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Can the Civil War Be Defined as a Just War?

(Sara Gabbard interview with Reverend John P. Gardner, Plymouth Congregational Church (UCC), Fort Wayne, Indiana)

SG: What does the *Bible* instruct us about war?

JG: History is replete with war. No era, ancient or modern, escapes war's wrath. Look wherever you will and you will find somewhere, someone engaged in mortal combat with someone else. Our human history notes no absence of war. Encrypted in our DNA, so it would appear, is a propensity for violence to resolve our differences.

In the Bible the stage is set early. Cain kills Abel. The first born of Adam and Eve slays his younger sibling. Birth of the first, death of the second, is recorded in all of eight verses on the east side of paradise (Genesis 4:1-8). And you may recall, Cain the Killer is marked, protected by God from the violent who are known to inherit the land (Genesis 4:15)

The Holy Land, Eratz Israel, is said to have been "one of the main military thoroughfares as far back as written annals record." The first coherent account of an ancient military campaign is chiseled on a tomb dating from the reign of Pharaoh Pepi I, the 24th century BCE, a thousand years or more before any mention is made of Israel settling in a promised land.

Dead Sea Scrolls, Cave 4 (Essenes) LC-M33-13635

War is embedded in the seasons of life. So we read, "in the spring of the year when kings go off to war, David sent Joab out..." (II Samuel 11:1). If there is a "time for every matter under heaven" (Eccles. 3:1), war gets more than an equal portion. Though it may be "vanity and a chasing after wind" (Eccles. 4:4), it is time honored vanity, a fixture deeply seeded in our human condition.

SG: Do we have records of early dissenters to the concept of war?

JG: Resisters abhor war. They recoil and refuse to enter its fray. Traditionally labeled "pacifists," they resist the use of violence to resolve conflict. In Lysistrata, the Greek poet Aristophanes portrayed women striking a pacifist blow against war, suspending bed- time privileges until war halted and peace prevailed.

In the first century of the Common Era (CE), there existed a Jewish sect, the Essenes, who renounced the world and withdrew from its clashing factions. They embraced a hope that the Deity of their devotion would justly settle all accounts without need of their assistance.

The Christian movement, for well over two centuries, was clearly pacifist in nature. Resistance to war and its legions, with rejection of its efficacy and necessity, can be traced through most generations to this day. John Howard Yoder (The Politics of Jesus, 1972), and Stanley Hauerwas (War and the American Difference, 2011) have heralded the pacifist tradition of resistance to war.

SG: Do we also have records of those who eagerly sought conflict and war?

JG: The formidable opposition to resisters are revelers, who embrace war with a certain gusto. "Happy Warriors" is the descriptive term employed by war scholar Michael Walzer. Happy warriors have no peace with peace; they revel in war and are most at home in its inferno.

Alexander the Great was a Happy Warrior who is said to have wept when considering that there were no more worlds to conquer.

Teddy Roosevelt, our rough riding 26th president (1901-1909), was a Happy Warrior who championed the manly arts of combat, and passed the fighting spirit on to his children. Roosevelt's son, Archie, was said to be "an absolutely selfless gladiator who insisted on being the first to smell the enemy's bad breath, regardless of the risk."

George C. Scott, in his famous portrayal of General George Patton ("Patton," 1970), is the iconic Happy Warrior. When beholding a field of battle he enthused: "I love it. God help me, I do love it so. I love it more than life."

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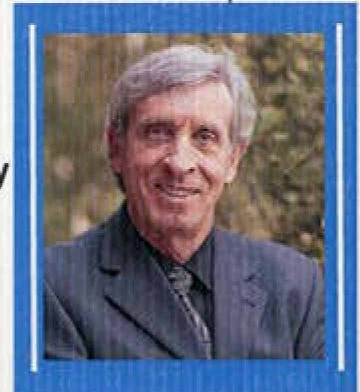

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SG: Is there some sort of "middle ground" of those who accept the fact that war is sometimes necessary?

JG: In the mean between resisters and revelers reside the realists. Realists assess war as a reality that can't be avoided. Call them reluctant warriors, resigned to war as a viable, sometimes necessary, course to settle a dispute or calm a threat. Realists also recognize a moral dimension to war, and the need for strict measures to curb the human proclivity to escalate violence when war is being waged.

"Pure pacifism," according to Reinhold Niebuhr, was an ideal not to be realized in the time of human history; as a philosophical construct, as a theological "eschatological sign" it was fine, but in the nuts and bolts of our every day life, it was politically irresponsible.

For Niebuhr, the best one can do in this beautiful, brutal world is fight for justice, use as little violence and coercion as possible, and conscientiously humble oneself "all along the way." Expressed yet another way, the realist may participate in war, but always with a heavy heart, shunning its glory, rejecting its romance.

SG: Please define war.

JG: Carl von Clausewitz (1780-1831), the noted military theorist, spoke of war as "a contest of wills conducted with physical means," whose object is a better peace, "from one's own point of view." Clausewitz provides another angle when stating, "War is an act of violence pushed to its utmost bounds."

Roger Shinn provides a simple definition: "Violence, when sufficiently massive, is war."

War, William James curiously observed, is something people want. It feeds a deep need for thrill and excitement. "War is human nature at its uttermost...It is a sacrament." More recently, Chris Hedges has written that war is "a force that gives us meaning." It is a meaning, though, with peculiar "standards of morality." For Hedges, war is a "drug," a "heady narcotic," an "addiction that slowly lowers us to the moral depravity of all addicts."

Michael Walzer has stated, "War is so awful that it makes us cynical about the possibility of restraint, and then it is so much worse that it makes us indignant at the absence of restraint."

Cynicism testifies to our grasp of what is beastly in our behaviors; indignation is indicative that we possess reservoirs to resist the beast. Indignation is a sign of hope that lurking within our nature is the capacity to experience repugnance over the grotesque depths into which we are always capable of sinking.

SG: How, then, do we find the emergence of the concept of just war?

JG: Just war theory emerges here, among the indignant, whose revulsion would restrain the warring appetite of revelers. And here we encounter what is peculiar to war – Not the violence, but the lack of restraint, the inability to contain our human furies. Roger Shinn makes the observation: "The peculiarity of war is not its violence...The peculiar problem of war is that it represents magnified violence between states or factions unrestrained by government."

The origins of just war theory are found in the writings of Plato (Republic) and Aristotle (Politics; Ethics). The Romans had a proverb, "Inter arma silent leges," which translates, "in time of war, the law is silent." Just war theory breaks the silence, giving rise to permissions and prohibitions. For Plato, war was legitimate if it was an effort to restore peace, if it was waged to break a cycle of violence. Wars of conquest, plunder, vengeance need not apply for admission in the Platonic code.

Augustine (354-430 CE), the North African bishop, was an early Christian voice that legitimized the vocation of soldier. It was not good for peace to have barbarians running around sowing discord, pillaging and plundering the basic law abiding citizen. Augustine was instrumental in advancing the theoretical basis for permitting Christians to wage war. "Love," Augustine wrote, "does not exclude wars of mercy waged by the good." And again, "War is a way of punishing sin and sinners...to prevent the sinner from sinning further."

"After you, Teddy" LC-DIGppmsca-27873 1912
Teddy Roosevelt on his way to the "Hall of Fame" between two rows of kings, emperors, military leaders and statesmen, including Alexander, Caesar, and Washington.

SG: How should "just war" be defined?

JG: In the Middle Ages, the great Jewish thinker, Maimonides (1135-1204), along with Aquinas, the Christian (1225-1274), and Avernoes, the Muslim (1126-1198), each addressed the subject of war in the framework of their traditions, each noting categories of permission and prohibition.

General principles have emerged from the work of such as these. To gage whether a just war be waged, the following criteria must be met:

War must be declared by a legitimate authority, to ensure the common good of society is served;

War must be waged with good intention (right reason);

War must lead to a greater good; to secure peace;

War must be a measure of last resort, with all other means for conflict resolution having been exhausted;

War must be waged for defensive, not offensive reasons.

Two further principles serve to limit engagement:

Proportionality is a rule to be observed; the methods of waging war should not exceed the evil that is opposed.

Combatants must be distinguished from civilians; civilian population is neither a just nor legitimate target in war.

In the Christian tradition (Augustine & Aquinas), all the above-mentioned criteria must be met for a war to be considered just. In the words of the Roman Catholic Catechism, these principles and the like are "strict conditions" for "legitimate defense" which require "rigorous consideration."

SG: Given these parameters, let's look at the Civil War. Could both North and South claim moral justification?

JG: The Civil War was the inevitable result of the internal contradiction upon which our nation was conceived: from the beginning there was a race-based system of bondage and servitude co-existing and running parallel to democratic values upholding equality, liberty, and justice for all. The Civil War resolved the incongruity the Founding Fathers recognized – yet postponed. Both North and South were quick to offer moral justification in defense of an original vision that was simply unsustainable.

Lincoln, in his Second Inaugural Address, offered profound insight when stating, "Both parties deprecated war, but one would make war rather than let the nation survive, and the other would accept war rather than let it perish..." Lincoln also correctly observed that the magnitude and duration of the war that came far exceeded what anyone expected or imagined. The firing on Fort Sumter unleashed accrued furies and made plain the fact that the nation was at war with itself.

The war quickly escalated into a crusade exceeding the limits of conduct a "just war" might impose. Correspondence between Confederate General John Bell Hood and Union General William T. Sherman illustrates the point. General Hood chastised Sherman's ordered evacuation of the City of Atlanta, accusing him of gross misconduct. He wrote to Sherman: "Sir, permit me to say that the unprecedented measure you propose transcends, in studied and ingenious cruelty, all acts ever before brought to my attention in the dark history of war."

Sherman, well known for his maxim, "War is hell," replied to Hood, "War is cruelty and you cannot refine it."

However, Sherman did engage in a refinement of sorts, ensuring that women and children were removed from his path of destruction. War historian Michael Walzer (*Just and Unjust Wars)* commented on this episode, saying, "Even in hell it is possible to be more or less humane, to fight with or without restraint."

March 4, 1865, Lincoln's 2nd Inauguration LFFC

SG: Is there a difference in determining morality between fighting over the concept of secession and fighting to eliminate or retain the institution of slavery?

JG: This is a difficult question. War is not an environment suited for clear-cut moral judgments. In our day, we speak of "the fog of war," and for good reason. It is an ethical quagmire, which is why it is best avoided.

"Just war" theory provides moral legitimization for the use of violence to foster a peace that is seemingly unattainable by any other means; it permits behavior that would under normal conditions be considered criminal. Theologically, one might say that war is a concession to the concept that one sin is sometimes necessary to punish another sin, with winners being awarded absolution.

Did the North have a moral trump card in its hand because the South was holding slavery in its hand? Was there moral legitimacy in a Confederate defense of the principle of secession? Embers, I sense, still smolder in the ashes.

I will say this: when the strife was over, the behavior of President Lincoln was exceptionally magnanimous. He displayed malice toward none. He resisted any impulse to belabor punishing the defeated. Such a grasp of the teaching, "Judge not, lest ye be judged," has no equal in our nation's history.

SG: Julia Ward Howe published "Battle Hymn of the Republic" in 1862. Was its popularity based upon the need for Northerners to believe that God was on their side? If so, do we today still seek that assurance?

JG: "Battle Hymn of the Republic" is a powerful musical score that inspires commitment to a cause greater than oneself. Music employed to countenance war, whether conceived as just, as a crusade, or as a form of war protest is a fascinating subject. "Battle Hymn" retains its powerful allure of drawing one into a larger and more noble purpose.

Faith that incorporates a divinity in the sanctioning of war, a belief that "God is on our side," remains a potent force in promoting war. War gods are ancient deities. They come in many faces, bearing many names, and promising many things. While providing incentive to fight, and promising protection of absolution, the power of war gods is unlimited. Song and faith weren't enough in themselves to fill Union ranks. Lincoln still needed to resort to conscription to meet the need for soldiers.

SG: Southerners claimed Biblical justification for the institution of slavery. As a member of the clergy, how do you respond to such a claim?

JG: The religious tradition which I serve has deep historic ties to the abolitionist movement, a movement which was criticized by pro-slavery advocates as being unbiblical in seeking to abolish the "peculiar institution."

The Bible as a book is wonderfully diverse. It literally has something for everyone. A serious student of scripture is rightly cautioned to seek the spirit and not the letter of the text. There is a constant need to pray for wisdom to discern "the canon within the canon."

The fact is that both Old and New Testaments accommodate slavery. Yet there are contrary narratives that cast an alternative vision, where bondage is broken and captives are set free. In these instances, the destructive disparity that comes when humans lord themselves over other humans is healed and righted with a restoration of divine sovereignty, and humanity is reconciled and at peace with itself.

**SG: Harry Stout, in his magnificent book *Upon the Altar of the Nation: A Moral History of the Civil War*, has titled one chapter "June 3. Cold Harbor. I was killed." Union soldiers wrote this message, along with their names and addresses, and pinned them to their clothing so that their bodies could be identified after the battle.
How can this acceptance of probable death be explained?**

JG: William James, in his study of human behavior and religious experience, observed that there are deep passions, an inner surge and drive within our human spirits, that is willing to sacrifice and yearns to find meaning and purpose in a cause greater than self. One will risk death in pursuit of such a goal. It was James who coined the phrase "the moral equivalent of war," hoping to cast this human potential in a more life-affirming way.

In war death becomes an acceptable casualty. While regrettable, it is the price exacted from those who wage it, or for those fated to be caught in its vice. Pinning a note to a uniform is an honest assessment that eventually, sooner or later, death is war's victor.

SG: Your final comments for the 21st century?

JG: We have not yet grasped the fine line that distinguishes "just war" from "holy crusade," whether sanctioned by church, encouraged by fatwa, or promulgated by the neo-pagan underpinnings of the modern nation state.

Caution comes from diverse sources. William J. Fulbright, in his dissent over the Vietnam conflict, wrote: "Power tends to confuse itself with virtue and a great nation is particularly susceptible to the idea

that its power is a sign of God's favor." Martin Luther King, Jr. called the "collision of immoral power with powerless morality" the major crisis of our times.

Yet another caution is sounded by the National Council of Churches, which has recently published a study paper, a tool for its member churches, entitled "Christian Understandings of War in an Age of Terrorism." The paper asserts, as part confession, part lament, that those who are heirs to the principles of just war, who depend upon just war principles for moral reflection, are woefully ignorant of the historic moral compass that would guide their quest for meaning in an age that demands rigorous moral discernment. The study paper notes,

> "Almost no Christian denomination in the US has formal structures or procedures for evaluating a proposed military action as to whether it meets the criteria for a just war, nor for evaluating ongoing military actions as to whether the criteria for just war are being met. Almost no Christian denomination in the US has procedures in place for giving teaching to their members in the military regarding the expectations the church has for them in case the nation pursues an unjust war or unjust military policies."

I literally plead on behalf of "integrity" that communities reexamine "just war" theory, to see if it remains tenable in our era of modern warfare. St. Augustine remains a perceptive counselor on our human condition, as insightful today as he was so long ago. In the "earthly city," in which we are but pilgrims those who "desire to dominate are dominated by the very love of domination." It is in the nature of empires, I surmise, to be animated by this aphrodisiac which clouds our thinking. Blinded by such love, our moral values are quickly compromised, soon surrendered.

Is there just war? I'm caught in the shifting tides of cynicism and indignation, with periodic lapses into indifference (for non-theologians, this is a bold face state of sin).

We have not processed recent wars well. Crusading sympathies championed by revelers have trumped, again and again, defenders of just war restraint. I'm a baby boomer, now well beyond two score and ten years. I have yet to experience a bona fide constitutional declaration of war. Yet I can count but few years of peace.

I am certain of this. We are in desperate need of voices who can sound a different march, who will lead us through the fog of wars without end, not as a crusade, not as national sacrament, but with a firm grasp of just war principles. Failing this, we stand to lose the liberty we cherish, the honor we esteem, the justice we seek, the precious values that elevate us above our brutish inclinations.

Just peace remains my hope, the means to the end, I trust, we all seek. Only just war, ending in just peace, stands to tame the "fanatic furies" that lurk within, providing the restraint and discretion we need to attain the peace for which we pray.

(Portions of this interview were presented by Dr. Gardner to Fort Wayne's Quest Club.)

Recommended Reading

Chaim Herzog and Mordecai Gichon, *Battles of the Bible*

Edward Renehan, *The Lion's Pride: Theodore Roosevelt and His Family in the Great War*

Richard Fox, *Reinhold Niebuhr: A Biography*

Robert Clouse, ed., *War: Four Christian Views*

Roger Shinn, *Wars and Rumors of Wars*

Chris Hedges, *War Is a Force That Gives Us Meaning*

Michael Walzer, *Just and Unjust Wars*

Richard Sorabi and David Rodin, eds., *The Ethics of War*

William J. Fulbright, *The Arrogance of Power*

William James, *The Varieties of Religious Experience*

Carl von Clausewitz, *On War*

Martin Luther King, Jr. "Where Do We Go from Here?" August 16, 1967

Battle of Gettysburg Kurz & Allison, 1884 LFFC

Lincoln and the Triumph of the Nation: Constitutional Conflict in the Civil War by Mark E. Neely, Jr.

University of North Carolina Press, 2011;

Book review by Myron A. Marty, Professor of History Emeritus at Drake University.

Battles, battlefields, generals, soldiers, politics, presidential leadership, and diplomacy—these are the standard ingredients in books on the Civil War. But not in this one. Mark Neely concentrates, rather, on the Constitutional controversies during the War. Some of them deal with the challenges advocates for the abolition of slavery or emancipation of slaves faced, given the Constitution's oblique but unquestionable endorsement of the peculiar institution (Article I, Sections 2 and 9, and Article IV, Section 2).

Also posing crucial challenges was the Constitution's prohibition of suspension of writs of habeas corpus, included in the enumeration of legislative powers (Article I, Section 9). Most of them centered on conflicting interpretations of this exception: "unless when in Cases of Rebellion or Invasion the public Safety may require it."

Provisions in Article VI were inevitable points of contention, as well, specifically this one: "This Constitution and the Laws which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Amendment X was designed to allay concerns over states' rights: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people," but defenders of states' rights persisted in their objections to what they perceived as their loss of liberty resulting from excessive power exercised by the federal government.

Neely provides perceptive critiques of these and other constitutional issues, including those defining the war powers of the president. Because the Constitution of the Confederate States of America was adapted from the United States Constitution, while in effect "deratifying" it, the Confederacy's leaders wrestled with many of the same issues. Examining the history of the short-lived Confederate Constitution, he writes, "can help us determine the way the war powers really worked." (19)

This book is Neely's attempt "to explore how lawyers, judges, justices, and government officials thought about the Constitution" and to analyze the arguments they used "to explain (occasionally) and to capture (most often) the U.S. Constitution" for their political purposes. He attempts "to render their arguments lovingly, in their ingenuity, intricacy, and inconsistency (often)." What is new in the book is "what has been too often overlooked even in plain sight: judicial opinions, political pamphlets on constitutional questions, and public proclamations." (25-26)

In Part One of *Lincoln and the Triumph of the Nation*, Neely identifies three sources of Lincoln's ideas concerning the Constitution: his sentiment of nationalism, imbued from an early age; his coming to political maturity as a development-minded member of the Whig Party, and therefore a believer in pragmatic, rather than strict, interpretation of the Constitution; and the anti-slavery movement. He had given little thought to matters relating to secession, and the Constitution gave him no guidance, for nothing in it explicitly called secession illegal or explicitly declared the Union perpetual. (39)

Before Lincoln's inauguration, however, seven states had already seceded, so he had to educate himself quickly. In his inaugural address he offered four arguments for the Union against secession: constitutional, legal, historical, and practical. In this most important and most enlightening portion of the book (37-57), Neely elaborates succinctly on each of these arguments, outlining Lincoln's sources and passing judgment on their immediate and long-term effectiveness.

Habeas corpus issues also arose early in Lincoln's presidency, thanks to Chief Justice Roger Taney, a slaveholder from Maryland. The lawyer for John Merryman, a civilian who had been arrested and held by Union officers for impeding the progress of Union troops moving through Maryland and attempting to prepare men to serve in the army of the Confederacy, asked Taney for a writ of habeas corpus, demanding the release of his client. Taney issued an opinion asserting that the Constitution did not empower the president to suspend the writ without the authority of Congress. Lincoln defended his action and ignored Taney's order. Neely notes that years later, James G. Randall, a Lincoln biographer, concluded that perhaps "no other feature of Union policy was more widely criticized nor more strenuously defended."

At this point Neely begins to follow a narrative strategy that helps readers make sense of the arguments of lawyers, scholars or jurists who held conflicting or contrasting opinions. In this instance he devotes eighteen pages to an analysis of the arguments offered by defenders of Lincoln's uses of presidential power, including suspension of habeas corpus. His defense was contained in his response to a letter sent from a mass meeting in Albany, New York. Known as the "Corning letter,' as it was addressed to the first signer of the Albany letter, Erastus Corning, Neely cites it as "the strongest statement ever made by any American president asserting the power of the

government to restrict civil liberty" and presents an incisive analysis of Lincoln's four main assertions. After acknowledging arguments of Lincoln's opponents on presidential power, he asserts that on these matters, Lincoln "deserves praise not yet lavished on him" and explains why this is so.

The chapter on the Emancipation Proclamation, is subtitled, "The Triumph of Nationalism over Racism and the Constitution." Neely calls the growth of "constitutional racism" the "most important constitutional development of the Civil War." (113) Its most prominent spokesmen were Chief Justice Taney and Senator Stephen Douglas of Illinois. State legislatures in Illinois, Indiana, Iowa, and Oregon were principal contributors to ensuring the denial of civil and political rights, including the right of black Americans to move into their states.

Here he comes to a critical point, as he rebuts the notion that the Constitution, advanced by James Randall, was a problem for the North. Rather, he contends, "Article II . . . had the practical effect of making a determined Republican the commander in chief for four long years and allowing him to ride out military defeats and remain in office to victory." (120) However, as Lincoln pursued his policies toward emancipation, Neely contends, he temporarily lost his political mastery, particularly in his poor management of the news of the Emancipation Proclamation, a matter he treats in detail. Again he cites the arguments raised by Lincoln's critics and defenders. Their arguments notwithstanding, the most formidable issue in debates over emancipation was not the Constitution, but racism, including Lincoln's own. But it was his appeals to nationalism and those of his supporters that "pushed the racial messages off the stage." The chapters in Parts Two and Three provide the larger context for the points made so far. In "Soldiers in the Courtroom," there are human interest stories, many of them involving the courts' handling of such matters as appeals of underage soldiers to be discharged, desertions, acts of disloyalty in the military, and conscription, many of them including decisions concerning the always-contentious writs of habeas corpus. In the end, says Neely, nationalism triumphed in and over the courts.

"The Nation and the Courts," the next chapter, has an apt subtitle: "The Least Dangerous Branch Fights the Civil War." Here Neely analyzes decisions of state courts and the Supreme Court concerning such matters as: the legality of the U. S. Navy's taking of merchant ships caught in its blockade (the Prize cases); the legitimacy of the paper money issued by the government (the Legal Tender Act); and the Conscription Act. In each instance he focuses on the judges and justices who decided them and places them in their historical context. Constitutional history, he asserts, "provides the most succinct and precise definition of nineteenth-century nationalism available: it was the belief that nation-states properly commanded the lives and fortunes of every person in the world." (234)

"Secession," the next chapter, has another fitting subtitle: "Deratifying the Constitution." To "know that the Confederacy was . . . obsessed with preserving slavery," Neely remarks, "is only a beginning for understanding what the nation was like." (237) When the provisional constitution was drafted only seven states had seceded, making it prudent for them to deviate as little as possible from the U.S. Constitution. He ponders parallels between the contest over ratification of the U.S. Constitution in 1787 and 1788 and the Confederacy's actions in deratifying it and drafting its new version. This prompts a series of questions: Was secession rushed? Was secession carefully and fully considered in rational political debate? Was secession a self-consciously antipopular movement? To these questions and more he provides provocative responses.

In the conduct of this would-be nation, the Confederacy faced issues similar to those the Union grappled with: states' rights; conducting elections; conscription of troops when the number of volunteers was insufficient; provisions for granting or denying writs of habeas corpus; the creation of a police state in Richmond; and managing racial issues. As in his treatment of controversies in the Union, he reviews the positions taken by various newspapers in Confederate states, draws upon pamphlets and broadsides, and analyzes judicial decisions, mainly in state courts.

In the Epilogue, Neely expresses the hope that this book "should be only the beginning of studies of constitutional issues in wars," The next one might be "Constitutional Problems under Madison," and then "stretching through all of our wars until we have accumulated a shelf of volumes that reconsider the role of the Constitution in America's wars." (349)

Lincoln and the Triumph of the Nation is not for readers lacking familiarity with the matters mentioned in the first line of this review. Knowledgeable readers, on the other hand, will appreciate it for the exhaustive research embodied in it. As a densely packed, enlightening treatise on Constitutional conflict in the Civil War, it challenges readers to stick with it, to re-read complicated sections, and to discover, as I did, that it adds an important new dimension to our understanding of tragic episodes in our nation's history.

A Different View on "the Other 13th Amendment"
by Richard Striner

In March 2011, a contributor to the *New York Times* "Disunion" series, Daniel W. Crofts, wrote an interesting article about the part of Lincoln's first Inaugural Address in which the incoming president — disturbingly — accepted in principle the constitutional amendment recently passed by Congress (though never to be ratified by the states) that would have permanently forbidden Congress to interfere with slavery in states that permitted it.

Here is what Lincoln said: "I understand a proposed amendment to the Constitution—which amendment, however, I have not seen, has passed Congress, to the effect that the federal government, shall never interfere with the domestic institutions of the States, including that of persons held to service . . . . Holding such a provision to now be implied constitutional law, I have no objection to its being made express, and irrevocable."

Crofts argued, in essence, that Lincoln's position resulted from the fact that he really had little idea of how slavery might be terminated once it was contained. "To be sure," he wrote, "Lincoln and his friends hoped that slavery eventually would disappear. But they had no blueprint to get from here to there."

Not exactly: Lincoln had for years been an advocate of compensated emancipation, a phase-out of slavery in which southerners would be paid off to liberate blacks. In 1862, he pushed through Congress a measure to achieve just that, on a voluntary basis. Of course the constitutional amendment in question — if it had been ratified — might have made such action impossible.

Still, there might well have been a secret reason for Lincoln to hope that with slavery contained there would be *no need* for Congress to abolish it. The leaders of the slave states themselves had supplied the scenario for the elimination of slavery without any federal action. In October 1860, the *Charleston Mercury* had warned that if Republican policies prevented the institution of slavery from spreading, anti-slavery activism would fester within the South. The *Mercury* warned that with the Republican Party "enthroned at Washington, the *under*-ground railroad will become an over-ground railroad. The tenure of slave property will be felt to be weakened; and slaves will be sent down to the Cotton States for sale, and the Frontier States *enter on the policy of making themselves Free States*. With the control of the Government of the United States, and an organized and triumphant North to sustain them, the Abolitionists will renew their operations upon the South with increased courage . . . . They will have an Abolition Party in the South, of Southern men. The contest for slavery will no longer be one between the North and the South. It will be in the South, between the people of the South."

Since the 1830s, the slave-owning plantation elite had silenced anti-slavery opposition by criminalizing anti-slavery speech under state law. (In the 1860 election, Lincoln's name was even kept off the ballot in most of the southern states, which perhaps we ought to call police states). The protections of the First Amendment — which applied to actions *by Congress* — did not apply to actions by the states. Moreover, to make the *cordon sanitaire* complete, southern postmasters intercepted and censored the mails to destroy anti-slavery tracts. The great fear was that abolitionist literature would find its way into the hands of some future Nat Turner, who would lead a bloody slave insurrection. This had been the worst nightmare of slave-holders for many years — all over the South.

The soon-to-be-appointed Republican postmasters would no longer censor the mails after Lincoln's election. In 1860 — with the raid of John Brown still fresh in southern minds — an Alabama writer predicted that if Lincoln and his party should triumph, "what social monstrosities, what desolated fields, what civil broils, what robberies, rapes, and murders of the poorer whites by the emancipated blacks would then disfigure the whole fair face of this prosperous, smiling, and happy Southern land?"

Lincoln made a practice of reading newspapers from all over the country. Perhaps this was why he had reason to believe that with slavery contained the institution would wither: southern whites — more fearful than ever of the great black menace — would begin to find a way to put themselves and their children out of danger. They would phase out the evil institution. Only indirect pressures from the North would be necessary. Congress would not have to lift a finger. Prudent southerners would do the work themselves. As the *Charleston Mercury* predicted, there would be "an Abolition Party in the South, of Southern men."

One has to remember that the "bad thirteenth amendment" of 1861 was not Lincoln's idea. There can be little doubt that he hated it. But the lame-duck Congress had passed it for a very simple reason: to contain the secessionist movement. And this presented Lincoln with a quandary. He had for years proclaimed that the containment of slavery would constitute a heroic achievement. He refused to budge from this goal. But to placate the leaders of the slave states — who correctly foresaw that their region would become a minority within the nation as soon as a super-majority of new free states took shape as the westward movement progressed— Lincoln denied that he had any intention of interfering with the institution where it already existed. What he hoped in 1860 was to stop the expansion of slavery without triggering secession in response.

Of course secession happened anyway. Even so, as the new president took the oath of office in March 1861, the upper South had not yet fallen under the control of secessionists.

Here was Lincoln's dilemma: if he openly opposed the pro-slavery amendment to the Constitution he might seem to be confessing that his promise of noninterference with slavery where it already existed was meaningless — or not binding on Republican successors.

So Lincoln, no doubt with supreme misgivings, inserted the text — the obnoxious text — in his first Inaugural Address. What he hoped to do was to stop the secessionists, stop the spread of slavery, and clamp a firm lid upon the South in the hope that the internal pressures of the slaveholding system would break down the southern police states, at least over time.

But before very long, the sheer pressure of war would provide him with new opportunities to push his anti-slavery agenda.

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Lincoln, the Law, and Race by Brian Dirck

Abraham Lincoln did not often encounter African Americans in his law practice. Out of over thirty eight hundred extant cases in which he was involved as an attorney, twenty-four involved black people. Of those cases, he (or one of his partners) directly represented only six black clients.[1] Despite these tiny numbers, however, Lincoln's court cases involving African Americans can teach us lessons about how he viewed race, and how he understood the ways in which race operated both in the legal system and American life in general.

In some of these cases, race only hovered around the edges of the dispute at hand and exercised little real influence on Lincoln's thinking. In 1841 Lincoln represented an Edgar County, Illinois resident named Harriet Benson in a breach of promise suit against her former fiancé, Milton Mayo. Milton claimed that Harriet herself had broken off the engagement, "because he was the half-brother of a negro." Whether this was true or not, in the end the jury sided with Lincoln's client, albeit for considerably less money than Harriet wanted for damages—four hundred dollars, when she had requested two thousand.[2]

Exactly how Lincoln approached the matter of race in *Benson v. Mayo* is hard to say. To secure a victory it probably was unnecessary for him to address the question of whether or not Milton Mayo was actually related to an African-American. He would instead have more likely focused on the question of whether Milton had made a genuine proposal of marriage, and whether or not it was Milton rather than Harriet who subsequently broke the engagement.

In other cases racial prejudice was more upfront and central to the dispute at hand. In 1855 a man named William Dungey retained Lincoln and sued his own brother-in-law, Joseph Spencer, for slander. Spencer had publicly referred to Dungey as "Black Bill," and claimed that Dungey possessed African-American blood. Dungey countered that he was "not a person of color, negro, or mulatto," and that he was what he appeared to be: a white man who was "lawfully married to a white woman." This was no small matter. According to the Illinois Black Laws, had this not been true—had it been accepted by the state that he was not a white man—Dungey's marriage could have been voided.[3]

Lincoln's Legal Wallet
LFFC

Truth was an effective defense against slander; that is to say, Spencer's claims could not be judged slanderous if it turned out that African-American blood actually flowed in Dungey's veins. Spencer's attorney therefore produced depositions from witnesses living in the Tennessee area where Dungey originally lived, claiming that Dungey was part African-American, and that this was common knowledge around that neighborhood. His father Charles Dungey was known to be "mixed blooded," in the words of one witness, who added "I have heard men speak, and they [Dungey's family] are not white."[4]

Lincoln's response was to question the veracity of these witnesses. He objected to questions put to the deponents by Spencer's attorney concerning the supposed racial makeup of Dungey or his family, probably on the grounds that they were hearsay, and subsequently unreliable.[5] In this he was successful, for the jury ruled in favor of Spencer, awarding him six hundred dollars in damages.[6]

Race was at least a visible presence here in the courtroom; but it was rather sanitized. In the Dungey case, Lincoln could hold race away from himself at arm's length without getting too dirty. However much he may or may not have objected to either Illinois' Black Laws or the prejudices that provided their foundation, he never raised the question of whether or not his client's alleged "mixed blood" should have been an issue in the first place. There was no legally or professionally justifiable reason for him to do so. Indeed, on a strictly professional level, such a strategy would possibly have injured his client's cause, raising before the court issues which were not directly relevant and were accepted by nearly all of Lincoln's white neighbors. Lincoln's job was to win the case for his client; questioning the morality or wisdom of deeply imbedded racial mores likely would not have helped.

Sometimes race was an incidental ingredient in one of Lincoln's court cases. But on other occasions, it was quite specifically and openly present in the courtroom. And on at least one occasion, Lincoln intentionally put it there.

In 1845 he was hired by a Mason County couple, Ambrose and Tabitha Edwards, in another slander case with racial overtones. The year before, Lincoln's clients had sued a neighboring couple, William and Maria Patterson, concerning remarks Maria had made to the effect that Tabitha had "raised a family of children by a *Negro*."[7] Mr. and Mrs. Edwards wanted two thousand dollars in

damages, claiming that Maria Patterson's words had damaged Tabitha Edwards' community standing as a "virtuous, honest and worthy citizen," particularly since those words were overheard by several witnesses.[8]

There were two possibly slanderous categories at work, one involving race—specifically "negro" children—and the other involving the community's sexual mores—the innuendo that Tabitha was a loose woman who had committed fornication and adultery. In the original case, tried in the Mason County Circuit Court in June, 1844, Tabitha asserted that she had never been known in her neighborhood as someone "guilty of criminal promiscuous and illicit intercourse with and to have [had] illegitimate children by a Negro and raised a family of illegitimate children." While the question of her racial purity was present—the court pleading made a point of identifying the alleged father of her illegitimate children as a "Negro," and witness testimony indicated Maria had stated that "all her [Tabitha's] children were negroes" —the matter of her marital fidelity was more at the forefront, castigating Maria Patterson for falsely accusing Tabitha of the "crime of fornication" and of "base prostitution."[9]

This may have been a courtroom stratagem by the Edwards's attorney, for doubts had been raised concerning whether, in the course of stating that "Mrs. Edwards" had raised children "by a negro," Maria might have been referring to Tabitha's mother instead.[10] Doubt could therefore be introduced in the minds of the jurors concerning whether or not Maria had slandered Tabitha racially, whereas there seems to have been less doubt concerning whether or not Maria had slandered Tabitha sexually. It was on this basis that the Edwards's case was won in the lower court; the jury found that Tabitha's words had carried the innuendo of "adultery" and "fornication."

The Pattersons appealed, and Lincoln was hired by Mr. and Mrs. Edwards to represent them before the Illinois Supreme Court. In the appeal, the Pattersons' attorney argued that the words spoken by Maria, "Mrs. Edwards has raised a family of children by a negro," did not, by themselves, constitute a necessary implication of adultery and fornication.

Lincoln felt compelled to concede that point, particularly given the confusion over exactly which "Mrs. Edwards" Maria was referring to—Tabitha or her mother. Searching for some other basis upon which to preserve the ruling for his client, Lincoln pushed the issue of race from the background to center stage. Even if Maria Patterson's words had not necessarily implied sexual misconduct on Tabitha Edwards' part, he argued, it most certainly had introduced the specter of mixed-race children in the Edwards family tree. As such, Lincoln argued, Maria's words were slanderous because they pushed the hot button topic of black/white sexual relations in a community which, like nearly every other American community, would not abide such things. "The presumption is, that Mrs. Edwards is a white woman," Lincoln (and his partner in this case, attorney Murray McConnell) argued, and "the inference is, that she had children by a negro." This racial content, according to Lincoln and McConnell, was "the sense that the community understood them [the words]." But the court did not accept this argument. It reversed the lower court's decision, essentially ignoring the racial dimension and asserting that Patterson's declarations did not quite rise to the level of slanderous aspersions cast upon Edwards' sexual and marital fidelity.[11]

In making this argument before the Illinois Supreme Court, Lincoln used race as a legal strategy to win his case: no more and no less. If he made any sort of emotional investment in the arguments he presented—if he felt, for example, that the white community's general condescension towards mixed-race people was justified, or not—there is no record of the fact.

All of which is not to say that Lincoln's practice did not occasionally take a chip or two out of America's dark racial monolith. On at least three occasions he represented men accused of harboring fugitive slaves. George Kern, a Woodford County man, hired Lincoln in April 1847 to defend himself against charges of harboring a runaway, "contrary to the peace and dignity of the same people of the State of Illinois," in the wording of the indictment; a jury found Kern not guilty.[12] That same month Lincoln was hired by John Randolph Scott, accused of hiding a fugitive slave from Missouri. Lincoln filed for a change of venue in the case (the reasons are unknown), and the prosecutor later dropped the matter entirely. He and his partner William Herndon also managed, two years previously, to get another client, Marvin Pond, acquitted by a jury of harboring a runaway.[13]

In one of the early cases in his career, Lincoln foreshadowed an antislavery argument that both he and the Republican Party would employ years later. The case involved a business transaction by David Bailey, a Tazewell County man who had given another man named Nathan Cromwell a promissory note for three hundred and seventy six dollars, as payment for Nance, a slave girl. Bailey agreed to make good on the note, provided that Cromwell produce a title proving Nance was a slave. Cromwell made this deal with Bailey immediately prior to departing for Texas; he died en route some weeks later, having never sent Bailey the paperwork on their deal.

Bailey soon discovered that Cromwell was either a sloppy businessman or an outright fraud. He contacted the administrator of Cromwell's estate, looking for Nance's title. The administrator replied there was none to be found anywhere in Bailey's papers. Nance had meanwhile vanished, "declaring all the time that she was free." Such were the vicissitudes of owning a human being; and it also turned out that she was over twenty-one years of age, and had been a resident of Illinois for several years.

No doubt feeling he had been hoodwinked into buying a free woman, Bailey refused to pay the promissory note. Cromwell's administrator was unsympathetic, and he sued Bailey for payment. A Tazewell County jury ruled that Bailey would have to make good on that note, despite the lack of title. Bailey appealed, and in 1841 he hired Lincoln and Stuart to represent him before the Illinois Supreme Court.[14]

On the surface, this was primarily a contract case, and Lincoln approached it as such. He argued that the contract was entered into "without any good and valuable consideration."[15] "Consideration" was a complex but vital component of contract law which required, at least in this case, positive proof of Nance's status as a slave before any sale could be considered valid and binding.

But there was more to the case than contract law. There was also the fact of Nance's status as a free woman; and it was here that Lincoln made an argument that would someday be used with good effect by himself and other antislavery Northerners. He argued that the Northwest Ordinance of 1787, which organized Illinois and the surrounding region as a territory, forbade the establishment of slavery on the state's soil. Honoring the contract between Bailey and Cromwell, Lincoln believed, would be in effect doing that very thing: imposing a status of slavery upon a free woman of color.

In later years, Lincoln the politician would use the Northwest Ordinance to bolster his case that a majority of the Founding Fathers did not want western expansion to include human bondage. But for now, in 1841, Lincoln was concerned only with the fate of one black woman and the contract which supposedly held her in servitude. The Illinois Supreme Court agreed; it ruled in favor of Lincoln's client, and struck down the contract between Bailey and Cromwell. In doing so, the court reiterated a legal maxim that had been part of American (and prior to that, English) law for a long time: namely, that freedom was the natural status of any individual, whereas slavery required the creation of positive law to establish itself. In a previous ruling, the Illinois justices had recently ensconced that principle directly into the state's legal system, and they reiterated it again. "The presumption of law was, in this state, that every person was free, without regard to color," read the court's opinion, and therefore "the sale of a free person is illegal."[16]

Desk Set from Lincoln's Springfield Law Office LFFC

However satisfying this courtroom blow against slavery might have been, Lincoln was equally capable of functioning on the other side of the racial divide, a fact illustrated by what is probably the most famous—and controversial—court case involving race and slavery in Lincoln's legal career: the Matson case.

In 1847 he was hired by Robert Matson, a Kentuckian who had brought a slave woman named Jane Bryant and her four children into Illinois to work on a farm he owned in Illinois. Matson was aware of the jeopardy in which he placed his property rights by carrying slaves onto free soil; any suggestion that Bryant and her children were residents of Illinois would award them freedom. Matson, therefore, was careful to make a public declaration before witnesses that the slaves were only, as he stated in court documents, "on a temporary sojourn" in Illinois, and that they permanently resided on the slave soil of Kentucky, where as his slaves they "owed to him service and labor...for and during their natural lives."[17]

His precautions fell short, however. Alarmed by rumors that her master intended to separate her family by returning them to Kentucky and then putting them up for sale, Jane and her children found their way into the hands of two Illinois antislavery men, Gideon Ashmore and Hiram Rutherford. They in turn hired a lawyer and asserted their freedom under Illinois law, arguing that their presence on the state's free soil established their status of Illinois residents, and subsequently their freedom.[18]

Matson, naturally enough, begged to differ. He was a rather unsavory man, who was involved in numerous lawsuits back in Kentucky, including litigation directed against his own brother. He maintained a mistress on his Illinois farm, and there were rumors that one of Jane's children

was fathered by Matson's brother.[19] Exactly how Lincoln came to be retained by Matson is unknown, but at some point soon after the slaves' disappearance Lincoln was hired by the Kentuckian.[20] Some evidence exists that Lincoln may have tried to get himself released from the case; Hiram Rutherford later claimed he tried to enlist Lincoln on the slaves' behalf, but that Lincoln declined because he had already agreed to act as Matson's lawyer.[21]

In any event, he took the case. Along with another lawyer—his friend Usher Linder—Lincoln represented Matson in a hearing in the Coles County Circuit Court, held in October 1847, concerning the slaves' petition for a writ of habeas corpus. Granting the petition would free Jane and her children from the local sheriff's custody (they had been detained as technical "runaways" until the case could be decided in the circuit court) and set them well on their way to permanent liberty.[22]

Race was of course an inevitable subtext in this case. But the law's general effect was to shove the slaves' racial identities into the background. "The abstract question of slavery affords a wide field for discussion," the circuit court judge admitted, "but it is one which does not arise in this case, nor are we called upon to express an opinion, either upon its morality or policy."[23] Instead, the court and the lawyers on both sides wanted the case to pivot on the seemingly colorblind issues of property law, the stated intent of Robert Matson to keep his slaves as residents of Kentucky, and the legal and constitutional cooperation ("comity") required between the states of Illinois and Kentucky. When the time came for Lincoln to present his portion of the case before the circuit court, he presented a coolly logical argument that Matson's repeatedly stated intent was to keep Jane and her children as residents of Kentucky, and not Illinois.

From a purely tactical point of view, this was a sound approach. Lincoln stood a better chance of winning a decision for his client if he could make the case turn on a rational, abstract legal precept—not the slaves' collective humanity, which might evoke compassion from the bench and produce the very opposite effect than that which his client desired—their freedom.

In any event, the court ruled against Lincoln's client. After reviewing the laws governing the return of fugitive slaves to their owners, the judge argued that Matson's entirely voluntary transportation of his slaves into Illinois rendered these provisions irrelevant. "The master is entitled to the re-delivery of his servant only when the servant escaping has been legally held to service in one State, and has escaped into another," the court declared, "He must be a fugitive from his master." Such was not the case here; ergo, "it is manifest that Mateson [sic] has forfeited all title to the services of Jane and her children."[24]

The silence of the historical record makes problematic any efforts to either praise or damn Lincoln for his participation in the Matson case—or any of the other cases he litigated involving race, for that matter. What did he think, for example, when in June 1845 he helped Menard County sheriff Amberry Rankin write out a response to a writ of habeas corpus filed by Joseph Warman, an African-American whom the sheriff had jailed on suspicion of being a runaway slave? Warman claimed to have been a native-born Illinois freeman, on his way to Chicago from the southern part of the state, when he was "unlawfully and unjustly arrested with force" in the town of Petersburg. Warman's petition for a writ of habeas corpus was an attempt to gain his freedom; and in helping Sheriff Rankin respond to that petition—the sheriff claimed that "said mulatto person" had "failed to produce such certificate of freedom as is required" by the state—Lincoln here employed his professional expertise to help keep a black man in jail, a man who was likely arrested in the first place merely due to the fact of his skin color, and then further imprisoned because he had failed to carry with him a piece of paper required of no white Illinois citizen. Indeed, Warman stood a decent chance of being sold into slavery whether he was actually a freeborn African-American or not. Perhaps some of these facts entered into Lincoln's mind as he drafted the sheriff's response—or perhaps not. He drafted the document just the same.[25]

It is even difficult to ascertain Lincoln's exact point of view in court proceedings involving race that directly touched him and his family. His wife Mary became embroiled in a complex case involving slaves resulting from her father's death in 1849. In the fallout from Mr. Todd's estate settlement, George Todd, Mary's brother, sued his father's heirs, including Mary's stepmother Elizabeth and Mary herself, requiring them to sell some of the property from the estate, including tracts of land—and several slaves. Elizabeth claimed the slaves for herself, arguing that they were an inheritance from her mother. The circuit court in Kentucky ruled in George's favor, who in turn purchased two of the slaves for himself. After another round of legal arguments in the Kentucky Court of Appeals, the lower court sold the remaining property, then divided the proceeds among the heirs. When the dust settled on this lengthy courtroom imbroglio (the litigation was not finally settled until over five years after Mr. Todd's death), Mary and Abraham inherited a little over one hundred dollars from her father's estate.[26]

As Mary's husband, Lincoln was named as a party to the Todd lawsuit; it was as close as Lincoln ever came to the labyrinthine world of slave ownership. He never actually held title to any of the Todd slaves himself, and it is unlikely he ever met those slaves or interacted with them in any way. They were just names on a piece of paper, part of the estate inventory of his dead father-in-law, subject to a law suit in a court hundreds of miles away, and part of a legal proceeding with which he was peripherally involved. It would be hard to imagine that these slaves evoked any sort of response from him at all.

No reliable evidence exists concerning Lincoln's personal, moral reaction to any of these little intersections between race, slavery and the law that peppered both his professional and, in the Todd estate's case, his private life. Whether the presence of a black person, or anti-black sentiments, raised his eyebrow, even just a little, in the course of a case, or whether he felt either revulsion at representing Matson, or an inner feeling of satisfaction in defending Bailey, or those people who harbored runaway slaves, we do not, nor will we ever, know.

Historians have endlessly debated the moral significance of Lincoln's decision to represent a man like Robert Matson, and what that says about his larger antislavery principles and his perspective on African-Americans generally. Some have tried to excuse Lincoln on the grounds of professional propriety, arguing that it was his lawyerly duty to represent clients like Matson to the best of his ability.[27] Several suggested that his arguments were weak on behalf of slavery in the courtroom because they did not, in the words of one admirer, "meet the approval of his conscience."[28] Others filter his decision to represent Matson through his friendship with Matson's attorney, Usher Linder, or his Whiggish politics, suggesting that Lincoln's behavior, however reprehensible to modern sensibilities, was entirely in line with other moderate antislavery Whig lawyers of his time, men who valued the rule of law and constitutional duty above all else.[29] Some argue that Lincoln was entirely indifferent to the racial dimension of slavery, and was able to separate the two things entirely in his mind, and still others argue that he was a bigot, pure and simple.[30]

But perhaps the point is not so much Lincoln's innermost feelings about how race was used in the courtroom, but rather the fact that, in every one of his cases involving African-Americans, the law would have taught Lincoln how to manipulate race, how to pluck it out of the mental toolbox that was his legal training and apply it when necessary to whatever he needed to fix in this or that court case. Along those same lines, the law taught him that it could sometimes be necessary to entirely ignore the presence of race in a given case: settle the estate, divide the property, collect the unpaid debt, without regard to the fact that these impersonal business transactions might at some level involve trafficking in human beings.

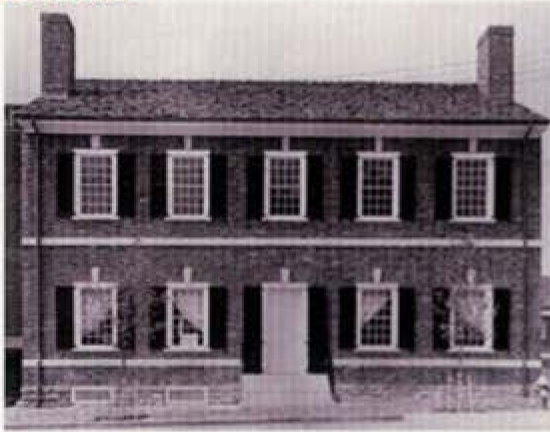
Race was to lawyer Lincoln predominantly a tool. The courtroom and the requirements of his profession made it so, as did his legal education, such as it was, which abstracted race right out of the law, making it a non-factor in property settlements, probate, debt collection—the panoply of legal actions that together made up the stuff of Lincoln's law practice.

The truth was of course different. Those really were black *people* being bought and sold, proposed as settlements for debts, divided among heirs in estate settlements, and so forth. But Lincoln's legal world taught him to think and act otherwise, to treat property settlements involving human beings as much the same as if they were settlements involving horses, cattle or real estate. While there were some anti-slavery minded lawyers who thought and acted otherwise, they were an exception, rather than the rule. Lincoln could therefore take both the Bailey case and the Matson case, with no evident disconnect or discomfort, because his profession taught him that, on the level of dispute resolution, there was no essential moral difference to him, as an attorney, between the cases.

Was this a moral failing on the part of Lincoln, or more generally the American legal profession; a blind refusal by American lawyers to acknowledge the consequences of their actions, or lack thereof, where slavery and the racial inequities so common in the North were concerned? Certainly. What might it have meant, after all, if America's legion of antebellum attorneys had refused to accept clients whose business either directly or indirectly profited slavery, or in some fashion reinforced the already labyrinthine racial and caste structure in the United States?

In theory it would have meant quite a lot. But in the real, everyday world of antebellum America, the point was moot. Lawyers in Lincoln's time lacked any sort of national organizing apparatus that might have helped guide or unify them under any one particular banner. There was no American Bar Association, and few state-level lawyers' organizations—just a smattering of small, local groups of attorneys who met in a quasi-informal fashion. Lincoln occasionally attended such meetings, but they did little in the way of substantive deliberations. None seemed interested in trying to guide lawyers when they picked their way through the layers of black, white and gray that defined America's racial environment.

Todd Family Home in Lexington, Kentucky
LFFC 2690



Instead, lawyers were generally left to their own moral devices when confronting race in the courtroom. Those devices were fashioned by professional standards for rank-and-file attorneys like Lincoln which held that their primary duty lay in preserving, far more than questioning, the *status quo* around them. Putting it more bluntly, antebellum lawyers were deeply enmeshed in "the system." In the business world, this meant that lawyers facilitated the growth and expansion of market capitalism, often without much evident regard for the moral and social ramifications of that system. Politically, it meant that lawyers dominated national, state and local governments. Socially, it meant that lawyers tried to smooth over conflict between family members, friends and neighbors, usually with more of an eye towards preservation of community peace, whatever the larger moral consequences, than any other consideration.

It is not so terribly surprising, then, that a lawyer like Abraham Lincoln would have been predisposed by the prevailing professional standards of his day to take whatever cases came his way, and in the process ignoring or diminishing those cases' racial ramifications. The fact that Lincoln might have submerged his moral misgivings about race and slavery in order to earn a dollar might cause his admirers to squirm uncomfortably; but there truly is no alternative interpretation. Only two possibilities present themselves: either Lincoln possessed no measure of compassion for people of color or slaves, in which case there was no moral dilemma for him to resolve; or he felt such compassion, but he set it to one side in favor of his professional ethic as a lawyer to represent clients to the best of his ability, and his need to earn a good living. His well-documented, lifelong aversion to slavery suggests that the first possibility is untrue—so we are therefore left with the second as the only viable possibility.

But did he really need the money so badly? Twenty-four cases out of several thousand? Only a handful of fewer clients? A little less change jangling in Lincoln's pockets—the pockets of a man who dwelt in that nice house on Eighth and Jackson Streets, whose family seemed to want for little, and who would someday become President of the United States? It seems a small price to pay for Lincoln to have made his hands at least somewhat cleaner by refusing to soil them with the dirt of slavery and American racial inequity.

But the matter of the money involved is more complicated than it might appear. Lincoln did enjoy a comfortable middling class life, to the point that whatever he earned by way of a retainer from someone like a Robert Matson might seem negligible.[31] But far less negligible was the symbolism. However comfortable he might have become in the law, he was never all *that* comfortable. He was never very far removed from the insecurities and unsettled lifestyle of his poor origins.

We can see this in his overall attitude towards his own money and earning power. The longstanding myth that Lincoln was indifferent to the amount and frequency of his retainers was just that—a myth. "The matter of fees is important," he stressed, and when the need arose, he took clients to court who failed to pay up. "As the dutch Justice said when he married folks, 'Now, vere ish my hundred dollars[?]" Lincoln wrote to one client in 1851. His tone may have been playful, but he would pursue payment with earnest seriousness if need be.[32]

This was not the attitude of an overly contented man who was indifferent to money. He was something of a miser, too, in ways that suggest he still kept one eye over his shoulder, looking back at the shadow of his hardscrabble roots. Lincoln had "no avarice of the get," Herndon believed, "yet he had the capacity of retention, or the avarice of the keep."[33] Frugal almost to a fault, Lincoln thought in terms of preserving what he had acquired, the better to keep from sliding backwards—back towards his impoverished roots.

This meant that Lincoln took almost any case that came his way, so long as he thought the legal issue at hand was viable, and fell within the bounds of professional propriety. On a purely practical level, Lincoln could have gotten along quite well financially had he cut out of his practice any case that directly or indirectly impinged upon race. But on a deeper level, Lincoln might have felt compelled to take the case of a man like Matson, to take the case of any side involving slavery and race, because of an ill-defined need to keep pushing away, as far as possible, his poor roots, one dollar at a time.

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NOTES:

[1] The cases in which Lincoln or his firm represented a black person were *Crowder v. Collier and Collier*, November 1847, Lincoln Legal Papers, CD-ROM Database (Urbana: University of Illinois Press, 2000; hereinafter referred to as *LLP*); *Dungey v. Spencer*, October 1855, *ibid.* (I counted Lincoln's client, Dungey, as an African-American; he was accused of having African-American blood, and the accusers produced a deposition to this effect); *Florville v. Allin, et.al.*, September 1853, *ibid.*; *Florville v. Stockdale, et.al.*, August 1849, *ibid.*; and *Unknown v. Unknown*, June 1847, *ibid.* (I counted these three cases as Lincoln having represented one client, given that in both he represented William Florville); *People v. Hill*, June, 1854, *ibid.*,; *Shelby v. Freeman and Freeman*, April 1858, *ibid.*; *Shelby v. Shelby*, July 1841, *ibid.* (I count these two cases as a single client, since they both involve one person, Mary Shelby); *Unknown v. Smith*, November 1845, *ibid.*; I did not in this counting include *E llis v. Blankenship v. "Negroes,"* October 1838, *ibid.*, because it is unclear from the extant record exactly which parties Lincoln and Stuart represented.

[2] *Benson v. Mayo*, October 1851, *LLP*; the extant records indicate that Lincoln subpoenaed numerous witnesses on Benson 's behalf, but what their relationship was to the case and how they testified is unknown.

[3] *Dungey v. Spencer*, October 1855, *LLP* ; quotes are from the case declaration and praecipe, document ID 4580.

[4] *Dungey v. Spencer*, *LLP*; depositions of witness Joseph Catrell, document ID 33945 and ID33943.

[5] For Lincoln's objections, see *ibid.*, document ID33945.

[6] *Ibid.*, *LLP*; the two sides later agreed to remit four hundred dollars in return for a release of errors from the record.

[7] *Ibid.*, declaration and plea, document ID6576, 2; emphasis in original.

[8] *Ibid.*, declaration and plea, document ID6576, 1.

[9] *Ibid.*, declaration and plea, document ID6576, 1-3; quote concerning her children is in the bill of exceptions, document ID6577; there also seems to have been some confusion concerning whether Maria had actually raised the question of race; see *ibid.*, 2, and the witness's uncertainty as to whether a matter about "black children" had in fact been broached by Maria Patterson.

[10] See bill of exceptions, *ibid.*, document ID6577, 3.

[11] Ibid., Illinois Supreme Court opinion, document ID39615.

[12] *People v. Kern*, April 1847, *LLP*; quote is from the indictment, document ID121075.

[13] *People v. Scott*, April 1847, *ibid.*; *People v. Pond*, November 1845, *ibid.*

[14] *Bailey v. Cromwell and McNaghton*, June 1840 and July 1841, *ibid.*; the summary of the case was taken from the Illinois Supreme Court opinion, document ID4480.

[15] *Bailey v. Cromwell and McNaghton*, quote from transcript, document ID45581.

[16] *Ibid.*, document ID4480.

[17] *Matson v. Bryant, et.al.*, August 1847, *ibid.*, document ID5510; also Anton-Herman Chroust, "Abraham Lincoln Argues a Proslavery Case," *American Journal of Legal History* 5 (October 1961), 299; for a good general overview of the case's background, see Jesse W. Weik, "Lincoln and the Matson Negroes," *Arena* 17 (April, 1897), 753-755.

[18] Duncan T. McIntyre, "Lincoln and the Matson Slave Case," *Illinois Law Review* 1 (December 1906), 386-391.

[19] Steiner, *An Honest Calling*, 106; see also Charles R. McKirdy's biographical sketch of Matson in *Lincoln Apostate: The Matson Slave Case* (Jackson: University Press of Mississippi, 2011), 22-25.

[20] Duncan T. McIntyre, "Lincoln and the Matson Case," *Illinois Law Review* 1 (1907), 386-387, wrote that Matson rode to Springfield "two or three days" after the slaves left his farm, and hired Lincoln despite Lincoln's overt antislavery sentiments. But Anton Herman-Chroust in his excellent essay on the case casts well-founded doubts on this tale; see Herman-Chroust, "Lincoln Argues a Proslavery Case," 300fn.

[21] See Weik, "Lincoln and the Matson Negroes," 755; Rutherford claimed to have approached Lincoln, and related this story; his claims about Lincoln are plausible, but impossible to corroborate.

[22] *Matson v. Bryant, et.al.*, October 1847, *LLP*.

[23] *Ibid.*, court opinion, document ID96657.

[24] *Ibid.*, court opinion, document ID96657.

[25] *Ex Parte Warman*, July 1845, *LLP*; quotes from petition for writ of habeas corpus, document ID136133, and writ of mittimus, document ID136145.

[26] *Todd v. Todd, et.al.*, August 1851 (Kentucky Circuit Court), *LLP*; and *Todd v. Todd, et.al.*, January 1854 (Kentucky Court of Appeals), *ibid.*

[27] 101; and Donald, *Lincoln*, 103-104.

[28] See e.g., Weik, "Lincoln and the Matson Negroes," 756; Gertz, "The Black Laws of Illinois," 471-472.

[29] The argument centering on Linder's friendship with Lincoln is advanced by McKirdy, *Lincoln Apostate*, 97-104; thw Whig political argument is Mark Steiner's overall perspective in his analysis of the Matson case; see Steiner, *An Honest Calling*, 125-136; Richard Carwardine makes a similar case in his discussion of the Matson matter; see Carwardine, *Lincoln: A Life of Purpose and Power* (New York: Alfred A. Knopf, 2006), 30; Winkle, *The Young Eagle*, 259, likewise emphasizes Lincoln's respect for the law as paramount in the Matson affair.

[30] Guelzo, *Redeemer President*, 127, makes the argument about his being able to separate race and slavery in representing Matson; this also seems to be the conclusion reached by Anton Herman-Chroust; see Chroust, "Lincoln Argues a Proslavery Case," 308; for the case that the Matson affair exposes Lincoln 's essential bigotry, see Bennett, *Forced Into Glory*, 278-282.

[31] There is some question as to whether Lincoln was paid for his work in Matson case at all; see Weik, "Lincoln and the Matson Negroes," 757-758.

[32] Notes for a Law Lecture, c. July 1850, *CW* 2: 82; the "dutch Justice" quote is from Lincoln to Andrew McCallen, July 4, 1851, *ibid.*, 2: 106; the Lincoln Legal Papers database lists sixteen cases in which Lincoln sued to collect his fee: search string "Abraham Lincoln" as a plaintiff in cases involving attorney 's fees, *LLP*.

[33] William H. Herndon, *Herndon's Lincoln* (Urbana: University of Illinois Press, 2006), 215.

Sara Gabbard interview with author Jason Emerson regarding his book Giant in the Shadows: The Life of Robert T. Lincoln (Southern Illinois University Press, 2012)

SG: We read frequently that Tad and Willie were rambunctious as young boys. Can the same be said for Robert?

JE: Absolutely. The difference is that Robert's childhood occurred when Abraham Lincoln was a relatively anonymous Illinois lawyer and local politician; Willie and Tad's hijinx occurred in the White House and under the watchful gaze of the national media, which is why their behaviors are so well known today.

The facts of Robert's earliest childhood are unfortunately scant, but some of his antics have survived in stories. Probably the best-known description of him is when he was only three years old and Abraham wrote in a letter to Joshua Speed, that Robert "has a great deal of that sort of mischief, that is the offspring of much animal spirits." Lincoln went on to say, "Since I began this letter a messenger came to tell me, Bob was lost; but by the time I reached the house, his mother had found him, and had him whip[p]ed—and, by now, very likely he is run away again."

Robert was reported to be "considered by his mates somewhat wild," during his boyhood years in Springfield. He once thought to run away with a circus that passed through town; he used to harness cats and dogs up to carts; and once he and a friend even stole a quantity of lead pipe from a house under construction and sold the pipe at the downtown hardware store. A shocked Lincoln marched his son down to the store, made Robert admit his crime, paid for the pipe, and then returned it to the owner.

One of Robert's more infamous shenanigans occurred when he and his friends, inspired by the visitation of a "wild animal" show to Springfield, attempted to train cats and dogs and put on a show of their own in the Lincoln barn.

Emily Todd Helm, Mary's younger sister, later told an amusing incident that illustrates what an indulgent father Lincoln was, and what type of childhood Robert had. When the Lincolns traveled to Lexington in 1847, Mary's cousin, Joseph Humphreys, traveled on the same train, although he did not know who they were. While the Lincolns waited for their luggage at the Lexington station, Humphreys walked from the railroad to the Todd home, where he told Mary's stepmother of the ordeal of his train ride. "Aunt Betsy, I was never so glad to get off a train in my life," he began. "There were two lively youngsters on board who kept the whole train in a turmoil, and their long-legged father, instead of spanking the brats, looked pleased as Punch and aided and abetted the older one in mischief." When the Todd carriage appeared at the door moments later carrying the troublesome family, Humphreys, seeing them out the window, exclaimed, "Good lord, there they are now." He ran away and was not seen again during the Lincolns' visit.

One of my favorite quotes shows Robert's childhood and change to adulthood in one sentence. When commenting once on Tad's lack of schooling and boisterousness during the White House years, Abraham Lincoln compared Tad to Robert, saying, "Let him run, he has time enough yet to learn his letters and get pokey. Bob was just such a little rascal, and now he is a very decent boy."

SG: In later years, did Robert, through letters or conversations, share feelings about his childhood? His brothers?

JE: Rarely, if ever about his childhood, a little bit about his brothers.

I cannot recall ever reading anything that Robert ever said or wrote about his brother Eddie, who died in 1850 when Robert was six-and-a-half, and very little about Willie, who died in 1862.

Dedication of Lincoln Memorial, 1922 President Warren Harding, Robert Todd Lincoln & Speaker of the House, Joe Cannon LFA - 0509

Tad, on the other hand, was a subject Robert was more open with, I think because the two brothers became so close after the assassination. Robert was not just an older brother after that time, but also a mentor and in some ways a father figure to Tad. And Tad worshipped "Brother Bob" as he called Robert and always wanted to please his older brother. Robert took charge of Tad's education, certainly gave him advice and even sent Tad to a dentist to help the boy overcome his speech impediment.

Robert was distraught when Tad died in 1871. "He was only eighteen when he died but he was so manly and self reliant that I had the greatest hopes for his future," Robert later wrote of his youngest brother. He often would recall Tad as a devilish little boy "who was such a comfort to my father" during the trying times of the Civil War.

In the years after Tad's death, when historians and writers sought information about the boy, Robert would often oblige. He gave much information to Noah Brooks and F. Lauristan Bullard for their work on Tad after the turn of the 20th century.

Robert did not typically write about his childhood (although he may have spoken about it). His memories must have been fond because he did keep the old Lincoln homestead in Springfield until 1887, at which time he donated it to the state of Illinois. Robert had many opportunities to sell the place but never did, even stating once, "I will own the place until it ruins me."

One of the most touching moments in Robert's life, in my opinion, occurred in 1909 when Robert traveled to Springfield to participate in the centennial celebrations of his father's birth. Robert asked to go into his old home on the corner of Eighth and Jackson streets by himself, which he did, and stayed inside for some time.

Think of the memories he must have recalled that day when life was simple, his brothers were alive, his father just a Springfield lawyer and his mother a much happier, more sanguine middle-class wife and mother...

SG: Do you get the impression that he was pleased to have the opportunity to attend school in New England?

JE: Definitely. When Robert was reaching his teen years all his Springfield friends and neighbors were going to Eastern colleges and universities: most specifically John Hay to Brown University and Clinton Conkling to Yale. It was a rather typical desire for Midwestern boys Robert's age, and of course his parents, who respected a good education, wanted their children to achieve higher than they had.

I think Robert's years at Phillips Exeter Academy and Harvard College were some of the most formative of his life. In fact, numerous times throughout his life, Robert referred to Exeter as "the most important year of his life." His five years in New England changed him from a midwestern boy into a gentrified young man, for it was there that he really gained his love of good style and clothing, for smoking cigars and playing poker, for taking on the beliefs and attributes of a Victorian gentlemen, which would be his style for the remainder of his life.

Robert seems to many people today so "un-Lincoln" and much more Todd in his "aristocratic" ways, and they surmise (based I believe on Ruth Painter Randall's assertion of the same) it was due to his spending one summer at age five with his grandfather Todd in Lexington. I disagree completely, and believe that the difference from his unpretentious father in Robert's style and traits came from his time in New England. In fact, so did his mother. When Robert returned to Springfield in February 1861 after 18 months away, she said she was concerned that he was becoming too much of a Yankee.

For the rest of Robert's life, he kept a close association with both Exeter and Harvard alumni associations and institutions in general. He attended every alumni event he could, donated money often and even donated some personal and family items to Exeter as an older man.

SG: I know that readers will be anxious to hear your take on Mary's "Insanity Trial" and Robert's role in it.

JE: I think Mary Lincoln suffered from serious mental illness (a Todd family trait, in fact) and needed medical help, and Robert did what he believed was both necessary and proper in order to keep his mother safe from herself and from other people.

There was nothing illegal in the trial, no nefarious plot to lock a perfectly-sane Mary away out of embarrassment or avarice – those accusations are the unsubstantiated stories of revisionist historians.

I have studied and written about Mary's mental health and insanity trial now from both her point of view (*The Madness of Mary Lincoln*) and Robert's point of view (*Giant in the Shadows*), and my next book will be a complete compilation of every surviving piece of primary source material (*Mary Lincoln's Insanity Case: A Documentary History*, from University of Illinois Press). After all of this, I have no doubts Robert acted correctly and Mary had serious mental issues.

If you understand Robert's Victorian-era sensibilities as man, as son and as male head of the family, you can understand why he believed it was his duty to help his mother through her mental health issues, "even," as he once wrote, "if necessary against her will." Interestingly, for all the criticism Robert receives today for committing his mother, at the time, in 1875, his actions were almost universally approved, his character lauded and his trials sympathized with by both the public and journalists. It has only been since about 1987 or so that Robert has been villainized for the trial.

SG: Did Robert ever speak or write about: the assassination; Emancipation Proclamation; any of his father's speeches; the Civil War?

JE: Robert revered his father and his father's legacy, and was the custodian of that legacy for more than 60 years, and he did write and speak about his father's thoughts, actions and writings during the Civil War multiple times.

Robert wrote about the assassination a few times, although he did not enjoy the retelling. He called it "a very dreadful night" seemed never to end, and one that he would never forget. He once said, "Every moment of that night is ingrained upon my mind." In 1909, when Robert's friend Richard Watson Gilder was planning a Lincoln centennial issue, he asked Robert to write about the assassination. Robert not only declined, but asked Gilder not to publish anything on the subject at all, which Gilder obliged.

Robert often liked to talk about the Cooper Union Address, and say that it was his father's desire to visit him, his son, at Exeter that caused him to gain the necessary support to be elected President of the United States by speaking in New York. He also commented on the greatness of the Gettysburg Address many times, and even helped locate a previous unknown copy in his father's handwriting.

One of the few, really probably the only, time Robert spoke specifically to honor his father was in Galesburg, Illinois in 1896 to commemorate the Lincoln-Douglas debates. Robert spoke on the stage with a bust of his father sitting on a chair beside him.

In general, Robert often offered throughout his life glimpses of the war, life in the White House, and his father's administration in his personal letters to friends. One of my favorites was his recalling his father's anguished response to the aftermath of the battle of Gettysburg and Gen. Meade's failure to follow and destroy Lee's Virginia army and thereby end the war.

Robert never wrote such things for the public or for private enterprise/gain. He had decided in 1865 never to write about his father for publication but to leave it to other people. In later life he regretted that decision, but, unfortunately, did not rectify it.

Another item I have always found interesting were Robert's recollections on the surrender of Lee to Grant at Appomattox, at which Robert was personally present as an aide to Grant on Grant's staff at the time. Robert was, I believe, by the 1920s the last surviving man present at the surrender.

Robert wrote or spoke about his experience at Appomattox numerous times throughout his life, and explained how when Grant entered the McLean house, the majority of the general's staff—especially the junior members, of which Robert was one—waited on the large front porch. Once the conference between Grant and Lee was completed in the front parlor and the capitulation agreements written and signed, the officers were presented to the Confederate commander. "Looking back into history, the events on that day form a page that can never be forgotten, especially by those who were present on that occasion," Robert told a newspaper reporter in 1881. But, when pressed for more details of the dramatic nature of the scene, Robert, then President James A. Garfield's secretary of war, somewhat anticlimactically said, "As I recall the scene now, it appeared to be a very ordinary transaction. . . . It seemed just as if I had sold you a house and we had but to pass the titles and other conveyances."

SG: Please describe Robert's professional life.

JE: Robert held numerous professional positions throughout his life, but he was, first and foremost, an attorney. He started as a junior partner, practiced on his own for a few years, then joined with Edward Isham in the firm Isham and Lincoln (later Isham, Lincoln and Beale) that became one of the most prestigious firms in Chicago and in the Midwest.

The partnership of Isham & Lincoln was officially formed in February 1872. While Robert chose to specialize in his legal career up to that time in insurance and real estate matters, Isham ranged farther afield. He undertook work on personal trusts, corporate affairs, equity cases, and railroad interests and litigation. Both Isham and Lincoln had occasionally been engaged in jury cases involving general legal issues, which they continued to do as a partnership. The early records of the firm show that, as the junior member, Robert did most of the everyday work, correspondence, arguing cases in court, etc., and Isham handled the more important matters. Robert referred to himself as "the mechanics lien man of the firm," meaning he specialized in real estate liens, which result from someone (such as a contractor) doing work on property and not getting paid.

Robert turned from law to business beginning in 1894, after he returned to America from his post as minister to Great Britain and as a result of the death of his 16-year-old son Jack. Robert had been grooming Jack to follow in his footsteps and ultimately join the firm. With Jack's death, Robert lost all interest in his legal career.

As a businessman, Robert served as a board member, vice president or president of numerous banks, electric companies, telephone companies, railroad companies and other businesses. He was, briefly, president of the Chicago Telephone Company and of course president of Pullman Company. These positions were not attained because of his surname, but because he was an incredibly astute businessman. For example, in his first two years as president of Pullman, Robert doubled the value of the company; during his 11 years as president he quadrupled it.

SG: In your extensive research, what information did you find that was least expected?

JE: Quite a number of things actually. One I love is that Robert's sense of humor and storytelling ability actually rivaled – or perhaps emulated is a better word – his father's: Robert was apparently a hilarious guy who was an excellent raconteur, just like his father. He really only showed this side of himself to his family and close friends, however, which is why it is not a commonly known aspect of his personality.

The fact that Robert's relationship with his father was actually quite close, and they grew closer during the war years. In fact, Robert was, at some of the most trying times during the Civil War, his father's confidant. That's a great little gem, however, that I will not elaborate on in a (shameless) effort to make people buy and read my book!

Home of Robert T. Lincoln, Hildene in Vermont, LFA-0547

One of the biggest shocks to me—and one of the most exciting discoveries I made in my entire research process—was to find about a dozen handwritten letters from Robert to various friends and family members detailing the shooting, medical treatment, and convalescence of President Garfield, and the machinations of the government and Cabinet while the president lay wounded. None of those letters has ever been used, cited, quoted or published in any book ever, as far as I can tell. In fact, Robert was the only witness to the shooting (he was about 40 feet away from Garfield) who was not called to testify at the trial of Charles Guiteau. I still don't know why.

I was somewhat surprised by the deep substance of Robert's tenure as secretary of war (1881-1885) and also the fascinating and detailed stewardship and relationship Robert had to his father's legacy and memory for more than 60 years. The fact that he did not have his father's papers in his possession nor go through them himself for about 40 years after the assassination I did not expect.

SG: And finally, has history treated Robert fairly? If not, was that fact a primary motivation in your choice of this particular subject?

JE: Unfortunately, no. Robert has been often ignored, typically misunderstood and generally maligned by historians for decades. There are three main reasons for this: 1) His role as millionaire captain of industry give the impression of a ruthless, avaricious CEO who disdained the common man – which is seen as something so unlike his father and anathema to his father's nature and principles. 2) His commitment of his mother in 1875 to the sanitarium, which has been characterized (wrongly) as a son's greed and apathy towards his mother. 3) Probably the most damning thing to ever happen to Robert's reputation was the completely erroneous—and I would even call it libelous—depiction of him as a despicable, reprehensible, inhumane son and man by Jean Baker in her 1987 biography of Mary Lincoln. Since that has been the go-to book on Mary for over 30 years, and there are no books on Robert readily available, those characterizations have become the accepted "truth."

My motivation in writing this book was not to vindicate Robert or seek to cleanse his reputation, but rather to simply throw some illumination on his overlooked and shadowed life. He just seemed like a fascinating man with an interesting life that deserved to be investigated. And the fact that he was Abraham Lincoln's son, the only son to live to adulthood, and only one book was ever written on him (in 1968) I found to be an enormous scholarly gap in the Lincoln field that needed to be filled.

I do recognize and admit that my interpretations and outlook on Robert certainly appear aimed at rehabilitating his historical reputation, but really I just wanted to understand him and reveal him, and so I simply followed the evidence to the conclusions it all led me to – which is, to my mind, what a historian should do. We all certainly have opinions, but a good and true historian will change his/her hypothesis with the evidence and not change the evidence to fit a predetermined hypothesis (the latter of which I think happens all too often...)

Jason Emerson is the author of *The Madness of Mary Lincoln*, *Lincoln the Inventor*, and *Giant in the Shadows*.

2012 Annual Lincoln Colloquium
Indiana Historical Society, Indianapolis, Indiana

Opening Reception: Friday, October 12, 2012
Colloquium: Saturday, October 13, 2012

The Indiana Historical Society is pleased to host **Lincoln, Slavery, and the Historian's Role** as part of the 27th Annual Lincoln Colloquium.Guest speakers include Ron Soodalter (author of Capt. Gordon: The Life and Trial of an American Slave Trader), Michael Johnson (The Johns Hopkins University), and Callie Hawkins (President Lincoln's Cottage).

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