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Recommended Citation

Hardy, James D. (2001) "A Meditation On American Politics': Can Lincoln's Political Ideals Provide Continuity With Our Past?," *Civil War Book Review*. Vol. 3 : Iss. 1 .
Available at: <https://repository.lsu.edu/cwbr/vol3/iss1/1>

Review

'A MEDITATION ON AMERICAN POLITICS'

Can Lincoln's political ideals provide continuity with our past?

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Winter 2001

Anastaplo, George *Abraham Lincoln: A Constitutional Biography*. Rowman & Littlefield Publishers, Incorporated, 1999-11-01. ISBN 847694313

George Anastaplo began his career in an unusual fashion. He was a victim of the Illinois Bar Association's aversion to free expression in a First Amendment case, *In re Anastaplo* (366 U.S. 82 [1961]). He went on to an exceptionally distinguished academic career of sustained publication in law and political theory.

In **Abraham Lincoln: A Constitutional Biography**, Anastaplo has brought together 17 previous talks and essays into a volume built around the origins of the American republic and Lincoln's constitutional views. The essays are organized in roughly chronological order, beginning with a slave case, *The Case of James Sommersett* (XX How.1 [1772]) in the prologue, moving to reflections on the Declaration of Independence, the Northwest Ordinance and the Constitutional Convention, and several subjects tied to the early national period. Abraham Lincoln makes his appearance in the eighth essay and Anastaplo concentrates on Lincoln's various speeches, debates, and messages in the next essays, before concluding with a reflection on the president's intellectual legacy.

Several philosophical positions tie this wealth of historical, legal, and constitutional analysis together. Central to the entire book is Anastaplo's recognition of the historical importance (and continuing reality) of natural law in the American constitutional system. Complementing the natural law is prudence, the first cardinal virtue and an essential quality for the continuation and success of the republic. A third common theme is the overriding importance of slavery during the years between the American Revolution and the Civil War. Finally the essays acquire unity from an examination of Lincoln's constitutional and philosophical positions as expressed in his more important messages and

speeches.

Anastaplo centers his examination of natural law in an essay entitled "The Common Law and the Organization of Government." He demurs from the standard assertions of American legal realists that the common law is based upon "experience" (Justice Oliver Wendell Holmes, *The Common Law*, 1881) or what the judge said it was (John Chipman Gray, *The Nature and Sources of Law*, 1909) or that the common law "does not work from pre-established truths of universal . . . validity" (Justice Benjamin Cardozo, *The Nature of the Judicial Process*, 1921). To the contrary, Anastaplo states on page 74: "Underlying all of the common law, in addition to the great constitutional rights and civil liberties rooted in historical developments, is a doctrine of natural right, or a sense of natural justice."

He is, of course, absolutely right. The shared cultural sense of natural right prevailing amongst us exists in both jurisprudence and the popular imagination. The "right thing," based, one must suppose, on some concept of natural law, appears to have been decisive in *Brown v. Board* (347 U.S. 483 [1954]). The appeal of natural right to the popular imagination reveals itself through the constant complaints that lawyers love technicalities and that courts do not do justice, or in the occasional jury nullification, from John Peter Zenger to O.J. Simpson. Indeed, this continuing sense of natural right (*The Case of James Sommersett*) keeps commonality in the common law.

The political importance of the Platonic virtue of prudence is another position advanced by Anastaplo, as prudence must be the constant goal of citizens as they deal with the endless tensions between happiness and virtue, between rights and duty, between the good and the best. Prudence thus defined becomes the most reasonable and ethical political course available, considering actual circumstances as well as theoretical possibilities, and requires the difficult acknowledgment that, as Anastaplo writes on page 166, "the sensibilities and aspirations of one's opponents are usually entitled to respect." During the early republic, the great challenge to political prudence came with slavery, which had been limited but not destroyed by the Northwest Ordinance and Constitutional Convention of 1787. It was the best that could be achieved.

In the essay "John C. Calhoun and Slavery," Anastaplo acutely describes Calhoun's ambiguous purpose: despite learned constitutional arguments, slavery was the true cause of nullification, interposition, and states' rights. Calhoun's

doctrine of interposition denied the political attitudes supposed necessary by the Declaration of Independence, including equality and prudence, implicitly asserting instead that the protection of slavery was the basic purpose of the American polity.

Abraham Lincoln: A Constitutional Biography examines Lincoln's major public statements through literary criticism more than legal analysis. Lincoln's inaugural addresses, the July 4, 1861, message to Congress, the Emancipation Proclamation, and the Gettysburg Address are philosophical and often poetic documents, invoking political ideals of liberty, equality, justice, and courage rather than calling for legislative remedy. They appeal to the justification of history and of God, to charity toward all.

Ultimately, the statements and their ideals transcend the immediate, illuminating shared community values that tie Lincoln's period (and ours) to the founding of the republic. Anastaplo analyzes them in this larger, ethical and historical context, and suggests on page 255 that Lincoln's "legacy stands as a barrier against the massive assault by positivism, value-free social science, legal realism, existentialism and relativism to which intellectuals have been routinely subjected in the twentieth century."

This is not a book designed for quick and casual reading. It is intellectually dense, assumes at least an adequate classical education on the part of the reader, and proceeds often by means of Socratic questions that the serious reader will wish to ponder. The text is complemented by nearly 100 pages of notes.

Anastaplo himself comes down firmly on the side of historical perspective, natural law, prudence, and charity, opposing ideological absolutism and a maniacal insistence that all political perfection be obtained immediately. But he presents his views deftly and insists upon inquiry rather than orthodoxy. He has produced a meditation on American politics, Platonic in its focus virtue, historical in its emphasis on prudence, modern in its suggestion that equality is the major continuing problem in American law and social structures - it is, in short, the product of a lifetime's thought about the American polity.

James D. Hardy, Jr., is associate dean of the Honors College at Louisiana State University and has published several books on both history and literature.