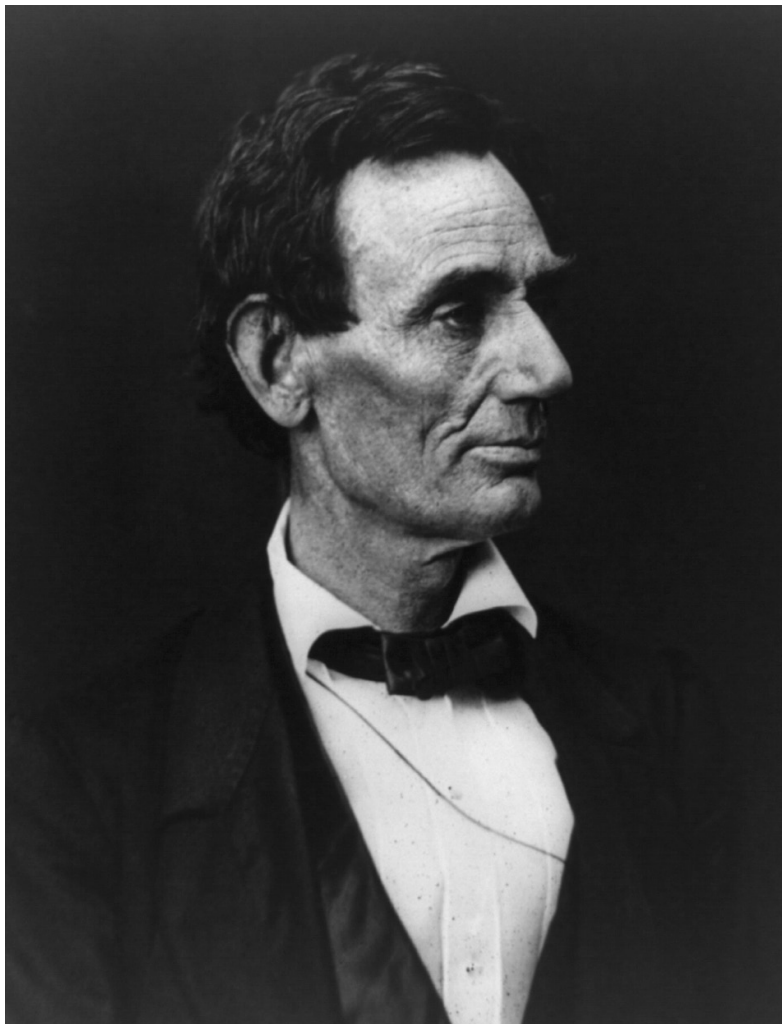


SPECIAL REPORT



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FIRST PRINCIPLES

Abraham Lincoln or the Progressives: Who was the *real* father of big government?

Allen C. Guelzo



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Executive Summary

That our current government is bigger—both in terms of size and reach—than anything that the Founders envisaged, none can deny. The question of who spawned this Leviathan, however, remains a disputed one. Whereas most point the finger to the Progressives, some put the blame on Abraham Lincoln and his administration.

We asked Allen C. Guelzo, the Henry R. Luce Professor of the Civil War Era at Gettysburg College and a noted Lincoln scholar to settle the question once and for all.

In this special report, Guelzo refutes the canard that Lincoln was

the father of big government. He does reveal that some of the confusion is understandable as the early Progressives co-opted Lincoln's legacy to justify their program of expansive government powers over American life. In so doing, they obscured how their philosophy of government broke with Lincoln and the Founding to which he was heir. Nevertheless, some conservative and libertarian thinking today has assumed, at once and without serious reflection, that the Progressives' appropriation of Lincoln (and the continued appropriation of Lincoln by the American Left) was legitimate.

But Abraham Lincoln is not, nor was his Administration, any model for what today seems so objectionable in the modern welfare state. His unwavering commitment to natural rights and the Constitution's framework of limited government, as well as the comparatively limited forces he called into the defense of the nation during the Civil War, not only place him in philosophical opposition to the Left, but dispel any notions that he set the stage for the expansion of government in the 20th century. 🏹

I HAVE SAID, VERY MANY TIMES...that no man believed more than I in the principle of self-government; that it lies at the bottom of all my ideas of just government, from beginning to end.... I deny that any man has ever gone ahead of me in his devotion to the principle, whatever he may have done in efficiency in advocating it. I think that I have said it in your hearing that I believe each individual is naturally entitled to do as he pleases with himself and the fruit of his labor, so far as it in no wise interferes with any other man's rights—that each community, as a State, has a right to do exactly as it pleases with all the concerns within that State that interfere with the rights of no other State, and that the general government, upon principle, has no right to interfere with anything other than that general class of things that does concern the whole. I have said that at all times.

—Abraham Lincoln, “Speech at Chicago, Illinois,” July 10, 1858¹

Whenever the name of Abraham Lincoln emerges in a public forum, there are two likely sets of responses. The first set is the most predictable—a quasi-reverent hush; an allowance that any debating point connected to Lincoln enjoys automatic validity; even a few testimonies of admiration, awe, and the inevitable WWLD (What would Lincoln do?). These are the responses captured first and best by Walt Whitman:

THIS dust was once the Man,
Gentle, plain, just and resolute—
under whose cautious hand,
Against the foulest crime in his-
tory known in any land or age,
Was saved the Union of These
States.²

This is the Lincoln memorialized in over 220 statues across the country and even overlooking Parliament Square in London, the Lincoln of 1,500 books and two symphonies (by Daniel Gregory Mason and Roy Harris), the Lincoln of Mount Rushmore.³

But there is another set of responses, far less consequential but also correspondingly much more shrill for being so largely ignored, and those are the responses that denounce Lincoln as a tyrannical dictator, a coarse vulgarian, and pliant tool of big, malevolent

interests. For a long time, these voices belonged either to unreconstructed Confederates or (once the supply of surviving Confederates began to diminish in the early 20th century) assorted Progressives and leftists of various persuasions.

THE PROGRESSIVES' REJECTION OF LINCOLN WAS COMPLICATED, SINCE SO MANY OF THEIR LEADERSHIP—AND PARTICULARLY THEODORE ROOSEVELT AND WOODROW WILSON—STRAINED TO DRAW LINCOLN WITHIN THEIR IDEOLOGICAL ORBIT AND FEED ON HIS REPUTATION.

The embittered Confederates are no surprise, since they never forgave Lincoln for their loss of power and the destruction of race-based slavery. Lyon Gardiner Tyler, the son of former President John Tyler and himself president of the College of William and Mary (from 1888 until 1919), denounced Lincoln in terms which would have caused even Mme. Defarge's knitting needles to drop stitches:

Lincoln's speeches, addresses, and conversations are scarcely more than a collection of sophisms in which a flourish of words

is substituted for the truth... . He is pictured ... as slipshod, slovenly, and shiftless to such an appalling degree that some of his debts remain still unpaid. We are told by them of Lincoln's passion for funny stories, particularly for dirty ones; of a repellent poem he wrote, a salacious wedding burlesque too indecent to quote.⁴

At least, Tyler's fury could be set down as simple losers' pique. The Progressives' rejection of Lincoln was more complicated, since so many of their leadership—and particularly Theodore Roosevelt and Woodrow Wilson—strained to draw Lincoln within their ideological orbit and feed on his reputation. But in the 1920s, after the Progressive cause had been wrecked by the high-handed self-righteousness of the President whom H. L. Mencken sneered at as “the Archangel Woodrow,” Progressives concluded that the image of Lincoln had all along been their worst enemy and that he needed to be denounced rather than embraced.

The Progressive Indiana Senator, Albert Beveridge, author of a biography of Lincoln, gradually became convinced that Lincoln had been “strongly conservative and in firm support of vested interests and the

conduct of business, unmolested as far as possible, by legislative or any kind of governmental interference” all along. Edgar Lee Masters, whose *Lincoln: The Man* (1931) falls considerably short of the Progressive poetry he wrote in the more famous *Spoon River Anthology*, endorsed Beveridge’s biography as “so factual and dispassionate that no judicious mind can refuse it credit” and then denounced Lincoln as a man whose “acts were against liberty” and “to the advantage of monopoly and privilege.” Masters’ Lincoln was “an ugly duckling,” one with “lawyers and bankers and traders and merchants ... who hoped to get drippings from the privilege of the tariff, and the overflow of the bank,” full of “paltering” and “duplicity,” who always “took the side of the strong” and helped “the capitalism of railroads and manufactures...establish its supremacy.”⁵

But if the early Progressives experienced, after 1920, a measure of buyer’s remorse over their adoption of Lincoln, the momentum of that identification still continued through the Popular Front of the 1930s (in the form, for example, of the pro-Soviet Abraham Lincoln Brigade for service in the Spanish Civil War) and in the more recent appropriation by present-day liberals of the Lincoln image—most notably by Barack Obama.⁶

This appropriation has been the source, since the 1960s, for a species of conservative–libertarian rejection of Lincoln as the “father of big government.” Disturbed by the metastasis of central government power under the New Deal of Franklin Roosevelt and the Great Society of Lyndon Johnson, conservative critics of both neo-Progressive initiatives turned in wounded fury to the task of identifying the long-term causes of their anguish, and—influenced by the uneasy alliance many conservative thinkers had struck up with Southern agrarians—the root system they identified as the primary cause led back to Abraham Lincoln. Thus, Lincoln was introduced for the first time to a conservative pillory.

THERE IS AN ODD SYMMETRY TO THE PROGRESSIVE AND LIBERAL APPROPRIATION OF LINCOLN AND HIS REJECTION BY CONSERVATIVES AND LIBERTARIANS—A SYMMETRY THAT REQUIRES SOME SERIOUS HISTORICAL TESTING.

This new denial of Lincoln blends the traditional agrarian critique of mass society, shaped by Melvin Bradford and Willmoore Kendall, with a voluble and streamlined

libertarianism, driven almost entirely by its identification of Lincoln as the Trojan horse that compromised the purity of republican government and allowed the Progressives to work their havoc from within. After all, the driving lever of the New Deal and its massive expansion of government was, according to Murray Rothbard, “strong central government, large-scale public works, and cheap credit spurred by government”; but Lincoln’s Administration was also built on “high tariffs, huge subsidies to railroads, public works.” *Ergo*, Lincoln was the forerunner of Franklin Roosevelt. Or, if not Roosevelt, Lincoln was at least a clone of his contemporary, Otto von Bismarck, the great centralizer of the German state in 1871, whose social welfare legislation—the *Wohlfahrtsstaat* or *Sozialstaat*—offered the models of national health insurance, old age pensions, and unemployment compensation adored by Progressives then as well as now. Lincoln, concludes libertarian writer David Gordon, “like his Prussian contemporary Otto von Bismarck ... sought a powerful, centralizing state.”⁷

In its most recent versions, a libertarian economist and a libertarian presidential candidate have taken the demonization of Lincoln to a new pitch. Lincoln and those who admire him are “cultists,” claims

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1. In *Collected Works of Abraham Lincoln*, ed. R. P. Basler et al. (New Brunswick, N.J.: Rutgers University Press, 1953), Vol. II, p. 493.
 2. Walt Whitman, “This Dust Was Once the Man,” in *Leaves of Grass* (Philadelphia: Rees Welsh, 1882), p. 263.
 3. James A. Percoco, *Summers With Lincoln: Looking for the Man in the Monuments* (New York: Fordham University Press, 2008), p. xxix.
 4. Lyon Gardiner Tyler, *A Confederate Catechism: The War for Southern Self Government* (privately printed, 1931), p. 36.
 5. Albert Beveridge, *Abraham Lincoln, 1809-1858* (Boston: Houghton Mifflin, 1928), Vol. I, p. 236; John Braeman, “Albert J. Beveridge and Demythologizing Lincoln,” *Journal of the Abraham Lincoln Association*, Vol. 25 (Summer 2004), p. 18; Edgar Lee Masters, *Lincoln: The Man* (New York: Dodd, Mead, 1931), pp. 2, 4, 10, 26, 43, 124, 129; Herbert K. Russell, *Edgar Lee Masters: A Biography* (Urbana: University of Illinois Press, 2001), pp. 274-279; Frank van der Linden, “The Cause of the Civil War,” *Cosmos Club Bulletin*, Vol. 64 (April 2011), pp. 25-26.
 6. Barack Obama, *The Audacity of Hope: Thoughts on Reclaiming the American Dream* (New York: Crown Publishers, 2006).
 7. Murray Rothbard, “America’s Two Just Wars—1775 and 1861,” in *The Costs of War: America’s Pyrrhic Victories*, ed. John V. Denson (New Brunswick, N.J.: Transaction Publishers, 1999), pp. 128-129; David Gordon, “Harry V. Jaffa and the Indefensible Abe,” *Mises Review*, Vol. 7 (Summer 2001), at http://mises.org/misesreview_detail.aspx?control=179; Thomas L. Krannawitter, *Vindicating Lincoln: Defending the Politics of Our Greatest President* (Lanham, Md.: Rowman and Littlefield, 2008), pp. 298-302.

economist Thomas DiLorenzo, who favor “a more powerful and more highly centralized (*i.e.* monopolistic) form of government that can better expand the welfare state, regulate the economy, or adopt socialism.” Ron Paul, in an interview on March 31, 2010, disagreed with any notion that Lincoln “was one of our greatest presidents.” Lincoln’s object, Paul insisted, “was to prove that we had a very, very strong centralized federal government ... because Lincoln really believed in the centralized state.”⁸

There is an odd symmetry to the Progressive and liberal appropriation of Lincoln and his rejection by conservatives and libertarians—a symmetry that requires some serious historical testing. The test should be constructed around two critical questions:

1. What, precisely, do we mean by “big government”? Especially, how do we measure “bigness” in government, what yardsticks should reveal that “bigness” between the 1860s and today, and what role, if any, can be identified as the Lincoln Administration’s role in creating that bigness?
2. What was Lincoln’s own professed concept of the role of government in American public life, and did his actions depart from that concept, either intentionally or unintentionally?

All through a consideration of these questions, it is important to bear in mind that “big government” is not always the fruit of executive actions. Even if it can be shown that

the template of “big government” was somehow the product of the Lincoln presidential years, there are two other actors in the American constitutional framework—the federal judiciary and Congress—that may bear responsibility for results that are otherwise laid at Lincoln’s door. The formation of a “big government” is not always the product of oversized claims to presidential power.⁹

The Size and Reach of Government Pre- and Post-Lincoln

The complaint that Lincoln was the camel’s nose of state centralization assumes that three premises are true:

1. That it can be shown what “centralization” means;
2. That Lincoln intended to initiate a process leading to “centralization” of the U.S. federal government; and
3. That the Civil War (and the Lincoln Administration) was a significant aspect of that process and was perhaps even intended to be the means of furthering that process.

But do any of these premises survive under detailed historical scrutiny? Begin with the premise that “centralization” is a known quantity with a set of characteristics which are easily recognizable. One of the characteristics of an over-mighty “centralized” federal government might be the sheer numerical *size* of a government in terms of

the number of its civil or military employees; another characteristic might be the size of the government’s *budget*, representing the fiscal power it can wield in terms of both taxing and spending; yet a third might be the *reach* of the government, considered as the number of agencies it creates and the review-and-approval authority it claims to exercise over education, the economy, and freedom of speech, movement, religion, and assembly.

In none of these ways can Lincoln or his Administration be shown to have promoted the characteristics of a “centralized” government, or at least not more “centralized” than the government he inherited from his predecessor, James Buchanan, or more “centralized” than the immediate circumstances of a large-scale insurrection would require.

The Federal Budget

For the sake of perspective, it is worthwhile to look a decade behind the Civil War and then at the raw numbers for the federal budget under the Lincoln Administration. In 1848 and 1849, respectively, overall federal expenditures amounted to \$58.2 million and \$57.6 million. Within those overall numbers, the administrative costs of the legislative, executive, and judicial branches moved between \$2.6 million in 1848 and \$2.9 million in 1849, almost half of which (\$1.3 million) flowed through the Post Office.

The costs of the War and Navy Departments were the single largest chunk in both budgets and moved between \$38.5 million in 1848 (the last year of the Mexican War) and \$27.1 million in 1849. This was

8. Thomas J. DiLorenzo, *Lincoln Unmasked: What You’re Not Supposed to Know About Dishonest Abe* (New York: Three Rivers Press, 2006), p. 13; John Hawkins, “An Interview with Ron Paul,” *Right Wing News*, n.d., at <http://rightwingnews.com/interviews/an-interview-with-ron-paul/>.

9. Julian Davis Mortenson, “Executive Power and the Discipline of History,” *University of Chicago Law Review*, Vol. 78 (Winter 2011), p. 410.

matched, however, by revenue of \$58.4 million in 1848 and \$59.8 million in 1849 for the three branches, so that the federal budget actually ran a small surplus (even though it was still paying \$16.5 million in outstanding debt service from earlier Administrations). Adjusted for inflation, this would translate into a modern federal budget of just less than \$1.5 billion, which in turn would account for less than 1 percent of gross domestic product (GDP).¹⁰

If we move to 1860, the last year of peace before the Civil War, the federal budget, in raw numbers, had already been on the upswing through the 1850s, to \$76.8 million (the modern inflation-adjusted equivalent of \$1.8 billion—an increase, in other words, of 24.1 percent over the Administrations of Presidents Zachary Taylor, Millard Fillmore, Franklin Pierce, and Buchanan, who are not usually held to blame for “big government.” (If, because the federal budget year ended on June 30, we extend our purview to fiscal year 1861, the percentage of federal budget increase actually rises to 31 percent.) As a percentage of GDP, the federal budget then stood at 0.93 percent.


From that point, as the Civil War began in earnest, the federal budget leapt to \$1.3 billion in 1864–1865 (the fiscal year in which the war ended and in which Lincoln was assassinated) and \$1.9 billion for 1865. If we were to chart the overall numbers, they would look like the figures in table 1.

Taken purely by themselves, these numbers would indeed seem to suggest

TABLE 1

The Federal Budget During the Civil War Era

Budget Year	War and Navy Departments (in Millions)	Total Expenditures (in Millions)	Total Revenue (in Millions)
1848	\$38.5	\$58.2	\$58.4
1849	27.1	57.6	59.8
1860	27.9	76.8	77.0
1861	35.4	85.3	83.3
1865	1,105.4	1,906.4	1,805.9
1871	55.3	424.3	534.2

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that the Lincoln Administration had become the original governmental big spenders; but bear in mind that there was a war in progress, and wars are pricey for nations to wage. Also, the war years were plagued by an annualized inflation rate of 14.4 percent (comparable to the runaway inflation of the Carter Administration). If we factor for inflation at that rate, the 1865 federal budget would still translate into only \$26 billion and would still account for only 1.8 percent of real GDP. This past spring, the National Aeronautics and Space Administration *alone* submitted a budget request of \$18.7 billion; the Environmental Protection Agency was slated to spend \$10.5 billion in 2010.¹¹

A much more telling mark of whether Lincoln intended to create the basis for a “centralized” government lies in the speed with which the federal government’s budget reverted to its prewar dimensions between 1865 and 1871, from the

high point of \$1.9 billion to a meager \$424 million. This still represents an enormous increase over the 1861 federal budget of \$85.3 million, but 44 percent of that budget went to servicing the wartime debt, and another 9.6 percent went to paying pensions to wounded soldiers. The budget kept on shrinking too. By 1880, the federal budget was only 16.7 percent of what it had been in 1865. (Debt service was now down to 36 percent, but pensions were up to 21 percent as the veterans of the Civil War aged.)

If Lincoln had plans to create “big government,” none of his successors seems to have known what they were. As Mark Neely writes, “the minimal enhancement of executive power in the Civil War had no lasting effect” and, in fact, was followed in the Reconstruction years by an era in which “the powers of the legislative branch were as great as they had ever been.”¹²

10. *The American Almanac and Repository of Useful Knowledge for the Year 1851* (Boston: Little, Brown, 1850), pp. 157–162; Louis Johnston and Samuel H. Williamson, “What Was the U.S. GDP Then?” MeasuringWorth, 2011, at www.measuringworth.com/datasets/usgdp/result.php.

11. *Historical Statistics of the United States, Colonial Times to 1970* (Washington: U.S. Government Printing Office, 1975), Vol. 2, p. 1104; press release, “NASA Announces Fiscal Year 2012 Budget,” February 14, 2011, at www.nasa.gov/home/hqnews/2011/feb/HQ_11-041_NASA_Budget.html.

12. Manton Marble, *The World Almanac 1871* (New York, 1872), pp. 35–36; Mark E. Neely, *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War* (Chapel Hill: University of North Carolina Press, 2011), p. 109.

The Federal Civilian Workforce

But maybe budget numbers are not the best yardstick for measuring the size of government. Let us try the number of federal civilian employees. In 1851, the executive branch of the federal government had only 26,300 people on its payroll. The Civil War immediately boosted that to 36,600 in 1861, with another 4,000 in legislative and judicial employees. Of these, however, only 2,588 were actually headquartered in Washington, D.C.; the rest were scattered across the face of the nation as postmasters, clerks, Indian agents, public lands agents responsible for the administration and sale of federally owned public land, and customs-house staff. By 1865, the total paid civilian employment of the federal government had swelled to 194,997, just 0.8 percent of a Union population of 22,342,231; but, again, only 14,826 were actually occupied in Washington, and over 10,000 of those were War Department employees since there was, of course, a war in progress.¹³

Overall, the federal civilian workforce amounted to only 0.9 percent of the Union population. Any glance through the *Register of Officers and Agents* at the midpoint of the Civil War will show executive departments with staffs so minuscule as to defy belief.

- The entire State Department was staffed by 33 people in 1863, including the Secretary of State, William Seward, and the department's four security guards.

- The Washington staff of the Interior Department also numbered 33, although this did not include the 28 salaried employees of the Census Bureau; the 27 staffers of St. Elizabeth's Hospital for the Insane; or the customary host of land office agents, Indian agents, and employees of the Patent Office, especially since the land office and Indian agents were scattered across the country rather than being situated in Washington.
- The Department of Agriculture, which was not yet Cabinet rank in 1863, got by with 29 employees, while Attorney General Edward Bates managed the legal affairs of the government with exactly nine employees.
- The Post Office and the Department of the Treasury were the biggest consumers of civilian services, although even there the numbers seem microscopic once we isolate them: 33,000 postmasters and clerks for the entire nation, along with 4,500 mail agents and contractors, and a Treasury Department that managed 79 full-time staff in the office of Secretary of the Treasury Salmon P. Chase, 74 in the comptroller's office, 2,800 customs agents for the whole country, and just 150 in the office of the Commissioner of Internal Revenue.

How this can be construed, as Bruce Porter does in *War and the*

Rise of the State, even in a nation of 22 million people, as "a centralized apparatus" with "a radically transformed Presidency wielding authoritarian power over almost every aspect of Union life" is difficult to imagine. The modern federal civilian workforce, including U.S. Postal Service employees, amounts to 2 million. This actually amounts to a slightly smaller percentage of the U.S. population than in 1865 (approximately 0.7 percent of the 2010 U.S. population). On the other hand, however, the 2010 federal workforce enjoys the automated and digitized assistance of computers, automobiles, and telephones, all of which had to be provided in 1865 by an army of copyists, hostlers, drivers, and messengers.¹⁴

By 1871, the number of federal employees had dropped back to 51,000, with only 5,824 employed in the executive branch in Washington itself—and this while Reconstruction of the Southern states was still under way. The demobilization of the armed services was even more dramatic. At the end of the war, there were approximately 1.3 million men in Union uniforms. By 1875, the U.S. Army had been reduced to 1,540 officers and 24,031 enlisted men, and its total expenditures—including the maintenance of rivers and harbors by the Corps of Engineers—amounted to only \$42 million. The bulk of this demobilization was, wrote William G. Moody, "accomplished within one hundred and twenty days after the signing of the capitulation at Appomattox Court House. A change

13. Paul P. Van Riper and Keith A. Sutherland, "The Northern Civil Service, 1861-1865," *Civil War History*, Vol. 11 (December 1965), p. 347; *Historical Statistics of the United States, Colonial Times to 1970*, Vol. II, p. 1103.

14. *Register of Officers and Agents, Civil, Military and Naval, in the Service of the United States on the Thirtieth September, 1863* (Washington: U.S. Government Printing Office, 1864), pp. 1-2, 40-41, 57-96, 97, 122, 125, 265; Stephen Dinan, "Largest-ever Federal Payroll to Hit 2.15 Million," *The Washington Times*, February 2, 2010; Robert Schlesinger, "U.S. Population, 2010: 308 Million and Growing," *U.S. News & World Report*, December 31, 2009; Bruce D. Porter, *War and the Rise of the State: The Military Foundations of Modern Politics* (New York: Free Press, 1994), p. 258.

greater, more rapidly made, and of more momentous consequences than the world ever before witnessed ...”¹⁵

The Reach of the Federal Government

However, “big” government does not necessarily rely on either the dollars it spends or the number of people it employs, especially if the dollars and people are employed in a plethora of agencies possessing aggressively intrusive powers. In what areas, exactly, did the “reach” of the Lincoln Administration expand?

In the 1850s, the federal government included exactly 15 formally designated civilian agencies or bureaus (compared to 513 in 2010), including the Patent Office, the Pension Office, the Lighthouse Board, the Bureau of Weights and Measures, and the Mexican Boundary Commission.¹⁶ The federal government ended the Civil War with exactly 22, so the “reach” of the federal government expanded by only *seven* agencies, commissions, or boards. Several of these involved already existing services—the Coast Survey, the National Observatory, the National Currency Bureau—which were now elevated to bureau status.

There was, in the end, only one new agency created during the Civil War that could have exercised genuinely far-reaching powers: the Freedmen’s Bureau (whose full title was the Bureau of Refugees, Freedmen and Abandoned Lands),

which was created by congressional action in March 1865. The Freedmen’s Bureau was charged with oversight of “the supervision and management of all abandoned lands”—meaning Southern farm properties deserted in the face of invading Union armies—and “all subjects relating to refugees and freedmen from rebel states,” including food relief and the “assignment of not more than forty acres” of lands acquired “by confiscation or sale.”

THE FEDERAL GOVERNMENT ENDED THE CIVIL WAR WITH EXACTLY 22 AGENCIES, SO THE “REACH” OF THE FEDERAL GOVERNMENT EXPANDED BY ONLY SEVEN AGENCIES, COMMISSIONS, OR BOARDS.

In practice, the bureau employed only six officers and 10 staffers in Washington and had to be reauthorized every year. Much of its work, in fact, had to be conducted in conjunction with a private agency, the American Missionary Association. President Andrew Johnson, who had his own idea of what Reconstruction in the defeated South should look like, vetoed the bureau’s reauthorization in 1866, and even though Congress overrode his veto, the bureau was finally closed down in 1872. The only bureau that showed anything like an upward trajectory of expansion was the Pension Bureau, which managed wartime pensions for Civil War

veterans, and there the reason for the expansion had little to do with increasing the scope of government power.¹⁷

A more dramatic way in which government “reach” might have expanded under the Lincoln Administration was through the five great legislative initiatives of the Civil War years—the provision of public funding for a transcontinental railroad and for “land-grant” colleges, the imposition of record-high mercantilist tariffs to protect American manufacturing, a centralized Hamilton-style central banking system, and the levying of a federal income tax. These are the initiatives that the critics of “big” government insist laid the foundation of the Progressive welfare state. As Thomas DiLorenzo writes, “national banks, internal improvements, and tariffs” were the means by which Lincoln would bring about “centralized government” and “British-style mercantilism.”¹⁸

1. The Transcontinental Railroad

A second, more careful look at each of these initiatives reveals much less in the way of governmental bigness or mercantilist designs than the critics imagine. In the first place, none of these initiatives, except the income tax legislation of 1862, resulted in the creation of a government oversight bureaucracy. Nor did they involve the use of tax revenues: The funding that supported the building of a transcontinental railroad by

15. William Godwin Moody, *Land and Labor in the United States* (New York: Charles Scribner’s, 1883), pp. 151, 154–155, 171; *Report of the Secretary of War, Being Part of the Message and Documents Communicated to the Two Houses of Congress* (Washington: U.S. Government Printing Office, 1875), Vol. 1, pp. 23, 34.

16. “Index,” in *A Register of Officers and Agents, Civil, Military, and Naval in the Service of the United States on the Thirtieth September, 1853* (Washington: Robert Armstrong, 1853), pp. iii–xix; Federal Agency Directory/Louisiana State University Library, at www.lib.lsu.edu/gov/index.html.

17. “Index,” *Register of Officers and Agents, Civil, Military, and Naval, in the Service of the United States, on the Thirtieth September, 1865* (Washington: U.S. Government Printing Office, 1866), pp. v–xvi; “An Act to Establish a Bureau for the Relief of Freedmen and Refugees,” March 3, 1865, in *The Statutes-at-Large, Treaties and Proclamations, of the United States of America, from December 1863, to December 1865*, ed. George P. Sanger (Boston: Little, Brown, 1866), pp. 507–508.

18. Thomas J. DiLorenzo, *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War* (New York: Three Rivers Press, 2002), p. 78.

the Union Pacific and Central Pacific railroads came in the form of bonds backed by federally owned public lands that came into the possession of the federal government from the Louisiana Purchase and the Mexican War.

One may object that *any* form of funding from public sources to promote private enterprise is an abuse, but by that logic, neither the U.S. Army nor Navy has any business protecting the lives, goods, or shipping of private citizens. What is pertinent to the question in hand is not whether the federal government has any theoretical business with business, but whether the real hand the U.S. government had in making the transcontinental railroad happen was so large as to constitute a forerunner of “big” government. The federal government, under the terms of the Pacific Railroad Act, provided the bonds—which is to say, the loan guarantees—but it provided no operating funding, no management oversight, and no ongoing regulatory bureaucracy.

2. The Morrill and Homestead Acts

The “land-grant” college legislation—proposed by Vermont Congressman Justin Morrill as the Morrill Act of 1862—functioned in the same fashion, except that in this case the initiative came from the states rather than a private corporation and involved the granting of 30,000 acres of federally owned land to each of the loyal states “for each Senator and Representative in Congress to which the States are respectively entitled by the

apportionment under the census of 1860” for the establishment of colleges dedicated to “such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe.”¹⁹

THE HOMESTEAD ACT WAS, IN MODERN TERMS, THE GREATEST PRIVATIZATION SCHEME IN AMERICAN HISTORY. IT CREATED NO NEW BUREAUCRACY OF ITS OWN, NOR DID IT REQUIRE A TAXPAYER BAILOUT TO PROP IT UP.

The Morrill Act, strictly speaking, actually *devolved* power from the federal government to the states by granting to the states the wherewithal (in the form of federal land) to create “land-grant” colleges and to administer them as the state legislatures saw fit without any subsequent federal involvement.

Another piece of legislation that acted in much the same way in Lincoln’s domestic agenda was the Homestead Act, which, like the Pacific Railroad Act, proposed the selling off of vast tracts of federally owned land to homesteaders at fire-sale prices—freehold title to 160 acres for the cost of a filing fee and five years’ residence, or for \$1.25 an acre after six months’ residence. But since the Homestead Act was a governmentally inspired means of expanding property ownership rather than diminishing or taxing it, this has rarely been seized upon as proof of Lincoln’s “big” government

intentions. To the contrary, it was hailed by Indiana Congressman George Washington Julian as “the most important legislative act since the formation of the Government” and “at once an epoch in legislation and an enduring landmark of industrial and social progress.”²⁰

The Homestead Act was, in modern terms, the greatest privatization scheme in American history. Yet it is based upon the same premise as the railroad legislation and the “land-grant” colleges: that government may indeed have a role in the life of citizens by encouraging and promoting entrepreneurship and ownership. It is true that even beneficent intentions can go awry, as the Fannie Mae and Freddie Mac debacles have demonstrated only too well, but at least the Homestead Act created no new bureaucracy of its own, nor did it require a taxpayer bailout to prop it up.

3. Tariffs

Of all the domestic policies adopted by the Lincoln Administration during the course of the Civil War, the ones most likely to have increased the “reach” of “big” government were tariffs (in other words, taxes placed on certain imported goods at the point of import in a port city or similar port of entry) and the imposition of a graduated income tax.

It is beyond question both that Lincoln had always been a “Henry Clay-Tariff” man (referring back to Lincoln’s “beau ideal of a statesman,” Henry Clay) and that the 37th and 38th Congresses hiked tariff rates to the highest levels they had

19. “An Act donating Public Lands to the several States and Territories which may provide Colleges for the benefit of Agriculture and the Mechanic Arts,” July 2, 1862, in *Statutes at Large*, ed. George P. Sanger (Boston: Little, Brown, 1863), pp. 503-505; see also United States Code, Title 7, chapter 13, subsection 1, para. 301.

20. George W. Julian, “The Spoilation of the Public Lands,” *North American Review*, Vol. 141 (August 1885), p. 175.

ever enjoyed. Average tariff rates stood at 15 percent in 1860, with the maximum set at 24 percent; the rates under the so-called Morrill Tariff rose by 1863 to 37.2 percent and by 1864 to 47.06 percent (as compared to a minuscule 1.3 percent in 2010). But far from generating the kind of opposition that had limited tariff rates in the past, the Morrill Tariff and its successive revisions were seen as a balancing act for the impact of the wartime new income taxes. “There was no delay in the adoption of the bill,” wrote the muckraker journalist Ida Tarbell. “Its worst enemies were for it” as a war revenue measure.²¹

IT WAS NOT GOVERNMENT THAT PROSPERED UNDER LINCOLN’S TARIFF REGIME, BUT THE AMERICAN PRIVATE SECTOR.

What is less clear is whether the tariffs actually expanded government overreach. Tariffs, after all, increase the costs of imports to importers, whether the importers in question are merchants or end-point consumers. The purpose of the tariff, however, is not to generate revenue, but to create an incentive for the importer to stop importing and turn instead to the purchase of domestic goods and thus benefit domestic markets. Merchants and consumers are not, after all, machines; if the costs of importing are too high, they can and will flee to domestically produced items.

Tariffs, in other words, obey the Laffer Curve: The higher the tariff rate, the fewer the imports and the lower the amount of revenue derived from the tariffs. But if the purpose of the tariff is to redirect purchasers to domestic markets, then the lowered revenues from tariffs are perfectly acceptable.

This, in large measure, is precisely what happened in the wake of the Lincoln Administration’s tariff policies. “The increase of duties on imports has had the effect to decrease importations to a considerable extent,” reported Treasury Secretary Salmon Chase, and with them “the receipts from customs.” Far from bemoaning this falling-off in revenue, Chase considered “this disadvantage ... more than counter-balanced by the stimulus afforded to domestic industry and the consequent increased revenue from internal taxes.”

In effect, the Lincoln Administration accepted a loss of revenue from customs duties for the benefit it bestowed on domestic manufacturing, especially at a time when dependence on imports from foreign nations that frankly favored the Confederacy imperiled the republic’s survival. It was not government that prospered under Lincoln’s tariff regime, but the American private sector.²²

4. The Federal Income Tax

Nothing, however, is more likely to stand as proof of the Lincoln

Administration’s malevolent intentions than its imposition of federal personal income taxes, beginning with a 3 percent tax on incomes over \$600 in the summer of 1861. Direct taxation of this sort was not entirely a novelty, although in previous versions of internal taxation, the collection had been a matter of state responsibility.

However, the costs of the Civil War quickly outstripped the projections of Treasury Secretary Salmon Chase, and by the beginning of 1862, Chase confessed to Lincoln that the Treasury was running dry on revenue, and financiers were proving reluctant to lend. “Chase has no money and he tells me he can raise no more,” Lincoln complained to Quartermaster General Montgomery Meigs. “The bottom is out of the tub.”²³

The solutions were almost as problematic: deliberately inflating the currency, overhauling the borrowing mechanisms to tap into middle-class savings, and creating a new direct tax. In the end, the Lincoln Administration invested itself in all three approaches. Legislation authorizing the substitution of a national paper currency (known as “greenbacks”) and the invention of small-denomination bonds was in place by 1863, and a direct tax on incomes (through the Internal Revenue Act of 1862) imposed direct federal collections through 185 collection districts and a Bureau of Internal Revenue and expanded internal taxation to

21. Frank William Taussig, *The Tariff History of the United States*, 5th edition (1910; Auburn, Ala.: Ludwig von Mises Institute, 2010), pp. 138, 144; Ida Tarbell, *The Tariff in Our Times* (New York: Macmillan, 1911), pp. 10-11; Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* (Cambridge, Mass.: Harvard University Press, 1997), pp. 110-111, 123-126; Reinhard H. Luthin, “Abraham Lincoln and the Tariff,” *American Historical Review*, Vol. 49, No. 4 (July 1944), pp. 618-619.

22. *Historical Statistics of the United States, Colonial Times to 1970*, Vol. 2, p. 888; “Finances of the United States,” in *The American Annual Cyclopaedia and Register of Important Events of the Year 1864* (New York: D. Appleton & Co., 1865), Vol. IV, p. 375.

23. Lincoln to Meigs, January 10, 1862, in *Recollected Words of Abraham Lincoln*, eds. Don and Virginia Fehrenbacher (Stanford, Cal.: Stanford University Press, 1996), p. 328.

include taxes on occupations, banks, corporations, financial transactions, and inheritances.

The general purpose of the income tax was to fund the war and the operations of government, not to fund special programs or redistribute income; its specific purpose, in fact, was to take the inflationary steam out of the newly introduced “greenback” currency. For that reason, the tax on personal incomes laid surprisingly modest burdens on Northern taxpayers. The personal income tax form, in fact, amounted to exactly one page out of 500, including the index, in the federal tax manual (which also covered excise taxes, all texts of the revenue legislation, regulations, forms, instructions, circulars, court rulings—the entire federal code—all between two covers).²⁴

Even in 1865, the \$32 million taken in by the Bureau of Internal Revenue in personal income taxes was only a small part of the overall revenue pie, and income taxes amounted to only about 8 percent of total revenues. In 1866, the federal government took in \$279 million in customs duties and \$309 million in all other forms of internal revenue, levied as virtually a flat tax of 3 percent on all incomes except those in the highest bracket (over \$10,000 per annum), where the rate nudged up to 5 percent.

By contrast, the Confederate government, which also levied a tax on incomes, established steeply

progressive rates, beginning with 5 percent on incomes from \$500 to \$1,500 per annum, rising to 10 percent for incomes from \$1,500 to \$5,000, 12.5 percent for incomes from \$5,000 to \$10,000, and 15 percent for those over \$10,000. The Confederate government also imposed license fees for everything from apothecaries to wholesale liquor dealers, and at rates usually five times greater than license fees levied by Lincoln’s Administration.

In any case, the Civil War taxes on personal income lasted only until their repeal in 1872, and by that time, in fact, all but the tariffs had disappeared. The income taxes that prevail today were the creation in 1913 of Woodrow Wilson’s Administration and were intended by Wilson not to fund the costs of a national emergency, but to redress “an industrial system which, take it on all its sides, holds capital in leading strings, restricts the liberties and limits the opportunities of labor, and exploits without renewing or conserving the natural resources of the country.” For Lincoln, the income tax was needed to pay bills; for Wilson, it was necessary to achieve a social vision.²⁵

5. The National Banking Act

One particular criticism of the Lincoln Administration by Ron Paul and Thomas DiLorenzo focuses on the National Banking Act, which Lincoln signed into law in February 1863. The assumption behind these criticisms has been that Lincoln

erected either a successor to the “Monster Bank” devised by Alexander Hamilton (and defunded by Andrew Jackson) or a forerunner of the modern Federal Reserve Bank—or both.

**THE NATIONAL BANKING ACT
CREATED A NATIONALLY UNIFORM
CURRENCY FOR FUNDING AND
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WITHOUT THAT, FEEDING, CLOTHING,
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WOULD HAVE BEEN A NIGHTMARE OF
MONSTROUS PROPORTIONS.**

The National Banking Act of 1863, however, did not actually create either a Hamilton-style “Bank of the United States” or a predecessor to the Federal Reserve (which was actually a creation, once again, of the Wilson Administration in 1913). In fact, it did not create any institution at all. Its purpose was to eliminate the massive commercial confusion in the U.S. economy caused by state legislatures’ issuance of bank charters to in-state banks, which in turn issued their *own* paper currencies.

It had been Andrew Jackson’s hope, and the hope of Jacksonian Democrats, to limit transactions as much as possible to “real” money—to *specie*, in gold or silver—but large-scale commercial transactions would become impossibly cumbersome on those terms (imagine the weight of the gold needed to buy a house; imagine a business loan in gold bars).

24. George S. Boutwell, *A Manual of the Direct and Excise Tax System of the United States, Including the Forms and Regulations Established by the Commissioner of Internal Revenue* (Boston: Little, Brown, 1863), pp. 33, 156; *An American Almanac and Treasury of Facts ... for the Year 1878*, ed. A. R. Spofford (New York: American News, 1878), p. 198; Richard F. Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859–1877* (New York: Cambridge University Press, 1990), pp. 168–169.

25. Richardson, *The Greatest Nation of the Earth*, pp. 116–122; Philip S. Paludan, “A People’s Contest”: *The Union and the Civil War, 1861–1865* (New York: Harper & Row, 1988), p. 121; *Marble, The World Almanac 1871*; Bense, *Yankee Leviathan*, pp. 170–171; Taussig, *Tariff History*, p. 150; Woodrow Wilson, “Presidential Inaugural Address,” March 4, 1913, in *Woodrow Wilson: Essential Writings and Speeches of the Scholar-President*, ed. Mario R. DiNunzio (New York: New York University Press, 2006), p. 368.

So the banks themselves issued their own notes and paper to facilitate transactions.

The difficulty this posed was that, over time and distance, banks closed or suffered losses while their paper continued to circulate, creating enormous questions at every point of sale about the reliability of the paper currency being offered in exchange. With over 5,000 state-chartered institutions (including canal companies), no merchant could do business without publications like Day's New-York Bank Note List, Counterfeit Detector and Price Current, Bicknell's Reporter, Counterfeit Detector, and Philadelphia Prices Current, or the Cincinnati Price Current to advise him which banknotes were worth the value printed on their faces, which had to be discounted, and which were no longer anything more than paper.²⁶

This might have been tolerable in more peaceful, lackadaisical times, but not in the midst of a civil war. The purpose of the National Banking Act, therefore, was to standardize the "greenbacks" issued as notes by the Treasury as a national currency. The Act created this standard in two ways: first, by taxing the "wild-cat" banknotes issued by state banks (and hence driving them out of circulation) and, second, by authorizing national charters for any association of five or more people with a capital reserve of \$50,000 to create a "national" bank. One-third of the capital reserve was to be invested in Treasury bonds, and the banks

TABLE 2

Personal Income Taxes, in Thousands

Budget Year	Income of \$600-\$10,000 per Annum	Income More Than \$10,000 per Annum	Total Income Tax Revenue From All Sources (Corporate, Financial, etc.)
1863	\$172	\$277	\$2,741
1864	7,944	6,855	20,295
1865	9,697	9,362	32,050

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issued "greenbacks" in return to circulate as business demanded.

But the Act invented no new institution; it revived no Hamiltonian Bank of the United States, nor did it create a modern central bank. The chartering of the new "national" banks was handled through the Treasury and set no limits on interest rates, lending policies, or profit margins. What the Act *did* do was to create a nationally uniform currency for funding and purchasing in wartime, and without that, feeding, clothing, and arming the Union armies would have been a nightmare of monstrous proportions.²⁷

Progressivism and the Birth of Big Government

Whether we consider it in terms of budget, size, or reach, Abraham Lincoln's presidency undertook no permanent reconstitution of the federal government on Leviathan-like proportions, and this was largely because it had never intended to do

so. If there is any point in the 19th century when the size of government soared, it would have to be during the Administrations of Grover Cleveland and Benjamin Harrison, who by 1891 had tripled the number of federal employees, to 157,400. Executive branch employees in Washington *alone* quintupled between 1871 and 1903, from 5,800 to 25,675.

However, the federal workforce only grew in the same proportions as the white-collar clerical workforce was growing in almost every other industry. In 1864, the Massachusetts National Bank got along with exactly four employees—an accountant, a teller, a messenger, and a cashier. Even as late as the 1890s, the business office of the massive Pepperell manufacturing company, one of the country's top 10 manufacturing firms, employed only a treasurer and three clerks. But by the turn of the century, organizational complexity had spawned an entirely new professional class of

26. Thomas J. DiLorenzo, *Hamilton's Curse: How Jefferson's Arch-Enemy Betrayed the American Revolution—and What It Means for Americans Today* (New York: Random House, 2008), p. 73; Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill & Wang, 1990), pp. 35–38; William H. Dillistin, *Bank Note Reporters and Counterfeit Detectors, 1826–1866: With a Discourse on Wildcat Banks and Wildcat Bank Notes* (New York: American Numismatic Society, 1949), p. 99; Q. David Bowers, *Obsolete Paper Money Issued by Banks in the United States, 1782–1866: A Study and Appreciation for the Numismatist and Historian* (Atlanta, Ga.: Whitman Publishing, 2006), p. 185.

27. Richardson, *The Greatest Nation of the Earth*, pp. 83–94; Paludan, "A People's Contest," pp. 122–126.

managerial bureaucrats, and in tandem with them, the federal government likewise created a white-collar bureaucracy.²⁸

This was a feature not of the Lincoln Administration, but of the Gilded Age and the emergence of “integrated, multi-departmental enterprises.” Progressivism sprang from the head of this bureaucracy. Its watchword was efficiency, and its guiding spirit was the stopwatch of Frederick Winslow Taylor. Nothing maddened the Progressives more than the slow, cumbersome, and stupendously inefficient workings of Congress and the Constitution. What was admired instead was a managerial government sufficient to meet the new needs of the new industrial society rather than the old one, which was perfectly content with government inefficiency because, after all, what the Constitution’s framers had wanted from that document was not efficiency, but liberty, and liberty was precisely what the Constitution’s clumsy, deliberate machinery of checks and balances produced.²⁹

No surprise then, that it was under the reign of Progressive Presidents, and not Lincoln, that the size and scope of managerial government took off. Under Theodore Roosevelt, the first of the Progressive Presidents, the federal budget rose from \$559 million in 1902 to \$710 million in 1908. By 1914, midway through Woodrow Wilson’s first term (and before the outbreak of the First World War), it had risen yet

again to \$731 million. Wilson, in fact, had hardly been inaugurated before a special session of Congress agreed to the most sweeping tariff reductions since the Civil War and substituted in their place a new direct income tax, which by 1917 netted \$180 million—almost a quarter of all internal taxes. And the single greatest leap in federal employment occurred under Wilson’s disciple, Franklin Roosevelt, in the eight years between 1932 and 1940, when the *peacetime* civilian federal workforce rose from 605,000 to just under 1 million.³⁰

NOTHING MADDENED THE PROGRESSIVES MORE THAN THE SLOW, CUMBERSOME, AND STUPENDOUSLY INEFFICIENT WORKINGS OF CONGRESS AND THE CONSTITUTION. WHAT WAS ADMIRIED INSTEAD WAS A MANAGERIAL GOVERNMENT SUFFICIENT TO MEET THE NEW NEEDS OF THE NEW INDUSTRIAL SOCIETY RATHER THAN THE OLD ONE.

Lincoln’s Defense of Limited Constitutional Government

In September 1863, Treasury Secretary Chase, an ardent abolitionist, wrote to urge Lincoln to tear down the limitations on emancipation that Lincoln had incorporated into his Emancipation Proclamation of January 1, 1863. The Proclamation

had declared free all of the slaves in the rebel states but had specifically exempted the loyal slave states of Missouri, Kentucky, Maryland, and Delaware, plus a number of federally occupied Southern districts in Virginia and Louisiana. And for good reason: Lincoln’s proclamation had been issued as a “war powers” proclamation, on the strength of his constitutional designation as commander in chief, and a “war powers” proclamation could have no application to places that had never been at war with the United States (the border states) or were no longer (the occupied districts).

Lincoln replied to Chase, asking Chase to consider what he was asking Lincoln to do by extending the Proclamation to these other areas:

If I take the step must I not do so, without the argument of military necessity, and so, without any argument, except the one that I think the measure politically expedient, and morally right? Would I not thus give up all footing upon constitution or law? Would I not thus be in the boundless field of absolutism?³¹

Those kinds of constitutional scruples maddened abolitionists like Chase, who simply wanted to “do justice though the heavens fall,” but they were indicative of a highly cautious constitutional conservatism that characterized the entirety of Lincoln’s career. Be “ever

28. Cindy Sondik Aron, *Ladies and Gentlemen of the Civil Service: Middle-class Workers in Victorian America* (New York: Oxford University Press, 1987), p. 5.

29. Thomas G. West and William Schambra, “The Progressive Movement and the Transformation of American Politics,” Heritage Foundation *First Principles Essay* No. 12, July 18, 2007, at <http://www.heritage.org/Research/Reports/2007/07/The-Progressive-Movement-and-the-Transformation-of-American-Politics>.

30. *The American Almanac, Year-book, Cyclopaedia and Atlas, 1903* (New York: American and Journal, 1902), p. 546; *Brooklyn Daily Eagle Almanac, 1908* (Brooklyn: Eagle Publishing, 1908), p. 498; *The Chicago Daily News Almanac and Year Book for 1918*, ed. James Langland (Chicago: Daily News Co., 1917), pp. 184, 190; *The Chicago Daily News Almanac and Year Book for 1916*, ed. James Langland (Chicago: Daily News Co., 1915), p. 93.

31. Abraham Lincoln, “To Salmon P. Chase,” September 3, 1863, in *Collected Works*, Vol. VI, pp. 427–428.

true to Liberty, the Union, and the Constitution—true to Liberty, not selfishly, but upon principle—not for special classes of men, but for all men, true to the union and the Constitution, as the best means to advance that liberty,” he wrote in 1858. A decade earlier, he had even repudiated schemes to amend the Constitution:

No slight occasion should tempt us to touch it. Better not take the first step, which may lead to a habit of altering it. Better, rather, habituate ourselves to think of it, as unalterable. It can scarcely be made better than it is. New provisions, would introduce new difficulties, and thus create, and increase appetite for still further change. No sir, let it stand as it is. New hands have never touched it. The men who made it, have done their work, and have passed away. Who shall improve, on what they did?³²

It was Lincoln’s misfortune to be thrust into the constitutionally anomalous situation of civil war and to be compelled to reconcile peacetime constitutional process with the wartime demand to “preserve, protect and defend” the Constitution from insurrection. At no point has that struggle attracted more vehement denunciation from the Lincoln-haters than his decision, in May of 1861, to authorize a suspension of the writ of *habeas corpus*.

The privilege of a writ of *habeas corpus* may be the single most hal- lowed principle in Anglo–American jurisprudence in that it requires any civil or military jurisdiction to sur- render a “body” to the normal judi- cial process of the courts. In effect, it means that no one can be arrested and imprisoned arbitrarily or perma- nently without the imprisoning agent having to show cause in a court of law. The writ’s origins ran all the way back to Magna Carta in 1215, and its operation was recognized in Article 1, Section 9 of the Constitution and in the very first congressional stat- ute, the Judiciary Act of 1789, which empowers all federal courts to grant the writ.

BE “EVER TRUE TO LIBERTY, THE UNION, AND THE CONSTITUTION... NOT FOR SPECIAL CLASSES OF MEN, BUT FOR ALL MEN, TRUE TO THE UNION AND THE CONSTITUTION, AS THE BEST MEANS TO ADVANCE THAT LIBERTY.”

On the other hand, the writ has never exactly been a get-out-of-jail-free card. The Constitution’s sole reference to the writ describes how it may be suspended. Massachusetts actually suspended the writ’s operation during Shays’ Rebellion, and the U.S. Senate debated its suspen- sion during Aaron Burr’s conspiracy in 1807. Moreover, although state courts have the statutory power to

issue the writ, only federal courts have authority to issue it for both state *and* federal prisoners.³³

Lincoln met the writ of *habeas corpus* almost as soon as the Civil War broke out. When he called out the state militias to defend the capital (under the Militia Acts of 1792 and 1795) on April 15, 1861, the militia of Pennsylvania and Massachusetts were attacked *en route* by pro-secession mobs in the streets of Baltimore. When the mayor and police chief of Baltimore refused Lincoln’s appeal to open transit through the city, the U.S. Army’s general-in-chief, Winfield Scott, asked Lincoln for a suspension of the writ of *habeas corpus* so that he could quell the rioters in Baltimore without fear that the city courts would turn the rioters loose as fast as Scott could apprehend them.

Lincoln authorized the suspen- sion on April 27, and in due course, John Merryman, a Maryland mili- tia officer who had supervised the burning of the railroad bridges used by the Pennsylvania militia, was arrested and jailed in Fort McHenry. Merryman’s brother-in-law at once appealed to Chief Justice Roger B. Taney to intervene, and in his capaci- ty as presiding judge for the U.S. Fifth Circuit (which included Baltimore), Taney asserted original jurisdiction and issued a writ for Merryman’s release to his court. The comman- dant at Fort McHenry refused, citing the suspension of the writ, and Taney then proceeded in *ex parte Merryman*

32. Abraham Lincoln, “Speech in United States House of Representatives on Internal Improvements,” June 20, 1848, and “To Anton C. Hesing, Henry Wendt, Alexander Fisher, Committee,” June 30, 1858, in *Collected Works*, Vol. I, p. 488, Vol. II, p. 475.

33. Rollin C. Hurd, *A Treatise on the Right of Personal Liberty: and on the Writ of Habeas Corpus* (Albany: W. C. Little, 1858), pp. 134–136, 149, 159; W. S. Church, *A Treatise of the Writ of Habeas Corpus, Including Jurisdiction, False Imprisonment, Writ of Error, Extradiction, Mandamus, Certiorari, Judgments, Etc* (San Francisco: A. L. Bancroft, 1884), p. 42.

to compose what is often treated as the ultimate indictment of Lincoln's high-handed and despotic overriding of the Constitution.³⁴

But painting Lincoln as the ogre of American civil liberties on the strength of *ex parte Merryman* requires us to ignore, as Taney rigorously did, the nearly complete collapse of civil authority in eastern Maryland in the spring of 1861. Lincoln's reply, in the form of his address to a special session of Congress on July 4, 1861, was to insist that his presidential oath required him to see that the "laws be faithfully executed," and he saw no reason why he should make an exception for John Merryman.

Taney also ignored that the description of *habeas corpus* in Article I, Section 9 of the Constitution is a negative description: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Although lodged in Article I, describing the powers and responsibilities of Congress, this language nowhere actually specifies that *only* Congress may do the suspending. Taney was, in other words, behaving as the original model of an "activist" judge, using a constitutional point as a shield for partisan political motives. (He would, in fact, write to former President Franklin Pierce in June 1861 that he hoped "the North, as well as the South, will see that a peaceful separation, with free institutions in each section, is far better than the union of all the present states ...")

Lincoln, on the other hand, was on the horns of a real procedural dilemma: With Congress out of session in April and May of 1861, what exactly would Americans have preferred Lincoln to do about riots that were aimed at isolating the national capital? Nothing? And if he had, would anyone believe that he later had any worthwhile defense against impeachment? As it happened, Lincoln took the actions, and Congress, as soon as it had assembled, began to confirm Lincoln's actions retroactively.³⁵

NO MATTER HOW HARD ONE TRIES TO CONSTRUE LINCOLN'S SUSPENSION OF THE WRIT OF HABEAS CORPUS AS A CIVIL LIBERTIES CRIME AGAINST THE CONSTITUTION, THERE IS VERY LITTLE IN TERMS OF CIVIL LIBERTIES ABUSES DURING THE CIVIL WAR THAT CAN BE LAID AT LINCOLN'S FEET.

The irony of *ex parte Merryman* is that, no matter how hard one tries to construe Lincoln's suspension of the writ as a civil liberties crime against the Constitution, there is very little in terms of civil liberties abuses during the Civil War that can be laid at Lincoln's feet—unless one regards *any* federal attempt to resist the subversion of the Constitution as an abuse. Historian Mark E. Neely has estimated that overall, during the four years of the Civil War, there were no more than 14,000 military arrests by Union forces, and most

of them turned out to be arrests for wartime racketeering, the imprisonment of captured blockade-runners, deserters, and the detention of suspicious Confederate citizens, not the imprisonment of political dissenters. When measured against the far vaster civil liberties violations levied on German-Americans and Japanese-Americans in America's two 20th-century world wars, Lincoln's casual treatment of dissent and outright subversion appears almost careless.³⁶

This was, in large measure, because Lincoln's understanding of government was, like Lincoln himself—who had been born in 1809 while Jefferson was still President, George III was still king of England, and James Madison, John Jay, George Rogers Clark, John Adams, Paul Revere, and Tom Paine were still alive—rooted in the experience of the Revolution. There was never any question in Lincoln's mind that government existed entirely at the will of the people and possessed only so much sovereignty as the people, for their own convenience, chose to delegate to it. "This country, with its institutions, belongs to the people who inhabit it." Its "strongest bulwark" was "the attachment of the people," and "whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it."³⁷

This did not mean that *some* form of government was purely an option. Like Madison, who agreed that government would indeed be

34. Jonathan White, *Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman* (Baton Rouge: Louisiana State University Press, 2011), pp. 12-17, 19-20; Brian McGinty, *Lincoln and the Court* (Cambridge, Mass.: Harvard University Press, 2008), pp. 65-83.

35. Stephen C. Neff, *Justice in Blue and Gray: A Legal History of the Civil War* (Cambridge, Mass.: Harvard University Press, 2010), pp. 34-39; Neely, *Lincoln and the Triumph of the Nation*, pp. 64-66, 109, 201.

36. Mark E. Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), pp. 24-28, 60, 98, 133-137.

37. Lincoln, "First Inaugural Address First Edition and Revisions," March 4, 1861, in *Collected Works*, Vol. IV, p. 260.

optional only if “all men were angels,” Lincoln believed that even if “all men were just, there would still be some, though not so much, need of government.” In a perfect world, Lincoln agreed, there was no reason why “each individual” should not “take to himself the whole fruit of his labor, without having any of it taxed away, in services, corn, or money” or “take just so much land as he can cultivate with his own hands, without buying it of any one.”³⁸

But this is not a perfect world, and men are not either just or angelic. For that reason, Lincoln laid down this axiom as his philosophy of government:

The legitimate object of government, is to do for a community of people, whatever they need to have done, but can not do, at all, or can not, so well do, for themselves in their separate, and individual capacities. In all that the people can individually do as well for themselves, government ought not to interfere.³⁹

On that basis, he reasoned, there are two areas in which some form of government is obliged to exist and to act: “those which have relation to wrongs, and those which have not.” The wrongs, however, are limited entirely to the punishment of “all crimes, misdemeanors, and non-performance of contracts,” not to the redistribution of property or the curtailment of natural rights:

If one people will make war upon another, it is a necessity with

that other to unite and cooperate for defense. Hence the military department. If some men will kill, or beat, or constrain others, or despoil them of property, by force, fraud, or noncompliance with contracts, it is a common object with peaceful and just men to prevent it. Hence the criminal and civil departments.⁴⁰

FREE GOVERNMENT'S OVERARCHING PURPOSE WAS SIMPLE: TO CREATE A LEVEL PLAYING FIELD—A SOCIETY IN WHICH NO ONE WAS AWARDED A STATUS THAT ENTITLED HIM TO SPECIAL PRIVILEGES—AND SO TO ENSURE EQUALITY OF OPPORTUNITY AND NOT TO INVOLVE ITSELF IN THE LABOR AND SELF-IMPROVEMENT OF THE PEOPLE.

The non-wrongs involve issues of cooperative action on projects too large for any single individual to accomplish on his own. This category “embraces all which, in its nature, and without wrong, requires combined action, as public roads and highways, public schools, charities, pauperism, orphanage, estates of the deceased, and the machinery of government itself.” But government, even in that sense, acts simply as the facilitator of the peoples’ wishes.⁴¹

This was also a very mechanical notion of government. The functions that Lincoln described in these categories could easily be stretched

to include under wrongs a number of fanciful injustices whose correction is intended less to mitigate the wrong and more to increase the power of the government as their corrector. They could be stretched again under non-wrongs to include “co-operative” actions that served the purposes of a bureaucracy rather than the people and that the people, rather than cooperating in them, were coerced into joining.

The Centrality of Natural Rights

Thus, over and above the wrongs and non-wrongs that government is legitimately created to address, there is this overarching restraint: that government’s primary obligation in dealing with both wrongs and non-wrongs is the affirmation and protection of the natural rights with which its citizens are born prior to any institution of government.

The problem with “most government”—and the reason government itself has so often been regarded as little more than (as Augustine said) a latrocinium, or den of thieves—is that it has “been based, practically, on the denial of the equal rights of men.” As soon as government founds itself upon the inherently superior status of one class of humanity, everything afterward acts to the self-aggrandizement of that class and the oppression of the others. The American Constitution, however, created a government in which no class of people was awarded any automatic status. “There is no permanent class of hired laborers amongst us,” Lincoln said in 1859.

38. Lincoln, “Fragment on Government,” July 1, 1854 (?), in *Collected Works*, Vol. II, p. 221.

39. *Ibid.*, in *Collected Works*, Vol. II, p. 220.

40. *Ibid.*, in *Collected Works*, Vol. II, pp. 220–221.

41. Lincoln, “Address Before the Young Men’s Lyceum of Springfield, Illinois,” January 27, 1838, in *Collected Works*, Vol. I, p. 111.

“Twenty five years ago, I was a hired laborer. The hired laborer of yesterday, labors on his own account to day; and will hire others to labor for him to morrow. Advancement—improvement in condition—is the order of things in a society of equals.”⁴²

Free government’s overarching purpose was simple: to create a level playing field—a society in which no one was awarded a status that entitled him to special privileges—and so to ensure equality of opportunity and not to involve itself in the labor and self-improvement of the people. Punishing wrongs and assisting in projects that promoted opportunity were the applications of that fundamental tenet. “The cornerstone of the government, so to speak, was the declaration that ‘all men are created equal,’ and are entitled to ‘life, liberty, and the pursuit of happiness.’”⁴³

From that starting point, Lincoln expected that the people were quite competent on their own to create a free and prosperous society. “We proposed to give all a chance; and we expected the weak to grow stronger, the ignorant, wiser; and all better, and happier together.”⁴⁴ Not everyone would make from that “chance” the same results, but results were the business of the people, not the government. “The just and generous, and prosperous system, which opens the way for all gives hope to all, and energy, and progress, and improvement of condition to all,” is the one in which “the prudent, penniless beginner in

the world, labors for wages awhile, saves a surplus with which to buy tools or land, for himself; then labors on his own account another while, and at length hires another new beginner to help him.”⁴⁵

**IT WAS PRECISELY BECAUSE
“WE DO NOT PROPOSE ANY WAR
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RICH WITH EVERYBODY ELSE.”**

With this system, the government has no interest. There is no wrong involved if “any continue through life in the condition of the hired laborer,” because that “is not the fault of the system, but because of either a dependent nature which prefers it, or improvidence, folly, or singular misfortune.” Much less is there any social inconvenience that government is obligated to rectify collectively. “It is best for all to leave each man free to acquire property as fast as he can,” Lincoln asserted, and with that, government has no license to interfere. “I don’t believe in a law to prevent a man from getting rich; it would do more harm than good.”

In fact, it was precisely because “we do not propose any war upon capital” that Americans “wish to allow the humblest man an equal chance to get rich with everybody else.” This was by no means a guarantee that everyone would “get rich” or even

get a “fair share.” And to those who did *not*, Lincoln suggested no deeper intervention in the economy than best wishes for a second try:

Some of you will be successful, and such will need but little philosophy to take them home in cheerful spirits; others will be disappointed, and will be in a less happy mood. To such, let it be said, “Lay it not too much to heart.” Let them adopt the maxim, “Better luck next time;” and then, by renewed exertion, make that better luck for themselves.⁴⁶

The Fiction of a Right to Secession

As much as Lincoln personally loathed slavery, he did not propose a governmental war on it. What occurred in the outbreak of civil war in 1861 was an impatient assault by the slave states on even the slightest hint that Lincoln would, as President, urge restraint on slavery’s expansion.

In fact, the secession of the Southern states to form the Confederate States of America was an even larger assault on the sovereignty of the people, since secession constituted a denial that Southerners would consider themselves bound by the majority vote of the people in choosing an anti-slavery Northerner like Lincoln as President. Lovers of free and limited government should rise up to defend the Constitution, because if it could be assaulted like

42. Lincoln, “Fragment on Government,” July 1, 1854 (?), and “Fragment on Free Labor,” in *Collected Works*, Vol. II, p. 222, and Vol. V, p. 462.

43. Lincoln, “Speech Delivered at the First Republican State Convention at Bloomington,” May 29, 1856, in *Life and Works of Abraham Lincoln: Early Speeches, 1832-1856*, ed. M. M. Miller (New York: Current Literature Publishing Co., 1907), Vol. II, p. 282.

44. Lincoln, “Fragment on Slavery,” July 1, 1854, in *Collected Works*, Vol. II, p. 222.

45. Lincoln, “Address Before the Wisconsin State Agricultural Society, Milwaukee, Wisconsin,” September 30, 1859, in *Collected Works*, Vol. V, pp. 478-479, 481-482.

46. Lincoln, “Address before the Wisconsin State Agricultural Society, Milwaukee, Wisconsin,” September 30, 1859, and “Speech at New Haven, Connecticut,” March 6, 1860, in *Collected Works*, Vol. II, p. 222; Vol. V, pp. 478-479, 481-482; and Vol. IV, p. 24.

this, with impunity, it would prophesy the futility and failure of free and self-limited government everywhere.

“This is a people’s contest,” Lincoln declared at the outset of the war. It was not about slavery *per se*, although it *was* the protection of slavery over which the seceders were willing to go to war. Nor was it about states’ rights, since what right, exactly, had been violated by Lincoln’s election? The Constitution, after all, contains no reversion clause. Nor does it specify a process for break-up and secession; and by opposing secession, Lincoln was hardly eradicating a check on the growth of oppressive government, since secession was being practiced precisely so that the Confederate regime could be free to create an oppressive government, built on human bondage and inherited status.

It was this that the various European aristocracies applauded in the Confederacy. They hoped to see a revival of “the monarchical-aristocratic principle in the Southern states.” As Otto von Bismarck told Carl Schurz years later, “there was something in me that made me instinctively sympathize with the slaveholders, as the aristocratic party, in your Civil War.” Just as instinctively, Lincoln saw the war as “a struggle for maintaining in the world, that form, and substance of government, whose leading object is, to elevate the condition of men—to lift artificial weights from all shoulders—to clear the paths of laudable pursuit for all—to afford all, an unfettered start, and a fair chance, in the race of life. ... This is the leading object

of the government for whose existence we contend.” And which is worth contending for.⁴⁷

THE SECESSION OF THE SOUTHERN STATES WAS AN EVEN LARGER ASSAULT ON THE SOVEREIGNTY OF THE PEOPLE, SINCE SECESSION CONSTITUTED A DENIAL THAT SOUTHERNERS WOULD CONSIDER THEMSELVES BOUND BY THE MAJORITY VOTE OF THE PEOPLE IN CHOOSING AN ANTI-SLAVERY NORTHERNER LIKE LINCOLN AS PRESIDENT.

Conclusion

There is nothing obtuse about seeking long-term causes for the emergence of a federal government that has grown to such a gargantuan size that the entire American system seems to have become a relentless, interfering bureaucracy rather than an of-by-and-for-the-people democracy. But the effort to hang this around Lincoln’s neck is both naïve and ill-informed, and what is worse, it obscures the importance of the Lincoln image for the defense and promotion of democratic government.

There is no doubt that the wartime emergency of 1861 to 1865 called out a significant increase in the size and scope of the federal government; what is important to notice, however, is that:

- This increase was in response to a threat to the very life of the republic,

- It bears no proportional resemblance to the scope of modern “big government,” and
- The increase shrank back to its prewar proportions with no sense of having established a permanent precedent, much less a government-knows-best philosophy.

This increase was the creature of an emergency and was never seen by Abraham Lincoln as anything but that. Moreover, emergencies are emergencies: “I can no more be persuaded that the government can constitutionally take no strong measure in time of rebellion, because it can be shown that the same could not be lawfully taken in time of peace,” wrote Lincoln in 1863, “than I can be persuaded that a particular drug is not good medicine for a sick man, because it can be shown to not be good food for a well one.”⁴⁸

If anything, what Lincoln demonstrates is that democratic government, when assailed, is both strong enough to take the measures required for its defense and strong enough to lay them down again when the danger has passed. It is a mark of confidence in our own principles, not the decay of their purity, that Americans are able both to do what an emergency requires for the survival of their republic and to put those measures by when peace is restored. There will always be legitimate alarm, even in an emergency, about the use of “a particular drug.” What Lincoln’s example means is that we neither allow the alarm to paralyze us nor become necessarily addicted to the “drug.”

47. Lincoln, “Message to Congress in Special Session,” July 4, 1861, in *Collected Works*, Vol. IV, p. 437; Leopold, King of the Belgians, to Archduke Ferdinand Maximilian, October 25, 1861, in A. R. Tyrner-Tyrnauer, *Lincoln and the Emperors* (London: Rupert Hart-Davis, 1962), pp. 65–67; Carl Schurz, “Talks with Bismarck,” *McClure’s Magazine*, Vol. 31 (August 1908), p. 367.

48. Lincoln, “To Erastus Corning and Others,” June 12, 1863, in *Collected Works*, Vol. VI, p. 266.

The Progressives had a very different notion of the “drug” of welfare statism. In their understanding, the American patient had become so chronically sick on individualism, liberty, and free markets, and so demented in his persistence in believing in the priority of freedom, that the patient no longer understood how much the world had evolved since the days of the Constitution. Hence, the “drug” was necessary as a permanent prescription and in ever-expanding quantities.

“Our thought has been ‘Let every man look out for himself, let every generation look out for itself,’” declared Woodrow Wilson in his first inaugural address, “while we reared giant machinery which made it impossible that any but those who stood at the levers of control should have a chance to look out for themselves.” The time had now come for “sober second thought.” It was time for “men and women and children” to be “shielded in their lives, their very vitality, from the consequences of great industrial and social processes which they can not alter, control, or singly cope with.”

This would, of course, mean a tremendous expansion of government oversight and power in order to ensure an “equalization of conditions.” But in Wilson’s mind, “Men as communities are supreme over men as individuals,” and that gave to “communities” powers of “public control” so vast that “in the strict analysis” there would be no limits at

all. Progressive government would no longer be shackled by the inefficiencies of an 18th-century Constitution. It would, instead, be shepherded into a new age by a leader, a duce who “gathering, as best he can, the thoughts that are completed that are perceived that have told upon the common mind; judging also of the work that is now at length ready to be completed; reckoning the gathered gain; perceiving the fruits of toil and of war and combining all these into words of progress, into acts of recognition and completion.”⁴⁹

Wilson had no hesitation about invoking Lincoln’s emergency powers as a justification for this, largely because Lincoln was such a useful icon and also because, for Wilson, everything in American life had become an ongoing emergency for government to address. By contrast, Lincoln would “attempt no compliment to my own sagacity. I claim not to have controlled events, but confess plainly that events have controlled me.” He saw himself as little more than the temporary occupant of an executive office, struggling to hand it—and the entire mechanism of free government—over to the next occupant.

It is not merely for to-day, but for all time to come that we should perpetuate for our children’s children this great and free government, which we have enjoyed all our lives. I beg you to remember this, not merely for my sake, but

for yours. I happen temporarily to occupy this big White House. I am a living witness that any one of your children may look to come here as my father’s child has. It is in order that each of you may have through this free government which we have enjoyed, an open field and a fair chance for your industry, enterprise and intelligence; that you may all have equal privileges in the race of life, with all its desirable human aspirations. It is for this the struggle should be maintained, that we may not lose our birthright—not only for one, but for two or three years. The nation is worth fighting for, to secure such an inestimable jewel.⁵⁰

It is the misfortune of much conservative and libertarian thinking to have seen the Progressive appropriation of Lincoln and to have assumed, at once and without serious reflection, that it was legitimate—rather like mistaking a hostage taken by terrorists for one of the terrorists himself. More than a little of modern conservatism and libertarianism’s skittishness on the subject of Lincoln is connected to the influence of Southern agrarianism in the conservative fabric, but Lincoln is not, nor was his Administration, any model for what today seems so objectionable in the modern welfare state. The conservative task instead should be to liberate the hostage—and embrace him. 🗡

49. Wilson, “Presidential Inaugural Address,” March 4, 1913, in *Woodrow Wilson: Essential Writings and Speeches*, pp. 367–368; Wilson, “Congressional Government,” 1885, and “Leaders of Men,” 1889, in *The Papers of Woodrow Wilson*, ed. Arthur S. Link (Princeton, N.J.: Princeton University Press, 1966–1994), Vol. V, p. 561, and Vol. VI, p. 671.

50. Lincoln, “To Albert G. Hodges,” April 4, 1864, and “Speech to One Hundred Sixty-sixth Ohio Regiment,” August 22, 1864, in *Collected Works*, Vol. VII, pp. 282, 512.



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