

Lawyer and Congressman Interview Thread Transcript

Edward Ayers

For Lincoln, his political poles are defined by the Declaration of Independence – “all men are created equal” – which is a radical document, and the Constitution, which is in some ways a conservative document – it’s built to conserve the United States, right? So he believes in both of those all along, right? And he doesn’t believe the Constitution should be amended, it should be changed very much. But he also believes the Constitution was anti-slavery from the beginning. He points out, “It never says the word slavery. Our eloquent forefathers – you’re telling me that they didn’t use the words that they meant to use? No, they expected it to fade away. So that’s his story. He basically has a narrative about how we came to this. And the narrative was that there was every reason to expect at the founding that slavery would fade away. The one act that they took about slavery was to stop the international slave trade 20 years later.

So he believes that he does not change the Constitution in order to combat slavery. He’s tapping its intrinsic latent, meaning to do all of that. And that he believes, with things like the Dred Scott decision, that the Constitution has become corroded, distorted by actions since the founding. So he wants to get back to the purpose that drove the United States at the beginning, which was to find a comity among the states, right, to create the Union. So what he thinks now is that people who are the enemies of the United States have taken control of this. He doesn’t acknowledge the legitimacy of the Confederacy. He still believes that the Slave Power conspiracy that he and other Republicans had seen with reason running everything in the 1850s are still kind of running the Confederacy. So he believes that actions against slavery are actions against an illegitimate power. It’s not against the worthy purposes of Americans to do this.

Well, Lincoln, of course, was a lawyer, a Constitutionalist. And he – the general consensus of people, North and South, almost all – was that the Constitution did not give the federal government the power to directly interfere with slavery in the states where it existed. Before the Civil War, the political issue about slavery had to do with the territories, not the states. Areas that were being brought into the United States, those were under the control of Congress. Slavery was also under the control of Congress in Washington, D.C., and Lincoln felt that Congress had the power, the federal government had the power to abolish slavery in Washington, which it did in the spring of 1862. And Lincoln signed that bill.

But when it comes to direct intervention in the Southern states against slavery, Lincoln felt that was not allowed

by the Constitution. Now, the whole question of the Constitution and slavery is very complicated and very murky, because the Founding Fathers did not envision a situation in which 11 states were waging war against the rest of the nation. There is nothing in the Constitution that tells you what to do in a situation like that. So people had to be making up ideas as they went along. Yes, Lincoln believes in the Constitution, and yet when the war begins, Lincoln raises troops without authorization of Congress. He raises money without authorization of Congress. He suspends the writ of habeas corpus in some places, which seems to go against the Constitution, although there’s debate about that. And then when Congress meets in July 1861, Lincoln says, “I’ve done this, this, and this. I’ve gone beyond the Constitution.” He doesn’t say, “I violated the Constitution,” but he doesn’t claim that he actually adhered to the Constitution either. “I’ve gone beyond it,” which is a very interesting way of putting it. And then he says, “I want Congress to retroactively approve everything I did,” which they do.

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So I don’t think the Constitution is the only barrier to direct action against slavery. Partly it’s the border states where Lincoln feels that if he takes direct action against slavery in the states, it’ll alienate those four slave states that remained in the Union. There’s a lot of pressure in the North early on to take direct action against slavery. And by saying, “Well, the Constitution doesn’t allow it,” that’s a kind of a good argument for not doing something you don’t really want to do anyway, right at the beginning. But by 1862, Lincoln does become convinced that there is what he calls this “war power.” That in a situation of warfare, the Constitutional protections of slavery are stripped away. Now, this was not a new idea. John Quincy Adams had said this in Congress 20 years earlier. He says, “If there is a war, the federal government on military grounds can take action against slavery. Slavery will be a source of weakness.” He’s talking about a war against another country, but it would be possible for the federal government to arm Blacks as soldiers. It would be possible to free them if their presence is interfering with the war effort.

The war power. Now, the President has the war power. The President is the commander in chief of the armed forces, according to the Constitution. That’s why Lincoln keeps saying eventually, the President can act, as he does in the Emancipation Proclamation. Congress cannot. Congress cannot free slaves in a state, although by the very end of the war, Lincoln has changed his mind to considerable extent about that also. So the Constitution is important,

no question about that, but Lincoln is willing to violate the Constitution when it seems absolutely necessary. And as he says somewhere, you know, "We can't let the whole government fall apart, fall to pieces because we are unwilling to violate one law, or one part of the Constitution." You have to look at the whole structure; if the fate of the nation is at stake, your Constitutional interpretation may become a lot broader than in normal times.

Kerri Greenidge

So by the 1850s, there's this battle going on, both in the streets of the United States, and also politically. Part of that had to do with in 1850, there was a law passed called the Compromise of 1850, which admitted California and Western states into the Union. But outlawed the slave trade in D.C., enacted a very strict federal Fugitive Slave Law, but also sort of had popular sovereignty for states that were coming into the United States. And so this piece of legislation was meant to be a compromise between North and the South. However, what it did was it entrenched these differences, political, cultural, and racial between the North and the South. Between those who wanted to see slavery spread into the West, and those who wanted to see industry and free labor spread into the West.

And so by the early 1850s, you had a slogan that was being chanted by many Whigs who were conscious Whigs, one of them being Charles Sumner, who... Their argument was free soil, free labor, free men. And basically what they meant by that was that the United States had to have an economic system in which people, and in most incarnations of this they meant white men, could work and they would be justly compensated for their labor, that it wouldn't be labor that they had to be coerced into doing. And so this became an entire ideology, particularly in the North that attracted people to what became the Free Soil Party, and then eventually morphed into what was called the Republican Party. And so people like Charles Sumner argued that you had free soil, free labor, free men.

But they also had this whole ideology surrounding what it meant to be a citizen. And one of the things they thought that meant was this idea of consent of the governed. The fact that as a person, you had to consent to the systems under which you lived, and that this was going to basically bring into practice what had been declared in the 1780s and 1790s in terms of republican, again, a little r, form of government.

By 1854, this had a specific urgency, this idea because of the Kansas-Nebraska Act, which basically argued or went against precedent that had existed in the country for a little over 30 years. And that precedent was that for every slave state that was admitted to the Union, you had to admit a free state. And so it set up that you would have an equal number of slave holding senators and non-slave

holding senators. And with the Kansas-Nebraska Act, this actually got rid of that proclamation. It said that now, slavery could exist wherever the popular sovereignty, or the popular vote, believed that slavery should exist. So this was terrifying, particularly for people who were from the North, because it basically set up that Southern states could theoretically send people into states as they did into Kansas, had those people vote and they could create slave states out of this territory. And so the Republican Party emerged out of that maelstrom that occurs in 1854. During this time period, though, there were many or most members of this new Republican Party who were not necessarily abolitionists. In other words, they didn't necessarily think slavery should end immediately.

They did believe that free labor should exist in the West, but they often had no designs on ending slavery where it existed in the South. Abraham Lincoln emerged as a member of this Free Soil Party and then as a member of the Republican Party.

James Oakes

It is in the 1858 debates, especially at the opening of the Charleston debate where Lincoln gives his most notorious defense of certain forms of racial inequality. So if you think about equality as racial equality as operating on different levels, at the level of natural rights to life, liberty, and the pursuit of happiness. Lincoln believes in racial equality. Blacks and whites are equally entitled to freedom, equally entitled to the fruits of their labor.

If you think of equality at a different level, as the rights, the privileges and immunities of citizenship, Lincoln isn't always there, but in the 1850s he begins to suggest that Blacks and whites are equally entitled certainly to the rights of due process. And he becomes more and more explicit about that over the course of the decade. He's quite explicit about it in his inaugural address.

But there's another level of racial equality, at the level of various forms of state based discrimination, state, local discrimination of Blacks could not vote. Blacks couldn't serve on juries. Blacks couldn't testify in courts. Blacks and whites couldn't marry. And at that level, Lincoln never commits himself to that kind of racial equality. And in fact, explicitly in the debates with Douglas, explicitly disclaims any commitment to the equality of Blacks and whites at that level, at the various forms of state-based discrimination. And it is his most, should I say, this is the most offensive defense of racial inequality that we see.

Lincoln could say those things because he personally believed it. And he could say those things because he believed strategically in the state of Illinois in the 1850s, if he said anything differently, that would be the end of his political career. So it's very difficult to say there are some indications that he had earlier, in earlier speeches that he did recognize that this might not be something, these forms of discrimination might not accord with justice. But

it hardly matters in a democracy, whether it does or does not accord with justice, because we will know that the vast majority of whites will not accept the living with Blacks on a condition of complete equality.

So he's in a state that has a reputation as being one of the most racist states in the North. He knows that, and he is struggling to separate out the issue of racial equality from the issue of slavery. And in order to do that in the course of doing that, he occasionally, maybe even often descends into something like racial demagoguery. That tossing racist nuggets to the peanut gallery to make it clear to people that in his opposition to slavery, he is not advocating all the forms of racial equality that Stephen Douglas and the Democrats are jumping up and down about.

So although Lincoln always hated slavery as much as any abolitionist, he was not always as committed to racial equality. He was not committed to racial equality at the beginning of his political career, the way he was at the end of his political career. In his earliest days as a politician in the state legislature of Illinois, he was perfectly willing to use grotesque racial demagoguery in his speeches, in his attacks on his opponents. He once drafted a law that gratuitously excluded Black men from voting, things like that.

And although that kind of racial demagoguery diminishes over the course of his career, it doesn't completely disappear until the latter half of the 1850s. The way I think about this is, you could say that Lincoln's opposition to slavery, you could say was inhibited by his racial prejudices. But you could also say, and I would say, that his racial prejudices were dampened by his increasing commitment to anti-slavery. And the more committed he became to the destruction of slavery, which he does over the course of his career, and particularly over the course of the war, the more committed he became to racial equality.

David Reynolds

After his term in Congress, he was a little disillusioned by politics because he had tried to strike a moderate tone on the slavery issue although he had been behind a measure to try to abolish slavery in Washington D.C. that didn't go anywhere, but other than that, he had been a little more reticent on the slavery issue while he was in Congress. In the early 1850s, he was trying to resume his law practice and also he had a growing family in Illinois at that time. He was gone for about half of the year on the law circuit because back in those days, the individual town generally didn't have lawyers, so a whole bunch of lawyers would have to travel from town to town to town and he went around the whole... was equivalent to the area of Connecticut, his circuit around Illinois. These were years, but he was really growing at the same time. Why? His law partner William Herndon was a radical abolitionist and someone who was a big fan, not only of people like

Garrison, but also very close by correspondence with the Underground Railroad figure Theodore Parker, who lived in New England. They corresponded a lot.

Also, Herndon had subscribed to many anti-slavery newspapers as well, so when Lincoln went to the office, he often had dialogues about slavery with Herndon. At the same time he was growing culturally, he was expanding his mind. Not so much on the slavery issue, but on the law circuit he was getting exposed to culture on many levels; quite often popular culture. He spent many evenings telling popular jokes and so forth with his fellow lawyers. He would go and hear popular songs and music and theater and everything. In the law office, he would be reading poetry and also reading anti-slavery newspapers and this was also the period when in the early 1850s when that American anti-slavery renaissance peaking with Uncle Tom's Cabin, this massive best seller appeared and really created a sea change in popular opinion in the North. There was the Compromise of 1850, which changed a lot of minds on slavery in the North because that has one of its bills, the Fugitive Slave Act, which plays to new harsh penalties on Northerners who assisted the flight of enslaved people who were trying to come to the North. This outraged many, many people.

Lincoln hated it. He accepted it because there is a clause in the Constitution that talks about the obligation to return fugitives from labor. He said, "I hate the law, hate it, detest it, but we have to enforce it because it's there in the Constitution." He was a little more conservative on that issue than a lot of people were because a lot of people were, at that point, they just flip-flopped and became complete anti-slavery people. As much as he hated it, he wanted to remain within the Constitution and he disagreed with William Seward's notion of higher law because Seward was a politician who later served as Secretary of State under Lincoln, but at the time, he was a senator who said, "There is a higher law than the Constitution, the law of justice to African Americans and we can't observe this horrible fugitive slave act." Lincoln wrote a little marginal thing that said, "I agree with Seward on slavery completely, but I disagree with the concept of the higher law."

John Stauffer

Lincoln was... a central part of his identity was a politician. He was a Whig politician. He loved Henry Clay and Clay's vision for ending slavery was to, first of all, modernize the country. Clay was a slave owner. And so, yeah, one could and should be very critical of Lincoln. But in my view, the reason why Lincoln was as conservative as he was in his anti-slavery views is that essentially he, what was more important to him, was his identity as a politician, than his identity as an activist.

And he felt that ultimately change, social change, political change could happen more effectively through political action than through activism. But, in order to embrace

that one had to ignore the horrors, the inhumanity that was happening with slavery, and in Illinois, just not very far away. And that was something that Lincoln, in his writings, never really grapples at length with that. There are a few instances. When he goes down to New Orleans, where he sees, he witnesses slaves firsthand. In some cases he refers, he writes about slaves as being comparatively well treated. In other instances, he recognizes the horrors, but he doesn't dwell on it. It's not something that he dwells on.

So I mean, Joshua Speed is Lincoln's closest friend. He spends time at Speed's plantation and sees slaves on the plantation, comes back, on his way back he sees these slaves. And so that's another reason why Lincoln does nothing. He essentially says it's in God's hands, that God is in part responsible for the existence of the slavery, and it will, in God's own time, there will be a solution.

And that was a very common, liberal, Northern anti-slavery perspective. Yeah, "Hey, it's not my problem. And God will take care of it at some future date, but it's just not something that I'm able to do." And that makes you feel good. On the one hand, you recognize the inhumanity, the horror, the sadism that is part of slavery. On the other hand, you can say, "Well, I'm a person of faith. I believe in a God." And the vast majority of Americans did, in my view Lincoln did, although there's a debate on this. And so it's easy to say "We'll let God take care of it."