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## LINCOLN, THE CONSTITUTION, AND DEMOCRACY<sup>1</sup>

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IN ANY attempt to discuss the problems which Lincoln had to face and solve we must, of course, appreciate the supremely difficult nature of his tasks. He was confronted in the later years of his life with the most severe and dangerous crisis in American history. The way in which he met this crisis and the way in which his own personal power developed during the years will always be a matter of absorbing interest. My own reflections have led me to consider the nature of his reactions to constitutional problems and to consider also the character of his political philosophy. We have the advantage of distance; and, viewed from afar, his normal and instinctive principles, as well as his reasoning and his arguments, appear simple; that simplicity is an attribute of greatness.

The constitutional problems with which Lincoln had to deal were very real and insistent. But as a rule they did not demand any meticulous examination of obscure principles or precedents. Though occasionally he entered upon some particular exposition and disclosed legal discrimination of high character, the times called for more than highly technical legalistic analysis. He did not ignore legal forms and prohibitions or sweep them aside with an impatient gesture; he was forced to go beyond them, or,

<sup>1</sup> An address delivered before the annual meeting of the Abraham Lincoln Association, Springfield, Illinois, February 12, 1936.

rather, he penetrated to the foundations of a democratic government restrained by law.

A constitution need not be looked upon as only a piece of parchment stored away in a safe, free from the prying eyes of the multitude, consigned to the clever exposition of politicians and subjected to the astute arguments of jurists. In a very real sense the actual structure of a nation, even if we are thinking only of its habitual political activities and its customary political reactions, is something more than a document and all the incrustations of statutes and judicial interpretations; it includes the common and conventional attitudes of the citizens, the principles which animate them, their substantial concepts of justice, liberty, and safety, their readiness to be ruled by others or their determination to compel their rulers to serve them. To the extent that a formal written constitutional system or any other kind of constitution is at variance with the character of a people, it is wanting in substantial reality.

I may be taking liberties with the word "constitution" when I include within it the actual life and the living philosophy of a nation. But probably no one will seriously object to the statement that, in a country which is more than merely a pretended democracy, there is and must be conformity between legal practices and underlying fact. There is, however, more to be said: a nation is a living thing, the product of vital forces; it transcends all written words; it embodies the thoughts, the traditional beliefs, the inherited tone and temper of the people. "The mystic cords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone"—these are in part the foundations of any constitutional system, and, above all, of a system founded on the principles of democracy. If memories are benumbed, if men have forgotten achievements, failures, and aspirations, the nation loses its character, its sense of self, its very essence; and constitutional forms are likely to give way to tumult or be dissipated by the spirit of distraction and essential uncertainty.

Only a democratic people, knowing and feeling the essence of their own philosophy, can manage a democratic government, and only a democratic government can maintain itself as the agency and ruling authority of a democratic people. This is so obvious that one may well hesitate to put the fact in words. But I am intent on making quite plain something which seems necessary for any clear understanding of Lincoln's life. For, when all is said, we look upon him as the peculiar exponent of the principle and the fact of democratic government in the nineteenth century; and we need to recognize the force of certain elementary realities. It is the prime duty of a democratic statesman to maintain the very system on which his power rests; it is the main duty of a democratic nation to be democratic. It is the central and all-controlling duty of an autocrat to defend his own power if he would live up to his own philosophy; for at the very moment when he fails to guard and exercise his autocracy, he ceases to that extent to be an autocrat.

It is sometimes said in these days of uncertainty and bewilderment that a nation need have no constitution. Of course such an assertion is utterly unfounded. Every politically organized community has a constitution; it has structure, forms, modes of action. Britain, we are told, has no constitution; and that very pronouncement helps me to present the simple thought with which I seem to be struggling. Beyond and below all established practices and the great British charters and statutes lie the fundamental principles which have been woven into the character of the people, the product of history, of experiences, of hopes deferred and aspirations attained.<sup>2</sup> This solid but intangible fact constitutes the basis of the state. It has been made gradually through the centuries. The strongest restraint on the amplitude of parliamentary power is the respect of the people for the elements of stable, authoritative, just govern-

<sup>2</sup> "That the state, and therefore Parliament and the King have very real restrictions placed upon them has been at all times in England a *live* conviction of the people" (Georg Jellinek, *The Declaration of the Rights of Man and of Citizens*, trans. M. Farrand [1st ed., 1895], p. 93). Italics mine.

ment. That respect and the feeling of popular power appear to have upheld democracy while the European world across the channel saw governments rise and fall and be swept aside by torrents of emotion. I am not advocating the establishment of an all-powerful legislature in America; such a plan would be inadvisable if not absolutely impossible. I am only pointing to the fact that a nation must have a constitution and that a real constitution is more than ink on paper.

All these preliminary statements are not foreign to my subject. For the more closely one reads and studies, the more confident he becomes of a simple and comprehensive fact. Lincoln, as a lawyer and a good citizen, had respect for the formal principles and prohibitions of the Constitution—he conceived it his duty not to ignore or avoid them—but his dominating impulse was to protect the very nature of the republic and not to allow the real America to destroy itself; he appears always to be looking beyond forms to character, to be relying on the inner sense of right and duty and power without which democracy and popular government are shallow and hypocritical.

The real Constitution, the underlying character of America as a political entity, is itself, of course, a historical product. The written document contains in words many of the elementary principles which were wrought out long before America existed as an independent nation. The framers of our Constitution were intent upon maintaining and strengthening liberties and protective forms which had been won by the toil of centuries. They were intent not only upon strengthening their hold upon liberty but also upon giving liberty the support of fundamental law. But unless my previous statements are without foundation, this support can last only so long as the character of the nation remains. I have often thought of Lincoln, when he was scarcely more than a youth, sitting under a tree through the hours of a sunny day and reading Blackstone's *Commentaries* and Chitty's *Pleadings*. He was being introduced to the antiquities of a legal system highly technical and formal when compared with the life

of the simple community which encompassed him, as he sat and shifted his chair when the moving sunlight cast an unpleasant glare upon the pages. His mind, we may presume, was not fully absorbed by the intricacies of feudal holdings, by reversions, remainders, and contingent interests, or by the complication of pleas and rebutters and rejoinders. He must have contemplated the long effort of men to attain free government responsive to their needs. No one can read Blackstone without enlarging the horizon far beyond the study walls, far beyond the confines of a frontier village, far beyond the narrow and technical boundaries of the law.

If there is truth in the foregoing statements, then Lincoln was an archconstitutionalist. With this conception of the real America in our minds, we can appreciate his attitude toward the difficulties which he had to meet and overcome. And yet it is sometimes hard to understand his unwavering reliance on the sober judgment of the people. He was no closet philosopher viewing the demos from afar; he suffered from no illusions; he knew practical politics; he knew people in their shifting moods; he had faced hostile audiences; he had had to accept defeat. But in the later, stronger, and more dangerous years of his life he at no time lost faith in what he believed America to be, "the last best hope of earth." This knowledge was built upon experiences. Few men who have risen to high place in the world had such ample opportunity to know men; life, as he had known it, was free from artificiality; if it was crude or uncultured, it was real. Life in a village gives wider and sounder knowledge of men than can come to the denizens of the mansions or purlieus of a metropolis.

Three men are commonly associated in our minds with the word "democracy." The first of these was Jefferson. He was primarily a philosopher. His inaugural address of 1801 stands today, I believe, pre-eminent in our literature as the best brief presentation of the principles and ideals of political democracy. And yet there was always likely to be something of contention

or even of partisan argument in what he said and did; there was wanting calm, generous confidence; he believed in democracy, but he was likely to see specters in the dark. Jackson represented a democracy boastful of its new-found power, inclined to be aggressive, combating the assumed superiority of the "wise and good and rich," still resenting the pessimism of the doleful Federalists. Lincoln took the people for granted; he neither feared nor boasted; he knew not where to look, if he ever tried, for a source of wisdom and justice except in the main body of men. He did not think, like Carlyle, of democracy as a jar of Egyptian vipers each striving to get its head above the rest; nor did he conceive it as marked by muddle-headed incompetence. In his first inaugural he said:

Why should there not be a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world? . . . If the Almighty Ruler of Nations, with his eternal truth and justice, be on your side of the North, or on yours of the South, that truth and that justice will surely prevail by the judgment of this great tribunal of the American people.

Here we find a solemn conviction based on faith in men. In any attempt to trace the main currents during the last few years of Lincoln's life these convictions, this assurance, provide, in my judgment, the safest guide.

His aim during those years was to save democracy, to save it even from itself. That thought was closely associated with his opposition to slavery. He said in 1854:

This declared indifference, but, as I must think, covert real zeal, for the spread of slavery, I cannot but hate. I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world; enables the enemies of free institutions with plausibility to taunt us as hypocrites; causes the real friends of freedom to doubt our sincerity; and especially because it forces so many good men among ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence, and insisting that there is no right principle of action but self-interest.

He attacked not his opponents but a system of social order, which he believed to be endangering the safety of free govern-

ment. To offer palliative or excuse was to trifle with the elements of civil liberty.

So far I have been discussing the central principle of Lincoln's constitutionalism. We must now glance at his position on some of the technical questions of constitutional law. And I refer to this subject, which I have not the time to discuss thoroughly, only that I may not appear to have wilfully ignored it. Even in these matters, however, he rarely if ever lost sight of the primal and elemental responsibility of free government. It is rather interesting to find that an able lawyer did not indulge in critical examination of the legal right to exclude slavery from the territories. He certainly did not do so in his public addresses. He made no attack upon certain vulnerable parts of the fugitive slave law. Thoroughly aroused by the Dred Scott decision, he did not enter upon a technical argument concerning the validity of its main pronouncement; nor did he present the salient declaration of Justice Curtis to the effect that, when the Constitution was framed, the allowance and the prohibition of slavery were recognized subjects of municipal legislation, and, as Congress was given governmental authority over the territories, this authority included the power to recognize or abolish slavery. In all these instances there was good reason for Lincoln's evading technical arguments which were not suitable for popular presentation. He consistently asserted that the hope of the Fathers was in the dwindling importance and final disappearance of slavery; by resisting attempts to extend slavery he believed that he, not Douglas or his co-workers, was loyal to the spirit of the men who made the Constitution. In that respect his position is undoubtedly sound.

Douglas sharply criticized Lincoln's opposition to the principle of the Dred Scott decision; and Lincoln's task, as we all know, was to show that Douglas himself was preparing an avoidance or a betrayal of that very principle. No member of Congress is under constitutional obligation to carry out in affirmative legislation a judicial announcement of constitutional

power or absence of power. He is entitled to his own opinion, though it should be an opinion based on common sense and not on mere personal or partisan vindictiveness.<sup>3</sup> This constitutional principle, however, as a matter of political ethics does not apply to a man who strenuously defends the decision and heaps opprobrium on his opponent because of the opponent's objections to the principle involved. How far a president or a congressman should go in an effort to bring about a reversal of a decision is a matter of political morality and sensible citizenship. To pack a court in order to overthrow a decision interfering with partisan purposes or individual desires has been properly condemned in this country as a dangerous and demoralizing proceeding; but if the court should be deliberately packed, the process might not be technically unconstitutional; it might and probably would insult and assault the very spirit of the Constitution. Only a most serious situation could excuse the crude strong-arm methods which are technically possible. So once again we face the crucial fact: The Constitution is sustained in a democracy by the authoritative conscience of a democratic people. Moreover, peaceful and legal methods of adapting the Constitution to a changing condition of society are at hand. Decisions have been overruled and others have been plainly

<sup>3</sup> I mean by this statement no more than this: If an act has been declared constitutional by the court, a congressman may properly vote against an act involving exactly the same principle as that contained in the court's decision. If an act has been declared unconstitutional, a congressman would be engaged probably in useless or worse than useless activity if he voted for another act of the same kind; but, in this latter case, conditions may have so altered, either in the makeup of the court or in the shifting of opinion, that it might not be unwise to pass another act substantially like the one declared void. And still, of course, the substantial fact is that the continuity of law, the advantage possessed by a court in passing upon a concrete question, has had the result of practically establishing the court's decisions as the authoritative determination of the content of the Constitution; and that fact has been of so much significance in our history that any abandonment of it in any particular instance ought to be made only with great hesitation and after deliberate circumspection. Those who cherish the idea or the possible prospect of relying solely on legislative discretion should remember that any such reliance should be based on a reverence and respect for established tradition entering into the fiber of a living people, and that any abrupt and thoughtless jettisoning of a habit and an applied principle is likely to endanger the character of the state as a sentient being.



modified. In three instances, constitutional amendments have been made so altering the Constitution as to destroy the effect of certain judicial decisions—in the adoption of the eleventh and sixteenth amendments and in the first sentence of the fourteenth.

Lincoln's well-considered position concerning the court is given in one lucid paragraph of his first inaugural address. After speaking again of the binding effect of a decision upon the parties to a suit, he declares that decisions

. . . are also entitled to very high respect and consideration in all parallel cases by all other departments of the government. And while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time, the candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by the decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there in this view any assault upon the court or the judges. It is a duty from which they may not shrink to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

Here we have a recognition of two salient principles. Law must be continuous; and yet it must be changeable. A fluctuating law is a misnomer; a law not adapted to social need is an anachronism.<sup>4</sup>

In the course of the war Lincoln acted on the assumption that devotion to procedure should not be regarded as a paramount

<sup>4</sup> "We believe as much as Judge Douglas (perhaps more) in obedience to, and respect for, the judicial department of government. We think its decisions on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution. But we think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it" (speech at Springfield, June 26, 1857).

obligation if this respect and devotion made probable the dissolution of the Union. At times in the past the word "Union" had connoted little more than the formal connection among the component parts of the nation. To Lincoln it had a wider and deeper meaning. It meant the nation, burdened or upheld by the duty of maintaining the principles of democratic government. When, therefore, he says that if he could save the Union by abolishing slavery he would do it and if he could save the Union by saving slavery he would do it, he was not paying homage to a form of government or to a system of political articulation; nor was he indulging in emotional patriotism. Every act of Lincoln's four years of painful solicitude must be interpreted in the light of this solemn determination.

It is quite impossible to discuss here in detail the arbitrary arrests which were frequently made during the war. The President hesitatingly and, I think, reluctantly acquiesced in the practice of imprisonment without a judicial trial because of the necessity of the situation. One statement, made in connection with the Vallandigham affair, deserves quotation:

Mr. Vallandigham avows his hostility to the war on the part of the Union; and his arrest was made because he was laboring, with some effect, to prevent the raising of troops, to encourage desertions from the army, and to leave the rebellion without a military force to suppress it. He was not arrested because he was damaging the political prospects of the administration or the personal interests of the commanding general, but because he was damaging the army, upon the existence and vigor of which the life of the nation depends. . . . If Mr. Vallandigham was not damaging the military power of the country, then his arrest was made on mistake of fact, which I would be glad to correct on reasonably satisfactory evidence.

As we study these words, we find the stern reality of which I have spoken. Arbitrary arrests are the favorite and indispensable agencies of tyranny. What prevents them from becoming the foundation of a despotic government or from being used with crafty cruelty and high injustice? Once again it is the conscience, the moral attitude, the sense of civic duty, and the

respect for law in the breast of the man that wields this enormous and dangerous power; and this sense of civic duty must be maintained and strengthened by the unfaltering devotion of the people to the primary principle of free government. We are living in an age which has seen the recrudescence of despots. No mere constitutional formalism can prevent their rise or prevent the ruthless exercise of power when once it is seized. And we gather assurance from the course of the Civil War which was marked on the whole by a respect for discussion, for freedom of the press, for open election, for the maintenance of legislative debate. So we must remind ourselves of the simple fact that it was not what Lincoln did, but what he failed to do and did not attempt to do, which constitutes the center of his greatness as a democratic leader. And, yet, I think the evidence appears to show that arbitrary arrests seriously endangered the Union cause and perhaps, almost certainly in extreme cases, did more harm than good.

Lincoln, someone has said, certainly cannot be classed as a constitutionalist because he did the most unconstitutional and arbitrary act imaginable when he issued the Emancipation Proclamation. And, still, in one respect, that very proclamation illustrates his studied respect for constitutional powers. He had always denied congressional authority to deal with slavery within state limits. He appears to have doubted or denied this authority even amid all the anxieties of the war. Now, I suppose, no one can seriously question the right of a commander-in-chief of an army to seize the property of an enemy—certainly property which is of evident service in hostile activities. While modern international lawyers and publicists frown upon any seizure of personal property not actually used in the conduct of the war, such a principle can scarcely be said to be firmly established on very solid foundation. And if it is recognized as a principle of what is called international law, a disregard of it cannot be called a breach of constitutional law.

There remains, however, one difficulty: If the war was an in-

surrection, then the most that could be legally done was to confiscate the property of the rebellious persons and to leave untouched the property of those persons in the rebellious communities who were not engaged in the rebellion. The insurrection had, however, taken on practically all the characteristics of public war; and the defenders of the Confederacy would be the last to announce technical grounds for denying the existence of the right to seize personal property, if that denial should be made to rest upon the assumption that the Confederates were engaged in an insurrection. This answer is, perhaps, an avoidance and a retort and not an answer to the constitutional question; but, at all events, this appears to be an answer entirely consonant with reality if not with the subtleties of legalism. It is, however, a noteworthy fact that courts of the southern states, in giving decisions concerning the time when owners of slaves lost their ownership, declared that the Emancipation Proclamation did not free the slaves in the area covered by the proclamation. Emancipation, they said, was in fact accomplished by conquest: “. . . Slavery ceased to exist in the different parts of the State as they fell into the hands of the conqueror.”<sup>5</sup> Thus, the proclamation was considered to be a war order issuing from the commander-in-chief.

Forty years and more after the Civil War, Theodore Roosevelt asserted that he had acted on the Jackson-Lincoln theory of the presidency. I have spent many hours of perplexing thought in an endeavor to interpret that declaration and to discover its validity. As I hope I have already shown, or as I have at least declared, Lincoln sought not to magnify the office or to disregard the Constitution but to save it. In days that threatened the very existence of the nation and the Constitution, he battled to save both. I have discovered no evidence of any particular additions to the office which were applicable to a state

<sup>5</sup> *Pickett v. Wilkins*, 13 Richardson (S.C.) 366 (1867).

of peace and not of war. If we seek to find a single principle of Lincoln's administration, we shall not find it to be an attempt so to interpret the Constitution as to expand presidential authority on the general theory of the paternalistic duty of the president, as the steward of the people, to promote the general welfare.

Possibly we often forget why we observe anniversaries of this kind and why we are here today. We meet, not because of any simple historical curiosity or from any reaction to a traditional emotion, but because we believe with Lincoln that a democratic nation ceases to exist if it has no central ideal, no spirit, no ethical core; and that a nation embodying within itself contradictory and conflicting philosophies of life cannot stand. He speaks to us today more clearly than ever before.

We are often told that, because of rapid communication by airplane, by wireless, and by the telegraph, the world has become one. And yet I think it is now more plainly two than ever before. The very fact of contiguity, the very fact that people ten thousand miles apart may hear the same music at the same time, listen to the same voice over the air, read the same news at approximately the same moment, brings out clearly not the unity but the dualism of the world. Just so, the dualism of America by the mid-nineteenth century had become more evident because of the integrating forces drawing North and South together; or, if "integrating" be too strong a word, the sentiment of nationalism, which had been developing for seventy years, enabled a man in Massachusetts to feel that slavery in the South affected him; and Calhoun, speaking in South Carolina, believed that religious agitation and popular discussion of slavery by the villagers amid the Green Mountains endangered the permanence of the Union. It no longer took three weeks or more for a letter from Massachusetts to reach Charleston as it had done seventy-five years before. There is some sense, surely,

in the paradoxical statement that the more nearly North and South came together, the farther they were apart.<sup>6</sup>

The occidental world is so closely knit in many respects that we are asked by the realities of the structure to inquire whether a civilization divided against itself can stand. There are two principles of life warring, one with the other, within the closely woven fiber of the modern Western world. Those nations which have democratic institutions and a large measure of real democracy may not be fully conscious of their rôle in the world and may not recognize the logical consequences of their own philosophy. The nations whose internal organization is founded not on discussion, not on co-operation, not on adjustment, but on sheer force are fully conscious of the implications of their system. Despotism, as ever true to itself, is thrusting out its mailed fist without decent respect for the opinions of mankind. But I must not condemn; it is living up to its nature without hypocrisy.

While this contrariety was of course apparent in the past—while it was perfectly plain that autocracy and democracy were, as theories of political order, at daggers drawn—the contradiction was not of supreme consequence, especially for us, living far away from the palaces and dungeons of autocratic power. But, as I have said, this antithesis is today perfectly plain. Space is largely annihilated; and ideas, as the source of action, are not confined; they are carried in a breathless second through thousands of miles of ether. I am not prepared to prophesy with Lincoln or make any pretense of having his powers of prophetic divination; but one can with difficulty avoid the belief that Western civilization is in deadly peril because divided against itself. We are led to question whether it will not “become all

<sup>6</sup> This is illustrated by Lincoln's letter to Joshua R. Speed, August 24, 1856, where he speaks of the fact that the sight of manacled slaves made him miserable: “It is not fair for you to assume that I have no interest in a thing which has, and continually exercises, the power of making me miserable.”

one thing, or all the other" or be shattered in a conflict begotten by antagonistic principles. Lincoln's declaration and prophecy, someone may say, were confined in their application to a nation; any nation must cherish some common principle—a principle nourished by history, tradition, sacrifice; and if the nation loses these common possessions, it ceases to be a nation, however closely the political mechanisms may strive to enfold it. This is true, but I am audaciously venturing to go farther and to find in the words of this humble gentleman of Illinois, who had spent a large portion of his life amid the rude simplicities and homely hardships of the frontier, a philosophic principle of universal application.

National boundaries today are no insulating walls shutting out the currents of foreign thought. The great enemies are the antipathies, the opposites, the contradictions of the spirit. And, as I have already said, the principle of democracy, which beyond all cavil is imperiled in the world today, is the principle of adjustment, adaption, co-operation, interchange of opinion, not the suppression of speech and open discussion and not simply seizure of property and territory by the right of physical force.<sup>7</sup> If it be quite false—this assumption that the modern world is one—then complete economic, spiritual, and intellectual isolation is reasonable and in accord with reality. But if this assumption be true, or to the extent that it is true, we find ground for saying that modern civilization is a house divided against itself. At the present moment the house seems to be frail, and we question whether it will not succumb to tempests of passion. A balanced system of antagonistic nations, each acutely suspicious of the others, appears to be inconsistent with a hope of stabilized peace.

<sup>7</sup> Lincoln's statement in his Peoria speech, quoted on a previous page, amply illustrates this principle. The acknowledgment or supine acceptance of a principle regarding the right of slavery reached out to affect the very elements or the underlying principle of popular government. Such acceptance recognizes, as a rule of action, force and self-interest, neither of which can be the essentials of democracy.

My aim in these preceding paragraphs is not to expose learning or prophetic power; my aim is to call your attention once more to the impressive wisdom of Lincoln and to suggest that neither the author of the metaphor of the divided house nineteen hundred years ago nor the man who quoted the words seventy-eight years ago<sup>8</sup> could have supposed the words to be applicable only to a peculiar and temporary phase of life. They thought of the principle as having continuous, general, and universal validity. Indeed, Lincoln made that very statement, if we can accept Herndon's words: "That expression," he said, "is a truth of all human experience, 'a house divided against itself cannot stand.' . . . The proposition also is true, and has been for six thousand years."

The analogy which I have drawn between the United States in the fifties of the last century and the world today is not made for the purpose of advocating or attacking any particular measure expressive of our own national duty. My statements are made as a natural outgrowth of rumination upon the depth of Lincoln's philosophy of the divided house. But, in fact, there are certain patent similarities between the whole process of European attempts to preserve national security and the history of the United States during a considerable portion of its history. The idea or the plan of the balance of power in Europe is a very old one; but in the century from 1814 to 1914 it is conspicuous. At the end of the last and the beginning of the present century there were two watchful ententes, or alliances, so evenly balanced one against the other that attack by either party seemed unlikely. This idea certainly bears a close resemblance to the balanced Union which was so ably and even vehemently advocated by Calhoun and his followers. To some extent from the beginning, but plainly from 1820 to 1850, the slave states were balanced against the free. The admission of California broke

<sup>8</sup> Letter to George Robertson, August 15, 1855; speech at Springfield, June 16, 1858.



the balance; and the extremists in the South looked upon the break as an assault upon the Constitution itself. Whatever else this attempt to maintain a union in a state of equilibrium may mean and whatever may be the value of a comparison with Europe, it appears to make evident the impossibility of maintaining a status by the perpetuation of an antithesis between one section and another, when they are imbued with essentially contradictory philosophies of life.

Calhoun believed so thoroughly in the balance of interests that he developed the highly ingenious principle of the concurrent majority. The basic assumption of that principle was the existence of two conflicting, or divergent, interests; neither of these should have the authority to determine by the counting of votes, by the force of mere numbers, the policy to be followed or laws to be enacted concerning the essential safety and well-being of the other. There is something attractive in the nature of this theory; but we should notice that it postulates not a common weal—or certainly not a common life—but antithetical groups. While it embodies the principle that minorities, under our constitutional system, are not supposed to be subject to the tyranny of majorities, it disregards the fact that in a democracy a majority must govern—in this country a majority restrained by law from wilful abuse of power in defiance of human liberty. It rejects the principle and the mode of securing unity by discussion and rests on the naked right of the minority to continue its life in a system based on the balancing of interests or desires. It attempts in reality to establish a divided house as a safe and permanent dwelling. In some ways it was in accord with the philosophy of slavery, inasmuch as it denied the authority of majority rule and was in agreement with a social and industrial order under which one man could own fifty. The conflict between such a theory and that of Lincoln is apparent; for to the southern leader, as he declared with solemn earnestness, the rule of the majority was anathema; to Lincoln there was no higher

guide than the considered judgment of the people. One believed in the permanent and useful effect of equilibrium of forces. The other believed in the attainment and perpetuation of union by interchange of opinion, by the cross-fertilization of ideas.

It is, or has been, true that European peace—an armed, ever restless, unneighborly, suspicious peace—was for decades at a time preserved by the counteraction of forces; just as Austria-Hungary, a state made up of differing peoples, really seemed to hold together as does a stand of stacked muskets with interlocking bayonets. But facts now suggest—and more than suggest—the choice between the principle of force in international relations and a spirit of democratic co-operation recognizing a common good and a common civilization. In this state of Illinois and in this city, where men were divided against themselves, Lincoln saw clearly the impact of ideas, a dangerous impact or conflict; for the idea or principle, which he dreaded, cast disrepute he believed on democracy and liberty. All this is not unimportant for us.

The historians have often, if not always, been strangely remiss in giving their readers opportunity to appreciate the dynamic influence of ideas. The same indictment can, I think, be brought against the philosophers. At all events, political philosophy is treated often with such an air of abstraction that the contact between philosophic thought and the course of mundane affairs seems to the reader to be generally lost sight of. If you read the history of Europe in the sixteenth century, you may be left with the impression that Charles V, who in 1519 was chosen Holy Roman emperor and soon became the ruler of half the world, was the creative figure of that age. But the monk who in 1517 nailed the ninety-five theses to the church door at Wittenberg is still alive. This is true whether all of us accept his doctrines as true and wholesome or not. The significance of the French Revolution is not altogether in the guillotine or the crushing power of Napoleonic armies. At the end of Napoleon's triumphs and

final defeat, the status of Europe was much as it had been twenty-five years before. But the doctrines of the rights of man and of citizens had a lasting effect upon the public law of Europe—lasting at least until in recent years the fabric of human liberties was devastated.<sup>9</sup>

I have mentioned the dualism of the modern world, but multiplicity is more nearly the correct word. It should be noticed, however, that the differences are within the field of ideas or theories of social, political, and economic order. Each nation of Europe fears not alone penetration of its territory by the armed forces of its neighbor but even more keenly the incursions of doctrines. Every nation is on its guard. One nation detests capitalism, individualistic democracy, and Fascism; another is afraid of Communism and democracy; another dreads Fascism and Communism. Only twenty-five years ago we complacently took for granted the silent and gradual conquest of the world by the ethical principles and political forms of popular government; and the history of the preceding half-century gave some ground for holding this comfortable assurance. Who could have supposed that the work of Mazzini and Cavour would be swept aside by a dictatorial hand? Today in Europe democracy is on the defensive. We can well appreciate the anxiety of Czechoslovakia, standing, as her own declaration of independence says, upon the memories of her distant past and on the democracies of Jefferson, Wilson, and Lincoln.

Once again we find the obvious resemblance between present conditions in the world and conditions in America during the two or three decades before Lincoln came to the presidency.

<sup>9</sup> Speaking of the French Declaration of the Rights of Man and of Citizens, Professor Jellinek says: "Less regarded than its historical and political significance is the importance of this document in the history of law, an importance which continues even to the present day. Whatever may be the value or the worthlessness of its general phrases, it is under the influence of this document that the conception of the public rights of the individual has developed in the positive law of the states of the European continent" (*op. cit.*, p. 2).

What the southern leaders feared was the rise and extension of doctrines endangering the security of slavery. Calhoun, who seems always to have thought more clearly and to have penetrated a problem with sharper insight than other southern leaders, called upon his brethren of the South to resist attack; this was just one hundred years ago. He asked them to redeem their pledge to protect the South, for the war had begun.

The war is waged, not only in the most dangerous manner, but in the only manner it can be waged. Do they expect that the abolitionists will resort to arms, and commence a crusade to liberate our slaves by force? . . . If so, let me tell our friends of the South who differ from us, that the war which the abolitionists wage against us is of a very different character, and far more effective. It is a war of religious and political fanaticism, mingled, on the part of the leaders, with ambition and the love of notoriety, and waged, not against our lives, but our character.

Lincoln and Calhoun—both of them great men, men of superior intellectual power, one of them the philosopher of slavery and probably the ablest and most original political philosopher in our history—both Lincoln and Calhoun appreciated the permeating force of ideas. When Calhoun made that passionate speech from which I have quoted a passage, the abolitionists were scarcely more than a handful; but he saw that the real war had begun. So in this respect as in some others he anticipated Lincoln. The southerner, however, believed that the remedy was to stifle discussion; people must be kept from talking. But in a democracy people must talk. It is impossible for a democracy to exist without discussion; and at any time to endeavor to save democracy or democratic realities by enforcing silence is to attack the very ark of the covenant. Lincoln, it is unnecessary to say, fearing the extension of slavery principles—perhaps, as it now seems to us, fearing them too much—met them in the only method consonant with the spirit of a self-respecting democracy; he sought to win by open verbal attack and frank, free, but tolerant speech.

Lincoln's philosophy also contradicted the principle of the

supposed fact of unrelenting conflict of classes. Such a conception ran counter to his whole theory of life. Perhaps one may say that he was naïve, that his outlook was the outlook of the open frontier, which offered hope for betterment and where every man was, or expected to be, a capitalist tilling his own acres or managing his own country store or his own mill; Lincoln did not know the stupendous contrarities of modern America. Moreover, throughout the North fifty or seventy-five years ago the words "class" and "class struggle" were foreign to American thinking. Be that as it may, his philosophy in this particular is plain; and one phase of it, the perplexing labor problem for which the slave owners asserted they had found a solution, he thoroughly understood. He rejected a solution which provided for the ownership of the laborer by the capitalist.

Now I mean only to emphasize Lincoln's comprehension of the play of human forces distinct from all material conditions or political contrivances. In the long run such forces are compelling if not dominant. The course of human history is deeply affected or actually controlled by them. And, yet, in these later days we are told that he should have been content with silence; he should have been satisfied, at least after 1858, with a *status quo* which would have ultimately resulted in the disappearance of slavery without the misery of a civil war. Believing in the compelling power of ideas, he believed also in the duty of asserting them.

I suppose the main fact which we should fully appreciate is Lincoln's recognition of what I may call the spiritual interpretation of history and of society. If "spiritual" be a misleading term, no one will deny the appropriateness of "non-materialistic." He recognized the effectiveness of forces superior to desire for pecuniary gain. His own life and its influence through the last seventy years are in themselves a condemnation of crass materialism as the guiding and conquering power in society.

Especially in the later months of his life he openly acknowledged the operation of forces beyond human comprehension and far beyond human greed. In his noble second inaugural and in his semi-serious, semi-jocular, and entirely sincere letter to Thurlow Weed, he gave emphatic recognition of the antagonism between right and wrong. There was in him, in fact, a quality of mysticism; or, if that word is not quite suitable—for he made no claim to the possession of special divine guidance or any peculiarly intimate communication with the Supreme Ruler—we can safely say that he placed reliance on the existence of a power, paramount, stable, unyielding, transcending the fluctuations and contradictions of life.

He had faith. I am not now using the word in any theological sense. He had faith in folks, faith in the power of ideas, faith in America as an influence for democracy, faith in the triumph of right, "as God gives us to see the right." He had the courage of an assurance that men were not mere cockleshells tossed about on the waves of passion or carried hither and thither on the currents of sheer accident. "Let us have faith," he said, "that right makes might; and in that faith let us to the end dare to do our duty as we understand it." A democracy without faith is no democracy at all. The essence of the spirit of democracy rests on the belief in men's natural ability to work out their own salvation; it rests on the belief in the normal tendency of folks to seek good and not evil. Having faith of this sort, real democracy is necessarily optimistic. I am reminded of a letter written some years ago by Herbert Croly to Theodore Roosevelt:

For better or worse, democracy cannot be disentangled from an aspiration toward human perfectibility, and hence from the adoption of measures looking in the direction of realizing such an aspiration. . . . The principle of democracy *is* virtue, and when we consider the condition of contemporary democracies, the saying may seem to be more ominous than flattering.<sup>10</sup>

<sup>10</sup> Henry F. Pringle, *Theodore Roosevelt* (New York, 1931), p. 541.

As a matter of fact, this was not all sentimentality nor was the idea quite new; Montesquieu nearly two hundred years ago found the basis of democracy in virtue; and George Washington one hundred and forty years ago said, "It is substantially true that virtue or morality is a necessary spring of popular government."

Of course, these words sound like smug satisfaction, the kind of thing which has so often appeared when oratory blazed with sparkling periods depicting American superiority. Though you can find in Lincoln's writings plenty of evidence of the trust of which I have spoken, you will find nothing of blatant, national self-glorification but an emphasis on duty. As a matter of cold reality, however, democracy does rest, for its safety and its success in the affairs of men, upon honesty and upon the sense of propriety and justice in the masses of the people. It is just as true now as when spoken two hundred years ago, though Montesquieu spoke upon the basis of logic rather than from experience. If the confidence or the realities of this faith are taken from us, we are sailing in a rudderless vessel over a chartless sea. At the beginning of this paper I spoke of the essential constitution of a nation—a constitution which in its essence includes the character or quality of the people. If that pronouncement is subject to legitimate objection when we deal with superimposed government, it is certainly true when we are speaking of a political system in which the people are the governors.

If we fear in this country the establishment of autocratic government, we may remind ourselves that despotism may come not because a designing ruler seizes power and proceeds to wield it ruthlessly but because of the weakness, the distractions, the ineptitudes of democratic government; and such conditions may result from popular inertia, lethargy, and heedlessness, which may vitiate democracy quite as thoroughly as popular turmoil and noisy agitation. A recent learned writer has declared that "a student of history may be warranted in thinking

that in the past weakness has probably caused the fall of more governments than wickedness." But what democracy has to fear is not so much the feebleness of government or the absence of "powers" as incessant futilities. Democracy, to succeed, must be economical and not wasteful; it must move on toward orderly and effective legal government, conserving liberty and accomplishing its purpose. It must not succumb to the wiles of intriguing and gain-seeking political groups; it should know its own history and comprehend its own temptations. No highly articulated legal system can save a democracy heedless of its own responsibilities—responsibilities at the primary and the election, responsibilities in daily life. In the end it all comes down to this: If democracy fail, the failure will be chargeable to ourselves.

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