



Don Pollack, *Laying the Foundation*, 2010.

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## LEGACIES OF LINCOLN SYMPOSIUM

### FOREWORD: LAYING THE FOUNDATION

JOSEPH D. KEARNEY\*

One might state the question provocatively: Is there yet more that might usefully be said about Abraham Lincoln, and is there any particular reason to expect it to be said at Marquette University Law School? The answer, in each respect, is *yes*. So much—indeed, more—is demonstrated by the symposium that the Law School organized, together with the Department of History, to commemorate the bicentennial of Lincoln’s birth and the sesquicentennial of his visit to Milwaukee, on September 30, 1859, to address the Wisconsin state fair. The points merit elaboration, and they provide an opportunity as well for a reflection concerning Marquette Law School and a life in the law.

#### I. THIS SYMPOSIUM

We assembled leading historians and lawyers to speak at a symposium entitled “Legacies of Lincoln,” held on October 1 and 2, 2009, primarily in Sensenbrenner Hall, Marquette University Law School’s longtime home. The symposium began with the delivery by Allen C. Guelzo, of Gettysburg College, of *Colonel Utley’s Emancipation—Or, How Lincoln Offered to Buy a Slave*. The occasion was the History Department’s annual Frank L. Klement Lecture, so named in memory of a longtime member of the department who was himself a leading Civil War historian. Professor Guelzo tells a remarkable story portraying the difficult straits in which Lincoln found himself when the abolitionist fervor of Union troops conflicted with his interest in keeping slaveholding Kentucky in the Union camp. That the protagonist of the story commanded a regiment from Racine,

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\* Dean and Professor of Law, Marquette University.

Wisconsin, adds a local interest, but the account is more broadly compelling. Lincoln's prudence is especially much in evidence. Professor Guelzo, coauthoring the article with a former student, leads off this published symposium as well.<sup>1</sup>

We then take a step back to consider Lincoln before his presidency—in particular, in the process of becoming, first, a lawyer and, then, a successful one. Mark E. Steiner, of South Texas College of Law and author of the book entitled *An Honest Calling: The Law Practice of Abraham Lincoln* (2006), unpacks Lincoln's training as a student of the law, both in entering the profession and once a member of the bar. In *Abraham Lincoln and the Rule of Law Books*,<sup>2</sup> Professor Steiner explains how the revolution in the production and dissemination of law books in the first half of nineteenth-century America made possible Lincoln's entry into the profession and subsequent practice. He describes as well how Lincoln's habit of reading undergirded his successful prosecution of the Civil War, as when, for example, Lincoln mastered a difficult, otherwise wholly foreign subject (viz., military strategy).

A shorter essay follows by Joseph A. Ranney, Adjunct Professor of Law and partner in DeWitt Ross & Stevens in Madison, who diverges a bit from Professor Steiner's book in reacting to one particular incident in Lincoln's law practice. More broadly, *In Praise of Whig Lawyering: A Commentary on Abraham Lincoln as Lawyer—and Politician*<sup>3</sup> sets forth the view that Lincoln's Whiggish rather than radical approach to emancipation reflected a lawyerly way of proceeding and, in particular, of not overreaching.

Michael Les Benedict, of The Ohio State University's Department of History, provides *Lincoln and Constitutional Politics*.<sup>4</sup> His focus is on Lincoln's presentation of constitutional matters to the court of public opinion. The run-up to the Civil War in such things as the *Dred Scott* decision and the Lincoln–Douglas debates, and the passions in the North over civil-liberties issues during the war itself, were inherently political matters. This is necessarily so, suggests Professor Benedict, in a democracy.

The symposium then turns to different aspects of Lincoln and politics. *The Other Thirteenth Amendment: Free African Americans and*

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1. 93 MARQ. L. REV. 1263.

2. 93 MARQ. L. REV. 1283.

3. 93 MARQ. L. REV. 1325.

4. 93 MARQ. L. REV. 1333.

*the Constitution That Wasn't*,<sup>5</sup> an essay by Stephen Kantrowitz of the University of Wisconsin-Madison Department of History, pauses to reflect on the central story of emancipation without all of the hindsight as to how it came out—without, that is, a sense that, when the dust of the battles cleared, African Americans would no longer be slaves, would be citizens, and would be possessed of the right to vote (and, ultimately, would be able to exercise it). Professor Kantrowitz suggests that not only was no part of this outcome clear in the late 1850s or early 1860s, but, in fact, it was not what free African Americans would have reasonably believed at the time.

Alison Clark Efford, of the Marquette University Department of History, also is interested in citizenship. Her essay, *Abraham Lincoln, German-Born Republicans, and American Citizenship*,<sup>6</sup> recounts the mark that German Americans and their support of Lincoln made on the developing views of the Republican Party. In particular, German immigrants influenced the party's move away from an anti-immigrant sensibility and toward both a more rigorous focus on preventing the spread of slavery and an interest in associating the right to vote with American citizenship (for men, at any rate).

We look beyond Lincoln's own times in *Abraham Lincoln and the Politics of Principle*,<sup>7</sup> a contribution by Heather Cox Richardson of the University of Massachusetts, Amherst. The article maintains that Lincoln left a legacy of a new vision of American politics: one that reformers have used thereafter in challenging the political and economic elite. In the congressional acts providing for land-grant colleges, homesteads, and a federal department of education, Professor Richardson sees precedents for an activist central government intent on fostering economic progress for individuals. The article draws heavily on Lincoln's 1859 speech in Milwaukee that occasioned this symposium (more on this in a moment).

Kate Masur of Northwestern University also looks beyond Lincoln's own times, in the shorter essay entitled *Civil, Political, and Social Equality After Lincoln: A Paradigm and a Problematic*.<sup>8</sup> In the shifting terminology of the mid-nineteenth-century United States, both before and after the Civil War, Professor Masur sees a country that was able to sidestep the question of just what equality might mean among

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5. 93 MARQ. L. REV. 1367.

6. 93 MARQ. L. REV. 1375.

7. 93 MARQ. L. REV. 1383.

8. 93 MARQ. L. REV. 1399.

individuals in the nation, until the war was over and Lincoln gone. The distinction that emerged—at least between “political” and “social” equality—helped support decades of Jim Crow laws.

We conclude with James Marten, of the Marquette University Department of History and one of the organizers of the symposium. His essay, *Those Who Have Borne the Battle: Civil War Veterans, Pension Advocacy, and Politics*,<sup>9</sup> explores how Lincoln’s very words (in the Second Inaugural Address) helped sustain decades of advocacy on behalf of a government role in direct economic assistance to veterans. Marten sees in this some of the beginnings of the lobbying and interest-group politics that are now so familiar in our society.

This is an outstanding collection of articles and essays that should be of interest to anyone interested in Lincoln and his legacies.

## II. A BRIEF REFLECTION

It *should* be expected that such a collection, including contributions by nationally known scholars, would emerge from Marquette University Law School. This is not because we have been a center of scholarship concerning Lincoln. Nor is it because as dean I have had a longstanding commitment to exploring Lincoln’s legacies.

It rather is that the Law School increasingly is a place that gathers lawyers, judges, policymakers, academics, students—all sorts of engaged citizens, really—to address matters of common interest. The origins of the symposium reflect this. It began when Thomas L. Shriner, Jr., a partner at Foley & Lardner and an Adjunct Professor of Law here, tracked down, on October 1, 2007, an allusion that I had made in our Advanced Civil Procedure class, to the effect of “And this, too, shall pass away.” His e-mail to me later that same day placed the use of these words in Abraham Lincoln’s speech at the Wisconsin state fair on September 30, 1859, and noted that we were corresponding almost exactly on the anniversary of that speech.<sup>10</sup>

Out of this exchange there grew the idea of a symposium both to mark the sesquicentennial of Lincoln’s speech in Milwaukee (which was delivered on the present-day Marquette University campus) and to contribute to the state and national celebrations of the bicentennial of his birth. We quickly made common cause with our law school

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9. 93 MARQ. L. REV. 1407.

10. Abraham Lincoln, *Address Before the Wisconsin State Agricultural Society, Milwaukee, Wisconsin*, SENTINEL (Milw., Wis.), Oct. 1, 1859, reprinted in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN 471, 482 (Roy P. Basler et al. eds., 1953).

colleague, Professor Daniel D. Blinka, and Professor James Marten of the History Department, who together led the effort to recruit the impressive roster of contributors to the symposium. To be sure, the matter was not quite as quick as this might suggest: it required a good deal of effort. But the salient point is that the Law School, both through its own creative processes and in response to broader initiatives, identified a topic of interest to the community and last fall offered a sold-out Legacies of Lincoln Symposium. If something is important to the University or the region, it is presumptively of interest to the Law School.

There is a bit more to the story worth sharing. In our first correspondence, Mr. Shriner noted to me a wonderful quotation in Lincoln's speech about the importance of reading:

A capacity, and taste, for reading, gives access to whatever has already been discovered by others. It is the key, or one of the keys, to the already solved problems. And not only so. It gives a relish, and facility, for successfully pursuing the yet unsolved ones.<sup>11</sup>

Professor Michael K. McChrystal would also separately commend this quotation to me. For all of this was about the time (2007–2008) that the Law School was planning our new home, Ray and Kay Eckstein Hall, to which we moved just this summer (2010). The plans included a magnificent two-story room (now known as the Wylie and Bette Aitken Reading Room), intended to help communicate to students that there is little more important to their forming themselves into lawyers than their development of a habit of reading—and to help support their developing that habit.

The group of us planning Eckstein Hall (which included particularly Thomas P. Ganey, University Architect, and Professor McChrystal) realized that the reading room would benefit, both aesthetically and functionally, from a painting of Lincoln that used the foregoing quotation in some way. A national search led us to Don Pollack, an artist much studied of Lincoln, and we commissioned for Eckstein Hall's Aitken Reading Room a painting that Mr. Pollack entitled *Laying the Foundation*. It graces the beginning of this issue.

For some of us, then, this issue of the Law Review is more than a collection of essays concerning Lincoln or his broad legacies. It is a bridge between Sensenbrenner Hall, the Law School's historic home of

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11. *Id.* at 480–81 (*Chicago Press and Tribune* version).

eighty-six years, where the symposium gathered last fall, and Eckstein Hall, our brilliant new home, from which these words are written and, more importantly, where our portrait of Lincoln now hangs in the Aitken Reading Room, serving as a daily reminder to students hereafter of the importance of reading. It reflects as well a melding of Marquette Law School initiatives, from the substantive to the architectural.

And for me, at least, it is evidence of the importance of friendships. I shall not elaborate on them: either those of longstanding (such as mine with Tom Shriner, Dan Blinka, Mike McChrystal, and Tom Ganey) or developing ones that have emerged out of the work on this symposium, including some with a number of research assistants or law review editors (Marvin Bynum, Philip Babler, Noel Johnson, Gabe Johnson-Karp, and Dotun Obadina) or other colleagues with whom this project has brought me into contact (including Jim Marten, Julie Norton, and William P. O'Brien). Nor shall I mention even all of the relevant ones. It rather will have to suffice to note that out of such friendships have grown important matters, whether this Legacies of Lincoln Symposium or Eckstein Hall.

While friendships might not reasonably be said to be among Lincoln's legacies, they certainly can be a reminder of him. As Mr. Shriner noted to me when I questioned him shortly before giving brief final remarks at the symposium, it was Lincoln's friends gathered in Chicago who secured his nomination for president in 1860, while he remained in Springfield.<sup>12</sup> Future Marquette lawyers, studying in the Aitken Reading Room and contemplating *Laying the Foundation*, should develop not only the habit of reading but also that of friendship.

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12. An account can be found in 1 MICHAEL BURLINGAME, ABRAHAM LINCOLN: A LIFE 601-26 (2008).