

“Dictator Lincoln”: Surveying Lincoln and the Constitution

The Civil War was a constitutional crisis. It tested the ability of the Constitution to survive a direct threat to one of its fundamental elements, the peaceful process of changing governments by elections rather than bloodshed. Edmund Burke once said that constitutional discussion was a sure sign of an ill governed state. But surely the capacity of the United States to create a Constitution that survived intense crisis suggests that Burke was wrong. There was much to discuss about powers and liberties before, during, and after the war, and without this discussion the Constitution would not endure as the governing document of the United States (1).

The most compelling of the discussants was Abraham Lincoln. His eloquence and his insights combined to provide arguments about equality, democracy, and the Constitution, still known around the world. On June 19, 2006 a Google search revealed that there were 83,800 Internet sites which mention Bush, Lincoln and war powers. As the search suggests, the topic of Lincoln and the Constitution is an abiding one and significant in the life of the nation. It is important to know what thoughtful people have said about his relationship to this nation's fundamental law.

We generally think of constitutional argument as conservative, a debate over the rules, and how to obey those rules, rather than disobeying them. But from the beginning the union crisis raised fundamental and revolutionary concerns. White southerners claimed that their right to survive as a new nation rested on their constitutional right to nullify federal law and to secede. Lincoln met those constitutional declarations with constitutional rebuttals, designed to inspire his audiences to reject and defy those claims and, at the last, to give their lives to preserve the Constitution.

Most historians applaud Lincoln's constitutional argument. But David Zarefsky, a scholar of communications, raised the interesting point that when Lincoln and Douglas invoked the Constitution they raised the stakes of their debate from a matter of policy to a matter of truth. Rather than simply debating which laws might have been chosen by rational lawmakers, the two men threw the hallowed founders of the nation and the sacred Ark of the Covenant at each other. Zarefsky here echoes Daniel Walker Howe's observation that "If one calls an opponent's proposals unconstitutional it makes them seem more dangerous and illegitimate than if they were simply unwise" (3).

Practically from the day he took office, however, Lincoln was called a

dictator in one form or another. The event that inspired and legitimated these accusations was Lincoln's clash with the Chief Justice of the United States Supreme Court Roger B. Taney over the fate of Confederate sympathizer John Merryman. On April 27, 1861 Lincoln had authorized the suspension of the privilege of the writ of habeas corpus in the area between Philadelphia and Washington, DC. Merryman was arrested by the army while trying to burn bridges, cut telegraph lines and organize a pro-Confederate militia. His lawyer asked Justice Taney to issue a writ of habeas corpus to free his client. But the officer holding Merryman rejected the writ and Merryman remained in jail. Taney wrote an extensive and stern opinion explaining why Lincoln had violated the Constitution. "The people of the United States are no longer a government of laws," Taney said, "but every citizen holds life liberty and property at the will and pleasure of the army official in whose military District he may happen to be found" (5).

Taney's opinion legitimized opposition nationwide. Southern states competed with northern Democrats attacking Lincoln's "tyranny." Alexander Stephens claimed that Lincoln had "hoisted the banner of consolidation" to destroy the rights of states. By late 1862 Benjamin Curtis, a former justice of the United States Supreme Court, and one of the dissenters in the *Dred Scott* case, published a pamphlet that accused Lincoln of assuming dictatorial power. The *London Times* agreed, especially after Lincoln issued the Emancipation Proclamation; here was a sign, the *Times* said, of the "absolute despotism of the present government in Washington." The Democratic Party sprayed charges of tyranny all over its newspapers, pamphlets, and speeches. Democrats quickly saw a boon to their cause. As one put it, "The most notable way of impeding [the Republicans] is to knock them down with 'the Constitution' every time they rise to the surface and begin to swim out" (6).

The passage of time did not eliminate the accusation. In 1890 Lord Bryce thought of Roman emperors and Oliver Cromwell when he assessed Lincoln's presidency. When American scholars began studying Lincoln's actions, they accepted the idea of a dictatorship with various degrees of approval. In 1897, William Archibald Dunning, known best for his hostility toward Reconstruction, forecast that hostility by speaking of a temporary dictatorship with the powers of government "concentrated in a single department," the presidency. James Ford Rhodes saw constitutional dictatorship in the Lincoln administration and dis-

Lincoln acted quickly and decisively, and alone, for ten weeks. Clearly this was a time when the Constitution's three branches of government were collapsed into one. Three days after the firing on Fort Sumter, Lincoln called for Congress to meet in a special session. But it was a special session that would be held on July 4, 1861. Meanwhile Lincoln set the country on the road to war.

approved of action suppressing newspapers and of civil liberty restrictions but pointed out that Lincoln's "loyal and unselfish nature" kept him from the excesses of Napoleon or Caesar. John W. Burgess justified Lincoln's extraordinary powers by speaking of the spirit of the Constitution which allowed dictatorial power in times of national crisis.

In the aftermath of World War I James G. Randall produced what would be the standard study of Lincoln and the Constitution, *Constitutional Problems under Lincoln* (1926). A scholar deeply devoted to the president, Randall wrote that if Lincoln was a dictator he was a "benevolent dictator." Unlike other dictators Lincoln had used his extraordinary power in behalf of democracy, not to overthrow it. By the time Randall issued a revised version of *Constitutional Problems* in 1951 the world had experienced Hitler and Mussolini and Stalin, and the Lincoln scholar was fed up with the accusation: "That Lincoln was a strong executive does not of course signify that he was a dictator Since the word 'dictator' suggests Hitler or other totalitarian rulers the contrast between their hideous methods and those of Lincoln is so evident that it needs no comment" (7).

World War II and the subsequent civil rights movement profoundly affected scholarship on Lincoln and the Constitution. The war itself showed the beneficial effects of national power to defeat real dictatorships. Political scientist Clinton Rossiter wrote a comparative study of crisis governments during war and placed Lincoln's power alongside leaders in Germany, France, England and the United States. He approved of supreme unchecked executive power in times of crisis. The fact that he was talking about Lincoln, of course, made the idea of "constitutional dictatorship" more acceptable (8).

Civil rights gained momentum from the war too. Reaction to the Japanese internment increased sensitivity on racial matters. Defeat of the Nazis and their despicable racial policies undercut the authority of American racism. The lawyers in the case of *Brown v. Board of Education* enlisted the efforts of constitutional historian Alfred Kelley and other respected historians while challenging racial segregation. Some scholars participated in the March on Selma, Alabama. In this environment scholars critical of Lincoln moved to the margins of historiography. The field of constitutional history came to be dominated by a brigade of Lincoln defenders (9).

Those on the margins occasionally spoke out. Scholars and authors of the "New Left" criticized Lincoln for his tardiness in emancipation at the same time that they subordinated his importance in comparison to actions by ordinary men and women. Dwight G. Anderson, another political scientist, brought a psychological spin to a New Left analysis of dictator Lincoln. The president felt compelled to overthrow the Framers' system so that could achieve lasting fame. He created a new Union which he made into a political religion. In 1968, reflecting reaction to the Vietnam War, political scientist, Gottfried Dietze described how Lincoln increased his powers in wartime until he became "an omnipotent, national executive who as spokesman for the people might consider himself entitled to do whatever he felt was good for the nation" (10). Such criticism could provoke the pro-Lincoln brigade to the president's defense. But with one exception this argument seldom focused on constitutional questions.

A collection of essays commemorating the bicentennial of the Constitution did discuss, at length, constitutional questions. But its goal was to challenge Lincoln's importance: "Lincoln regarded the constitutional text as a closed repository of permanent constitutional meaning," law school professor Hendrik Hartog observed. But the essayists "rejected the youthful Lincoln's vision of American citizenship as a passive, although watchful conservatorship. They reject his conception of the Constitution as an estate to be husbanded. They reject any delegation of interpretive responsibility to a distant legal priesthood."



The firing upon Fort Sumter in April, 1861, precipitated the constitutional crisis that led to civil war. View of South East Angle of the fort in December 1863. (Image Courtesy of Library of Congress, Prints and Photographs, LC-USZ62-14908.)

Interested in the constitutional claims, they looked beyond or beneath Lincoln's understandings and actions; they did not engage them (11).

Constitutional history itself was also losing influence within the profession as a whole. More and more scholars took up social history, until a majority of American historians identified themselves as social historians and studied topics not easily related to Lincoln and the Constitution. Some were attracted to Bertold Brecht's statement, "Unhappy the land that is in need of heroes." Although Lincoln had risen from common soil, he was too much the Dead White Male icon to merit scholarly attention from the New Left.

Social historians did provide analyses and information that potentially challenged, not Lincoln himself, but the social and economic achievements of his age, something I pointed out in a commentary on Gabor Boritt's classic *Lincoln in the Economics of the American Dream* (Memphis, Memphis State University Press, 1978) (12). The key question: To what extent was Republican economic policy responsible for mid-century inequalities? But only historian Kenneth Winkle paid serious attention to social history issues in his work, *The Young Eagle* (2001) (13). Meanwhile, constitutional historians, though occasionally upset at their own marginalization, perhaps feeling defensive about it, focused on defending their hero, essentially from accusations of tyranny.

The consensus of these historians is that the charge of dictatorship collapses once Lincoln is seen in the context of the politics of his time (14). First, the fact that his opponents were allowed to frequently and vociferously denounce Lincoln as a dictator refutes the charge. Had Lincoln been the tyrant he could have filled the jails of the country with his accusers. Practically every Democrat in the North had indicted him. Some breached decency and the law. A Wisconsin editor wrote, "The man who votes for Lincoln is a traitor because Lincoln is a traitor and a murderer. And if he is elected to misgovern for another four years, we trust some bold hand will pierce his heart with a dagger point for the public good" (15). The editor was not arrested. Almost all of Lincoln's critics were free to speak and to publish. Furthermore no election, at any level of the polity from village mayor to county commissioner, to state treasurer, to congressional representative, to senator, to president of the United States was canceled. Indeed the election of 1864 turned out 80 percent of the eligible voters. And given a choice between those who accused Lincoln of tyranny and the "tyrant" himself, the voters in that year chose the "tyrant" by the largest margin since Jackson's second election (16).

Furthermore, Lincoln was a temporary “tyrant.” National elections came every two years and voters were free to throw out of power the president and/or the Congress. The president simply assumed that he would turn over the office should he lose to General McClellan in 1864. On several occasions Lincoln remarked that he exercised his extraordinary powers only while the war went on. With the war over he would operate in more traditional ways (17).

This is not to say that Lincoln’s record was clean. Newspapers were suppressed, Democratic speakers went to jail, and private letters were opened. Military courts and commissions did exercise arbitrary power. Lincoln at times sounded like a threat to even mild dissent: “The man who stands by and says nothing, when the peril of his government is discussed, can not be misunderstood. If not hindered, he is sure to help the enemy. Much more, if he talks ambiguously—talks for his country with ‘buts’ and ‘ifs’ and ‘ands’” (18).

But the numbers of people jailed for political reasons were small and, as Yogi Berra might have put it, nobody went to jail for saying nothing. After an exhaustive search of the federal records of these arrests Mark Neely has found that most of the people subject to military arrests were not antigovernment orators or editors. They were taken as union armies occupied rebel territory (most frequently in Border States and especially Missouri), or when they cheated soldiers with shoddy goods, or smuggled, or interfered with draft registration (19).

Daniel Farber provides a thoughtful and generally favorable picture of the president’s actions. He reminds readers, as had Harold Hyman in his classic, *A More Perfect Union*, of the institutional context in which civil liberty questions arose. The generally weak state of the national government and its legal force meant that “Military arrests and trials were required by the pathetic state of the federal government’s legal apparatus.” Farber argues that without a modern legal bureaucracy such as the Justice Department and the FBI, and with only eighty-one federal attorneys in the entire nation, and because of the necessity to arbitrate the differences among cabinet members, generals, staff members, and Congress, “Lincoln was in no position to act as a dictator even if he had wanted to.” At the same time, Farber does argue that Lincoln went too far in *Vallandigham* and *Milligan*, one of the few to do so (24).

But it should be recalled that Farber is a professor of law, not a historian. We need studies informed by the historian’s knowledge of context. Of course, the question of Lincoln, dictator or not, is binary; either /or propositions about historical events and actors are too simple. Everyone agrees that Lincoln had an expansive view of his powers under the Constitution. How expansive is the issue. James Randall offered a useful discussion by noting the difference between the powers of Congress and that of the chief executive under the Constitution. While Congress has enumerated lawmaking powers, the “legislative powers herein granted,” the president may exercise “executive power” with no discussion of what that might be. In addition, the president takes an oath to preserve, protect and defend the Constitution of the United States, another sweeping assertion. Furthermore, the clause making him commander-in-chief requires him “to take care that the laws be faithfully executed.” Another vagary pregnant with discretionary action. This flexibility allowed Lincoln to grasp broad powers for his office.

And he acted quickly and decisively, and alone, for ten weeks. Clearly this was a time when the Constitution’s three branches of government were collapsed into one. Three days after the firing on Fort Sumter, Lincoln called for Congress to meet in a special session. But it was a special session that would be held on July 4, 1861. Meanwhile Lincoln set the country on the road to war. On April 15, he called out the state militia—75,000 from every state in the union, north and south. A militia act of the 1790s authorized this. But then he sailed into unchart-

ed waters. On April 19, he blockaded rebel ports, an action which in international law required a declaration of war. The Constitution gives Congress the power to declare war, but lawmakers were visiting their constituents while they awaited the Fourth of July. On the April 20, Lincoln ordered Secretary of the Treasury Salmon Chase to spend money for defense. The Constitution requires that money should be spent only by congressional appropriation. Two weeks later Lincoln called for volunteers to enlarge the Army and the Navy. The Constitution gives Congress the power to raise armies and maintain navies, but the members of Congress were not available. On April 27, the president told the commanding general of the army that he might suspend the writ of habeas corpus should it seem necessary to the general. The Constitution places the power to suspend the writ in Article 1 which describes legislative powers. But there was no national legislature in town.

Finally on July 4, 1861 Congress gathered and Lincoln provided his constitutional argument for his independent actions. It was broad and innovative. His actions “whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity; trusting then as now that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress” (25). In effect the president might execute a law before Congress passed it, if he believed that Congress would pass it later. On the specific matter of habeas corpus Lincoln famously said, “are all the laws but one to go unexecuted and the government itself go to pieces lest that one be violated? . . . in such a case, would not the official oath be violated if the government should be overthrown?” Later in the war Lincoln declared, “I conceive that I may in an emergency do things on military grounds which cannot be done constitutionally by Congress.” In both word and deed the president exercised extraordinary powers during time of war (26).

Farber offers a balanced assessment of Lincoln’s 1861 actions.. “On the most important items—calling up the militia, deploying the military and imposing a blockade— [Lincoln] was clearly acting within constitutional bounds.” But in other ways Lincoln overstepped his bounds. When he expanded the regular military without congressional approval and when he used government funds to help private parties pay early war expenses, he defied what the Constitution clearly stated. However, Congress supported his actions after the fact, thus supplying some significant constitutional approval. Overall, Farber notes, “the Union marched to war in general compliance with the Constitution” (27).

With all this discretion what strikes modern historians is how respectful Lincoln was of constitutional limitations on the extent of his power. (28) Most obviously, Lincoln consistently placed himself within constitutional limitations. Even the infamous query asking “Are all the laws but one to go unexecuted and the government itself go to pieces lest that one be violated?” was not a plea justifying lawbreaking. While most historians, even Lincoln defenders, overlook how Lincoln followed the question with a denial that he had broken even one law. Lincoln never simply asserted his power under the old rubric *inter arma silent legis*. Harold Hyman appropriated Randall’s title, as well as his judgment, in insisting that, “There were constitutional problems under Lincoln” (29).

Lincoln was a lawyer and knew the importance of claiming the Constitution in the war. The president provided justifications under the Constitution for suspending the privilege of the writ in his July 4 message to Congress, in his ten to twelve page letter to Erastus Corning; and in a similar letter to Ohio Democrats. He argued the unconstitutionality of secession at length in his first inaugural speech and his July 4, 1861 message. He wrote an extensive opinion on conscription. Thinking like a lawyer was a profound part of his makeup. A word count of his *Collected Works* reveals that Lincoln used the word “Consti-

tution" 1263 times and the word "law" 1323 times. By contrast he used the words "liberty" 259 times, "democracy" 138 times, and "equality" 155 times.

The most controversial of his acts as president was, of course, the Emancipation Proclamation, freeing all the slaves in places still in rebellion as of January 1863. In this document, Lincoln claimed the cover of the Constitution. Critics on the right attacked him for stirring up a servile war, encouraging amalgamation of the races and, of course, violating the Constitution. One opponent declared the proclamation "undoubtedly one of the most startling exercises of the one-man power which the history of human government free or despotic has ever witnessed." From the left came charges that Lincoln freed the slaves in places where he could not touch them and left those he could touch still in chains. Richard Hofstadter famously demeaned the proclamation as having "all the moral grandeur of a bill of lading" (30).

But it is just this critique which reveals the constitutional significance of the Proclamation. As Allen Guelzo and others have observed, the document is written in dry legal language because Lincoln was performing an act under the Constitution. He was changing the legal status of over two and a half million slaves. Guelzo comments, "It is one of the greatest of American historical oddities that the document Lincoln labored so studiously to keep within the bounds of the Constitution should be the very document his critics exhibit as proof that Lincoln had no regard for the Constitution" (31).

Lincoln responded, when Salmon Chase asked him to extend the Proclamation to cover occupied territories, that "The original proclamation has no constitutional or legal justification except as a military measure." Military necessity did not apply to the exempted areas. If he acted simply on moral grounds, "would I not thus give up all footing upon Constitution or law? Would I not thus be in the boundless field of absolutism" (32). Michael Vorenberg's 2001 study of the creation of the Thirteenth Amendment argues that Lincoln was so concerned about preserving the Constitution that he was reluctant at first to accept the Thirteenth Amendment as the proper means to end slavery. He shared the belief of many Americans, that the document as it stood provided the most secure foundation for American liberty (33).

Farber affirms that Lincoln was within his constitutional rights in issuing the proclamation. Under the rule of the war powers, both in the nineteenth century and in modern times, combatants have the right to destroy and or confiscate the property of the enemy. Necessity was the ultimate factor determining when such acts could be performed. It should be noted that Lincoln, in justifying emancipation, made a

strong argument in favor of the necessity of doing so. It might also be noted that Lincoln's argument did not assert the claim that "necessity knows no law." The necessity of the act was a crucial part of what made it legal (34).

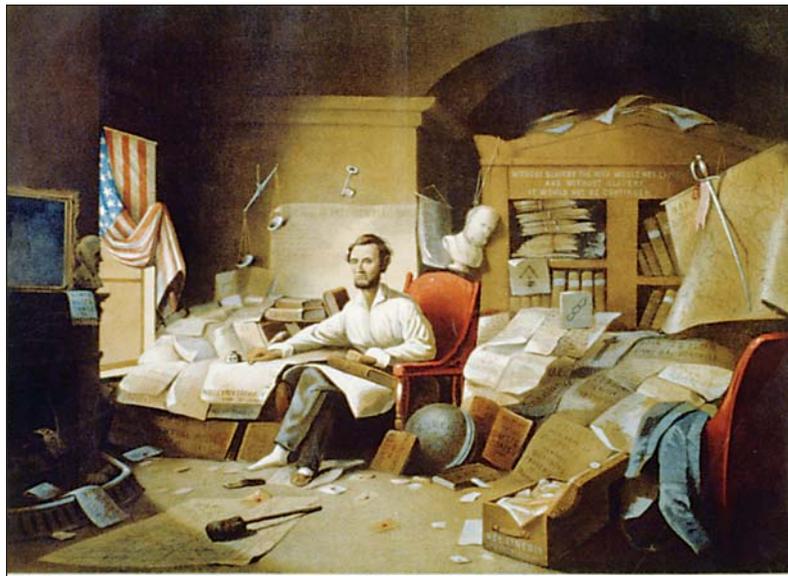
Of course the constitutional argumentation by Lincoln does not disprove the charge of dictatorship. But it does show his constitutional concerns and it allows us to set a standard by which to judge his justifications. Scholars have noted the use of the war powers and once again have justified his actions. Herman Belz argues that "A sound Constitution makes necessary power available in time of emergency; if it does not and the Constitution is simply set aside, its legitimacy and effectiveness as a political law for peacetime government will be eroded . . . there are times when the rule of law is threatened by further

adherence to the rule of law. In those situations not only is decisive action by a single individual to be risked, it is required" (35).

Guelzo's book on the Emancipation Proclamation similarly endorses Lincoln's use of the war power not only with regard to emancipation but also with civil liberties. The president challenged protesting Democrats by noting that the Constitution gave the president more power over those liberties during the war than in times of peace. Guelzo notes, "the logic behind Lincoln's dealing with [emancipation] was identical" (36).

Lincoln's respect for the constitutional order is also reflected, Don Fehrenbacher reminded readers, by his respect for the traditional federal union. He noted that with the exception of West Virginia "the integrity of the rebellious states was never seriously threatened." Scholars trained by Harold Hyman in the 1960s emphasized the

abiding respect for the power of states even in a war that destroyed state sovereignty and established a permanent national union (37). William Harris, studying Lincoln's reconstruction policy also emphasized Lincoln's respect for state rights (38). Proposals in Congress to territorialize the South were defeated by impressive majorities. Lincoln himself had a traditional view of the union as a union of states and it was that union he was trying to restore. To illustrate this respect, contrast the fact that Lincoln asked the Border States to end slavery, respecting the states right to determine such issues, even while he was using his war powers to end slavery in the still rebellious parts of Dixie. The principal achievement for American nationalism under Lincoln's leadership, Fehrenbacher says, "was the negative one arresting a drift toward decentralization that had become a plunge into disintegration" (39). The contrast between that disintegration and a secure postwar nationalism had misled historians to overemphasize the degree of Lincoln's nationalism.



A print based on David Gilmour Blythe's fanciful painting of Lincoln writing the Emancipation Proclamation. In a cluttered study Lincoln sits in shirtsleeves and slippers, at work on the document near an open window. His left hand is placed on a Bible that rests on a copy of the Constitution in his lap. The scene is crammed with symbolic details and other meaningful references. A bust of Lincoln's strongly Unionist predecessor Andrew Jackson sits on a mantelpiece near the window at Lincoln's right. A bust of another former President, James Buchanan, who was widely viewed as ineffectual against secession, hangs by a rope around its neck from a bookcase behind Lincoln. The scales of justice appear in the left corner, and a railsplitter's maul lies on the floor at Lincoln's feet. (Image courtesy of the Library of Congress, LC-USZC4-1425).

Implicit in the discussion of Lincoln's dictatorship is the question of his constitutional philosophy. If Lincoln was a dictator then clearly he had either no respect for the Constitution or he interpreted the document in a way which made it so flexible, that it became whatever he wished it to be. Lincoln clearly had enough respect for the Constitution that he cited it often and claimed to be following it. His success in saving the union and freeing four million slaves provided an endorsement for a flexible Constitution, a "living" Constitution responsive to the needs of the people as they faced crises beyond the ken of the founding fathers. Lincoln thus could be injected into the constitutional arguments of modern times over how free judges and presidents might be to interpret the Constitution flexibly (40).

Conservative critics deplored Lincoln's flexibility. Willmore Kendall claimed that he had transformed the Constitution from a document in which states had created a national government and deserved deference into a new union which rested on the ideal of the equality. As Herman Belz describes it, "according to Kendall, Lincoln placed the United States on the road to centralized egalitarianism by making equality a supreme commitment and the standard of judgment in American politics. Lincoln did this by assigning the Declaration of Independence constitutional status, undermining the tradition of community self-government under majority rule and legislative supremacy." In this new union national power might hurdle constitutional restraints to spread egalitarianism. Liberals on the other hand applauded the very flexibility the conservatives hated (41).

Perhaps the most extreme example of this flexibility is seen in a work by a law professor. George Fletcher, in *Our Secret Constitution: How Lincoln Redefined American Democracy* argued for an equality that included economic justice as well as equality before the law. This allowed him to create a Constitution that for the first time embodied equality for all (42). Fletcher's argument went far beyond what Lincoln would agree to by proclaiming that Lincoln freed himself from constitutional restraint in the middle of war. This was a lawyer's brief advocating modern equality by claiming that a nineteenth-century president had established it.

On July 4, 1861 Lincoln asked "Is there in all republics, this inherent and fatal weakness?" "Must a government, of necessity be too strong for the liberties of its own people, or too weak to maintain its own existence?" (43). The Civil War ultimately answered both questions in the negative. During the conflict answers weren't always clear but the impassioned debate that raged helped to demonstrate the vitality of the constitutional process. It helped that Lincoln with his powerful commitment to equality and the rule of law was the president. At times perhaps he reached too far. His devotees may have excused him too often. But his depth and complexity makes the ongoing work of scholars on the crises of disunion and war even more worthwhile. □

Endnotes

1. Arthur Bestor, "The Civil War as a Constitutional Crisis," *American Historical Review* 68 (January 1964): 327-52; Harold Hyman, *A More Perfect Union: the Impact of the Civil War and Reconstruction on the Constitution* (New York: Alfred A. Knopf, 1973).
2. Herman Belz, "Lincoln and the Constitution: the Dictatorship Question Reconsidered," and "Abraham Lincoln and American Constitutionalism," in *Abraham Lincoln, Constitutionalism, and Equal Rights in the Civil War Era* (New York: Fordham University Press, 1998); Michael Les Benedict, "A Constitutional Crisis," in *Writing the Civil War: The Quest to Understand*, ed. James M. McPherson and William J. Cooper, Jr. (Columbia: University of South Carolina Press, 1998).
3. David Zarefsky, *Lincoln, Douglas and Slavery in the Crucible of Public Debate* (Chicago: University of Chicago Press, 1990) 138-40; Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago

- Press, 1979), 23. See also Bestor, "American Civil war as Constitutional Crisis," 328.
4. See the revisionist writings of Avery Craven, T. Harry Williams, and James G. Randall as discussed in Merrill Peterson, *Lincoln in American Memory* (New York, Oxford University Press, 1994), 302-310.
5. *Ex parte Merryman*, 17 Federal Cases 144.
6. Don E. Fehrenbacher, "The Paradoxes of Freedom," in *Lincoln in Text and Context* (Stanford: Stanford University Press, 1987), 130-31; "Lincoln and the Constitution," in *Lincoln in Text and Context*, 116; Democrat quoted in Harold Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York: Alfred A. Knopf, 1973), 78. See also, 88-89.
7. James G. Randall, *Constitutional Problems under Lincoln* (Urbana: University of Illinois Press, 1951) xxix-xxv, 47.
8. Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton: Princeton University Press, 1948).
9. Indicative of how much on the margins the anti-Lincoln authors were, Don Fehrenbacher, who writing on the "The Anti-Lincoln Tradition" in 1987, spoke of only four academic authors, Ludwell Johnson, M.E. Bradford, William Appleton Williams, and Dwight G. Anderson. He does note the criticism by the "New Left" of Lincoln's unfortunate commitment to the political institutions of his time. *Lincoln in Text and Context*. 207-213
10. Dwight Anderson, *Abraham Lincoln: The Quest for Immortality* (New York: Alfred A. Knopf, 1982); Gottfried Deitze, *America's Political Dilemma: From Limited to Unlimited Democracy* (Baltimore: Johns Hopkins University Press, 1968).
11. *The Constitution and American Life*, ed. David Thelen (Ithaca, NY: Cornell University Press, 1988), 353-54.
12. Phillip S. Paludan, "Commentary on 'Lincoln and the Economics of the American Dream'" in *The Historian's Lincoln: Pseudohistory, Psychohistory, and History*, ed. Gabor Boritt (Urbana: University of Illinois Press, 1988), 116-24.
13. Kenneth J. Winkle, *The Young Eagle: The Rise of Abraham Lincoln* (Dallas: Taylor Trade Publishing, 2001).
14. Popular writers and nonhistorians, however, still persist in calling him a dictator. See David Detzer, *Dissonance: The Turbulent Days between Sumter and Bull Run* (New York: Harcourt, Inc., 2006). George Fletcher, *Our Secret Constitution: How Lincoln Redefined American Democracy* (New York: Oxford University Press, 2001).
15. Editor quoted in Phillip Shaw Paludan, *A People's Contest: the Union and Civil War* (Lawrence, KS: University Press of Kansas, 1996), 233.
16. Herman Belz, "Lincoln and the Constitution: The Dictatorship Question Reconsidered," in *Abraham Lincoln, Constitutionalism, and Equal Rights in the Civil War Era* (New York: Fordham University Press, 1998) provides the best analysis of this issue. See Harold Hyman, *A More Perfect Union* (New York: Alfred A. Knopf, 1973), 70-73.
17. Roy P. Basler ed., *The Collected Works of Abraham Lincoln*, 8 vols. (New Brunswick, NJ: Rutgers University Press, 1953-1955) (hereinafter *Collected Works*), 4: 267, 302.
18. *Collected Works*, 4: 265.
19. Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York, Oxford University Press, 1991) esp. chap. 6; Phillip Shaw Paludan, *The Presidency of Abraham Lincoln* (Lawrence, KS: University Press of Kansas, 1994), 71-79.
20. Arthur Schlesinger, Jr., *War and the Constitution: Abraham Lincoln and Franklin D. Roosevelt Seventeenth Annual Robert Fortenbaugh Memorial Lecture* (Gettysburg, PA: Gettysburg College, 1988) provides a thoughtful discussion.
21. Paludan, *Presidency of Abraham Lincoln*, 71-79.
22. Phillip Shaw Paludan, "A People's Contest": *The Union and Civil War* (Lawrence, KS: University Press of Kansas, 1996), 240-45.
23. Frank L. Klement, *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge: LSU Press, 1984).
24. Daniel Farber, *Lincoln's Constitution* (Chicago: University of Chicago Press, 2003), 144-46.
25. *Collected Works*, 4: 426. Arthur Schlesinger, Jr., *War and the Constitution: Abraham Lincoln and Franklin D. Roosevelt*.

26. *Collected Works*, 7: 281
27. Daniel Farber, *Lincoln's Constitution*, 143.
28. See Guelzo, "Apple of Gold in a Picture of Silver: The Constitution and Liberty" in *The Lincoln Enigma: The Changing Faces of an American Icon* (New York: Oxford University Press, 2001); Fehrenbacher, "Lincoln and the Constitution," in *Lincoln in Text and Context*; Belz, "Lincoln and the Constitution: The Dictatorship Question Reconsidered," in *Abraham Lincoln, Constitutionalism, and Equal Rights in the Civil War Era*.
29. Harold M. Hyman, Lectures at University of Illinois, 1963-1968. Don Fehrenbacher, "Lincoln and the Constitution," in *Lincoln in Text and Context*, 121; and James McPherson, "Lincoln and Liberty" in *Abraham Lincoln and the Second American Revolution* (New York: Oxford University Press, 1991), 59-60; Sanford Levinson, "Abraham Lincoln, Benjamin Curtis and the Importance of Constitutional Fidelity," *The Green Bag: An Entertaining Journal of Law*, 2d Series 4 (Summer 2001): 424 omit Lincoln's denial that he had broken a single law.
30. Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: Alfred A. Knopf, 1989), 131.
31. Allen C. Guelzo, *Lincoln's Emancipation Proclamation: The End of Slavery in America* (New York, Simon & Schuster, 2004), 191, 198.
32. *Collected Works*, 4: 428.
33. Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment* (Cambridge University Press, 2001), 6-15.
34. Farber, *Lincoln's Constitution*, 154-55.
35. Belz, *Abraham Lincoln, Constitutionalism, and Equal Rights*, 92.
36. Guelzo, *Lincoln's Emancipation Proclamation*, 207.
37. Harold Hyman, *A More Perfect Union*; Phillip S. Paludan, *A Covenant with Death: The Constitution, Law and Equality in the Civil War Era* (Urbana: University of Illinois Press, 1975); Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction, 1863-1869* (New York: Norton, 1974).
38. William Harris, *Lincoln's Last Months* (Cambridge, MA: Harvard University Press, 2004); William Harris, *With Charity for All: Lincoln and the Restoration of the Union* (Lexington: University of Kentucky Press, 1999).
39. Fehrenbacher, *Lincoln in Text and Context*, 116-19.
40. See Walter Murphy, James Fleming, and William Harris, II, *American Constitutional Interpretation* (Mineola, NY: Foundation Press, 1986) cited by Belz, "Abraham Lincoln and American Constitutionalism," 73.
41. Willmore Kendall, and George Carrey, *The Basic Symbols of the American Political Tradition* (Baton Rouge, LSU Press, 1970), 85-94; Belz, "Lincoln and the Constitution," 24.
42. George Fletcher, *Our Secret Constitution* (New York: Oxford University Press, 2001).
43. *Collected Works*, 4: 426.

Phillip Shaw Paludan is Naomi Lynn Distinguished Professor of Lincoln Studies at the University of Illinois, Springfield. He is the author of *A Covenant with Death: The Constitution, Law and Equality in the Civil War Era*; *Victims: A True Story of the Civil War*; *A People's Contest: The Union and Civil War, 1861-1865*; and *The Presidency of Abraham Lincoln (which won the prestigious Lincoln Prize)*. He has received fellowships from the Guggenheim Foundation, the American Council of Learned Societies, and Harvard Law School. He taught NEH Summer Seminars for Teachers on five occasions.

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HIGHLIGHTS

OAH CENTENNIAL PLENARY Presidential Memories

Mary Frances Berry • Carl Degler • Eric Foner • John Hope Franklin • Richard Leopold • David Montgomery • Vicki Ruiz • Anne Firor Scott • Richard White

PLENARY SESSION

Evangelical Religion in America

This session features lectures by **George Marsden**, author of many books on the religious history of America, including *Jonathan Edwards: A Life* (2003), and **Lisa McGirr**, author of *Suburban Warriors*. **Jon Butler**, distinguished historian of American religion, will respond.

OFFSITE SESSION LOCATIONS INCLUDE
**Andersen Library and Minnesota Population Center,
University of Minnesota • Weisman Art Museum •
Minnesota History Center**

TOURS INCLUDE

A Labor and Industrial Tour of the Minneapolis Historic Milling District, led by NPS historian Dave Wiggins.

"**Bob Dylan's American Journey**," a two-hour tour that will visit sites where he lived, performed, and recorded.

AND MORE

Offsite sessions and tours, the exhibit hall, films, receptions, networking events, and luncheons

INFORMATION

Complete program, listing sessions and participants, is available online at <<http://oah.org/2007>>. Preregistration deadline is March 8, 2007.