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Margaret Elizabeth Moslander

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**Natural Right or History? The Lincoln-Douglas Debates and the Moral  
Foundations of the Liberalism**

**APPROVED BY  
SUPERVISING COMMITTEE:**

**Supervisor:**

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Gary J. Jacobsohn

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Jeffrey K. Tulis

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Foundations of Liberalism**

**by**

**Margaret Elizabeth Moslander, B.A.**

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## Abstract

# Natural Right or History? The Lincoln Douglas Debates and the Moral Foundations of Liberalism

Margaret Elizabeth Moslander, M.A.

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Supervisor: Gary J. Jacobsohn

This paper re-examines the Lincoln-Douglas debates through a comparison of two works on the subject: Harry Jaffa's *Crisis of the House Divided* and John Burt's *Lincoln's Tragic Pragmatism: Lincoln, Douglas and Moral Conflict*. This paper examines several arguments made both in and about the debates, particularly on the status of the Declaration of Independence for Lincoln and for Douglas, on the nature and implications of popular sovereignty, and on the ability of liberal government to accommodate deeply rooted moral disagreements. The paper then considers how Madisonian political science, as articulated in *Federalist* 10, might yield insights about the nature of the problem the country faced in 1858 and the inevitability of the Civil War that was a result of that problem.

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## Chapter 1: Introduction

In his 1959 *Crisis of the House Divided*, Harry Jaffa undertakes a study of the philosophical implications of the Lincoln-Douglas debates, casting this historical moment in the light of the famous debate between Socrates and Thrasymachus in Plato's *Republic*. Jaffa argues for Lincoln as Socrates, maintaining that Lincoln's position is rooted in an understanding of the requirements of natural right and justice while Douglas's argument for popular sovereignty is an American version of the Thrasymachean conviction that "might makes right." Jaffa gives us a Lincoln of towering genius, a Lincoln "like Aristotle's great-souled man, who is a man of few but great actions" and who demonstrates how "magnanimity might find its lodgment with the cause of the people."<sup>1</sup> In many ways, Jaffa's Lincoln is familiar to any student of American politics; he the Lincoln of the Lincoln Memorial, a man of unwavering moral sense, uniquely suited to greatness. Stephen Douglas, on the other hand, is seen by Jaffa as a worthy competitor but also one whose fundamental assumptions about the nature of the American Constitutional project are disastrously wrong. For Jaffa, a wide gulf separates Lincoln from Douglas, and their struggle represents the struggle between right and wrong understandings of justice, between the possibility of a moral foundation for the American Constitutional project and a descent into what, for Jaffa, is an untenable relativism at the heart of American political life.

In *Lincoln's Tragic Pragmatism*, John Burt offers an alternative understanding of the philosophic implications of the Lincoln-Douglas debate, one that brings Lincoln back

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<sup>1</sup> Harry V. Jaffa, *Crisis of the House Divided* (Chicago: University of Chicago Press, 1959) 219

into history and Douglas back to Lincoln. Burt refracts their debate through the lens of the philosophy of John Rawls, understanding the two men as principled political actors committed both to the eradication of slavery and to the concept of liberal government, which demands compromise in the face of conflict. Rather than a conflict between popular sovereignty and natural right, Burt sees a conflict between Douglas's Madisonian understanding of liberalism as compromise among competing interests and Lincoln's belief that liberalism requires an underlying commitment to a structure of fairness that recognizes the political and moral autonomy of a free people. For Burt, both Douglas and Lincoln hope to achieve "a tradition of fair dealing among people of different interests and views."<sup>2</sup> They differ on how they believe that goal would best be achieved, but are both working within a liberal paradigm.

In this paper, I will interrogate the different positions of Jaffa and Burt on the Lincoln-Douglas debates. The paper will first take up each author's understanding of Douglas and the doctrine of popular sovereignty, with a particular emphasis on the nature of moral compromise within a liberal polity. The main dispute between the authors with regard to Douglas is on the nature of his commitment to popular sovereignty: whether it is simply an argument from force, or whether it holds within it a particular understanding of the requirements of liberal government. The second part will be dedicated to Lincoln, and will seek to understand Lincoln's commitments both to political and moral freedom and political compromise. The main historical-political question here is how the two authors understand Lincoln's reconciliation of a moral commitment to eradicating slavery

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<sup>2</sup> John Burt, *Lincoln's Tragic Pragmatism* (Cambridge: Belknap Press of Harvard University Press, 2013)

with his willingness to compromise on the institution of slavery where it exists already within the American political system. I will conclude by examining the nature of constitutional decision-making in a liberal democracy and the obligations of a people and their representatives to live up to the moral and political commitments set forth for them by a founding generation.

Jaffa's Lincoln belongs to "the family of the lion, the tribe of the eagle." He "thirsts and burns for distinction," and, in Jaffa's view, is deserving of it. Burt's Lincoln flies less close to the sun and thus, in many ways, is less of a threat to a liberal democratic polity. Jaffa's Lincoln is both brilliant and potentially destructive, where Burt's Lincoln is uniquely suited to recognize the tragic elements of liberalism but is ultimately committed to playing within its rules. These are two very different Lincolns, and the challenge for this paper will be to try to understand whence come these different understandings and what those differences mean for the American constitutional project.

## Chapter 2: The Case for Douglas

Understanding Lincoln's position in the lead up to the Civil War requires an examination of the position to which Lincoln's was the alternative: namely, that of Stephen Douglas. Douglas has often been cast as "brilliant but unscrupulous," a man whose "high-flying career was finally brought to earth by Lincoln's supreme political logic."<sup>3</sup> Jaffa and Burt would agree, however, that this description belies the fact that Douglas had principled commitments that he sought to advance in the debates and throughout his storied political career. As to the precise nature of those principled commitments, though, the authors disagree; for Jaffa, Douglas's commitment to the doctrine of popular sovereignty was undergirded by a belief that it captured the "true spirit of free political institutions," while Burt holds that the doctrine of popular sovereignty was an effort by Douglas to actualize a commitment to the "mutual accommodation that is the principal work of traditional politics."<sup>4</sup>

In this section, I will first take up Jaffa's understanding of the underlying commitments within Douglas's embrace of the popular sovereignty doctrine (in particular, the importance of manifest destiny), which ultimately lead Jaffa to cast Douglas as a kind of Civil War-era Thrasymachus, and then examine Burt's rejoinder to Jaffa, which contends that Douglas was in fact a Madisonian liberal, committed to the principles of *Federalist* 10 as the primary mode of resolving political conflict.

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<sup>3</sup> Jaffa 20

<sup>4</sup> Jaffa 31, Burt 179

## **Popular Sovereignty, Manifest Destiny, and Might as Right**

Jaffa holds that for Douglas, the principle of popular sovereignty “meant the principle by which each distinct political community, whether state or local, determined for itself the institutions by which its daily life was lived, subject only to those general rules, embodied in the Constitution, which guaranteed to each its equal right to pursue its own way.”<sup>5</sup> For Douglas, the fact that the United States was both a democratic and federal republic required that “no community of free men or group of such communities was good enough to dictate the domestic institutions of another community of free men.”<sup>6</sup> Douglas holds that the appropriate unit of decision-making, and therefore self-government, is the local community. Lincoln has a powerful and obvious rejoinder to this position, namely, that “anyone sincerely desirous of self-government...could not be indifferent to slavery. The relation of master and slave was a total violation of self-government.”<sup>7</sup>

While in principle it is the case that Lincoln has the better argument, in practice it was more complicated; for once one admits, as Lincoln does, that perhaps slavery is a “necessary evil,” Douglas’s position becomes increasingly tenable. For once the institution itself has been introduced, and one is hesitant to abolish it wholesale, the question becomes not whether one should analyze the principle of self-government at the individual or community level, but rather “who should determine when such a necessity

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<sup>5</sup> Jaffa 30

<sup>6</sup> Jaffa 31

<sup>7</sup> Ibid

[for slavery] existed?”<sup>8</sup> Should Congress be permitted to answer this question for the territories? As Douglas notes, “If Congress could not legislate on slavery in the states, which *were* represented in Congress, why should it legislate on slavery in the territories, which were *not* represented in it?”<sup>9</sup> Douglas’s objection to congressional legislation with regard to the territories harkens back to the Revolutionary period, in which the primary objection of the American colonists was the British’s Parliament’s policy of legislating for colonial communities when those communities had no representation in the British Parliament. For Douglas, therefore, “the essence of free government lay in the power of decision by free men on issues of vital importance to themselves.”<sup>10</sup>

Douglas must, of course, deal with the issue of who precisely qualifies as a free man, and so he argues that “The civilized world has always held, that when any race of men have shown themselves so degraded...as to be utterly incapable of governing themselves, they must...be governed by others, by such laws as are deemed applicable to their condition.”<sup>11</sup> While the idea that blacks were incapable of governing themselves is abhorrent to us now, the idea that they “were ‘not capable of being improved by free and equal discussion’ was common ground to all but an infinitesimal minority in 1858.”<sup>12</sup> To Douglas, the idea that an unrepresentative body could decide for the territories who constituted a free man would be to insist “upon a universal leveling of the conditions of

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<sup>8</sup> Ibid

<sup>9</sup> Jaffa 32

<sup>10</sup> Jaffa 33

<sup>11</sup> Jaffa 32

<sup>12</sup> Ibid

men everywhere, instead of raising the heads of free men above the common level, in virtue of their uncommon virtue and sacrifices.”<sup>13</sup>

This conviction was only strengthened by Lincoln’s admission that he (Lincoln) did not consider blacks the equals of whites, for, as Douglas points out, “if Negroes were admittedly not to be our equals, then they must be our inferiors and governed by us.”<sup>14</sup> Douglas’s objections to Lincoln stem from two seeming inconsistencies in Lincoln’s own thought: first, if Lincoln accepts the “necessary evil” of slavery in certain areas, then, in Douglas’s view, the governance of that institution once established should be at the local level, and Lincoln’s argument that Congress had the power to determine that character of the institution of slavery is antithetical to the principles of self-government. Second, Douglas cannot abide Lincoln’s insistence that blacks were both inferior to whites and their equals. Either, Douglas believed, blacks are the equal of whites and thus deserving of an equal share of governing capacity, or they are not, and thus properly placed under the rule of whites.

In light of these positions, how can Jaffa maintain, as he does, that Douglas held an essentially anti-slavery position? One cannot understand Douglas, Jaffa argues, by simply evaluating his domestic policy of popular sovereignty; instead, one must pair Douglas’s commitment to popular sovereignty with his foreign policy commitment to manifest destiny. “If one expression were needed for Douglas’s policy,” Jaffa holds, “it would not be ‘popular sovereignty’ but ‘expansion.’”<sup>15</sup> Douglas was not concerned, as

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<sup>13</sup> Jaffa 33

<sup>14</sup> Jaffa 32

<sup>15</sup> Jaffa 48

Lincoln was, with the preservation of freedom through the perfection of American political institutions, but with spreading freedom, imperfect though that spread might be. This conviction, Jaffa maintains, was behind Douglas's willingness to repeal the Missouri Compromise; for, once the line dividing slave states from free was repealed, "slavery could no longer crouch behind a line which freedom dared not cross."<sup>16</sup> Douglas believed that "the organization of new territory could rapidly result in new free states, [which] would lead to an overwhelming preponderance of freedom over slavery in the Union."<sup>17</sup>

The American West, Douglas believed, was "destined to be free soil;" "the overwhelming weight of opinion was that the deserts and mountains which made up so much of its area would never render slavery profitable there."<sup>18</sup> And so slavery would be crushed by the force of two majorities: first, through local majorities within the territories, which Douglas believed would not vote for slavery ("there was scarcely a man in the country who soberly and seriously believed that any of the remaining territory, organized or unorganized, north of 36'30'' would ever become slave states"<sup>19</sup>); and, second, by the introduction into the Union of the free states of the American West, whose presence within the Congress would ultimately so overwhelm the interests of the comparatively small (in Douglas's hope) slave-holding section of the country. In Douglas's view, continual expansion would lead to the eradication of the slavery question without ever having to confront it explicitly.

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<sup>16</sup> Jaffa 47

<sup>17</sup> Jaffa 48

<sup>18</sup> Jaffa 59

<sup>19</sup> Ibid

One can now see how and why Jaffa characterizes Douglas as a kind of American Thrasymachus: Douglas's vision for the United States relied exclusively on a majoritarian use of force, though that force was democratic rather than violent. To couple popular sovereignty, in which the majority within a locality must rule, with manifest destiny, in which continued expansion guaranteed (in Douglas's view) the continuous introduction into Congress of states within which slavery was economically and materially impractical, was to overwhelm the pro-slavery interests. It avoided any interrogation, moreover, of the goodness or rightness of the use of that majoritarian principle; it provides no principled basis on which the majority ought to decide. Rather, it leaves important political questions up to geography and chance. This character of Douglas's argument leads Jaffa to argue "the only moral justification of Douglas's policy...is a tacit belief in the idea of progress, an idea that economic forces were 'inevitably' working for freedom, both on the plains of Kansas and elsewhere."<sup>20</sup> To place one's faith in the rightness of popular sovereignty and the potential of manifest destiny to resolve the slavery question is to have faith that volatile economic and material interests will line up in one's favor; it assumes, moreover, a faith in technology, a faith that while perhaps not entirely misplaced is certainly a serious gamble if one is to be hopeful that slavery would ultimately be eradicated.

For Jaffa, then, Douglas's position is morally untenable; it relies more than Douglas admits on a faith that "progress" would ensure that the decisions of a majority come out "right" without providing any moral basis for what that "right" decision should

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<sup>20</sup> Jaffa 408

look like. Jaffa's Douglas, though relying on a majority rather than an army, ultimately relies on force rather than reason to achieve his ends. Jaffa's Douglas, however, is not Burt's Douglas, which suggests that perhaps there is another way to frame Douglas's position vis-à-vis the slavery question. Burt sees Douglas not as a Thrasymachus but as a Madison, concerned primarily with economic persuasion rather than majoritarian coercion.

### ***Federalist 10 and an Interest-Based Politics***

Jaffa's primary mode of interpretation with regard to Douglas is to substantively connect his allegiance to popular sovereignty with his espousal of the doctrine of manifest destiny, thus casting Douglas as an advocate for the use of "force" on two distinct levels, the local and the national. Burt, however, offers an alternative explanation for Douglas's embrace both of popular sovereignty and of expansion, and it is an explanation based not on a belief in majoritarian force but on a faith in the ability of a liberal democracy to enmesh its various constituencies in a web of myriad overlapping interests. In Burt's interpretation, Douglas does not rely on a majority of free men or free states crushing a minority of slaveholders and slave states, but on the creation of alternative interests that would enable the minimization of the slavery conflict.

In *Federalist 10*, Madison makes the case for an extended republic, stating, "Extend the sphere, and you take in a greater variety of parties and interests; you make it less probably that a majority of the whole will have a common motive to invade the rights

of other citizens....”<sup>21</sup> In Madison’s view, the negotiation of political conflict does not in fact require a majority in every case; rather, a multiplicity of interests can suffice to diffuse intense political disagreement because it will ensure other issues over which the dissenting parties can find common ground. “Political agents in *Federalist 10* politics have a multitude of interests, and conflicts over one interest do not align with conflicts over other interests.”<sup>22</sup> Burt views Douglas’s emphasis on expansion not as the accumulation of an increasingly overwhelming majority aligned against the South but rather as an accumulation of an increasing number of interests: Douglas “continuously sought to use issues of westward expansion and railroad development...to blunt sectional conflict.” He was attempting, in Burt’s view, “to make the pragmatic interests of the agents in deal-making converge upon the requirements of a just political order.”<sup>23</sup> Burt sees as Douglas’s main problem, then, not a misguided belief in progress but a misunderstanding of the nature of the interests with which he was forced to deal.

The “logrolling strategy” (“you can have your treaty, so long as I also get my dam”) can “be successful only so long as some great issue does not reconfigure all of the other issues to transform them into theaters of proxy war.”<sup>24</sup> Douglas’s mistake was not to place his faith in progress but to confuse issues for interests; while he sought to divide the country along interest-based rather than section-based lines, he failed to account for the fact that there was in fact only one interest at play in the 1850s, an interest that would use any issue as a vehicle for its own advancement. A “*Federalist 10* political order can

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<sup>21</sup> Madison, *Federalist 10*

<sup>22</sup> Burt 261

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

function only so long as it is possible to detach one issue from another. It must be possible for A and B to agree about  $x$  but disagree about  $y$ .”<sup>25</sup> Differently stated, *Federalist* 10 politics are not equipped to deal with ideological politics, in which ideological politics are understood as a politics “in which parties have a disciplined and consistent policy program in which the elements are all of a piece and to which a party’s adherents are expected to sign on.”<sup>26</sup>

Why can *Federalist* 10 politics not function under this condition? Because it presumes that the politics at work are not “conflicts about identity,” for an identity-based politics provides no rational grounds for liberal democracy to do what it does best; namely, persuade. “Persuasion, which is the foundation of truly political life, is possible only if interlocutors can see a change of convictions as possibly expressing a deeper stratum of their identity than maintaining those convictions would express.”<sup>27</sup> The anomaly of the 1850s, of which Douglas did not fully grasp the implications, was the “emergence of stable ideological parties.”<sup>28</sup> These stable ideological parties, moreover, were few and concentrated on a single issue; Madisonian politics only works if it can encourage “complex negotiations along many different lines of engagement,” which “knits the society as a whole together by giving everyone a positive investment.”<sup>29</sup>

1850s politics, on the other hand, were organized “around deeply entrenched conflicts among a small number of interest groups, [where] one group can hold over the

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<sup>25</sup> Burt 262

<sup>26</sup> Ibid

<sup>27</sup> Burt 264

<sup>28</sup> Burt 266

<sup>29</sup> Burt 267

others the threat of undoing the social order if its desires are not taken account of.”<sup>30</sup> The secession politics of Calhoun were a distinctly un-Madisonian brand of politics; “For Calhoun, the group was the unit of measure and the unit of value, and the integrity of the group is the chief thing that matters, whereas for Madison groups were heterogeneous and unstable, and the chief thing that matters is the culture of persuasion a political society maintains among the individuals.”<sup>31</sup> And thus Burt’s understanding of Douglas’s mistake is precisely opposite of Jaffa’s: where Jaffa understands Douglas as seeking to expand a majority group (namely, non-slaveholding territories and states), Burt understands Douglas as fundamentally *mis*understanding the nature of his expansive project. Burt’s Douglas is attempting to expand the number of interests, not the size of the majority group. From Burt’s perspective, therefore, Jaffa is correct in diagnosing the result of Douglas’s actions but fails to understand his essentially Madisonian motivation.

Burt and Jaffa’s understandings of Douglas are fundamentally divergent: where Jaffa thinks Douglas had a coherent but morally foundation-less strategy to achieve the resolution of the slavery question, Burt argues for a Douglas committed to a particular brand of liberal democracy (a well-pedigreed brand, at that) but who failed to understand that the context of his time precluded the kind of politics he hoped to rely on for the resolution of this question. One can see, moreover, that the two different understandings of Douglas set up two divergent understandings of Lincoln: Jaffa’s presentation of Douglas sets the stage for a Lincoln who can correct Douglas’s (and the country’s) moral

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<sup>30</sup> Ibid

<sup>31</sup> Ibid

failings, while Burt's portrayal of Douglas sets the stage for a Lincoln with a more complete understanding of the possibilities and limitations of liberal democratic politics.

### Chapter 3: The Case for Lincoln

One of the most challenging problems confronted both by Jaffa and by Burt with regard to Lincoln is how to reconcile what appear to be two competing convictions within Lincoln's thought: on the one hand, as exemplified in a statement Lincoln made in Northern Illinois, a sense that the nation must "unite as one people throughout this land, until we shall once more stand up declaring that all men are created equal," and on the other, a sentiment expressed in Southern Illinois, that he "is not nor ever [has] been, in favor of bringing about in any way the social and political equality of the white and black races."<sup>32</sup> Lincoln seems to be at once an advocate for equality and not, a staunch advocate for the moral right of ending slavery and a politician adapting his rhetoric to whatever audience he is in front of.

Jaffa and Burt try to understand these seemingly antagonistic positions in different ways: for Jaffa, Lincoln's apparent inconsistency on this point is in fact not an inconsistency at all, but a rational playing out of a tension between equality and consent present within the Declaration of Independence itself. For Burt, these positions are evidence both for Lincoln's moral repugnance for slavery and his acknowledgment that, living at a particular moment in history, he cannot overcome his own feelings of racism, even if he abhors those feelings. This inconsistency within himself, Burt argues, in many ways leads Lincoln to recognize a tragic element of liberalism, a peculiarly liberal difficulty in resolving moral conflict that proves itself to be a fatal flaw in the context of the conflict over slavery in the United States.

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<sup>32</sup> Jaffa 365

## The Problem of the Declaration of Independence

Jaffa tackles Lincoln's apparent inconsistencies first with an assertion about the nature of political debate: "Mere verbal consistency is no criterion of genuine consistency in politics. In fact, genuine verbal *inconsistency* may be a requirement of true political consistency."<sup>33</sup> Different words, Jaffa maintains, "may advance the same cause in different circumstances, and sometimes words of contrary bearing must be used at the same time to advance that cause in given circumstances."<sup>34</sup> Differently stated, for Jaffa, Lincoln's intention in both speeches remains the same even though his words open him up to charges of inconsistency. While this may be true, the argument for verbal inconsistency cannot satisfy a different but related objection to Lincoln's substantive stance on the issue of slavery: namely, that it is both a moral evil that must not be allowed in the territories and that he is willing to recognize and maintain the institution of slavery in the states where it already exists. To more adequately address this deeper problem within Lincoln's thought, Jaffa turns to what he believes is its source: a deep tension within the Declaration of Independence itself, and the concomitant commitments therein.

The moral dilemma presented by "the demands of equality on the one hand and the practical denial of some of those demands on the other" is, Jaffa argues, "the typical condition in which political justice must sought."<sup>35</sup> The Declaration of Independence is at once "an authoritative expression of the American creed" and the source of this moral

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<sup>33</sup> Jaffa 369

<sup>34</sup> Ibid

<sup>35</sup> Jaffa 374

dilemma itself: “if the dilemma exists at all, it is in the structure of the ideal, which issues in a dual imperative.”<sup>36</sup> What is this dual imperative? It is a demand for a government founded both in equality and in consent: “by reason of this very equality governments are said to derive their just powers from the consent of the governed.”<sup>37</sup> Popular consent, therefore, is crucial for the establishment of legitimate government. And thus Lincoln’s problem: popular opinion within the American polity cuts against the ideal of equality expressed in the Declaration, but the Declaration mandates not just that equality be recognized but that the people’s will, the people’s consent, be valued in the same way.

In Jaffa’s view, the “crisis of the house divided” arose “because a very considerable portion of the American people had turned its back on the truth upon which its own rights depended.”<sup>38</sup> The South could not see or willfully rejected the fact that a government based on consent required a foundation of equality, and thus that to deny to blacks the equality that was the natural right of all was in fact to deny it to themselves in principle, if not in practice. Differently stated, their consent was meaningless in the absence of a principle of equality that was all encompassing. This failure on the part of the South was indicative to Lincoln that “the ship of state was adrift, and there was no security for any of the rights for which governments are instituted.”<sup>39</sup> And thus Lincoln, to try to right its course, is forced to be both an advocate for equality and a partisan of popular consent.

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<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Jaffa 375

<sup>39</sup> Ibid

Jaffa, then, believes that “Lincoln’s middle ground, between equality and consent” is actually “the middle ground between the two aspects of equality,” and thus “the only thoroughly consistent ground that the principles of the Declaration sanction.”<sup>40</sup> Lincoln’s apparent negotiation between the principles of equality and consent, for Jaffa, is not moral compromise; rather, it is moral consistency. Equality and consent are intimately intertwined; in fact, they are two sides of the same coin. Equality without a government based on popular consent is useless, while a government based on consent without a principle of equality is meaningless.

Jaffa makes a strong case for Lincoln’s principled negotiation between the principles of equality and consent; and yet, that alone cannot explain Lincoln’s reluctance, expressed several times throughout the debates, that he is no advocate of social and political equality for blacks. Some, like Richard Hofstadter in *The American Political Tradition*, contend, “The same argument which condemned slavery should have compelled Lincoln to condemn the political inequality which he tolerated.”<sup>41</sup> But the requirements of consistency do not demand, Jaffa argues, that Lincoln exercise the same intolerance for political inequality that he exercises for the institution of slavery. Why? “Slavery involves the denial of an ‘unalienable right,’ the right to liberty, which all men have, according to the Declaration, by the laws of nature and of nature’s God.” But the “privileges of citizenship,” the political equality that Hofstadter hopes for, “are not unalienable natural rights but civil rights, to be determined by a civil process.”<sup>42</sup> And thus

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<sup>40</sup> Jaffa 377

<sup>41</sup> Jaffa 364

<sup>42</sup> Jaffa 378

free blacks, according to Jaffa, must be recognized as having a common humanity but not, necessarily, granted membership within the political compact that forms liberal civil society.

This position, while arguably rooted in the natural right orientation of the Declaration, is deeply unsatisfying to the modern reader. Jaffa does note that such a position is untenable now, after the passage of the Fourteenth Amendment, which “has created a moral claim to political equality which the Negro could not claim by the principles of the Declaration of Independence alone.”<sup>43</sup> And yet, one could argue, against Jaffa, that if the Declaration of Independence does not facilitate this claim the Constitution, even in the absence of the Fourteenth Amendment, does; that the Fourteenth Amendment makes explicit what is implicit in the structure of rights and duties in the Constitution itself. It is precisely this structure of rights and duties, construed by Burt as a Constitutional imperative for a “structure of fairness,” that Burt uses to construct his own interpretation of Lincoln’s position. He roots Lincoln’s arguments for equality and consent not in moral consistency but in moral compromise, in the necessary use of persuasion rather than coercion within a liberal democracy and the pragmatic, and sometimes tragic, events that result from that imperative.

### **The Limits of Pragmatism and the Tragedy of Liberalism**

The “hope of liberal politics,” Burt writes, “is that it can establish a tradition of fair dealing among people of different interests and views.”<sup>44</sup> At a minimum, he argues, it

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<sup>43</sup> Jaffa 381

<sup>44</sup> Burt 10

hopes for fair procedures to negotiate different interests; at best, however, “the habit of insight into the situations of other people that deal making and compromise encourage in us will move us to treat the tradition of fair dealing as itself a common interest and the basis of a common moral life.”<sup>45</sup> The creation of that habit of fair dealing, however, is best accomplished through negotiation over interests, for “liberal politics has a long and largely successful record of mediating them.”<sup>46</sup>

When it comes to moral conflict, however, liberalism’s record is more mixed. The reason why is perhaps not obvious, for, Burt contends, it is not the significance or divisiveness of the moral conflict that is the primary determinant of liberalism’s success or failure in this regard; rather, where “liberalism fails it fails not because of the importance of the issue it seeks to address, but because the detailed local history of the political conflict over it exposes some of the inner strains within liberal traditions.” Liberal democracies are not always destined to fail when it comes to the negotiation of moral conflict; rather, the particular political circumstances surrounding the negotiation of that moral conflict will play a decisive role in determining a people’s success or failure in finding compromise. And thus one can see that already, Burt’s Lincoln is destined to be different from Jaffa’s, for Burt’s Lincoln is historically contingent; he is not an ahistorical, towering genius, but rather limited by his time and place. Most importantly, however, Burt’s Lincoln is a liberal, and one who declines to argue from a position of absolute moral right, choosing instead to actively resist the “crusader politics” that is the inevitable result of intransigent moral argument and leads, ultimately, to tyranny.

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<sup>45</sup> Ibid

<sup>46</sup> Burt 12

Burt, like Jaffa, first must explain Lincoln's seeming contradiction between his abhorrence for the institution of slavery and a willingness to maintain that institution in states where it already existed. Burt's interpretation of this contradiction is not, like Jaffa's, that it only looks like a contradiction but in fact is evidence of moral consistency; rather, Burt argues, it is in fact a serious contradiction, but it is a principled one, rooted in an appreciation for the requirements of liberal democracy and in an acknowledgment that political life requires a moral foundation, but that that moral foundation must be established via persuasion rather than coercion.

Burt rejects the idea that Lincoln could have been the stringent moralist that Jaffa argues he was, for the primary reason that Lincoln showed himself willing to do whatever he could to work within the constraints of liberal democracy while maintaining a moral foundation for his politics. He wanted to avoid "drawing a moral line in the sand," for "once one has drawn a line in the sand one has no choice but to engage in a contest of force with those who are on the other side of that line."<sup>47</sup> A moral order, Burt argues, "has no authority except under conditions of choice," and therefore cannot be coercively imposed. Burt maintains that Lincoln understood this predicament, and thus sought to work as effectively as possible within a persuasive, rather than a coercive, system.

How did he do that? Burt suggests that in his *Peoria* speech, Lincoln attempts this by "imaginatively constructing an ideal slaveholder, a slaveholder who stands within Lincoln's own horizon of persuadability."<sup>48</sup> Lincoln's ideal slaveholder is akin to a Jefferson or a Washington, a slaveholder "who hates slavery in principle but does not see

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<sup>47</sup> Burt 682

<sup>48</sup> Burt 688

any immediately available practical way of putting it to an end.”<sup>49</sup> Lincoln’s ideal slaveholder is a “prisoner of necessity,” unable, because of the time in which he lives, “to imagine that former slaves and their masters might ever be able to live together on terms of political and social equality.”<sup>50</sup> Lincoln empathizes with this ideal slaveholder, and attempts to accommodate the slaveholder while insisting that the slaveholder’s hatred for slavery in principle be maintained. Lincoln identifies himself with this slaveholder, stating, “When it is said that the institutions exists, and that it is very difficult to get rid of it, in any satisfactory way, I can understand and appreciate the saying. I surely will not blame them for not doing what I should not know how to do myself.”<sup>51</sup> Lincoln, therefore, is willing to maintain the institution of slavery in the states where it already exists because he understands the constraints of his time and place.

Why? Lincoln here is not conflicted about the moral rightness or wrongness of slavery, but because the ideal slaveholder has “already made the crucial concession, that slavery is wrong and must be abolished,” Lincoln can afford to compromise on the institution of slavery where it already exists.<sup>52</sup> When did the ideal slaveholder make this concession? When he consents, in effect, to being governed by the ideals of the Declaration of Independence: “Lincoln finds this concession in the language of the Declaration of Independence, whose preamble he sees as making commitments that are incompatible with the persistence of slavery.”<sup>53</sup> The slaveholder, in living in a regime

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<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Burt 689

<sup>52</sup> Burt 691

<sup>53</sup> Ibid

governed by the ideals of the Declaration, accepts the central *concept* of the Declaration without fully embracing its practical *conception*. It is essential for Lincoln, however, that those ideals be maintained even in the absence of their full realization, for those ideals, particularly equality for all, are crucial to the maintenance of liberal institutions.

The promise of equality, Lincoln believed, “was a promise of a special kind, having a foundational relationship to the idea of self-rule,” and thus the liberal state is justified in demanding it as a moral foundation for political life. The power of the promise of equality “arises from its centrality to the democratic ethos...it is an essentially political value...[and] a democratic regime cannot survive as a democratic regime if it fundamentally betrays the values” that define it. Burt and Jaffa are alike in this respect: both see (and believe Lincoln saw) the promise of equality as absolutely necessary for democratic self-government. While Jaffa sees a principle of equality as necessary for a government based on consent, however, Burt sees equality as necessary for a structure of fair dealing, for establishing a habit of negotiating with those with whom one may have significant differences. For it is only if each member of the political community can recognize that his opponent is equal to himself in worth and capacity for self-government that he can negotiate fairly in the manner liberal government requires.

And so Burt’s explanation for Lincoln’s acceptance of slavery in the states where it already existed: Lincoln could abide the institution of slavery where it already existed so long as he was dealing with a particular type of slaveholder, one “who thought of slavery as an evil that could not be rooted out immediately but that should be put in the

way of ultimate extinction.”<sup>54</sup> It is the *promise* of equality, remember, that is crucial for liberal governance; the fact that it cannot be fully realized does not prevent liberal democracy from functioning. It is only when that promise is taken away, when there is no underlying political value to facilitate principled compromise, that liberal democracy ceases to function. Lincoln’s problem, therefore, was not with the older type of slaveholder but with the new intellectual leaders of the South, with “Calhoun, or Fitzhugh,” who believed that slavery was a positive *good* and that there was no promise of equality in any meaningful sense inherent in the Declaration.

Lincoln has a similar problem, though it is a less extreme case, with Douglas, for he believes that Douglas’s popular sovereignty position will cause even those people who do not see slavery as a positive good but accept it as a necessary evil to lose sight of the essentially evil character of slavery. A Madisonian interest-based politics, like the one Burt holds Douglas espoused, risks “hardening the public mind to the injustice of slavery.... [and] in treating moral stakes as commensurable with other stakes, one risks the distinction between a moral value and a monetary one.” Lincoln felt that “liberal regimes require for their support a deeply ingrained and only partly conscious structure of habits and feelings...a liberal regime must not only shape public institutions, but must also shape the public mind.”<sup>55</sup> Popular sovereignty, Lincoln feared, shaped the public mind in such a way as to encourage treating slavery as if it were another economic or political interest.

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<sup>54</sup> Burt 75

<sup>55</sup> Burt 81

Lincoln is trying to walk a narrow line: to continue to engage in a habitual process of principled compromise with a slaveholding South while maintaining the promise of equality as the moral foundation for liberal democratic political life. He cannot, however, negotiate with those who deceive themselves into believing one can have liberal self-rule without a promise of equality; to do so, as Douglas hopes to, would be to sow the seeds of the destruction of the liberal order. Liberal democracy cannot survive, in Lincoln's view, if it rejects the principle of equality as a foundational principle. And yet to cease negotiation, as Lincoln ultimately must, forces a struggle that risks the very survival of the Union.

Lincoln, from Burt's perspective, could be pragmatic to a point, until continued pragmatism and compromise risk the survival of the Union as much as moral absolutism would. The essential inevitability of this eventuality in the context of the Civil War leads Lincoln to liberalism's tragic dimension: that under certain political conditions, it is impossible "to keep right and will aligned," and it is almost impossible to "restore persuasive engagement once it becomes discredited."<sup>56</sup> Once the slaveholders of the "positive good" school rejected the foundation of equality for liberal government, they effectively ruled out any possibility that the Union could be maintained via persuasion rather than forceful coercion. This rejection of fundamental values could not be remedied, Burt argues, by invoking "the better angels of our nature," as Jaffa suggests it might be; rather, Burt emphasizes, we can rediscover them "only after a history of successful deal

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<sup>56</sup> Burt 706

making persuades us that we were not fools to have taken moral risks with each other.”<sup>57</sup>

The political conflict over slavery, and with it the South’s unyielding suspicion that the North was out to undermine not just its interests but its identity, precluded this kind of principled pragmatism, and left Lincoln with only an appeal to force. His willingness to exercise that force, Burt maintains, came not from a belief in an unyielding principle of natural right but because it was inevitable; developments in the South’s own understanding of the nature of the institution of slavery made the failure of the antebellum Constitutional project inevitable, whether Lincoln appeased the South or not.

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<sup>57</sup> Burt 705

## Chapter 4: Re-Reading *Federalist 10*

Having examined both Jaffa's and Burt's understandings of Douglas and Lincoln, there are two points I believe merit further discussion: Jaffa's explanation of the significance of the Declaration of Independence for Lincoln; and Burt's contention that both Douglas and Lincoln are operating by the assumptions that undergird *Federalist 10*, but that Lincoln further understands the liberal tragedy that not all moral questions can be dealt with via the *Federalist 10* scheme. In this section, I argue that Burt is correct in arguing that Lincoln had a better understanding of *Federalist 10* politics, but not for the reasons that he articulates. Rather I argue that Lincoln understood better than Douglas both the nature of minority faction and what the institutional forms provided by the Constitution might require in order to ultimately resolve the slavery question through its eradication.

In *Federalist 10*, Publius defines a faction as “a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”<sup>58</sup> Minority factions, Publius notes, do not pose an existential threat to republican government, for “if a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.”<sup>59</sup> The primary problem for republican government, Publius notes, comes in the form of majority factions, and it is to

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<sup>58</sup> Hamilton, Madison and Jay, *Federalist 10* in Clinton Rossiter, ed. *The Federalist Papers* (New York: Signet Classics, 2003) p. 72

<sup>59</sup> *Ibid*

the resolution of this problem that the bulk of *Federalist* 10 is devoted. Publius argues that majority faction can be controlled or eliminated only by rendering the majority faction “by their number and local situation unable to concert and carry into effect schemes of oppression.”<sup>60</sup> How might this goal be accomplished?

The most effective way to prevent majority faction, Publius suggests, is to multiply the number of interests present in a given republic to such an extent that it becomes increasingly unlikely that “a majority of the whole will have a common motive to invade the rights of other citizens.” From this premise, Publius develops the argument for the extended sphere and, therefore, for the large republic, in contrast to ancient political science, which held that only small republics had the necessary qualities to long endure. “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens....”<sup>61</sup> The larger the republic, Publius indicates, the greater likelihood that there will be a multiplicity of interests and therefore a lesser probability that a majority faction could emerge.

Both Bert and Jaffa argue that Douglas is motivated by a desire to ultimately see slavery eradicated but to do so by creating a free state majority via manifest destiny and popular sovereignty rather than by persuading the current majority of the immorality of slavery. In Jaffa’s view, Douglas takes this position because he does not fully grasp the moral implications of accommodating the potential spread of slavery into the territories. In Burt’s view, Douglas has a strong moral aversion to slavery but does not grasp the fact

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<sup>60</sup> Ibid

<sup>61</sup> Ibid

that the issue of slavery, because it is constitutive of Southern identity, cannot be resolved by ordinary liberal politics. Burt's argument regarding Douglas's embrace of *Federalist* 10 politics is largely persuasive, though I believe he errs in his attribution of the claim that liberal politics cannot accommodate identity-based disagreement to Madison. Using *Federalist* 10 as a guide, I believe one can make the argument that both Douglas and Lincoln are using the political logic of *Federalist* 10 as a guide to navigating the issue of slavery, but that Lincoln understands the nature of factionalism, and, therefore, the logic of *Federalist* 10, more comprehensively than Douglas.

In examining Douglas's commitment to manifest destiny as American foreign policy, one can see an embrace of Publius's belief that the large republic offers a greater safeguard against factional strife. Douglas believed that no organized territories north of the 36'30 line would become slave states, and believed that the geography of the West was inimical to a slave-based agricultural economy. To introduce more states, then, would be to tip the balance of power to the free states, and therefore to create a majority that could overwhelm the slave interests. Douglas, moreover, does not believe that any foundational principles need to be consulted when considering the introduction of new states; as Lincoln notes, Douglas "is in favor of the acquisition of further territory, as fast as we might need it, in disregard of how it might affect the slavery question."<sup>62</sup> Douglas's proposal would give local populations the ability to decide on the slavery question as they desired, and hope that his instincts regarding the nature of the new territories was correct. In this rationale for manifest destiny, however, Douglas misses a crucial part of Publius's

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<sup>62</sup> Abraham Lincoln, "The Lincoln-Douglas Debates: 5<sup>th</sup> Debate." Galesburg, IL, 07 October 1858. <http://teachingamericanhistory.org/library/document/the-lincoln-douglas-debates-5th-debate/>

argument in *Federalist* 10: namely, that the argument for a large republic does not rely on geographic expansion for its own sake, but rather in the service of a multiplication of interests across the polity. The “greater security” provided in the large republic is “afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest.”<sup>63</sup> Douglas, in his embrace of manifest destiny, is not seeking to multiply the number of interests with regard to the slavery question; instead, he seeks to use geographic expansion to create a new majority to tip the balance of power in favor of one (admittedly laudable) resolution to the problem.

Because Douglas is committed to majoritarianism as the principle by which liberal politics should operate, he does not pay much attention to the principles that might underlie the majority he creates, so long as it votes the way he believes it should. Douglas’s commitment to popular sovereignty serves as another example of this majoritarian commitment, a commitment that, when examined, also is in conflict with a more accurate reading of Publius in *Federalist* 10. The principle of popular sovereignty, which holds that local majorities should hold absolute decision-making power, leads almost inevitably to the kind of majority factions that Publius hopes to avoid. Publius, in fact, is more concerned with the potential harm inflicted by majority factions than with any other type of abuse in a democratic republic: “measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.”<sup>64</sup> And so Douglas’s attempt to combat the evils of slavery via a combination of manifest destiny and popular sovereignty is

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<sup>63</sup> Ibid

<sup>64</sup> Ibid

found to be inherently incompatible: the *Federalist* 10 argument for the large republic is premised on the idea that permanent majorities on particular issues are detrimental to the health of the republic, while popular sovereignty operates under the assumption that the will of the majority should be the prime mover of political life.

It is important to make clear that in arguing that Douglas's embrace of manifest destiny and popular sovereignty is at odds with the logic of *Federalist* 10, one is not arguing that the creation of a majority opposed to slavery is necessarily the same as creating a majority faction. Rather, to complete the critique of Douglas's flawed understanding of *Federalist* 10 politics and understand how his proposals lead to majority faction, one must look to the status of the Declaration of Independence under Douglas's plan, and compare it with Lincoln's unshakable allegiance to the Declaration as the foundational document of American political life. For Douglas, the Declaration of Independence, when it claims that "all men are created equal," did not mean all men—rather, it refers only to white men of European descent. "The signers of the Declaration of Independence," Douglas argues, "never dreamed of the negro when they were writing that document. They referred to white men, men of European birth and European descent, when they declared the equality of all men."<sup>65</sup>

Douglas's insistence that the Declaration refers only to white men is integral to his embrace of popular sovereignty to settle the slavery question in the territories for, as Lincoln notes, it allows him to argue that "upon principles of equality [slavery] should be

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<sup>65</sup> Stephen Douglas, "The Lincoln-Douglas Debates: 5<sup>th</sup> Debate." Galesburg, IL, 07 October 1858. <http://teachingamericanhistory.org/library/document/the-lincoln-douglas-debates-5th-debate/>

able to go anywhere.”<sup>66</sup> If only white men are created equal, then each should have an equal right to his property, including his property in slaves. And so, even if the territories vote against allowing slavery, they will have done so on the premise that the decision is morally neutral, as neutral as any other decision about property rights. And so, even if the result one obtains by popular sovereignty and then manifest destiny is the result desired by abolitionists, it will have been accomplished via premises that deny that the Declaration of Independence means what it says when it states that “all men are created equal.”

To create an anti-slavery majority using Douglas’s means would be to (potentially) accomplish one goal but, in the process, to sacrifice the principle of equality that underlies the American political regime. In creating a majority that treats slavery as any other interest, and thus as subject to the whims of majoritarian politics, one creates a majority faction, a group “united by some common impulse of passion...adversed to the permanent and aggregate interests of the community.”<sup>67</sup> It would be a group that has been tutored to “discard the idea that there is any thing whatever wrong in slavery.”<sup>68</sup> This majority faction, moreover, would exist regardless of the result on the slavery question; it would be a group that has embraced popular sovereignty, and majoritarianism, as the foundational principle of American politics, which is a principle fundamentally incompatible with the political design of the constitutional system described by Publius in *Federalist* 10. Douglas is using the language of *Federalist* 10 and its embrace of the

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<sup>66</sup> Abraham Lincoln, “The Lincoln-Douglas Debates: 5<sup>th</sup> Debate.” Galesburg, IL, 07 October 1858.  
<http://teachingamericanhistory.org/library/document/the-lincoln-douglas-debates-5th-debate/>

<sup>67</sup> Publius, *Federalist* 10

<sup>68</sup> Lincoln, 5<sup>th</sup> *Debate*

extended sphere to espouse a position at odds with the underlying logic of the Constitution it is intended to defend, a logic that rests not on majority rule but on preventing the very type of majority faction that Douglas's rejection of the principle of equality in the Declaration of Independence is destined to create.

The Lincoln that emerges from this portrayal of Douglas, then, is neither Jaffa's moral paragon nor Burt's tragic liberal. Rather, one can argue that Lincoln understands, as Publius did, the danger posed by both majority and minority factions, and in appearing to contradict himself with regard to the status of blacks in the United States is in fact trying to prevent the emergence or perpetuation of either type of faction. Because Lincoln maintains that the Declaration of Independence includes blacks in its assertion that all men are created equal, Douglas accuses him of desiring complete social and political equality for blacks. Lincoln, in rhetoric often lamented by contemporary readers, replies to this charge by stating "I have all the while maintained, that in so far as it should be insisted that there was an equality between the white and black races that should produce a perfect social and political equality, it was an impossibility."<sup>69</sup> And yet he maintains "in their right to life, liberty and the pursuit of happiness, as proclaimed in the Declaration of Independence, the inferior races are our equals."<sup>70</sup>

Much has been made of this seeming contradiction, and I would like to suggest yet another reading, one motivated by Lincoln's deeper understanding of the nature of *Federalist* 10 politics: Lincoln, in attempting to walk the line between asserting the equality of blacks under the Declaration but not as citizens under the Constitution, is

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<sup>69</sup> Lincoln, *5<sup>th</sup> Debate*

<sup>70</sup> *Ibid*

attempting to multiply the number of possible positions one can take on the slavery question, and therefore to prevent the same factionalism Publius hopes to prevent with his arguments in *Federalist* 10. Lincoln's arguments offer a number of possible positions for a number of different types: for the abolitionists, he offers the possibility that slaves might be freed under the logic of the Declaration, while to Northern Democrats, he insists that blacks may never be the social and political equals of whites, even though they should not be held as slaves. For Southern Democrats, Lincoln offers the position that slavery would not be disturbed in the states where it already existed. Lincoln is seeking, I believe, to avoid a majority faction in either direction on the slavery question, and therefore to delay its resolution in order to allow liberal politics a chance to operate.

This argument is at odds with Burt's contention that Lincoln realizes that *Federalist* 10 politics cannot accommodate identity-based moral disagreements, and that slavery was the type of identity-based question that precluded resolution via the framework set up by the constitution. Lincoln and Publius, I would argue, did not believe that moral disagreements on issues fundamental to individual or group identity were beyond the reach of liberal politics; in fact, a potential source of factional disagreement that Publius believes the large republic argument will help mitigate is religious strife, which is among the most identity-based disagreements one can imagine. Publius notes, "a zeal for different opinions concerning religion...have divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good." Lincoln's problem is not so much the tragic nature of liberalism as the difficulty in controlling factionalism, in

whatever form it might take. Lincoln's problem, differently stated, is the practical instantiation of the theoretical danger that Publius identifies as the primary threat to the democratic republic in *Federalist* 10.

Why, then, Lincoln's insistence on the Declaration of Independence as the foundation of American political life? The Declaration, for Lincoln, is a principled baseline from which he can create a coalition of different interests allied against the extension of slavery into the territories and by which he might be able to keep slavery "on the course of ultimate extinction."<sup>71</sup> Including blacks in the Declaration's assertion of fundamental equality is essential to the ultimate extinction of slavery, and offering as a potential position the idea that blacks are equal under the Declaration but not the Constitution allows white citizens who would be otherwise disinclined to support the Republican platform a chance to be part of Lincoln's coalition without forcing an immediate resolution to the slavery question. Lincoln's apparent contradiction with regard to the equal status of blacks, then, is not so much a contradiction as an attempt to multiply the number of interests, and thus to operate according to a thorough understanding of the *Federalist* 10 argument.

Burt's Lincoln is characterized by failure, though Burt argues that the failure is not entirely Lincoln's but instead a result of the tragic dimension of liberalism. I would argue that according to the *Federalist* 10 paradigm Lincoln was not a failure but in fact a qualified success—that he and the Republicans did manage to prevent a majority faction in the elections of 1858 and 1860, in which voters split primarily among Republicans,

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<sup>71</sup> Abraham Lincoln, "House Divided Speech," Springfield, Illinois, 16 June 1858

Southern Democrats, Northern Democrats, and Unionists. In those elections, groups divided on the slavery question into a number of different interests, with no one group clearly dominating; there were, furthermore, more than just pro-slavery and anti-slavery positions represented. Why, then, was the election of 1860 the last election in which voters in the Southern states would vote until after the Civil War? Because of a problem that Publius identifies in *Federalist* 10 but does not spend a significant amount of time discussing: namely, the problem of the minority faction that rejects constitutional forms as a way to channel political disagreement.

When discussing the problem of the minority faction, Publius notes, “if a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.”<sup>72</sup> He continues, “It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.”<sup>73</sup> The implication here is that the Constitution provides a form of government that can deal with minority faction, but the final sentence suggests another possibility: that the minority faction, unable to execute its violence under the forms of the Constitution, might throw off those forms and reconstitute itself in a separate polity in which it might achieve a majority. Burt’s contention, then, that the Union disintegrates when both Lincoln and the Southern states doubt the availability of a “structure of fair dealing” has been lost is only partly convincing; rather, the Southern states so understood the nature of the structure set up by the Constitution that it knew that it could achieve its ends only “unfairly,” or by creating

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<sup>72</sup> Publius, *Federalist* 10, p. 75

<sup>73</sup> Ibid

a new structure of dealing in which it could constitute a majority faction. Differently stated, the Southern states do not exploit a “tragedy” inherent in liberalism; rather, they reject the liberal structure of fair dealing set up by the Constitution and explicated in *Federalist 10* in favor of a system that operates via majoritarian factionalism.

## Chapter 5: Conclusion

In many ways, Burt and Jaffa seek to answer the same question: namely, whence come a country's substantive commitments, and what obligation is there for a people to actively seek to maintain and strengthen the political or moral values of a founding generation? For Jaffa, the substantive values of the American Constitutional regime are present in the Declaration of Independence, and thus Lincoln has to harken back to the Declaration to make his case for the necessary nature of equality; the Declaration provides for Jaffa the substantive moral commitments that he cannot find in the Constitution itself. This understanding of the nature of the substantive value commitments of the United States enables Jaffa to make an argument separating natural right from political equality; the Constitution does not require, in his view, that blacks be made equal to whites. It is only the passage of the Fourteenth Amendment that imposes that particular requirement. The commitments of the Founders, for Jaffa, require only the recognition of the natural rights of equality and liberty, without requiring that they be actualized as political or civil rights.

Burt takes a different stance, arguing first that the substantive commitments of the American Constitutional system are present in the structure of fairness set up by the Constitution itself, and that one cannot limit one's understanding of the commitments of the Framers to natural rather than political rights, because the Framers set up a structure of government that has implicit within it a need for the *political* value of equality. Each generation's conception of equality may change, but the concept remains the same. Where Jaffa sets a limit on the extent to which the Framers' commitment to equality must

be realized, Burt argues that there is no inherent limit to this commitment; rather, each generation has an obligation to recognize it the best way it can in its own time.

Burt notes throughout the work that “persuasion, which is the foundation of truly political life, is possible only if interlocutors can see a change of convictions as possibly expressing a deeper stratum of their identity than maintaining those convictions would express.”<sup>74</sup> Differently stated, one must be willing to chance one’s conceptions in the event that a clearer or better understanding of a particular concept is made clear at a particular moment in history. The problem, and tragedy, of the liberal order for Burt is that conceptions can change in the wrong direction; witness the transformation of Lincoln’s “ideal slaveholder” into a Calhoun or a Fitzhugh. Is there anything, then, within liberalism to minimize the potential for this kind of transformation? For Burt, it is the maintenance of a structure of fair dealing. In some ways Burt sees liberalism as a kind of circular process, one that must be rooted in a foundation of equality to have fair negotiation, but then where a habit of fair negotiation reinforces this fundamental feeling of equality. Moral conflict is thus negotiable within a liberal system, but only to a point: liberalism will fail to successfully deal with moral conflict when one side denies the other’s right to equal consideration in the political sphere.

Jaffa, however, would say that the very circularity of this understanding of liberalism makes it vulnerable to attack; rather, he argues, the polity must recognize certain natural rights and moral principles to which it can harken back regardless of any procedural or structural developments in constitutional thinking. A pragmatic approach to

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<sup>74</sup> Burt 264

the conflict between them might suggest that perhaps taking the two understandings together might yield desirable outcomes: the Declaration can remain a kind of moral foundation or baseline, while the Constitution can bind the polity to structures of fairness and equality that require going beyond the natural rights espoused by the Declaration to achieve the political rights that are essential for the successful negotiation of conflict within a liberal democracy.

The Declaration so understood becomes necessary but not sufficient, for ultimately it seems that it is only by taking the Declaration and Constitution together that the American political regime can best realize its substantive commitments. This position, I believe, can be associated with Publius's argument in *Federalist* 10: the principle of equality that underlies a government based on consent is a necessary prerequisite for a large republic in which one seeks to multiply and legitimate a variety of different interests while preventing any of those interests from devolving into faction, be it a majority or a minority.

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