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Reconciling race in the Declaration and the Constitution

Last month, two stories appeared in the news on the same day. The front page of The New York Times on March 4 featured a Justice Department report accusing the Ferguson, Mo., police of a long-standing policy of discrimination through disproportionately ticketing and arresting black drivers.

The Arts section that same day featured an interview with John Ridley, the black creator of a new television series, "American Crime." Ridley noted that this police show would be different because of its tight focus on race and American criminal law. Ridley described the first shows as dealing with bigotry, stereotypes and racial profiling.

The relationship between race and the American criminal legal system is not a new story. But today, I want to step back from the trees to provide a view of a very tangled forest. New books about two 19th century American presidents provide a sobering panorama of how issues of race and slavery have divided America from the very beginning.

One of the oldest American dilemmas is how to reconcile the language of the Declaration of Independence with the Constitution. The Declaration in 1776 declared unequivocally that "all men are created equal." Yet slavery is interwoven into the Constitution.

The Constitution protected the slave trade for 77 years; it approved an obligation to return fugitive slaves; and it used the infamous "three-fifths rule" to allocate representation in apportioning seats in the House of Representatives.

Each document had its detractors. On the Fourth of July in 1854, the abolitionist William Lloyd Garrison publicly burned a copy of the Constitution, stating that its provisions countenancing slavery turned it into a "Covenant with Death, an Agreement with Hell." Yet six years earlier on the floor of the U.S. Senate, John C. Calhoun insisted that the Declaration's clause that "all men are created equal" was "the most false and dangerous of all political errors."

John Quincy Adams began his career as a political appointee of President George Washington, and he ended it by serving with Abraham Lincoln in the House. He, too, was troubled by what he called the "dishonorable compromise" the Constitution made with slavery.

In an 1820 diary entry, he referred to the "bargain" the Constitution struck as being "morally and politically vicious." Yet Adams did not publicly reveal his qualms in the 1820s, when he both won and lost presidential elections.

The change in Adams once he left the White House in 1829 is discussed in Charles N. Edel's new book, "Nation Builder: John Quincy Adams and the Grand Strategy of the Republic." With the presidency behind him, Adams was less willing to hide his antipathy to slavery.

In the choice between a pro-slavery Constitution and the freedom expressed in the Declaration, Adams told an audience in 1839, "The ark of your covenant is the Declaration of Independence."

According to Edel, Adams believed that the Constitution must be interpreted as "operating within the Declaration's philosophical and legal framework." The Declaration trumped the Constitution. Thus, Adams believed that America must eventually abolish slavery.

In 1841, he argued the *Amistad* case in the U.S. Supreme Court, contending that rebellious African slaves who commandeered a Spanish ship and sailed into American waters had to be declared free. He both began and ended his argument by relying on the Declaration. The court granted the Africans their freedom.

How Abraham Lincoln approached the contradiction between the values of the Declaration and the Constitution is the subject of Richard Brookhiser's new book, "Founders' Son."

Lincoln walked a middle ground, accepting the Constitution as law that must be obeyed but accepting the principles of the Declaration to argue that slavery must be abolished. In Brookhiser's view, Lincoln saw the Constitution merely as the legal means to reach the ends established by the Declaration.

What did the Declaration mean to Lincoln? In an 1860 speech at Independence Hall, Lincoln said, "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence."

Brookhiser shows how Lincoln developed this theme in the Gettysburg Address. He notes that Lincoln speaks of two births.

The first he specifically dates as 1776 when the Declaration was adopted, establishing that "all men are created equal." Yet at the end of the address, he speaks of the necessity of "a new birth of freedom."

This second birth is necessary because the Founders' values were not fulfilled through a Constitution that accepted slavery. The war necessitated a rebirth in which the cancer of slavery would be removed.

Lincoln elaborated on this in his second inaugural speech in 1865, which Brookhiser contends is Lincoln's greatest.

The Gettysburg Address dates America as beginning with the Declaration in 1776; it does not use the words "slave" or "slavery." But the second inaugural speech is more far-reaching.

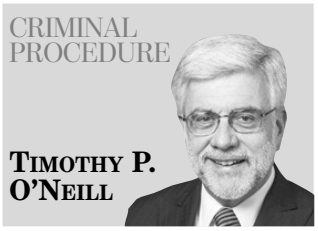
It frankly notes that at the start of the war, "One-eighth of the whole population were colored slaves." It also refers to American slavery as constituting 250 years of "unrequited toil." Lincoln thus takes us back to Jamestown, long before the American Revolution. Lincoln uses this quarter-millennium of slavery's evils to suggest that the horror of the Civil War may be God's punishment on the entire country for its sin.

How much suffering would be required? In a little over four weeks, Lincoln would be dead.

It is unfortunate that Lincoln did not live to see the ratification of the 13th Amendment, for this was the "new birth of freedom" he exhorted at Gettysburg. And for once the Constitution did not use euphemisms to describe "the peculiar institution."

The original Constitution politely referred to people "bound to service for a term of years" or people "held to service or labor in one state." Refreshingly, the 13th Amendment directly bars "slavery."

The only time the word "slavery" is used in the Constitution is to forbid it. For Adams and Lincoln, this would have been the long-sought victory of the values of the Declaration of Independence.



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