

**SIR WILLIAM BLACKSTONE AND THE JURISPRUDENCE OF ABRAHAM LINCOLN**

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Sir William Blackstone's Commentaries on the Laws of England (1765-69) is the most important legal treatise ever written in the English language. It was the dominant lawbook in England and America in the century after its publication and played a unique role in the development of the fledgling American legal system.<sup>1</sup>

As Blackstone's Commentaries were the dominant lawbook in England and America<sup>2</sup> during the 19th century, so also were they dominant in the mind of Abraham Lincoln. Much of the depth and moral tone to Lincoln's legal philosophy may strongly be attributed to the influence of these commentaries. As we will later note, the study of Blackstone engaged Lincoln's intellect in a manner that Lincoln finds incomparable in his legal career. In short, the thinking of Blackstone was highly instrumental in shaping the personal and public jurisprudence of Abraham Lincoln. The legal epistemology of Blackstone had profound influence on the moral, political, and legal decisions of Lincoln's life.

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<sup>1</sup> Stanley N. Katz, "Introduction," in William Blackstone, Commentaries on the Laws of England, 4 vols. (Chicago: University of Chicago Press, 1979), 1:iii.

<sup>2</sup> Melville mentions the name of Blackstone in Billy Budd while discussing the concept of human nature vs. knowledge of the world. The sentence states: "Coke and *Blackstone* hardly shed so much light into obscure spiritual places as the Hebrew prophets. And who were they? Mostly recluses." Perhaps Melville is saying that Blackstone applies to the scholarly or theoretical aspects of law and Christianity rather than the personal or psychological facets. [Italics my own] [Herman Melville, "Billy Budd," in Billy Budd and Other Stories (New York: Penguin Books, 1986), p. 325.]

## THE DISCOVERY OF BLACKSTONE:

Lincoln's chance discovery of Blackstone's commentaries is both comical and ironic.<sup>3</sup> In 1831 (age 22), while working as a clerk in the grocery store of Denton Offutt in New Salem, Illinois, Lincoln purchased an obscure and worthless barrel which contained his Blackstone treasure. Lincoln writes the following in a letter to A.J. Conant:

One day a man who was migrating to the West drove up in front of my store with a wagon which contained his family and household plunder. He asked me if I would buy an old barrel for which he had no room in his wagon, and which contained nothing of special value. I did not want it, but to oblige him I bought it, and paid him half dollar for it. Without further examination I put it away in the store and forgot all about it. Some time after, in overhauling things, I came upon the barrel and emptying it on the floor to see what it contained, I found at the bottom of the rubbish a complete edition of Blackstone's Commentaries.

I began to read those famous works, and I had plenty of time; for during the long summer days, when the farmers were busy with their crops, my customers were few and far between. The more I read the more intensely interested I became. Never in my whole life was my mind so thoroughly absorbed. I read until I devoured them.<sup>4</sup>

The above account shows the engrossing impact these commentaries had on Lincoln's young mind. In all probability, Lincoln had never before read law like Blackstone. With his childhood education and reading centered around the Bible and other classics, the discovery of Blackstone's integration of law and theology captured Lincoln's attention. This discovery and subsequent reading ignited a spark of legal interest in Lincoln's life.<sup>5</sup>

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<sup>3</sup> Some have stated that Lincoln purchased Blackstone's Commentaries from an auction in Salem, yet this does not appear in Lincoln's writings.

<sup>4</sup> Abraham Lincoln, Lincoln Talks, ed. Emanuel Hertz (New York: Blue Ribbon Books, 1941), pp. 15,16.

<sup>5</sup> As a young man, Henry Adams was also exposed to Blackstone. In 1868, he writes: "His [Adam's] father and mother would have been glad to see him stay with them and begin reading *Blackstone* again, . . ." [Italics my own] See Henry Adams, The Education of Henry Adams (Boston, Mass.: Houghton Mifflin Co., 1961), p. 242.

Twenty-seven years later on December 2, 1858, Blackstone's influence on Lincoln is unquestionable.<sup>6</sup> The following is a letter by Lincoln to James T. Thornton, Esq. giving advice on the essential texts needed for the proper study of law. Lincoln writes:

Yours of the 29th. written in behalf of Mr. John H. Widner, is received. I am absent altogether too much to be a suitable instructor for a law student. When a man has reached the age that Mr. Widner has, and has already been doing for himself, my judgement is, that he reads the books for himself without an instructor. That is precisely the way I came to the law. Let Mr. Widner read **Blackstone's Commentaries**, Chitty's Pleadings--Greenleaf's Evidence, Story's Equity, and Story's Equity Pleadings, get a license, and go to the practice, and still keep reading. That is my judgement of the cheapest, quickest, and best way for Mr. Widner to make a lawyer of himself. [Boldface my own]<sup>7</sup>

The above evidence is significant. First, it verifies that Lincoln's initial exposure to Blackstone as a youth was not forgotten. Twenty-seven years later, Lincoln thinks so highly of Blackstone's work that he recommends these commentaries **first** among four other prominent legal books of his time. Second, Blackstone is included in what we may call Lincoln's law curriculum. If one is to study law as Lincoln did, the **best** way is Blackstone's way. Lincoln valued Blackstone as a standard text for legal study.

Third, the preceding letter also implies the Judeo-Christian jurisprudence of Lincoln. Not only is Blackstone's work written from a Judeo-Christian perspective,<sup>8</sup> as we will later

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<sup>6</sup> At the age of fifteen, Blackstone was admitted to Pembroke College, Oxford. He was an excellent student who was known for his acumen in classics and mathematics. His legal training started at the Middle Temple in 1741. In 1743, he was elected a fellow of All Souls College. It was during these years that he started his popular lectures on Law, which supplied the basis of his commentaries. In 1758, he was granted the first ever chair of English Law at Oxford, the Vinerian chair. He left his teaching position in 1766 and practiced law in London. He also served as a member of Parliament from 1761-1770. He was known for his legal scholarship much more than his average skill in the courtroom. He died at the age of 57 in 1780.

<sup>7</sup> Abraham Lincoln, Abraham Lincoln: His Speeches and Writings, ed. Roy P. Basler (Cleveland: The World Publishing Co., 1946), p. 485.

<sup>8</sup> A contemporary equivalent to Blackstone's Judeo-Christian approach to law would rest in the thinking of Harvard law professor Harold J. Berman. In his compelling 657 page work, Law and Revolution, Berman writes: "Law is becoming more fragmented, more subjective, geared more to expediency and less to morality. . . . Thus the historical soil of the Western legal tradition is being washed away in the 20th century, and the tradition itself is threatened with collapse." See Harold J. Berman, Law and Revolution, (Cambridge, Mass.: Harvard University Press, 1983).

discuss, but the third text mentioned, Greenleaf's Evidence,<sup>9</sup> also is known for a similar jurisprudential approach.

## BLACKSTONE'S WORK: AN OVERVIEW AND SAMPLE

Blackstone's commentaries cover four volumes of roughly one thousand pages. Each volume spans about five hundred pages. Book one covers the Rights of Persons; book two, covers the Rights of Things; book three, the Private Wrongs, and book four, Public Wrongs. Blackstone thus spans the four basic categories of law: personal, property, criminal, and civil.

Although this work includes a vast number of fascinating topics and concepts, our brief sample of Blackstone will concentrate on one area relevant to Lincoln's interest: the nature of law.

Concerning the nature of law, Blackstone begins his commentaries with a detailed analysis of the epistemological sources of law. To Blackstone, law was not the study of mere human conventions which may change according to the random preferences of men, nations, or epochs. Law goes far deeper, as Blackstone asserts:

For he [the creator] has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity, he [God] has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly furnished; but has graciously reduced the rule of obedience to this one paternal precept, 'that man should pursue his own happiness.' This is the foundation of what we call ethics, or natural law. . . . This law of nature, being co-equal with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, or contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.<sup>10</sup>

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<sup>9</sup> Simon Greenleaf was the Royal Professor of Law at Harvard University. He was the greatest American authority on Common Law evidence during the 19th century. Apart from his famous work, Treatise on the Law of Evidence, he is also known for work applying the principles of legal reasoning to the veracity of the New Testament documents. For a reprint and detailed analysis of this essay, see John Warwick Montgomery, The Law Above the Law, (Minneapolis: Bethany House Publishers, 1975), pp. 91-140.

<sup>10</sup> William Blackstone, Commentaries on the Laws of England, vol 1 (Chicago: University of Chicago Press, 1979), pp. 40,41.

Blackstone further specifies his thoughts, as he states:

. . . But every man now finds the contrary to his own experience; that his reason is corrupt, and his understanding full of ignorance and error. . . . This has given manifold occasion for the benign interposition of divine providence; which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in divers manners to discover and enforce it's laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found in the holy scriptures. . . . Yet undoubtedly the revealed law is (humanly speaking) of infinitely more authority than what we generally call the natural law. . . . Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these.<sup>11</sup>

In the preceding quotation, we observe at least three applicable points concerning Lincoln's life and thought. First, the Lockean<sup>12</sup> themes on the 'pursuit of happiness' are indisputable. Blackstone is drinking from the same fount which shaped the Lockean sources of American government. In Blackstone, Lincoln was reading a legal treatise that endorsed elements of the "first principles" which shaped issues surrounding his life. Blackstone was a jurisprudential commentator regarding the thoughts of men that greatly influenced Lincoln.

Second, Blackstone is saying that law is absolute, not relative. General revelation (nature), and special revelation (the Bible), provide a divine or transcendent reference point for law. Law is seen as having a divine rather than human origin. Valid jurisprudence cannot stem from human reason alone, but only in conjunction with the unchanging principles of biblical revelation. Perhaps when Lincoln refers to the "truth of the scriptures," he may be thinking in terms of legal principal rather than "religious" obedience. Lincoln may not believe in the truth of divine inspiration, yet he may be endorsing the truth of biblical principles which apply to jurisprudence. Furthermore, Lincoln, in a letter dated 1859 pertaining to Thomas Jefferson, writes that the Declaration contains "abstract

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11 Ibid., pp. 41,42.

12 John Warwick Montgomery makes an essential observation with regard to the Christianity of Locke and the founding fathers: "Fortunately, our Founding Fathers (with the prominent exception of Jefferson) did not consciously attempt to cut themselves off from their revelational roots (see E. S. Corwin, The "Higher Law" Background of American Constitutional Law [1955]) In developing their views of "inalienable rights" and social contract they followed not the deistic sentimentalist Rousseau but John Locke--whose Christian beliefs were so firm that he wrote an apologetic on The Reasonableness of Christianity (cf. C. Becker, The Declaration of Independence: A Study in the History of Ideas (rev. ed. 1942)). Jefferson's antipathy to Blackstone may well relate not only to the latter's political but also to his religious conservatism; see J. S. Waterman, Thomas Jefferson and Blackstone's Commentaries, in Essays in the History of Early American Law 451, 472-73 (D.H. Flaherty ed. 1969)" [John Warwick Montgomery, Law Above the Law, p. 147].

truth, applicable to all men at all times."<sup>13</sup> Like Blackstone, Lincoln acknowledged the existence of axioms or principles which could not be applied in a relative or subjective context. Both thinkers use the phrase, "all times."

Third, we see Blackstone's assertion of man's depravity. Man, left with his fallible reason is incapable of finding a transcendent basis for law. There must be a law above the law to govern man's decisions and guide a nature which is capable of error and self-interest. It was just this lack of confidence in human-nature that supplied the justification for checks and balances in government. Lincoln was fully aware of this human condition. His experiences from the civil war were a constant reminder of such depravity.

### BLACKSTONE AND LINCOLN: THE "LOGIC" OF SLAVERY

The issue of slavery provides striking similarities between Lincoln and Blackstone. The methodological reasoning used by both thinkers appears to find its source from the same family of technique. It is not that their reasons or ideas are shared, rather their style of logic. Lincoln uses different arguments against slavery than does Blackstone yet shares an **approach** similar to that of Blackstone.

In Blackstone's brief essay, "On Slavery," he utilizes three arguments to invalidate the claimed justifications for slavery. Prior to these arguments, Blackstone states that slavery "is repugnant to reason, and the principles of natural law."<sup>14</sup> He then follows with a brief but cogent analysis of three fallacious origins of slavery.

The first origin concerning slavery arises from **military captivity**. The conqueror, because he spared the captor's life, has a right to act in any manner. The military victor thus has absolute authority over his captor or slave. Because slavery will serve the victor's needs, he can arbitrarily impose this state upon the military loser. Slavery is not a choice. Instead, it is a forced consequence of military inferiority.

Blackstone argues that the above justification of slavery is false. He bases his reasons upon a self-defense argument. Blackstone writes:

War is itself justifiable only on principles of self preservation; and therefore it gives no other right over prisoners but merely to disable them from doing harm to us, by confining their persons; much less can it give a right to kill, torture, abuse, plunder, or even to enslave, an enemy, when the war is over. Since

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13 Abraham Lincoln, "The Man Before the Dollar," ed., Richard N. Current, The Political Thought of Abraham Lincoln (New York: Macmillan Publishing Co., 1985), p. 124.

14 William Blackstone, "On Slavery," ed. Gareth Jones, The Sovereignty of the Law (Toronto: University of Toronto Press, 1973), p. 115.

therefore the right of making slaves by captivity, depends on a supposed right of slaughter, that foundation failing, the consequence drawn from it must fail likewise.<sup>15</sup>

A right to kill is only justified in self defense, yet as Blackstone notes, a military conquest renders the captive imprisoned rather than dead. The victor does not kill the looser; he confines him. Military conquest is therefore an invalid argument for slavery's justification.

Blackstone's second argument against slavery shifts from conquest to **economics**. Because slavery starts from the sale of a person, it implies an inherent value or price that is equal to the worth of a human being, including the service such a person can render its buyer. However, such a transaction may work for a contract of labor, but not concerning human ownership. Blackstone reasons that a sale constitutes a price in exchange for the desired item. The price must be an equivalent to the value of the sold item. But, this leads to a moral and human question: can life and freedom carry a price? No, according to Blackstone. Since a human cannot carry a price, he cannot be a slave. Blackstone concludes that,

the buyer gives nothing, and the seller receives nothing: of what validity then can a sale be, which destroys the very principles upon which all sales are founded?<sup>16</sup>

Blackstone's third and final argument against slavery examines **birthright**. The person born of a slave is a slave. Not choice but physical consanguinity locks a child into the role of slavery. Blackstone quickly disarms this argument by returning to the preceding two fallacies of slavery. Due to the invalid nature of these premises, the inference pertaining to birthright must also be false. Since conquest and economic purchase have logically failed as a basis for slavery, so to does the argument from birthright. The logical and moral right is for freedom not slavery.

As for Lincoln, he wrote a short series of syllogisms concerning slavery entitled "The Illogic of Slavery." This note, dated around July of 1854, covers four brief arguments that attack, as did Blackstone, the fallacies of slavery.

Lincoln's first argument touches on what one may call the converse argument for slavery. It goes as follows:

If A. can prove, however conclusively, that he may, of right, enslave B.--why may not B. snatch the same argument, and prove equally, that he may enslave A.--<sup>17</sup>

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15 Ibid.

16 Ibid., p. 116.

17 Current, op. cit., p. 326.



Lincoln is saying that the justification of enslavement is transferable to any end that meets the needs of the "master." The argument to justify slavery is relative. It is a "situation" argument, and depends always on the reasons which meet the needs of the proposed master. A reason to fit individual needs can always be invented to justify slavery. In short, for the same reason the slave becomes the master, the master could become the slave.

Lincoln's second argument speaks of **skin color**. If skin color is the issue, then black verses white color becomes meaningless. Lincoln notes that one man of the same race could enslave another because he had a darker shade of skin. In other words, if one white man spent more time in the sun a particular day than another white man, a sunburn would be sufficient reason for enslavement! One would simply "be slave to the first man you meet, with a fairer skin than your own."<sup>18</sup> Hence, the issue of slavery is more a question of pigment than of inherent inferiority. Morality, not color, was important to Lincoln.

Lincoln's third argument concerns **intellect**. Since the skin color argument is invalid, one's intelligence level might determine a justification for slavery. Lincoln notes that the first man you cross with a higher IQ than yours could enslave you. Taken to its extreme, all Harvard graduates could enslave any or all southerners less educated than they. Like skin color, varying degrees of intelligence make it impossible to draw definitive distinctions for a justification of slavery.

In his last argument, Lincoln deals with **interest**. If one can determine that it is in his best interest to enslave another, than slavery is acceptable. Again the converse could be true because "interest" is dependant on the relative interest or needs of the one defining the term.

Lincoln thus weaves a common strand in all of his arguments against slavery. Since the justifications against slavery are at best relative and dictated by interest, there must be a moral, or as in the case of Blackstone's writings, a natural law standard from which to view slavery. Lincoln's weapons against slavery are those of logic, not of prejudice. Both Lincoln and Blackstone expose the ever existent fallacy of equivocation in arguments advocating slavery. Both men meticulously define their terms<sup>19</sup> with little room for

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18 Ibid.

19 John Patrick Diggins notes the significance of Lincoln's emphasis on precise language and the redefinition of terms. He writes that "by the time of the American Civil War, the use of political language had become so inconsistent from one section of the country to another that Lincoln had to redefine the meaning of such terms as 'liberty,' 'tyranny,' and 'slavery' by recovering their *eighteenth-century origins*." These origins tie directly to the thinking of Blackstone and the

"interest." Slavery is valid in a relative context depending on needs, but unsound in a moral context, especially when the terms of each premise are clearly examined and defined.

In both thinkers one notes different arguments, but a similar **style** of analysis. This is not to suggest that Lincoln "borrowed" many of his moral and legal arguments from Blackstone, rather it indicates that Lincoln had early exposure to a form of legal reasoning that he later applied to political issues. We can infer that Lincoln's early exposure to Blackstone's thinking may have shaped his logical and moral approach to the pressing issues that were to face his presidency. Perhaps Blackstone's style of reasoning planted seeds in the mind of Lincoln that would later grow as he was faced with the actual, and not just the logical problems of slavery.

### CONCLUSION AND APPLICATION:

The preceding glance into the impact of Blackstone on Lincoln shows us first, that Lincoln had direct contact with the writing and legal philosophy of Blackstone. Beyond a reasonable doubt, it is evident that Blackstone left a lifelong impression on the legal and moral mind of Lincoln.

Blackstone's thinking was important, because early in Lincoln's life, he illustrated the value of a Judeo-Christian integration of law and theology. The point is not whether Lincoln was an atheist, agnostic, or believer.<sup>20</sup> What is clear is that the **moral principles** rather than just the "practice" of Christianity found their way into the political life of Lincoln. Even if Lincoln did not believe the truth of Christianity, he certainly applied the truths of Christianity in law, government, and morality.

Of all the facets that influenced Lincoln's life, there is no question that his love of law was significant for both Lincoln and America. Lincoln often found his life and presidency at "the bottom of the barrel." For the sake of law, he also found Blackstone.

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British legal jurisprudence of his time. [Italics my own] See John P. Diggins, The Lost Soul of American Politics, (Chicago: University of Chicago Press, 1986), p. 113.

<sup>20</sup> See Dwight G. Anderson, "Herndon and Lincoln's Religion," in Abraham Lincoln: The Quest for Immortality (New York: Alfred A. Knopf, Inc., 1982), pp. 62-68.