

Celebrating Lincoln's Birthday: Law and Liberation

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Happy birthday, Mr. President! This coming Monday, February 12, Abraham Lincoln would turn 209. I wonder whether the "Great Emancipator" would've considered this week's Torah reading to be a fitting tribute.

Our portion opens by presuming the existence of slavery, unchallenged. The law articulated in these verses does, however, set a limit on the period of servitude – if only for male Israelite slaves. A restriction on slavery might well have been progressive in the Ancient Near East. If so, we may ask why the Torah doesn't go all the way to abolition.

Maimonides answers: "It is impossible to go suddenly from one extreme to the other; such is [human] nature that [we] cannot suddenly give up everything to which [we have] been accustomed."ⁱ Shimon Bakon, Editor Emeritus of *Jewish Bible Quarterly*, goes on to conclude, "Thus, the ultimate goal of the biblical version of slavery was indeed to abolish it."ⁱⁱ

Bakon's conclusion is questionable. During the tumultuous period between President Lincoln's election and his inauguration, New York's Rabbi Solomon Raphall defended slavery on the basis of biblical precedent. Still, Raphall "pointed out that even pagan slaves in ancient Israel had 'rights,' as 'persons,' as American slaves did not."ⁱⁱⁱ Rabbi Raphall was vigorously opposed by Rabbi David Einhorn, the spiritual and intellectual father of Classical Reform Judaism. Hear now Einhorn's words, castigating Raphall: A member of a people whom "God everyday requires to praise its own liberation from Egypt and that today in most states of the Old World bends under the yoke of servitude and cries to God, has undertaken to defend slavery as a completely blameless institution sanctioned by God."^{iv} The historian Robert Southard explains: "Any Jew should know better, Einhorn asserted, and Raphall was demeaning Judaism and distorting God's word."^v

So, who was right? Rabbi Raphall had a point: Torah makes laws that enable the perpetuation of slavery in ancient Israel. But Rabbi Einhorn also stood on firm scriptural ground: an overriding principle of Torah is our obligation to praise the Holy One for our liberation and to free all who remain enslaved. The Rev. Dr. Martin Luther King, Jr. proclaimed, "The arc of the moral universe is long,

but it bends toward justice.”^{vi} We may paraphrase: The arc of Torah’s treatment of slavery is long, but it bends toward emancipation.” Maimonides would argue no less. Still, the path to universal Jewish rejection of slavery was neither easy nor direct.

President Lincoln also stumbled and took detours on the road to emancipation. America followed suit, and continues an uneven journey to liberation even today.

The historian Eugene Berwanger wrote that American historians writing a century after Lincoln’s presidency claimed that “the president took his time abolishing slavery ... Describing Lincoln’s moves to destroy the peculiar institution, one historian has characterized them as ‘tortoise-like.’”^{vii}

“This ... compromising picture of Lincoln the president,” Berwanger writes, “show[s] him sharply changed from Lincoln the aspiring politician of the 1850s. ‘I confess myself,’ he said in 1858, ‘as belonging to that class in the country who contemplate slavery as a moral, social, and political evil ... and look hopefully to the time when as a wrong it may come to an end.’”^{viii}

Lincoln’s problem was the Constitution, which authorizes slavery no less than the written Torah. Eventually, the President found an opening in his war powers. The Emancipation Proclamation of 1863, Berwanger acknowledges, “did not free any slaves on the day it was promulgated; slavery was left undisturbed in the border states and in those portions of the Confederacy in Union hands; only the slaves in areas of rebellion were declared to be free.”^{ix} Berwanger, though, explains Lincoln’s thinking: “The semi-abolition approach stemmed not from Lincoln’s reluctance to terminate slavery, as some historians imply, but rather from his own doubts about the federal government’s lack of authority to touch slavery in the loyal areas. The Emancipation Proclamation itself he regarded as a legitimate weapon of war – an act of confiscation ‘warranted by the Constitution upon military necessity,’ and an act that could apply only to areas still engaging in insurrection.”^x

Lincoln’s moves to end slavery, like those of Torah, fall far short of the acts one might expect of a “Great Emancipator.” Nonetheless, when the President had steered the 13th Amendment through Congress, he proclaimed: “This amendment is a King’s cure for all evils. It winds the whole thing up.”^{xi} Slavery was indeed abolished when that constitutional amendment was ratified in late 1865, months

after Lincoln’s assassination. Tragically, though, he had not “wound the whole thing up.”

No law, not even a constitutional amendment, can make an instant change in the hearts, minds, and behavior of human beings. When the 13th Amendment proved insufficient to bring civil and voting rights to former slaves, Congress and the states responded with two additional amendments. When racism persistently thwarted the aim of those noble constitutional provisions, Congress and President Lyndon Johnson responded with a raft of Civil Rights laws in the 1960s. Yet still, racism and its pernicious impact persist.

Maimonides was right. Human habits are hard to change. Torah makes an attempt, placing limits on slavery without abolishing it.

Blessedly, though, Dr. King was also right. We have cause for optimism and hope. The arc of history does bend toward justice.

Let us acknowledge: The 13th, 14th, and 15th Amendments, the Civil Rights Act, the Voting Rights Act, the Fair Housing Act, all made a positive difference. Slavery did end in 1860s America, and Jim Crow died in the 1960s. These accomplishments are no less real because they are incomplete.

Let us proclaim: Law can yet enhance American freedom. Congress must adopt, and the President must sign, the Dream Act, bringing liberty to nearly two million young people who know no home but America, their lack of legal status notwithstanding. Congress must adopt, and the President must sign, the Equality Act, extending protections of the Civil Rights Act of 1964 on the basis of sexual orientation and gender identity. Arkansas and states across this country must enact criminal justice reform, assuring that we do not subject the next generation to mass incarceration, tying up our tax money to pay for prisons rather than health and education. And our state and others must tear down all the laws that have cast shadows on the voting rights in the last five years – Voter I.D., foreshortened early voting periods, closed polling places, and increased gerrymandering.

Then, may our leaders, and may each of us, experience the accomplishment that President Lincoln described when he signed the Emancipation Proclamation: “I never in my life felt more certain that I was doing right than I do in signing this paper... If my name ever goes into history it will be for this act, and my whole soul is in it.”^{xii}

Through an act of law, President Lincoln turned his prayer into history. Let us and America's 21th Century leaders be privileged to do the same.

Amen.

ⁱ Maimonides, *Guide to the Perplexed*, The Divine Commandments, chapter 18, cited in Shimon Bakon, "Why Did the Torah Allow Servitude?" *Jewish Bible Quarterly*, April-June, 2014, accessed at jbnqnew.jewishbible.org/assets/Uploads/422/jbq_422_3_bakonbondage.pdf, February 9, 2018.

ⁱⁱ Shimon Bakon, "Why Did the Torah Allow Servitude?" *Jewish Bible Quarterly*, April-June, 2014, accessed at jbnqnew.jewishbible.org/assets/Uploads/422/jbq_422_3_bakonbondage.pdf, February 9, 2018.

ⁱⁱⁱ Robert F. Southard, "The Debate on Slavery: David Einhorn and the Jewish Political Turn," *American Jewish Archives*, accessed at americanjewisharchives.org/publications/journal/PDF/2012_64_01_00_southard.pdf, accessed February 9, 2018. The quoted passage is on p. 142.

^{iv} *Ibid.*, p. 148.

^v *Ibid.*

^{vi} My research indicates that Dr. King uttered these famous words on several occasions – for example, during the march from Selma, 1965; a 1958 article in *The Gospel Messenger*, and his 1964 Baccalaureate sermon at Wesleyan University in Connecticut. On several occasions, Dr. King placed these words in quotes, suggesting an earlier source. According the quoteinvestigator.com, an original source may be *Ten Sermons of Religion*, a collection published by Rev. Theodore Parker in 1853.

^{vii} Eugene H. Berwanger, "Lincoln's Constitutional Dilemma: Emancipation and Black Suffrage," *Journal of the Abraham Lincoln Association*, Volume 5, Issue 1, 1983, pp. 25-38.

^{viii} *Ibid.*

^{ix} *Ibid.*

^x *Ibid.*

^{xi} *Ibid.*

^{xii} John Hope Franklin, "The Emancipation Proclamation: An Act of Justice," *Prologue Magazine*, Summer, 1993, Vol. 25, No. 2.