 1, at 314. Consider, as well, the "minor" but significant change in the language of the Ninth Amendment when it was incorporated in the Confederate Constitution of 1861. See CONFEDERATE STATES CONST. art. VI, § 5 (1861). See infra Appendix C for the use made of the Ninth Amendment in a discussion of the original intentions of the drafters of the Second Amendment.
National Independence; that something that held out a great promise to all the people of the world to all time to come; I am exceedingly anxious that this Union, the Constitution, and the liberties of the people shall be perpetuated in accordance with the original idea for which that struggle was made . . .  

V.

The prudence of Abraham Lincoln may be evident, then, in his avoidance of explicit reminders, as he approached his Inauguration, of the “created equal” language of the Declaration of Independence, emphasizing instead “this Union, the Constitution, and the liberties of the people.” The equality language had been made much of by him as he emerged as a Republican Party leader during the preceding decade. Nor did he find it prudent to repeat, as more and more Southerners contemplated Secession, his longstanding moral condemnation of chattel slavery.

Even without the explicit “created equal” language, however, the grounding of the Declaration in such an affirmation was bound to be evident throughout the document. It may be seen, for example, in the central grievance in the document—that taxes had been imposed on the American Colonists by the British Parliament without their consent. Slavery, it could have been added, is an extreme form of “taxing” a people without their consent.

92. Abraham Lincoln, Address to the New Jersey Senate at Trenton, New Jersey (Feb. 21, 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 235–36. See, on “the original idea for which that struggle was made,” STRAUSS, supra note 77, at 1:

It is proper for more reasons than the most obvious one that I should open this [inquiry] . . . by quoting a passage from the Declaration of Independence. The passage has frequently been quoted, but, by its weight and its elevation, it is made immune to the degrading effects of the excessive familiarity which breeds contempt and of misuse which breeds disgust. “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” The nation dedicated to this proposition has now become, no doubt partly as a consequence of this dedication, the most powerful and prosperous of the nations of the earth. Does this nation in its maturity still cherish the faith in which it was conceived and raised? Does it still hold those “truths to be self-evident”?

See also supra note 82.
Thus, the American emphasis on equality may have made slavery seem particularly troubling. That is, the very humanity of African slaves was in effect denied. Rationalizations on behalf of slavery, therefore, could, depending on circumstances, make anyone “fair game” for ruthless exploitation.  

VI.

Besides, Southerners, too, made much of equality (as may be seen in Confederate Vice-President Alexander H. Stephens’s “Corner Stone Speech” of March 21, 1861 (at Savannah, Georgia), when he rejoiced that the Southern States could “stand upon the same broad principles of perfect equality,”) among themselves, now that the Confederate Constitution had placed strict limitations upon any use of the Congressional revenue power, recalling the “old thorn of the tariff,” to favor some States at the expense of other States.  

It was Southern spiritedness, grounded in an insistent sense of their own equal worth as individuals, which made it hard for the government of the Confederacy to be as effective as its Northern counterpart during the Civil War. This was evident, for example, in the difficulties the Confederates had, even more than the Unionists, in attempting to conscript troops.

Questions do arise among a people, Lincoln warns in his Inaugural Address, which can divide them “into majorities and minorities.” “If the minority will not acquiesce,” he continues,

the majority must, or [else] the government must cease. There is no other alternative; for continuing the government, [there must be] acquiescence on one side or the other. If a minority, in such case, will secede rather than acquiesce, they make a precedent which, in turn, will divide and ruin them; for a minority of their own will secede from them, whenever a majority refuses to be controlled by such minority.

93. See, for reminders of the monstrous extremes to which such exploitation can be taken, infra Appendix A; GEORGE ANASTAPLO, Life, Death, and the Systematic Perversions of Law (2000), in ANASTAPLO, REFLECTIONS ON LIFE, supra note 1, at 251; ANASTAPLO, THE CHRISTIAN HERITAGE (Lexington Books 2010).

94. See, on Stephens’s Corner Stone Speech, infra Part 7.

95. Lincoln, supra note 88, in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN,
He then poses, in a lawyerlike fashion, a hypothetical:

For instance, why may not any portion of a new confederacy, a year or two hence, arbitrarily secede again, precisely as portions of the present Union now claim to secede from [the Union]. All who cherish disunion sentiments, are now being educated to the exact temper of doing this. Is there such perfect identity of interests among the States to compose a new Union, as to produce harmony only, and prevent renewed secession?96

"Plainly," he then argues, "the central idea of secession, is the essence of anarchy." This argument is reinforced here (as elsewhere) by him with the advice:

A majority, held in restraint by constitutional checks, and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it, does, of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy, or despotism in some form, is all that is left.97

I drew, in effect, on the Lincoln argument here in a Letter-to-the-editor on November 4, 1998, commenting on the "filibuster" rule in the United States Senate which continues to offend our constitutional protocol:

A perverse use of party discipline in this Country in recent years has been the repeated recourse to threats of filibustering in the United States Senate, thereby subverting the duty of the majority to rule. The November 3rd election returns mean, among other things, that there is still no "filibuster-proof" margin enjoyed by the dominant party in the Senate. (News Stories, October 30 and November 4, 1998.)

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supra note 3, at 267.
96. Id. at 267–68.
97. Id. at 268.
The proposals for [constitutional] amendments submitted to the First Congress in 1789 included many suggestions that what we call a “supermajority” be required on one issue after another. The First Congress refused to change what the Framers had done in limiting severely—that is, to a half-dozen instances—the matters for which more than a majority is needed [in either House of Congress]. The current Senate rule that keeps a bare majority from ending debate, [even] after a reasonable time for discussion of the relevant issues, is probably unconstitutional. A [self-respecting] Senate majority, with the cooperation of the presiding officer, should [some day] be able, by the use of [well-reasoned] points of order, to [correct] both the Senate filibuster rule requiring a three-fifths vote to end debate and the Senate rule requiring a two-thirds vote to change the rules of that body.

The restoration of majority rule in the Senate probably depends upon an informed public opinion. A truly self-respecting people would demand that their legislatures should be free to act efficiently, making due allowance for adequate discussion and fair procedures. In short, We the People have to revive, and to insist upon, a reliable standard of constitutionalism in this country. 98

VII.

Constitutional protocol, reflecting the underlying principles of a proper Anglo-American regime, is drawn on (and thus confirmed) in the Declaration of Independence. The great case of Somerset v. Stewart 99 recognized, in the opinion of Lord Mansfield (a prominent commercial judge), the fundamental antipathy of the Common Law to slavery. That


antipathy found expression in Canada, the realm where a fugitive slave from the American South could expect to find official sympathy and a refuge.

The fugitive slave could also expect to find considerable sympathy in various communities in the Free States of the Union. But slave-hunters were authorized to enlist the support of the Law in returning fugitives to captivity. This is one result of the compromises that evidently had had to be made, in order to secure ratification by the Slave States, when the Constitution was drafted in 1787.

The longer Africans were held in slavery in the United States, however, the more difficult it became to justify their bondage. The way of life of Africans in this Country made them seem and sound more and more like their white masters, a development that was deepened by an ever-growing mixture of blood. It could be very much a matter of chance, therefore, which men and women of African descent were obliged to continue to conduct themselves in ways deemed appropriate for slaves.

VIII.

Thus, lawyers found it ever more difficult to justify chattel slavery as it had developed in the United States. Lincoln himself recognized that there were significant differences between the Africans and the whites in North America. But he had several times recognized that there were no criteria for slave-eligibility that would not also put various non-Africans at risk of enslavement or exploitation.

All this pointed out how hopelessly anachronistic Southern slavery was becoming in Lincoln’s time. Europeans, generally, had long come to repudiate not only the obviously barbaric international slave-trade but domestic slavery as well. Indeed, there was in the Southern insistence upon maintaining chattel slavery something very much against the spirit of that Common Law upon which a vital Anglo-American constitutionalism has always had to depend.

The Common Law does depend upon sensible adaptations to changing circumstances. This is a healthy way for the moral sense of a people to develop in a manner that can shape legislation and even reshape constitutions. Lincoln himself recognized, that is, that men and women of African descent were not the only Southerners trapped by the troubling system of slavery that prevailed in his day.
Abraham Lincoln was not only a lawyer but, especially, a lawyer nurtured in the Old Northwest Territory. This meant, among other things, that his people had been very much influenced by the Northwest Ordinance of 1787, one of the Organic Laws of the United States. Among the lessons taught by that great statute is that the States added to the Union since 1789 have almost all of the powers and prerogatives of the original Thirteen.

Critical to the Northwest Ordinance was its forthright prohibition of slavery anywhere in the vast Territory thus provided for. Along with this prohibition, however, was a stipulation that fugitive slaves seeking refuge in the Northwest Territory could be reclaimed by their masters from the Slave States. This was a "mixed message," anticipating thereby the many difficulties lawyers and other citizens would have in coming to terms thereafter with slavery in the United States.

Abraham Lincoln, as President, could deliver slavery-related "mixed messages" of his own, sometimes grim in character, as may be seen in his February 4, 1862 Stay of Execution of Nathaniel Gordon. The first half of this order confirmed a sentence of execution for a man who had been captured engaging in the long-outlawed international slave-trade:

Whereas, it appears that at a Term of the Circuit Court of the United States of America for the Southern District of New York held in the month of November A.D. 1861, Nathaniel Gordon was indicted and convicted for being engaged in the Slave Trade, and was by the said Court sentenced to be put to death by hanging by the neck, on Friday the 7th day of February, A.D. 1862; And whereas, a large number of respectable citizens have earnestly besought me to commute the said sentence of the said Nathaniel Gordon to a term of imprisonment for life, which application I have felt it to be my duty to refuse; And whereas, it has seemed to me probable that the unsuccessful application made for the commutation of his sentence may have prevented the said Nathaniel Gordon from making the necessary preparation for the awful change which awaits him. . . .

100. 5 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 128.
This order continues, reflecting thereby the compassionate firmness that may have had to be shown those compromised by the ultimately inexcusable form that involvement in modern chattel slavery could take—the kind of manly firmness that the experienced lawyer could develop and apply (even as he made sure that Washington's Birthday would not be desecrated by even a justified execution):

Now, therefore, be it known, that I, Abraham Lincoln, President of the United States of America, have granted and do hereby grant unto him, the said Nathaniel Gordon, a respite of the above recited sentence, until Friday the twenty-first day of February, A.D. 1862, between the hours of twelve o'clock at noon and three o'clock in the afternoon of the said day, when the said sentence shall be executed. In granting this respite, it becomes my painful duty to admonish the prisoner that, relinquishing all expectation of pardon by Human Authority, he refer himself alone to the mercy of the common God and Father of all men.101

5. ABRAHAM LINCOLN, HUMAN BEING AND CITIZEN102

I.

Socrates, in Plato's Apology of Socrates, can speak of the virtues appropriate to the thoughtful human being and to the law-abiding citizen, proceeding thereafter to remind us (in effect) that what is appropriate for the human being to do (or not to do) may sometimes get one into trouble as a citizen.103 The human being may be, to some extent, "a citizen of the world." Even so, he can recognize the usefulness, if not even the necessity, of the somewhat self-centered patriotism likely to be associated with any political community.

101. Id. Does the reference to "the common God and Father of all men" remind would-be slave traders that the Africans they exploit are human beings essentially like themselves?

102. This talk was prepared for the April 3, 2009, First Friday Lecture Series of the Basic Program of Liberal Education for Adults, The University of Chicago.

103. See, on Plato's Apology of Socrates, George Anastaplo, Human Being and Citizen: A Beginning to the Study of Plato's "Apology of Socrates", in ANCIENTS AND MODERNs: ESSAYS ON THE TRADITION OF POLITICAL PHILOSOPHY, IN HONOR OF LEo STRAUSS 16 (Joseph Cropsey ed., 1964), reprinted in ANASTAPLO, HUMAN BEING AND CITIZEN, supra note 2, at 8.
The human being may naturally develop sympathy for the plight of those outside the particular political community to which he believes himself to owe allegiance. But it is natural as well that his awareness of the circumstances and plight of others may be quite limited. Also limited, of course, may be the resources, spiritual as well as material, that he may have available either to learn about or to relieve the miseries of outsiders.

Particularly troubling for the conscientious human being may be those wretched conditions among outsiders, or “the Others,” for which his own political community may have been in large part responsible. This is especially so whenever the human being recognizes that he has benefited significantly from the oppressive policies over the years of his fellow-citizens. Prudence may be needed in determining what corrective measures should be undertaken and at what sacrifice, personal as well as communal.

II.

Abraham Lincoln, as human being, could recognize, early in his life, the inhumanity of the slavery upon which his Country (and not just the South) had long depended. Thus he could observe in 1841, on seeing twelve slaves while he was on a steamboat coming home from Kentucky, that they were chained together “like so many fish upon a trot-line.”

Both early and late in his political career he spoke publicly of the obvious immorality of chattel slavery.

Whatever the limitations of the African, he argued (as in the celebrated Lincoln-Douglas Debates of 1858),

I agree with Judge Douglas [that the Negro] is not my equal in many respects—certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man.

104. Letter from Abraham Lincoln to Mary Speed (Sept. 27, 1841), *in* 1 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 259, 260; see also infra text accompanying note 115.

He could thereafter criticize Senator Douglas again and again for never considering himself obliged to pass, in public, any moral judgment upon the institution of slavery by which the United States seemed to be trapped. The moral issues posed by slavery were identified most dramatically by him, as President, in his Second Inaugural Address.

The human being in Abraham Lincoln may be seen as well during an episode with his fellow militiamen during his Black Hawk War service of 1832. The only Indian encountered by his militia company during his tour of duty was evidently an elderly man who, having wandered into their camp, was at risk of serious harm at the hands of Lincoln’s comrades. Lincoln put himself at personal physical risk, it seems, when he intervened to protect this man.106

III.

However deeply rooted Lincoln's abhorrence of slavery may always have been, he was not as dramatically a public opponent of slavery as many others were. Thus, he was not an abolitionist, but rather even a critic of the more active abolitionism. Nor did he resist—indeed, he could reluctantly endorse—the enforcement in the Free States of the Fugitive Slave Law of 1850, considering this and other troubling accommodations to slavery necessary for the perpetuation of the Union.107

Even so, he could repeatedly insist, during the contentious decade leading up to the Civil War, that the Founders of the United States had so organized the Government of the Country as to place slavery “in the course of ultimate extinction.”108 This happy result would take time, during which efforts would have to be made both to put up with slavery where it had long been and to keep it from being established anywhere in the remaining Territories of the Union. The sacrifices demanded of Free States citizens, on behalf of the Union during the Civil War, could not be grounded by him (he believed) upon the mobilization among them of any

21, 1858), in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 1, 16.
106. See CHARNWOOD, supra note 16, at 53.
107. See, e.g., Lincoln, supra note 88, in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 262; see also supra note 104; supra text accompanying note 17. See also Anastaplo, Hard Spots, supra note 1.
108. That “course,” he argued again and again, was decisively indicated by the Northwest Ordinance. See supra note 24; infra note 149.
overarching concern for the welfare of the Africans living either in the North or in the South.

That is, Lincoln as Citizen, was very much aware of the deeply-rooted racial prejudices that had to be reckoned with Countrywide: prejudices that made much of obvious differences between the Africans and the Europeans in North America. Lincoln himself could speak repeatedly of significant differences between Africans (whether slave or free) and the whites of his day in the United States, differences by which he himself may have been at times personally inclined to be moved. Whatever his own deepest feelings about such matters, he sensed that racial differences would have to be taken into account by any Citizen who wanted to guide the political community at large, that community which could be reassured by Lincoln’s intermittent (and perhaps not insincere) championing of the Colonization abroad (either in Liberia or in Central America) of freed Africans (a championing that Frederick Douglass, in 1876, found strange, inasmuch as Lincoln “told [them] to leave the land in which [they] were born”).

IV.

Lincoln inherited also the dominant attitudes among Americans with respect to the native peoples awaiting European immigrants since 1492. These attitudes had been most vigorously acted on theretofore by leaders such as Andrew Jackson. Particularly heartless, and indeed shameless, were the contributions made by President Jackson to the deadly expulsion of thousands of Cherokees from Georgia in the 1830s.

President Lincoln inherited, as well, government officials who were not effective champions of the Indians who had by then lost most of the vast lands they had once considered somehow their own. He himself did not try to do much, during his one term in the Presidency, to improve the lot of the demoralized Indians. We might even see in the dismal governmental policies of that day toward resettled Indians what the African Colonization programs advocated by Lincoln would have probably looked like in practice.

109. Frederick Douglass, Oration in Memory of Abraham Lincoln (Apr. 14, 1876), in WHAT COUNTRY HAVE I? POLITICAL WRITINGS BY BLACK AMERICANS 46, 50 (Herbert J. Storing ed., 1970); see also infra text accompanying note 120.

Lincoln, in his capacity as First Citizen (so to speak), was very much aware of the dominant attitude among his fellow citizens, an attitude later expressed in the fashionable opinion that “the only good Indian was a dead Indian.” The Human Being in Lincoln did nobly assert himself, however, when he considered himself obliged to review the death sentences handed down for 303 Sioux Indians by a military tribunal after a bloody uprising in Minnesota in 1862. President Lincoln’s painstaking study of the records in that case permitted him to save 265 of those men from execution, an action which he later assessed as having cost him thousands of votes in a State which he could still carry during the 1864 Presidential Election.111

V.

Deep divisions in the American political soul with respect to race relations may be detected even in the Organic Laws of the United States, beginning with the Declaration of Independence. There, it can be recalled by us (as it was repeatedly recalled by Lincoln), a “self-evident” truth is proclaimed as fundamental to this regime, that “all Men are created equal.” And yet the catalogue of grievances against Great Britain in the very same document concluded with the dramatic complaint that the British had “excited domestic Insurrections amongst [them], and ha[d] endeavoured to bring on the Inhabitants of [their] Frontiers, the merciless Indian Savages, whose known Rule of warfare, is an undistinguished Destruction of all Ages, Sexes and Conditions.”

Thus, this particularly dramatic grievance refers to British attempts to mobilize disaffected Slaves and Indians in the effort to put down the American rebellion, attempts which offered some redress of grievances to the exploited of color in North America. A decade later, Americans themselves in effect recognized, in another of the Organic Laws of the United States (the Northwest Ordinance of 1787), that there continued to be questionable features in the ways that Indians and Africans were being treated by the ever-enterprising Europeans on this continent. Thus, it is directed, in the Northwest Ordinance:

111. What would the President have “had” to do if his handling of these Indians’ cause had threatened, at the 1864 polls, the great cause for which so much had already been sacrificed?
The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.\(^\text{112}\)

Much more significant in practice was another directive in the Ordinance of 1787, “There shall be neither slavery nor involuntary servitude in the [Northwest] territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted . . . .” That directive, contributing significantly to the development of five slave-free States in what we now know as the Midwest, can be understood to have determined, in effect, what the permanent status of slavery would eventually be in the United States. Still, there “had” to be added, even to this vigorous prohibition of slavery in the Northwest Ordinance—a prohibition which did contribute significantly to the outcome of the Civil War—there “had” to be added the kind of concession to the South that was later to help fuel the Abolitionist movement, “Provided always, that any person escaping into [the said territory], from whom labor or service is lawfully claimed in any one of the original [thirteen] States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.”\(^\text{113}\)

VI.

Frederick Douglass, in his famous 1876 Freedmen’s Monument Speech, considered himself obliged to identify Lincoln as “pre-eminently the white man’s President, entirely devoted to the welfare of white men,” having come “into the Presidential chair upon one principle alone,


\(^{113}\) Confederate Congress, Ordinance of 1787: The Northwest Territorial Government, art. VI (July 13, 1787). It is not generally noticed that slaveholders in only “one of the original [thirteen?] States” are given this assurance about recovering their runaway slaves. What does this suggest about the status of subsequent slaveholding States?
namely, opposition to the extension of slavery.” We can add, however, that such opposition, seen in the Northwest Ordinance and elsewhere, was critical to the fate of all slavery in the United States. Indeed, this distinguished former slave, in this 1876 speech, went on himself to acknowledge that Lincoln’s longstanding refusal to endorse explicit abolitionism contributed significantly to a political effort which eventually saw slavery abolished countrywide:

I have said that President Lincoln was a white man, and shared the prejudices common to his countrymen towards the colored race. Looking back to his times and to the condition of his country, we are compelled to admit that this unfriendly feeling on his part may be safely set down as one element of his wonderful success in organizing the loyal American people for the tremendous conflict before them, and bringing them safely through that conflict. His great mission was to accomplish two things: first, to save his country from dismemberment and ruin; and, second, to free his country from the great crime of slavery. To do one or the other, or both, he must have the earnest sympathy and the powerful co-operation of his loyal fellow-countrymen. Without this primary and essential condition to success his efforts must have been vain and utterly fruitless. Had he put the abolition of slavery before the salvation of the Union, he would have inevitably driven from him a powerful class of the American people and rendered resistance to rebellion impossible. Viewed from the genuine abolition ground, Mr. Lincoln seemed tardy, cold, dull, and indifferent; but measuring him by the sentiment of his country, a sentiment he was bound as a statesman to consult, he was swift, zealous, radical, and determined. Though Mr. Lincoln shared the prejudices of his white fellow-countrymen against the negro, it is hardly necessary to say that in his heart of hearts he loathed and hated slavery.

It could not be said, however, that Lincoln ever likewise “loathed and hated” what had been done, and continued to be done in his time, to

114. Douglass, supra note 109, in What Country Have I? Political Writings by Black Americans, supra note 109, at 49.
115. Id. at 52–53.
the American Indians. Perhaps the murder by Indians of his grandfather (another “Abraham Lincoln”) helped dull his sensitivity here. Also important to him, as to his fellow citizens, was the fact that they (as settlers) were steadily exploiting a land which had been taken (one way or another) from the Indians, land which was being steadily added to by whites decade after decade and which was never going to be given up (no matter what anyone said or did).

Still, we have noticed that Lincoln’s natural sensitivity did assert itself on one critical occasion during his Presidency, moving him to make the quite unpopular decision to commute the death sentences of 265 Sioux Indians condemned in Minnesota. But he cannot be readily remembered for ever having said about the centuries-long exploitation of the Indians what he repeatedly said about the highly questionable character of slavery, however much the national compromises with respect to slavery did have to be put up with for the common good. Far more sensitive with respect to the troubling treatment of the Indians was someone such as Chief Justice John Marshall even when he felt that he and his fellow jurists had to go along with the legalized dispossession of Indians that the Country had long come to demand and to rely upon.116

VII.

The Indians of all the Western Hemisphere—not only those in what became the Continental United States—were not fortunate in how, and especially when, they encountered the imperialistic Europeans. The Vikings, it seems, did come here well before Columbus and his successors. But evidently their numbers, and especially the level of their technology (including their instruments of war), were not such as to permit them to establish themselves securely in the Western Hemisphere.

What, we may wonder, might have happened if the Ancient Greeks or Romans (or, perhaps, the Medieval Muslims) had chanced to bring “the blessings of civilization” to the Indians? Mutually beneficial accommodations may then have been more likely, perhaps of the kind sometimes seen when the Romans went into Gaul and Britain or the Muslims into East Asia. Also instructive here may be the experience of the British in India, which does seem to have left those Indians enriched

politically, however economically and otherwise exploited they had been for two centuries.

Although such inquiries are likely to be highly speculative, we can see the differences it evidently made which Europeans chanced to take over various parts of the Western Hemisphere. The Spanish, Portuguese, and French over here, it can be argued, may have treated the indigenous peoples better, and their African slaves worse, than did the English. Even so, all of these European peoples were encouraged by their political leaders, if not also by most of their spiritual leaders, to look out primarily for themselves in taking over two continents that seemed to them to be very much in need of “development.”

VIII.

There does seem to be, in the annals of the European “civilizing” of the Western Hemisphere, at least one challenging exception to the history just reviewed. That is, there does not seem to have been in Canada the same amount or even the same kind of ruthless exploitation of Africans and Indians that had been routine for centuries in the United States. Mexico seems also to be somewhat worthy of notice here, but that “situation” may be specially affected (perhaps even to this day) by the critical role played in the drama of that land by the ferocious human sacrifices practiced on a large scale by the Aztecs.

How, then, have the Canadians been different, and why? The Indian tribes (or “Nations”) up there do sometimes seem to have been treated better than they ever were in the United States—and not only, perhaps, both because their lands were not as attractive to Europeans and because the fur-trading so important in Canada may have required much more cooperation by the newcomers with the Indians. Did the mixture of French and British in the Canadian soul (as well as obvious limitations as a power among nations) somehow promote a deeper sense of humanity?

117. Consider a talk, What the United States can Learn from China and Greece, that I prepared for an August 8, 2009 “Chinese Reunification Forum” in Chicago, Illinois and published in The Greek Star, on September 24, 2009. That talk includes these observations:

Americans who study the remarkable Chinese experience may be fortunate . . . in what they can learn about themselves. Thus, it can be wondered (as one result of such study) whether modern China needs (as the United States may
Certainly, Canada was much better for the Africans, perhaps partly because there were (per capita) so many fewer of them. Also, the spirit of the great 1772 case of *Somerset v. Stewart*¹¹⁸ seems to have been very much alive there, which meant that no fugitive slave who did manage to get to Canada could be forcibly recovered by his would-be American master—something that should have made thoughtful Southerners wonder about the justice of their “peculiar institution.” May we also be encouraged to wonder, because of all of this, how sound the much-celebrated anti-British grievances of Americans had really been in 1776 (and especially those grievances related to the understandable efforts by the British to require Colonists to contribute to their own defense)?¹¹⁹

**IX.**

Abraham Lincoln, it can be said, could see that the indefinite continuance, and hence a likely steady expansion, of slavery threatened the integrity and well-being of the Country that he loved. His fundamental, however measured, opposition to slavery was critical to the political career that he yearned for. The racial prejudice of his day, with which we are still somewhat familiar, did make it seem at least expedient for him to suggest, from time to time, that emancipated Africans should be helped to settle elsewhere.¹²⁰

The racial prejudice to be contended with by Republicans of that day can be seen in a Democratic Party campaign poster during the 1864 Presidential Campaign—a poster which charged that Lincoln was in favor of “Negro Equality.” Similar political charges with respect to Lincoln and the Indians were never made much of, however disturbed
some of his fellow-citizens might have been by his Sioux Indian commutations. After all, the Indians were no longer a serious threat, since they had long been subject to a “Colonization” project (still in progress today), which effectively moved them out of the everyday lives of most Americans—and this made them mostly irrelevant to Abraham Lincoln, a master politician.

Since, by virtually every indicator that most Americans take seriously, African Americans do seem to have fared far better than Native Americans in this Country since the Civil War, would the Indians, subduing their sometimes disturbing spiritedness, have been better able to salvage what they did have (including some marvelous stories\textsuperscript{121}), if they had permitted themselves to be enslaved by aggressive Europeans, thereby turning themselves into valuable property to be kept close at hand (and more or less educated), rather than being repeatedly exiled to desolate lands? European Americans could “safely” cease to “worry” about the Indians, compared to the Africans, when it became evident that the Indians no longer seemed to matter, especially as the more enterprising (that is, the Europeanized) among the Indians could routinely “pass” into the dominant population in this Country, becoming thereby unexceptional human beings and citizens. However that may be, a particularly humane assessment of the plight of the Indians is found in President Ulysses S. Grant’s Second Inaugural Address, where the First Citizen of that day voiced these sentiments:

My efforts in the future will be directed to the restoration of good feeling between the different sections of our common country; ... and, by a humane course, to bring the aborigines of the country under the benign influences of education and civilization. It is either this or war of extermination. Wars of extermination, engaged in by people pursuing commerce and all industrial pursuits, are expensive even against the weakest people, and are demoralizing and wicked. Our superiority of strength and advantages of civilization should make us lenient toward the Indian. The wrong inflicted upon him should be taken into account and the balance placed to his credit. The moral view of the question should be considered and the

\textsuperscript{121} See, e.g., GEORGE ANASTAPLO, BUT NOT PHILOSOPHY: SEVEN INTRODUCTIONS TO NON-WESTERN THOUGHT 225 (2002).
question asked, Can not the Indian be made a useful and productive member of society by proper teaching and treatment? If the effort is made in good faith, we will stand better before the civilized nations of the earth and in our own consciences for having made it.\footnote{122}

6. \textsc{Nineteenth-Century Giants: How Did They Matter?}\footnote{123}

\textit{I.}

The coincidence that two quite prominent men share the same day of birth (in this case, February 12, 1809) has encouraged learned observers to notice other similarities in the careers of these two men. It can be wondered, of course, whether the parallels thus developed are truly as instructive as they may at times seem. Thus, one observer, commenting on a book, \textit{Rebel Giants: The Revolutionary Lives of Abraham Lincoln and Charles Darwin},\footnote{124} was provoked into recording (in an Internet assessment),

\begin{quote}
What a glaring insult it is to the memory of Charles Darwin, who made epic analytical contributions toward helping us figure out how our world works, to be forever inextricably linked to a mass-murdering, Constitution-trampling tyrant like [Abraham] Lincoln over something as trivially coincidental as a shared birthday. Whom will we co-celebrate next: Thomas Jefferson and Jack the Ripper?\footnote{125}
\end{quote}

However trivial a coincidence may be, it can sometimes encourage

\begin{footnotes}
\footnote{122. Ulysses S. Grant, Second Inaugural Address (Mar. 4, 1873), \textit{in The Presidents Speak: The Inaugural Addresses of the American Presidents, from Washington to Clinton} 153 (Davis Newton Lott ed., Henry Holt & Co. 1994).}
\footnote{123. This talk (originally titled, \textit{On the Origins and Consequences of Abraham Lincoln and Charles Darwin}) was prepared for a May 2009 Weekend Conference of the Basic Program of Liberal Education for Adults, The University of Chicago.}
\end{footnotes}
us to notice instructive similarities in the thoughts and careers of two noteworthy human beings. Thus, Darwin and Lincoln did share what may be called a visceral reaction against slavery. That aversion can be said to be grounded in the language that they shared, the language in which there could be found, for example, a denunciation of slavery by a great commercial judge, Lord Mansfield, in *Somerset v. Stewart*.126

Both of our “birthday boys” can be seen to be grounded in vital traditions. Thus, Lincoln had been shaped by worldwide developments that had been stimulated by such proclamations as the English Magna Carta, the American Declaration of Independence, and perhaps the French Declaration of the Rights of Man. Thus, also, Darwin had been shaped by worldwide developments that had been stimulated by an ever-broadening scientific enterprise in astronomy, biology, chemistry, geology, and especially physics.

II.

Important as Lincoln and Darwin have been recognized to have been in their respective fields of endeavour, is it not likely that their principal objectives would have been secured, one way or another, even if they had not been personally involved to the extent and in the ways they were? Thus, I have argued that more important than Abraham Lincoln was the constitutional system that formed him and which he served. That is, Lincoln was a particularly gifted servant of the regime that had shaped him and that permitted (and even obliged) him to develop his remarkable talents.127

Thus, also, the physical sciences had been opening up steadily well before Darwin. It is hard to overestimate the influence here of Isaac Newton and his more prominent forebears. Indicative of what was happening was the influence, in Britain and elsewhere, of the Royal Society and its counterparts.128

Technology played a significant role in the careers of both Lincoln and Darwin. Critical to the work of Lincoln was the telegraph and the

126. See supra note 99. See also supra note 118 and accompanying text.
127. See ANASTAPLO, ABRAHAM LINCOLN, supra note 1, at 344 n.492 (with respect to Harry V. Jaffa).
railroad, just as critical to the work of Darwin was the microscope and perhaps even the telescope. It can be said to be inevitable (and all-too-human) that particular men and women should be dramatized as critical to both social and intellectual developments that were to be expected and then acclaimed throughout the Western World.

III.

Thus, it can usefully be wondered what would have happened to slavery in the United States without Abraham Lincoln—if, for example, he (as a young man) had indeed been killed by the kick of a horse (as had been first believed at the time). His model statesman, Henry Clay, a Kentucky slaveholder, had expressed serious reservations about slavery. He, too, wanted to see that institution phased out of existence without imperiling the broad-based Union that seemed to provide the best hope for the eventual fate of Africans in North America.

Abolitionism was well on its way, independent of Abraham Lincoln (and sometimes in opposition to his Presidential aspirations). Southern Secessionists moved when they did in 1860 because of their recognition that the power of the anti-slavery movement was steadily growing in the United States. This growth was in line with what had been happening for more than a half-century among the more influential nations in the Western World.

The key question here may not have been what would happen to slavery throughout the Western hemisphere, but rather why the American South got trapped as it did in a system that its most venerated founders recognized to be highly questionable. Lincoln’s principal contribution, therefore, may not have been that of abolishing slavery but rather that of preserving the Union. It can be plausibly debated whether that could have been done without resort to “a great civil war.”

IV.

Thus, also, it can usefully be wondered what would have happened to evolutionary biology without Charles Darwin—if, for example, he had become either the physician or the practicing clergyman he once seemed destined to become. We can see movements in the Darwinian direction independent of Darwin, with Alfred Arthur Wallace being well known for his parallel discoveries. And something of an anticipation was the
publication of Robert Chambers's 1844 book, *Vestiges of the Natural History of Creation.*

Then there was the work (some of it not yet published) already done (independent of Darwin) by geologists, botanists, and biologists. Men such as Linnaeus and Mendel come to mind. Perhaps even more significant had been the work of men such as Kepler, Galileo, and Newton—work which shook up longstanding scientific suppositions and theories (no matter what the particular allegiances, religious or otherwise, of these innovators continued to be).

The scientific future down to our day can be said to have been implicit in the technology made possible by decades, if not even centuries, of discoveries before 1800. Refinements in microscopes and telescopes would prove quite productive for the curious and adventurous. So would the telegraph and the steam engine.

V.

Exceptional politicians and scientists may personally hang on to old ways even as they promote radically new ways that eventually undermine the old ways that they cherish and seem to depend upon. A particularly dramatic instance of this may be seen in the career of perhaps the greatest physicist since Galileo, Isaac Newton. Thus, he may well have devoted as much effort to his apparently obsessive attempt to unravel the mysteries of the *Book of Daniel* and the *Book of Revelation* as he did to his development of his *Principia Mathematica.*

A revealing reliance by Newton on the old ways may be seen even in the *Principia*, especially in the General Scholium with which he

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129. See Robert Chambers, *Vestiges of the Natural History of Creation and Other Evolutionary Writings*, (Univ. of Chi. Press 1994) (1844); see also infra text accompanying note 134.


131. Even so, in the two-dozen pages devoted to Isaac Newton's life (1642–1727) in the 14 Dictionary of National Biography, (Leslie Stephen & Sidney Lee eds., 1917), his nonscientific work can be dealt with briefly, in the following comment: "A third work, first printed in 1733, is entitled 'Observations upon the Prophecies of Daniel and the Apocalypse.' In it an interpretation is given of Daniel's dreams, and the relation of the Apocalypse to the Books of Moses and to the prophecy of Daniel is considered." Id. at 391.
concludes a re-issue of that revolutionary treatise. Consider the problem he confronts there:

All bodies must move very freely in [the celestial spaces, which are above the atmosphere of the earth], and therefore planets and comets must revolve continually in orbits given in kind and in position, according to the laws set forth above. They will indeed persevere in their orbits by the laws of gravity, but they certainly could not originally have acquired the regular position of the orbits by these laws.

The six primary planets revolve about the sun in circles concentric with the sun, with the same direction of motion, and very nearly in the same plane. Ten moons revolve about the earth, Jupiter, and Saturn in concentric circles, with the same direction of motion, very nearly in the planes of the orbits of the planets. And all these regular motions do not have their origin in mechanical causes, since comets go freely in very eccentric orbits and into all parts of the heavens. And with this kind of motion the comets pass very swiftly and very easily through the orbits of the planets; and in their aphelia, where they are slower and spend a longer time, they are at the greatest possible distance from one another, so as to attract one another as little as possible.132

The solution to Newton’s problem is offered thus by him:

The most elegant system of the sun, planets, and comets could not have arisen without the design and dominion of an intelligent and powerful being. And if the fixed stars are the centers of similar systems, they will all be constructed according to a similar design and subject to the dominion of One, especially since the light of the fixed stars is of the same nature as the light of the sun, and all the systems send light into all the others. And so that the systems of the fixed stars will not fall upon one another as a result of their gravity, he has placed them at

132. It is noticed by editors for an 1871 reprinting of the Principia, (Glasgow: James Maclehose, Publisher to the University), n.939: “Edition 1 lacks the General Scholium, which includes Newton’s famous discussions of God and of hypotheses.”
immense distances from one another. He rules all things, not as the world soul but as the lord of all. And because of his dominion he is called Lord God Pantocrator.133

The Newtonian solution here is in a spirit commensurate with what our Creationists, Intelligent Designists and their allies today are moved to argue, about such phenomena as the complexity of the human eye. But neither they nor Newton himself would be likely today to resort to the Newtonian solution about the remarkable stability of our solar system. This is partly because contemporary astrophysicists (that is, Newton's professional successors) can speak with some authority instead of the conservation of angular momentum when massive bodies so spin off parts that enduring planetary relations are established, etc.

VI.

We can be reminded, by Newton's "obsession," how even the most gifted among us can be trapped by their circumstances, especially when they step outside the fields where they are most surefooted. Such limitations may be seen in the careers of both Lincoln and Darwin, ambitious men with the capacity to apply themselves effectively to the goals they set for themselves. They could "figure out" what needed to be learned and done to achieve what each of them sought, a capacity that can even be said to have been enhanced by that mastery of Euclid they both seem to have had.

Even so, each of these great men also seemed to be unable to assess reliably the work of the other. Thus, we are told, Lincoln could not become excited by Darwin's masterpiece after glancing through it. Instead, he seemed thereafter to have been much more impressed by Chambers's *Vestiges* book, even purchasing a copy for himself.134

Thus, also, Darwin several times expressed serious reservations about what Lincoln was doing as President. Once the Civil War began, Darwin seemed at times to favor the South, sometimes even seeming to regard the Lincoln efforts as not only ineffective but also unjust. He

133. See PlaTo, Timaeus. See also infra note 150.
134. See Chambers, supra note 129, at xxvi; Sandburg, supra note 17, at 414–15; Contosta, supra note 124, at 16–17, 141–42.
never seemed to recognize Lincoln’s political astuteness.\footnote{See, e.g., \textsc{Contosta}, supra note 124, at 16, 220.}

\section*{VII.}

It does seem to be a matter of chance that we are moved to consider Darwin and Lincoln together. But it can be an instructive pairing, especially if it encourages us to notice both the predecessors and the limitations of these men. In this way, perhaps, we may be able to see them better than we might otherwise be inclined to do.

The consequences of what these men and their likeminded allies and successors have done can make it difficult, if not impossible, to resurrect significantly in the Western World (barring cataclysmic events) the causes of those whom they challenged. Thus, the efforts of Lincoln and his allies made it difficult to sustain chattel slavery anywhere in the Western World. It was not long after the American Civil War that the much more brutal form of slavery remaining in some of South America “had” to be abolished.\footnote{See, for the insane (and ultimately self-destructive) forms that exploitation of others can take in our time, \textsc{Anastaplo}, supra note 93; see also both Appendix A and the \textit{Mystery of Evil} appendix in my prospective \textsc{Christian Heritage} volume \textit{(supra note 93)}; George Anastaplo, \textit{On Truly Knowing What One is Trying To Do: The Mystery of Evil}, \textsc{Greek Star}, Oct. 23, 2008, at 8.}

Thus, also, the efforts of Darwin and his allies (who came to include almost all of a vast scientific establishment) made it difficult for informed people to remain as Earth-centered as they had been, with all the presuppositions about the status of the human race that such an orientation encouraged. How remarkable the shift in the overall “perspective” has been during the past two centuries is testified to by stupendous news that could merit less than two inches of space on page seventeen of the April 30, 2009 issue of the \textit{New York Times} (in an item entitled, under “Science,” \textit{Boom from Universe’s Early Days}):

\begin{quote}
It was snap, crackle and pop in the early days of the universe. You would not want to live there. Astronomers said Tuesday that they had smashed the long-distance record in astronomy when they recorded an explosion, probably a massive early star, that lived and died 13 billion years ago, only about 600 million years after the Big Bang. The explosion was detected on April
\end{quote}
23 as a burst of gamma-rays by NASA’s Swift satellite, which has been patrolling the skies for these powerful explosions for the last five years. The satellite relayed the news to astronomers and ground-based telescopes, which were able to gauge the distance of the explosion by the lengthening of light-waves in the fading fireball.\textsuperscript{137}

Such news as this can be said to have been anticipated by the acceptance, in the opening of a recent \textit{New York Times} story, of this “fact”: “Once a second or so, somewhere in the universe, a star blows itself to smithereens, blossoming momentarily to a brilliance greater than a billion suns.”\textsuperscript{138}

\textit{VIII.}

These accounts, and perhaps even more the casualness with which they can be presented \textit{and received}, testify to what we have come to “accept” about the grandeur of the universe. Does such constantly-expanding grandeur make it ever more likely that life exists elsewhere in the universe? The recent launch of the “Kepler” space probe, seeking solar systems which have some planets in what has been dubbed “the Goldilocks zone,” testifies to the interest there has developed among us in the possibility of life elsewhere.\textsuperscript{139}

This is exploration on a grand scale—and it is matched (perhaps more than matched) by what has already been discovered by exploration on a minute scale. Particularly intriguing is the sort of things that can be learned, for example, about the “escape flight initiations” in the fruit fly. This is indicated in a 2007 article about the fruit fly which opens with this introduction:

\begin{quote}
Flight is a quintessential behaviour of flies, including the fruit
\end{quote}

\begin{footnotesize}
\textsuperscript{137} Dennis Overbye, \textit{Boom from Universe’s Early Days}, \textsc{N.Y. Times}, Apr. 30, 2009, at A17. Also quite modest is an article, \textit{From a Distant Comet, a Clue to Life}, by Kenneth Chang, found on page A18 of the \textsc{N.Y. Times}, August 19, 2009. The article begins, “For the first time, a building block of proteins — and hence of life as we know it — has been found in a comet.”

\textsuperscript{138} Dennis Overbye, \textit{Life-or-Death Question: How Supernovas Happen}, \textsc{N.Y. Times}, Nov. 9, 2004, at F1.

\textsuperscript{139} See, for suggestions about “the natural animation of matter,” \textsc{George Anastaplo}, \textsc{The Bible: Respectful Readings} 327 (2008).
\end{footnotesize}
fly *Drosophila melanogaster*. Flight however is not possible during a critical period immediately after the emergence of a fly from the puparium—a process called eclosion that lasts for only a few seconds (Baker et al. 1999). At this early stage of adulthood the wings are in their pupal state; crumpled and delicate with a pale and pliable cuticle (Johnson and Milner 1987; Kiger et al. 2001, 2007). Following eclosion the immature fly immediately searches for a suitably protected site where, while quiescent, it transforms its wings into functional wing blades (Johnson and Milner 1987). To achieve this, the wings are expanded and groomed, the dorsal and ventral surfaces are bonded together and the cuticle hardened by tanning (Johnson and Milner 1987; Kiger et al. 2001, 2007). That recently eclosed flies can neither fly nor do they attempt to fly poses a puzzle because a neural circuit that initiates flight in response to a threatening stimulus is fully developed before the fly ecloses (Phelan et al. 1996; Allen et al. 1998, 2006).140

Further on in this article the suggestion is made about when the fruit fly first attempts to fly:

The strong tendency of just eclosed flies to avoid exposure while the wings are still developing is clearly adaptive, especially in view of the fly’s inability to execute an effective escape flight at this early stage. Once wing expansion is complete however, about 30-min post-eclosion, immature flies retain their preference for shelter and reluctance to move until they acquire the mature adult’s indifference to exposure several hours later.141

Such examples, drawing on observations recording minute processes that take only a few milliseconds, suggest what the drive for self-preservation can mean even in minute living things, something that

141. *Id.* at 1128. Should we not marvel at a process of maturation that takes only a few hours? May such “phenomena” inspire contemporary “Newtons” with pious inclinations to rely upon a Pantocrator? *See supra* text accompanying note 133.
living things evidently must have if they are to endure across many generations—and suggests as well the support in nature that there is for the emphasis by, say, Thomas Hobbes (still another, but evidently an inferior, student of Euclid) upon the overpowering desire of human beings for self-preservation. \(^{142}\) Critical to much of modern science has been the reliance upon mathematics in the investigation not only of inanimate processes but also of living things, a process which can be said to be reciprocated by the use of animate things to identify, if not even to develop, mathematical relations, as may be seen in the current definition of “Tree” in a reference book:

A tree is a mathematical structure which can be viewed as either a GRAPH or as a DATA STRUCTURE. The two views are equivalent, since a tree DATA STRUCTURE contains not only a set of elements, but also connections between elements, giving a tree graph. . . . A tree graph is a set of straight line segments connected at their ends containing no closed loops (cycles). In other words, it is a simple, undirected, connected, acyclic graph (or, equivalently, a connected FOREST). The points of connection are known as FORKS and the segments as BRANCHES. Final segments and the nodes at their ends are called LEAVES. A tree with two BRANCHES at each FORK and with one or two LEAVES at the end of each branch is called a BINARY TREE. Trees find applications in many diverse fields, including computer science, the enumeration of saturated hydrocarbons, the study of electrical circuits, etc. . . . When a special node is designated to turn a tree into a ROOTED TREE, it is called the ROOT (or sometimes “EVE”). In such a tree, each of the nodes which is one EDGE further away from a given node is called a CHILD, and nodes connected to the same node which are the same distance from the ROOT NODE are called SIBLINGS. \(^{143}\)

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IX.

It is far from clear that either Darwin or Lincoln sensed the long-term risks of the impressive developments to which they contributed. Thus, Lincoln did not seem to be concerned about the political and moral implications of the population of hundreds of millions that he anticipated for his continent-wide country. Thus, Darwin did not seem to be concerned about the moral and social implications of the (darkly?) mechanical system said by him to account for the emergence and substance of life here.

It can even be wondered what it would do to our morale (as well as safety?) as human beings to find reliable evidence of rational mortal beings elsewhere in the universe as routinely superior to us in native intelligence as we are superior to, say, apes and dogs. When human beings have imagined superior things heretofore they have been inclined to deify them and to worship them. An alternative response to such an encounter has been vigorous resentment, especially if enslavement is feared.

However all this may be, Abraham Lincoln and Charles Darwin may have benefited "personally" from the attacks of their enemies. Thus, both of them here have been treasured as martyrs to their respective causes. This has meant, among other things, that it has become difficult to recognize how much both of them may also have been dramatic instances of not-altogether-salutary developments in the Western World.

7. BUT FOR THE CIVIL WAR . . . 144

I.

But for the Civil War, the two most remarkable political thinkers of 1860 in the United States, North and South, would probably be little known today—and their Country would probably have been significantly shallower without them and their ways. These two men, Abraham Lincoln of Illinois and Alexander Hamilton Stephens of Georgia, first came to know and to respect each other during their service together, as Whigs, in the House of Representatives of the Thirtieth Congress (1847–

144. This talk was prepared for the May 2009 Hickory Humanities Conference of Lenoir-Rhyne University at the Wildacres Retreat, Little Switzerland, North Carolina.
One of them was unusually tall and powerful, the other was unusually small and frail.

Lincoln, on February 2, 1848, wrote this note to William Herndon, his law partner back home in Springfield:

I just take up my pen to say, that Mr. Stephens of Georgia, a little slim, pale-faced, consumptive man, with a voice like [Stephen T.] Logan’s has just concluded the very best speech, of an hour’s length, I ever heard.

My old, withered, dry eyes, are full of tears yet.

If he writes it out any thing like he delivered it, our people shall see a good many copies of it.145

The Stephens speech was in opposition to the Mexican War (of 1846–1848), which the James K. Polk Administration had promoted. The critique made by the Georgian (who developed a good personal relation with Lincoln) included this reading of the Constitution:

Mexico had . . . given an assurance of her willingness to settle [differences with the United States] amicably . . . . She protested, as late as the 12th of March, 1846, that she did not occupy a position of even quasi hostility towards [the United States]. Why, then, was [a military] advance ordered [by the President]? There is but one answer to this question: it was to provoke resistance, and thereby involve us in a war. [Did] the President [have] power rightfully, under the Constitution, to do this? I answer in this House, before the American people, and in the face of Heaven, most emphatically, he had not. The war-making power belongs to Congress, and not to the Executive . . . . Gentlemen may turn and twist this matter as they please, for the purpose of screening the President, but all such attempts will prove utterly fruitless and unavailing; the final conclusion that he “unnecessarily and unconstitutionally” commenced this war can never be escaped. The mark is fixed upon him as indelibly as that stamped upon the brow of Cain by the finger of God. He and

145. Letter from Abraham Lincoln to William H. Herndon (Feb. 2, 1848), in 1 THE
COLLECTED WORKS OF ABRAHAM LINCOLN, supra note 3, at 448.
his friends may say, "Out, foul spot," but it will not "out."

Lincoln himself, a generation later, and other Presidents since then have also been accused of usurping the exclusive war-making power of Congress. But on this 1848 occasion, Lincoln was much moved by a speech which included these sentiments in its closing moments:

As the Representative upon this floor of a high-minded and honorable constituency, I repeat, that the principle of waging war against a neighboring people to compel them to sell their country, is not only dishonorable, but disgraceful and infamous. What! shall it be said that American honor aims at nothing higher than land—than the ground on which we tread? Do we look no higher, in our aspirations for honor, than do the soulless brutes? Shall we disavow the similitude of our Maker, and disgrace the very name of man? Tell it not to the world. Let not such an aspersion and reproach rest upon our name.147

It eventually became generally evident to thoughtful observers that the Mexican War contributed significantly to the American Civil War, at least in that it helped train many of the officers who would take charge, North and South, of extensive military campaigns.

II.

It was the Civil War that found Lincoln and Stephens in the top ranks politically of their respective communities—one as President, the other as Vice-President. Stephens argued vigorously against the Secession that his native Georgia, following South Carolina's December 1860 lead, insisted upon in January 1861. Thereafter, he (like other patriots elsewhere, such as Robert E. Lee in Virginia) considered himself morally obligated to go with his native State (even though, it is said, Stephens himself had been seriously considered for appointment as Attorney General in the forthcoming Lincoln Administration just as Lee had been considered for the command of the Union Army).

147. Id. at 163.
Once Stephens decided to disavow (however reluctantly) his allegiance to the United States, he developed the case as best he could for the Confederate States of America. Their new (February 1861) constitution was extolled by him in a Savannah speech of March 21, 1861 (a fortnight or so after the Lincoln Inauguration). He assured a huge audience on that occasion:

This new constitution, or form of government, . . . amply secures all our ancient rights, franchises, and liberties. All the great principles of Magna Charta are retained in it. No citizen is deprived of life, liberty, or property, but by the judgment of his peers under the laws of the land. The great principle of religious liberty, which was the honor and pride of the old constitution, is still maintained and secured. All the essentials of the old constitution, which have endeared it to the hearts of the American people, have been preserved and perpetuated [in our new constitution].

But it was because of what was said by Stephens about slavery that this March 1861 address was once celebrated as The Corner Stone Speech. The topic is introduced boldly:

The new constitution has put at rest, forever, all the agitating questions relating to our peculiar institution—African slavery as it exists amongst us—the proper status of the negro in our form of civilization. This was the immediate cause of the late rupture and present revolution. Jefferson in his forecast, had anticipated this, as the “rock upon which the old Union would split.” He was right. What was conjecture with him, is now a realized fact. But whether he fully comprehended the great truth upon which that rock stood and stands, may be doubted. The prevailing

148. Alexander H. Stephens, The Corner Stone Speech (Mar. 21, 1861) [hereinafter Corner Stone Speech], in Alexander H. Stephens, In Public and Private, with Letters and Speeches, Before, During, and Since the War 717, 718 (Henry Cleveland ed., 1866) [hereinafter Stephens, In Public and Private]. We should notice that the “law of the land” assurance with respect to deprivations of “life, liberty, or property” is here extended only to “citizen,” not to “person” (and hence, in principle to slaves?) as in the Fifth Amendment to the United States Constitution. The Confederate Constitution of 1861 does retain “person” in accepting this Fifth Amendment assurance. See supra note 26; see also supra text accompanying note 32.
ideas entertained by him and most of the leading statesmen at the time of the formation of the old constitution were that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. It was an evil they knew not well how to deal with, but the general opinion of the men of that day was that, somehow or other in the order of Providence, the institution would be evanescent and pass away. This idea, though not incorporated in the constitution, was the prevailing idea at that time. The constitution, it is true, secured every essential guarantee to the institution while it should last, and hence no argument can be justly urged against the constitutional guarantees thus secured, because of the common sentiment of the day. Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. It was a sandy foundation, and the government built upon it fell when the "storm came and the wind blew." Our new government is founded upon exactly the opposite idea; its foundations are laid, its corner-stone rests upon the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.149

The development of this thesis by Stephens included these announcements:

This, our new government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth [that the negro is not equal to the white man]. This truth has been slow in the process of its development, like all other truths in the various departments of science. It has been so even amongst us. Many who hear me, perhaps, can recollect well, that this truth was not generally admitted, even within their day. The errors of the past generation still clung to many as late as

149. Corner Stone Speech, supra note 148, in Stephens, in Public and Private, supra note 148, at 721. Stephens, in his confidence that "no argument can be justly urged etc.," does not consider here the relevance of the Northwest Ordinance, one of the Organic Laws of the United States. See, e.g., supra text accompanying note 108.
twenty years ago. Those at the North, who still cling to these errors, with a zeal above knowledge, we justly denominate fanatics. All fanaticism springs from an aberration of the mind—from a defect in reasoning. It is a species of insanity. One of the most striking characteristics of insanity, in many instances, is forming correct conclusions from fancied or erroneous premises; so with the anti-slavery fanatics; their conclusions are right if their premises were. They assume that the negro is equal, and hence conclude that he is entitled to equal privileges and rights with the white man. If their premises were correct, their conclusions would be logical and just—but their premise being wrong, their whole argument fails. I recollect once of having heard a gentleman from one of the northern States, of great power and ability, announce in the House of Representatives, with imposing effect, that we of the South would be compelled, ultimately, to yield upon this subject of slavery, that it was as impossible to war successfully against a principle in politics, as it was in physics or mechanics. That the principle would ultimately prevail. That we, in maintaining slavery as it exists with us, were warring against a principle, a principle founded in nature, the principle of the equality of men. The reply I made to him was, that upon his own grounds, we should, ultimately, succeed, and that he and his associates, in this crusade against our institutions, would ultimately fail. The truth announced, that it was as impossible to war successfully against a principle in politics as it was in physics and mechanics, I admitted; but told him that it was he, and those acting with him, who were warring against a principle. They were attempting to make things equal which the Creator had made unequal.

150. Corner Stone Speech, supra note 148, in Stephens, In Public and Private, supra note 148, at 721–22. Should we see, in the events recalled in the materials cited supra note 93, how natural-inequality fanaticism can lead even a civilized people into monstrosities? Was Stephens’s “Creator” anticipated by Isaac Newton’s “Pantocrator”? See supra text accompanying note 133. (Newton, in his merciless campaign against counterfeitters, while at the mint, could become somewhat fanatical.)
Stephens, in “correcting” Jefferson and others as he did, supported in effect what Lincoln had argued (most famously, in the Lincoln-Douglas Debates of 1858), that the Founders looked forward to the ultimate extinction of chattel slavery in the United States. It had been about “twenty years ago,” Stephens reported, that respectable Southerners (such as John C. Calhoun) had begun to develop arguments for “the positive good of slavery” for both slaves and masters. These (we have noticed) were arguments that came to be considered necessary once it became evident, to many decent Southerners, that slavery was not “in the course of [that] ultimate extinction” once generally longed for and anticipated.

There is something reassuring about such a rhetorical development, in that it can remind us that decent people very much need reassurance that what they do is truly in the service of the Good. Such reassurance works from what is and what is quite likely to continue to be. It did not consider itself obliged to dwell upon the systematic kidnapping in West Africa upon which the now-forbidden international slave trade had depended.

That that originating slave-trade was ultimately indefensible was recognized even in the Confederate Constitution of 1861, which forbade absolutely its resumption. But once millions of peoples of both African and European stock had been mixed for generations as they had been in North America, what was to be thought and done about their long-term relation? Southerners considered themselves obliged and entitled to put the best face they could on “the situation” they had inherited, just as Northerners and Southerners alike (well before 1860) had done after steadily taking from the native tribes most of their ancestral lands in the continental United States.

“The situation” changed dramatically for conservative Southerners, with respect to race relations, because of the Civil War. The Emancipation Proclamation (of January 1, 1863) and the Thirteenth Amendment (to be ratified in December 1865) indicated what the long-term prospects were to be. The more practical-minded in the South counselled their fellows to look beyond loyalty to “the Lost Cause,”
however noble that might be made to seem, at least for awhile.

Once that Cause was indeed lost, thoughtful Southerners began to try to make the best of the debacle that they then faced. Thus, Stephens, in June 1865 (while being held prisoner by the Union Army), returned in his ruminations to his 1861 Corner Stone Speech. “I used this [Corner Stone] metaphor,” he recalled, “merely to illustrate the firm convictions of the framers of the new [1861] Constitution that this relation of the black to the white race, which existed in 1787, was not wrong in itself, either morally or politically; that it was in conformity to nature and best for both races.”

At this point (in June 1865) Stephens did consider himself obliged to voice reservations about the system of slavery his people had inherited, beginning with these observations:

My own opinion on slavery, as often expressed, was that if the institution was not the best, or could not be made the best, for both races, looking to the advancement and progress of both, physically and morally, it ought to be abolished. It was far from being what it might and ought to have been. Education was denied. This was wrong. I ever condemned the wrong. Marriage was not recognized. This was a wrong that I condemned. Many things connected with it did not meet my approval but excited my disgust, abhorrence, and detestation. The same I may say of things connected with the best institutions in the best communities in which my lot has been cast.  

The natural desire to put the best face on what one does seems to be stuck with (thereby making needed improvements more likely) may be seen in what Stephens then said:

Great improvements were ... going on in the condition of blacks in the South. Their general physical condition not only as to necessaries but as to comforts was better in my own neighbourhood [in Georgia] in 1860, than was that of the whites

152. Id. at 174. Does Stephens discuss explicitly anywhere the implications of the steady mixing of races while slavery prevailed? See, e.g., supra note 148 and accompanying text.
when I can first recollect, say [in] 1820. Much greater [improvements] would have been made, I verily believe, but for outside agitation. I have but small doubt that education would have been allowed long ago in Georgia, except for outside pressure which stopped internal reform.153

Perhaps some support for the Stephens assessment here may be found in the post-Civil War resistance by almost all people of African descent in the United States against subsidized resettlement of them elsewhere (including in Africa).

V.

These, then, have been remarks by Stephens that can help us begin to see the workings of his remarkable soul. Lincoln, too, has provided us recollections about how he thought and felt about the great issues of the day. Particularly instructive here, of course, are his greatest speeches.

Further guidance is provided by Lincoln’s testimony about the workings of his soul, particularly upon encountering the greatest poet in the English language. This is what he was moved to say (on August 17, 1863) to an actor (James H. Hackett) whom he had seen perform Falstaff in a Henry IV history play:

Months ago I should have acknowledged the receipt of your book, and accompanying kind note; and I now have to beg your pardon for not having done so.

For one of my age, I have seen very little of the drama. The first presentation of Falstaff I ever saw was yours here, last winter or spring. Perhaps the best compliment I can pay is to say, as I truly can, I am very anxious to see it again. Some of Shakespeare’s plays I have never read; while others I have gone over perhaps as frequently as any unprofessional reader. Among the latter are Lear, Richard Third, Henry Eighth, Hamlet, and

153. Stephens, supra note 151, at 174–75. We can see here something familiar in our own time, the problems created by the supposed meddling of what we know as “outside agitators,” for whom John Brown can be considered the Patron Saint. See, e.g., supra text accompanying note 20; see also Edward Rothstein, One Man’s Crusade Against Slavery, Seen From Two Angles, N.Y. TIMES, Oct. 28, 2009, at C1.
especially Macbeth. I think nothing equals Macbeth. It is wonderful. Unlike you gentlemen of the profession, I think the soliloquy in Hamlet commencing "O, my offence is rank" surpasses that commencing "To be, or not to be." But pardon this small attempt at criticism. I should like to hear you pronounce the opening speech of Richard the Third. Will you not soon visit Washington again? If you do, please call and let me make your personal acquaintance.\textsuperscript{154}

Lincoln is known to have recited frequently to his companions (while President) speeches from \textit{Richard III, Macbeth, and Hamlet}.

His inventory of plays and speeches can challenge us. What do these five plays (Tragedies and History Plays) have in common? And why are entire genres, such as the Republican-minded Roman plays, omitted, including the play upon which his assassin drew?

\textbf{VI.}

Lincoln's principal law partner testified to the considerable ambition that Lincoln had "always" had.\textsuperscript{155} Such ambition, in a man of considerable intellectual gifts and with a remarkable sensitivity, can arouse concerns about how power should be pursued, acquired, and exercised. Particularly significant may be the emphasis placed on \textit{Macbeth}, especially by a leader who must have wondered at times whether the hundreds of thousands of wartime deaths had been "necessary."

Macbeth is far more attractive, ethically, than, say, the villainous Richard III, because he does sometimes \textit{seem} "to know better." Thus, I have had occasion to refer to an eminently gifted but deeply flawed thinker of our own time, Martin Heidegger, as "the Macbeth of philosophy."\textsuperscript{156} We may even be reminded here of the warning the young Lincoln voiced in his 1838 \textit{Lyceum Speech} (in which he anticipated the lengths to which the most ambitious man will try to go, if


\textsuperscript{155} See Anastaplo, \textit{Abraham Lincoln}, supra note 1, at 297–98 n.275.

\textsuperscript{156} See Anastaplo, \textit{The Constitutionalist}, supra note 6, at 738 n.140; Anastaplo, supra note 11, at 107–08. See also Anastaplo, \textit{Abraham Lincoln}, supra note 1, at 114.
an opportunity seems to be available).\textsuperscript{157}

*Had* the War been necessary? Prominent anti-slavery European statesmen (such as Lord Palmerston and William Gladstone in Great Britain) were appalled by its horrendous casualties, so much so that they seriously considered intervening (with the help of France and Russia), even if it meant recognizing the slave-holding Southern Confederacy.\textsuperscript{158} Did Lincoln, with his endorsement of the Claudius Speech, sense that there may have been problems as well with the sincerity of his own principles, or at least with their application?

**VII.**

The most curious element in the Lincoln inventory (of "Lear, Richard Third, Henry Eighth, Hamlet, and... Macbeth") is "Henry Eighth." We can see in that History Play bloody machinations that culminate in the anticipation of the glorious reign of Elizabeth. Chance plays, in *Henry the Eighth*, a significant part in the exposure of the conniving Cardinal Wolsey.

It is far from clear how King Henry VIII himself should be regarded. The limits of his control are suggested by his having to settle for a daughter, when a son had been very much longed for by him. Shakespeare must have known that this king had continued (after the birth of Elizabeth) to be desperate for the son he believed essential to secure the Succession.

What *did* Lincoln know about this history, and how must he have regarded the Archbishop's glowing revelation (at the very end of this play) about the destiny of this infant? What does all this suggest about the limitations of even the most powerful rulers? How well, that is, *did* Lincoln know himself, something that can be wondered when someone who evidently attended the theatre *hundreds* of times during his Presidency can identify himself as having "seen very little of the drama."

\textsuperscript{157} See, on the *Lyceum Speech* (The Perpetuation of Our Political Institutions), ANASTAPLO, ABRAHAM LINCOLN, *supra* note 1, at 366. Here, as elsewhere, the work on Lincoln of Harry V. Jaffa is quite instructive.

\textsuperscript{158} See, *e.g.*, CHARNWOOD, *supra* note 16, at 186–92.
VIII.

Another odd feature of the Hackett letter is what is said by Lincoln about the Falstaff “presentation” he had seen. “Perhaps the best compliment I can pay,” he told Hackett, “is to say, as I truly can, I am very anxious to see it again.” But, it can be wondered, what does the Falstaff of the History Plays stand for?

Critical to Falstaff’s career in those plays is his determined avoidance of physical risk in battle. How should a leader such as Lincoln, who was routinely punishing cowardice and desertion, sometimes with executions, have regarded Falstaff’s shameless dedication to his self-preservation? Was it enough that Falstaff could be quite witty in justifying his highly questionable (if not even simply unseemly) conduct?

The wit of Falstaff (and hence of Shakespeare) must have appealed to Lincoln, who had himself been celebrated for decades as exceptionally witty. When we recall as well the sublimity of which the Lincoln prose came to be capable, we can be reminded of the Platonic insistence (as in the Symposium) that the best artists can “do” both tragedy and comedy. Does only such an artist know himself (among those gifted in moving others)—and was Abraham Lincoln capable of that?

IX.

Critical to the understanding of the great war accepted, if not even promoted, by Lincoln is what he suggests again and again about the Divine purpose. Thus, he can say, in his Second Inaugural Address,

Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue, until all the wealth piled [up] by the bond-man’s two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said “the judgments of the Lord, are true and

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righteous altogether."\footnote{160}

On the other hand, Stephens argued, in his massive two-volume apologia, *A Constitutional View of the Late War Between the States; Its Causes, Character, Conduct and Results*:

To maintain that Slavery is *in itself sinful*, in the face of all that is said and written in the Bible upon the subject, with so many sanctions of the [slave] relation by the Deity himself, does seem to me to be little short of blasphemous! It is a direct imputation upon the wisdom and justice, as well as [upon] the declared ordinances of God, as they are written in the inspired oracles, to say nothing of their manifestation in the universe around us.\footnote{161}

What comes from such juxtaposition of readings of the Divine Will may not be the question of whether slavery is justifiable but, rather, whether *any* Biblical authority should (at least in our circumstances) ever be regarded as sovereign. Slavery has long come to be generally repudiated in the Western World, leaving the question of what is to be made of any authority (spiritual or temporal) that seems to legitimate it. In short, what *can* be reliably known and properly said by thoughtful human beings about such matters?

Alexander Stephens, who retained throughout his life considerable respect for Abraham Lincoln, could suggest this about him in his *apologia*:

I do not think that he intended to overthrow the Institutions of the country. I do not think he understood them or the tendencies of his acts upon them. The Union with him in sentiment, rose to the sublimity of a religious mysticism; while his ideas of its structure and formation in logic, rested upon nothing but the subtleties of a sophism!\footnote{162}

Perhaps, however, the more telling testimony as to what the Union meant

\footnote{160. Lincoln, *supra* note 22, in 8 THE COLLECTED WORKS OF ABRAHAM LINCOLN, *supra* note 3, at 333; see also *supra* text accompanying note 105.}

\footnote{161. ALEXANDER H. STEPHENS, 2 A CONSTITUTIONAL VIEW OF THE LATE WAR BETWEEN THE STATES; ITS CAUSES, CHARACTER, CONDUCT AND RESULTS 83 (1870).}

\footnote{162. *Id.* at 448.
came not from what politicians North and South were moved to say and
do from time to time but from how the contending soldiers regarded each
other, as may be seen in Ulysses S. Grant’s account of the fateful siege of
Vicksburg, an account which includes this somewhat ambiguous
vignette: “The soldiers of the two sides occasionally conversed
pleasantly across [one of the barriers maintained during the siege];
sometimes they exchanged the hard bread of the Union soldiers for the
tobacco of the Confederates; at other times the enemy threw over hand-
grenades, and often our men, catching them in their hands, returned
them.”163 The relationships thus depicted suggest that it was one
Country, however troubled it could be from time to time—or, at least, it
was how that Country could be regarded by decent people North and
South, as is suggested by General Grant in his post-war account of the
capture of Vicksburg on July 4, 1863:

At the appointed hour the [Confederate] garrison of
Vicksburg marched out of their works and formed line in front,
stacked arms and marched back in good order. Our whole
[Union] army present witnessed this scene without cheering. . . .
The men of the two armies fraternized as if they had been
fighting for the same cause. When [the Confederate soldiers]
passed out of the works they had so long and so gallantly
defended, between lines of their late antagonists, . . . not a
remark was made that would give pain. Really, I believe there
was a feeling of sadness just then in the breasts of most of the
Union soldiers at seeing the dejection of their late antagonists.164

164. Id. at 295, 298 (emphasis added). Grant observes in this chapter: “This news
[about the Union capture of Vicksburg], with the victory at Gettysburg won the same day
[correctly, July 3], lifted a great load of anxiety from the minds of the President, his
Cabinet, and the loyal people all over the North. The fate of the Confederacy was sealed
when Vicksburg fell.” Id. at 297. See WILLIAM FAULKNER, INTRUDER IN THE DUST 194
(1948) (“For every Southern boy fourteen years old, not once but whenever he wants it,
there is the instant when it’s still not yet two o’clock on that July afternoon [at Gettysburg]
in 1863 . . .”). May not that ever-hopeful fourteen-year-old southern boy be seen in
Alexander Stephens’s somewhat desperate volume 2 (STEPHENS, supra note 161), not
least in the nomenclature relied upon in its title? On the other hand, Abraham Lincoln
could speak, at Gettysburg, of “a great civil war.” Consider, as well, Lord Charnwood’s
questioning of Lincoln’s “common-sense judgment” of John Brown. See, e.g., supra text
accompanying notes 18, 20.
CONCLUSION

I have suggested, in this Lincoln Bicentennial Collection, that Alexander H. Stephens is worthy of the considerable respect that Abraham Lincoln exhibited for him across two decades. Students of Stephens's character and circumstances should be challenged by the shifts in tone of the dedications prepared by him for each of the two volumes of his treatise, *A Constitutional View of the Late War Between the States: Its Causes, Character, Conduct and Results*, with the first dedication (dated December 10, 1867) reading:

TO

All true friends of the Union under the Constitution of the United States, throughout their entire limits, without regard to present or past party associations; and to all true friends of Constitutional Liberty, the world over, now and forever,—especially to all, everywhere, who may, now or hereafter, look to the Federative System, between neighboring Free Democratic States, as the surest means of saving Mankind from ultimate universal Monarchical Rule,—this Work, with all the earnestness of his nature, which the great subject thoroughly awakens, is hereby, not formally, but most solemnly and sacredly, dedicated by the

AUTHOR.¹⁶⁵

On the other hand, the dedication (dated April 26, 1870) for the second

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John Brown had at least left to every healthy-minded Northern boy a memory worth much in the coming years of war and, one hopes, ever after. He had well deserved to be the subject of a song which, whatever may be its technical merits as literature, does stir. [Ralph Waldo] Emerson took the same view of [John Brown] as the song writer . . . .


¹⁶⁵ 1 STEPHENS, supra note 161, at iii. One can hear, in contemporary concerns about worldwide tyranny, echoes of the Stephens warning against "ultimate universal Monarchical Rule." See, e.g., LEO STRAUSS, ON TYRANNY (Victor Gourevitch & Michael S. Roth eds., 1991). Is there not something tyrannical about economic globalization, especially as it radically reorganizes longstanding moral and social arrangements in one country after another?
TO

The Memory of those whose lives in the late War between the States were sacrificed, either in Battle, in Hospital, in Prison, or elsewhere—in defence of the Sovereign Right of Local Self-government, on the part of the Peoples of the several States of the Federal Union; and in defence of those Principles upon which that Union was established, and on which alone, it, or any other Union of the States, can be maintained consistently with the preservation of Constitutional Liberty throughout the Country—this Volume is most solemnly, and sacredly dedicated! While others are, to-day, strewing flowers upon their graves, this oblation, with like purpose and kindred emotions, is thus contributed by the Author, to the same hallowed shrine! 166

Both dedications, it is indicated, emanate from Liberty Hall, Crawfordville, Georgia. Also, after it is noticed by Stephens, at the outset of the Preface to his second volume, that the most important attack on his first volume had been by Horace Greeley, in the New York Tribune, this Preface to the second volume concludes with these remarks from Liberty Hall (dated April 5, 1870):

Is it not amazing . . . that Mr. Greeley in the face of the facts for the last four years, to say nothing of those of the war, when according to his own showing the Administration at Washington in rushing into it, were in “the wrong”—I say, to omit all mention of the wrongs of the war, its immense sacrifices of blood and treasure, is it not amazing in the highest degree, that Mr. Greeley, in the face of the facts of the last four years only, should now repeat to us the Principles of American Independence as his creed? Have not the Constitutions of ten States, as made and adopted by the People thereof, founded on such principles and organized in such form as seemed to them

166. 2 Stephens, supra note 161, at iii. It is noteworthy that the post-Civil War Stephens can seem to speak of the “Union of the States” as a “Country.” Various eminent Secessionists (such as Robert E. Lee) would once speak only of their State as their Country.
most likely to effect their safety and happiness, been swept from
existence by military edict? Have not the People in these ten
States, including the arbitrarily enfranchised Blacks, been denied
the right to form new Constitutions “laying their foundations on
such principles and organizing its powers in such form as to
them shall seem most likely to effect their safety and
happiness?” Have they not been required and literally
compelled to form such Constitutions as seemed most likely to
effect the safety and security of the dominant faction at
Washington?

Is this holding up to our gaze these immutable and ever-to be-
reverenced Principles of the Declaration of Independence, at this
time and under the present circumstances, intended only as
mockery added to insult, injury, and outrage.

It is evident from remarks here and elsewhere that Stephens, who
seemed to retain his pre-War sentiments both about the natural inferiority
of Africans and about the superiority of Southern culture, was very much
offended by what had been done in and to the Southern States by the
occupying Union forces. Had Abraham Lincoln lived to see the
Stephens protest (assuming that he as President would have permitted the
Occupation to take the troubling forms it sometimes did), he might have
been tempted to ask whether Alexander Stephens, in his reliance here on
the Declaration of Independence, had, in effect, eloquently invoked that
sacred document’s “created equal” truth on behalf of artificially-
constructed States rather than on behalf of natural (if not even divinely-
ensouled) human beings.

167. Id. at 15. See supra text accompanying note 94, above (the old thorn of the tariff);
see also supra note 164; see also supra note 84.
APPENDIX A: A RETURN TO DEADLY SLAVERY IN TWENTIETH-CENTURY EUROPE

This is the third conversation (May 4, 2000) in a six-hundred page transcript of thirteen recorded conversations between George Anastaplo ("A") and Simcha Brudno ("B"), Simply Unbelievable: Conversations with a Holocaust Survivor. The first such conversation (March 23, 2000) has been published in George Anastaplo, Reflections on Life, Death, and the Constitution 251–78 (2009) (with a couple of pages added from the second conversation). The second such conversation (March 30, 2000) is included in George Anastaplo, The Christian Heritage: Problems and Prospects (forthcoming 2010). (The third such conversation, provided here as an appendix, has been translated into Spanish by Manuel Vela Rodriguez, with the title Supplemente Increible: Conversaciones Con Un Superviente del Holocausto. It is to be included in a Spanish book.) The tapes of these thirteen conversations were transcribed by Adam Reinherz, who was then a student at the Loyola University of Chicago School of Law. The current availability of these conversations in print has very much depended on both his diligence and his knowledge of Jewish things.


The Second World War “officially” began, in Europe, with the German invasion of Poland in September 1939. Thereafter Russia occupied the Baltic States (Estonia, Latvia, and Lithuania). Germany invaded Russia in June 1941, at which time the German occupation of the Baltic States began. That occupation continued until the German retreat from Russia in 1944, at which time the Russians returned to the Baltic States for decades. (The spellings used in this transcript of the names of persons and places in Lithuania could not always be confirmed.) See, for instructive comments on these matters, Timothy Snyder, Holocaust: The Ignored Reality, N.Y. Review of Books, July 16, 2009. That article includes this reminder:
If we concentrate on [the Nazi] Auschwitz and the [Soviet] Gulag, we fail to notice that over a period of twelve years, between 1933 and 1944, some 12 million victims of Nazi and Soviet mass killing policies perished in a particular region of Europe, one defined more or less by today’s Belarus, Ukraine, Poland, Lithuania, and Latvia. . . . Mass killing happened, predominantly, in parts of Europe between Germany and Russia, not in Germany and Russia themselves.

SIMPLY UNBELIEVABLE: THE THIRD CONVERSATION (MAY 4, 2000)

Brudno: Allow me just to quote this guy, George Anastaplo, in *Campus Hate-Speech Codes*, page 61: “Wartime can lead to an engaging heightening of sensibilities. Everything is felt much more intensely than in ordinary times—and this can be exhilarating, allowing those caught up in the heroic adventure, especially the young ones and the young at heart, to believe that at last they are truly living. Of course, this heightening of spirits can lead to the most disturbing disillusionment if things should turn out to have been, and to be, far different from what they had seemed.” Gold, gold, absolutely true. People need this exhilaration. Do you have any substitute for war to provide this exhilaration? It’s a very serious problem. Do you agree? Anastaplo: I agree. Did you have that experience? B: Oh yes, of course, of course. A: You were exhilarated? B: And how! What kind of talk is that? It is obvious. And it’s not only me, many other people also. A: So you saw this even when you were in very great danger— B: It’s exhilarating. A: —without much opportunity to take charge of the situation? It could still be exhilarating? B: And how, and how! As a matter of fact, here is an opportunity for me to tell you something. The most exhilarating night in all my life was when the Russians bombed the ghetto [in 1944] and our whole city [Siauliai] was on fire. Unbelievable, that was a sight definitely nonforgettable. The whole city was on fire. That was very exhilarating, no doubt whatsoever. You had to feel alive when you saw before your eyes that the whole city was on fire. And another thing— A: And it wasn’t just the ghetto that was on fire? B: No, the whole city. The ghetto was also bombed. Several people died in the ghetto, too. Some Lithuanians thought if they placed themselves near the Jewish ghetto, the Russians would not bomb them. They thought that the Russians were our allies. A: Did some Lithuanians actually go into the ghetto? B: No! No! Nobody went into the ghetto. They went near the ghetto. The
ghetto would not be bombed, supposedly. It was completely crazy. 

A: Was the ghetto itself bombed? B: Yes. A: Or was it the city that they were bombing? B: The city and the ghetto, they didn’t distinguish. Why should they distinguish? A: Why were they doing it? B: Because they had to enter the city. I mean that was the front. A: I see. B: They didn’t want to have people shooting at them from the roofs. They wanted the army to enter and be safe, so they wanted the population to run away. And they achieved their purpose. During all the war my hometown had not been touched, it had not been bombed, nothing but these several nights that the Russians bombed us. But then the whole city was on fire. Later on, when the Russians entered the city, they took pictures and said that this place had been left by the Germans completely destroyed. A: And that clearly was not so? B: No. The Russians had done it. A: You know that the Germans did not do it? B: Beyond any shadow of doubt. I have to trust my eyes. I just wanted to tell you how people are. Here’s another good quote from the same already-mentioned guy. A: What page is this one? B: It’s page 91: “The fact that we cannot do ‘everything’ should not leave us doing nothing, especially when challenged by Hitlerian or Stalinist programs of extermination.” Gold. People most of the time say, “I can do nothing, what can I do?” No excuse. You can’t do everything, but you have to do something. You have to make yourself count. And then there is this on page 93: “Rivaling the Nazis in monstrousness is what the Cambodian Marxists, known as the Khmer Rouge, did to their country in the 1970’s, a disaster to which the shortsighted American policy with respect to Vietnam contributed. We are thus reminded, again and again, that there are monsters everywhere who are available to be recruited for dubious causes.” Gold, absolutely true. So I just want to quote you this guy who knows what he is talking about. A: Now and then. B: That’s enough. Everybody cannot do everything. It’s enough that he has said it very clearly. It’s very important for me, because you know he came to these conclusions all by himself and I came to these conclusions by myself, completely independently. Now I don’t remember what I have talked with you about and what I haven’t. I now have more information that I didn’t have before. I found this in a book that was written in the ghetto. A: Written by somebody who had lived there? B: Yes. A: Somebody you knew? B: Yes. He was my teacher. Not only that but this book was used in the Nuremberg process. The Russians used it as evidence. A: In the Nuremberg Trial? B: Yes, it was used in the Nuremberg Trial.
In this book I found maps of the ghetto. You ask me all the time how big it was. I don't know how far his information is right. A: This man survived the war? B: Oh, yes, he survived. He was in Israel then. A: Did you see him after the war? B: Oh, yes. A: What was his name? B: Yerushalmi, he was a limski. Yerushalmi, the guy from Jerusalem. Yerushalmi, it's a Jewish family name. A: What was his other name? B: Eliezer is his first name. A: This book is in Hebrew or in Yiddish? B: This is in Hebrew. It is translated already. A: Translated from the Yiddish? B: Yes. And he has here the maps of both the ghettos. There were two ghettos in my hometown. He has maps. I don't trust the maps fully; they have been done by somebody, by memory—by an engineer who had been there, in '57, much later. So I don't know how much the maps are messed up. You know, 1 to a 1000, I don't believe it that this thing is 1 to a 1000. Do you believe this is 1 to a 1000? A 1000 [indicating a distance] is from here to here, it's nothing. A: Which one of these is your ghetto? B: I was in both. I was first in that one and when it was annihilated we were all put in this one. A: I see. Where is the leather factory in relation to this? B: To this side. But here is the real relation. A: This has both of the ghettos in one map? B: Both of the ghettos in one map. And all this is the factory. The factory was definitely larger than both the ghettos. A: How many employees did it have, roughly? B: In my time it had six hundred, but when the Russians came and after the war they made unemployment disappear, it went up to two thousand. Needless to add, it went bankrupt. A: Now, this is where the factory was? B: Yes. A: And your original home was where? B: My original home was here. A: Outside of both of these ghettos? B: Oh, outside, of course. A: What do you mean, “of course”? B: The ghettos were outside of the factory. I was born inside the factory. A: How much time did you spend in each ghetto, roughly? B: I don't remember. What's important is something I didn't know then: I lived in the middle of both ghettos. From here on [indicating] is the cemetery. I didn't know then that I lived right in the middle. I was never cognizant of the fact that I was in the middle of all these things. Now I want to tell you what he says was the size. He says the size of the Kofkaz ghetto, of this ghetto— A: —the first one you lived in?— B: —yes, was thirty-five dunam. I found out a dunam is one thousand square meters. So thirty-five dunam is nothing. A: It depends what you are comparing it to. B: I thought all this was greater, but then I was young. Maybe everything looked to me greater. And there were, according to him, two
meters per human being to live in, which is nothing. A: Does he include streets? B: No, in the houses there were only two meters per human being, where people could live. I remember when we slept in the other ghetto, when we opened all the beds and everything, there was no place to go. So it was just bed to bed to bed. A: So you couldn’t move around? B: No, no. A: You had to crawl over beds to move? B: There was no crawling over beds. A: Well, how did you get out of the room? You must have gotten out of the room somehow in the middle of the night? B: There was no middle of the night. Nobody moved in the middle of the night. That’s it. A: Well now, how did this space compare with the German camps that you were in later? B: In the German camps it was still worse. The German camps were just one, one, one, one, one, one. A: This book was made with Russian permission? B: Yes. The Russians not only gave permission, they tried to do some very interesting things. Some of the things they did are just unbelievable, how they decided to add Lithuania and Latvia and Estonia to Russia. A: This bears on the question I want to ask you as soon as you finish. B: Go ahead. Ask now. A: How did each of these people that you came in contact with, that is to say, Lithuanians whom you grew up among and the Russians who came in and the Germans who came in—how did each of them see themselves? How did they justify themselves in what they were doing? How did they understand themselves? B: Very good. The first ones that came were the Russians. A: No, first were the Lithuanians. B: The Lithuanians considered the country Lithuania, and Lithuania should belong to Lithuanians. A: And there’s no problem for them that they should have Lithuania. They had been independent for how long by this time, by the time the Second World War began? B: Twenty years. A: Only twenty years, but they had no question that they were entitled— B: Please, because you push me to the wall, I have to tell you. That is exactly now what Mugabe says about Zimbabwe, “This country is ours and whites have nothing to do here. Let’s take over everything.” The Lithuanians behaved exactly the same. A: Towards whom? B: Towards the Jews. A: Before either the Russians or the Germans came? B: The fight was basically economic. A: Economic? B: Economic—because, historically, the Lithuanians lost their intelligencia to the Poles. All the intelligent Lithuanians became Polandized, you know like Zilia Noldes. Lithuanians became Polandized, so when they became independent they didn’t have any intelligencia. Thus, the lawyers in Lithuania were all so Jewish that
outside of the courtroom they talked amongst themselves in Yiddish. And, of course, the Lithuanians wanted to take over everything: "You are a Jew, you don’t belong.” They did it then, of course, with legal means by the use of various cooperatives. There was only a token Jew here, a token Jew there. The economic fight was very strong. A: Were the Jews the only minority group in their country that the Lithuanians were concerned about? B: There were also the Germans. The Germans were considered the experts. I think I told you this. They were the engineers and the chemists. A: Now I realize that you are repeating some things, but I’ll be editing. B: So I’ll be repeating. A: I can edit some of this out. B: Don’t worry, as long as it will not be contradictory. This is why I insist on telling the truth, because otherwise if I am inconsistent, right away, someone will say, “Aha, aha, aha, aha.” A: Right. I understand. So there were the Germans who were considered experts. They were somewhat secure because of that? Could they join the co-ops? B: No, they didn’t own stores. A: So they had no reason to join the co-ops. B: They had no reason. Most of them were hunters. They just liked to go hunting in Lithuania. A: Would they consider themselves a kind of minor nobility or something? B: Basically, yes. A: I see. Were there any other minorities? Non-Lithuanian? B: Yes, there were the Poles. But the Poles were mostly Lithuanians who became Polish. When I was a small boy, Polish was considered the intelligent language and everybody spoke Polish. And then it turned over, and all of a sudden those who speak Polish are not okay, you have to speak Lithuanian. Very chauvinistic. One neighbor, as I have underlined, was a German soldier who fell in love with a Lithuanian girl and married her; he was a German soldier in the First World War. So at home they spoke German, the children and the father spoke German and the mother was somehow set aside, she was Lithuanian. Several years later, things changed completely: they spoke Lithuanian at home and the father was all of a sudden set aside. The net result, to cut it short, was that this family went to America, and a daughter told me that when her father had to sign his nationality, he signed Laturis for Lithuania. A: Even though he was originally German? B: Yes, German, 100 percent. And he became a Catholic, because otherwise he couldn’t marry that girl. The daughter is still alive in this country. I visit her. But the son got killed in the war. A: Were there any other groups? B: There were Russians but they were not noticed. They were very few. The Russians were mostly people of the Old Belief. The Tzar, as a punishment, sent them to
Lithuania. These were the Old Believers. A: There were still some of them there then? B: Oh, yes, they considered themselves children of the land, no doubt. A: But they also considered themselves Russians? B: Yes. A: They spoke what language? B: They spoke Lithuanian, they spoke Russian. They spoke whatever you want. A: Any other groups? B: No, that’s enough. A: Then there were the Jews, of course? B: The Jews were, I think, seven percent. All together minorities were twenty percent. A: Does that include the Gypsies too? B: Yes. The Gypsies were nothing. There were very few of them. And they were annihilated during the war. A: I am going to return to the other question put earlier. When each of these groups comes in, they justify what they are doing? B: Yes, of course. The Russians justify what they are doing. A: And the Germans did, too, didn’t they? B: The Germans did everything for the Aryan race. That’s all. No more justification was needed. A: I’m not sure what you mean by that. You mean that all they had to do was to say, “We’re Aryans,” and they didn’t have to give any reasons? B: Right. A: No justification for taking Aryans most seriously? B: We are Aryans, that’s good enough. Racism is not a joke, please. A: I don’t suggest it’s a joke. B: They said, “We are Aryans, therefore it belongs to us, by right.” A: What is it that’s implied in the “therefore”? B: We Aryans need the territory, no more, no less. A: Various of these people that you encountered did what you and I would agree were evil things. Is not that correct? B: Yes. A: They did what we would identify as evil things to people who were helpless? B: Yes. A: And who had not done anything to them? B: Just because they existed. A: But none of them ever said, “We are going to do some evil things” or “We are now doing evil things”? B: No, they are doing it for the good of the population. A: That’s what I am trying to see. What was the good aimed at? B: The Germans came in 1941. They liberated us from the Russians, which was a true statement. And the Lithuanians welcomed the Germans beautifully and they put Lithuanian flags everywhere. Then after two weeks came an order to pull down all the Lithuanian flags: no independence. And there were German plans to exploit Lithuania. The general plan was to evacuate all the Lithuanians to the east, so that this territory should be available for German colonization. A: Where to the east? B: Into Russia. A: You mean, push them all out of Lithuania somehow? B: Yes. A: After the army went east they were going to take Lithuanians and settle there? B: There are documents about what was to be done after the war. You would be surprised about what I saw
in other papers. The British will also be evacuated from England into the east or the Baltics and England should become German. A: That was never very serious, was it? B: I'm giving you— A: You mean that some Germans suggested that some of the British— B: It had been published in the German paper and the Lithuanian paper translated it. When it was published in Lithuania, the Lithuanian paper stopped appearing. Censorship said that it's not allowed. So they took it seriously. Don't kid yourself for one moment that the Germans didn't take themselves seriously. For example, they decided in 1942 to destroy eleven million Jews. They didn't have that many under their occupation, but they had a plan to destroy the Jews in all of Europe, including the Jews of Ireland. That's quite amazing. A: Wherever they could find them? If we were to speak to them frankly—if we were in a position to ask questions and speak frankly to them—how would they justify all this? B: Germany is overpopulated, it needs space. A: And it's entitled to that space because of what? B: Because they are Aryans. A: And that means what? Why does that entitle them? B: Because they are Aryans. Don't you see, it's clear-cut. Maybe not to you, but it was to them. A: But if among themselves any of them asked why Aryans should have more— B: They never asked that question. A: They must have. Somebody must have asked it once in a while. B: I don't think so. Don't kid yourself. It's like the Jews knowing that they are the Chosen People. Chosen People, that's it. The Aryans are the Chosen Race, you don't need any more arguments. Whether it's true or not doesn't matter. A: But the Jews could say, "God has designated us as the Chosen People." B: Same for Germans. "God has chosen the Aryans." A: They would put it that way, you think? B: Oh, yes. They are the Chosen Race. A: Now, when the Russians did what they did— B: The Russians did it in the name of Communism. They have to liberate the proletariat from the capitalistic system, from the God-forsaken capitalistic system. A: So they are acting somehow in the cause of justice? B: Of course, everybody acts in the cause of justice. A: Now, how would the Germans explain that their programs were just? B: They didn't have to explain it to anybody. A: If they were to— B: I don't know. Please, if I don't know, I am not going to— A: You don't have any notion of how they would have— B: They assumed that being Aryans is enough. A: Did you ever have a conversation— B: I didn't have any conversation. We did have German neighbors. A: Once you
were on the move, did you ever at any place talk with German guards or
with others? B: No. It was very clear to them, no argument. A: I am
not talking about an argument and I am not talking about your
demanding anything of them. Rather, did you ever have a conversation
with a German once you left your hometown? B: I didn’t have any
conversation. A: Well, how long were you among the Germans after
that train ride that you took? B: I was all this time in German
concentration camps. A: For how long? B: For nine months precisely.
I don’t want to exaggerate. Nine months were enough. A: And you had
the Germans with you for how long in Lithuania before that? B: About
three years. A: So you had three years of contact with the Germans in
Lithuania? B: I never had contact with them. I tried to avoid them as
much as possible. I once told you that I was so disappointed—and you
didn’t believe me—when Germany declared war against the United
States. If racism is true, then how can you declare war on behalf of the
yellows against the whites, against America? A: You mean that they
became the allies of the Japanese? B: Yes. There was an order for the
German soldiers not to get into arguments about the Japanese. They
even said that the Japanese are not non-Aryans, that’s all. A: They are
“not non-Aryans”? B: Not non-Aryans. A: I see. B: So that proves to
you that all this racism and everything was nothing. Not one German
made a noise about it, not one German. A: Are you saying that the
racism really didn’t mean anything to them? B: In reality, it didn’t mean
anything. A: But earlier you were saying that the fact that they were
Aryans— B: They used it, that is all. A: But they didn’t really believe
it? B: Are you asking me? A: Well, you are suggesting they didn’t
really believe it. B: Their actions tell what they believed. They declared
war with Japan against America. If you can justify that by racial means,
then I give in. I was very disappointed. A: What do you mean by
“disappointed”? B: Where is racism, where are all their theories? They
kill people, they kill a whole race of people, they kill Jews— A: Yes.
B: —and then they act this way. Their actions are inconsistent. A: You
would have felt better if they had been consistent? B: Of course, I
would have felt better, because now I know that I am persecuted for
absolutely nothing. Before, at least, maybe there was an ideal behind it.
A: Well, that’s what I am trying to see, whether there was something
behind it. B: What broke my heart is that the Germans did have daring
and bravery. They went to their deaths willingly. But the Jews obeyed
all kinds of orders. I had to draw the conclusions that the Jews are
cowards and the Germans are brave. A: That’s what you observed? B: That’s what I observed. A: But the Germans also obeyed self-destructive orders, didn’t they? B: I don’t know, please. A: Well, didn’t you see them obey— B: In the end, it looked to me that the Germans are very brave and very daring and that the Jews are cowards. That’s what I saw. Don’t worry. Since then I have had to change my mind, but then those were the facts. And it bothered me. A: Did it bother other Jews? B: The day before yesterday was exactly fifty-five years since I have been liberated. A: In Germany? B: In Germany. So I phoned another guy who was liberated together with me. We have all kinds of strange relations. A: Where’s he? B: He’s here in Chicago somewhere. I phoned him and after so many years I asked him, “What did you think under the German occupation?” A: Back in Lithuania? B: Yes. “What did you think?” He told me he was always optimistic. He was sure he was going to survive. He never thought about the future. He was sure he would survive because— A: He was your age? B: Yes. He doesn’t remember half of it. He doesn’t remember one percent of what I remember. Even the facts that he told me are not completely on the level. He told me I cannot argue with him because this is the way he remembers. He claims he stayed alive because he was all the time optimistic that he would survive. And he did survive, he and his father. That’s what he believes. Now I could tell him that I know many people that were as optimistic as he was, who believed they would survive, and didn’t. A: Do you have a reason or do you have an explanation for, why he survived? B: Because he kept breathing. He was healthy, young, and could work. Very simple. Do you need any more? A: I see. B: He was my age. I started out as a small boy. How did I survive? Because I was exactly the right age. A: So there was a certain rationality to the German choices of victims? B: They wanted work. A: That’s what I mean. B: That’s all. A: If you were young and male. How about if you were young and female? B: Fine. Jewish women can work. This is when I was convinced finally in the women liberation movement. Now, I am pro-women liberation ten thousand percent. When women have to work, they work. No monkey business. And the Germans knew it. Women can work. My mother was also sorted out to work. People see me now as old, so they assume that my mother was very old. My mother was then exactly fifty-two years old when she had been sorted out to work. Then she was separated from me. A: And she was still working? B: She was working, but then she died from hunger. I myself very
nearly died from hunger. I mean, the work was hard and there was not enough to eat. A: Why didn’t they feed you more if they wanted your work? B: [Pause] A: They wanted your work, right? B: You are all the time pushing me, and I have to answer with the truth. I will give you what they fed us. A: Now this is in Germany? B: In Germany, yes. In the concentration camp I got every day 600 grams of bread. A: 600 grams. B: Bread. A: Now, how much is that, how many slices of our bread? B: 600 grams is 600 grams, you don’t have to slice it. 600 grams. A: I’m trying to— B: In the whole world it is the same. I refuse to go into any more details. 600 grams is 600 grams. A: Can’t you tell me what it’s equivalent to in our sliced bread? B: I don’t— A: Roughly? B: A kilo is 220 ounces. A: Look, you’ve been eating sliced bread— B: No! No! No! No! A: —for the last forty years, haven’t you? B: Don’t— A: Haven’t you? B: I am not going to— A: Do you ever eat sliced bread? B: 600 grams is very well defined, I don’t have to say anything more. A: It doesn’t tell me anything. B: You know by the weight. What do you mean? A: I don’t know bread by weight, I know it by slices. B: Now, how much does bread weigh? A: I don’t know, I really don’t know. Perhaps I should be ashamed of myself for not knowing. B: So you find out. 600 is very well defined. A: All right, you have 600 grams of bread. B: Every day. A: Once a day. B: Once a day. Then we had soup. The soup was basically potatoes and nothing else. A: Potatoes and water. B: Potatoes and water A: Anything else in it? B: Just boiled potatoes and water. In my concentration camp we had decent people who decided that they would boil all the potatoes so that it became like a porridge. So everybody got exactly the same amount. A: What do you mean by “decent people”? I don’t understand? B: So that everybody will get the same amount of potatoes. A: If it hadn’t been done this way, what would have happened? B: Then one guy would get a potato and one would not get a potato, one would get a big potato and one would get a small potato. In my camp it was done completely on the level. That’s one of the reasons I survived. I was in a very decent concentration camp. A: Decent? Now, who were the decent ones? You mean the Germans there were decent or the Jews? B: The Germans were and the Jews were. There was no preference for any upper layer. What the Germans gave, we got. A: This was where? B: In our Dachau camp. A: Now, they would give you once a day— B: A soup. A: All of your rations at one time? B: No, no. In the morning we would get the bread. A: Straight bread, nothing else? B: Straight
bread. No: 20 grams of margarine, or 20 grams of butter, and 20 grams either of sugar or of honey or jam. Sugar we got once a week, 125 grams, and once a week, 125 grams of meat. A: Once a week? B: Yes. And then a soup that was called bunker soup, but it was neither here nor there. I wouldn’t even know how to define it. It was all kind of things. But it was called “bunker soup” because the Germans themselves drank it when they were in the bunkers. It was called bunker soup. A: You mean when they were in the field? B: And what’s very important is this: I looked in the German newspapers to see how much food they were getting. A: Yes? B: The only thing they got more of than us, and immensely so, was meat. They really got good chunks of meat, but otherwise they got the same proportions, like whole wheat bread. But they could go and buy more. They could also grow food for themselves. This was something we had no recourse to. That’s very important because most people are not ready to admit it. A: Admit what? B: That the Germans almost treated us, foodwise, fairly. Have you ever heard somebody say such a thing? A: That the Germans treated you fairly? B: As much as they could. A: Those who were going to be working, is that it? B: Only workers! Those who didn’t work, they didn’t consider them. A: The ones who were not working would be— B: Would be killed. Forget it. A: They would be killed? B: Eventually, one way or another. A: The ones who were working in your camp were all living together? B: Yes. A: All of you who were living together were workers? B: Yes. A: All the men were living together? B: We were separated, men from the women. A: Men would be living together? B: Yes. A: Women would be living together elsewhere. I think you have already described for me how the bunks were arranged. B: Yes. A: And how crowded they were. B: Yes. A: And so you get up in the morning. This is Dachau now, right? B: What are you pushing me to talk about when I want to talk about something else? A: Well, everything will come in eventually. I want to follow up with what you have just now been saying. I just want to make sure about some details. B: Okay, do it your way. A: What time did you get up in the morning? B: Let me think, I think six. A: Would you be awakened? B: Wait, wait. At first we would be awakened at five in the morning. A: Would you have to be woken up, or would you just get up? B: The lights would go on in the barracks. A: Did you get up independently of that, or did you wait until the lights turned on? B: The lights went on and that’s it. A: In the barracks? B: Yes. A: Is it fair to call these “barracks”? B:
They were very far from barracks, but call them barracks. A barrack is a palace in comparison to what we had. A: Were they sheds? What kind of buildings were they? B: [A sketch is made.] A: It was a triangular building? B: Yes. A: It had a roof that slants up? B: Yes, it had only a roof. A: You mean a roof slanting up from each side? B: Yes. A: Now was it built for this purpose or was it built for something else? B: For our purpose. Here was a door and you go in the dugout that is dug out so you sleep here on the floor. A: By “dug out” you mean? B: Where you can walk below the surface. A: Below the surface, where people were sleeping? B: Yes. People were sleeping on the floor. A: You mean the path between the beds— B: —as dug out— A: —below the ground? B: Yes. A: The floors were dirt completely? B: We slept basically on the ground. A: There were electric lights in there? B: Yes. A: Were there windows? B: The windows are very interesting. When we came in there were no windows and we had a very decent SS Commandant. I have to underline that. He made sure that glass was supplied for windows. A: There were holes for the glass to be put in? B: There were holes that were meant eventually for windows. He supervised a lot of things. I very much insist on the point that he was a decent SS officer. It is very important for me. A: Do you remember his name? B: Bier. A: B? B: B-I-E-R. A: What was his first name? B: I have no idea. Please, don’t push me. A: What was his rank? B: I don’t know, people knew. A: Captain, Major, Colonel? B: I never remember ranks. A: But he was the Commandant? B: He was in the SS, yes. A: Did he have just your barracks or did he have more? Do you know? B: He had the camp. A: I see. B: Our camp was a branch of Dachau. A: I see. Okay. B: So he had a whole branch. There were two Commandants. One was Kollanberg, an old bastard of the first degree. After the war, I think he was hanged. The other was Bier, a decent guy. A: Bier was younger? B: Bier was younger and Kollanberg was the older guy. B: Bier did a lot of good things for us. Because you push me, I will tell you all the good things he did. A: Okay. B: So we would wake up at five, maybe even at four. I don’t remember, because at seven o’clock we had to be at work. So we would get coffee in the morning. The coffee was actually made from bread crumbs. A: Made from bread? B: Yes, from crumbs of bread. A: Just bread, no chicory or— B: I don’t know. That’s what I saw. A: It was hot? B: It was hot, a good brown drink. A: It had the right color? B: Yes, it had the right color. They didn’t have coffee because they had to
import coffee and Germany didn’t have anywhere to import coffee from. The German population didn’t have coffee either. It’s not that they did it special for us. So let me tell you what good he did. Even if I die tomorrow, we still have good things recorded about this guy. We would wake up, first, at four, maybe five. All of a sudden, he dropped our being awakened so early and we woke up one hour later. Why? Because we had been a good, well-ordered bunch. If we were told, “Go there,” we went there. There was no disorder. A: How many of you were there? B: Six-hundred people. B: He noticed that there was no problems with us. A: Now the “us” here were are all Jews? B: All Jews, yes. A: Nobody else, just Jews? B: Nobody else. First, we had been four hundred from our home town, then two hundred came over from another ghetto. A: So you knew a number of these people in your work. And there were six hundred men from these two towns. B: Four hundred and then two hundred. I talked recently with a guy from the other ghetto, who is right now in New York, I have found him. We had been together in the camps and of course he remembers me for other reasons than I remember him, but it’s not important. Important is what he told me and he shook me up. He told me that in the concentration camps he got better food than in his ghetto and I am sure it is true. This guy is not a liar. A: He is comparing the concentration camp— B: He said the hunger in his ghetto was so great that when he came to the camp— A: It was an improvement? B: —an improvement, and I am sure it is true. I have no doubt it is true. A: Okay. B: The Germans really wanted work from us. A: So, whatever hatred they had for the Jews did not keep them from— B: If Jews are good for cheap labor, they are some good—so you can’t say that Jews are no good at all. A: They would use Jews— B: For cheap labor, it’s okay. A: —and they will feed them properly? B: Yes. A: At least enough to keep them going? B: For cheap labor they are good. Their inconsistencies are just mind-boggling. A: Go ahead. B: Now let me tell you about this guy, Bier, why I think he was a good guy. I don’t remember all the other things that I noticed that he’s a good guy. He behaved very strict, according to the law. We were not allowed to be beaten up at work; there was an official beating only in the camp. A: You mean when you got back to the camp? B: Yes. A: Only then could you be punished? B: Only then, yes. And the punishments were twenty-five or ten, however much, on your behind. A: I see. B: I remember one scene where they punished one guy for twenty on his behind. A: Yes. B:
This guy was a deaf mute. He made noises that make me, even now, feel horrible. A deaf mute doesn’t know what noises he makes. He made noises like a wild animal in pain. The Commandant couldn’t stand it and said to stop it because it was too much. A: He knew that he was a deaf mute? B: I don’t know if he knew, but if you heard these noises, if you had a little humanity in you, you would know that this is too much. He didn’t cry like a human being, you know. He couldn’t cry, he didn’t know the noises he made. A: Where was he from? Was he from your— B: Yes, he was from my hometown. A: You knew him before. B: Yes. Another thing: if I write my memoirs I will insist on giving names and not initials. A: Did this deaf mute survive the war? B: I think he survived, and died later. A: Okay. Can we go back to those morning rations? B: Wait, wait, before we go back. I have to talk about this German guy, because whatever I can say— A: Commandant Bier? B: Bier. He was very good and he couldn’t stand it. He personally couldn’t stand it. He said, “Stop it,” so they stopped. He had human feelings in him. We were very hungry, so he would go and steal potatoes for us. But the potatoes were so bad that you can squeeze them through the fingers. So what did we do? We make an oven, an iron stove basically. We dropped this thing on the top and it tasted like potato [laughing] pancakes. A: Potato pancakes? B: Yes, because it was from potatoes. What do you want? A: I see. B: It tasted very good. Then I thought, why didn’t I do this when I was free, it tastes so good. But wait. The Commandant came into one of his little huts— A: You’re still talking about Bier? B: Yes. And he caught us doing it and of course we were all dead, because we were scared. I mean here we are doing a completely illegal thing, who knows what he might do to us. The net result was that the next day he gave an order to divide salt amongst us. That’s a human being. A: You mean you hadn’t had salt before? B: We didn’t have salt before. A: And he thought that you needed it for the potatoes? B: Yes, that’s a human being. A: Whatever happened to him? B: After the war, he got five years and I would go in and witness for him any day. A: I see. B: This is why I insist that belonging to the SS is no excuse. The SS is not a criminal organization like Eisenhower said. Even if you belong to the SS, you have to behave like a human being. A: Like who said? B: Eisenhower. There was a ruling that the SS is a criminal organization. If you belong to it you are already a criminal. A: Okay. B: You cannot afford to lose anyone, you have to demand responsibility from everyone. You SS can still behave like a
human being. But I have no doubt that if Bier had gotten an order to kill us, he would have, no doubt. A: He would have? B: Oh, yes, but as long as we were alive he treated us like human beings. What's more, he wanted to free us. A: What do you mean, he wanted to? B: One day—it was, I think, the 20th of April or the 19th of April, 1945—he called us together and he says the Americans are coming. He has no order what to do. He with his SS will retreat to Dachau proper. A: He called you together? B: He made a parade— A: —of all of you? B: —of all the workers and he gave us a speech. A: In German? B: Of course, in German. The Americans are coming, he said. He hasn't got any order what to do with us. Therefore he will retreat with his people to Dachau proper. He belongs there. A: I'm sorry. You're now talking about the main camp when you say Dachau. B: Yes. He doesn't know what to do with us. He didn't have any order but the local population around us were afraid of us because we had been held for six years as hardened criminals. That was their perception of us. So we have to promise that we will make a police of our own and we have to promise not go out of the camp until the Americans came. They already knew that when the Americans came, they would keep the camp closed and not let anybody out. They knew it already from their Intelligence. Now here I will be very personal. What should people do—embrace and kiss each other? I mean we had just come out from such a horrible thing. No, we started fighting about who will be the policemen. Each barrack had to provide two. A: You mean you started fighting among yourselves? B: Among ourselves. There were amongst ourselves Communists, Zionists, and average people. They started fighting about who will be the policemen. Each barrack had to provide two. A: You mean you started fighting among yourselves? B: Among ourselves. There were amongst ourselves Communists, Zionists, and average people. They started fighting about who will be the policemen and it came to blows. A: Really? B: Really. And I said, “Gentlemen, the war is over.” I knew that the 25th of April will be the peace conference in San Francisco. That I knew from the papers. So it's only five days. “Gentlemen, I say, this is the end.” So they relaxed. Two hours later, Bier took back all that he said. A: He retracted? B: Yes. He had gotten orders to bring us to Dachau proper, but he had really wanted to free us. What happened is then they opened their store rooms. Their potatoes were all of a sudden free. Everybody can grab as many potatoes as he wants, cook as many, and all night people just cooked potatoes and ate because they knew in the morning we would have to start out on a march. The bread and the butter we would have to leave to the local village. A: But why was that, do you think? B: Why are you asking “why”? I give you facts. A: Well, why didn’t they also
leave the potatoes for the local village? Why did they leave one and not the other? Do you have any notion about this? B: No, no, no. I just give you the facts. The potatoes were open, everybody could take as many potatoes as they wanted. A: And then you started that march which you told me about earlier? B: I am not going on the march now. There is another point I want to talk about. This is the order that they kill all the crazy people. This is very important to me that you should know about it because they killed all the crazy people. A: Now who killed all the crazy people where? B: The Germans, in Germany. A: In Germany? B: Yes. A: Germans as well as Jews, right? B: Germans mainly. Here I have to give you the rationale and you have to judge. The difference between human beings and animals is that humans think. Crazy people don’t think. Therefore they can be treated as animals. Crazy people not only don’t think, they eat and they take away food from the rest of the population. They are mouths to feed and they create nothing. Not only that, other people have to take care of them, people who are occupied with a completely useless enterprise. Conclusion: we have to kill all the crazy people. And they did it. It is not a theoretical thing. Also, here is a list of killing the Jews. I don’t know if you ever saw this list. A: Of the Jews, you say? B: Of Jews. Here is the list of killing the Jews. Not only is it sorted out by male, female and children; it is also sorted out by numbers, which place, what date. And one of them, is what is very important to me, I will show you. Aglouma. A: Aglouma? B: Aglouma is the name of the place. A: What place? Where? B: In Lithuania. Here is who was killed and what for; you know this is for being Jewish; that is for their crime, their crime is being sick, 269 men, 227 women, and 48 children. The lunatic asylum inmates in Aglouma were killed by the same people who killed Jews. A: But these were not just Jews? B: These were non-Jews, for certain, non-Jews. A: And they give a date? B: They give a date. 1941 the 22nd in the 8th month. Very business-like. A: Now you were saying that the Germans who were then occupying Lithuania decided to start killing the insane. B: They didn’t decide it only there; it was the law also in Germany. A: They had already started doing that in Germany? B: Yes. A: As far as you understand? B: Yes. A: Did you know they were doing it? B: A good question. Everybody knew not to show signs of craziness—Lithuanians, Germans, or Jews—not to lose your temper, nothing of craziness, everybody behaved like they were the sanest people in the world. Crazy people were killed outright, no monkey business. A:
The Germans started killing crazy people soon after they came? B: No, they had already started killing crazy people in Germany. A: I know, but— B: Here is a date, the 22nd in the 8th month, in 1941. A: Is this the first killing of crazy people they had in Lithuania? B: I don’t know. Here is only a document. A: Well, how long after the occupation began is that? B: The occupation started in June. A: And this is— B: The 8th month, June, July, August. A: So three months later they are doing it? B: They are killing Jews three months later. A: Yes, they are killing Jews. But you aren’t talking about Jews, you are talking about the crazy people. B: The same guys. That’s what I want to tell you: the same company that kills Jews also kills the crazy people. This is a report of the company that is doing the killing. A: Now, if I remember correctly, this company included Lithuanians doing the killing? B: Yes, definitely. A: Under German supervision? B: That’s what the Germans did: it should look like all this was done by the Lithuanians. A: You knew at the time yourselves that you should not act crazy in any way? B: The Lithuanians knew it, and the Jews knew it, and the Germans knew it. Nobody acted crazy. Nobody. A: Well, except perhaps the people who were already in the asylum? They had already been identified as crazy. B: Right. A: Did you know any crazy people who restrained themselves, people you already knew before to be crazy? B: No, I wouldn’t say crazy. Here in America craziness is so accepted. Many people here in America who are considered crazy are not crazy. A: I’m just using your term, “crazy.” B: Crazy means crazy, really crazy. A: Did you know any really crazy people before the Germans came, who were not in the asylum? B: I knew people who acted what we would call crazy. They raise their voice. They are out of their mind. But with this, they are all of a sudden behaving themselves. A: Oh, you did know some? B: All of a sudden, they behaved. Anyone who had a little saneness in him behaved. A: I see. B: This is why I don’t buy it when people say, “Oh, he couldn’t help himself, he was crazy.” A: That’s what’s interesting here. You’re suggesting from what you observed that, except in the most extreme cases— B: —except when the guy is really crazy, you know, except when it is beyond any shadow of a doubt that he is crazy. But if he only behaves emotionally distraught, or if he’s only angry, when a gun is pointed at his head, he will all of a sudden behave. That is my own experience. A: I see and you did know some that way? B: Yes. Yes. A: Did you ever talk to one of them? B: I never talked to anyone, please. A: So you never asked him,— B: I didn’t have to
ask. A: —“How come?” B: I judge people by behavior. A: I see. Well, did people talk about the fact that the crazy people were— B: Nobody talked, it was known. Lithuanians were scared of being crazy. Germans were scared of being crazy. It was general behavior not to show anything. The whole system was crazy but you went along with the laws of the whole system. A: Now, was there anybody that you knew well who was in that condition? B: There were many people who would lose their temper when you would just say something and they would raise their face to high heaven— A: But you never discussed among yourselves what this meant? B: Nobody discussed anything. I judge only by the facts. It is very important for me that you should underline this. A: Now where is this, would you point out the item for me again? B: Aglouma. A: Let me look at it again. B: Aglouma. A: A-G-L-O-U-M-A. You think this is a German list? B: I know it’s translated from the German. It’s very important, very important. A: Of course it is. It’s also important that people who are somewhat crazy can restrain themselves. In some circumstances they can become— B: When a gun is pointed at them, it’s completely different. A: Did you ever know any of these people afterwards? B: No, afterwards everybody was subdued and there were people who went crazy. A: Did you ever meet afterwards any of these people who, under the threat of the Germans, became more restrained? Did they remain that way? B: Oh, yes. A: After the war? B: Oh, yes. It’s quite an experience. A: It was therapeutic. Is that what you are suggesting? B: I don’t suggest anything. A: It was therapeutic? B: That’s how people behaved. A: Now, could we go back to those morning rations? B: Not yet. A: You are going to show me something else now? B: Mixed marriages. A: Mixed marriages, all right. B: So, here’s a list of all the mixed marriages in my hometown. A: Whose list? B: This is a list that had to be given to the Germans by the Lithuanians. A: Okay. B: And here is the order about what to do. Two had already been killed before the list even came into being. A: You mean some of them had already been killed? B: Yes. Here is Bergen. And here is a Jewish doctor who married a German woman. A: Okay. B: Here is a Lithuanian whose wife was Jewish. A: What was done with this list? B: Wait a minute, you are too impatient. The German commandant who got the list said, “I am not going to do it.” A: “I am not going to do” what? B: To kill these people basically or to put them in the ghetto. They lived outside the ghetto. A: These were— B: It was very simple. He says, “At this
moment there are enough people for our purpose and such an action would bring unnecessary misunderstanding and therefore I haven’t done it. There is no safety reason for doing these things, because we know all of them and all those who might have done anything against safety have already been dealt with.”

A: So these people were safe outside the ghetto? B: Yes. They survived. A: And you know they survived? B: Yes. A: These were Jews who were married to— B: to non-Jews. A: Either Lithuanians or Germans? B: Yes. A: And the Germans knew that they were there? B: They knew they were there and did nothing. A: And when you all evacuated the city— B: They stayed. A: They didn’t have to leave? B: Nobody forced them. That’s very important, that the Germans refused to obey the order and they gave a very reasonable explanation why not. A: I see. B: There was peace, so why make a show and kill. That was very important. A: Can we go back now to the camp? B: I must close what I have been showing, so I can relax. A: Okay, show me. B: Here’s a map showing how many Jews have been killed by the German commanders. A: In Lithuania? B: In Lithuania, Latvia, Estonia, and White Russia. With numbers and everything, a very nice thing, beautiful. A: What are those, caskets? B: Yes. A: The caskets indicate the dead? B: Yes. A: In White Russia, is that what this is, with Minsk as the capital? B: Yes. A: You have 41,828. B: Numbers! Numbers! A: These are Jews? B: Jews, yes. A: Now, these are killed in Lithuania? B: Yes. A: 136,000? B: Yes. A: This is Latvia? B: Yes. A: 35,000? B: Yes. A: Is this Estonia? B: Yes. A: And it says “Judenfrei.” B: Yes, “free of Jews.” There were still camps of Jews in Lithuania, Latvia and White Russia. A: These are in the ghettos that those countries still have? B: Yes, yes. A: And would they have all been killed roughly the same way in these places? B: This is the company that did the killing. A: Would they have done it the same way, in all of these places here? B: Of course. A: How would they have killed them? B: By shooting. A: It would be done primarily by shooting? B: Not primarily, that was the only way: shooting. A: Shooting people? B: Yes. A: In all of these places? B: Yes. There were no gas chambers at that time. A: There weren’t any then. There never were any, that is, in these places? B: Basically, you are right. There were no gas chambers in these places. I never thought about it. A: So in these places they were doing it all by shooting? B: All by shooting. A: Why did they go to the gas chambers? B: It’s very simple. The shooting commanders went out of their minds. A: The
commanders did? B: Both the commanders and the plain soldiers. They just went crazy and it had a very demoralizing effect. It had a demoralizing effect on the German army, all of the shootings. It had a demoralizing effect on the local population. It’s not enough that Jews are killed. People are not blind. A: How do you know this? B: Germans themselves told me. They themselves told me. A: That it was just simply too— B: It’s no good. It’s not good for the morale of the people who are there. It’s not good for those who do the shooting. A: I see. B: Sending them away to gas chambers, nobody sees, nobody knows. A: Except the people there, of course, at the gas chambers. B: Yes, and they did all these gas chambers in Poland, that’s what’s very important. A: Why Poland? B: Because there was tremendous anti-Semitism in Poland. They trusted the Poles. I am not joking. A: I’m not suggesting you are. B: That’s it. They didn’t do it in Germany in order not to influence the German population. A: They didn’t want to do it in Germany, you say? B: No, they didn’t do it in Germany. A: Because? B: Because the local population would be outraged and so on. They took Jews from Germany and sent them to Poland. A: Are you saying that the Poles hated the Jews more than the Germans did? B: Definitely, there’s no doubt. A: No doubt about that? B: No doubt about it. Because the Jews in Poland were ten percent. The Jews in Germany were less than one percent. A: And therefore? B: Competition was critical. Don’t kid yourself for one moment. I am not a Marxist but the competition did it. A: In Poland, because of the numbers? B: In Poland and Lithuania and everywhere. A: So you’re saying in Poland the Jews were ten percent? B: Ten percent. A: In Germany they were one percent? B: Less than one percent. A: The Poles hated the Jews— B: —much stronger— A: —much more than the Germans did? B: Oh yes, there’s no doubt about it. A: Because of the economic competition? B: In my opinion, it was the economic competition. I can’t prove it one way or another. And we, of course, amongst ourselves always thought that Protestant Christians are better to Jews than Catholic Christians. A: And were you right? B: No. Look at what Protestant Germany did. A: But you believed you were safer among Protestants than you were among Catholics? B: Yes. A: Well, in one way you were right, because obviously you are saying that it was easier to kill Jews in Poland than it was in Germany. B: Oh, no doubt, no doubt. A: No doubt about that? B: No doubt about it. A: Now Dachau itself is in Germany. B: Wait a minute. When they had to have
a transport of people to be gassed, they would send them to Auschwitz [in Poland] from Dachau [in Bavaria].

A: They wouldn’t kill them there? B: They would kill here and there. There was a crematorium in Dachau but it was not producing, it was not a death machine. 

A: So Dachau was not primarily concerned with killing people? B: Definitely not.

A: It was for keeping people to work? B: Also, it was a jail, to hold Communists and others.

A: There were prisoners there who were not working? B: Yes.

A: Who were just prisoners, is that it? B: Yes.

A: And then there were the workers? B: Yes. A: Who would be Jews or others? B: Russians.

A: Russians? B: Jews, Russians, and also Germans.

A: So the Germans, originally, were only shooting people? B: Originally the plan was shooting. A: And this is what the map shows? B: Yes. A: And then they began gassing them? B: Yes.

A: Now, when did they begin gassing people, do you think? B: I don’t know. They say 1942, but it started early— A: You never saw a gas— B: I saw it.

A: Where? B: Stutthof [on the outskirts of Gdansk (Danzig), in Poland].

A: When? B: When I had been taken from Lithuania to Germany, for one month I had Stutthof for a concentration camp.

A: Where they were gassing people? B: But not in large numbers.

A: You knew they were gassing people when they were there? B: Yes. A: You also knew you were going to go on, is that it, or did you know? B: I hoped that I would go on.

A: Well, did they take people from your village or your town to be gassed? B: Not during my stay there.

A: As far as you know? B: Not during my stay there. The month that I was there, nobody got gassed.

A: In other words, for you it was just a transition camp? B: Transition, yes.

A: You went there after you went to Memel [in Lithuania]? B: Yes.

A: You stayed in Stutthof a month, right? B: Stutthof was hell incorporated. It was worse than Dachau could ever have been. Stutthof was real hell. A: Because it was so crowded? B: No, we were more crowded in Dachau but Stutthof was hell, hell, anything you can imagine in hell. The same loaf of bread that was divided for five people in Dachau, they divided for thirteen people in Stutthof.

A: So you were always hungry? B: And how hungry! I know that the Germans gave us the same amount per person in Stutthof that they gave us in Dachau. A: So somebody was taking it? B: Somebody was taking it.

A: Who was taking it? B: For God’s sake, are you surprised? A: The Administration? B: Are you really surprised? A: I’m not surprised. I’m just trying to see. Were the Germans taking it or would it have been others? B: Poles, Poles, the Polish people. A: Now,
when you were there that month, you were always expecting to go on
from there? B: Yes. A: Others had gone on before from there,
obviously? B: Yes. A: But also some people were being killed there?
B: Yes. A: Were being gassed? B: Yes. A: Did you know there were
gas chambers there while you were there? B: Yes. A: Did you know
what they were doing with them? B: Yes. A: How did you know? B:
You are pushing me to the wall. Stutthof will take two tapes, not one.
A: Okay. B: That’s a whole other story, Stutthof. But I was in the gas
chamber. A: You were in it? B: No, not in the gas chamber, I’m lying
to you. I was in the crematorium. A: You were there? B: I went there.
I was curious. A: Wait a minute. You were in your barracks or your—
B: Not in barracks. We were taken away to work. First, I noticed the
gas chamber. It was a closed door and I very innocently asked the
German guard, “What is here?” He said this is where you come when all
of your clothes are full of lice. So here is where they are fumigated.
This is what he told me about the gas chambers. A: Do you think that he
believed it? B: He didn’t believe it, but this is what he told me. He
talked nonchalantly and I talked nonchalantly. We both know nothing,
very innocent, but then— A: You were then eighteen years old? B:
No, I was nineteen, twenty. A: Okay. B: And then I went to the
crematorium. A: What do you mean you went to it? B: Exactly.
I ran away from work and went to the crematorium because I am so curious.
A: When you were at Stutthof you were actually working? B: Several
days we went to work there. A: Where did you go to work there? B: It
doesn’t matter where. A: Outside the camp? B: Outside the camp. A:
You would be marched somewhere to work? B: Yes. A: And you
would come back? B: But the crematorium was inside the camp. A:
Okay. B: But it was separate. A: But, first, you saw the gas chamber
itself as a hermetically-sealed building? B: Yes. A: A big one? B:
Not a big one, no. A: As big as this room [an office in a library]? B: I
don’t know. No, bigger. A: Bigger than this room? B: This is very
important, so I will tell you precisely. We went to work there to unload.
I had decided that this was an opportunity of a lifetime, I couldn’t believe
these things. I have to go and see the crematorium. A: Wait a minute.
Had you heard about it? B: Yes, yes. The people in the camp talked
freely about it. There was a chimney. You could see the chimney, so the
people talked. A: You are talking about the crematorium? B: Yes. So
anyways, I went. I went and the people there spoke Polish and I know a
little Polish but it was not enough to communicate. I went back to work and I convinced another inmate who spoke Polish fluently. I say, “Come with me.” “No, no.” I said, “Don’t be stupid. Either we are all condemned and then it doesn’t matter. Because for us two they will not start a new fire. Come with me.” He was convinced. A: Now you were— B: Wait, wait, wait, don’t interfere! A: What are you— B: Don’t interfere! Let me tell you the story! So I went with him to the window and I was very surprised the crematorium didn’t look different from the factory I was born into, the same kind of oven. I asked them— A: You asked who? B: The guys that worked there, the Poles. A: Did they know who you were? B: Please, don’t interfere, don’t. Let me tell. So I asked them what they are doing and they explained to me the technicalities. About 150 or 200 people are taken to the gas chamber. Fifteen, twenty minutes later, they are all dead and they are shoved from the gas chamber into the crematorium. A: How far apart were these places? B: Not far, not far, and they explained to me the technicalities. Then I asked them, “How can you do it?” and they say, “When we came here we had a choice, either have it done to us or we do it to others.” Then he took out a bottle of vodka. He says, “You are hungry and I can drink and eat as much as I want.” And the third thing they said is, “We prepare a rebellion.” They had a factory for repairing new guns. They were preparing to steal guns to make a revolution. So that was enough for my information. I saw them with my own eyes, no doubt anymore. A: You didn’t see bodies? B: No. I saw no bodies, but I saw them taking out ashes. There was a razor and a picture of a guy and the other guy says this is a Jew that had died there, that day or sometime. End of story, closed. A: Wait, let me ask you something. I want to go over your story before we close. B: Look, this asked too much energy of me. Close it [the recorder] and then— [The recording resumes] A: Now you went over from the work camp or the work party with someone else. Was he from your village or your town? B: No. He was from another place. A: He knew Polish? B: He knew Polish. A: You were dressed so that they knew who you were when you came up? B: What kind of question is that? Of course. A: You were dressed in a way that they could know who you were— B: Yes. A: —that you were not Poles. They knew you were Jews? B: Yes. A: And it was Jews they had been killing? B: Not necessarily. This was a camp that was international. A: They were international in their clientele? B: Yes. The French and Poles. A: And they were killing them, too? B: Everybody who died
was cremated. A: But the people they talked to you about— B: That's what they told me, the procedure. A: Those cremated were people who had been killed, not just those who had died, right? B: Yes. A: And they knew that you were Jews— B: Yes, sure. A: —whom they were telling this to? B: Yes. A: And these were Poles? B: Yes. A: What age? B: I don't know. A: Well, were they your age? B: Of course, they were young guys. A: They were young like you? B: Yes. A: You went up to them and began talking to them about this? B: Yes. A: And they simply said— B: I told this guy, the guy who knows Polish, "Ask this, ask this, ask this." A: And over here is where they get killed? B: Yes. A: That is what they explained to you? B: Yes. A: And that was how far away? B: Not far away. A: Well? B: I don't know, I refuse to— A: One hundred feet? B: I don't know. Please don't push me. A: Well, you said that they shoved them in? B: That's what they told me. A: And then they told you they bring them in here. Did they tell you how many at a time? B: They told me, between 150 to 200 people in the gas chamber. A: At one time? B: Yes. A: How many would go into the crematorium at one time? B: In the crematorium, I got the impression they went one by one. A: I see. B: It was a simple oven like in the factory. I was amazed. A: Yes. B: A simple oven. A: Yes, a simple oven. B: And then, of course, they take out the ashes. A: You had already seen the chimney from this? B: Yes. Then they take out the ashes, and the ashes are used to fertilize the garden there. A: In the camp? B: Yes. A: Right around there? B: So basically we ate food made from the ashes of people. A: Well, you didn't have many vegetables, so you probably— B: We did have beets. A: I see. I see. So they told you this? B: Yes. A: They didn't apologize for it, obviously? B: What, apologize! I asked them what they were doing and they told me. A: And they justified it and said it was either we do it or it is done to us? B: Yes. A: Why were they there? B: I told you. A: Do you have any idea of why they were vulnerable? B: I told you, I told you. This was in Poland basically and the majority of inmates there were Polish. A: That's right. Would these have been Polish criminals, do you think? Why were they in the camp? B: Polish criminals, whichever, whichever. A: You see, I am trying to figure out why they were vulnerable themselves. Obviously the Germans weren't killing all the Poles in the country. The Germans were not out to kill all the Poles, so these people— B: I'll ask a blunt question. What do you think that the Germans had done with the Polish prisoners of war? A: You mean
after the war, what would they have done? B: Not after the war, during the war. A: I don’t know. What did they do with them? B: What do you think? A: Well, I guess you are suggesting that they were killing them, the way the Russians killed the Polish officers in the Katyn Forest. B: I don’t believe they killed as many as the Russians did, but they did kill Poles. A: Still, I find it somewhat surprising that these particular men would be so frank with you. B: In a concentration camp, what do you have to be secretive about? What kind of secrets are there to keep? A: Let me ask you about all this another way. These men you talked to were the people who were putting the bodies into the crematoria, into the ovens? B: Yes. A: How about the people who were putting the people into gas chambers? B: Don’t ask me. A: Were they the same kind of people? B: I don’t know. A: You don’t know about them? B: No. A: They didn’t say anything about— B: I am not saying anything I don’t know. A: They didn’t say anything about those people? B: I didn’t ask. A: They answered all your questions, or were there some questions they wouldn’t answer? B: That’s all that I asked and that they answered. A: How long did you talk to them? B: Several minutes, because you know I was running away from work. A: Yes, you had to get back to work? B: I had to be back to work. A: But they—how many of them were there? B: Not many. A: Well, three, four? B: Probably between five and ten. A: And there were two of you? B: Yes. A: And, as far as you know, they answered your questions? B: I have no doubt they answered my questions. A: Yes, and you had no other questions to ask them? B: I didn’t at that moment, that was enough. A: And you went back to your work? B: I went back to the camp. A: Then you talked to people about it? B: I don’t remember even if I talked. A: But this only confirmed what you already knew, is that it? B: I knew it, but that was theoretical knowledge. A: Now you had seen— B: Now I had seen. A: You didn’t see any bodies but you saw the men who put the bodies—the men who said they put the bodies, in the ovens? B: Yes. A: And what did your friend think about this? B: I don’t know. He wasn’t my friend. I never saw him before or after. A: You didn’t talk about it with him afterwards? B: No. A: As you walked away? B: No. What was there to talk about? A: I’m just trying to think, trying to learn. I mean, it must have been shocking. Wasn’t it? B: Yes. A: Especially when they put it in terms of, “What choice do I have?” B: Yes. A: Did that sound to you reasonable? B: Yes. A: You understood what their motivation was? B: Yes, and they told me they were preparing a rebellion and
insurrection. So what else can I ask? A: And they weren’t afraid to tell you that, either? B: What is there to be afraid of in a concentration camp? A concentration camp was freedom incorporated—

APPENDIX B: ON THE SENATE FILIBUSTER-CLOTURE RULE: GEORGE ANASTAPLO’S LETTER TO THE EDITOR (SEPTEMBER 17, 2009)*

It is curious that the more astute Members of the United States Senate have not, long ago, repudiated that Body’s 60-member-filibuster-cloture rule. The justification for the filibuster, as traditionally understood, had been that it permitted a Senator to present, at some length, an unpopular position. But the way the threat of a filibuster is now exploited usually discourages genuine debate, proceeding as it does on the somewhat arrogant assumption that no position has to be taken seriously if it does not already have three-fifths of the Senate in its support.

Making matters even worse, as well as exhibiting an affront to traditional republican principles, is that the current Senate rule is probably unconstitutional. After all, the Framers of the Constitution obviously assumed that the majority should rule, except in those few clearly specified instances, which require that we call a “supermajority.” The troubling state of affairs now is, however, that it can take almost as many votes to pass a bill in the Senate as it does to override a Presidential veto of a bill passed by both Houses of Congress.

One of these years, a point of order should be raised, submitting that the Constitution assumes that a simple majority should suffice for ordinary business of the Senate, with the understanding that genuine debate should of course be permitted at whatever length may be necessary to examine properly the issues of the day. Such a motion, favorably ruled on by the Vice-President presiding over that body, should itself not require more than a majority vote for it to carry. The Senate can there-after go on to perform its legislative duties in a proper manner.**

* The remarks in this Letter to the Editor were prompted by an article, For Senate Democrats, 60 is the Magic Number, N.Y. TIMES, Sept. 17, 2009, at A20.

** The following Letter to the Editor, of January 21, 2010, by George Anastaplo, developed further his argument about threats of filibusters:

Our descendants will wonder, someday, that the legislative power of this Nation could have been crippled as it has been for decades now by silly myths about the sanctity of filibusters in the United States Senate.
A well regulated Militia, being necessary to the security of a free State, the right of people to keep and bear Arms, shall not be infringed.

It should be instructive (as well as reassuring) to be reminded, from time to time, of how bills of rights were regarded by the Framers of the Constitution of 1787 and their most thoughtful champions. The absence of a bill of rights in the original Constitution disturbed some citizens during the Ratification Campaign of 1787–1788. Attempts were made to reassure such critics with reminders that the principal guarantees they were demanding were already generally recognized for and by the People of the United States, whether or not reaffirmed in any new document.

The constitutional assumptions drawn on by such assurances are reflected in the language of the Ninth Amendment (the next-to-last article provided thereafter in the Bill of Rights of 1791): “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Such constitutional assumptions are evident as well in the Declaration of Independence of 1776, where longstanding guarantees and rights were repeatedly drawn on in condemning what the English Government of the day had been doing to their North American Colonies. But however misguided, if not even tyrannical, the English Government might have seemed at times, it was evident that various fundamental rights of the People (rights recognized over centuries) were firmly grounded in the history and

One of these years a presiding officer of the Senate will recognize the insistence by a clear majority of that body that it should be able to act authoritatively, once adequate opportunities have been provided for the examination of all issues relevant on that occasion.

The current unbecoming paralysis of substantial Senate majorities can raise questions about that common sense with which the people of this Country have long been credited.

political character of the English-speaking peoples. Thus, Americans could acknowledge, once the passions of war had subsided, that their “cousins” in England were generally as free, politically and legally, as they themselves were in North America.

It can be instructive, therefore, to notice any major deviations in American constitutional doctrine today from the current English understanding of comparable matters. One obvious departure is with respect to inherited privileges, but even here the English are steadily moving closer to the American orientation, as may be seen in what has happened during the past century to their House of Lords. Another departure can be noticed with respect to established religious prerogatives, something recognized in our First Amendment restriction upon “an establishment of religion.”

Otherwise, the English reading of longstanding constitutional privileges is generally like ours. The most truly troubling exception may be with respect to the Second Amendment assurance about “the right of the people to keep and bear Arms”—troubling not because of the language of that provision, but rather because of how it has come to be misread by some among us. After all, there had been in England, well before 1776, suspicions about any faction (usually grounded in religious principles) sometimes being more privileged than others with respect to the right to possess weapons. (This injustice is noticed in the English Bill of Rights of 1689.) But the ancestral “right of [all] the people to keep and bear Arms” has never been understood to have in England the remarkable scope now claimed for it in the United States. That is, whatever may now be felt by some among us about such a privilege in the United States, it is hardly traditional among the English-speaking peoples that it should be completely independent of anything like the substantial supervision once provided by a “well-regulated Militia.”

American visitors do recognize that they move in England among a people who are generally free as their own. English domestic problems tend to be similar to ours, including with respect to race relations. The deference still paid there to royalty and to the nobility can seem foreign to American tastes, but it does not tend to be generally regarded by us as corrupting everyday life. Besides, even more dramatic deference may sometimes be observed in the United States—as in the almost obsessive interest in whoever happens to be either the President or the celebrity of the moment.

However all this may be, the American visitor to England simply
does not encounter there the amount of, and the determined campaigns
for, unregulated private gun ownership that we have had to become
accustomed to in the United States. Nor is there, of course, the
horrendous murder rate we are also accustomed to, a rate that
undermines both security and freedom.

Social conditions and chance historical developments may help
account for such differences. But English friends of the United States
are hardly likely to regard as either prudent or persuasive the insistence
that we hear among us (even from distinguished jurists)—the curious
insistence that the right of citizens to possess, mostly on their own terms,
a wide variety of dangerous weapons is grounded in and guaranteed by
whatever ancient right the English-speaking peoples may properly have
“to keep and bear Arms.”