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## Two Presidents, Two Inaugurations, and the Course of Freedom

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This year marks major anniversaries of the inaugurations of two greatly admired Presidents — Abraham Lincoln in 1861 and John F. Kennedy in 1961. Their inaugural speeches, unlike many, are also memorable. Lincoln, as the nation was beginning to split apart, ended by affirming that the Union would endure once Americans were guided by the “better angels of our nature.”<sup>1</sup> A century later, Kennedy took office during a cold war that threatened, through the “dark power” of nuclear weapons, to end in humanity’s self-destruction.<sup>2</sup> But Kennedy optimistically called for cooperation among nations in

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\* Copyright © 2011 Scott Bales. Justice, Arizona Supreme Court. These remarks were presented on February 24, 2011 — during the week of Presidents Day — as the Barrett Lecture at King Hall, the UC Davis School of Law named for Martin Luther King, Jr.

<sup>1</sup> President Abraham Lincoln, First Inaugural Address (Mar. 4, 1861), in ABRAHAM LINCOLN: SPEECHES AND WRITINGS, 1859-1865, at 224 (1989). The annotated draft that Lincoln used in reading his remarks is reproduced in CARL SANDBURG, 1 ABRAHAM LINCOLN: THE WAR YEARS 125-34 (1939).

<sup>2</sup> President John F. Kennedy, Inaugural Address (Jan. 20, 1961), in RICHARD J. TOFEL, SOUNDING THE TRUMPET: THE MAKING OF JOHN F. KENNEDY’S INAUGURAL ADDRESS 171-75 (2005) [hereinafter TOFEL].

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challenging “tyranny, poverty, disease and war itself.”<sup>3</sup> He concluded by asking Americans and our “fellow citizens of the world” to consider “what together we can do for the freedom of man.”<sup>4</sup>

These inaugural speeches are worth remembering for reasons beyond their eloquent phrases and the coincidence of their 50th and 150th anniversaries. Lincoln’s speech focused more on the Constitution than perhaps any other inaugural address. Kennedy discussed freedom and America’s role in the world. Although these Presidents spoke at times distant from today, their words still can deepen our understanding of the Constitution’s progress.

### I

On February 24, 1861, Abraham Lincoln was staying in Washington, D.C., at Willard’s Hotel, where he reviewed drafts of the remarks he would give a week later upon taking office. Lincoln had just completed a nearly two-week train trip from Springfield, Illinois. Along the way, he was greeted by approving crowds in northern cities, including 100,000 people in Philadelphia. The celebratory stops ended at the border of Maryland, a slaveholding state. Because of an assassination threat, Lincoln left his entourage, traveled unannounced at night through Baltimore, and arrived in Washington early on February 23 accompanied only by a detective. Between his November 1860 election and his arrival in Washington, seven states had declared their secession from the union — the entire Deep South stretching from South Carolina to Texas.<sup>5</sup> James Buchanan, the lame duck President, had feebly responded that secession was unconstitutional, but the federal government could not prevent it. Lincoln would use his inaugural speech to state his views on secession and, thus, the very fate of the nation.

To understand Lincoln’s remarks, and the crisis in which they arose, we need to recall that the Constitution drafted in 1787 had accommodated slavery while avoiding the word itself. Although some framers opposed slavery, and even some slaveholding framers expected it to disappear with time, the slaveholding states would approve the new Constitution only if it protected slavery. It did so in

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 175.

<sup>5</sup> South Carolina voted to secede on December 20, 1860. In the next six weeks, it was followed by Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas. Between April 17 and June 8, 1861, four other states voted to secede: Virginia, Arkansas, North Carolina, and Tennessee. See JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* 234-35, 278-80, 282 (1988).

three ways: First, the national government could not ban the importation of slaves — described as “such Persons as any of the States now existing shall think proper to admit” — for twenty years.<sup>6</sup> Second, slaveholding states were given greater representation in Congress and, through the Electoral College, in presidential elections, by counting slaves as “three fifths of all other Persons” for purposes of apportioning the House of Representatives.<sup>7</sup> Finally, the Constitution declared that “Person[s] held in Service or Labour in one State” would not be “discharged” by escaping into another, but instead would “be delivered up on Claim of the Party to whom such Service or Labor may be due.”<sup>8</sup> This provision, known as the Fugitive Slave Clause, meant that escaping slaves would be returned to their owners.

In its slavery provisions, the Constitution was in tension with the ideals proclaimed in the Declaration of Independence, a point noted by some of the framers and many other commentators. Any hope that slavery might fade away, however, vanished due to events unforeseen by the founding generation. Slave-based agriculture, particularly cotton, gained economic importance through technological changes, such as the cotton gin and factory weaving, and exports to Europe. Territorial expansion meant that a constitution adopted by thirteen states stretching along the Atlantic seaboard would govern a nation spanning the continent. The Constitution did not expressly speak to the power of the federal government to acquire territory beyond what existed in 1787, much less the status of slavery in such areas.<sup>9</sup>

Although the Constitution was silent about slavery in new territories, clamor over this issue would increasingly dominate political debate as the United States expanded westward. The Louisiana Purchase of 1803 nearly doubled our nation’s size. Under the Missouri Compromise of 1820, slavery was prohibited in the Louisiana territory north of the 36° 30’ latitude except in Missouri, which was admitted as a slave state.<sup>10</sup> Texas joined the union as a slave state in 1845. When the Mexican-American War began the next year, it was opposed by many, including Lincoln, as an effort to extend

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<sup>6</sup> U.S. CONST. art. I, § 9, cl. 1. This was one of only two clauses that the Constitution said could not be amended. *See id.* art. V.

<sup>7</sup> *Id.* art. I, § 2, cl. 3.

<sup>8</sup> *Id.* art. IV, § 2, cl. 3.

<sup>9</sup> *See* WILLIAM H. REHNQUIST, *GRAND INQUISITIONS* 56 (1992) (noting that Constitution “granted to Congress no specific authority to acquire additional territory” and discussing congressional debate over constitutionality of Louisiana Purchase).

<sup>10</sup> Act of Mar. 6, 1820, ch. 22, § 8, 3 Stat. 545, 548 (repealed 1854).

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slavery westward. The war stretched our nation's boundaries across the Southwest to California's Pacific Coast. Under the Compromise of 1850, Congress admitted California as a free state, deferred the status of slavery in other territories acquired in the war, and enacted a new and particularly harsh Fugitive Slave Act.<sup>11</sup> Many in the North bitterly opposed the Act for its allowing the summary arrest and return of persons alleged to be escaped slaves and its imposing criminal penalties on persons who interfered with slave recapture.

In 1854, Congress undid the Missouri Compromise with the Kansas-Nebraska Act, which provided that residents of those two states would determine whether to allow slavery within their boundaries.<sup>12</sup> The repeal of the Missouri Compromise prompted strong opposition from abolitionists, violence between pro- and anti-slavery factions in Kansas, and the formation of the Republican Party, which opposed allowing slavery in new states. In a misguided effort to quell the increasingly rancorous debate, the Supreme Court in 1857 decided *Dred Scott v. Sanford*.<sup>13</sup> Scott had invoked the diversity jurisdiction of the federal courts for a lawsuit, claiming he had become free because his master had taken him into territory (present day Minnesota) where slavery was prohibited by the Missouri Compromise.

In the *Dred Scott* opinion, Chief Justice Roger Taney recognized the tension between the Declaration's assertions of inalienable rights and the Constitution's slavery provisions. He attempted to resolve it by excluding blacks from the American political community. Asserting that slaves and their descendents were not part of "we the people" who had ratified the Constitution, Taney said that black Americans were not "citizens" entitled to sue in federal court, and indeed they could claim none of the "rights and privileges" protected by the

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<sup>11</sup> Fugitive Slave Act, ch. 60, §§ 1-10, 9 Stat. 462 (1850) (repealed 1864). The 1850 Fugitive Slave Act imposed federal criminal penalties on persons who interfered with the recapture of slaves and created a new class of federal "commissioners" with broad enforcement powers. Commissioners could arrest alleged runaway slaves based merely on an affidavit of the putative slaveholder. The alleged slave was not entitled to a jury trial on their status; instead, commissioners were authorized to determine whether an alleged runaway was slave or free. Commissioners received \$10 if they found the person was a slave and only \$5 if they declared the person free. Commissioners could arrest private individuals who interfered with the recapture of runaway slaves. Furthermore, commissioners could force private citizens to help in the capture of escaped slaves.

<sup>12</sup> Act of May 30, 1854, ch. 59, 10 Stat. 277.

<sup>13</sup> 60 U.S. 393 (1857).

Constitution.<sup>14</sup> Although he had concluded that the federal courts lacked jurisdiction, Taney proceeded to reject Scott's claim on the merits. He held that the Missouri Compromise was unconstitutional because, by prohibiting slavery in certain areas, it violated the rights of slaveholders.

The Kansas-Nebraska Act and the *Dred Scott* decision did not end the debate on slavery, but they helped catapult Abraham Lincoln to political prominence. In 1858, he ran as the Republican candidate for Senate in Illinois, challenging the Democratic incumbent Stephen A. Douglas. Their debates drew national attention. Douglas, who had supported the repeal of the Missouri Compromise, argued that "popular sovereignty" should determine the legality of slavery within newly formed states; he also defended *Dred Scott*. Lincoln responded by stating that a "house divided against itself cannot stand" and that the nation could not permanently endure as half-slave and half-free.<sup>15</sup> He criticized *Dred Scott* as reflecting a conspiracy among the Supreme Court, President Buchanan, and slaveholders to extend the reach of slavery. Although Lincoln lost the 1858 Senate race, he would win the Republican nomination for President two years later.

The 1860 presidential election, like the Civil War itself, was fundamentally about slavery's future. The Democrats split between two factions: the Northern Democrats, led by Douglas, who supported local determination of the status of slavery in newly formed states; and the Southern Democrats, led by John C. Breckinridge, who maintained that the Constitution protected the right to own slaves in all territories. A third party, the Constitution Union Party, led by John C. Bell, advocated compromise to preserve the Union, adopting the slogan "the Union as it is, and the Constitution as it is." The Republican platform opposed any extension of slavery and supported settlement of the West by completing a transcontinental railroad and enacting a Homestead Act granting free land to settlers.<sup>16</sup> In the four-

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<sup>14</sup> *Id.* at 406. Justice Curtis forcefully argued in dissent that Taney's opinion ignored the fact that, when the Constitution was ratified, free blacks were entitled to vote in several states. See *Sandford*, 60 U.S. at 572-76 (Curtis, J., dissenting). Free blacks had also fought in support of the Revolutionary War. See MICHAEL LEE LANNING, *DEFENDERS OF LIBERTY: AFRICAN AMERICANS IN THE REVOLUTIONARY WAR* 11, 177 (2000). See generally WILLIAM COOPER NELL, *THE COLORED PATRIOTS OF THE AMERICAN REVOLUTION (1855)* (examining black patriots during the revolutionary era).

<sup>15</sup> See Abraham Lincoln, *House Divided Speech at Springfield, Illinois* (June 16, 1858), in *ABRAHAM LINCOLN: SPEECHES AND WRITINGS 1832-1858*, at 426 (1989).

<sup>16</sup> Republican Convention 1860, *Platform of 1860*, in *A POLITICAL TEXT-BOOK FOR 1860*, at 26-29 (Horace Greeley & John F. Cleveland eds., 1860).

way race, Lincoln won the presidency with less than forty percent of the popular vote.<sup>17</sup> Lincoln did not even appear on the ballot in those slave states that later joined the confederacy — except Virginia, where he came in fourth with about one percent of the vote. Within days of the November election, South Carolina called for a convention to consider secession.

On the eve of Lincoln's inauguration, delegates from the seceding states met in Montgomery, Alabama, to adopt a constitution for the "Confederate States of America."<sup>18</sup> This constitution was unabashedly pro-slavery, declaring that "no . . . law denying or impairing the right of property in negro slaves shall be passed."<sup>19</sup> It included three-fifths and fugitive slave clauses similar to those in the federal constitution.<sup>20</sup> The Confederate Constitution further proclaimed that citizens were entitled to travel with their slaves among the states and that "the institution of negro slavery" would be recognized and protected in any new territories.<sup>21</sup> While the Confederate Constitution was being prepared, rebel forces were organizing in the seceding states and seizing federal forts, armories, and other facilities. No other president has faced so grave a challenge to our nation's existence.

Lincoln began his inaugural remarks by attempting to reassure the "people of the Southern States."<sup>22</sup> He said: "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so." Lincoln also said that he would not oppose a constitutional amendment providing that "the Federal Government shall never interfere with the domestic institutions of the States, including that of persons held to service." Noting that such a provision was already implied, Lincoln said, "I have no objection to its being made express and irrevocable." Although Lincoln personally opposed slavery, he was determined to save the Union even if it meant further accommodating slavery in the Constitution.

In his following remarks, Lincoln — without saying so explicitly — responded to arguments by Southerners that secession was justified

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<sup>17</sup> Lincoln won a majority in the Electoral College with 180 votes. The other candidates combined received 123 electoral votes. See DAVID HERBERT DONALD, *LINCOLN* 256 (1995).

<sup>18</sup> CONFEDERATE STATES CONST. of 1861 pmbl. The proposed constitution was completed in late February and was formally approved by the Confederate delegates on March 11, 1861, one week after Lincoln's inauguration.

<sup>19</sup> *Id.* art. I, § 9(4).

<sup>20</sup> *Id.* art. I, § 2(3).

<sup>21</sup> *Id.* art. IV, §§ 2, 3(3).

<sup>22</sup> ABRAHAM LINCOLN: SPEECHES AND WRITINGS, *supra* note 1, at 215.

because northern states had resisted enforcement of the Fugitive Slave Act and refused to accept *Dred Scott's* holding that Congress could not bar slavery in new territories. Lincoln did not mention the Republican Party's opposition to slavery. Instead, he outlined his views on the rule of law, the indissoluble nature of the Union, and the President's responsibilities under the Constitution.

Acknowledging the controversy over "delivering up of fugitives from service or labor," Lincoln said that Congress was obliged to support the Fugitive Slave Clause just as any other provision of the Constitution. He obliquely criticized the 1850 Fugitive Slave Act by saying that such a law should include "all the safeguards of liberty known in civilized and humane jurisprudence" to prevent free men from being surrendered as slaves, and it should also enforce the Constitution's Privileges and Immunities Clause. Lincoln added, however, that it would be "much safer for all" to comply with existing laws rather than to "violate any of them trusting to find impunity in having them held to be unconstitutional."

Turning to secession, Lincoln maintained that the Constitution created a perpetual union. But even if the Constitution is regarded as a contract among states, Lincoln said, a contract cannot be terminated by fewer than all the parties. More fundamentally, Lincoln argued that "[t]he union is much older than the Constitution," having been formed even before the Declaration of Independence in 1776.<sup>23</sup> In the Articles of Confederation, the states expressly agreed that their union was perpetual. Since the Constitution forms a "more perfect" union, it cannot allow secession, which would deny "the vital element of perpetuity." Lincoln accordingly concluded that "no State upon its own mere motion can lawfully get out of the Union."

Lincoln argued that secession was not only unlawful but also unwarranted. He conceded that revolution might be morally justified if a majority "by the mere force of numbers" deprived a minority of "any clearly written constitutional right." Such was not the case because the Constitution did not itself address whether Congress

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<sup>23</sup> Lincoln said:

The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was "to form a more perfect Union."

*Id.* at 217-18.

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could prohibit slavery in the territories or whether it must protect slavery there. Such questions should be resolved politically. “[T]he only true sovereign of a free people,” Lincoln said, is “a majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments.” The alternatives were “anarchy or despotism.”

The Supreme Court, Lincoln acknowledged, was responsible for deciding some constitutional questions. Alluding to *Dred Scott*, but not identifying it by name, Lincoln admitted that the Court’s decision was binding on other branches of government, but added that erroneous decisions may be later overruled. He stated: “[I]f the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court [in private litigation] the people will have ceased to be their own rulers.”

Lincoln thought that the illegality of secession determined his responsibilities as President. Because the Union was “unbroken” as a legal matter, Lincoln said he would “take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States.” Federal power would be used to “hold, occupy, and possess” government property and to collect duties and imposts. But Lincoln said that there would be “no bloodshed or violence” unless “forced upon the national authority.”

At the end of his remarks, Lincoln urged his countrymen to think “calmly and well upon this whole subject.” He said that “the momentous issue of civil war” was in the hands of the seceding states: “The Government will not assail you. You can have no conflict without being yourselves the aggressors.” Finally, Lincoln concluded:

We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

Lincoln then took his oath of office from Chief Justice Taney, who, shaking from age and emotion, held a Bible as Lincoln swore to “preserve, protect, and defend” the Constitution.<sup>24</sup>

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<sup>24</sup> SANDBURG, *supra* note 1, at 122. For a discussion of the conflicting constitutional views of Lincoln and Taney, see JAMES E. SIMON, *LINCOLN AND CHIEF JUSTICE TANEY: SLAVERY, SECESSION, AND THE PRESIDENT’S WAR POWERS* (2006).



Lincoln's appeal for peace would not preserve the Union. Nearly six weeks later, rebel forces attacked Fort Sumter in Charleston's harbor, launching our nation's bloodiest war. The scale of the Civil War's devastation is hard to grasp. Some 620,000 persons died in the four-year conflict, a percentage of the population that would equate to more than six million Americans today.<sup>25</sup> The war was fought almost entirely within our borders, pitting friends and family members against each other. Mary Todd Lincoln, the President's wife, lost three brothers in the conflict, all of whom died fighting for the confederacy.

A war that began in a dispute over the expansion of slavery would end with its abolition. The war would also transform Lincoln's own views.<sup>26</sup> In the summer of 1862, Lincoln resolved to order the emancipation of slaves in the rebellious states, exercising his powers as commander in chief based on military necessity. When the Emancipation Proclamation took effect on January 1, 1863, it freed nearly three million slaves.<sup>27</sup> But it did not grant freedom to those in states that had not seceded, such as Kentucky, or areas under the control of Union forces, such as New Orleans. The Proclamation's limited scope reflected both tactical concerns (Lincoln was determined to keep Kentucky and other border states within the Union) and constitutional constraints (*Dred Scott* had held that slaveholders had property rights in their slaves).<sup>28</sup> The Emancipation Proclamation also provided that freed slaves could serve in the Union Army, and thousands joined at a time when replenishing troops was critical because of growing opposition to the war in the North.<sup>29</sup>

Lincoln's views on the nature of the war had evolved even further by the end of 1863. In November, he spoke briefly at the dedication of a cemetery at Gettysburg, Pennsylvania — the site of the pivotal battle where Union forces turned back Robert E. Lee's advance into the North and the two sides suffered nearly 50,000 casualties. Characterizing the Declaration as our founding document, Lincoln

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<sup>25</sup> DREW GILPIN FAUST, *THIS REPUBLIC OF SUFFERING: DEATH AND THE AMERICAN CIVIL WAR*, at xi (2008).

<sup>26</sup> For a discussion of the evolution of Lincoln's views, see generally ERIC FONER, *THE FIERY TRIAL: ABRAHAM LINCOLN AND AMERICAN SLAVERY* (2010).

<sup>27</sup> See *id.* at 240-42; ABRAHAM LINCOLN: *SPEECHES AND WRITINGS*, *supra* note 1, at 424-25.

<sup>28</sup> DONALD, *supra* note 17, at 299-300. Slaves in areas under rebel control could be freed on the rationale that property could be confiscated in wartime if it was being used to support the enemy. See DANIEL FARBER, *LINCOLN'S CONSTITUTION* 152-57 (2003).

<sup>29</sup> AKIL AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 358 (2005). Amar notes that 180,000 former slaves and other free blacks served in the Union forces.

argued that our nation was conceived in liberty and dedicated to the proposition that all men are created equal.<sup>30</sup> He concluded by saying the costs of the war would be vindicated by a “new birth of freedom.” To this end, Lincoln worked to achieve congressional approval of the Thirteenth Amendment, which prohibited slavery “in the United States, or anywhere within their jurisdiction,” and he eventually supported voting rights for the newly freed slaves.<sup>31</sup> After his assassination, the Reconstruction Congress continued these efforts by adopting two more constitutional amendments and enacting civil rights legislation.

The Fourteenth Amendment, ratified in 1868, begins by repudiating *Dred Scott’s* holding denying citizenship to slaves and their descendants. The first sentence states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”<sup>32</sup> The amendment then declares that no state shall abridge the privileges and immunities of citizens or deny any person due process or the equal protection of the laws. Ratified in 1870, the Fifteenth Amendment declares that the right to vote shall not be denied based on race, color, or prior servitude.<sup>33</sup> The Civil War amendments held the promise of a “new birth of freedom” in which all Americans would be equal citizens.

The promise was largely lost with the end of Reconstruction. By the turn of the twentieth century, most of the former Confederate states had adopted new constitutions that were designed to disenfranchise blacks. The federal government, including the courts, failed to enforce the constitutional protections afforded by the Civil War amendments. The Supreme Court narrowly construed the enforcement powers given to Congress; it held that states could mandate the segregation of races despite the Fourteenth Amendment’s requirement of equal protection, and it declined to intervene when blacks complained of concerted efforts to prevent them from voting.<sup>34</sup> The result was a self-

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<sup>30</sup> ABRAHAM LINCOLN: SPEECHES AND WRITINGS, *supra* note 1, at 536.

<sup>31</sup> On Lincoln’s role in securing congressional passage of the Thirteenth Amendment, see DONALD, *supra* note 17, at 553-63. *See also* FONER, *supra* note 26, at 312-16, 330-31.

<sup>32</sup> U.S. CONST. amend. XIV, § 1.

<sup>33</sup> *Id.* XV, § 1.

<sup>34</sup> *See generally* *Giles v. Harris*, 189 U.S. 475 (1903) (rejecting equitable challenge to alleged exclusion of blacks from voter rolls); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (rejecting equal protection challenge to state law mandating segregated railway cars); *The Civil Rights Cases*, 109 U.S. 3 (1883) (holding that statutory prohibition on discrimination in transportation and public accommodations exceeded Congress’s

perpetuating system of racial discrimination in the South: blacks were educated in schools lacking the resources afforded to white students; hospitals, restaurants, hotels, and even cemeteries were segregated; blacks had limited economic opportunities; and, because they were excluded from the voting rolls, blacks also generally could not serve on juries. Sharecropping bound many rural families to a subsistence existence, and involuntary servitude persisted through prison work farms and the “leasing” of convicts to private employers.<sup>35</sup> Despite the Civil War Amendments, within decades of the war’s end, blacks in the South had again been largely excluded from the political community of their states and the nation.

## II

John F. Kennedy took office on January 20, 1961, as the sun glared on newly fallen snow and spectators sat under blankets in biting cold. He began his remarks by describing the presidential transition as “a celebration of freedom” and declaring that “the torch has been passed to a new generation of Americans” who, as heirs to “our first revolution,” remained committed to defending human rights “at home and around the world.” Kennedy said:

Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty.

Kennedy’s focus was understandably quite different than Lincoln’s.<sup>36</sup> In 1861, Lincoln confronted an internal threat to our national existence; he invoked the Constitution and national memory in an effort to preserve the Union. One hundred years later, Kennedy spoke to a nation that had become the world’s greatest power and possessed the technological means to “to abolish poverty and to abolish all forms of human life.” A Cold War president, Kennedy described a world engaged in conflict between “two great and powerful groups of nations.”

He pledged to support our allies, to help newly independent countries “to help themselves to escape from poverty” and to support

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powers).

<sup>35</sup> See DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* 5-9 (2009).

<sup>36</sup> Kennedy’s speech, however, is modeled on Lincoln’s rhetorical style, particularly in its brevity and careful word choice. See TOFEL, *supra* note 2, at 38, 87-88. Moreover, certain passages echo phrases from Lincoln’s speeches. See *id.* at 105-06, 117.

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a new alliance for progress in Latin American. To those who would be our adversaries, Kennedy called for the opening of arms control talks. He said:

So let us begin anew — remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate.

Let both sides explore what problems unite us instead of belaboring those problems which divide us.

The president called on “both sides” to “join in creating a new endeavor, not a new balance of power, but a new world of law, where the strong are just and the weak secure and peace preserved.”

Like Lincoln, Kennedy concluded with a musical metaphor. Instead of mystic chords of memory, Kennedy said:

Now the trumpet summons us again — not as a call to bear arms, though arms we need; not as a call to battle, though embattled we are — but a call to bear the burden of a long twilight struggle, year in and year out, “rejoicing in hope, patient in tribulation” — a struggle against the common enemies of man: tyranny, poverty, disease and war itself.

It was in the context of this “long twilight struggle” that President Kennedy memorably said:

And so, my fellow Americans: ask not what your country can do for you — ask what you can do for your country.

My fellow citizens of the world: ask not what America will do for you, but what together we can do for the freedom of man.

Antipodal in its style and worldview, Kennedy’s speech was widely praised when first delivered and is still regarded as a key statement of American political thought.<sup>37</sup> But Kennedy’s eloquent call to consider what we can do for the freedom of man contrasted with his silence about civil rights in the United States.<sup>38</sup> He deliberately avoided this issue because it had divided his own party — conservative Democrats

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<sup>37</sup> The immediate responses to Kennedy’s speech and its reception over time are described in TOFEL, *supra* note 2, at 133-53.

<sup>38</sup> After a draft of the speech had been completed, some of Kennedy’s aides urged him to mention civil rights. Kennedy agreed to include the words “at home and abroad” after referring to the nation’s commitment to human rights, but he declined to mention race relations. *See id.* at 74.

still largely controlled the political structure in the South, and many were opposed to changing the status quo.

Before Kennedy's election, the emerging civil rights movement and litigation efforts led by the NAACP's Legal Defense Fund had prompted the nation to begin taking steps towards reviving the promise of the Civil War Amendments. In 1954, the Supreme Court held in *Brown v. Board of Education* that segregated public schools violated the Equal Protection Clause, effectively overruling the "separate but equal" doctrine.<sup>39</sup> Three years later, President Eisenhower put the power of the executive branch behind the rule of law when he dispatched an airborne division to enforce a district judge's order desegregating Little Rock High School.<sup>40</sup> That same year, Congress enacted the first federal civil rights act since Reconstruction.<sup>41</sup> The new law enabled federal prosecutors to seek injunctions against voting rights violations and led to the creation of the civil rights division in the U.S. Department of Justice. But segregation remained widespread and relatively few blacks were registered to vote in the southern United States.

One person who heard Kennedy's speech was James Meredith, a 28-year-old Air Force veteran and the grandson of a slave. Angry that Kennedy had not mentioned civil rights, and hoping to prompt action by the new administration, Meredith immediately applied to the University of Mississippi, which had not admitted a black student in its 114-year history.<sup>42</sup> When federal courts later ordered Meredith's admission to "Ole' Miss," the state's Governor and Legislature vowed to resist.<sup>43</sup> State officials physically barred Meredith three times from registering for classes, even though he was accompanied by federal marshals. In a televised address on September 30, 1962, President Kennedy said that he was constitutionally obliged to implement the court's orders by whatever means necessary, but he pleaded for peaceful compliance. Opponents of integration instead began rioting

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<sup>39</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 494-95 (1954).

<sup>40</sup> See President Dwight D. Eisenhower, *Radio and Television Address to the American People on the Situation in Little Rock, Arkansas* (Sept. 24, 1957), available at [http://www.eisenhower.archives.gov/all\\_about\\_ike/speeches.html](http://www.eisenhower.archives.gov/all_about_ike/speeches.html).

<sup>41</sup> See ALEXANDER KEYSAR, *THE RIGHT TO VOTE* 259-61 (2000). Edward L. Barrett, Jr., the namesake for the lecture at which these remarks were given, worked on the development of the Civil Rights Act of 1957 while serving as a special assistant to the Attorney General.

<sup>42</sup> See NICK BRYANT, *THE BYSTANDER: JOHN F. KENNEDY AND THE STRUGGLE FOR BLACK EQUALITY* 331 (2006).

<sup>43</sup> The court proceedings are described in JACK BASS, *UNLIKELY HEROES* 172-200 (1981).

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on the campus. Two people were killed and hundreds injured as outnumbered federal marshals valiantly protected Meredith and themselves. Kennedy was forced to send federal troops to restore order. While military police held off protesters shouting racial epithets and the smell of tear gas lingered in the air, Meredith was finally able to register to attend his state's university.

Events in Mississippi, and the civil rights movement more generally, affected Kennedy's views. Just as Lincoln changed his position on slavery over time, Kennedy would gradually embrace a more active role for the federal government in promoting racial equality. On June 13, 1963, Kennedy addressed the nation after sending troops to the University of Alabama to assure the admission of two black students.<sup>44</sup> This speech — his most significant on civil rights — in some ways represents the domestic counterpart to his inaugural address. Like Lincoln at Gettysburg, Kennedy described the Declaration as our foundational document. Kennedy said that “our nation was founded by men of many nations and many backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened.” He connected these principles to international affairs, saying that “[t]oday we are committed to a worldwide struggle to promote and protect the rights of all who wish to be free,” and acknowledging the inconsistency in “preach[ing] freedom around the world” while treating blacks as second-class citizens “here at home.” Noting that emancipation had been followed by “one hundred years of delay,” Kennedy said that the time had come for “this Nation to fulfill its promise.” He announced that he would ask Congress to enact a sweeping civil rights bill that would bar discrimination in public accommodations, help end segregation in public schools, and better protect voting rights.

Before civil rights legislation could be enacted, however, Kennedy was tragically assassinated in November 1963. His successor, Lyndon Johnson, told Congress in his first presidential address that “no memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill.”<sup>45</sup> Enactment still was not assured, and civil rights

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<sup>44</sup> See President John F. Kennedy, Radio and Television Report to the American People on Civil Rights (June 11, 1963), available at <http://www.jfklibrary.org/Research/Ready-Reference/JFK-Speeches/Radio-and-Television-Report-to-the-American-People-on-Civil-Rights-June-11-1963.aspx>.

<sup>45</sup> President Lyndon B. Johnson, Presidential Address to Congress (Nov. 27, 1963), available at [http://www.lbjlib.utexas.edu/johnson/kennedy/Joint%20Congress%](http://www.lbjlib.utexas.edu/johnson/kennedy/Joint%20Congress%20Address)

demonstrations — often met by arrests and violent opposition — continued across the nation. With the support of civil rights leaders and moderate Republicans in Congress, Johnson was able to overcome a long filibuster and achieve passage of the Civil Rights Act in July 1964.<sup>46</sup> This landmark legislation prohibited discrimination in employment, public accommodations, and government-funded programs. It was followed the next year by the Voting Rights Act of 1965,<sup>47</sup> which would finally displace the barriers to black voter registration in the South — a necessary step to fully including blacks in the American political community.

### III

What can we learn today from inaugural speeches given by presidents so long ago? Upon taking office, Lincoln said that he did not intend to interfere with slavery where it existed. Yet the Civil War fought to preserve the Union would ultimately end slavery and begin what Lincoln hoped would be a “new birth of freedom.” In speaking about our nation’s role almost one hundred years later, Kennedy did not acknowledge that the promise of the Civil War Amendments was still largely unmet. But Kennedy, like Lincoln, would revise his views about the federal government’s role in securing civil rights, and his later words and actions were important to the gains ultimately achieved in the 1960s.

Our greatest leaders often cannot determine or even anticipate the course of events. Much of their greatness, like that of our country itself, has been the ability to adapt and change in ways that have helped us to better realize our defining ideals of liberty and equality.<sup>48</sup> Although we may never fully measure up to these ideals, the gap itself

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20Speech/speech.htm.

<sup>46</sup> Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241. For a history of the enactment, see NICK KOTZ, *JUDGMENT DAYS: LYNDON BAINES JOHNSON, MARTIN LUTHER KING, JR., AND THE LAWS THAT CHANGED AMERICA* 88-122, 130-53 (2005).

<sup>47</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973(a)-1973bb-1 (2006)).

<sup>48</sup> Cf. FONER, *supra* note 26, at 336 (noting that the “hallmark of Lincoln’s greatness was his capacity for growth”). Lincoln observed that the statement that “all men are created equal,” expresses an ideal “which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere.” Abraham Lincoln, *Speech on the Dred Scott decision at Springfield, Illinois (June 26, 1857)*, in *ABRAHAM LINCOLN: SPEECHES AND WRITINGS*, *supra* note 1, at 398 (1989).

can tug us forward as a nation. We sometimes are guided by the better angels of our nature. But the path is not easy. Writing from an Alabama jail in 1963, Dr. Martin Luther King, Jr., observed that “human progress does not roll in on the wheels of inevitability.”<sup>49</sup> Instead, as King well knew and history demonstrates, progress generally has been hard won, coming only after long struggle involving many people — from students to presidents. Understanding that this has been our nation’s story should inform our appreciation of the Constitution and those who helped make it.

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<sup>49</sup> Martin Luther King, Jr., Letter from a Birmingham Jail (Apr. 16, 1963), reprinted in MARTIN LUTHER KING, JR., I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD 83-92 (James Melvin Washington ed., 1986).