

## Who Are the True Heirs of Lincoln and Douglas?

Rogers M. Smith

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/mlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Rogers M. Smith, *Who Are the True Heirs of Lincoln and Douglas?*, 83 Md. L. Rev. 204 ()  
Available at: <https://digitalcommons.law.umaryland.edu/mlr/vol83/iss1/7>

This Symposium is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

---

---

## WHO ARE THE TRUE HEIRS OF LINCOLN AND DOUGLAS?

ROGERS M. SMITH\*

When I learned the 2023 Maryland Law School Schmooze would be devoted to considerations raised by the famous Lincoln-Douglas debates of 1858, two questions occurred to me. First, what, if any, positions in our current polarized politics can plausibly claim to be the heirs of the rival positions that Lincoln and Douglas took in those debates? Second, does the text of the Constitution today align more with the positions of Lincoln or Douglas? These questions are linked because the rival political views in modern America include sharply opposed understandings of how the U.S. Constitution should be read, differences that some hold to parallel the profound differences between the perspectives of Lincoln and Douglas.

Indeed, my motivation for discussing these questions stems chiefly from my interest in a charge leveled most prominently by a number of “West Coast Straussians,” mostly students and admirers of the late Harry Jaffa.<sup>1</sup> They contend that modern liberals and progressives have turned their backs on what they understand to be the natural rights principles of both Lincoln and the Constitution and have instead embraced morally relativistic and often tyrannical positions that today’s progressives defend as democratic, in just the way that Stephen Douglas defended his principle of “popular

---

© 2023 Rogers M. Smith.

\*Christopher H. Browne Distinguished Emeritus Professor of Political Science, University of Pennsylvania. My thanks to Professor Mark A. Graber, the University of Maryland Schmooze, and the editors of the *Maryland Law Review*.

1. Leo Strauss was a German Jewish political philosopher—initially influenced, like his contemporary Hannah Arendt, by Martin Heidegger—who fled Nazi Germany and pursued a highly influential academic career at the New School, the University of Chicago, and Claremont McKenna College. He argued in many works, notably *Natural Right and History* (1953), that modern philosophy and the social sciences wrongly dismissed ideas of natural right in ancient and medieval thought. Among his many prominent students, Harry Jaffa, also of Claremont, fostered scholarship celebrating the natural rights commitments of the American founding, works that have come to be called a school of “West Coast Straussians,” in contrast to “East Coast Straussians” who more often stress Socratic skeptical traditions. For discussions of Strauss, Jaffa, and contemporary “Straussians” by diverse conservative thinkers, see, for example, Paul Gottfried, *Clearing Up the Confusion on Leo Strauss*, CHRONICLES (July 13, 2021), <https://chroniclesmagazine.org/web/clearing-up-the-confusion-on-leo-strauss/>; Gerard T. Mundy, *A Sophist American Framing*, RUSSELL KIRK CTR. (Dec. 20, 2020), <https://kirkcenter.org/reviews/a-sophist-american-framing/>; Matthew J. Franck, *Friends and Enemies: Harry Jaffa, Walter Berns, and the Arguments that Redefined American Conservatism*, CLAREMONT REV. OF BOOKS (Spring 2017), <https://claremontreviewofbooks.com/friends-and-enemies/>.

sovereignty.”<sup>2</sup> This critique, tracing back to *Crisis of the House Divided*,<sup>3</sup> Jaffa’s widely admired study of the Lincoln-Douglas debates, is all the more salient because the Trump years brought the Claremont Institute,<sup>4</sup> founded by Jaffa’s students in 1979 and for many years seen as esoterically academic and politically marginal, into heightened prominence. Because Institute-affiliated scholars have warned about America’s constitutional and political decline since the 1960s, Thomas Klingenstein, the chair of the Institute’s Board, asserted in 2022 that the modern conservative movement’s “intellectual justification” for turning to Trump “comes from Claremont.”<sup>5</sup> That justification rests on a belief that Trump has so often articulated, that today’s political progressives are assaulting America’s founding values and best traditions. Trump, in turn, awarded the Institute a National Humanities Medal in 2019. The lawyer John Eastman, a chief architect of plans by Trump allies to overturn the 2020 election, has been affiliated with the Claremont Institute for several decades (though not all its leaders agree with his election claims), and he continues to direct the Institute’s Center for Constitutional Jurisprudence.<sup>6</sup>

It is perfectly reasonable to observe that both Lincoln and Douglas were men of their time, whose views were more distinct than similar to most people’s views today, and who faced very different challenges than ours, so that we cannot honestly say what stance they might take on current issues. The political reality, however, is that it is often effective for political actors and movements to link their preferred positions to those that are prestigious in their nation’s past, while tagging their opponents with disgraced viewpoints. After all, there are bound to be some connections between past and present. So, my response to the West Coast Straussian conservative critique is first, to concede that there are indeed ways in which progressives

---

2. Along with Strauss’s *Natural Right and History* and Harry Jaffa’s *Crisis of the House Divided* (see notes 1 and 3), probably the most influential statement of this critique is the bestseller *The Closing of the American Mind: How Higher Education Has Failed Democracy and Impoverished the Souls of Today’s Students* (1987), written by University of Chicago Professor Allan Bloom, perhaps the most famous student of Strauss. See also THOMAS G. WEST, *THE POLITICAL THEORY OF THE AMERICAN FOUNDING: NATURAL RIGHTS, PUBLIC POLICY, AND THE MORAL CONDITIONS OF FREEDOM* (2017); CHARLES R. KESLER, *CRISIS OF THE TWO CONSTITUTIONS: THE RISE, DECLINE, AND RECOVERY OF AMERICAN GREATNESS* (2017). For a valuable overview of these debates, see ALAN GIBSON, *INTERPRETING THE FOUNDING: GUIDE TO THE ENDURING DEBATES OVER THE ORIGINS AND FOUNDATIONS OF THE AMERICAN REPUBLIC* (2d ed. 2010).

3. HARRY V. JAFFA, *CRISIS OF THE HOUSE DIVIDED: AN INTERPRETATION OF THE ISSUES IN THE LINCOLN-DOUGLAS DEBATES* (Univ. of Chi. Press 1982) (1959).

4. CLAREMONT INST., <https://www.claremont.org/> (last visited July 31, 2023).

5. Elizabeth Zerofsky, *How the Claremont Institute Became a Nerve Center of the American Right*, N.Y. TIMES (Aug. 3, 2022), <https://www.nytimes.com/2022/08/03/magazine/claremont-institute-conservative.html>.

6. *Id.*

past and present have echoed Stephen Douglas's espousal of popular sovereignty. Even so, progressives' overriding sense of political purpose, unlike that of Trump and many Claremont conservatives, is far closer to Lincoln's. Second, our Constitution is a hybrid of—primarily—founding era, Reconstruction, and Progressive outlooks, leaving it legitimately open to many different synthetic readings. Readings that give centrality to a moderate progressive interpretation of the postwar amendments, especially the Fourteenth Amendment, are among those that are not only constitutionally legitimate, but also very well supported in the text; and they are normatively best.

#### I. THE CASE FOR CONSERVATIVES AS LINCOLN'S HEIRS, PROGRESSIVES AS DOUGLAS'S HEIRS

Begin with the conservative critique of American progressives, both those of the Progressive era and those active today, whom conservatives portray as apostates, if not traitors, to the heart of Lincoln's political commitments. At its best, this critique stems from what has arguably always been the deepest concern of most Straussians: the belief that people must accept the existence of unchanging standards of natural right, or else they will ineluctably embrace a moral relativism that can justify atrocities and that ultimately amounts to destructive nihilism.<sup>7</sup> Harry Jaffa presented the Lincoln-Douglas debates as centered on a choice between versions of these two alternatives.<sup>8</sup> In his view, Lincoln held that America was founded on the belief that all human beings are equal in their entitlement to certain natural rights, including life, liberty, and the pursuit of happiness, with the corollary that no public or private agency can rightly deprive people of those rights, so that all can be governed only with their own consent.<sup>9</sup> Douglas held that America was founded instead on a commitment to popular sovereignty, to the democratic right of the majority of the citizens in a community to decide all issues they see as affecting them, including their interest in benefiting from the enslaved labor of others.<sup>10</sup>

Jaffa's interpretation of the Lincoln-Douglas debates has great force. Though Lincoln's understanding of the political implications of what he called the "great fundamental truth" of human equality evolved over time, it did so consistently with his oft-repeated statement that, in saying all men are created equal, the Declaration of Independence:

---

7. To paraphrase Dostoevsky, most Straussians think that if people believe that neither natural right nor God exist, they will decide that everything is permitted. They will have no standards to judge what is objectively good and virtuous.

8. JAFFA, *supra* note 3, at 29–35.

9. *Id.* at 30–31.

10. *Id.* at 30.

---

---

set up a standard maxim for free society which should be . . . 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, every where.<sup>11</sup>

Douglas, in contrast, regularly contended that the “principle . . . more sacred than all others” to “every true American” was “the right of every community to judge and decide for itself, whether a thing is right or wrong, whether it would be good or evil for them to adopt it.”<sup>12</sup> Douglas recognized that the language of the Declaration of Independence appeared to support Lincoln’s view, but he interpreted the Declaration as applying only to white men. As Douglas put it in the third joint debate:

[T]he signers of the Declaration had no reference to the negro whatever, when they declared all men to be created equal. They desired to express by that phrase white men, men of European birth and European descent, and had no reference either to the negro, the savage Indians, the Fejee, the Malay, or any other inferior or degraded race, when they spoke of the equality of men.<sup>13</sup>

Because today, conservatives often profess to oppose imperialism in favor of upholding nationalism and the absolute sovereignty of all nations, it is worth noting that Douglas also repeatedly made clear that he instead favored the constant imperial expansion of the United States at the expense of such “races.” He urged his audiences to “go forward increasing in territory, in power, in strength and in glory,”<sup>14</sup> advancing “our interests and our destiny” through “additional territory in the North, in the South, or on the Islands of the ocean.”<sup>15</sup> Though Lincoln too hoped that the existing U.S. territories would provide “a home” for “*free white people every where*,” including immigrants, he did not favor any expansion that would strengthen slavery.<sup>16</sup> He therefore derided Douglas’s policies as likely to produce “a grab for the territory of poor Mexico, an invasion of the rich lands of South

---

11. Seventh Joint Debate, Alton (Oct. 15, 1858), in *THE LINCOLN-DOUGLAS DEBATES OF 1858*, at 286, 304, 307 (Robert W. Johannsen ed., 1965) (Mr. Lincoln’s reply).

12. Speech of Stephen A. Douglas, Chicago (July 9, 1858), in *THE LINCOLN-DOUGLAS DEBATES OF 1858*, *supra* note 11, at 22, 22, 27.

13. Third Joint Debate, Jonesboro (Sept. 15, 1858), in *THE LINCOLN-DOUGLAS DEBATES OF 1858*, *supra* note 11, at 116, 128 (Mr. Douglas’s speech).

14. First Joint Debate, Ottawa (Aug. 21, 1858), in *THE LINCOLN-DOUGLAS DEBATES OF 1858*, *supra* note 11, at 37, 48 (Mr. Douglas’s speech).

15. Second Joint Debate, Freeport (Aug. 27, 1858), in *THE LINCOLN-DOUGLAS DEBATES OF 1858*, *supra* note 11, at 75, 92 (Mr. Douglas’s reply).

16. Seventh Joint Debate, *supra* note 11, at 316 (Mr. Lincoln’s reply).

America, then the adjoining islands will follow, each one of which promises additional slave fields.”<sup>17</sup> The modern conservatives who oppose imperialist ventures can therefore say that they are on the side of Lincoln, not Douglas.

There are several other ways in which these positions enable conservatives to argue that both twentieth- and twenty-first-century progressives are effectively, if not consciously, the heirs of Stephen Douglas. Early twentieth-century Progressives embraced Darwinian evolutionary ideas, pragmatist philosophic premises, and Social Gospel forms of religiosity that led them to reject notions of unalterable, inalienable natural rights as well as traditionalist forms of religion.<sup>18</sup> They believed the best—and perhaps the only legitimate—sources of human political guidance were contemporary democratic preferences and modern scientific expertise, and they readily accepted that in the course of human social evolution, both democratic choices and scientific findings could and should change and, in all probability, improve.<sup>19</sup> Consequently, they did not believe that inherited doctrines of constitutional limitations or superstitious notions of natural rights should bar any governmental “engineering” of the “social forces,” to use the Progressive Lester Frank Ward’s phrase, that had broad democratic support and that experts said would work.<sup>20</sup> Most early Progressives (though not Ward) also thought that modern science had demonstrated the existence of deep, and only questionably alterable, racial and gender differences—beliefs that, for many of them, justified policies of racial and gender segregation, eugenics measures including forced sterilizations and abortions, and “tutelary” imperial rule over less “civilized” peoples.<sup>21</sup>

In *Crisis of the Two Constitutions*, the editor of the *Claremont Review*, Charles Kesler, provides an exemplary statement of the modern conservative critique.<sup>22</sup> Analyzing what he describes as the “[p]rogressive liberalism” of the early twentieth century, with its embrace of “evolutionary processes,

---

17. Fifth Joint Debate, Galesburg (Oct. 7, 1858), in *THE LINCOLN-DOUGLAS DEBATES OF 1858*, *supra* note 11, at 206, 234–35 (Mr. Lincoln’s reply).

18. See, e.g., THOMAS C. LEONARD, *ILLIBERAL REFORMERS: RACE, EUGENICS, AND AMERICAN ECONOMICS IN THE PROGRESSIVE ERA* (2016); NATURAL RIGHTS INDIVIDUALISM AND PROGRESSIVISM IN AMERICAN POLITICAL PHILOSOPHY (Ellen Franken Paul, Fred D. Miller, Jr., & Jeffrey Paul eds., 2012).

19. A classic discussion is EDWARD A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* (1973).

20. 1 LESTER F. WARD, *DYNAMIC SOCIOLOGY OR APPLIED SOCIAL SCIENCE* 68 (D. Appleton & Co. 1926) (1883).

21. Julian Go, *The Provinciality of American Empire: ‘Liberal Exceptionalism’ and U.S. Colonial Rule, 1898-1912*, 49 *COMPAR. STUD. SOC’Y & HIST.* 74, 76–79 (2007); see Kathleen Dalton, *Changing Interpretations of Theodore Roosevelt and the Progressive Era*, in *A COMPANION TO THE GILDED AGE AND THE PROGRESSIVE ERA* 296 (Christopher McKnight Nichols & Nancy C. Unger eds., 2017).

22. KESLER, *supra* note 2, at 146–47 (2021).

pragmatic tests, and historical relativity,” Kesler sees in it a “rejection of the Constitution” and a “firm break with natural right[s], higher law, limited government, and constitutionalism”—and “the morality” embodied in all of those.<sup>23</sup> Kesler notes that in *Crisis of the House Divided*, Jaffa presented Lincoln himself as having pushed American egalitarianism beyond what the nation’s founders envisioned, which might seem dangerously progressive.<sup>24</sup> But Jaffa later concluded in *A New Birth of Freedom* that he had been wrong, that Lincoln and the founders had blended rationalism, ancient and modern, and religion in very similar fashion, and in ways opposed to modern progressive liberalism.<sup>25</sup> Kesler, like many West Coast Straussians, takes the ardent segregationist Woodrow Wilson as his preferred archetype of this early progressivism, and there can be no denying that Wilson was a major figure in the Progressive movement who praised Darwinian evolutionary doctrines and dismissed natural rights and Constitution worship as “political witchcraft.”<sup>26</sup>

Progressives today, of course, denounce early Progressives like Wilson as sexist, racist, and often imperialist, and they have succeeded in having his name removed from many major institutions, even at his own Princeton.<sup>27</sup> But conservatives like Kesler insist that today’s progressives do something that is arguably even worse.<sup>28</sup> Progressives, they say, endorse Stephen Douglas’s view that the framers of the Declaration and the Constitution—all male, propertied, Christian, white settler-colonialists—did not think for a second that “all men are created equal” applied to anyone other than themselves.<sup>29</sup> Today’s progressives are, to be sure, the opposite of Douglas in wanting to radically overcome that past. Kesler rightly says that many seek “not merely to reform but to *transform* the country” into something they see as “freer, fairer, and more fulfilling,” without a specific model of what that looks like: The goal is “reform without end.”<sup>30</sup>

---

23. *Id.*

24. *Id.* at 134–35.

25. *Id.* at 131, 134, 137; see HARRY V. JAFFA, *A NEW BIRTH OF FREEDOM: ABRAHAM LINCOLN AND THE COMING OF THE CIVIL WAR* (2000).

26. KESLER, *supra* note 2, at 149 (quoting WOODROW WILSON, *CONGRESSIONAL GOVERNMENT* (1885)); see also *id.* at 148, 151.

27. See Office of Comm’cns, *Board of Trustees’ Decision on Removing Woodrow Wilson’s Name from Public Policy School and Residential College*, PRINCETON UNIV. (June 27, 2020, 12:29 PM), <https://www.princeton.edu/news/2020/06/27/board-trustees-decision-removing-woodrow-wilsons-name-public-policy-school-and#:~:text=>

28. KESLER, *supra* note 2, at 221.

29. See *id.* at 221–22.

30. *Id.* at 144–45.

He and other conservatives, including the members of Donald Trump's 1776 Commission<sup>31</sup> on which Kesler served, nonetheless stress their belief that by embracing group rights, many progressives today are acting in ways that are as racist as Douglas, and far more racist than many that progressives criticize today.<sup>32</sup> In fact, Kesler could have stressed that many progressives today believe the entire world system of nation-states, predominantly shaped by racially justified European imperialism, must give way to an as-yet-hazy system of global egalitarian democratic governance, a vision that appears very different from Lincoln's determination to save the American Union while furthering what he saw as its core purposes.<sup>33</sup> Many conservatives see the modern progressive global "democratic" vision as really an elitist cosmopolitan one that is itself a form of imperialism.

In sum, in many contemporary conservative eyes, progressives past and present have, like Douglas, been predominantly relativistic, anti-universal natural rights, and believers in democratic majoritarianism. Progressives today are convinced that the framers were abhorrently racist, but conservatives believe that in different ways, such progressives are racist and imperialist themselves. Except for their embrace of the adjective "abhorrently," they're clearly Douglas's heirs.

One more point: Reading the post-Civil War Amendments as chiefly embodying Lincoln's vision, and accepting Jaffa's later view that Lincoln and the Founders were much the same, Kesler and other conservatives feel entitled to give little weight to twentieth-century amendments. They read the Constitution as amended—"some vital improvements, some not," in Kesler's judgment—as "broadly recognizable still as the founders' handiwork."<sup>34</sup> It should be read entirely, or at least overwhelmingly, in light of what the leading Founders understood to be the principles of "natural right, higher law, limited government, and constitutionalism"—in other words, the "intellectual and political commonsense of Washington, Adams, Jefferson, Madison, and Lincoln."<sup>35</sup>

---

31. PRESIDENT'S ADVISORY 1776 COMM'N, THE 1776 REPORT 29 (2021), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf>.

32. See, e.g., KESLER, *supra* note 2, at 366.

33. See, e.g., ADOM GETACHOW, *WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION* (2019); JUSTIN DESAUTELS-STEIN, *THE RIGHT TO EXCLUDE: A CRITICAL RACE APPROACH TO SOVEREIGNTY, BORDERS, AND INTERNATIONAL LAW* (2023).

34. KESLER, *supra* note 2, at xii.

35. *Id.* at 146.



## II. PROGRESSIVES AS HEIRS TO WHAT IS BEST IN LINCOLN AND THE CONSTITUTION, NOT TO DOUGLAS

One problem for the conservative critique is that, as Kesler acknowledges without discussion, most early Progressives like Theodore Roosevelt lionized Lincoln (with, admittedly, Wilson an exception).<sup>36</sup> But why? Most Progressive thinkers did, after all, reject natural rights and sadly, too many did embrace doctrines of racial inequality and policies of eugenics, segregation, and imperialism.<sup>37</sup> More happily, many followed the greatest Progressive philosopher, John Dewey, in embracing democracy, self-governance by the people, in far more thorough-going ways than Stephen Douglas ever dreamed of—which might be seen as popular sovereignty on steroids.<sup>38</sup> But Lincoln opposed Douglas’s doctrine of popular sovereignty. Why, then, did so many Progressives love Lincoln?

I submit it is because—like the earlier and, in my mind, more credible Jaffa, and even more like Michael P. Zuckert in his superb recent analysis of Lincoln’s speeches, *A Nation So Conceived: Abraham Lincoln and the Paradox of Popular Sovereignty*—they rightly saw Lincoln as a major progressive political reformer and as a model of personal moral growth, in ways that they sought to emulate.<sup>39</sup> Many believed that, as Jaffa said in 1959, “Lincoln’s morality . . . extends the full length of Jefferson’s, but it also goes further.”<sup>40</sup> Many called attention to how Lincoln interpreted the Declaration as launching a continuing, unending reform project, of exactly the sort Kesler indicts progressives for favoring. The standard of equality of rights for all was, Lincoln repeatedly said, “though never perfectly attained,” to be “constantly labored for . . . constantly spreading and deepening its influence, and augmenting the happiness and value of life,” and the best early Progressives like Dewey were comfortable endorsing the momentous next words, “to all people of all colors every where.”<sup>41</sup> Some were surely aware that Lincoln, who had long favored emancipation with compensation for

---

36. *Id.* at 117.

37. See *supra* notes 18–21 and accompanying text.

38. For Dewey’s thought and influence, see, for example, JAMES T. KLOPPENBERG, *UNCERTAIN VICTORY: SOCIAL DEMOCRACY AND PROGRESSIVISM IN EUROPEAN AND AMERICAN THOUGHT, 1870–1920* (1986); ROBERT B. WESTBROOK, *JOHN DEWEY AND AMERICAN DEMOCRACY* (1991); WILLIAM J. NOVAK, *NEW DEMOCRACY: THE CREATION OF THE MODERN AMERICAN STATE* (2022).

39. MICHAEL P. ZUCKERT, *A NATION SO CONCEIVED: ABRAHAM LINCOLN AND THE PARADOX OF DEMOCRATIC SOVEREIGNTY* 31 (2023).

40. JAFFA, *supra* note 3, at 327.

41. Abraham Lincoln, Speech at Springfield, Illinois (June 26, 1857), in 2 *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 398, 406 (Roy P. Basler ed., 1953); cf. JOHN DEWEY, *RECONSTRUCTION IN PHILOSOPHY* 186 (Beacon Press enlarged ed. 1948) (1920) (“[In a democracy] all social institutions have a meaning, a purpose. That purpose is to set free and to develop the capacities of human individuals without respect to race, sex, class or economic status.”).

slaveholders and colonization for the formerly enslaved, abandoned those positions during the Civil War and came instead to endorse the suffrage for educated Blacks and Black military veterans.<sup>42</sup>

For Jaffa and most conservative West Coast Straussians, however, Lincoln extended Jefferson, if he extended him at all, only by recognizing a categorical and not merely instrumental duty to do “justice” to all—not by favoring a wide-ranging, continuing, and open-ended reform agenda.<sup>43</sup> Directly challenging Jaffa, Zuckert argues instead that Lincoln resolved his internal debate over how persons of great ambition could be satisfied with merely extending the works of America’s founders by recognizing that there were many “possibilities for . . . the expansion of spheres of equality and liberty into hitherto untouched areas,” and that greatness could be achieved by contributing to those expansions.<sup>44</sup> On Zuckert’s reading, for Lincoln as for many Progressives, this project was necessarily open-ended, because the full “possibilities of human freedom are not known,” and “new agendas of freedom” could “emerge” that might well go far beyond what earlier generations imagined.<sup>45</sup> It is not surprising, then, that so many Progressives found in Lincoln’s words and deeds not simply recognition of a duty to respect “liberty and justice for all,” but a call to constantly look for and labor to achieve enhancements in the happiness and value of life for all, an endeavor that included developing deeper understandings of what that task required as it proceeded. In their eyes, that is what Lincoln himself had done. This was a sense of national purpose very different, indeed sharply opposed, to the acquisition of lands, resources, wealth, and glory solely for American white men that Stephen Douglas offered as the nation’s mission.

To be sure, most progressives today would insist that they are seeking transformations to advance the happiness and value of life for all, as well as forms of government “of the people, by the people, for the people,”<sup>46</sup> that go far beyond those that Lincoln envisioned. Many see their differences from him as so great that they would disparage efforts to build on Lincoln, unlike most early Progressives. Yet it seems impossible to dispute that progressives today are still much closer to Lincoln’s sense of political purposes, his belief that there is more “in reach for human action” to expand “liberty in very many

---

42. Abraham Lincoln, *Last Public Address*, ABRAHAM LINCOLN ONLINE (April 11, 1865), <https://www.abrahamlincolnonline.org/lincoln/speeches/last.htm>; see ZUCKERT, *supra* note 39, at 296–97.

43. JAFFA, *supra* note 3, at 327.

44. ZUCKERT, *supra* note 39, at 362; see also *id.* at 29, 350.

45. *Id.* at 36.

46. Abraham Lincoln, *The Gettysburg Address*, ABRAHAM LINCOLN ONLINE (Nov. 19, 1853), <https://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>.

if not all spheres of life,” than they are to Stephen Douglas’s acceptance of slavery and celebration of ever-expanding white settler colonialism.<sup>47</sup>

### III. THE CONSTITUTION’S HEIRS

What, then, of the Constitution? Kermit Roosevelt III, a University of Pennsylvania law professor and descendant of Theodore Roosevelt, has recently argued that Lincoln’s account of America as pursuing from its start a project, rooted in the Declaration of Independence, of securing rights for all has become “the standard story” of America.<sup>48</sup> This “standard story” is, however, one that Roosevelt, unlike his ancestor Theodore but like many modern progressives, sees as doing more harm than good.<sup>49</sup> He contends that by over-praising “the Founding,” the “standard story” inevitably understates how deeply flawed, how exclusionary of Black people, women, Indigenous people, and many others, America’s founding was, and how the Constitution utterly failed to remedy those profound deficiencies.<sup>50</sup> Roosevelt believes Americans should take their bearings not from the Declaration of Independence and the “Founder’s Constitution,” but from the Gettysburg Address and the better, though still flawed, “Reconstruction Constitution.”<sup>51</sup> He maintains that despite its imperfections, the “Reconstruction Constitution” has a much greater capacity to serve as a source of inspiration for continuing reform efforts.<sup>52</sup> Roosevelt’s bottom line is that “[t]hinking about Reconstruction gives us a better vision of what we must do” than thinking about the Founding.<sup>53</sup>

I have some disagreements with Roosevelt. A minor point of personal privilege: Though he appears to place me in the camp of proponents of what he calls the “standard story,” I have repeatedly indicated, as I have here and as he does, that Lincoln and his anti-slavery constitutionalism went well beyond what was clearly adopted in the founding era.<sup>54</sup> Moreover, it seems paradoxical for Roosevelt to urge rejection of the “standard story” while

---

47. ZUCKERT, *supra* note 39, at 363.

48. KERMIT ROOSEVELT III, *THE NATION THAT NEVER WAS: RECONSTRUCTING AMERICA’S STORY*, at v, 9–13 (2022).

49. *Id.* at 15–31, 201–11.

50. *Id.* at 201.

51. *Id.* at 201–03.

52. *Id.* at 202–03.

53. *Id.* at 211.

54. See, e.g., Rogers M. Smith, *The Politics of Rights Talk, Then and Now*, in *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND* 303, 310, 314 (Barry Shain ed., 2007); Rogers M. Smith, *Lincoln and Obama: Two Visions of American Civic Union*, in *REPRESENTING CITIZENSHIP* 17, 30–31 (Richard Marback ed., 2016); Rogers M. Smith, *Lockean Liberalism and American Constitutionalism in the Twenty-First Century: The Declaration of Independence or “America First”?*, 8 *AM. POL. THOUGHT* 283, 286–88 (2019); ROGERS M. SMITH, *THAT IS NOT WHO WE ARE! POPULISM AND PEOPLEHOOD* 110 (2020).

urging today's progressives to embrace the Gettysburg Address, which is perhaps the most influential telling of that story—though in fairness, Roosevelt presents the Address as a statement of how Americans should think of themselves and their nation, not as an accurate historical account. Finally, I think Roosevelt exaggerates when he says, “Reconstruction destroys the Founders’ Constitution . . . It is not a fulfillment of the Founders’ vision, but a rejection of it, a recognition of its failure.”<sup>55</sup> That formulation makes the same mistake as the “standard story.” It attributes too much unity to “the Founders’ vision.”<sup>56</sup> It veers close to suggesting Stephen Douglas was right to dismiss the more universalistic expressions of some of the leaders in the founding generations. It also overstates the degree to which the leaders of Reconstruction rejected the products of the founding period.

Nonetheless, I fully agree with Roosevelt that the Reconstruction Constitution is “better—vastly better” than the Constitution prior to the postwar amendments, and that it is wise to feature Reconstruction in our accounts of America’s best inheritances.<sup>57</sup> While I taught constitutional law courses for over four decades, I came to see more fully that we actually have a hybrid Constitution, one that incorporates into its amended text the dominant political visions of the late 1780s and 1790s, those of the Reconstruction period, and subsequent amendments that largely reflect more democratic, progressive outlooks. Though these founding era, Reconstruction, and democratic progressive political visions have important themes in common, they are far from identical; yet they are all present in the Constitution as we have it today. As Bruce Ackerman has long insisted, these historical developments mean that constitutional interpretation is inescapably a synthetic enterprise, in which we try to achieve sufficient consistency in the nation’s composite fundamental law to sustain the nation’s endeavors.<sup>58</sup> Additionally, I have recently suggested that the Civil War Amendments, particularly the Fourteenth Amendment, can and should serve as the “hinge and bridge” of this synthetic endeavor.<sup>59</sup> Precisely because the Civil War amendments embody the commitments to securing rights for all that Lincoln and other Reconstruction leaders still rooted in natural rights doctrines, even as they expand national powers and obligations to pursue that quest over

---

55. ROOSEVELT, *supra* note 48, at 203.

56. *Id.*

57. *Id.* at 203.

58. 1 BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 58–130 (1991). Because our Constitution is a kind of ideological patchwork quilt, it is, contra Ronald Dworkin, not realistic to believe that it can be interpreted as expressing any single comprehensive political theory. *Cf.* RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 105–30 (1978)

59. Rogers M. Smith, *American Citizenship and the Constitution: The Fourteenth Amendment as Hinge and Bridge*, in *CITIZENSHIP AND CIVIC LEADERSHIP IN AMERICA* 99 (Carol McNamara & Trevor Shelley eds., 2022).

time, those amendments both connect with the best elements in the founding period, and they provide authorization for the continuing reform projects that progressives have gone on to pursue, in ways that, in my view, have commendably improved over time.

Because Kesler neglects the growth in Lincoln's own views and Lincoln's deep, if debatable, conception of the Declaration and the Constitution as launching, not largely completing, a transformative political project, Kesler sees the Reconstruction Amendments that Lincoln helped inspire as not much modifying "the founders' handiwork."<sup>60</sup> But it is, at a minimum, legitimate to read those amendments as more of a departure than Kesler grants, if not necessarily as the all-out rejection of the founding that Roosevelt sees. When we then consider the four Progressive era amendments and those of the 1960s, which collectively further expanded both national governmental powers and the democratic character of American political institutions, in keeping with progressive visions, it becomes legitimate to read the Constitution as increasingly embodying a project of achieving more inclusive, egalitarian, and beneficial enjoyment of rights for all. That project is common to both Lincoln and the progressives, even if, as Zuckert suggests, Lincoln believed that human nature imposed limits on this project that made aspirations for its perfect fulfillment unrealistic.<sup>61</sup> Indeed, if we are striving for as coherent a synthesis of the Constitution's shaping in different eras by different framers and ratifiers as we can achieve, then a moderate progressive reading, much in the spirit of Lincoln, arguably does the best job of doing justice to the Constitution's text, taken as a whole.

#### CONCLUSION

It is, in contrast, impossible to say that the Constitution as amended fundamentally aims at the political project Stephen Douglas advocated, the endless expansion of a white settler nation. Nor does the Constitution at all support the repudiation of progressivism in the name of restoring the past that Donald Trump and his conservative supporters want. Consequently, if we choose to assign modern heirs to Lincoln and Douglas and their understandings of the Constitution, the case for today's progressives as Lincoln's heirs is far stronger than their conservative critics (and even many progressives) acknowledge.

To be sure, these brief Schmooze-inspired comments are not sufficient to affirm that conclusion definitively. They may, however, serve to indicate that if we choose to engage in the speculative endeavor of mapping the opposing positions of Lincoln and Douglas in the mid-nineteenth century

---

60. KESLER, *supra* note 2, at xii.

61. ZUCKERT, *supra* note 39, at 36.

onto the deep divisions among Americans in the twenty-first century, today's conservatives are on shaky ground when they try to claim Lincoln as their own. Though they are not wrong to think that Lincoln and most of the American founders believed, rightly or wrongly, that there are certain unchanging natural standards of justice and morality that should always guide political life, they are very wrong to suggest that Lincoln or, indeed, most of the founders thought that their new country fulfilled those standards. Most recognized, as Lincoln certainly did, that Americans needed to continue to strive to perceive justice more clearly and to realize it more fully for all. That is a task that leads us to ask, not how do we make America great again, but how do we move it closer to the greatness that has not been yet, but yet must be.