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ABRAHAM LINCOLN AS A POLITICAL MORALIST

A Thesis

Submitted to the

Faculty of the Department of History
and Government

Municipal University of Omaha

In Partial Fulfillment of the Requirements
for the degree of
Master of Arts

by

Carl Willard Ruchte

July 1954

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ACKNOWLEDGMENTS

The author expresses deep and sincere appreciation for the valuable assistance given by Dr. Fredrick Adrian and Professor William Utley.

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CHAPTER I

INTRODUCTION

In the eighty-fourth year of this nation's independence, forces so complex in nature that even today they are only partially understood culminated in what then appeared to be an irreparable breach in the Union. During the dark days of the 1860's the future outlook for the Union was extremely foreboding. Victory for the Southern forces would have spelled disaster not only for the North but for the South as well, economically and strategically, as events of more recent days have demonstrated in graphic fashion.

In times of such a crisis, capable and forceful leadership is of the highest importance, but to an impartial observer in the spring of 1860 these most desirable requisites would not have been discernible or recognizable as the characteristics of any of the existing political parties.

A divided Democratic Party was incapable of providing the necessary leadership and the incumbent president had clearly demonstrated his inability or unwillingness to cope with or even face up to the very threatening and steadily worsening situation.

In the opinions of observers of the time, the multitude of politicians rallying to the banner of the new Republican Party at the "Wigwam" in Chicago, in June of 1860, would be as helpless and incapable as the Democrats in selecting, and then supporting, the high caliber leaders vitally necessary, if the Union were to be preserved and maintained.¹

Many selfish and divergent factions were strongly represented at the "Wigwam" and achievement of any degree of unity appeared remote. Chase of Ohio, Seward of New York, Cameron of Pennsylvania, and numerous other favorite sons, all desired and were demanding support.² It seemed impossible that such a group, actually only a convention of personal factions and certainly at this stage hardly worthy of being designated a major political party, could unite and arrive at anything so specific and definite as the nomination of a worthy presidential candidate.

These superficial observations and opinions of contemporaries were grossly in error, as evidenced by succeeding events. The excellent progress of the convention, the maneuvering, and the "deals" made, all were

¹Burton F. Hendrick, Lincoln's War Cabinet, (Boston: Little, Brown & Co., 1946) pp. 3-123 ad passum.

²Ibid.

masterpieces in practical politics, but beyond the scope of this work. It is pertinent, however, to point out that the "Wigwam" abounded with shrewd political leaders. Two of the shrewdest were David Davis and Jessie Duboise, both of Illinois, campaign managers and old friends of the former United States Representative for the Southern District of Illinois and backwoods lawyer, Abraham Lincoln.³ Whether by Divine guidance, astute politics, or an honest patriotic desire to set aside petty differences due to the gravity of the national situation, Lincoln was nominated.

It is to the thinking of the man Lincoln that this work is devoted. It will show the moralistic tendencies of Lincoln in his attitude toward the political and legal structure of the United States.

Research of this nature necessitates the avoidance of certain pitfalls. In any analysis definite assumptions must be made before beginning. The nature of these assumptions may influence the final outcome of the analysis. Since these assumptions are, especially in the social sciences, generally not provable

³Reinhard H. Luthin, The First Lincoln Campaign, (Cambridge: Harvard University Press, 1944) p. 139.

but simply the personal preferences of the writer, discrepancies are possible. Closely related to the basic assumptions is the philosophy of the writer. This would not be so important if complete objectivity were possible, but most authorities concede it is not. It is agreed to be best to rule out moral and ethical considerations when making analyses, although the concept of morals and ethics on the part of the author can and does influence conclusions. In most cases a person will not be aware that he is being influenced by anything other than objective facts.

Initially, Lincoln has over the years become an almost legendary figure and as a result the fiction surrounding the man is often difficult to separate from fact. Secondly, the name of Lincoln became political magic almost immediately after his assassination and even those who bitterly opposed and maligned him during his life loudly acclaimed him after his death.

For all of these reasons precaution must be observed in the selection of material. Secondary sources, although almost infinite in quantity are to be avoided as much as possible since prejudice, conscious or unconscious, on the part of the author would almost certainly result in erroneous conclusions. The subjectiveness of this type of work amplifies this need for extreme care.

The most reliable of materials, listed in the order of probable accuracy are, (1) writings by Lincoln, (2) transcripts of his personal conversations, and (3) his political speeches. His speeches are rated last for obvious reasons. They contain, however, more material than any other single source and, therefore, must be used rather extensively but with caution. Conversations would be an excellent source except that most of these have come down to us by way of third parties and few are accurate transcripts. Most of these are paraphrases, which in some cases were written years after the conversation actually took place. These conversations must also be treated carefully and consequently are used only sparingly in this work. Unfortunately, Lincoln did very little writing for public consumption relative to his own political philosophy, or to political philosophy in general. There is, nevertheless, a small quantity of excellent material contained in his private correspondence which is given considerable weight in the conclusions of this work.

It should not be assumed from the foregoing analysis of available materials that there exists any lack of evidence which would prevent the determination of valid conclusions. To the contrary, while unquestionably

accurate material is not over-abundant, there is sufficient to establish the moralistic tendencies of Lincoln, which is the fundamental objective of this work.

CHAPTER II

DEFINITIONS

It is necessary to establish a few short definitions before beginning the body of this work. The terms opportunism, legalism, and moralism will be referred to frequently and require some explanation as to their use. It must be understood that the definitions which follow are for the purpose of convenience in classification and are meant to apply to this work only. They are not an attempt to establish a consistent system, but are simply the most obvious and convenient tools for this particular analysis.

The borderline between the above mentioned terms is hardly exact; one fuses into the other to a considerable extent. To complicate matters further no person is completely consistent. It is well known that age and experience will alter an individual's philosophy, sometimes quite considerably. Passage of time tends to telescope a man's whole life into one central idea, neglecting his development. Thus examples of philosophies in explanation of the following definitions are rather difficult to use without danger of inaccuracies. Examples, therefore, based on individuals are avoided,

and the divisions of political philosophy as defined in this chapter are only tools of this analysis.

An opportunist bases his decisions on the apparently most efficacious procedure, not on right or wrong, nor precedent. Self interest would probably be a major consideration of an opportunist. There is no firm and consistent basis for a decision and each decision stands out as original and individual. The highest type of this philosophy of opportunism is expressed by those who believe that institutions must be constantly adapted to circumstances; the lowest form finds expression in the demagogue politician who tries to be all things to all people.

A legalist is a person who forms his opinions on the basis of the law. By law is meant both statutory law and judicial precedent.

Legalism is generally considered to be the dominant political philosophy of the people of the United States. Some instances of this legalist attitude are quite evident. As one example, the oath taken by the President of the United States, "... to preserve, protect, and defend the Constitution..." gives no power to the President to modify the Constitution in the slightest

degree even in the best interests of the people. The position therefore becomes one of the "constitutionality" or "unconstitutionality" of a legal, and to some extent moral, question. For another example, some social workers and law enforcement officials recognize that to many the crime is not in the commission of an illegal act but in being caught in such an act. This, in its developed form, leads to the use of the laws for the protection of the criminal.

Those who argue the "spirit of the law" are equally legalistic by the terms of the definitions of this work, for whether it be the spirit or letter of the law, the law remains the highest test. In recent years the tendency towards legalism has been very pronounced and evident. The philosophy which might be termed salvation through legislation, or stated in different terms, look to Washington and particularly Congress to cure all evils, has dominated many political campaigns.

Moralism is distinguished from the others in that it is based on the belief in some ethical code. It is contrasted with legalism in that it is not dependent upon the mores of the group, but is based on the moral concept of the individual. It is contrasted with opportunism in that expediency is not a prime motive, but the

right or wrong as judged by the moral philosophy of the individual is fundamental.

It was stated in the preceding paragraph that expediency, to a moralist, is not a prime motive; yet it seems possible that a moralist might adopt the attitude that the means are justified by the end result. Such, however, would not alter the situation of his being a moralist.

For the purpose of classification, moralists could be divided according to the moral concepts upon which their decisions are based. First it must be made clear that desire for power, election to office for material gain or personal glory, or any such related motives, although they be the basic "philosophy" of the person, is not moralism, but is, as indicated above, opportunism. Moralism, then, is the manifestation of a philosophic system in politics. It is easier felt than defined.

The Christian religion is perhaps the most obvious example; yet not all Christians are moralists. It seems, at times, that very few are. On the other hand a Communist who truly believes in Marxism would also be a moralist by our definition. It should be clear, then, that a moralist is so by his own philosophy and morals,

not by any absolute or predetermined standard. The Christian and the Communist are given not as definite categories or unique examples. Divergence within each philosophy is almost as great as the difference between them. There is probably an infinite number of philosophies and variations thereof which are neither of the above. The foregoing serve in this case only as possible examples of moralism.

CHAPTER III

LINCOLN: EARLY POLITICAL DEVELOPMENT

A biography of Lincoln would be out of place in a work such as this, since nothing could be added to the many and well known biographies now in existence. The only biographical material included, therefore, is that which directly pertains to the subject of this work.

Lincoln as a young man did not differ much from the average young frontiersman. There is, nevertheless, an incident in his youth worth mentioning and indicative of his interests. At the age of seventeen he wrote an essay on government, somewhat unusual for a young man of today and very unusual for one in the Indiana of 1826.¹ His interests in politics, however, did not become active until after his family had become established in the state of Illinois. It was his life in this state that was important in developing the man who became President in 1861.

Southern Illinois in the days of Lincoln's early manhood was truly the frontier. The settlements were new

¹William H. Herndon, Herndon's Life of Lincoln, (New York: A & C Boni, 1930), p. 17.

and organized politics were only just beginning in this section. Southern Illinois, contrasted with similar areas along the new frontier, was not removed from the national political scene. In fact, it was the stage upon which miniature versions of most national issues were acted.

Northern Illinois was "free" territory, while Kentucky just across the bordering Ohio River was "slave" territory. The southern part of Illinois was a mixture of both "free" and "slave" sentiment. Lincoln was a product of this area of mixed feelings on the issue of slavery.

This period was characterized by undoubtedly the most bitter and intense national political feeling of our history. Illinois did not escape this feeling and was no exception to the rule. It is well to remember that the underlying difficulty even from the beginning of our Union has been the North and its industry versus the South and its plantation system. An East-West controversy had existed, but by about 1820 it had been relegated to a less important, or at least less well known, position. From 1820 to 1860 almost every political controversy could be traced either directly or indirectly to the North-South competition. Lincoln was an integral part of the controversy.

It has been mistakenly said that Lincoln was not prominent as a young man. Perhaps he was not as prominent as some contemporaries, but the fact remains that he was always considered as one of the political leaders of Illinois. He was deeply interested in politics throughout his adult life, serving with some distinction in the State Legislature of Illinois and for one term in the United States House of Representatives. Although his record in the United States Congress was not one of much activity, the fact that he was elected to that body is an indication of his popularity and political leadership in Illinois, at least.²

The political career of Lincoln actually began in 1832 when he ran and was defeated for the legislature of Illinois. At this time he still was without definite party connections, but by 1834 he was very positively and definitely aligned with the Whigs, an affiliation he maintained until the 1850's.³

In August of 1834 Lincoln was elected to the Illinois Legislature, as a member of the House of Representatives. His campaign speeches are unknown, ac-

²Wilfred E. Binkley, American Political Parties (New York: Alfred Knopf, 1947) p. 224.

³Ibid., p. 208.

according to Herndon.⁴ An interesting sidelight of his election is that he found it necessary to borrow \$200.00 from Coleman Smoot for clothing and other necessities to make himself presentable before the Legislature.⁵ Re-election followed in 1836, 1838, and for a final time in 1840.⁶

A few excerpts from the writings and speeches of Lincoln during this period of service in the Illinois Legislature throw some light on his political development. As would be expected, the slavery issue figured in his thoughts and on March 3, 1837, Lincoln protested a resolution of the legislature:

Resolutions upon the subject of domestic slavery having passed both branches of the General Assembly at its present session, the undersigned [Dan Stone and A. Lincoln, Representatives from the County of Sangamon] hereby protest against the same.

They believe that the institution of slavery is founded on both injustice and bad policy;

⁴Herndon, op. cit., p. 103. More recently, however, some of his speeches have been found. See: Roy P. Basler, editor, The Collected Works of Abraham Lincoln (New Brunswick, New Jersey: Rutgers University Press, 1953) Vol. I, pp. 27-250.

⁵Herndon, op. cit., p. 104.

⁶Ibid., pp. 130-145. Official election returns show Lincoln also having been elected in 1842, but he did not campaign and refused the seat.

but the promulgation of abolition doctrines tends rather to increase than abate its evils.⁷

The tariff also was very much an issue in national politics. Lincoln was a life-long high-tariff man, following the Whig leaders of his day. He devoted a number of his speeches to this subject during the 1840's and also to its ally, the Bank of the United States.⁸

In a letter by a reader to the editor of the Illinois State Register, a paper opposed to Lincoln, a speech made by Lincoln was described as follows:

The poor ignorant people were enlightened by speeches (if they were worthy of the name) from Messrs. Lincoln, Baker, Henry and McNeil. Mr. L. made some large statements, but I suppose they were true, for he had a document with him. He attempted to make the farmer believe that the high pressure tariff made everything they bought cheaper, but said also he could not tell the reason, but that it was so, and I suppose that is enough for the huge farmer to know. Now the little boys who Mr. L. enlightened as to what the tariff was, could have told him better to make such a statement. He then proceeded along very calmly, until Mr. Baker handed him a State Register,

⁷Basler, op. cit., Vol. I, pp. 74-75.

⁸Ibid., Vol. I, p. 287, pp. 309-318, pp. 407-416.

containing some extracts from the papers of Alex. Hamilton; then he rolled his eyes and shook his head, as if he had seen an Irishman.⁹

If the foregoing quotation be an accurate outline of the economic viewpoint and position of Lincoln--he did hint at such ideas at other times--he was not at the time of the speech, at least, the careful thinker that history usually makes him appear to have been.

Many times he used references to historical traditions to prove a point. A critic described a speech Lincoln made in 1846 in this manner:

Mr. Lincoln commenced and tried to show that because Washington and Madison signed the U. S. Bank Bill, therefore it was constitutional. He labored hard to prove that Washington never done a wrong thing in his life...¹⁰

Three possibilities exist in explanation of the preceding examples; (1) Lincoln really did use, and believe these arguments, to be valid, (2) he believed the conclusions to be valid but also thought his audience unable to comprehend the economics and legal doctrines necessary to logically prove his point, or (3) the

⁹Illinois State Register, March 15, 1844, quoted in Ibid., Vol. I, p. 344.

¹⁰Illinois State Register, March 15, 1844, quoted in Ibid., Vol. I, p. 333.

Illinois State Register was so anti-Lincoln that the reports were biased so as to put him in as bad a light as possible.

Evidence tends to support the first and third contentions, but even at this time Lincoln was already an excellent politician and knew well the use of many of the methods and devices used in influencing people. He must have known that logic and public opinion are often quite divergent.

In the early period of the political career of Lincoln the impression gained from the letters to his friends and associates is that of an unhappy and at times an almost despondent young man. The letters describing Vandalia, at that time the state capitol, illustrate this.

You will recollect I mentioned in the outset of this letter that I have been unwell. That is the fact, though I believe I am almost well now; but that, with other things I cannot account for, have conspired and have gotten my spirits so low, that I feel that I would rather be any place in the world than here. I really cannot endure the thought of staying here ten weeks.¹¹

Six months later he described life in Springfield in the following terms:

¹¹Basler, op. cit., Vol. II, pp.54-55. Letter to Mary S. Owen, Dec. 13, 1836.

This thing of living in Springfield is rather a dull business after all, at least it is so to me. I am quite lonesome here as I ever was in my life....I've never been to church yet, nor probably shall not be soon. I stay away because I am conscious I should not know how to behave myself.¹²

Lincoln wrote little on politics at any time in his life. Of his term in the Legislature from 1834 to 1836 there is not very much recorded. He attended the ordinary routine political meetings and made a number of typical political speeches, most of which have no value for this work. About 1836 the record becomes more complete and some of his basic views begin to appear.

In a letter to the editor of the Journal of New Salem, January 13, 1836, Lincoln announced his political views, most of which are unimportant from the standpoint of this work except to note that he said, "If elected, I shall consider the whole people of Sangamon my constituents, as well those that oppose as those that support me."¹³ This was a sentiment rare among

¹²Ibid., Vol. II, pp. 78-79. Letter to Mary S. Owen, May 7, 1837.

¹³A. B. Lapsley, editor, The Writings of Abraham Lincoln (New York: P. F. Collier & Son, 1905) Vol. I, p. 131.

politicians of his day, as well as among politicians of any day.

His growing prominence was shown by the fact that he was often invited to speak to organizations outside of the Legislature. Most of these were of little significance and it is always necessary to take into consideration the type of group to whom he was speaking. One example of this is an address Lincoln made to the Young Men's Lyceum of Springfield, Illinois, in January, 1837. He said:

Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others. As the patriots of seventy-six did to the support of the Declaration of Independence, so to support of the Constitution and laws let every American pledge his life, his property and sacred honor.¹⁴

In the same speech Lincoln attacked the use of mob violence as had occurred in St. Louis just previous to the date of the speech and went on to say, "...although bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for the sake of example they should be religiously observed."¹⁵

¹⁴Ibid., Vol. I, p. 154.

¹⁵Ibid.

It can be safely said that Lincoln, in general, followed the typical line of the Whig Party in both state and national politics. Examples of this are numerous, such as his speech on December 20, 1839, in the Illinois House of Representatives. This speech was mostly of a political nature. It was, in the main, an attack on the sub-treasury system and it is interesting to note that in the speech Lincoln spent a great deal of time discussing the constitutionality of national banks. He concluded that they were constitutional, indicating, at this time at least, that he was a loose constructionist.

In the early 1840's a great controversy raged in Illinois over the reorganizing of the state judiciary. The question of judicial review was the paramount issue. On February 12, 1841, Lincoln signed, with thirty-five other members of the legislature, all Whigs, the following statement protesting reorganization "...because (1) it violates the great principle of free government by subjecting the judiciary to the Legislature. (2) It is a fatal blow at the independence of the judges and the constitutional term of their office. (3) It is a menace not asked for, or wished for, by the people..."¹⁶

¹⁶Ibid., Vol. I, p. 242.

How much of all this is actually the man Lincoln one can only speculate, but since he was one of the leaders of the Whig Party it must have at least met with his approval. The third point of the statement quoted above rather suggests the idea of the sovereignty of the people; an idea indicated before and appearing several times later.

Another example, which again illustrates the adherence of Lincoln to the Whig Party line, is the transcript of a party meeting held in Springfield on March 13, 1843:

The object of the meeting was stated by Mr. Lincoln of Springfield, who offered the following resolutions, which were unanimously adopted:

Resolved, that a tariff of duties on imported goods, producing sufficient revenue for the payment of the necessary expenditures of the National Government, and so adjusted to protect American industry, is indispensibly necessary to the prosperity of the American people.

Resolved, that we are opposed to direct taxation for the support of the National Government.

Resolved, that a national bank, properly restricted, is highly necessary and proper to the establishment and maintenance of a sound currency, and for the cheap and safe collection, keeping, and distributing of the public revenue.

Resolved, that the distribution of the proceeds of the sales of public lands, upon the principle of Mr. Clay's bill, accords with the best interests of the nation, and particularly with those of the State of Illinois.¹⁷

¹⁷ Ibid., Vol. I, pp. 299-301.

The resolutions show nothing startling, they could have come from any Whig leader anywhere. The thinking in these is probably not as much that of Lincoln, himself, as it was an adherence to exactly what was expected of a good Whig of that period.

In the interim following 1842, Lincoln was very busy with his law practice in Springfield, preventing him, as he himself said, from participating in politics as much as he would have preferred.¹⁸ But there were written during this time several letters which seemed to show his own personal views on politics. Not being directly in politics he now could, perhaps, better express himself more truly than otherwise.

A letter of October 3, 1845 by Lincoln to Williamson Durley, an abolitionist, reads in part:

I hold it to be a paramount duty of us in the free States, due to the union of States, and perhaps to liberty itself (paradox though it may seem), to let the slavery of other States alone; while, on the other hand, I hold it to be equally clear that we should never knowingly lend ourselves, directly or indirectly, to prevent slavery from dying a natural death -- to find new places for it to live in when it can no longer exist in the old. Of course, I am not now considering what would be our duty in cases of

¹⁸ John G. Nicolay and John Hay, Abraham Lincoln: A History, Vol. I, pp. 213-216.

insurrection among the slaves.¹⁹

This statement allied Lincoln with neither the slave holders nor the abolitionists, a position he attempted to maintain even during his occupancy of the presidential office. Lincoln can never be justifiably called an abolitionist.

On the skill of Lincoln as a lawyer much has been written. There are many stories, frequently repeated, of his courtroom techniques and of his eloquence. Some of these are pure fiction, but many are based on facts. It has often been said that Lincoln defended only those in the right; that he never knowingly defended a criminal. This is attested to by Judge Abram Bergan of Cass County, Illinois.²⁰

The story of the Armstrong murder case has been highly publicized. Lincoln is supposed to have used an almanac to prove that a witness could not possibly have seen the murder since, contrary to the man's testimony, there was no moon on the evening of the crime. The story continues that the almanac was for

¹⁹Ibid., Vol. II, p. 11.

²⁰J. L. King, "Lincoln's Skill as a Lawyer," North American Review, Vol. XVI, p. 186.

a previous year. It has been said that Lincoln won this case through trickery but this is denied by Judge Bergan, who personally knew the incidents of the trial of the case. The Judge also tells that Lincoln seldom used precedent in pleading a case; he made little reference to past court decisions.²¹

Up to this point the early political development of Lincoln has been surveyed in this work. His philosophy, in all probability, was fixed by this time but on the basis of the material available to the writer for this chapter no conclusion is possible, nor is a trend yet evident; Lincoln appears thus far simply as an active participant in local Whig Party affairs and a skillful frontier lawyer.

²¹Ibid.

CHAPTER IV

LINCOLN ENTERS NATIONAL POLITICS

Lincoln, after a short period, 1842 to 1846, during which he occupied himself primarily with his private law practice, again actively engaged in politics. He was elected in 1846 by the voters of southern Illinois to the 30th Congress as a member of the United States House of Representatives.

Lincoln served but one term in the House and was assigned to the rather unimportant Postal Committee. In the first session of the 30th Congress he made a number of speeches which are pertinent to this work but during the second session Lincoln did very little of record or importance.

On January 12, 1848, Lincoln addressed the House of Representatives on the matter of the war with Mexico, then in progress. He stated his opinion and belief that it was the duty of all to fully support the government in the prosecution of the war, regardless of political affiliation, and withhold criticism and complaints until the war was ended. The majority of Whigs were of a different opinion, holding it to be a Democratic war. It was their contention

that the war was started by the Democratic president, Polk, through trickery, and that the Democrats should shoulder the burden and fight the war themselves.

In this same speech Lincoln presented a remarkable and interesting bit of philosophy.

Any people anywhere, being inclined and having the power, have the right to rise up and shake off the existing government, and form a new one that suits them better. This is a most valuable, a most sacred right -- a right which, we hope and believe, is to liberate the world. Nor is the right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people that can may revolutionize, and may make their own of so much of the territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority, intermingled with, or near about them, who may oppose their movements. Such minority was precisely the case of the Tories of our own Revolution. It is a quality of revolution not to go by old linen, or old laws; but to break up both, and make new ones.¹

This philosophy expressed by Lincoln would be termed radical by most people, even though such a theory of government is expressed in the Declaration of Independence. The speech, of course, applied only to Texas and whether or not Mr. Lincoln would have made the same positive and firm statements in all similar situations is a

¹Appendix to The Congressional Globe; First Session 30th Congress (Washington: Blair & Ives, 1848) pp. 93-94.

matter of conjecture. It is not evident in his Civil War speeches except for, perhaps, his position on the subject of the admission of West Virginia as a state, after its break with Virginia.

This speech may be of more significance than indicated by its content. In a letter to William H. Herndon, dated December 13, 1847, Lincoln wrote, "as you are all so anxious for me to distinguish myself, I have concluded to do so, before long."² Was the "War With Mexico Speech" a calculated attempt to impress his colleagues, and constituents, with the depth of his mind?

How Lincoln reacted to the social situation of Washington and how that society reacted to him is unknown, but it is known that he was moody and perhaps suffered from an inferiority complex, as could easily be concluded from the letters to Mary S. Owen, quoted earlier in this work. This speech on the war with Mexico may have been a manifestation of just such a complex.

During his residence in Washington, Lincoln kept up a steady correspondence with people at home, but most of this did not deal with politics. There is, as part of the records, a letter written from Washington, dated February 15, 1848, addressed to William Herndon. In this letter

²Basler, op. cit., Vol. I, p. 420.

Lincoln was disagreeing with Herndon over the power of the president to invade a country if the president thought this action was necessary to prevent an invasion of the United States. Herndon had taken the stand that the president had such power. Lincoln took a strictly constitutional view and a very narrow interpretation at that.

The provision of the Constitution giving war making power to Congress was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us.³

During Lincoln's term in Congress the perennial problem of internal improvement appeared. Lincoln opposed the anti-internal improvement policy of the Democratic Party. He interpreted the Constitution as allowing internal improvement although he admitted there were possible legal questions. Lincoln believed as did Jefferson that it was expedient for the Federal Government to make internal improvements and therefore permissible.⁴

³Lapsley, op. cit., Vol. II, pp. 50-52.

⁴Speech by Abraham Lincoln, U. S. House of Representatives, June 20, 1848. Appendix to Congressional Globe, 1st Session, 30th Congress, 1848, p. 707.

During his stay in Washington, as a Congressman, Lincoln corresponded with his family regularly and often. His brother wished to sell the old family farm, to which Lincoln would not agree and his father, Thomas Lincoln, continually wrote to him about trivial matters.

There is a letter from Lincoln to his father, dated December 24, 1848, in which he sent his father \$20.00 to pay a judgment which was of long standing, with the advice, "Before you pay it, it would be well to be sure you have not paid it, or at least you can not prove you paid it."⁵ There are two possible interpretations to this, both legalistic.

Another speech, which Lincoln delivered before the House of Representatives, contains more ideas of his relative to the structure of the Federal Government.

That the Constitution gives the President a negative on legislation, all know; but that negative should be so combined with platforms and other appliances as to enable him, and, in fact, almost compel him, to take the whole of legislation into his own hands, is what we object to--is what General Taylor objects to --and is what constitutes the broad distinction between you and us. To thus transfer legislation is clearly to take it from those who understand with minuteness the interests of the people, and give it to one [the presi-

⁵Lapsley, op. cit., Vol. II, pp. 120-121.

dent] who does not and cannot so well understand it.⁶

Lincoln did not return to the 31st Congress. He had hoped to secure, with the election of a Whig President, a choice Federal office. This was not forthcoming, although he was offered, and refused as unacceptable, appointments in both territories of Washington and Oregon.⁷

From the time of his retirement from Congress in 1848 until the campaign for United States Senator in 1858 there is not much political activity recorded for Mr. Lincoln. He again returned to Illinois and his law practice, spending some time in local Whig affairs. Although not active as an office seeker in this period he was far from silent. Some of his best comments on political philosophy came at this time.

Some notes, probably for a lecture of which no records have been found, give a clear statement of what he believed the sphere of government to be.

The legitimate object of government, is to do for a community of people, what ever they need to have done, but cannot do, at all, or cannot, so well do, for themselves -- in their separate, and individual capacities.

⁶Appendix to Congressional Globe, op. cit., pp. 1041-1043.

⁷Nicolay and Hay, op. cit., Vol. I, p. 297.

In all that the people can individually do as well for themselves, government ought not interfere.⁸

Perhaps he meant this as a guide for himself. His record in the Illinois Legislature is too Whig to be reliable evidence; his record in Congress is too short to show any trend; his record as president is clouded by the fact that few policies were initiated that did not bear directly on the Civil War.

Another thought on these notes is that upon close inspection they are not definite enough to use as a guide. It is possible to imagine a politician of modern times saying, "In all that the people can individually do as well for themselves government ought not to interfere," in condemnation of the party in power at the time. On the other hand the incumbent in office could reply in defense of his position that the government should do what the people "cannot do, at all, or cannot, so well do, for themselves..."

Lincoln realized that forces other than rational thought played their part in shaping politics. The Bloomington, Illinois, Weekly Panatagraph for September 20, 1854, in reporting a speech made on September 12

⁸Basler, op. cit., Vol. II, pp. 220-221. Dated arbitrarily July 1, 1854, by Nicolay and Hay.

gives an insight into Lincoln's feeling on the effect of environment.

He declared that the Southern slaveholders were neither better nor worse than we of the North, and that we of the North were no better than they. If we were situated as they are, we should act and feel as they do; and if they were situated as we are, they should act and feel as we do; and we never ought to lose sight of this fact in discussing the subject.⁹

An interesting statement appears in a letter dated June 23, 1858, by Lincoln to John L. Scripps, a Chicago newspaper man.

...neither the General Government, nor any other power outside the slave states, can constitutionally or rightfully interfere with slayes or slavery where it already exists.¹⁰

The construction of the phrase "can constitutionally or rightfully" would suggest that he meant to distinguish between the two. If this be the case Lincoln must have believed that a higher 'law' than the Constitution existed.

In contrast to the preceding, and also to much

⁹Ibid., Vol. II, p. 465.

¹⁰Ibid., Vol. II, p. 471.

that is to appear later, Lincoln advised his listeners in an attack on the Kansas-Nebraska Bill at Kalamazoo, Michigan, on August 27, 1856: "Don't interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties."¹¹

Speaking at a banquet of the Republican Party in Chicago, December 10, 1856, Lincoln told those present:

Our government rests in public opinion. Whoever can change public opinion can change the government, practically just so much. Public opinion, on any subject, always has a 'central idea' from which all its minor thought radiate. That 'central idea' in our political public opinion at the beginning, was, and until recently has continued to be, 'the equality of men'.

We shall again be able, not to declare that 'all States as States are equal' nor yet that 'all citizens as citizens are equal'.¹²

The Dred Scott Case was a topic discussed by most politicians of the late 1850's. Lincoln mentioned it, and made his dislike for the decision of the Supreme Court positive and clear. In relation to this famous case Lincoln wrote a few notes which were probably intended for a speech.

...whatever the Supreme Court may decide

¹¹Ibid., Vol. II, pp. 361-366.

¹²Lapsley, op. cit., Vol. II, pp. 383-386.

as to the constitutional restriction on the power of a territorial Legislature in regard to slavery in the territory, must be obeyed, and enforced by all the departments of the Federal Government.

Now, if this be sound, as to this particular constitutional question, it is equally sound of all constitutional questions; so that the proposition substantially is, 'Whatever decision the Supreme Court makes on any constitutional question must be obeyed and enforced by all the departments of the Federal Government.'¹³

His general tone of argument leads, although the notes are not complete, to the conclusion that he does not favor the position that all departments of the government are bound to accept a Supreme Court decision as their policy. This line of reasoning would be impossible for a legalist.

This sums up the ideas of Lincoln to the time of his famous political controversy with his old rival in politics and love, Stephen A. Douglas. Up to this time Lincoln seems to be a man of inconsistencies.

His talk to the young men of Springfield was a clear cut example of legalism and of a very conservative variety at that. Of course, if he had spoken to them as he spoke eleven years later in the House he

¹³ Ibid., Vol. II, pp. 387-388.

probably would have been branded a 'dangerous radical' by the good people of Springfield.

Lincoln's "War With Mexico" speech is an unusual statement of philosophy, especially coming from a Whig party member. Here we see Lincoln as a moralist. Although speaking only of Texas and Mexico, he does say "Any people anywhere", indicating this as a general rule to follow, undoubtedly based on the Jeffersonian concept of the right of revolution. Whether Lincoln sincerely believed in this doctrine we do not know, since there is no other reference by him to this idea and, as pointed out previously, it is diametrically opposed to his later statement about the sanctity of the Union. Either or both of these concepts could have been dictated by political or social expediency. The "War With Mexico" address sounds to some degree to be an attempt of a man of the frontier, practically unknown nationally, to impress his colleagues with the depth of his political philosophy. Should this be the case it is still significant in that if Lincoln had truly been a legalist he would not have chosen this type of a subject for discussion.

The possibility of Lincoln not actually having a definite and positive political philosophy up to this

point in his career has not been positively eliminated. In fact, much of the evidence tends to point in this direction, at least superficially. Lincoln was basically a politician, and not a philosopher, and as with all politicians it was necessary for him to stay in step with public opinion if he wished to remain a 'leader'. The next chapters will show Lincoln as a national leader, and his attempt to reconcile his own philosophy with the political currents of his day.

CHAPTER V

1850 to 1861

It was in the decade 1850-1861, that Lincoln rose from local leader to national hero. At this time the Illinois political scene was dominated mainly by two men, well known to each other--Douglas the Democrat and Lincoln the Whig. They had served together in the Illinois State Legislature, met in court as opposing counsels, and had even courted the same young woman.

The contrast between Lincoln and Douglas was great, and throws considerable light on the nature of both these men. Politically, Douglas, in this decade, was attempting to pursue policies aimed at reconciling the North and the South under a common system wherein slave and free areas might exist side by side on peaceful terms. Lincoln, as a typical Whig, opposed the Douglas Democrats. He believed that slavery was basically evil and should not be allowed to spread. Lincoln's policy of containment was, however, to be peaceful.

The speeches of Lincoln during this period have little bearing on moralistic philosophy of government except to note his many references to the binding nature of the Ordinance of 1787, which was passed by the Congress

under the Articles of Confederation. This idea, that the Union antedated the Constitution, in its developed form, was to dominate his thinking during the Civil War.

In May of 1856 Lincoln spoke of the Declaration of Independence as being part of our organic law.¹ This was one of his most significant statements for the purpose of this analysis, and relates closely to many of the statements to follow. It is unfortunate that he did not discuss this concept to a fuller extent.

The senatorial campaign of 1858 in Illinois was one of the most famous and important of all such campaigns in our national history: the candidates--Douglas and Lincoln. Although the heat of the race was great, not much of the available material relates to the moral philosophy of Lincoln. Most of his ideas had been repeated many times before, and one must remember that most of the campaigning was done as joint debates with both men on the same platform and being observed by large numbers of people. The political instinct of Lincoln probably ruled over his more philosophic side during

¹Lapsley, op. cit., Vol. II, pp. 247-275. Speech to the First Republican State Convention, Bloomington, Illinois, May 29, 1856.

this campaign. After all is considered, it is clear that for Lincoln the actual motivating factor was to be elected to the United States Senate.

There were several statements, however, made by Lincoln during the campaign of 1858 which have a bearing on this work. The opening round of the debates began on July 10th, with both Lincoln and Douglas speaking in Chicago. Here Lincoln observed:

I have expressed heretofore, and I now repeat my opposition to the Dred Scott decision; but I should be allowed to state the nature of that opposition, and I ask your indulgence while I do so. What is fairly implied by the term Judge Douglas has used, 'resistance to decision'? I do not resist it. If I wanted to take Dred Scott from his master I would be interfering with property, and that terrible difficulty that Judge Douglas speaks of, of interfering with property, would arise. But I am doing no such thing as that, but all I am doing is refusing to obey it as a political rule. If I were in Congress, and a vote should come up on a question whether slavery should be prohibited in the new Territory, in spite of the Dred Scott decision, I would vote that it should.²

In the same speech he included some general comments of the nature of government:

...that I believe each individual is

²Lapsley, op. cit., Vol. III, p. 54.

naturally entitled to do as he pleases with himself and the fruits of his labor, so far as it in no wise interferes with any other man's rights; that each community as a state has a right to do exactly as it pleases with all concerned within that state that interferes with the right of no other state; and that the General Government, upon principle, has no right to interfere with anything other than that general class of things that does concern the whole.³

In the Jonesboro debate, September 15, 1858, Lincoln expressed the idea that Congress was morally bound to implement the Constitution, that the members had taken an oath to do so, and therefore must support what constitutionally was legal.⁴

The next debate, in Charleston, September 18th, showed the attitude of Lincoln on social and political democracy. In this debate he said:

I will say, then, that I am not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races; that I am not, or ever have been, in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say, in addition to this, there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality.

³Ibid.

⁴Ibid., Vol. III, pp. 116-134.

I say upon this occasion I do not perceive that because the white man is to have the superior position the negro should be denied everything. I do not understand that because I do not want a negro woman for a slave I must necessarily want her for a wife.⁵

Following the defeat of Lincoln in the senatorial race, the publicity he gained caused him to become recognized nationally as one of the outstanding leaders of the North. He toured the United States, adding to his growing popularity. His defeat for the Senate seat was probably the best thing which could have happened to his political career, since it practically paved his way to the presidency.

The political maneuvering to nominate Lincoln as a presidential candidate is outside the scope of this work, even though it is an interesting study in practical politics. Of importance was his gradual shift, along with many others, away from the established Whig label.

In the years of 1854 to 1860 a new political party came upon the national scene;—the Republican Party. The membership of this new party was recruited mainly from the old Whig Party and some anti-slavery Democrats. The rise of the new party was rapid, but

⁵Ibid., Vol. IV, pp. 1-2.

due to its anti-slavery background and some other political factors, many leaders were reluctant, as even for a while was Lincoln, to adopt the label of the new movement.⁶

Many leaders and observers were of the belief, even before the conventions of 1860, that this was a crucial time in American history. The Democrats meeting in Charleston were hopelessly deadlocked over their party platform and candidates. This eventually caused a split in the party which resulted in the nomination of two presidential candidates; the northern wing nominated Douglas of Illinois, while the radical pro-South aggregation nominated John C. Breckinridge of Kentucky. Also in 1860 many of the old Southern Whigs joined with others who opposed the Democrats and the radicalism of the Republicans alike in the new Constitutional Union Party and entered this four-way race with John Bell of Tennessee as their candidate.⁷

Probably the most important of the 1860 national conventions, since it more closely than the others represented the thinking of, at least, the North, was that of the Republican Party, held in the "Wigwam" in Chicago.

⁶Binkley, op. cit., p. 217.

⁷Ibid., pp. 203-204.

This group included followers of almost every political idea then in vogue in the North. There was, as is usual at a political convention, a plentiful supply of willing candidates. The presence of numerous favorite son candidates divided the convention vote in such a manner that there were no outstanding pre-convention potential nominees with sufficient pledged votes to control the convention. It did not appear possible that this widely divided group could get together and collectively name a candidate with anything resembling majority support. To the contrary, however, it took little time to designate Lincoln as the candidate of the party for 1860, and as the second Republican to run for the office of president.⁸

The campaign pattern was now formed with Lincoln representing the North, Breckinridge the slave-holding South, Douglas the Northern Democrats and a small middle-of-the-road group who still hoped for a compromise with the other factions of their party, and John Bell endeavoring to gain supporters mostly from Douglas men, but with less popular appeal than Douglas himself.

It is often said that the states of the South were greatly alarmed and so fearful of the results of

Binkley, *op. cit.*, pp. 228-230.

the impending election that secession had, by the summer of 1860, become a common topic of discussion and debate in those states. The legislature of South Carolina remained in session to await results of the election so as to be prepared for quick action on the question.⁹ According to John A. Logan, the South actually was pleased and elated over the results of the election. Now, at last, they had an issue of sufficient propaganda value to solidify thinking in favor of secession; one by one the states which were to make up the Confederacy announced their decision to secede.¹⁰

At this point it might prove profitable to contrast Buchanan's constitutional interpretation of the question of secession with that of Lincoln. In his Inaugural Address Lincoln at least inferred that he believed that the president had the power necessary to prevent secession.¹¹ Buchanan, to the contrary, although acknowledging the illegality of secession, assumed that as president he had no constitutional authority to prevent it. This seems unusual in the light of the fact

⁹Ibid., p. 235.

¹⁰John A. Logan, The Great Conspiracy (New York: A. R. Hart & Co., 1886), pp. 99-101.

¹¹See pp. 50-51 of this work.

that the oath taken by each president to "preserve, protect and defend the Constitution" and the provision of the Constitution charging the president with the enforcement of all laws of the central government are very specific.

After the election some political leaders made efforts to secure the opinion of Lincoln concerning the constitutional interpretation of Buchanan but Lincoln refused to comment. If these politicians had taken cognizance of the past record of Lincoln they would have been able to find most of the answers to their questions. The replies which Lincoln finally did make were so non-committal, vague and contradictory that some began to profess fears for his sanity. Lincoln saved his important statements for his inaugural address.¹²

By February of 1861 Lincoln was thought by many persons, including some who were later members of his own Cabinet, to be completely incompetent. He had never controlled or managed a large organization and he had never been in any position to exercise great power. This led Seward actually to propose that the Cabinet

¹²Carl Sandburg, Abraham Lincoln; The War Years (New York: Harcourt, Brace & Co., 1939) Vol. I, Ch. 2, ad passum.

do the real work of the president and Lincoln be simply a figurehead to sign the papers.¹³ It is indicative of Lincoln's nature, and political skill, that Seward, for his political value and for his knowledge of government, was retained as Secretary of State during the whole of the administration even though he continually caused the president much anxiety, and materially complicated the already difficult situation in which Lincoln found himself.

The personal attitude of Seward, which was one of opposition, and other factors caused the Lincoln administration to start off in utter confusion. In fact, the confusion actually began shortly after the election and prior to the inauguration of Lincoln. The previous administration had given no serious consideration to the possibility of secession, or other related problems. Seven Southern states had already left the Union, Federal officers in the South had resigned, and dissension and doubt within the government itself had become a major problem by the time Lincoln assumed control of the Union.

¹³Basler, op. cit., "Some thoughts for the President's consideration by Wm. H. Seward," Vol. IV, p. 317 below. Lincoln's answer, Vol. IV, pp. 316-317.

To evaluate the available material concerning the period between 1858 to 1860 is somewhat difficult because of several apparent inconsistencies and important omissions. Although the idea that the Constitution was not the highest authority appeared to be developing, Lincoln, nevertheless, did contradict this when he said that Congress must implement the Constitution. His refusal to accept the Dred Scott Decision as a political rule adds to the complexity of evaluation. This contradiction was not as great as it might seem, since this legalist view of Congress and the Constitution was part of the political debates with Douglas and a more moralistic view might have been dangerous politically, a fact which Lincoln must have realized. This would also apply to many of the other statements made during these famous debates. The basic question raised in this chapter is, however, did Lincoln consider the Declaration of Independence as a legal document or as a moral guide?

To this point the material surveyed has pointed only toward a conclusion. Lincoln had little opportunity to act and rarely did he say what he would do in any given situation, nor did he speak of basic philosophy. One might conclude that he was unaware of any philosophical background of government if it were

not for a statement found in the New Haven, Connecticut, Paladium, quoting him as saying, "No policy that does not rest upon some philosophical opinion can be permanently maintained."¹⁴

Lincoln, in 1861, was thrust into a highly complex situation, and no man, regardless of his station or ability, is free to act without consideration for the circumstances in which he finds himself. Many of Lincoln's decisions were dictated to him by a sequence of events over which he had little or no control. Thus, an overall view of Lincoln must be taken and care should be exercised not to place too much emphasis upon any one act or event.

¹⁴Lapsley, op. cit., Vol. V, p. 165.

CHAPTER VI

LINCOLN: WARTIME PRESIDENT

On March 4, 1861 Lincoln delivered his inaugural address and stated clearly for the first time the manner in which he proposed to deal with the state of affairs with which he was confronted. It should be noted that the address as given differed from the original draft in several places. Some of these alterations were suggested by Seward for the purpose of "toning down" the stronger passages.

The inaugural address made it clear to most people that Lincoln, himself, intended to run the government, but some Southern leaders and even a few in the North were slow to realize that the president was not the weakling or incompetent they had supposed. In the address Lincoln touched on many subjects but the following quotation from the address is sufficient to show the moralistic concepts encountered in this document.

I hold that, in contemplation of universal law and of the Constitution, the Union of the States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all expressed provisions of our national Constitution and the Union will endure forever -- it being impossible to destroy it except by some actions not provided for in the instrument itself.

Again, if the United States be not a government proper, but an association in the nature of a contract merely, can it, as a contract, be peaceably unmade, be less than all the parties who made it? One party to a contract may violate it--break it, so to speak; but does it not require all to lawfully¹ rescind it?

Descending from these general principles we find the proposition that in legal contemplation the Union is perpetual, confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was nurtured and continued by the Declaration of Independence in 1776. It was further nurtured, and the fate of all the then thirteen states expressly plighted and engaged that it should be perpetual,² by the Articles of Confederation in 1778. And, finally in 1787, one of the declared objects for ordaining and establishing the Constitution was "to form a more perfect Union."³

In this speech Lincoln regarded the Constitution not as being the supreme instrument of the government, but rather the Union being above the Constitution. Since the Constitution is legally the basis for government, the opinions expressed here could hardly be construed to represent legalism. On the other hand these views were clearly not opportunistic, since it was not necessary

¹"Lawfully" is not in first draft. Added by Lincoln in second draft. See: Basler, op. cit., Vol. IV, p. 253.

²First draft read "and expressly declared and pledged, to be perpetual..." Ibid., Vol. IV, p. 253.

³Ibid., Vol. IV, p. 253.

nor desirable to please any one with them -- nothing he could say would please the South, and the North was more or less bound to accept almost anything he said. Here for one of the few times was a speech which was almost entirely the thinking of Lincoln; that is, it was conceived without political pressure or motive.

The month of March, 1861 contained little which would tend to reveal the moral philosophy of Lincoln. It served as a period of adjustment for him and his new administration. In the following months events took a more rapid pace. On April 15 Abraham Lincoln, as Commander in Chief of the Armed Forces, called for 75,000 volunteers to put down an "insurrection," as Lincoln termed it, in the South.⁴ This action was taken without prior authorization from Congress. On April 19 another proclamation was issued which declared most of the South to be in a state of blockade, again without Congressional approval.⁵ Continuing, in the month of May, more such presidential proclamations were made. No legalist could have condoned such presidential action, and it is unlikely that an opportunist would have chosen

⁴James D. Richardson, editor, Messages and Papers of the Presidents (New York: Bureau of National Literature, 1897) Vol. VII, pp. 3214-3215.

⁵Ibid., pp. 3215-3216.

a course of this nature, with so many potential pitfalls.

One major problem which arose during the month of April, 1861 was what would become of the State of Maryland? The legislature was due to convene April 26, and it was known that a proposal to secede, and arm the state against the Union, was to be considered. It was recommended to Lincoln by his military advisers that he command the Army to prevent the Maryland Legislature from assembling. Lincoln would not agree to this. He expressed his view in this matter as follows:

First. They have a clearly legal right to assemble and we cannot know in advance their action will not be lawful and peaceful, and if we wait until they shall have acted their arrest or dispersion shall not lessen the effect of their action.

Secondly. We cannot permanently prevent their action. If we arrest them we cannot long hold them as prisoners and when liberated they will immediately reassemble and take their action precisely the same as if we simply dispersed them...

I therefore conclude that it is only left to the commanding general to watch and wait their action, which if it shall be to arm their people against the United States, he [the commanding general] is to use the most prompt and efficient means to counteract, even, if necessary, to the bombardment of their cities and in extreme necessity, the suspension of the writ of habeas corpus.⁶

⁶Richardson, op. cit., pp. 3218-3219. Brackets in original.

The preceding could be considered as either opportunism or as moralism, depending on the interpretation placed upon it. By itself it appears to be simply a device to dodge or postpone an unpleasant situation; however, in relation to other events of the time it seems more probable that it was to Lincoln the most efficacious means of peaceably, if possible, preventing the city of Washington from being isolated. This statement, therefore, is not inconsistent with moralism, since it was a necessary measure directed toward the preservation of the government, and Lincoln realized that moral philosophy must be coupled with action or, as in this case, all might be lost.

On April 27, 1861 Lincoln issued a proclamation by which he suspended the writ of habeas corpus, in limited areas, although there was no precedent in American history for this action.⁷ Lincoln not only made the limited suspension apply to certain geographical areas but he also followed with an order to Lieutenant General Scott:

You and any officer you may designate will in your discretion, suspend the writ of habeas corpus so far as may relate to Major General Chase lately of the Engineer

⁷ Ibid., p. 3219.

Corps of the Army of the United States, now alleged to be guilty of treasonable practices against the government.⁸

Whether Lincoln wholeheartedly supported the policy of military arrests may be questioned. A memorandum dated May 17, 1861, stated in part, "Unless the necessity for the arbitrary arrests is manifest, and urgent, I prefer they should cease."⁹ However, Lincoln wrote Hannibal Hamlin on April 28, 1862:

Sir; In answer to the Resolution of the Senate in relation to General Charles Stone, I respectfully state that he was arrested and imprisoned under my authority and with my sanction, upon evidence which, whether he be guilty or innocent, required in my judgment such proceedings to be had against him, for the safety and welfare of the Country.¹⁰

At a special session of Congress on July 4, 1861, Lincoln, in his message to the group, undertook to justify the position he had already taken, and asked Congressional approval of his action. As to the call for militia and the blockade, Lincoln voiced the opinion that these steps were strictly legal ones. Then he said:

⁸Ibid., p. 3220.

⁹Lapsley, op. cit., Vol. IV, p. 372.

¹⁰Ibid., Vol. V, p. 201.

Soon after the first call for militia, it was considered a duty to authorize the commanding general in proper cases, according to his discretion, to suspend the privilege of the writ of habeas corpus, as, in other words, to arrest and detain, without resort to the ordinary processes and terms of law, such individuals as he might deem dangerous to the public safety. This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what had been done under it are questioned, and the attention of the country has been called to the proposition that one who has sworn to 'take care that the laws be faithfully executed' should not himself violate them. Of course some consideration was given to the question of power and propriety before this matter was acted upon. The whole of the laws which were required to be faithfully executed were being resisted and failing of execution in nearly one third of the states. Must they be allowed to finally fail of execution, even had it been perfectly clear that by the use of the means necessary to their execution some single law, made in such extreme tenderness of the citizens' liberty that, practically, it relieves more of the guilty than of the innocent, should to a very limited extent be violated? To state the question more directly, are all the laws but one to go unexecuted, and the government itself go to pieces lest that one be violated? Even in such a case, would not the official oath be broken if the government should be overthrown when it was believed that disregarding the single law would tend to preserve it.¹¹

Lincoln continued his message by stating that he believed that the suspension of the writ of habeas corpus was constitutional.

¹¹Lapsley, op. cit., Vol. V. pp. 326-328.

Other calls were made for volunteers... and also for large additions to the regular army and navy. These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and necessity, trusting then, as now, that Congress would readily ratify them. It is believed that nothing had been done beyond the Constitutional competency of Congress.¹²

Lincoln was of the definite opinion that these actions were not only essential but constitutional as well. His message defended his stand that the President had the authority to suspend the writ of habeas corpus against the arguments of his critics who were claiming that this was strictly a power of Congress. As a matter of fact, the Constitution does not give this power specifically to either of the two but simply states that it exists. It was on this point that Lincoln based his action.

From the foregoing it can be said that Lincoln did not regard the writ of habeas corpus as a legal right, but only as a privilege. He invariably used the term "privilege" when speaking of the writ. Whether Lincoln made a distinction between a right and a privilege he did not here make clear. In the light of his previous writings it is possible that the use of the

¹²Richardson, op. cit., pp. 3221-3232.

word "privilege" was deliberate and was intended to express a concept distinct from "right."

In speaking of the Southern philosophy of our government Lincoln said:

This sophism derives much, perhaps the whole, of its currency from the assumption that there is some omnipotent and sacred supremacy pertaining to a State -- to each State of our Federal Union. Our States have neither more nor less power than that reserved to them in the Union by the Constitution, no one of them ever having been a State out of the Union. The original ones passed into the Union even before they cast off their British colonial dependence, and the new ones each came into the Union directly from a condition of dependence, excepting Texas; and even Texas, in its temporary independence, was never designated a State. The new ones only took the designation of States on coming into the Union, while that name was first adopted for the old ones in and by the Declaration of Independence. Therein the "United Colonies" were declared to be "free and independent States;" but even then the object plainly was not to declare their independence of one another or of the Union, but directly the contrary, as their mutual pledge and their mutual action before, at the time, and afterwards abundantly show. The expressed plighting of faith by each and all of the original thirteen in the Articles of Confederation, two years later, that the Union shall be perpetual is most conclusive. Having never been States, either in substance or in name, outside of the Union, whence this magical omnipotence of "State Rights," asserting a claim of power to lawfully destroy the Union itself? Much is said about the "sovereignty" of the States, but the word even is not in the National Constitution, nor, as is believed, in any of the State constitutions. What is "sover-

eighty" in the political sense of the term? Would it be far wrong to define it "a political community without a political superior"? Tested by this, no one of our States, except Texas, was ever a sovereignty; and even Texas gave up the character on coming into the Union, by which act she acknowledged the Constitution of the United States and the laws and treaties of the United States made in pursuance of the Constitution to be for her the supreme law of the land. The States have their status in the Union, and they have no other legal status. If they break from this, they can only do so against law and by revolution. The Union, and not themselves separately, procured their independence and their liberty. By conquest or purchase the Union gave each of them whatever of independence and liberty it has. The Union is older than any of the States, and, in fact, it created them as States. Originally some dependent colonies made the Union, and in turn the Union threw off their old dependence for them and made them States, such as they are. Not one of them ever had a State constitution independent of the Union. Of course, it is not forgotten that all new States framed their constitutions before they entered the Union, nevertheless dependent upon and preparatory to coming into the Union.

Unquestionably the States have the powers and rights reserved to them in and by the National Constitution; but among these surely are not included all conceivable powers, however mischievous or destructive, but at most such only as were known in the world at the time as governmental powers; and certainly a power to destroy the Government itself had never been known as a governmental -- as a merely administrative power. This relative matter of national power and State rights, as a principle, is no other than the principle of generality and locality. Whatever, concerns the whole should be confined to the whole -- to the General Government -- while whatever concerns only the State should be left exclusively to the State. This is all there is of original principle about it. Whether the National Constitution in defining boundaries between the two has applied the

principle with exact accuracy is not to be questioned. We are all bound by that defining without question.

What is now combated is the position that secession is consistent with the Constitution -- is lawful and peaceful. It is not contended that there is any express law for it, and nothing should ever be implied as law which leads to unjust or absurd consequences. The nation purchased with money the countries out of which several of these States were formed. Is it just that they shall go off without leave and without refunding? The nation paid very large sums (in the aggregate, I believe, nearly a hundred millions) to relieve Florida of the aboriginal tribes. Is it just that she shall now be off without consent or without making any return? The nation is now in debt for money applied to the benefit of these so-called seceding States in common with the rest. Is it just either that creditors shall go unpaid or the remaining States pay the whole? A part of the present national debt was contracted to pay the old debts of Texas. Is it just that she shall leave and pay no part of this herself?

Again: If one State may secede, so may another; and when all shall have seceded none is left to pay the debts. Is this quite just to creditors? Did we notify them of this sage view of ours when we borrowed their money? If we now recognize this doctrine by allowing the seceders to go in peace, it is difficult to see what we can do if others choose to go or to extort terms upon which they will promise to remain.

The seceders insist that our Constitution admits of secession. They have assumed to make a national constitution of their own, in which of necessity they have either discarded or retained the right of secession, as they insist it exists in ours. If they have discarded it, they thereby admit that on principle it ought not to be in ours. If they have retained it, by their own construction of ours they show that to be consistent they must secede from one another whenever they shall find it the easiest way of settling their debts or effecting any

other selfish or unjust object. The principle itself is one of disintegration, and upon which no government can possibly endure.

If all the States save one should assert the power to drive that one out of the Union, it is presumed the whole class of seceder politicians would at once deny the power and denounce the act as the greatest outrage upon State rights. But suppose that precisely the same act, instead of being called "driving the one out," should be called "the seceding of the others from that one," it would be exactly what the seceders claim to do, unless, indeed, they make the point that the one, because it is a minority, may rightfully do what the others, because they are a majority, may not rightfully do. These politicians are subtle and profound on the rights of minorities. They are not partial to that power which made the Constitution and speaks from the preamble, calling itself "we, the people."¹³

Thus, it is seen that Lincoln believed that the States are not, nor ever had been, sovereign. From the tone of his argument it is obvious that Lincoln also believed that sovereignty was indivisible, and that the State had really been created by the Union. This view might be moralist or legalist according to the interpretation placed on it, yet it seems that few legalists would have used such an argument.

It is important to note that Lincoln believed that there was a limit on the power of the states, more than that as simply stated in the Constitution. This

¹³Richardson, op. cit., pp. 3228-3230.

idea should be considered moralist since he said,
"...nothing should be implied as law which leads to
unjust or absurd consequences."¹⁴

This special message on secession contained more material than any other single source on Lincoln's political ideas. It must be borne in mind, nevertheless, that this message was written and delivered under the stress of extremely unusual conditions.

Just how Lincoln would have conducted the office of the President in normal times, if such a condition as normal ever prevailed, could only be a guess at the best. From the heated politics on the issue of slavery in Southern Illinois to the office of the President of the United States during the Civil War was certainly not a fair test of the man's true beliefs. Perhaps his drastic, some said dictatorial, actions would have been tempered under less trying circumstances.

Lincoln continued throughout the war to use ways and means of doubtful or questionable legal authority; specifically, further suspension of the writ of habeas corpus, and the use of military courts for civilians.

¹⁴Ibid.

It is reported also, for example, that a mayor of Baltimore who was actually loyal to the Union but who was accused of Southern sympathies was arrested by the military and confined for over a year in jail.¹⁵

In Maryland, according to reports, a judge who requested a grand jury to investigate illegal acts of public officials was arrested and, some say, badly beaten while court was in session and later imprisoned for six months. The most famous case, however, involving the denial of civil rights and questionable legal procedure, is that of Vallandigham, of Ohio. Of this case it is known that Lincoln had personal knowledge.¹⁶

In the case of Ex parte Milligan, the Supreme Court ruled that where civil courts were open and functioning they must be used for civilians.¹⁷ This decision came more than a year after the war was over. However, the Supreme Court in most instances supported

¹⁵S. E. Morison and H. S. Commager, The Growth of The American Republic (New York: Oxford University Press, 1942) Vol. I, p. 700.

¹⁶Binkley, op. cit., pp. 265-267.

¹⁷Ex parte Milligan, 4 Wallace 2. See also Charles Fairman, American Constitutional Decisions (New York: Holt & Co., 1950) pp. 271-292, for general legal discussion of this subject.

the actions of Lincoln.

In a well known incident Lincoln directed the Treasury to advance \$2,500,000 to John A. Dix, George Oredike and Richard H. Blackford, all of New York. Congress had not given prior approval to this expenditure of funds.¹⁸ On June 30, 1862, the House of Representatives passed the following resolution in reference to a similar case:

Resolved; That Simon Cameron, late Secretary of War, by investing Alexander Cummings with control of large sums of the public money in authority to purchase military supplies without restriction, without securing from him any guarantee for the faithful performance of his duties, had adopted a policy highly injurious to the public service and deserving the censure of the House.¹⁹

Here administration policy received censure, and not sanction, even though the legal aspects of the situation were not fully discussed. On May 26, 1864, Lincoln referred to this resolution by the House, quoted above, and undertook a defense of Secretary of War Cameron's actions. The best explanation of this defense is found in a letter reporting a conversation between

¹⁸James G. Randall, Constitutional Problems Under Lincoln (New York: D. Appleton & Co., 1926) pp. 36-37.

¹⁹Richardson, op. cit., p. 3280.

Lincoln, Governor Bramlett, Senator Dixon, and A. G.

Hodges. In this letter Lincoln wrote:

I felt that measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the Constitution, through the preservation of the nation. Right or wrong, I assume this ground, and now avow it.²⁰

On July 17, 1862, Lincoln sent to Congress a message vetoing a bill freeing slaves of those actively in rebellion against the Union.

I think there is an unfortunate form of expression, rather than a substantial objection, in this, it is startling to say that Congress can free a slave within a state; and yet if it were said that the ownership had first been transferred to the nation, and that Congress had liberated him, the difficulty would at once vanish. And this is the real case.²¹

What such a line of logic, if it be logic, was expected to accomplish is difficult to determine. This would seem to illustrate legalism in its extreme form. Circumstances probably caused Lincoln to make this statement and accounts for its unexpected, or un-Lincoln like nature.

The year 1862 was difficult for Lincoln, political

²⁰Lapsley, op. cit., Vol. VII, p. 117.

²¹Basler, op. cit., Vol. V, p. 329.

and military difficulties caused him much anxiety. Attorney General Bates wrote a note which is now in the papers of John G. Nicolay which described Lincoln's troubled state of mind.

At the opening of the Council [September 2, 1862], he [Lincoln] seemed wrung by the bitter anguish -- said he felt almost ready to hang himself...²²

At about the same time, September of 1862, Lincoln wrote a brief essay on Divine Will.

The will of God prevails, In great contests each party claims to act in accordance with the will of God. Both may be, and one must be wrong. God cannot be for, and against the same thing at the same time. In the present civil war it is quite possible that God's purpose is something different from the purpose of either party -- and yet human instrumentalities, working just as they do, are the best adaptation to effect His purpose. I am almost ready to say this is probably true -- that God wills this contest, and wills that it shall not end yet. By His mere quiet power, on the minds of the now contestants, He could have either saved or destroyed the Union without a human contest. Yet the contest began. And having begun He could give final victory to either side any day. Yet the contest proceeds.²³

Nicolay and Hay stated that "it was not written to be seen of men."²⁴ One might wonder if this essay by

²²Ibid., Vol. V, p. 386, below. Brackets by editor.

²³Basler, op. cit., Vol. V, pp. 403-404.

²⁴Nicolay and Hay, op. cit., Vol. VI, pp. 341-342.

Lincoln be related to the observation of Bates, quoted previously.

Lincoln had always believed the Union to be superior to the states and on several occasions sanctioned interference in state affairs. Maryland had become a problem, because of its Southern sympathies and its geographic location enabling it to cut off Washington from the North. This is the best example of interference in state affairs on the part of the Federal Government, sanctioned by Lincoln.

In the Maryland election of November, 1863, Lincoln was in favor of preventing disloyal men from voting or running for office, although he did instruct General Schenck to prevent any violence from either side.

That all provost marshalls and other military officers do prevent all disturbance and violence at or about the polls, whether offered by such persons as above described [disloyal], or any other person or persons whomsoever.²⁵

One other act, not specifically provided for by the Constitution, was the creation of the State of West Virginia. The area that is now West Virginia, that is, the part of the original State of Virginia which lies for

²⁵Lapsley, op. cit., Vol. VII, pp. 12-13.

the most part beyond the crest of the Allegheny Mountains, had frequently been on terms of opposition to the people of the tidewater belt. There had been, through the years, much friction between these areas. When, in 1861, Virginia voted for secession, the people of what is now West Virginia, perhaps out of loyalty to the Union or perhaps in opposition to the tidewater belt, remained Unionists. On Thursday, June 13, 1861, a convention, held at Wheeling, voted to keep the western part of Virginia in the Union.

Lincoln was troubled over this issue, and requested the opinion of his Cabinet.

Gentlemen of the Cabinet A bill for an act entitled "An Act for the admission of the State of West-Virginia into the Union, and other purposes" has passed the House of Representatives, and the Senate, has been duly presented to me for my action.

I respectfully ask of each [of] you an opinion in writing, on the following questions, to wit:

- 1st. Is the said Act constitutional?
- 2nd. Is the said Act expedient?²⁶

In an undated fragment (dated December 31, 1862, by Nicolay and Hay, the day of the admission of West Virginia) Lincoln attempted to answer his own questions. To the first there seemed to be much doubt in Lincoln's

²⁶Basler, op. cit., Vol. VI, p. 17.

mind, for he gave no definite answer. He did, nevertheless, try, through a confused rationalization, to justify the Act on Constitutional grounds. The second question was answered more definitely; he clearly believed the Act to be expedient. His overall conclusion seems to place the expediency of the act in a more important category than its constitutionality.²⁷

In a public statement he summed up the situation in this manner:

The division of a State is dreadful as a precedent. But a measure made expedient by a war, is no precedent for times of peace. It is said that the admission of West-Virginia is secession, and tolerated only because it is our secession. Well, if we call it by that name, there is still difference enough between secession against the Constitution,²⁸ and secession in favor of the Constitution.

This action on the part of Lincoln seems somewhat similar to the concept expressed in his War with Mexico speech of 1848, quoted earlier in this work,²⁹ the major difference being that here he stressed expediency rather than moral right. Lincoln generally had contended, nevertheless, that secession was illegal and was to be considered as rebellion, and therefore the seceded states

²⁷Ibid., Vol. VI, p. 17.

²⁸Ibid., Vol. IV, p. 28.

²⁹See p. 25 of this work.

had never left the Union.³⁰ This is in apparent contradiction with both the division of Virginia and the speech of 1848. This inconsistency may have been due to the pressure of events or more probably the real explanation is that there was in his mind a distinction between political revolution in general and the special case of the Civil War.

The war years were characterized by extreme necessity. Slow, deliberate action was impossible and it is well known that under such circumstances quick decision, even with greater error, is a necessary evil. The actions of Lincoln were not dictated by hasty or immature judgment, but, nevertheless, the pressure of events forced him to act without as careful consideration as he would have desired. He described the forces acting upon him in a letter to A. G. Hodges of Frankfort, Kentucky, April 4, 1864, as follows:

I claim not to have controlled events, but confess plainly that events have controlled me. Now, at the end of three years struggle, the nation's condition is not what either party, or any man, devised or expected. God alone can claim it.³¹

³⁰See: Texas vs. White (1869) 7 Wallace 700. Discussed in Robert G. Cushman, Leading Constitutional Decisions (New York: Crofts & Co., 1929) pp. 29-33.

³¹Lapsley, op. cit., Vol. VIII, p. 118.

Publicly Lincoln stated that his purpose was to preserve the Union, even, if necessary, by means unknown to the law, as has been seen from the excerpts quoted earlier. He defended this position in speeches, messages to Congress, and private correspondence, as being justified by the extreme conditions.

The usual impression of Lincoln in his conduct of the war is that "he never faltered in his conception of the purpose of the war...[it] was for him a war to preserve the Union."³² His personal feeling toward such proceedings as military arrests was not one of "right", but "expediency"; in fact, he would not have, as seen from earlier statements, sanctioned them at all in circumstances approaching normal conditions.

Thus, it should be obvious that the main purpose in the mind of Lincoln was much deeper than the simple preservation of a national government as such. The references to universal law as distinguished from that of the Constitution clearly indicates something in the basic ideas of Lincoln besides the question of simple legality -- a basic moral philosophy.

³²Morison and Commager, op. cit., Vol. I, p. 658.

Lincoln was opposed to the Radical Republican point of view; yet they both could agree on the maintenance of the Union, and the basic evil nature of slavery. This is of utmost significance, for Lincoln, at this time, was not against the use of decisive action to effect his policies. Therefore, Lincoln must have thought beyond the announced objectives of both himself and the Radicals. It was, for Lincoln, not a war just to preserve the Union, but a war to preserve something of which the Union formed a part.

CHAPTER VII

CONCLUSIONS

From the foregoing it is obvious that Lincoln was, on the surface, quite inconsistent as to the basis for his thinking and yet, after careful examination it is evident that there do exist some factors common to most of his speeches, writings, and actions. These may be summarized as follows:

I. He recognized that "necessity knows no law."¹ This concept can be expanded to include the forces of public opinion and political expediency.

II. He analyzed history and often used historical precedent, but seldom legal precedent, as the basis for his reasoning.²

III. He often rationalized. The basic beliefs behind his logic did not always appear in his writings and speeches.

IV. He believed in Divine Guidance and frequently mentioned this in private letters, notes and speeches.

V. He was emotional, even in some political and legal matters, which undoubtedly influenced him at times.

¹Basler, op. cit., Vol. V, p. 369. Letter to Governor Alexander Ramsey, of Minnesota, August 27, 1862.

²King, loc. cit.

He may have had an inferiority complex, at least in his early political career.

VI. He was a conservative; order and respect for law were to Lincoln important yet he recognized that change must take place.

VII. The Declaration of Independence and the Union were above the Constitution in the mind of Lincoln.

VIII. Lincoln knew the Constitution and its applications very well and, at times, he wrote brilliant legal discussions.

Interpretation of the preceding categories of the thinking of Lincoln, and their relation to moralism, require some additional comments.

Any man who enters politics does so with the definite intention of gaining public office for himself or his colleagues. Sub-motives are many; some of these are, personal glory and public prominence, profit, or promoting of the public welfare, but all are dependent upon the securing and holding of office. It is obvious that Lincoln was aware of political considerations and was undoubtedly, at times, in his life, greatly influenced by them. In order to pursue a career in politics he had to belong to a party and of necessity had to, superficially at least, embrace its general doctrines. He was well aware of the fact that a politician cannot stand alone and at the

same time be successful.

The conservatism of Lincoln in his political philosophy also requires a short explanation. When he wrote, "legislation and adjudication must follow and conform to the progress of society,"³ he did not intend to justify great or sudden change. His attitude toward slavery and its elimination serves well to illustrate this point. All know that he condemned slavery, but he was not an abolitionist. To him the radical plans of the abolitionist were as unsound as was the institution of slavery itself.

Since all of the material concerning Lincoln fits into one or more of the eight categories listed at the beginning of this conclusion, the problem becomes one of finding a consistent basis for all eight.

First, it is possible to eliminate legalism. A true legalist could not possibly admit that "necessity knows no law," or could he place anything in a superior position to the Constitution. This would be untenable since the Constitution recognizes nothing, save the people, above it. It was written and adopted in, using a strict definition, a revolutionary manner, i.e., "by means unknown to the law." If it is to be admitted as the law, it must be the whole basis of the law, by its

³Lapsley, op. cit., Vol. V, p. 20.

very nature and method of creation.

The call for troops without Congressional approval (in writing to William Herndon he said that the war making power was the possession of Congress alone [see page 28 of this work], the suspension of the writ of habeas corpus, the spending of unauthorized funds, and the approval of the admission of West Virginia, all tend to eliminate any possibility of Lincoln being termed a legalist.

Two possibilities remain--opportunism and moralism. The available material indicative of opportunism is either inconclusive or tends to refute any conclusion which would label Lincoln an opportunist. An opportunist, for example, probably would not have referred to events as being shaped by Divine Will in a document intended to be seen only by the writer himself,⁴ and an opportunist certainly would not have opposed the Radicals, as did Lincoln in 1864, to the extent of risking the highest office in the land.

While neither opportunism nor legalism adequately explain all the factors outlined before, moralism--political action based on some individual ethical code--does. So far the proof of the conclusion that Lincoln was a moralist has been of a negative nature, that is, there is nothing

⁴See p. 66 of this work.

to disprove it. On the positive side reasoning must be more abstract, since it is indirect, with the exception of his belief in Divine Guidance.

Lincoln's belief in Divine Guidance would perhaps be enough to establish him as a moralist, but there obviously exists something beyond this. There is in the works and acts of Lincoln, a series of, for want of a better term, overtones of a deep philosophical nature. These overtones form a consistent thread of continuity through all of his political life. Due to his emotional make-up he would not, or could not, express his true concept of life or the complex three-fold relation between the individual, government, and God, although he seemed to think about this subject many times during his life.

The Constitution, and all law, to Lincoln was a manifestation of the dignity of the human being, even if imperfect. To lose what had already been accomplished was one of the greatest fears in the mind of Lincoln. This was the reason for his appeals for adherence to the Constitution and at the same time would justify departure from it when circumstances demanded.

In summary it can be truly said that Lincoln believed in the dignity of the human being and the supremacy of Divine Law. Mundane law was created to implement

this; when it did not, then it should be altered or in extreme circumstances be ignored. The only conclusion possible is that Lincoln's attitude and actions were, on the whole, dictated by moralistic, rather than by opportunistic or legalistic considerations.

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