Harry V. Jaffa, with a reply by Melvin E. Bradford

BRADFORD AND JAFFA: ONCE MORE ON LINCOLN

Two eminent Lincoln scholars disagree on the legacy of Father Abraham.

My good friend, Professor Melvin E. Bradford, of the University of Dallas, has protested, not without reason, against the representation—and/or misrepresentation—of his views on Abraham Lincoln that appeared in many of the nation's major newspapers and journals about three years ago ("Against Lincoln: My Dissenting Views," *TAS*, December 1984). "For the past three years," he writes, "the mere rumor of my complaints against the continuing influence of Father Abraham's example on the nation's public life has seemed to have a life of its own, surviving and even growing in inverse proportion to the number of times when some deflation or correction of it has been attempted in my own work or in the writings of my friends."

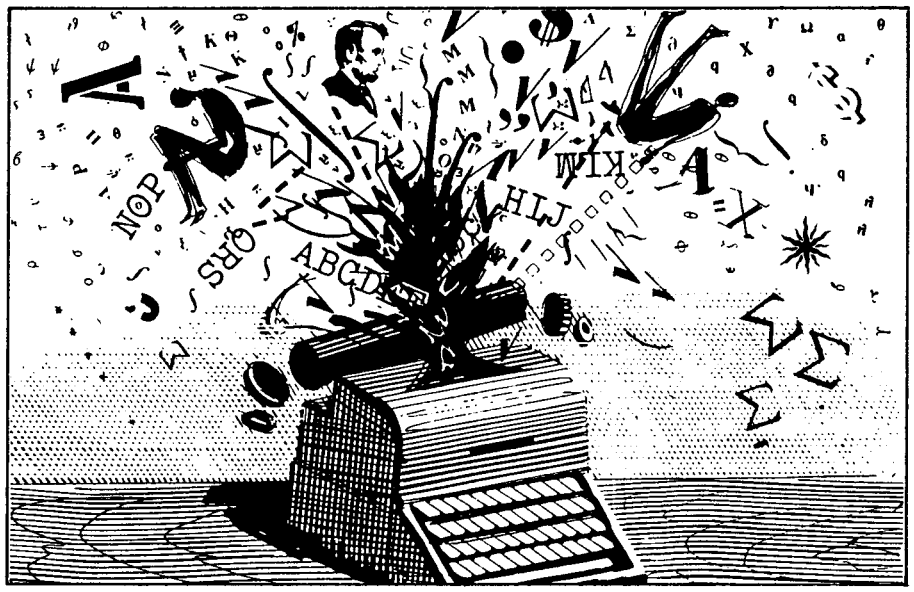
These complaints are not altogether without merit. They would have appeared even more plausible had Professor Bradford mentioned that the occasion for the attacks upon his anti-Lincoln writings was his nomination for the chairmanship of the National Endowment for the Humanities. Those attacks were motivated by nothing more profound than a struggle over patronage. Many of those behind the attacks—or, in some cases, in the forefront—had never before manifested the least interest in Lincoln, or in what was thought about him. But Bradford's writings on Lincoln—whether sound or unsound—became a club with which to beat the Bradford nomination, and they were so used, callously, cynically, and ruthlessly.

In the foreword to my recent book, *American Conservatism and the American Founding* (Carolina Academic Press, 1984), Bill Buckley has written that I have "constantly honored [Abraham Lincoln] in terms that might astonish Lincoln's warmest eulogists." One might say that the extravagance of my admiration of Lincoln has in some respects been the mirror image of Mel Bradford's non-admiration. It may seem strange, but it is certainly true, that we have been drawn together by the intensity of our concern with the reputation of Lincoln's life and career. That is something that we share with each other, but not with many others, and certainly not with the critics of Bradford's proposed nomination to NEH. George Will wrote a blistering column, attacking Bradford for his views on Lincoln. But Will was entirely silent when Bradford actually published the writings to which Will (years later) belatedly took offense. Nor has Will ever deigned to mention my rebuttals to Bradford's argument with Lincoln. For the book in which I had replied to Bradford (*How to Think About the American Revolution*, 1978), had chapters showing that, not only the late Willmoore Kendall, but both Irving Kristol and the late Martin Diamond had opinions about the Declaration of Independence that did not differ in principle from Bradford's. Will's indignation in behalf of Lincoln surfaced only when it appeared that Bradford might be appointed head of NEH.

The truth is that George Will's view of the American Founding differs from that of Abraham Lincoln about as much as it does from Bradford's. In his columns, and in *Statecraft as Soulcraft*, Will has identified the American Founding—not as Lincoln did at Gettysburg, with dedication to the proposition that all men are created equal—but with moral vulgarity, with a "conflagration of desire for instant gratification." In a chapter on Will ("The Madisonian Legacy: A Reconsideration of the Founders' Intent") in *American Conservatism* I concluded that in his praise of Lincoln, and his denigration of the doctrine of the Gettysburg Address, George Will's was a mind divided against itself. In another chapter of *American Conservatism* ("The Doughface Dilemma: Or, the Invisible Slave in the American Enterprise Institute's Bicentennial"), I further documented the influence, not of Abraham Lincoln, but of John C. Calhoun, in the understanding of the relationship of the Declaration of Independence to the Constitution predominant in neoconservative circles.

There was some surprise, however—given our well-known differences on Lincoln and the Civil War—when in 1981 I wrote to the White House to support Bradford's candidacy for the NEH post. But Lincoln himself had said, "Stand with anybody who stands RIGHT. Stand with him while he is right and PART with him when he goes wrong." Bradford was—and is—wrong on the issues of 1860. But he seemed to me to be eminently sound on the issues that united conservative Republicans in 1980. He is as much against socialism at home, and Communism abroad, as the Republicans of 1860 were united against the extension of slavery. The great civil rights issue of today is resistance to race- or sex-based quotas in what is euphemistically called "affirmative action." Above all, on the "social issues"—especially those concerning the moral integrity of the family—I had reason to believe Bradford and I were in agreement. On these issues more than any others, I, at least, think the future of the Republic depends.

The contest for the NEH nomination turned into a tug-of-war between former liberal Democrats now neoconservative Republicans, and former conservative Democrats now New Right Republicans. The former attacked the latter for their opposition—a generation earlier—to civil rights legislation. But these attacks sometimes came with an ill grace from those with radical—and even Communist—pasts. To a great extent, this was a sectional struggle between northeastern and Southern and western Republicans, continuing within the Republican party one that had gone on for generations within the Democratic party. Lincoln would have observed wryly that the cause of virtue cannot do without repentant sinners (see his Temperance speech), and have welcomed both groups into the Republican party. And he would have celebrated their reception with fair shares of patronage. I thought then, and think now, that the Bradford nomination would have been a good one, both in



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terms of Bradford's personal qualities, and of the need to build the new Republican majority out of the dissolving fragments of the old Democratic coalition. In saying all this, I mean no adverse reflection upon William Bennett, who was chairman of NEH for three years and earned the respect and good will of everyone. When I wrote in Bradford's favor, I made it very clear that I did so in the spirit of Lincoln's political prudence and political magnanimity, and not because there was any abatement of our enduring differences. And I acknowledge with appreciation the strong support that Bennett himself has shown (as distinct from the anti-Bradford partisans) for my writings on Lincoln and the relationship of the Declaration of Independence to the Constitution.

Bradford's characterization of his view of Lincoln as "dissenting" is only a half truth. The popular reputation of Lincoln is indeed that of the Lincoln memorial—of the semi-divine hero who saved the Union for the people. But the reputation one finds in the academic literature is entirely different. This is the literature, moreover, which controls the writing of the textbooks, both for high school and college, upon which public opinion in the long run is based. Lincoln is reputed there as a successful war leader, but as little else. My *Crisis of the House Divided* (1959) is to the best of my knowledge the first scholarly work ever to take a favorable view of the House Divided speech, and therefore of the entire policy Lincoln pursued from 1854 on as a free soil, anti-slavery leader. In 1962, I was joined in this favorable assessment by Don Fehrenbacher, in *Prelude to Greatness: Lincoln in the 1850s.* While today we have many followers—since we both have had many students in the intervening years—it is still true that we are far from representing the mainstream of American scholarship and opinion.

To understand what that mainstream is—and why Bradford but not Jaffa is in it—one must turn to the question of the status of the Declaration of Independence, not as a document of political history, but as a document of political philosophy. Lincoln once said that he had "never had a feeling, politically, that did not spring from the sentiments embodied in the Declaration of Independence." For Lincoln, the Declaration embodied an objective moral teaching that was the ground of the political teaching of the American Revolution—of the American Founding. It embodied, as he once wrote, "an abstract truth, applicable to all men and all times." It was a teaching at once of moral and political principle, and of political prudence. The attitude of nearly every historian who has written on Lincoln—certainly of every mainstream historian—was expressed by Carl Becker, in the most (deservedly) famous work on its subject, *The Declaration of Independence,* published first in 1922. "To ask whether the natural rights philosophy of the Declaration of Independence is true or false," wrote Becker, "is essentially a meaningless question." What for Lincoln was the most meaningful of all questions—a question which he himself answered with a ringing affirmative—Becker calls meaningless. For Becker, as for Bradford, the very idea of "an abstract truth, applicable to all men and all times," is a delusion. Such a truth was the core of Lincoln's being: Its rejection is the ground of that philosophical relativism that is the mainstream of American scholarship and opinion. Most historians who have written on Lincoln—bred in the same philosophical relativism as Becker—have treated Lincoln's moral earnestness with scorn, contempt, or sheer unbelief. And it is precisely in his attitude toward the Declaration that Bradford is at one with the mainstream, and at odds with Lincoln and with traditional moral philosophy and moral theology. For Bradford thinks Lincoln was a fanatic for insisting that, as a matter of natural law and natural right, slavery was wrong, and that the moral judgment of the wrongness of slavery had to be at the foundation of all policy dealing with it.

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Professor Bradford, throughout his article, represents himself as a student of Lincoln's rhetoric. Rhetoric is speech, however, and Lincoln's speech was political speech. Yet Bradford has never, to my knowledge, addressed himself to the actual political question to which Lincoln was compelled by events to address himself in his speeches: the question of slavery in the territories. One would never know, from Bradford's writings, that the direct and immediate cause of secession and of civil war was the radical and completely unprecedented Southern demand for a slave code for all federal territories. This was a demand to be constitutionally free to plant slavery on every foot of land owned by the United States outside the boundaries of the existing free states. Counting the existing slave states, this meant dedicating to slavery two-thirds or more of the continental United States. This demand also implied a constitutional right to extend slavery upon the ground of any future territory—within or without the continent—that might be acquired by the United States: for example Cuba, whose annexation was already being demanded, not to mention other Caribbean islands, and whatever of Mexico that had not already been seized and that might look good for the plucking.

By 1860, the South had concluded that it would not remain in the Union unless this demand was met. The federal government must extend police protection to every slaveholder who carried slaves into a United States territory. It was this issue that led the Southern Democrats to secede from the Charleston Convention in May 1860. It was this issue that led seven states to secede from the Union after Lincoln's election, and before his inauguration. When the Democratic party split, it did so because the South had rejected the candidacy of Senator Stephen A. Douglas—unquestionably the national party's dominant political figure. As a free state politician, Douglas could go no further than a willingness to guarantee that slaveholders be able to go into the territories. But he insisted that when there they must persuade their territorial fellow-citizens to vote them police protection for their slave property. *Federal* as distinct from *territorial* protection for slave property would mean that slavery followed the flag, and that no antislavery sentiment by freesoilers migrating into new territories could prevent slavery from being planted there. At bottom, the political cause of the Civil War was very simple. As Lincoln wrote to his old friend and former Whig colleague in the House, Alexander Stephens (soon to become Vice President of the Confederacy), on December 22, 1860, "You think slavery is *right*, and ought to be extended; while we think it is *wrong*, and ought to be restricted. That I suppose is the rub. It certainly is the only substantial difference between us." No account of the causes of the Civil War has ever transcended this explanation, either in simplicity or profundity. But you may search the writings of Bradford in vain to find any recognition of it.

Lincoln's House Divided speech was neither gnostic (whatever that means) nor mystic nor millenialist. It was an eloquent and courageous recognition of the political crisis for what it actually was. Chief Justice Taney, in *Dred Scott* (1857), had declared that the only constitutional power that Congress possessed over slavery in the territories was "the power, coupled with the duty of guarding and protecting the [slave]owner in his rights." The South, armed with this revolutionary interpretation of the Constitution, seized upon it as an instrument that would secure the future of slavery, once and for all, either within or without the Union. Lincoln argued—what I believe to be indisputably true—that there was no consistent ground upon which to resist the Southern demand, unless it was that condemnation of all human slavery that followed from the principles of the Declaration of Independence. It was Taney's denial of the meaning of the Declaration that governed his understanding of the Constitution, and it was his affirmation of that meaning that governed Lincoln's. And the difference between Lincoln and Taney on the meaning of the Declaration and the Constitution remains the central issue between Bradford and Jaffa.

In his Peoria speech of 1854, Lincoln laid the foundation of his entire argument thus. "Equal justice to the South, it is said, requires us to consent to the extending of slavery to new countries. That is to say, inasmuch as you do not object to my taking my hog to Nebraska, therefore I must not object to you taking your slave. Now, I admit, this is perfectly logical, if there is no difference between hogs and Negroes." Taney's opinion—the South's opinion—was to deny any moral ground for any constitutional distinction between a Negro and a hog.

The South seceded—and the Civil War came—because the South would not remain in a Union in which the perpetuation of slavery was not assured. And no assurance was acceptable except one that promised an almost indefinite expansion of slavery. This promise was justified in the minds of the political majority of the Confederate South by a conviction that slavery was a "positive good." The South's faith in the justice of its cause, its conviction of the superiority of the new Confederacy to the old Union, was

given classic and definitive expression in Alexander Stephens's famous "cornerstone" speech in Savannah, Georgia, March 21, 1861. The old Union, said Stephens, rested upon ideas that "were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. . . . Our new government is founded upon exactly the opposite idea; its foundations are laid, its cornerstone rests upon the great truth that the Negro is not equal to the white man. That slavery—subordination to the superior race—is his natural and normal condition. This, our new government, is the first, in the history of the world, based upon this great physical and moral truth." Stephens then goes on to compare the *scientific* discovery of the Negroes' inferiority to the scientific discoveries of Galileo and Adam Smith and Harvey—in particular to Harvey's discovery of the circulation of the blood. In short, the idea of *scientific* racism presided over the birth of the Confederate South no less surely than it did over Hitler's Third Reich, however different in character the personnel of the two ensembles may seem. After the Civil War was over, Stephens wrote his two-volume *A Constitutional View of the War Between the States.* In it he argued that the cause of the Confederacy was not slavery, but states' rights, which he identified with the defense of the minority from the tyranny of the majority. Confederate apologists ever since have followed his lead, and Bradford is no exception. The states' rights question is, however, derivative. The fundamental issue was always race and slavery. Stephens told the truth in the pristine days of Confederate optimism—before Fort Sumter—and not in the wake of Appomattox.

I pointed to Stephens's cornerstone speech in a reply to Bradford ("Equality, Justice, and the American Revolution") first published in *Modern Age* in 1977, and reprinted in *How to Think About the American Revolution.* Bradford knew that Stephens's speech destroyed his entire case against Lincoln, as well as destroying his case for the traditionalism (and innocence) of the Southern movement for independence. He knew that his only way of rebutting the evidence of that speech was to impugn its authority as representative of Southern opinion. He promised then to prove the nonrepresentativeness of Stephens's speech, and I have waited more than seven years for that proof. Now in the article in *The American Spectator* we seem to have all the evidence that Bradford could find. But Bradford, whose knowledge of the literature of the old South is encyclopedic, has been unable to discover so much as a word to contradict a word of Stephens's cornerstone speech. All Bradford can say is comprised in the lame assertion "that most Southerners recognized slaves as human beings in that they hoped to see them accept Christianity." This, and this alone, is his rebuttal of Stephens, which, however, he calls his "answer to Harry Jaffa"!

Perhaps most Southerners did hope to see Negroes accept Christianity. But why? The record is mixed. Certainly they did not want them to read the Gospels, since there were strict laws against teaching slaves to read in most states of the antebellum South. And let us never forget that the demand for the extension of slavery was founded from beginning to end, in Lincoln's language, upon the denial of any legal or moral ground for distinguishing between a Negro and a hog. Of course, the South was never *consistent* in denying the humanity of the Negro—as Lincoln himself took great pains to point out in the Peoria speech. But the antebellum South had no more difficulty in reconciling a "scientific" doctrine of racial inequality with Christianity than did the Ku Klux Klan in the post-Reconstruction South. Indeed, Stephens himself, toward the end of the cornerstone speech, explained the inferiority of the Negro *both* on the ground of nature *and* on the biblical ground of "the curse against Canaan."

Let us not be mealy-mouthed either about what Southern antebellum Christianity was like. The churches there were pressed into the defense of slavery as surely and as completely as the Communist party of the Soviet Union is pressed into the service of the Soviet state. If the slaves were told that Jesus loved them, and would take them to Heaven, they were also told that he would do so only if they were "good niggers" (like Uncle Tom), but that "uppity niggers" went to the other place. Some slaveowners may, in some abstract sense, have admitted Negroes to membership in the mystical body of Christ, but it played very little part in their ordinary consciousness. The latter is far better represented by Mark Twain in the following passage from *Huckleberry Finn.* Huck (mistaken for Tom Sawyer) is explaining to Aunt Sally why the steamboat supposedly bringing him from Missouri to Arkansas was delayed.

> "It warn't the grounding—that didn't keep us back but a little. We blowed out a cylinder-head."
>
> "Good gracious! Anybody hurt?"
>
> "No'm. Killed a nigger."
>
> "Well, it's lucky; because sometimes people do get hurt."

It is in Taney's opinion in *Dred Scott,* however, that one finds the most authoritative expression of the proposition that "niggers ain't people." In the South, this opinion came to be regarded not merely as canonical, but as Gospel truth. Under the Constitution, said Taney, Negroes were to be regarded

> as beings of an inferior order . . . and so far inferior that they had *no rights which the white man was bound to respect.* [Emphasis added.]

One wonders why Bradford's Christianity had not informed the Chief Justice to the contrary! The Negro, Taney continued,

> was bought and sold and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it.

The black race, he said,

> were never thought of or spoken of except as property and when the claims of the owner or the profit of the trader were supposed to need protection.

This was the interpretation of the Constitution that the leadership of Abraham Lincoln was dedicated to denying.

Bradford's case against Lincoln loses every shred of plausibility the moment one recognizes the reality of the threat of the extension and perpetuation of slavery, and realizes what this would have meant to the future of free government. But Bradford also attempts to impugn Lincoln's character, in particular by attributing hypocrisy to Lincoln on the entire subject of the Negro and slavery. We confine ourselves to one specimen, which is typical. The "evidence is clear," writes Bradford, "that Lincoln was engaged in moralistic posturing when he spoke of his 'hatred' for the 'peculiar institution.' Otherwise we have a lot of trouble explaining his action in the 1847 Matson case, in which he attempted to enforce the Fugitive Slave Law and recover runaways."

But what are the facts? First, one must know—and surely Bradford does know—that Lincoln from beginning to end supported the enforcement of a Fugitive Slave Act, whether that of 1793 or the much harsher law of 1850. Lincoln pointed to the fugitive slave clause of the Constitution—Article IV, Section 2—which declares that runaways "shall be delivered up" to their owners. This was as much a part of the Constitution as any other, Lincoln said. Everyone who took an oath to support the Constitution, he believed, took an oath to the whole Constitution. No one had the right to declare that he would support the other provisions of the Constitution, but not this one. Paradoxical as it may seem, Lincoln argued, we owed it to the cause of freedom itself to perform this unwelcome duty. Only by so doing could we preserve the Union, and all the promise that it held, in the long run, even for the descendants of the slaves. One may disagree with Lincoln's position on the constitutional duty to return fugitive slaves, but there is in it nothing whatever to justify a charge either of hypocrisy or inconsistency.

It is of some interest nevertheless to know how Lincoln discharged his duty as an attorney in the Matson case, which Bradford has brought up against him. Matson was a Kentucky slaveowner with extensive property in Illinois. He regularly brought slaves to work on his Illinois farm. The whole story is told in detail in Beveridge's *Lincoln* (vol. 1, pp. 392 ff). In 1847 a group of Matson's slaves ran away, and claimed freedom under Illinois law. When the case came to trial, and Lincoln spoke to the jury, he told them that there was one and only one point upon which their verdict ought to be rendered.

> Were these Negroes passing over and crossing the State and thus, as the law contemplates, *in transitu,* or were they actually located indefinitely by the consent of their master? If only crossing the State, that act did not free them; but if located even indefinitely . . . their emancipation logically followed.

The slaves were freed. Everyone knew that Matson had been using them as laborers on his Illinois farm. Lincoln only asked the jury to consider his client's claim in the clear light of the law, and of the true facts of the case. There were a thousand ways Lincoln could have appealed to the prejudices of the jury in the interest of his client. But Lincoln used none of them. Matson stalked angrily out of the courtroom, and never paid Lincoln his fee—which Lincoln never tried to recover. While there is no justification for saying that Lincoln had "thrown" the case, it is also true that nothing anyone could have done could more surely have brought freedom to the slaves. The same chapter of Beveridge that carries the Matson story also relates how "Lincoln, nearly ten years earlier, had secured the liberty of a [black] girl who had been illegally sold as a slave." On that—as on the real truth of the Matson case—Bradford is entirely silent.

Lincoln's record on the question of slavery and race must of course be examined and judged within the confines of the society and the political circumstances within which he lived and acted. The questions he faced were and remain perhaps the most complex and difficult ever to confront—if not to confound—human wisdom and virtue. Whenever this record is so examined, I believe it will be said that Lincoln's life story remains unsurpassed in human annals for magnanimity, for wisdom, and for justice. Would that the "influence of Father Abraham's example on the nation's public life" were what Bradford fears it to be. □

Melvin E. Bradford replies:

Concerning our general agreement on the great political questions of our era, Professor Jaffa is quite correct. I will not comment on the opening section, the exordium, of his remarks, except to say that I am pleased to see this fragment of the intellectual history of the American Right preserved on the record. In particular, Jaffa and I are united by our hostility to the modern version of egalitarianism that undermines the liberty of the citizen while simultaneously proclaiming its everlasting devotion to the rights of man. We agree also on most matters educational and on the role of liberal learning in the nurture of responsible men and women. Our most serious differences of opinion and interpretation have to do with what might be the best basis for preserving our national character and framing an argument against the levelers who threaten the stability of the regime: an argument concerning the grounds for a durable and distinctively American politics. On how to read the American Revolution and the train of events which resulted in the drafting and adoption of the Constitution of the United States we differ; and therefore we disagree about Abraham Lincoln—or for those reasons primarily, and a few others added along the way.

My good friend and faithful adversary is also correct in pointing out that our dispute has been conducted in public over a period of many years, that we are in some measure defined by it. But the quarrel in which we are engaged is even older than he suggests—was in fact an old one long before we were born. Thomas J. Pressly describes its origins in his *Americans Interpret Their Civil War* (1954). And even Pressly does not reach back far enough to find its beginnings; for they antedate the War Between the States and have implications which go well beyond the question of Negro slavery and its influence on our common history—so far as to consider the essential purposes, the ends, of our government, and the reasons why it is as strong (and as limited) as we have made it to be.

I will not reopen my conversation with Professor Jaffa concerning the Declaration of Independence except to say that there are ways of construing that document which are unrelated to both the reductionist gloss of Carl Becker and the philosophical paraphrase of Jaffa's Straussian dogmatics. I have indicated what one such reading might be in my *A Better Guide Than Reason: Studies in the American Revolution* (Sherwood Sugden, 1979). There I praise the Declaration *as I construe it—but not as Jaffa makes it out.* I have further specified in the title essay of my *Remembering Who We Are: Observations of a Southern Conservative* (University of Georgia Press, 1985) that there is a right principle, a "political ethic," for application to questions of policy. Its origins are in a respectful probity toward the political reality, the "way" or habitus, rooted in a particular history, with a priority assigned to "circumstance and prescription" as preserved and protected by "the broadest authorities of reason and revelation." One who believes in revealed truth is not a relativist. I have even conceded that men may posit their "right" to "an inherited politics generated by an inherited social and political order." I have no difficulty with a premise concerning self-preservation; and I have no doubt that the natural law exists, though known fully only to God. With the assistance of philosophy we perceive its outlines *from a very great distance*, but in such generality as to discourage immediate translation into *a priori* determinations about the absolute merits or demerits of a specific measure. As to the historic position of moral theology on the subjects of slavery and equality of rights, I suggest that the voice of the tradition was, in 1854, more complicated than Jaffa seems to think. My friend and I do not share the same epistemology. So be it. But it is reasonable that I should ask him to cease from attributing to me a simplistic caricature of my opinions.

There are two questions raised by Jaffa's reponse to my "Speech at Gettysburg": (1) Was the political rectitude of Father Abraham as Jaffa represents it to be—as Lincoln himself claimed? And (2) can Lincoln's conduct be defended from serious criticism once (or if) the argument from character in his behalf is sustained? I say no on both counts. The Lincoln who, in 1861, supported a constitutional amendment which would have prevented, *forever*, any change in federal policy toward slavery where it was established—who did this in his First Inaugural Address, even though the measure then before the country in the form of a change in our fundamental law would have precluded *any* subsequent amendment to release those in bondage, cannot be reconciled to the orator who, in 1858, asked for support in making the country (with respect to slavery) "*all* one thing, or *all* another." Or to the Lincoln who "never had a feeling, politically, that did not spring from the sentiments embodied in the Declaration of Independence." Jaffa tells us of how Lincoln described himself, about the persona he assumed in 1854 and sustained until he replaced it with the wartime mask of "man of sorrows." What interests me is Lincoln as he was, in all his protean multiplicity, not in Lincoln as he pretended to be. Which brings me to respond to Jaffa's complaint against my use of the 1847 Matson case in Coles County, Illinois, where Lincoln represented a slaveowner in an effort to recover runaways.

Jaffa derives his account of the Matson affair from Senator Albert J. Beveridge's monumental *Abraham Lincoln, 1809-1858* (1928). Quoting Beveridge, Jaffa imagines that he has discredited my construction of this episode, and thus my view of Lincoln as a man, with an *argumentum ad verecundiam* (from authority). There is much sound matter in Beveridge's fine old biography. Though I am surprised to see it quoted by Professor Jaffa (who cannot be comfortable with much of its content), in my own view it is an honest piece of work, still useful to Lincoln scholars, but not in certain respects—not on the subject of Lincoln's practice of the law and not on the Matson case. Says John J. Duff in his *A. Lincoln: Prairie Lawyer* (1960), "The distinguished writer [Beveridge] is on untenable ground when he indicates that Lincoln, having no heart for the affair, was something less than energetic in his efforts in behalf of Matson" (p. 138). As Duff demonstrates, Beveridge misunderstood the nature of Lincoln's pleading from Illinois law: an argument that the runaways were "seasonal workers [who] . . . never at any time acquired the status of permanent residents." Duff quotes an 1885 article by Orlando B. Ficklin, "one of the attorneys who opposed Lincoln in the litigation," in which it is reported that the Emancipator presented a powerful case, one that should have recovered Matson's property, "with trenchant blows and cold logic and subtle knitting." The theory that Lincoln did not want these Negroes returned to slavery Duff calls "pure hogwash."

In addition to Duff there are other authorities on Lincoln as lawyer that support his description of Beveridge's handling of that subject as "haphazard," "uneven," and improperly dependent on Jesse W. Weik, one of the great idolators. But I repeat only one detail from this mass of commentary, the report of Mrs. Hiram Rutherford that "Lincoln arrived at the trial with chains to be used to take the slaves back into captivity" as it appears in the Hendrick and Hendrick edition of Dr. Hiram Rutherford's papers (*On the Illinois Frontier: Dr. Hiram Rutherford, 1840-1848*, 1981, pp. 139 ff). How this information reconciles with the conclusion that "nothing anyone could have done could more surely have brought freedom to the slaves," I cannot say. Nor how it proves Lincoln's devotion to the doctrine of human equality as "an abstract truth applicable to all men at all times." I will add, however, in reference to what Professor Jaffa is so kind as to remark regarding my command of the literature, that I read not only Southern texts but pay attention also to the history of the Old Northwest; and that, though it was a good thing that Lincoln lost this case, no one in Coles County doubted that he had deserved his fee.

From a close study of the Matson case and from careful scrutiny of other features of Lincoln's life before he became a national figure, we learn that "it is essential to dismiss a myth which has become part of the concentrated folklore of the near-deification of Lincoln"; that "to attempt to depict Lincoln as one possessed of a lifelong

abhorrence of involuntary servitude is to falsify the record" (Duff, pp. 137 and 146). Moreover, there is evidence to the same effect scattered throughout Lincoln's career, none of it suggestive of what Jaffa means by "traditional moral philosophy": Lincoln's repeated insistence that the territories be reserved for settlement by "free white people"; his complaint that slavery was to be much criticized for mingling or "amalgamating" the races; and his advice to an antislavery friend, Congressman Elihu B. Washburne of Illinois, that it was not wise for Republicans to complain of a "white only" clause in a constitution proposed for Oregon. But I do not mean to suggest that there is, *for his time*, anything unusual about Lincoln's departures from the official norms *of our day* in his attitudes on the Negro, on race, and on human equality. Most of the American statesmen of the last century or earlier fall short of the standards of tolerance we now expect of public persons. Far short! And I would not anachronize in order to invent a usable past. However, I would ask the same of Professor Jaffa in his treatment of Alexander Stephens, to whose speech of March 21, 1861, he attaches so much importance.

Jaffa begins his gloss on Stephens's "cornerstone" speech with comment on the evidence of "*scientific* racism" in its text. He is quite right about this component, though it is not all of Stephens's argument in behalf of "the peculiar institution." Stephens reasoned in this fashion throughout his career, both before and after his big speech in Savannah, as did many other nineteenth-century Americans, most of them solid antislavery men who recited the Declaration of Independence, morning and evening, and insisted on the Union, whatever it might cost. Scientific racism is a European phenomenon; its forefathers are Darwinists such as Thomas H. Huxley. But it had its *fons et origo* on these shores in the great universities of the Northeast, where it prevailed for more than a century as the most respectable opinion. We connect it rightly with such men as Charles Loring Brace, Charles Pickering, Amory Lowell, Samuel George Morton, John W. De Forest, Louis Agassiz, and the Boston gentlemen who were members of the American Ethnological Society. Its currency depended not on cotton but on apostasy and speculation, uncommon vices below the Old Surveyors' line.

Southerners, on the other hand, were notoriously *unscientific* about everything and were inclined, when they defended slavery, to argue from history, law, and Holy Scripture. As an illustration of Southern feelings, I suggest Robert Manson Myers's edition of the papers of the Charles C. Jones family of Liberty County, Georgia, *The Children of Pride* (1972), or William Sumner Jenkins's *Pro-Slavery Thought in the Old South* (1935). Southerners listened with interest to theories of separate origin and sometimes quoted from "racial science," but when pressed usually retreated to a case at law. Indeed, the Southern churches (about which I am admonished to speak plainly) led resistance to distribution of the doctrine that the Negro was not of the same species as the white man. On the anomaly of the appearance of Stephens's argument in a Southern context, I recommend William Stanton's *The Leopard's Spots: Scientific Attitudes Toward Race in America, 1815-59* (1960). As for the attitude toward blacks suggested by the quotation from *Huckleberry Finn*, Harry Jaffa surely knows that it was, in 1860, if anything, more likely in New York, Ohio, or Illinois than in the South—for economic reasons, when not for others.

Jaffa has made much of my long silence on the sins of Alexander H. Stephens. The case as he presents it is that my "failure" to reply to his invidious equation of the Old South with Stephens on "natural superiority" demonstrates that the equation is justified. Such a proceeding is what the ancient rhetoricians called the *argumentum ad ignorantum*, the fallacy of reasoning from the absence of proof. That Jaffa has not written the sequel to *Crisis of the House Divided* which he promised twenty-six years ago *does not prove* (as we might reason if we followed his example) that Lincoln as President of the United States is not, for his forceful champion, the statesman promised in the language of his campaigning from 1854-1860. Just as my silence, thus far, on Lincoln and the territories does not signify that I am embarrassed by the subject. In fact, I have an essay on the rhetoric of the Peoria speech forthcoming in *Continuity* and have almost finished a discussion of Lincoln's speech on *Dred Scott*. Sometimes, most of us are slow in our work; and sometimes we wait upon occasion, for the right time to speak and the right context.

The truth about the reaction of the government of Jefferson Davis and of the other leaders of the Confederacy to Stephens's cornerstone speech is that the speech was the great exception to the norm in all the vast torrent of rhetoric shaped to the end of justifying their secession. Though they did not attack their Vice President, their dismay at his performance was common knowledge at the time. President Davis thought the speech "unfortunate," "foolish and inopportune," playing into the hands of the radical press of the North, which he, acting carefully, had not done in the official statement of the Southern position, his inaugural of February 18, 1861. Davis's caution was noted by the London *Times* and England's *Quarterly Review* (see Hudson Strode, *Jefferson Davis: Confederate President*). Making much of Stephens's speech is, according to Pressly's aforementioned *Americans Interpret Their Civil War*, a shopworn technique with Northern sectional apologetics. Assuredly, from the viewpoint of strategy, Stephens "spoke out of turn," opening with his effort at becoming "proclaimer of the Southern purpose" a "feud" with his superior which cost the South much during its "war for independence." Yet as the distinguished Southern historian Frank E. Vandiver has observed, "every other Confederate" speech of this period says nothing about scientific racism or the central importance of slavery to limited government and constitutional morality (*Their Tattered Flags: The Epic of the Confederacy*, 1970). Harry Jaffa may dispute the summary of these events contained in the work of Professor Vandiver. I leave that unpromising struggle to him. But the obvious fact remains—that it would have been the veriest folly for the leaders of the Confederacy to have offended the almost 80 percent of Southerners who were determined to resist Lincoln's tyranny, though they owned no slaves nor expected slavery to play a role in their lives, by telling them that they were obliged to die that other men might keep their Negroes; or by insisting to them that slavery was a "natural institution," given the drift of the latest ethnological evidence. What Jefferson Davis spoke of was "preserving the Government of our fathers in its spirit" and of paying whatever price "honor" and love of "liberty" would require. For such words as his, for the inheritance he called to mind, they would indeed put up a fight.

Which brings me to answer the second question raised by Professor Jaffa's remarks, to reopen the old quarrel between the sections antecedent to what we have said in our exchanges, and to offer an inclusive interpretation of the War Between the States and its continuing role as touchstone in the reading of American history. As is no other moment in our national experience, the "Second American Revolution" is a prism through which we shade our vision of American politics toward the harsh colors of ideology and hatred. In their view of their "good" or "evil," their passion for the argument from definition, many Americans even now announce their disposition to reduce the great questions of policy to little moral melodramas (like the one suggested by Lincoln in his letter to Stephens of December 22, 1860), self-satisfying Puritan morality plays; and in the name of the "higher law" of their private conscience in some good cause (peace, universal justice, brotherhood)

threaten over and over again to make ours a government of men, not laws. Or no government at all—apart from the *ad baculum* arguments of what the satirist Samuel Butler called "the holy text of pike and gun." The trouble with this procedure is, of course, that our political identity as a people does not rest directly on distinctive personal versions of moral necessity, but rather on a constitutional rectitude based on pledged word, a method of dealing with some disputes while ignoring others. That identity, which Lincoln ignored or violated at will, is the only kind we can have without a cataclysmic transformation from within. This much Lincoln acknowledged—when it seemed expedient to do so.

Thus, if Lincoln were indeed all the man my friend says he was, even then his political conduct after 1854 would have been a disaster for the American people: in his distortion of the early history of the Republic; in his creation of a successful sectional party; in his condemnation of his adversaries as not only wrong, but evil; and in the victory he achieved on that basis. To this day we feel his example among us whenever some righteous soul in the name of God calls for political change in the process of offering his own refinement of character as a reason for electing him to office—who plays this game of posturing regardless of the harm he is doing to the civility necessary to a Republic large and various if it is to preserve the axiological silence or compromise on which its future depends. Political or social reform enacted according to the example set by the Republicans in the period 1854-1877 takes almost no account of what is to be done after "virtue" has triumphed, of how business in any ordinary atmosphere might then be conducted without endless repetitions of the crusade just concluded. And precisely that sort of chain reaction almost occurred—as it had in the England of the 1640s—after Lincoln's election in 1860, and has threatened to occur on numerous occasions since. In announcing that he expected the nation to become "*all* one thing, or *all* another" by reason of his fortune in a federal election, Lincoln declared war on "the old policy of the Fathers." The pretense that slavery was established by being left as optional in open territories (a constant possibility from 1787-1860) was no more than a bugbear. It had been exploded every time a territory voted not to establish slavery, and when Illinois, Indiana, and Ohio voted not to change from "free" to slaveholding states. Moreover, Lincoln's talk of Democratic plans to enslave white men was a scare tactic unworthy of a man of his stature—an instance of the rhetorical *diaboli*, in the face of which no Union could survive. Such rhetoric was a form of disloyalty to the "political religion" Lincoln early claimed to profess and has become, since he borrowed the technique from Seward and Chase, a ground for objecting to his continuing influence among us.

What Southerners call "the War" was, therefore, about many things, including slavery and its future as a "domestic institution": about the problem of internal variety of any kind and the distrust it generates. But mostly it was about power, who was to "have the stick" and on what grounds; and about whether Americans could live together under the Constitution, according to the example left to us in the records of the Great Convention of 1787, or else violate the accommodations to which we had freely agreed in that setting, insisting instead on the right of mere majorities (without amendment of the Constitution) to violate our pledge of comity, to interpret and enforce the fundamental law at their whim. That principle should rightly inspire either legal and political resistance or outright revolution whenever it is sounded in our midst. Only the craven and the servile can let it pass without challenge—despicable characters, no more acceptable to Harry Jaffa than to me. □

CONSTITUTIONAL OPINIONS

THE MEESE THAT ROARS

by William Kristol

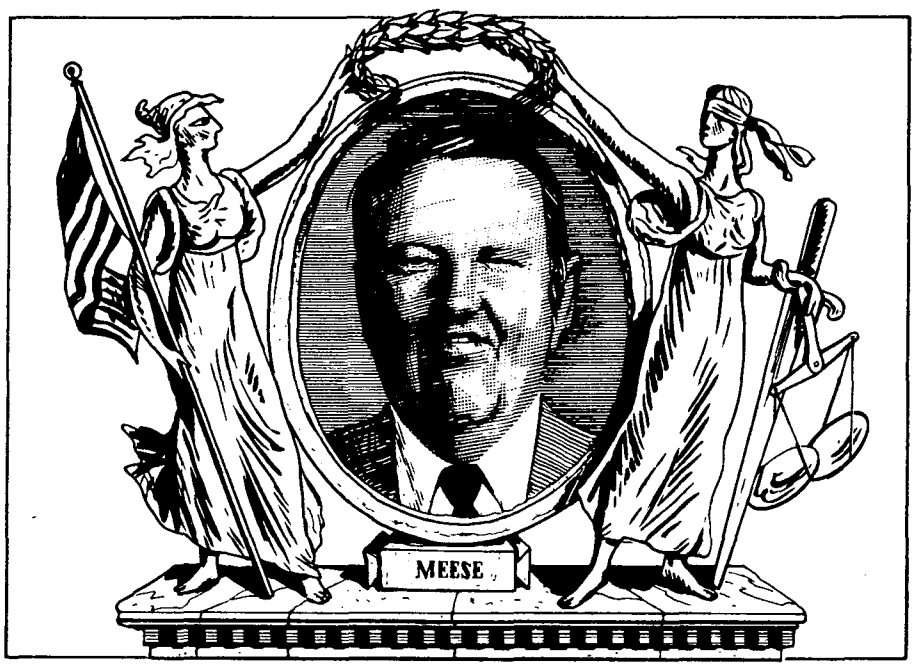
"What does not kill me makes me stronger." This thought of Nietzsche's—introduced into American political discourse by (who else?) G. Gordon Liddy—may have heartened Edwin Meese III during the difficult year between his nomination and his swearing in as Attorney General. Such a thought may even have inspired him to remain unbowed in the face of the Democratic taunts at his final Senate confirmation hearings that he was "beneath the office" of Attorney General, and then, once confirmed, to take vigorous command of the office.

For as Attorney General, Mr. Meese has shown no ill effects of his ordeal. In his first few weeks in office, he has announced initiatives in areas ranging from school discipline to drug enforcement; he has made impressive appointments—notably, the promotion of William Bradford Reynolds to Associate Attorney General and the selection of *TAS* contributor Terry Eastland as Director of the Office of Public Affairs; and he has spoken confidently and forthrightly of his plans in a variety of areas, including criminal justice, civil rights law, and legal services for the poor. With the further influence that will come as chairman of the Cabinet co-ordinating council on domestic and social policy, Attorney General Meese should be a man to be reckoned with in the Reagan Administration's second term.

This could be significant, for Mr. Meese has great hopes for that second term. In late January, he stated that its guiding purpose should be to do what FDR did with the policies of the New Deal: "to institutionalize the Reagan revolution so it can't be set aside no matter what happens in future presidential elections." While this may reflect an excessive confidence in one administration's ability to control the future, Mr. Meese is well placed to play a major role in institutionalizing the Reagan revolution, presiding as he does (in the words of the *Wall Street Journal*) "over the federal department most actively engaged in implementing President Reagan's political and social philosophies." But in order to institutionalize the Reagan revolution, Mr. Meese will have to move beyond the energetic pursuit of certain discrete policy goals; he will have to shape a set of policies that look toward a fundamental redirection of the course of constitutional interpretation, the role of the courts, and the character of the legal system.

Christopher Wolfe of Marquette University has described the theory and practice of contemporary constitutional interpretation as taking the Constitution out of constitutional law. This phenomenon is not just a matter of a few sloppy decisions or stretched interpretations. It is a matter of a long train of abuses and usurpations which, if they do not pursue invariably the same object, do rest on an underlying understanding of constitutional law as a vehicle for social justice and "moral evolution." Much of contemporary constitutional law thus uses the Constitution merely as a point of departure; at the end of the long journey from that point lies a host of decisions that have little to do with the Constitution, the intent of its framers, or the meaning of its language, and that have everything to do with various law professors' views of equality, social policy, and individual autonomy—views that have not on the whole been ratified by the American people. *Roe* v. *Wade* is the capstone of contemporary constitutional interpretation, not just because of its great practical effect, and not because it is bad constitutional law, but because, as John Hart Ely of Stanford Law School has said, "it is *not* constitutional law and gives almost no sense of an obligation to try to be."

How can the Justice Department contribute to a reformation of constitutional law? The most obvious means is through judicial selection. One presumes that Mr. Meese, toughened by his own experience at the hands of liberal senators, will not be impressed by their complaints about "ideological"—that is to say, constitutional—"litmus tests." In fact, should he feel himself wavering under the onslaught of law professors and senators marching under the banner of judicial integrity, Mr. Meese might remind himself of Senator Metzenbaum's amazing response to the suggestion that President Carter also sought judges who shared his views: "I don't think so," Metzenbaum said. "They were looking for more blacks, Hispanics, and women, and they were effective. But that does not necessarily imply getting more liberals than conservatives because there's no correlation." Since Senator Metzenbaum in the same breath praised Justice O'Connor for her refusal, at the confirmation hearings, to answer questions on past cases or constitutional doctrines ("I think she's right on target. To answer such a question would destroy the impartiality of the jurist when a case comes up in the future"), Mr. Meese should be emboldened to insist on the propriety of looking at prospective judges' previous writings and opinions, and of asking them to comment on past decisions, particular doctrines, or general modes of interpretation. (It would, of course, be improper to ask a prospective judge to commit himself to vote one way or another on a particular case.) But Mr. Meese and President Reagan should probably resist the temptation to test the professed belief of liberals that "only the necessary intellect, temperament, and integrity" should be relevant in judicial appointments (as the *Boston Globe* has stated) by appointing an intelligent, temperate, and honest constitutional defender of, say, *Plessy* v. *Ferguson*.



But sound judicial appointments must be supplemented—indeed, preceded—by a coherent and forthright articulation of constitutional principles by the Justice Department itself. This will require more boldness than lawyers are comfortable with. But when President Reagan has written, "Make no mistake, abortion-on-demand is not a right granted by the Constitution," and when he has endorsed various congressional efforts "to reverse this tragic policy," it is a bit ridiculous for the Justice Department to fail to argue for reversal, when it has the chance, before the Supreme Court. Yet the Justice Department was unwilling to argue that *Roe* v. *Wade* was wrongly decided when it appeared before the Court in 1983 to urge (unsuccessfully) the upholding of laws passed by the city of

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