

REFLECTIONS ON  
SLAVERY AND THE  
CONSTITUTION

GEORGE  
ANASTAPLO

Reflections  
on  
Slavery and the Constitution

George Anastaplo



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To the Memory

of

Richard M. Weaver  
(1910–1963)

a North Carolina Patriot

who graced  
our Thanksgiving Day Dinners  
the Last Years of His Life



## Preface

Men! whose boast it is that ye  
Come of fathers brave and free,  
If there breathe on earth a slave,  
Are ye truly free and brave?

—James Russell Lowell,  
*Stanzas on Freedom*

This preface echoes the prefaces prepared for the three predecessor volumes (published by the University Press of Kentucky) in my projected ten-part series of “constitutional sonnets”: I. *Reflections on Constitutional Law* (2006), II. *Reflections on Freedom of Speech and the First Amendment* (2007), and III. *Reflections on Life, Death, and the Constitution* (2009). It is hoped that the materials glanced at in this fourth volume (published by Lexington Books) can illuminate, for my fellow citizens, both how the history of race relations in this country should be approached and how seemingly hopeless social and political challenges can be usefully thought about.

The chapters in this volume (as in the other volumes in this series) draw upon my half-century of seminars in the Basic Program of Liberal Education for Adults at the University of Chicago and upon my decades of Constitutional Law and Jurisprudence courses in the School of Law at Loyola University of Chicago. The first five of these *Reflections* form a quintet. (The fifth volume, *Reflections on Religion, the Divine, and the Constitution*, forthcoming) is virtually complete. The second set of five volumes in this series, D.V.,

has been assigned these titles (forthcoming): *Reflections on War, Peace, and the Constitution*; *Reflections on Race Relations and the Constitution*; *Reflections on Crime, Character, and the Constitution*; *Reflections on Property, Taxes, and the Constitution*; and *Reflections on Habeas Corpus, the Bill of Rights, and the Constitution*.)

This fourth volume (in the first quintet) offers discussions that bear both upon how slavery has come to be regarded worldwide and upon the political struggles that led to the American Civil War. Thereafter, the outbreak of the war, its prosecution, and its aftermath are examined. It is virtually inevitable, when a “sonnet” approach is taken, both that not “everything” can be said in any particular chapter and that some things have to be said again and again if any individual “sonnet” is to be adequately grasped (if only provisionally) on its own. Even so, there have been established in the opening volume of this ten-volume series the vocabulary, format, paragraphing, capitalization and mode of presentation intended for the entire ten-volume series. Thus, there has been developed a discipline which should guide both author and reader throughout.

At the foundation of the series of constitutional sonnets offered in this volume is my first *Abraham Lincoln* collection (1999), for which I much prefer its intended title, *Thoughts on Abraham Lincoln: A Discourse on Prudence*. That Rowman & Littlefield volume bears this dedication:

To  
MY CHILDREN'S CHILDREN  
and to their Children  
with the Reminder that their patriotic Forebears  
were among the brave Men  
North and South  
who both counseled against and fought in  
the American Civil War

One cannot reasonably hope to add anything truly original to the voluminous materials long available on slavery, the American Civil War, Abraham Lincoln, and related matters. But perhaps it can be useful to reconsider, however briefly, some of these matters from a somewhat different and hence perhaps fresh angle, particularly if considerations can be brought together which are usually kept separate.

My children and grandchildren (and their fellow citizens of like lineage), who can claim by blood some of the Southern heritage, are provided suggestions about how to begin to think about challenging aspects of their remarkable inheritance. That is, they are encouraged to think about slavery,

an institution which *has* become for most of us generally unthinkable. It is well for all of us, upon encountering these melodies, to recall a suggestion made by Abraham Lincoln in his Second Inaugural Address (quoted from at length in the concluding chapter in this volume)—the challenging suggestion that the North shared considerable responsibility historically for slavery in this country. Anticipating this Lincoln suggestion is the following passage taken from the “Concluding Remarks” appended by Harriet Beecher Stowe to her *Uncle Tom’s Cabin* (1852):

Do you say that the people of the free states have nothing to do with [the horrible American slave-trade], and can do nothing? Would to God this were true! But it is not true. The people of the free states have defended, encouraged, and participated; and are more guilty for it, before God, than the South, in that they have *not* the apology of education or custom.

If the mothers of the free states had all felt as they should, in times past, the sons of the free states would not have been the holders, and, proverbially, the hardest masters of slaves; the sons of the free states would not have connived at the extension of slavery, in our national body; the sons of the free states would not, as they do, trade the souls and bodies of men as an equivalent to money, in their mercantile dealings. There are multitudes of slaves temporarily owned, and sold again, by merchants in northern cities; and shall the whole guilt or obloquy of slavery fall only on the South?

Northern men, northern mothers, northern Christians, have something more to do than denounce their brethren at the South; they have to look to the evil among themselves.

But what can any individual do? Of that, every individual can judge. There is one thing that every individual can do,—they can see to it that *they feel right*. . . .

One prerequisite, I presume to add, to “feel[ing] right” about momentous matters in a sustained and useful way is that of *thinking right*—that is, recognizing the critical issues of one’s day and trying to understand the enduring questions and answers illuminating such issues.

This volume of chapters is offered as a contribution to the hardheaded and yet compassionate investigation required here. Such an investigation can usefully begin with reminders of observations about slavery made by two of our most revered presidents. President Lincoln observed, in an 1864 letter, “If slavery is not wrong, nothing is wrong.” The following year he confessed in a speech, “Whenever I hear anyone arguing for slavery, I feel a strong impulse to see it tried on him personally.” In 1786 George Washington (who ordered the emancipation of his own slaves at his death) announced, in a letter, “I never mean, unless some particular circumstances should compel me to do

it, to possess another slave by purchase, it being among my first wishes to see some plan adopted by which slavery in this country may be abolished by law." Such a plan for eventual abolition, Abraham Lincoln was to argue, was in effect initiated (even before Washington became president) by the enactment in 1787 (by the Articles of Confederation Congress) of the Northwest Ordinance with its remarkable prohibition of slavery in what was then the principal undeveloped Territory of the United States.

Even earlier, Thomas Jefferson (himself a longtime owner of slaves) had proposed, as a grievance (about both slavery and the slave trade) to be included in the Declaration of Independence of 1776, the following complaints about the King (that is, about the British government):

he has waged cruel war against human nature itself, violating it's most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. this piratical warfare, the opprobrium of *infidel* powers, is the warfare of the CHRISTIAN king of Great Britain. determined to keep open a market where MEN should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce: and that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which *he* has deprived them, by murdering the people upon whom *he* also obtruded them; thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.

The only element of this proposed grievance that was included in the Declaration of Independence was the complaint that the King "ha[d] excited domestic Insurrections amongst [them]." And, a decade later, delegates from South Carolina and Georgia in the Constitutional Convention managed to have had suspended until 1808 any power the prospective Congress of the United States would have had to forbid the importation of slaves into the United States.

The intermittent Jefferson anguish with respect to the slavery that the South had somehow to deal with came to be repudiated by Southern leaders who could even learn to celebrate the controversial institution they had inherited. Alexander Hamilton Stephens of Georgia, as vice president of the newly established Confederate States of America, embraced chattel slavery as a Positive Good for everyone fortunate enough to be involved. Thus, he can be described in this way in the *Dictionary of American Biography*:



His most notable expression in this period was the “Corner-stone Speech” at Savannah, Georgia, March 21, 1861. In this he surveyed the conditions of the Confederacy, praised its Constitution [adopted in Montgomery, Alabama, March 11, 1861], and appealed for wise and patriotic support of the cause. As to Negro slavery, he said that the architects of American independence, as exemplified in Thomas Jefferson, had contemplated a theoretical equality of races; but, he continued: “Our new government is founded upon exactly the opposite idea: Its foundations are laid, its corner-stone rests upon the great truth that the Negro is not equal to the White man; that slavery—subordination to the superior race—is his natural and normal condition.” . . . In the same speech he said: “We are now the nucleus of a growing power, which if we are true to ourselves, our destiny, and high mission, will become the controlling power on this continent.”

Thoughtful Southerners, ever since, have had to come to terms with what their secessionist forebears were “really” dedicated to. This challenge may be seen in the concluding (“Lost Cause”) chapter in this *Reflections* volume. It may be seen as well in the following remarks (a half-century ago) by Richard M. Weaver, a University of Chicago English professor from North Carolina (*The Southern Tradition at Bay*, p. 148):

The issue of Southern separatism inevitably raised the question of differences between Southern and Northern people, and it was natural that champions of the lost cause would make the most of comparisons advantageous to them. If two people are so unlike that they can be happy only in separate political courses, the yoking of them together is an act of violence which can be justified only by casuistry or in terms of some mystical belief in a joint mission. Southern spokesmen realized that in the right of self-determination of people they had a powerful argument—*somewhat vitiated, it is true, by the awkward presence of the Negro*—and they were not slow to quote the Declaration of Independence on the necessity of dis severing political bonds [emphasis added].

The Weaver sensibleness is reflected in his recognition that the Southern insistence upon “self-determination” was “somewhat vitiated . . . by the awkward presence of the Negro”—that is, by the plight of millions of people whose self-determination had been rigorously suppressed for generations (however much better off their descendants may seem to be today in this country than are the descendants of those *not* kidnapped into slavery in the African territories from which the slaves had been taken). (Thus, Americans of African descent may be, with respect to their relatives in “the old country,” much as Americans of European or of Asian descent are likely to be with respect to *their* relatives elsewhere.) It is a fair-minded sensibleness

that is reflected as well in the way Mr. Weaver (of *Ideas Have Consequences* fame) responded (in November 1957) to an Illinois bar admission committee's "Cold War" question put to him about whether he had "ever heard any question raised as to [a particularly controversial bar] applicant's adherence to and support of the principles of the Constitution of the United States":

I have heard that this question was raised some years ago in connection with [this applicant's] application for admission to the bar. It has surprised me, however, that this should have happened. I have never seen any sign that [this applicant] harbors ideas of an unpatriotic tendency, and I am thinking of patriotism here in the old-fashioned sense. He has always seemed to me too keen and too independent a thinker ever to allow himself to be committed to a radical program. My own publications have often been attacked for their conservatism, but I must say that [this applicant] has shown a better and a more sympathetic understanding of the point of view expressed in them than the vast majority of students I meet. Everything I know about the applicant leaves me feeling that he is an unusually intelligent, balanced, and helpful American citizen. [See 18 Ill. 2d 182, 207–209 (1959). Compare, for the quite different "reaction" to this controversy by another distinguished scholar, "An Instructive Encounter with Professor Sidney Hook of New York City," [www.anastaplo.wordpress.com](http://www.anastaplo.wordpress.com).]

The distinctiveness of the South continues to be recognized, however much the long-standing racial discrimination in that region has been ameliorated. Thus, for example, it has recently been reported (by the Death Penalty Information Center) that the South still has by far the highest murder rate in this country and that the South accounts for over 80 percent of executions in the United States. To what extent, and in what way, is this (at least in part) a legacy of centuries of dubious race relations? Certainly all this may be, the official abolition of slavery in 1865 could not immediately endow the ex-slaves and their descendants with the attributes of effective citizenship in a republic. This was recognized, a generation after Emancipation, in an 1881 oration by Robert Charles Winthrop (a prominent Massachusetts politician [born in 1809] associated with Daniel Webster) (*Bartlett's Quotations*):

Slavery is but half abolished, emancipation is but half completed, while millions of freemen with votes in their hands are left without education. Justice to them, the welfare of the States in which they live, the safety of the whole Republic, the dignity of the elective franchise, all alike demand the still remaining bonds of ignorance shall be unloosed and broken, and the minds as well as the bodies of the emancipated go free.

The challenge here may be even more formidable now if the most gifted among the country's citizens (of whatever color) can no longer be expected to be as thoughtful as the more competent of their forebears could *at times* be. In any event, there may be seen, in Appendix F of this volume, the demoralizing consequences for the enslaved (even when they are talented and well-educated) of the desperate accommodations that they must make to powerful masters who regard them as “nothings” to be exploited at will.

The tension perhaps intrinsic to the American regime founded in 1776 may be seen at its most intense in the Civil War of 1861–1865. That desperate conflict may also be seen even to have deepened the American soul, perhaps making it more interesting as well as more vulnerable. Indeed, the juxtaposition in this country between the founding era and the Civil War may be usefully linked to the juxtaposition, among the Ancient Greeks (so critical to the Western heritage), between the cosmology-providing Hesiod and the crises-minded Homer (with Abraham Lincoln somehow serving as our Odysseus [about which I hope to say much more later]). It should also be remembered here what Socrates does with Odysseus in the closing pages of Plato's *Republic*.

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## PART ONE



# 1. Slavery in Ancient Greece

## I

Slavery, we are told by the *Encyclopedia Britannica*, is a “condition in which one human being is owned by another.” A slave, we are further told, “was considered in law as property, or chattel, and was deprived of most of the rights ordinarily held by free persons.” Slavery is said to have “existed in various forms throughout almost the whole of recorded history.”

Indeed, it seems, slavery may have been widespread, rather than the exception, in the ancient world. The *Britannica* provides this account of how enslavements came about:

Slaves were obtained in a number of ways. Most often enslavement was involuntary, being achieved by such procedures as capture in war, kidnapping, or slave raiding; punishment for criminal acts; payment for debts; direct sale by one’s parent, guardian, or chieftain; or the transfer of ownership from one master to another. The children of slaves themselves usually, but not invariably, became slaves.

“Freedom from slavery,” it is said, “could usually be gained only by the granting of manumission by the master, although in the nineteenth century there were several proclamations of mass emancipation by the governments of various Western nations.”

“Throughout most of Greek and Roman civilization,” it is further said, “slavery was an accepted way of life, and slaves often assumed managerial

and secretarial posts as well as their usual domestic and agricultural duties.” That is, the more advanced the culture of a community, the more likely that the humanity of the slave would be recognized and made use of. Our concern in this chapter, in providing some background for discussions in this volume on slavery in the United States, is primarily with slavery in Ancient Greece (with additional background provided in the next two chapters, where slavery in ancient Israel and in ancient Rome are glanced at).

## II

A convenient place to begin is with the slavery associated with the Trojan War, which has been usefully summed up in this way in the *Chronology of World Slavery*:

C. 2000 B.C. Probable date of the Trojan War, which was memorialized in Homer’s epic, the *Iliad* (probably composed in the eighth century B.C.), but accounts of it are highly fictionalized with mythological references. In the thirteenth century B.C., there was economic rivalry in the Aegean world between the Achaeans and the residents of Troy, a city in Asia Minor. Homer’s work suggests that Greeks of the archaic period believed that conquest in battle entitled the victors to the spoils of war, including the right to take enemy captives and make slaves of them.

This account, stressing as it does the economic factors in the Trojan War, neglects the erotic element in the conflict. After all, much is made by the poets of the elopement of Helen, someone who is presented (in the *Iliad* and especially in the *Odyssey* of Homer, as well as in several Greek plays) as a woman with a will of her own, not as the mere object of male acquisitiveness.

Critical to the causes leading to the quarrel between Achilles and Agamemnon, around which the *Iliad* turns, is the affection Achilles has for a captive woman who had been awarded to him as a prize of war. Other slavery-connected men and women are treated with respect, including Ajax’s half-brother Teucer, whose mother had been a slave. And, in sequels to the Trojan War, the Greek playwrights report, the Andromache carried off into slavery (after the death of Hector, her Trojan husband) becomes the progenitor of an illustrious royal lineage among the Greeks.

Other slaves in the Greek plays are presented as men and women of character and ability. After all, the Greek audience would know that important cities were conquered from time to time, leading to the enslavement of quite respectable people. Even Heracles, a son of Zeus, could find himself condemned to a series of remarkably onerous labors.

### III

Enslavement of cultivated cities (not just of primitive or barbaric peoples) was known among the Greeks of the fifth and fourth centuries. Thucydides, in his *History of the Peloponnesian War*, tells the story of the subjugation by the Athenians of the entire population of Melos, a people with some admirable traits (along with occasional bad judgment, perhaps). And then there were the thousands of Athenians cruelly enslaved after their city's ill-conceived Sicilian Expedition collapsed.

Plato, in his dialogues, has Socrates suggest, here and there, how slaves should be treated. For one thing, it is urged, Greeks should not enslave Greeks. It might even seem to be suggested at times that barbarians who are enslaved may be benefitted by the experience.

Still, it is recognized that slaves do not have to be treated as well as citizens are. Thus, in Plato's *Euthyphro*, Socrates presents himself as astonished that a zealous young man is prosecuting his own father because he had conducted himself so negligently that he had caused the death of a runaway slave. That the victim had been a recaptured homicidal slave seemed to make the son's apparent impiety even harder to justify.

### IV

Perhaps the most telling Platonic commentary on the institution of slavery may be found in the *Meno*. It is in this dialogue that a slave boy is recruited by Socrates to demonstrate that "learning" is really a kind of "recollection." This is done by having the boy work through, and evidently discover, a variation of what we know as the Pythagorean Theorem.

The boy is taken from the entourage of a wealthy aristocrat who had himself proved woefully incapable of following the arguments offered by Socrates. It does not matter that the boy is a slave. The only question Socrates has about him is, "He is Greek, then, and speaks Greek?"

Socrates is assured by the slave boy's owner, "By all means, very much so; he was born in the house." The boy so conducts himself, with opportune prompting by Socrates, that Socrates can say to his master at the conclusion of this exercise:

And now those very opinions [the boy has expressed] have just been stirred up in him, like a dream. But if someone were to ask him these questions many times and in different ways, you know that he will finally understand them no less precisely than anyone else.



We can wonder what the Greek reader thought of slavery when an enslaved boy can be presented as apparently distinguishing himself in this fashion.

## V

Just as Socrates' best student can be understood by us to have been Plato, so Plato's best student can be understood to have been Aristotle. I draw here, for some suggestions about the Aristotelian approach to slavery, upon the epilogue to my *Abraham Lincoln* book. These suggestions were originally developed for a 1986 conference organized by Mortimer J. Adler, who was intrigued by (even as he differed from) what is indicated here about the natural slave.

Critical to what Aristotle says about various topics in his *Politics* (as well as in his *Nicomachean Ethics*) is his understanding of the *polis*. Central to his account of these matters is this series of suggestions from the *Politics* (in the not-yet-published Laurence Berns translation):

Since we see that every *polis* is some kind of association [*koinonia*] and every association is constituted for the sake of some good (for all men do everything they do for the sake of what seems to be good), it is clear that while all associations aim at some good, there is one which is most authoritative of all and comprehends all the others and does so in the highest degree and aims at the good which is most authoritative of all. This is the one called *polis*, the political association.

The proposition that all associations aim at some good is, for the modern reader, put to a severe test upon studying such barbarities as the eighteenth-century international slave trade.

We can be challenged further upon encountering what Aristotle had to say about *the natural slave*, a subject which I have introduced in this way in my *Abraham Lincoln* book:

It seems that the critical practical issue with slavery is not so much who will rule but rather who will be ruled. Can those who are to be ruled as slaves, and especially those who are to be permanently ruled, be reliably identified? It is clear to Aristotle that permanent rule over others in the capacity of slaves can be justified only in the case of natural slaves. Who are they? What, if anything, are they good for?

I have attempted to answer these questions thus:

Vital to reliable identification of the natural slave is the expectation that he and perhaps his master will be better off because of their association than ei-