

**Lincoln's Speeches and the Refounding of America**  
**Tuesday, November 30, 2021, 7 – 8 p.m.**

**[00:00:00] Jeff Rosen:** Hello friends. Welcome to the National Constitution Center. Before we start, I want to share with you an exciting, new crowdsourcing campaign to support our We The People and Live at the NCC Podcast. This great program like all of our town hall programs will be podcasted on the Live at NCC feed and every week on We The People, I convene America's top scholars from different perspectives to talk about the constitutional issues in the week. Friends, it is so meaningful to be able to learn from these civil deep and great conversations. We had one recently about the Gettysburg Address and it was just so civil and so meaningful that I want you to listen to them. And I also want you to support the podcast by going to [constitutioncenter.org/wethepeople](https://constitutioncenter.org/wethepeople) and make a donation of any amount \$5, \$10 just to signal your support in this community of lifelong Learners who are devoted to non-partisan education about the Constitution and your gift will be matched. Thanks to the John Templeton Foundation up to \$234,000 to celebrate the 234th anniversary of the US Constitution. So, please do make a donation and tell your friends about it.

**[00:01:17] Tanaya Tauber:** Welcome to Live at the National Constitution Center. The podcast sharing live constitutional conversations and debates hosted by the center in person and online. I'm Tanaya Tauber, senior director of Town Hall Programs. November marked the 150th anniversary of the Gettysburg Address, one of Abraham Lincoln's most famous speeches. To honor the occasion, we convened three experts to take a deep dive into the words of Lincoln, discusses constitutional vision, and examine how that vision changed the course of the constitution and American history.

**[00:01:48]** Our guests are Michael Burlingame, author of *The Black Man's President: Abraham Lincoln, African Americans, and the Pursuit of Racial Equality*; Noah Feldman, author of *The Broken Constitution: Lincoln, Slavery, and the Refounding of America*; and Diana Schaub author of *His Greatest Speeches: How Lincoln Moved the Nation*.

**[00:02:07]** Jeffrey Rosen, president and CEO of the National Constitution Center moderates. This conversation was streamed live on November 30th, 2021. Here is Jeff to get the conversation started.

**[00:02:19] Jeff Rosen:** Michael Burlingame, let us begin with you. Tell our friends, why you argue in your new book. That's Lincoln was the black man's president and you have, you have several speeches of, uh, Frederick Douglass, uh, that you begin with including an 1865 eulogy on Lincoln, uh, where he said, "No people, uh, class of people in the country have a better reason for lamenting the death of Lincoln than have the colored people." What is the significance of that speech? And why do you believe that Lincoln was the black man's president?

**[00:02:50] Michael Burlingame:** Well, thank you very much for your kind introduction and thank you for inviting me. I feel a little out of place because my book is focused, the, the central theme of my book is let's not focus on Lincoln's speeches and writings and promises in the light.

Let's focus on Lincoln's interaction with black people, both in Springfield and in Washington. Uh, but the title of the book comes from a eulogy that Frederick Douglass delivered on June 1st, 1865 in Cooper Union, the premier site in the country to give a major speech.

**[00:03:15]** And it was covered widely in the New York Press, uh, but it's been unaccountably, uh, ignored by historians and anthropologists of Douglass' speeches. And in this remarkable speech he says Abraham Lincoln was pre-eminently the black man's president. The first to rise above the prejudices of his time and his country. By inviting me Frederick Douglass to the White House to consult on public affairs, Lincoln was saying by that gesture that I am the President of the black people as well as the white. And I mean to honor their rights as men and citizens.

**[00:03:46]** And it's a, a striking contrast to the speech that is very well known, widely anthologized and, uh, commented on regularly. And that is a speech he gave 11 years later at the dedication of a statue of the Emancipation Memorial in Washington in which he said, Abraham Lincoln was pre-eminently the white man's president. And I remember when I first encountered the speech and the Douglass papers and manuscript. I was, I was astounded. I said, surely, I would have seen this speech in the five volume edition of Douglass' speeches that the Yale Press published, uh, or the four volume study that, uh, Philip Foner had uh, [answered 00:04:22], Philip Foner had and, uh, I went back to those sources and that speech wasn't included.

**[00:04:26]** That got me thinking about Lincoln and race in general. And then Kate Masur, a very fine historian at Northwestern University, published an article recently on the White House receptions and black people's attendance at White House receptions. And, uh, in my 2,000-page biography had a little bit to say about that, but I thought, "Jeepers, how did I miss so much of the good information that she has unearthed?" And so I decided plunge deeper into that subject, and then that led me deeper and deeper into Lincoln's in- interaction with black people back in Springfield and in Washington. And, uh, lots of people know about Lincoln's interaction with Frederick Douglass because Douglass describe them in his autobiographies in some detail, but little has been done about Lincoln's interaction with other black people.

**[00:05:10]** And so thanks to the enormous, uh, utility of modern word searchable newspaper databases, I was able to take up a lot of new information. I got, everything I've written needs to be updated. Thanks to these databases. And so what I found is that both in Springfield and in Washington, Lincoln interacted with large number of, of black people. All of whom commented on how respectful he was, uh, how kind and how generous, uh, and it wasn't just courtesy, but it was also gestures and actions, uh, based on appeals that they made, uh, that indicates my way of thinking that Lincoln was an instinctive racial egalitarian.

**[00:05:47] Jeff Rosen:** Fascinating. Thank you so much for that. And thank you for calling our attention to the tremendous significance of digitized primary text, which have indeed transformed historical research and our understanding of Lincoln. Uh, Noah Feldman, you've argued so powerfully in your book that the original constitution of 1787 was broken. And as you put it in the New York Times, uh, Lincoln fatally injured the constitution of 1787. He consciously and repeatedly violated core elements of the constitution and they've been understood by nearly all Americans of that time. And through these active destructions, Lincoln

effectively broke the constitution of 1787, paving the way for something very different to replace this. Tell us more about your thesis in the Broken Constitution.

**[00:06:30] Noah Feldman:** Thank you, Jeff. Um, it's an honor to, to be here with these distinguished scholars. Um, I am a constitutions person rather than a Lincoln person. So I came from the standpoint of the Constitution itself, and, um, among those of us who work on the founding in 1787, it's for the most part, there might be one or two exceptions commonly accepted that the constitution was a compromised document in which one of the central compromises was a compromise over slavery.

**[00:06:54]** And so we have the three fifths compromise famously. We have the guarantee that the international slave trade would remain for at least 20 years. And we also have the fugitive slave clause, um, which effectively require the states that did not recognize slavery on their own to acknowledge and recognize slavery itself. So that's the setting for the way, the Constitution functioned from that time up until the Civil War.

**[00:07:22]** There were moments where the Constitutional compromised, seemed near breaking but Congress for the most part managed to re-inscribe that compromise with new variations. The Missouri Compromise is the most famous example of this. And Lincoln actually very much supported that structure of constitutional compromise throughout his political career because we're mentioning speeches of Lincoln. I'll mention in this context just very briefly something, which Diane has written about very extensively, Lincoln's address to the Young Men's Lyceum in Springfield in 1838.

**[00:07:52]** The only passage I mentioned. In a speech where Lincoln was actively defending the Constitution is Lincoln's statement there that we should be aware of people like Alexander the Great or like Caesar or like Napoleon, who's in there? Seeking of greatness would be willing to enslave freemen or to free enslaved people. That is to say an act that would be extraordinary and outside the bounds of constitutional norms would be wrongful. He's clearly against this and that's because the Constitution as it then existed legally mandated the continued existence of slavery in those states that chose to have slavery.

**[00:08:29]** So that's Lincoln's view. And once he becomes president, he confronts the reality that there have been secessions by at that point seven states and he has to decide what to do about that. And, of course, that secession is a fundamental breaking of the Constitution. And Lincoln responded by himself breaking the constitution in, I argue three ways, which I'll just mention each very briefly.

**[00:08:50]** The first is sort of surprising. We don't necessarily think of him as breaking the Constitution, but the decision to go to war unilaterally to obligate the seceding states to return to the union was not under contemporary constitutional norms, an obvious authority or right of the presidency, or even of the whole government. The Buchanan Administration in an official opinion by the Attorney General embraced by Buchanan, in his State of the Union Address had said that although secession was revolution, the president, Congress [indeed 00:09:19] no part of the federal government have the authority to force the state's back into the Union because

nothing in the Constitution explicitly authorized it. And because of the principle of consent of the governed.

**[00:09:28]** And on this principle the southerners in those states, have chosen to no longer give their consent to be governed. And so it violated that principle of consent to coerce them back in. Lincoln unilaterally and then eventually with the support of Congress took up arms to force them back in. The second breaking was the suspension of habeas corpus, which is the right that says, if the government grabs you up, it has to appear in court, give a reason, put you on trial, and if you're not convicted, let you go.

**[00:09:53]** And Lincoln unilaterally suspended habeas corpus early, uh, in the war. And kept that suspension in place even after the Supreme Court via the Chief Justice. Or at least the Chief Justice, the Supreme Court Roger Taney issued an opinion saying that this was unconstitutional because only Congress has the authority to suspend habeas and I would say that that is still the view, uh, of almost all constitutional scholars. And the Supreme Court itself after the war also repudiated the idea that, um, without a suspension by congress that martial law could be applied within the United States where no war was going on and Lincoln did that. He did it extensively and he imprisoned somewhere between 15 and 40,000 people. There's a lot of debate about how many, um, over the course of the war without trial, um, and without the opportunity to, to appear in court.

**[00:10:39]** This was the largest suppression of free expression in American history by a huge margin. And last but not least, um, and much more upliftingly, Lincoln also broke the constitution as he understood it when he issued the emancipation proclamation, formally freeing enslaved people in areas that were under confederate control. Lincoln himself when the war began reiterated his commitment to the idea that, um, slavery was constitutionally protected. So I think we'll probably talk a little bit tonight about his Second Inaugural address and the Gettysburg Address, those are the two that you see when you go into the Lincoln Memorial on either side of the enshrined president, enshrined as a god. It's after all the Lincoln Memorial was based on an athenian temple.

**[00:11:21]** We never hear about the First Inaugural address and that's because the First Inaugural address opens with Lincoln saying that he has neither the will nor the inclination or the constitutional power to change slavery, which he says is protected by the constitution. And Lincoln over time shifted in his view and in my book, I spent a lot of detail time trying to show that shift and he came to believe that it was somehow within his authority as president, as commander-in-chief in wartime to break the guarantee of property rights, uh, break the fugitive slave clause, which quite literally would have said that anyone who escaped, uh, would have to be returned to slavery and under the conditions of the war, Lincoln in the emancipation proclamation said that people who escaped would not be returned and would in fact become permanently free. So those are, that's a morally good breaking of the constitution in my view but a breaking nevertheless.

**[00:12:10] Jeff Rosen:** Thank you so much for that, uh, wonderful summary of your book and for calling our attention to the First Inaugural. Uh, Diana, your, your project is so inspiring to really do close readings of the Lyceum Address and the Gettysburg Address and the Second

Inaugural. Uh, there's, there's so much here and of course we don't, uh, we, we can't parse the whole thing but this theme that, uh, Noah mentioned of the rule of law and also the conflict between reason and passion, uh, jumps out but there may be other aspects of it that you want to call our attention to. So tell us about how we should read the Lyceum Address.

**[00:12:45] Diana Schaub:** Yeah, maybe I can just, uh, for a minute just say something about the overall thesis of the book and then, uh, and then turn to the Lyceum. So yeah, the, the book is, uh, a close reading, uh, I believe in close and careful reading of three Lincoln speeches. Uh, first the Lyceum Address, the speech that he gave as a, as a young man, uh, and then the two most famous presidential addresses, uh, the Gettysburg Address and the Second Inaugural.

**[00:13:11]** And actually what I- what I'm struck by is how often, uh, Lincoln anchored his speeches in dates, in significant dates. Uh, so the Lyceum Address, uh, begins with the constitution, uh, and the date of 1787. The Gettysburg Address as everyone knows, uh, four score and seven years ago, uh, takes us to 1776, uh, the declaration of independence, uh, that's what the Gettysburg Address is anchored in. And then the Second Inaugural, uh, and I don't think this has maybe been noted enough but it is actually anchored in 1619. Uh, if you do the math, uh, the reference to 250 years of the slaves' unrequited toil, uh, that takes you to 1615. Uh, he's, of course, rounding the number off.

**[00:14:01]** So Lincoln is aware of the origin date, uh, of slavery on the American continent, uh, so, uh, I argue that Lincoln really tells the story of America and helps us understand America through these three significant dates. Those two texts and the relationship between those texts and slavery in the United States. Uh, so I think the Second Inaugural really, uh, deserves to be known as, uh, as the original and actually better, uh, 1619 project.

**[00:14:30]** Uh, so but to go to the, uh, the Lyceum Address the speech that he gives as a, as a very young man, I think it's a remarkable address, uh, it's a diagnosis of the dangers that Lincoln sees abroad in the land at the time, uh, and a more general diagnosis of the problems that democracy is always prone to. So, uh, what Lincoln notes is the growing prevalence of mob rule throughout the nation. So there's kind of breakdown of law and order, uh, and this breakdown is triggered, I mean he's not talking about, um, looting and rioting. Uh, he's talking about vigilante justice, uh, acts of vigilantism. Uh, so these vigilantes are driven by their passion for justice, uh, but they are, you know, running over the due process and, uh, and rule of law.

**[00:15:28]** Uh, so Lincoln, uh, highlights this danger. He gives this diagnosis, uh, and then he proposes a solution and his solution is reverence, uh, for the constitution and laws. Uh, so his recommendation is law-abidingness and not simply law-abidingness but a particular, uh, attitude in which one obeys the laws, uh, this, uh, attitude of, of reverence. So that's his diagnosis of the sort of the present danger but the second half of the speech is not about the present danger but about future dangers, uh, and this is where Lincoln's analysis of passion is really developed. And here he goes back to a famous distinction, uh, that the ancient political philosophers always use, the distinction between the few and the many.

[00:16:14] Lincoln says, uh, what happens if a person of the founding type springs up after the founding? What is that person going to do? What outlet, uh, for their vast ambition will be available? Uh, and this is where he gives his warning against the Alexanders, the Caesars, uh, and the Napoleons. Uh, those who won't be content to be, you know, the, uh, the 41st or the 42nd or the 43rd president of the United States, uh, they're not content to be a custodian in the house of the fathers.

[00:16:42] And, uh, this ambition is presented as morally neutral, uh, if there are good avenues to pursue like the, uh, freeing of the slaves that might be done, uh, if the avenues of the good have, uh, already been trod. Uh, they will set boldly forth enslaving free men. Uh, so there's this, uh, this problem of inordinate ambition, uh, and then there's also a problem on the part of the many. And that is these, uh, negative passions of human nature, jealousy, envy, uh, hatred, revenge.

[00:17:14] And Lincoln says at the time of the founding, those passions were able to be harnessed toward good ends. Uh, you could hate the British and, uh, achieve liberty for yourself but now and in the future, uh, those passions will be dangerous. Uh, so I mean his, um, denunciation of passion is very strong. You know, passion may have helped us but can do so no more, uh, and the future passion will be our enemy. Uh, I think it is significant to note though that Lincoln always means by passion, the negative passions.

[00:17:44] Uh, so for instance he doesn't mean bonds of affection, he doesn't mean friendship. Uh, you can look at actually the, uh, you know, the First Inaugural which also says passion is the problem. Think of that last paragraph, uh, you know, passion may have strained the bonds of affection but, uh, we don't want it to, uh, you know, to separate us. So his solution then, uh, for the, for this future danger, uh, is reason. So he's got a double diagnosis, uh, mob rule, uh, the present danger, uh, future danger, this problem of the passions and then a double solution. Um, the solution to the problem of mob rule is reverence for the constitutional laws. Uh, the solution to these dangers ahead of inordinate ambition and runaway passion is reason.

[00:18:32] I should probably stop there but I try to explain, uh, how these two solutions could perhaps fit together, how can he recommend both reverence and reason.

[00:18:42] **Jeff Rosen:** That was wonderful. Thank you so much for that. And I, it's so fascinating to read it closely with you and you've helped me understand how deep the classical influence was because these vices of hate and avarice and envy are indeed the classical ones. He talks about the ruling passion, which was from Cicero and Aristotle and it's always negative, uh, and reason has to constrain it. And then we see as you, as you say that the ambition manifested by Caesar and Alexander are negative examples. So thank you. I always learn so much when you read closely and thanks for inspiring us to do that.

[00:19:20] All right. Well, we're now gonna, for this next round, use the Gettysburg Address as a jumping off point but I don't want to constrain us to close reading but it is the, um, anniversary in November of the address and it would be wonderful to hear how does the Gettysburg Address fit

into your thesis that, uh, Lincoln was the black man's president and what, what do you want to tell us about the Gettysburg Address?

**[00:19:43] Michael Burlingame:** It's been argued by some including, uh, fine commentators that, uh, it's striking that the Gettysburg Address doesn't say anything about slavery. The word slave slavery doesn't appear but it does seem clear to me that the new birth of freedom that Lincoln refers to in the Gettysburg Address is a direct allusion to emancipation, uh, and presumably beyond that of, of first-class citizenship.

**[00:20:07]** So even though the address doesn't have a great deal to say about race and, and, uh, the like but the implication of a new birth of freedom does seem to herald not just, uh, the complete emancipation, uh, extended not just to the confederate states but throughout the country, which happens with the 13th amendment but also by implication, the 14th amendment, uh, and the 15th amendment establishing civil rights for blacks and then voting rights for blacks is, is implicit in that notion of a new birth of freedom. And Lincoln's support for black voting rights for example, um, which wasn't articulated publicly until his last public address, which of course, he didn't know was going to be his last public address on April 11th, 1865 in which he called for the first time for black voting rights, at least limited black voting rights.

**[00:20:58]** That is to say those who had served in the armed forces and those who were very intelligent by which we assume he meant literate. Now, he had privately recommended that to the governor of Louisiana which was the, uh, model in Lincoln's mind for reconstruction. What can the north expect the south to do to rehabilitate itself politically after the war?

**[00:21:21]** And so, uh, in Louisiana, he'd worked very hard to get something like black civil rights or voting rights, included of working behind the scenes and then he writes a letter, uh, upon having been visited by two black gentlemen from New Orleans bearing a petition signed by roughly a thousand men in New Orleans who said, "Look, we are literate. We are property owners. We are taxpayers and we would like the right to vote."

**[00:21:48]** And Lincoln tells them, "Well, under our constitution the eligibility requirements for voting are established by states and not by the federal government. So, um, I'm very sympathetic, uh, but you really have to get this constitutional convention, which is about to meet in Louisiana to agree to do that." And so, so he says that to these gentlemen but then he takes a step further. He writes a letter to the governor, newly elected governor of Louisiana saying, uh, "I suggest that in the new constitution that is going to be drawn up. Uh, you include voting rights at least for the veterans of the union army and the very intelligent and the fact that Lincoln then as part of this new birth of freedom publicly announces that two days after Robert E. Lee surrenders is noteworthy because it means he's shifting away from a rather moderate position on, on reconstruction to a much more radical position.

**[00:22:38]** And Frederick Douglass said that I was in that audience that day on April 11th, 1865 and I was disappointed in the scope of the recommendation for black voting rights because it was so limited, just to the veterans of the armed forces and they're very intelligent. And many of my abolitionist friends were also disappointed but we should have recognized that that was, uh, an

extremely important speech because Abraham Lincoln learned his statesmanship in the school of split-rail splitting and to split a rail, you take a wedge and you insert the thin edge of the wedge into the log and then you drive it home with a big hammer, a maul. And we should have known that once Abraham Lincoln inserted the thin edge of the wedge publicly that you could count on him to drive home the thick edge of the wedge.

**[00:23:18]** Uh, but there was one gentleman in the audience who did appreciate its significance and that was John Wilkes Booth and he said, "That means n-word citizenship, that's the last speech he's ever going to give. By god, I'm going to run him through." and three days later murdered Lincoln not because he issued the emancipation proclamation, which is here on my tie, and not because he supported the 13th amendment but because he called for black voting rights. And therefore I think it's appropriate for us in the 21st century to regard Lincoln as a martyr to black civil rights as much as Martin Luther King or Medgar Evers or any of those people who were murdered in the 1960s as they championed the civil rights revolution of that time.

**[00:23:54] Jeff Rosen:** Noah Feldman, you write that the use of biblical language and imagery in the Gettysburg Address marked a great change for Lincoln who's a non-religious rationalist. And he could now describe the aims of the war, the union and the constitution in new moralized terms. And you very provocatively argue that the idea of new birth in both the teaching of rebirth and Christ tell us about that fascinating reading of the Gettysburg Address and what else you want our friends to learn about the Gettysburg Address and you can also introduce any other speeches that you think are important to help us understand the thesis of your, of your book.

**[00:24:27] Noah Feldman:** Well, let me start by saying that plenty of people have looked at the Gettysburg Address and seen classical Greek overtones and those are unquestionably there. Gary Wills famously drew attention very actively to this but the speech is also suffused with biblical language and a biblical idea of morality. And it's the beginning in my view of Lincoln articulating his own moral vision of the entire history of the United States and in the Second Inaugural address, which maybe we'll come to in our next round of conversation, he's most explicit about doing that. But in my view, he's starting to do that in the Gettysburg Address.

**[00:25:00]** And, you know, the, the three score and seven is self-consciously biblicizing. It's biblical and to Americans of the 19th century, almost all of whom were protestants. Biblical language meant general morality. 19th century Americans believed that morality was derivative of the bible. They were as I say heavily protestant and protestants thought that you should read the bible and through the bible, you would get access directly to morality.

**[00:25:25]** Lincoln could not interpret the history of the United States in these moral terms or the constitution of these moral terms so long as the constitution enshrined slavery, which he knew to be a moral wrong. So up until the emancipation proclamation, he was committed to the constitution under the rule of law principles that Diana was talking about but that meant he was committed to a compromise that included a compromise with immorality. And that put him in a contradictory situation.



**[00:25:49]** After emancipation, he was now able to describe the constitution as fundamentally moral. so when he said that our country was not only conceived in liberty but dedicated to the proposition that all men are created equal, he could not have said that about the constitution until he broke the constitution because the constitution wasn't dedicated to that proposition because the constitution enshrined slavery.

**[00:26:11]** Once emancipation was a established fact by Lincoln, he could reconceptualize the country in these terms. And this is where the new birth of freedom part comes in. New birth is a very resonant phrase for 19th century American protestant Christians, all of whom I think would have recognized immediately the idea of new birth in Christ. Now, I'm not arguing here that Lincoln was making a consciously Christian ar- argument, what I'm saying is he was drawing upon the common thread of Protestant moral thought, which was derivative of Christian ideas to express a new idea. And the idea here was that just as the Old Testament had been superseded by Christian liberty in the New Testament so the new birth of freedom would supersede the slavery present in the original constitution. So that the country would then be reborn and he plays out this idea more fully in the Second Inaugural address as a moral country. One that therefore could be improper fulfillment of the ideals of morality that were present in the original, um, declaration of independence on Lincoln's reading but were not present in the constitution.

**[00:27:20]** So that I think is the explanation for why Lincoln was able to use this kind of religious language, both in the Gettysburg Address and ultimately in the Second Inaugural. It's because he was freed up to do so by emancipation, which ended the immoral qualities of the constitutional compromise and opened the possibility of a, of a moral accounting. And of course, that was very appropriate at a funeral, what was after all in a way a commemorative funeral oration for people who had died. And eventually in the Second Inaugural, Lincoln would give specific sacral meaning to the deaths of the people who had died fighting the Civil War.

**[00:27:58] Jeff Rosen:** Diana Schaub, you almost know it by heart. Uh, what should we know about the Gettysburg Address?

**[00:28:03] Diana Schaub:** Yeah, I just want to maybe begin, uh, by just saying that I agree with Noah about the, uh, presence of the biblical language, uh, in the Gettysburg Address and of course, even more so in the Second Inaugural, uh, but I don't think that's new. Uh, in fact, I think that's present in his rhetoric from the beginning. I mean you see it at the very end of the Lyceum Address, uh, where he quotes from the bible, "The gates of hell shall not prevail against it." Uh, draws a connection between the only greater institution, the church, uh, and the United States.

**[00:28:32]** Uh, you see it in the Dred Scott speech where he actually puts the United States in the position of pharaoh and the, uh, enslaved blacks in the position of the enslaved Hebrews. Uh, you see it in house divided speech, uh, that, that itself is a biblical phrase, "A house divided against itself cannot stand." Uh, so I think that's always been present, uh, in, in his rhetoric.

**[00:28:54]** Maybe just a word about, um, the relationship between Lincoln's thinking about the, uh, constitution and the declaration. So I argued that the Lyceum Address is anchored in the constitution, uh, and I think that Lincoln is a dedicated constitutionalist. Uh, and unlike Noah, I

believe he remains a dedicated constitutionalist. Nonetheless it's true that as the crisis over the house divided develops, uh, Lincoln's attention in the speeches in the 1850s, uh, shifts from the constitution to the declaration of independence. Uh, this actually begins in 1852 with the eulogy to Henry Clay. Uh, he begins that speech by saying on the 4th of July, 1776 and in every one of the great speeches that he delivers throughout the 1850s, he recurs to the declaration.

**[00:29:46]** I think the reason that he has to do that, in other words, the reason that his textual horizon shifts, uh, is because Americans in the 1850s are beginning to repudiate, uh, the self-evident truths of the declaration. They're doing this in an outright manner in people like Calhoun and his followers, uh, who have taken to calling the self-evident truth, self-evident lies. Uh, and they're doing it in other ways more insidiously, um, uh, folks like Stephen Douglas, uh, and Roger B. Taney.

**[00:30:16]** So I think as those repudiators of the principle of liberty for all, uh, becomes stronger, Lincoln has to demonstrate their error. And so throughout the 1850s, uh, he appeals to the declaration in speech after speech and not just appeals to it but gives explications of the declaration. What properly understood it does mean.

**[00:30:38]** Uh, so it's only by re-adopting the declaration, uh, that the challenge posed by slavery and slavery's extension, uh, can be met. Uh, and I think that his decade of reflection on the meaning of the, of the declaration really reaches its culmination in the Gettysburg Address. And really that 30-word sentence, uh, [laughs] with which he begins, uh, the Gettysburg Address.

**[00:31:03]** Uh, and it's quite remarkable that post-Gettysburg, Lincoln does not again recur to the declaration. Uh, it's as if his thought about it had achieved its final form. And that's the statement that he wants to remain and then he wants, uh, all Americans to memorize. One other point about the new birth of freedom, uh, I agree, uh, that it makes sense to read the new birth of freedom as a reference to emancipation and the steps that will follow emancipation, but I also believe that perhaps the more fundamental meaning of the new birth of freedom, uh, is that if the union is victorious then the heretical, uh, suggestion of secession, uh, and that argument that was made for secession will be refuted.

**[00:31:56]** Uh, and that that refutation itself constitutes a new birth of freedom. In other words, that, that's what's necessary to return to the, uh, the original meaning of the founding charters. I don't know that that's the usual way of reading it but I, I think it fits with what Lincoln says about the meaning of the war in other places, uh, where he says the real meaning of the war is so that Americans, uh, will have the proper understanding of the relationship between ballots and bullets. Uh, once you agree to be bound by ballots, uh, you don't get to have recourse back to bullets. That, that is it's basically a lesson in democratic theory.

**[00:32:35] Jeff Rosen:** Our last text is the Second Inaugural. I'm going to give myself the great pleasure, uh, which I get to do as moderator of reading the famous last sentence, which we all do know and then ask each of you to, uh, give us your thoughts on the speech. Uh, here we go, "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right. Let us strive on to finish the work we are in. To bind up the nation's wounds, to care for

him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." Michael Burlingame, what should we know about the Second Inaugural?

**[00:33:18] Michael Burlingame:** Well, the final paragraph, of course, is the one that people know best but Frederick Douglass in that remarkable speech that I mentioned earlier, the, the eulogy of June 1st, 1865 says that the more remarkable paragraph is the one that immediately precedes it. In which Lincoln starts off by quoting Jesus. "Woe into the world because of offenses for it must needs be that offenses come, but woe unto that man by whom the offense cometh."

**[00:33:46]** And he goes on to say, "If we shall suppose that American slavery is one of those offenses which in the providence of God must needs come and having passed through his appointed time, he now wills to remove. And that he gives to both north and south this terrible war as the woe do unto them by whom the offense came. Shall we discern therein any departure from those divine attributes which the believers in the living God have ever ascribed, have always ascribed to him? Fondly do we hope. Fervently do we pray that this mighty scourge of war may speedily pass away. But if God wills that it continue until all the wealth piled by the bondments 250 years of unrequited toil shall be sunk and until all the blood drawn by the lash shall be paid by another drawn by the sword. So it must be said as it was said 3,000 years ago the judgments of the Lord are true and righteous altogether."

**[00:34:43]** And Frederick Douglass said, "This is a truly remarkable notion." Uh, and that this reveals the depth of Lincoln's commitment to racial justice and racial equality. To say on an occasion like the Second Inaugural, uh, address of a president something to the effect that God has punished white people for having enslaved black people. Uh, and the war has gone on so long because the scales have to be balanced. There have been 250 years of unrequited toil and a lot of, [laughs] a lot of income was generated by that and it has to be amount, of an amount of white property equal to the back wages that were denied to slaves has to be destroyed.

**[00:35:22]** Um, and then the notion that, that for all the blood because it's, it's ... We have to remember that this war was in- incredibly bloody, that the total number of deaths of, of, was roughly 750,000 on a population base that's one-tenth of the population basis. So imagine if we, uh, lost seven and a half million men in the war against terror. It- it's, it's just the scope of the, the bloodshed was, was extraordinary. Uh, and for Lincoln for, to say that, um, impressed Frederick Douglass very profoundly, uh, as, as well it might.

**[00:35:56]** And it wouldn't have sounded out of place in the, in the mouth of a, a, a Presbyterian minister say, uh, reflecting on, on the nation's ordeal of, of the war but for a president to say that, uh, is truly extraordinary. And I think that that Douglass' understanding of that and how radical it was and, and how deep it was and how, uh, how much it reflected his sense of justice and his compassion for blacks, um, I think is truly remarkable. And therefore that that paragraph deserves to be more, uh, carefully scrutinized, uh, than the more famous final paragraph that immediately follows it.

**[00:36:34] Jeff Rosen:** Thank you for calling our attention to it and thank you for reading it. Uh, Noah Feldman, the Second Inaugural.

**[00:36:40] Noah Feldman:** I strongly agree with Michael and his emphasis on that paragraph. I would say that that paragraph amounts to, um, what we would call the political theology of the United States and a political theology is the use of religious ideas, distinctively religious ideas to explain political events and to give them meaning. And I think what Lincoln is doing here is offering a version, I wouldn't call it secularizing because God is in it, but a version of the political theology of the United States that's heavily dependent on Protestant Christian ideas about liberation from sin.

**[00:37:14]** So in this picture, slavery is the original sin that Lincoln describes, which is an offense but it's an inevitable offense. It's something that had to happen much as original sin is seen in early protestant theology as an inevitable, uh, reality that was nevertheless fundamentally evil and sinful.

**[00:37:33]** And the only thing that can cleanse original sin is the sacrifice of Christ through his blood and here, the blood of the Civil War dead is used by Lincoln as a substitute for Christ's blood. It's passionate, uh, in the sense, in the technical sense that it's Christ's passion, uh, or suffering that forgives original sin and that's what's going on here.

**[00:37:57]** The blood of the Civil War dead who are themselves martyrs is being used theologically to cleanse the United States of the original sin of slavery. And what emerges from this is a new world where it is possible to view the entire picture as in some sense righteous in the eyes of God because it is a judgment, because there has been sin and the sin has been purged.

**[00:38:25]** And it's also true I think as Michael mentioned earlier that because Lincoln himself was subsequently assassinated, he came to function in our political theology, a political theology that he devised as a martyr of the process of emancipation and liberation. And then because of the failure of reconstruction and the imposition of segregation and disenfranchisement of black people, it was necessary for the Civil Rights Movement to come around and bring about a further redemption of the constitutional guarantee of freedom.

**[00:39:01]** And here, it was Martin Luther King Jr. who played that central role. It's not an accident that his most famous speech took place in front of the Lincoln Memorial and then he too was assassinated, becoming a further marker of this political theology of the constitution in which a price is being paid, a price of blood and sacrifice is being paid to try to cleanse us of the sins of slavery and of racism.

**[00:39:26]** So that is a political theology that I think is still with us and deepened and made even more powerful by the Civil Rights Movement and by Martin Luther King's own martyrdom and sacrifice. That's why we have a Martin Luther King Day today as well. It's part of our official or unofficial, both official and unofficial American theology.

[00:39:47] Now, I just want to add to that, there might be some listeners who feel troubled by the idea that our political theology is so derivative of Christian stories and ideology, after all we do have an establishment clause in our constitution and a free exercise clause. And lots of us would like to believe that we have a separation of church and state, although not everybody agrees that that's the way to formulate it. I happen to think that is a good way to formulate it.

[00:40:11] I think the key point to recognize is that when it comes to the making of narratives, narratives are made including national narratives by the people who were living in the country at the time according to their own moral instincts and judgments. And at the time that Lincoln was speaking, the United States was descriptively and practically a Christian country. There were very few Jews. There were very few Muslims and it was still at the time also overwhelmingly a Protestant country

[00:40:33] Now, we are a country of much greater religious diversity. And as a consequence, we've secularized these ideas so much so that we can't even quite recall or realize the Christian origins of this kind of political theology or that we might be troubled by it. And my view is that we shouldn't be troubled by it. Um, and I should say cards on the table, I'm Jewish and was raised Jewish. And, uh, I'm still very committed to Jewish tradition but as an American, I'm not troubled by the idea that this political theology of Lincoln's spoke in the moral language that most Americans of the time held and that that moral language was in a sense, Christian. I don't think that makes it any less capable of being honored, any less capable of being respected or any less capable of being embraced by Americans today because we're capable of updating and changing our beliefs and of keeping our narratives and making them more inclusive over time.

[00:41:22] And we have to believe that because if we didn't believe that, we would have to think not with Lincoln but unlike Lincoln that because of the racism and slavery that existed in our origins, we're doomed forever as a country to be just that same group of people. And I don't think we are so doomed. We're capable of change. We're capable of expansion. We're capable of improvement. We don't always do it, we don't always do it right and we don't always go forward.

[00:41:48] I think, um, King said that the, you know, the arc of the universe tends towards justice. We want that to be true but it's not always in a straight line. So we do make mistakes and we do sometimes go backwards but we're capable of going forward and I think that enables us to be more expansive and more open.

[00:42:02] **Jeff Rosen:** Thank you very much indeed for that close reading. Diana Schaub, the last word on the Second Inaugural is to you.

[00:42:11] **Diana Schaub:** Uh, yeah, I think it's great that we read aloud both the fourth paragraph and a substantial part of the third paragraph. And I think really the question of the speech is, uh, what's the relationship between that third paragraph and the fourth paragraph. His aim is obviously to get to the fourth paragraph to, to make that call to, uh, act with malice toward none and with charity for all and to set the task ahead.

[00:42:35] So I, I think that the theological interpretation, uh, makes possible. Uh, it opens up the space for human charity. Um, uh, I, I don't think I'd actually call it a political theology. I think it's real theology with a political purpose, uh, but I think it's also important to note that the theological interpretation of the meaning of the Civil War is not presented as a certainty. It is presented by Lincoln as a supposition.

[00:43:07] "If we shall suppose that and if God wills." So it is a a supposition or a hypothesis and I think that is part of what protects it from being some kind of crossing of the line between, uh, between church and state or religion and politics. Uh, it also prevents it from, uh, being used for sort of purposes of fanaticism. Uh, it's clear actually that the theological interpretation is intended to induce, uh, humility, uh, on the part of human beings and I, I think that the message in that third paragraph is very specifically targeted to three different audiences.

[00:43:46] Uh, Lincoln is trying to avert the danger of northern arrogance, uh, northern persecution, uh, of the south after the war, uh, you know, blaming them as the traitors who started the war. Uh, uh, even though they were the traitors who started the war, uh, [laughs] that kind of blame won't be helpful after the war. Um, uh, uh, also he's trying to address the problem of southern recalcitrance. Uh, and I think by calling it American slavery, not southern slavery, uh, not African slavery but American slavery by all Americans or white Americans at least being willing to share in that blame, uh, he hopes to do what he can, uh, to induce the south to, uh, uh, to admit the fault.

[00:44:31] And then I think that, uh, last sentence of the third paragraph. the one that Frederick Douglass always quoted whenever he referred to Lincoln, I think this is true in every, uh, reference after the war, uh, where Douglas, Frederick Douglass made reference to Lincoln. He always quoted that divine reparations sentence, uh, the, the one about the 200 years of unrequited toil and every drop of blood drawn with a lash being repaid by another drawn with the sword.

[00:44:59] I think in a way that is what is offered to African Americans. It is an admission of the nation's guilt. It's an acknowledgment that God was all along on the side of the slave. And it's a, uh, a kind of vision of, uh, of divine reparations. Uh, and the fact that, uh, Frederick Douglass so latched on to that passage, uh, I, I think is an indication that he, he understood what what Lincoln was doing there with that, uh, with that line.

[00:45:27] **Jeff Rosen:** Thank you very much indeed for that and thanks to all of you for this wonderful parsing of these centrally important speeches. It's so meaningful to learn with all three of you. We have just seven minutes left. Our only constitution center rule is to end on time but I think that's enough time for one question to each of you and some, some very brief closing thoughts. Michael Burlingame, Bonnie Zedek asks, "How did Lincoln react to the Seneca Falls Convention in 1848 into voting rights for black women as well as white women? Was he the friend of black women as well as black men? And what final thoughts would you like to share with our friends."

[00:46:05] **Michael Burlingame:** We have no direct, uh, allusion in anything that Lincoln said or wrote about the Seneca Falls Convention but he was, I- I've argued in my book, uh, a kind of

proto-feminist. Uh, that he, he was opposed to the sexual double standard if a, if a husband violated the marriage vows, the, the wife had every right to do so. Um, he does, uh, he does in one of his speeches, uh, uh, running for the reelection to the state legislature say that, uh, he believed, uh, that all folks who paid taxes or serving the militia should be able to, uh, vote, uh, not excluding females. And sometimes people sneered they'd say, well, no females paid taxes in those days but widows certainly did.

**[00:46:47]** He also refused to gossip about women. Uh, he was famous. Uh, all the men were, uh, forever, uh, telling stories about the lack of virtue of this woman or that woman or the other woman and Lincoln refused to have anything to do with that. He also, uh, as president was very reluctant to execute any, sign the execution orders for any soldiers who had been condemned to death by a court martial except if they had been guilty of rape. And then he sho- showed no hesitation in signing that. Uh, and then, then he, he took vigilante action actually, uh, as this opponent of vigilantism actually acted as a vigilante in punishing a wife-beater.

**[00:47:24]** A, a fellow in, in Springfield had been beating his wife. Lincoln and his friends told him to stop it. He didn't stop it, so they went and hauled him out and gave his wife a belt and said lay into him. Uh, so I think Lincoln was, was by temperament, a fair-minded, uh, man who sympathized with the notions of, of feminism and then as, as for black women, uh, during the war a question arose whether the widows of black soldiers, uh, the, the women who had been in effect, wives of black soldiers should get a pension even if they hadn't been formally married. And Lincoln said yes, yes, they should be given. So, so he sympathized, uh, with black women in that particular context. So, um, I think that in general, he was sympathetic to the ideas and ideals that were enunciated at Seneca Falls.

**[00:48:09] Jeff Rosen:** Noah Feldman, several questions about the constitutional arguments against secession and whether or not, uh, Lincoln was correct to argue that it was unconstitutional. And your closing thoughts as well.

**[00:48:22] Noah Feldman:** The articles of confederation said that the union was perpetual. The constitution did not say that the union was perpetual but it did say that it would be more perfect and perfect in the technical sense, um, not in the contemporary sense, the way President Obama liked to use it but perfect in the sense of complete. So the argument, uh, on Lincoln's side is that if the articles in confederation made the union perpetual and if the constitution made them more perfect, then it must have been just as perpetual or even more perpetual and therefore there was no way out.

**[00:48:54]** I think probably the most honest and sophisticated answer is to say that in any political union that doesn't include an explicit provision for withdrawal. If some group of people choose to withdraw and others think they shouldn't withdraw, it's ve- very hard to give a, a objective answer as to whether they're permitted or not but the effect of it is revolutionary.

**[00:49:16]** And remember to the Framers' generation, there was nothing wrong with being revolutionary. Uh, and this was also true for Americans of Lincoln's generation, a revolution was just something that people did. And in fact, Lincoln, uh, when he was in his one term of congress

gave a speech. He was actually speaking about the Mexican-American war. He was referring to the Texan revolution and he embraced the idea that any group of people no matter where they were had a fundamental right to, as he put it, revolutionize.

**[00:49:38]** So I think the best way to think about it is that it was a revolutionary act. And that people of the time debated whether it was a legitimate and just revolution or an illegitimate revolution. From Lincoln's perspective as the person who was actually running the country, he didn't think he had the option of accepting this as a just or legitimate revolution. And then the way he described it was to say that congress could decide that if it wanted to but he on his own did not have the authority to say that it was just.

**[00:50:03]** He felt he needed to execute the laws and the laws were not being executed in those states. And therefore, he felt that it was his obligation based on the oath registered in heaven as he put it in his first inaugural to, uh, go out and do what it took to enforce those laws. So I think those who want to argue that secession was somehow legitimate can argue that it was legitimate in that it was an act of revolution that was anticipated by the political- the political theory of the declaration.

**[00:50:32]** Those on the other side who want to insist that it was definitively not legitimate also have something to rely on. And that's why there was a war, you know, that's why we fought a war over this. That leaves the question of whether the outcome of the war tells you that one side was right or wrong. That's the might makes right theory of history.

**[00:50:49]** Um, it may or may not be true descriptively, it's probably not true morally and normatively. Um, I guess my, my concluding thought on all of this is that it's amazing to me how much we as Americans still care about these questions. And I think this is why we have a National Constitution Center. It's why we struggle to try to get constitutional questions right today. It's because these issues are central to who we are as a people. And that's the best thing you can say about our constitution. It gives us a mechanism for arguing about who we are that is better than fighting, uh, and although we did fight on one occasion, we ought not to do so in the future and I think the work of the National Constitution Center is to contribute to our not fighting each other.

**[00:51:31] Jeff Rosen:** Thank you for those kind words and thank you for contributing so well to that, uh, inspiring mission, which I know we all share. Diana Schaub, the last word is to you. Our friend Colin Tebow says, "Some of Lincoln's speeches are famous for being very short. Is that intentional and does that impact his rhetorical intentions of constitutional ideas?" Your thought and his shortness, uh, as we close this wonderful program.

**[00:51:55] Diana Schaub:** Yes, and I think I don't have much time left to answer this, so, uh, I will try to be as brief as Lincoln. Uh, yes, yeah, he, uh, acquires this gift for brevity, uh, and you see it especially in the Gettysburg and the Second Inaugural. I think it's very deliberate, uh, on his part and part of it especially in the Gettysburg address I think is that, uh, he, he hoped it would be memorized by Americans. So my suggestion is that we all, uh, commit both the, uh, Gettysburg address and the Second Inaugural, uh, to memory.



**[00:52:28] Jeff Rosen:** What a wonderful challenge. And friends, let's, let's take up Diana Schaub's challenge and if you succeed in memorizing, let's say either the Gettysburg address or the Second Inaugural then, uh, write to me at Constitution, [jrosen@constitutioncenter.org](mailto:jrosen@constitutioncenter.org) and let me know and I'll send you a congratulations. And, uh, we'll let Diana and Nah and Michael know about it. I know they'll be as pleased as I am that this deep, civil, rigorous and learned discussion, uh, will have inspired you to commit these sacred words to memory.

**[00:53:03]** Michael Burlingame, Noah Feldman and Diana Schaub for a constitutional conversation in the highest possible tradition, thank you so much. And thank you friends for joining us. Look forward to seeing you all again soon. Thanks. Goodnight.

**[00:53:24] Tanaya Tauber:** This episode was produced by Melody Rowell, Lana Ulrich, John Guerra and me, Tanaya Tauber. It was engineered by the National Constitution Center's EVT. Visit [constitutioncenter.org/debate](http://constitutioncenter.org/debate) to see a list of resources mentioned throughout this episode. Find the full lineup of our upcoming shows and register to join us virtually. You can join us via Zoom. Watch our live YouTube stream or watch the recorded videos after the fact in our media library at [constitutioncenter.org/constitution](http://constitutioncenter.org/constitution).

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