Lincoln’s Construction of the Executive Power in the Secession Crisis

HERMAN BELZ

In American politics the executive power is at once the most prized of governing institutions and the part of the Constitution believed most dangerous to the liberties of the people. We the people effectively “royalize” our modern presidents as cultural celebrities, while holding their executive feet to the fire of political expectations and standards of accountability so high as to almost guarantee failure. Do we want strong presidents, weak presidents, or presidents who can combine strength and weakness in the right measure at the right time?

Although this schizoid approach to government may appear to be the result of partisanship, it is more accurately viewed as a function of constitutional design. Americans have an ambivalent attitude toward the presidency because the executive power under the Constitution is an ambivalent institution. The president is formally required to execute the laws of the United States, carrying out the will of Congress. In virtue of being vested with the executive power as well as bound by oath, the president, with equal formality, is authorized to preserve, protect, and defend the Constitution of the United States.1 Under the former aspect, the presidency appears a weak institution, standing in the relation of agent to principal. Under the latter aspect, the presidency appears a strong institution capable of acting with energy, initiative, and autonomy.2

Evident throughout American history, the ambivalence of the executive power is nowhere more clearly manifested than in the Civil War era. The debate over the nature of the Union that so long threatened to

---

1. In contrast, senators and representatives are bound by oath to support the Constitution.

© 2006 by the Board of Trustees of the University of Illinois
divide the nation was reduced in the end to construction of the executive power. With historical justice and deep constitutional rationality, the political crisis provoked by the secession movement required the heads of the two major parties, Democrat President James Buchanan and Republican President-elect Abraham Lincoln, to exercise the executive power in the kind of exigent circumstances anticipated by the framers of the Constitution.

Southerners viewed the election of Lincoln as constitutionally illegitimate, virtually a preemptive act of war calculated to instigate slave rebellion through unlimited, if as yet unknown, exercises of the executive power. Republicans viewed Lincoln’s election as an affirmation of constitutional orthodoxy which, through responsible exercise of executive duties, could restore equilibrium to national politics while defusing threats of southern disunionism. Within a matter of weeks, however, enactment of the South Carolina secession ordinance irreparably altered the status quo. Like no previous act of state protest against national authority, secession broke the bond of Union in a practical sense. In the system of separated and countervailing power established by the framers of the Constitution, secession focused the attention of the country on the exercise of federal executive authority in the long-awaited crisis of American nationality.

If in periods of ordinary politics the Constitution appeared self-enforcing, the secession movement proved otherwise. The withdrawal of South Carolina and six cotton states effectively brought the government of the Union to a standstill. James Buchanan was the constitutionally sworn chief executive, Abraham Lincoln the constitutionally designated president-elect. On December 3, 1861, the second session of the Thirty-sixth Congress convened to receive President Buchanan’s fourth annual message. In the days that followed, sundry Union officials might perform duties prescribed by custom and formal procedure, but as the secessionists pursued their revolutionary goal, the gap between constitutional form and political reality widened ominously.

What was to be done to contain the explosive situation? Where in the system of countervailing powers were responsible officers to be found capable of ordering the fragmented country to the end of preserving the Constitution and the Union? Discussion of the right of state secession as a theoretical issue was no longer in point. As a practical matter, the secession ordinances and the seizure of federal property that accompanied them plunged the country into a pre-con-
stitutional condition of interstate anarchy. For the nation to survive, reconstruction of the Union was a constitutional imperative.\(^3\)

No two presidents present a starker contrast than Buchanan and Lincoln. Reflecting obvious differences of partisanship, personality, and ideology, the record of their performance of presidential duty appears strikingly discordant. Notwithstanding their reputations as the worst and greatest presidents in American history, however, Buchanan and Lincoln in a sense need each other in order properly to be understood in historical context. In dealing with the secession crisis, each had recourse to the deposit of authority and constitutional resources of the executive power. Sharing a constitutional common ground that has been permitted to a select few, each man, in his own way, was committed to maintaining the Union and the Constitution.

Through construction of two fundamental constitutional problems—the nature of the Union and the meaning of the republican principle—Lincoln fulfilled the promise of the American founding. Forced to deal with the disruption of the Union caused in part by Buchanan’s executive delinquency, he used the formal and informal prerogative powers of executive government to “re-inaugurate” the national authority required for the perpetuation of American nationality.\(^4\)

Although each viewed secession as lawless rebellion, neither Buchanan nor Lincoln attempted to seize the political initiative from the secession movement. As president and president-elect, respectively, both men had reason to rely on and appeal to the formal deferential aspect of the executive power.

3. The language of reconstruction, as distinguished from restoration, appeared in political commentary from the outset. Many southerners and compromise-minded northerners viewed secession as a means of obtaining constitutional protection for slavery in a reunited country. Dismissing secession as a form of slave-power intimidation, Republicans generally disdained the notion of reconstruction. The only thing necessary in their view was enforcement of national laws. Although reluctant to use the term secession, Lincoln recognized the political reality it signified. Existing as a political reality for over three months before its momentum was interrupted, the secession movement so seriously disrupted the Union that simple restoration of the status quo ante was neither possible nor desirable. Cf. David M. Potter, *Lincoln and His Party in the Secession Crisis* (New Haven, Conn.: Yale University Press, 1942), 219–48.

4. In his last public address, on April 11, 1865, Lincoln referred to “the re-inauguration of the national authority—reconstruction.” Although reluctant to use the term because it could imply that secession had destroyed the Union, Lincoln recognized the political reality of reconstruction, or reinauguration of national authority, throughout the war. He stated in his last speech that the subject of reconstruction “has had a large share of thought from the first.” Roy P. Basler, et al. eds., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick, N.J.: Rutgers University Press, 1953–55), 8:400.
In his annual message to Congress, Buchanan stated that “the responsibility and true position of the Executive,” bound by solemn oath before God and the country, was “to take care that the laws be faithfully executed.” No human power could absolve the president from this obligation. Buchanan claimed, however, that events over which he had no control “rendered impracticable” the performance of his executive duty. He referred to executive duty under the Militia Act of 1795, which apparently provided a statutory basis for presidential action in circumstances such as existed in South Carolina. Buchanan argued that the act was effectively nullified by the termination in South Carolina of “the whole machinery of the Federal Government” necessary for law enforcement. Addressing the broader interpretive problem of the nature of the Union implicated in the action of the South Carolina Convention, Buchanan denied executive responsibility for resolving the constitutional crisis. He declared: “The Executive has no authority to decide what shall be the relations between the Federal Government and South Carolina. He possesses no power to change the relations heretofore existing between them, much less to acknowledge the independence of that State.”

Lincoln’s view of the situation was very different. As president-elect he could regard secession as a Democrat problem, while resisting public demands to indicate what the policy of the new Republican administration would be. Lincoln’s preeminent concern was to insist on the constitutional propriety and necessity of recognizing the result of the presidential election. He therefore adopted a rhetorical strategy that minimized his ability to bring the discordant parts of the country under the rule of the executive government.

Speaking at Indianapolis, on February 11, 1861, the first day of his journey to Washington, Lincoln observed: “I . . . am but an accidental

6. Ibid. The act stated that, when the execution of the laws of the United States was obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or the powers vested in marshals, “it shall be lawful for the President to call forth the militia of such state to suppress such combinations, and to cause the laws to be duly executed.” Buchanan interpreted this language of authorization to mean precisely the opposite, namely, that obstruction of law enforcement procedures released the executive from his duty to execute the laws.
7. Ibid., 635.
instrument, temporary, and to serve for a limited time.” The American people, he said, not politicians, presidents, or office-seekers, should decide “the question, ‘Shall the Union and shall the liberties of this country be preserved to the latest generation?” At Lawrenceburg, Indiana, Lincoln reflected: “I have been selected to fill an important office for a brief period, and am now, in your eyes, invested with an influence which will soon pass away.” Whether his administration should prove wicked or foolish, “if you, the PEOPLE, are but true to yourselves and to the Constitution, there is but little harm that I can do, thank God!”

Lincoln’s strategy of executive minimalism required him to deny the existence of a constitutional crisis. At Pittsburgh, on February 15, he conceded that the extraordinary condition of the country “fills the mind of every patriot with anxiety and solicitude.” Constitutionally speaking, however, “there is really no crisis, springing from anything in the government itself.” “In plain words, there is really no crisis except an artificial one . . . such a one as may be gotten up at any time by designing politicians.” While acknowledging the “very great responsibility” that rested upon him, Lincoln insisted that “there is nothing going wrong . . . nothing that really hurts anybody.” People had differing opinions on political questions, “but nobody is suffering anything.” What was needed was “time, patience, and a reliance on that God who has never forsaken this people.”

Lincoln was forced to speak more directly to the disordered state of the country in his first inaugural address. Still he reiterated the theme of formal executive restraint. A “great and peculiar difficulty” presented itself: “A disruption of the Federal Union heretofore only menaced, is now formidably attempted.” In a formal constitutional sense, however, the destruction or termination of the Union could not be admitted. In words intended to obscure the existential danger to the nation, Lincoln appealed to constitutional forms and normative principles: “I hold, that in contemplation of universal law, and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. . . . I therefore consider that, in view of the Constitution and the laws, the Union is unbroken.” Avoiding extended historical and constitutional analysis of the nature of the Union, Lincoln reiter-

10. Ibid., 4:197.
12. Ibid., 4:204.
ated that the Union, formed in 1774 and hence older than the Constitution, was “in legal contemplation . . . perpetual.”

Denial that a national crisis existed, which in pre-inaugural speeches provoked ridicule from critics, was no longer possible. Nevertheless, executive prudence required Lincoln to emphasize constitutional formalism. Perpetuity of the Union was allowed to remain largely an abstraction, the practical meaning of which Lincoln was reluctant to define. Perpetuity, for example, as a matter of legal contemplation, was defined with circular reasoning to mean that no state could “lawfully get out of the Union.” Acknowledging fear of secessionist violence against the authority of the Union, which in the form of bloodless seizure of federal property had already taken place, Lincoln said that, should such acts occur within a state, they would be treated as “insurrectionary or revolutionary, according to circumstances.” Otherwise, for his part, Lincoln would do his duty—within reason—to “take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States.” For the country as a whole, the meaning of perpetuity was expressed in the simple admonition: “Continue to execute all the express provisions of our national Constitution, and the Union will endure forever—it being impossible to destroy it, except by some action not provided for in the instrument itself.”

Not unlike Buchanan, Lincoln disavowed the power of the executive department alone to resolve the crisis. He averred: “The Chief Magistrate derives all his authority from the people, and they have conferred none upon him to fix the terms for the separation of the States.” The executive duty was “to administer the present government, as it came to his hands, and to transmit it, unimpaired by him, to his successor.” Appealing to the virtue of the people, Lincoln said “no administration, by any extreme of wickedness or folly, can very seriously injure the government, in the short space of four years.”


14. Lincoln said he would hold, occupy, and possess property belonging to the federal government, and collect duties and imposts. Beyond this “there will be no invasion—no using of force against, or among the people anywhere.” Where hostility to the United States was so universal as to prevent citizens from holding federal offices, appointment of federal officers would not be made. Although the strict legal right of appointment existed, Lincoln said it was impracticable to exercise it. Collected Works, 4:266.

15. Ibid., 4:264–65.

16. Ibid., 4:270.
The formal executive minimalism displayed by Buchanan and Lincoln in the secession crisis poses an interpretive problem. At one level there is an understandable tendency to discount executive constitutional reasoning as the self-serving rhetoric of expedient politicians. At another level, however, it is reasonable to understand the account of formal executive duty offered by Lincoln and Buchanan as an essential element of the substantive authority conferred on the executive department in the design of the Constitution. The ambivalence of executive power—alternately desired and feared both for its discretionary potential and formal limitations—is essential for maintaining the right relationship between constitutional form and political reality in the American republic.

Lincoln’s construction of the executive power combined elements of constitutional formalism and realism, the precise relationship between which depended on the requirements of the political situation. Politically speaking, Lincoln had to think in the manner of a war president from the moment of his election. Much as he hoped—and was required in public to assume—that his presidential ascendancy would be assimilated into the country’s historic narrative of constitutional politics and confirmed in the traditional and formally prescribed manner, he prepared himself for the contingency of war. Asked during the journey to Washington what he would do with the secessionists after his inauguration, Lincoln replied: “My friend, that is a matter which I have under very grave consideration.”17 Although determination of a specific course of action depended on circumstances, the essence of Lincoln’s approach was simple and direct. He summed it up privately in stating that secession was not a debatable question, could not be tolerated, and would be treated as treason and rebellion.18

When it was suggested that the state of Kentucky would join the secessionists if the federal government used force to recapture southern forts and war broke out, Lincoln replied, “Let her prepare for war.” He reassured a Tennessee visitor: “To execute the laws is all that I shall attempt to do. This, however, I will do, no matter how much force may be required.”19 Constitutional theory, never a high priority for Lincoln, received minimal attention. In a discussion of party strategy in December 1860, Lincoln informed Thurlow Weed: “I believe you can pretend to find but little, if any thing, in my speeches, about se-

17. Ibid., 4:208.
19. Ibid., 2, 21.
cession; but my opinion is that no state can, in any way lawfully, get out of the Union, without the consent of the others; and that it is the duty of the President, and other government functionaries, to run the machine as it is.\textsuperscript{20}

Taken altogether, these statements convey the idea that the formal duty of the president to carry out the will of another—the passive aspect of the executive power—in practice involves informal powers of discretion, judgment, and initiative. If performance of the executive office in relation to ministerial duties depended on the exercise of practical reason, all the more did the highest responsibilities of the office—preserving, protecting, and defending the Constitution—require the exercise of prudential judgment concerning right action for the common good. Effective conduct of the executive office, in other words, transcended the apparent dichotomy between formal restraint and informal initiative in the structure of the executive power.

The ambivalence of the executive power required a distinct form of political reasoning that is properly denominated constitutional construction. The activity of construction expresses the nature of the Constitution as fundamental political law. The Constitution neither gives express instructions on how it is to be applied, nor answers all questions of constitutional meaning that arise under its authority. In distributing power between the political (legislative and executive) and judicial branches, the Constitution confers authority to determine constitutional meaning. Courts perform this duty through legal interpretation of constitutional text and precedents. The executive and legislature determine constitutional meaning through political construction of the principles, purposes, objects, forms, and procedures that constitute the fabric of political life in the community. In the nineteenth century, before the determination of constitutional meaning was identified as the exclusive concern of the judiciary in the twentieth century, constitutional construction was the responsibility of the political branches of government. Construction of the Constitution determined the meaning, force, and effect of the fundamental law of the political community and was an essential attribute of statesmanship.\textsuperscript{21}

Derived from classical political philosophy, the concept of statesmanship is defined as political action for the good of the community based on the virtues of prudence and practical reason. It is debatable

\textsuperscript{20.} Collected Works, 4:154.
whether statesmanship has a legitimate place in the politics of modernity, preoccupied as it is with rights, interests, and sovereignty. If it does, the activity of constitutional construction can be considered its modern analogue in the American political tradition. Under the American Constitution, the statesman is concerned to maintain the principles, goods, customs, traditions, and acts of foundation that constitute the horizon of republican government. In changing historical circumstances, the perpetuation of American nationality requires constitutional construction in acts of statesmanship that renew and perpetuate the principles of the founding.

Lincoln ascended to the presidency as the ambitious leader of a political party whose sectional constituency placed in question its claim to represent the good of the county as a whole. Lincoln’s construction of the Constitution, undertaken through the instrumentality of the executive power, ultimately earned him recognition as the preeminent statesman in the American political tradition. The end toward which Lincolnian construction was directed was two-fold: completion of the Constitution with respect to the nature of the Union and affirmation of the integrity of republican government. Resolving the indeterminacy of constitutional meaning that threatened the existence of the nation, Lincoln’s construction of the executive power gave concrete meaning to the promise of perpetuity inherent in the founding of the nation and the establishment of the Constitution.

The nature of the Union was the original and preeminent problem of constitutional construction in America. For prudential and political reasons, the framers of the Constitution divided governmental sovereignty without defining the relative powers of the federal and state governments in an explicit operational sense. Most importantly, the right of each government to exercise its powers with sovereign independence of the other was allowed to remain an open question. The Constitution, in express terms, neither conferred or prohibited the right of a state to secede from the Union, nor authorized or denied the right of the federal government to coerce a state to remain in the

22. With foresight and self-understanding, Lincoln in the Lyceum Address of 1838 articulated this promise as the defining motive of his political career. In a premonition of the suicidal dismemberment of the country that secession later signified, Lincoln said perpetuation of the American system of political and religious liberty was threatened by internal rather than external forces. He asked: “At what point then is the approach of danger to be expected? I answer, if it is ever to reach us, it must spring up amongst us. It cannot come from abroad. If destruction be our lot, we must ourselves be the author and finisher. As a nation of freemen, we must live through all time, or die by suicide.” Collected Works, 1:109.
Union should it seek to withdraw. Amidst uncertainty as to whether it represented a necessary act of constitutional construction or irrational surrender to a collective suicidal impulse, the secession movement forced the nation to decide this fundamental question.

The meaning of the republican principle was the second problem of constitutional construction presented in the secession crisis. In the most transparent sense this question involved the political, legal, and moral status of slavery. Did the Constitution expressly recognize or confer a right of property in slaves? The subject of bitter controversy in sectional conflict over the extension of slavery into national territories, this question came to a head in the election of 1860. Considered in the broadest sense, the Constitution thus left unanswered key questions about the identity of the people of the United States and the meaning of civil and political rights of citizens of the United States.

Before analyzing these issues, it is pertinent to note the almost didactic manner in which Lincoln propounded the matter of constitutional construction in his First Inaugural. How constitutional meaning was determined was inseparable from, and no less important than, the substantive conclusions of the reasoning employed. Here, again, the unitary nature of the ambivalence of the executive power paradoxically becomes apparent.

Indicating the constructive ground on which he would proceed, Lincoln took the official oath “with no mental reservations, and with no purpose to construe the Constitution or laws, by any hypercritical rules.” In other words, the constitutional text should be applied according to its ordinary language meaning, not in a technical or theoretical way. The question at issue was the force and effect of the Constitution in relation to secession. Lincoln said: “All profess to be content in the Union, if all constitutional rights can be maintained. Is it true, then, that any right, plainly written in the Constitution, has been denied?” Lincoln dismissed the idea: “Happily the human mind is so constituted, that no party can reach to the audacity of doing this. Think, if you can of a single instance in which a plainly written provision of the Constitution has ever been denied.” This was not simply a technical legal issue, but a political question of the greatest practical moment. Lincoln explained: “If a majority by mere force of numbers deprived a minority of a clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would, if such right were a vital one.” However the vital rights of minorities and individuals, he argued, were “so plainly assured to them, by affirma-

23. Ibid., 4:264.
tions and negations, guaranties and prohibitions, in the Constitution, that controversies never arise concerning them.”

The source of political conflict lay, rather, in matters of constitutional construction. Lincoln observed: “No organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length contain express provisions for all possible questions.” In the present situation, the Constitution did not expressly say whether fugitive slaves were to be surrendered by state or national authority, or whether Congress may prohibit or must protect slavery in the territories. “From questions of this class spring all our constitutional controversies,” Lincoln explained.

The questions that required constitutional construction in the secession crisis were analogous to those arising in the making of the Constitution. The most basic was the nature of the Union. In the Constitutional Convention this issue was settled by the decision to reorganize the country as a federal republic based on the idea of divided sovereignty. The federal principle was an ambiguous concept that gave rise to rival bodies of doctrine concerning the relative powers of the federal and state governments. Later this ambiguity was taken as evidence of the flawed design of the Constitution. In fact the requirement of constitutional construction in particular policy controversies evinced the vitality of the federal system. Contentious though federal-state relations might be, the underlying assumption was that the Union was a national government intended to exist in perpetuity.

The nullification controversy of 1832 showed the outer limit of state sovereignty protest against national law. South Carolina’s claim of a right to nullify federal law while remaining a member of the federal Union was viewed as an absurdity. President Andrew Jackson, in his proclamation to the people of South Carolina, treated the right of secession from the Union as the functional and equally absurd

24. Ibid., 4:267. In adopting the idea of a “clearly written constitutional right” as the standard in constitutional interpretation, Lincoln employed language used by President Buchanan in his fourth annual message to Congress. Referring to southern fears that the President elect “will attempt to invade their constitutional rights,” Buchanan said: “From the very nature of his office and its high responsibilities he must necessarily be conservative. The stern duty of administering the vast and complicated concerns of this Government affords in itself a guaranty that he will not attempt any violation of a clear constitutional right.” Richardson, ed., *Messages and Papers of the Presidents*, 5: 628.

25. Ibid.
Lincoln’s Executive Power

Lincoln’s Executive Power equivalent of nullification. It is a fact of the utmost importance that every constitutionally elected administration of the federal government regarded threats to secede from the Union in the same light. This was the ground on which Lincoln could assert in December 1860 that “the right of a state to secede is not an open or debatable question. It was fully discussed in Jackson’s time, and denied not only by him but also by a vote of . . . Congress.”

Considered as a matter of practical constitutional reason, a consensus existed that no right of secession existed. Much as theorists of state sovereignty might speculate otherwise, political men understood that secession, if actually undertaken, would require violation of national law and present itself as unlawful rebellion. The Union was not a compact of sovereign and independent states from which a member state could withdraw at its own pleasure and convenience. To the contrary, it was the sovereign government of the nation, constitutionally authorized to legislate for individuals, compel obedience, command loyalty, and punish the crime of treason. The power to enforce national laws applied moreover to citizens of the United States who were state government officers. If, on this account, enforcement of national law against individuals appeared to be coercion of a state in its corporate personality as a political community, such perception was the result of the failure to properly understand the nature of the Union.

Lincoln’s affirmation of national authority in the secession crisis established new constitutional meaning. Although his construction is usually described as the theory of perpetual Union, it is more accurately identified as the doctrine of national majority-rule orthodoxy. As a national-minded Whig politician, Lincoln accepted national majority rule as a matter of course. In the controversy over slavery expansion in the 1850s, he vigorously affirmed this doctrine as a Republican partisan. Defending his party against the charge of disunionist agitation and steering clear of theoretical disputation, Lincoln presented the issue of national majority rule as an essential matter of constitutional practical reason.

In July 1856, in a speech at Galena, Illinois, Lincoln denied that the Republican proposal to restrict slavery in national territories would dissolve the Union, as Democrats charged. He asserted: “We, the majority, being able constitutionally to do all that we purpose, would have no desire to dissolve the Union.” Even if the Supreme Court

attempted to decide the question of territorial slavery, as many politicians hoped, Republicans would submit to its decision. Lincoln asked whether proslavery politicians would similarly submit. “If not, who are the disunionists, you or we?” “We, the majority, would not strive to dissolve the Union; and if any attempt is made it must be by you, who so loudly stigmatize us as disunionists.” Lincoln summarized: “But the Union, in any event, won’t be dissolved. We don’t want to dissolve it, and if you attempt it, we won’t let you. With the purse and the sword, the army and navy and treasury in our hands and at our command, you couldn’t do it. This Government would be very weak, indeed, if a majority, with a disciplined army and navy, and a well-filled treasury, could not preserve itself, when attacked by an unarmed, undisciplined, unorganized minority.” All this talk about the dissolution of the Union is humbug—nothing but folly. We WON’T dissolve the Union, and you SHAN’T.”

The circumstances Lincoln faced in the secession crisis were vastly different from those contemplated in 1856. Secession was carried out by an armed and organized minority, acting in the name of absolute state sovereignty and with the advice of United States senators, which violated national laws and seized federal property in acts of lawless rebellion. Lincoln nevertheless affirmed the doctrine of national majority rule orthodoxy with integrity and conviction, while for prudential reasons presenting it in more circumspect and statesmanlike terms.

Breaking the strategic silence maintained since his election, Lincoln presented a nationalist construction of the secession crisis in a speech at Indianapolis, on February 11, 1861. He focused attention on the controversial question of coercion of states. From a strictly nationalist point of view, the idea that acts of the federal govern-

27. Lincoln hypothesized an act of Congress “making the United States territory free territory,” in accordance with the principle of the Northwest Ordinance. He imputed to proslavery opinion the view that some states would not submit to the enforcement of such a law because it would be unconstitutional. Acknowledging that an unconstitutional act was not a law, Lincoln said: “but I do not ask, and will not take your construction of the Constitution. The Supreme Court of the United States is the tribunal to decide such questions, and we will submit to its decisions.” Lincoln meant that it was the duty of the Court, under proper circumstances, to determine the constitutionality of a legislative statute. He did not contradict the position that he would take in the First Inaugural, namely, that Supreme Court decisions on constitutional questions, while binding on the parties to a suit, as to the object of the suit, were not binding on the political departments. Court decisions did not irrevocably fix “the policy of the government, upon vital questions, affecting the whole people.” Collected Works, 4:268.

ment could be conceived of as coercion of states was inadmissible. Lincoln nevertheless ventured into the semantic thicket presented by this issue. “What, then, is ‘coercion’?” he asked. “What is ‘invasion’?” Lincoln hypothesized that marching a federal army into South Carolina without the consent of her people would be invasion, and it would be coercion, too, if the people were forced to submit. It was not coercion, however, for the federal government to hold or retake forts belonging to it, enforce the laws of the United States in the collection of duties on foreign importations, or withdraw the mails from parts of the country that habitually violated delivery of the mails.

Lincoln further construed the principle of states rights. “What is the particular sacredness of a State?” he asked. He acknowledged that the position of the states under the Constitution, agreed to and abided by all, might be considered sacred. The assumption of the secessionists, however—“that a State can carry with it out of the Union that which it holds in sacredness by virtue of its connection with the Union”—was fallacious to the point of absurdity. It amounted to the claim that a state, as a primary constitutional principle, “should rule all that is less than itself, and ruin all that is bigger than itself.”

Lincoln’s argument recurred to the conception of union advanced by nationalist-minded delegates in the Constitutional Convention.

29. John W. Burgess criticized Lincoln for using the word invasion in discussing the constitutional issues raised by secession. In the First Inaugural, Lincoln said there would be “no invasion, no using of force among the people anywhere.” Burgess viewed these as “unfortunate expressions,” which southerners twisted into quasi-admission of the correctness of their constitutional theory. The correct constitutional doctrine was that “the National Government is as much at home in any ‘State’ organized within the boundaries of the United States as the ‘State’ government.” Lincoln’s locutions, said Burgess, showed that “even Mr. Lincoln’s mind was not entirely clear as to the national character of our political system.”

30. In the convention, the issue of the nature of the Union was posed most clearly in the debate over representation in the legislature. Samuel Johnson of Connecticut observed: “The controversy must be endless whilst Gentlemen differ in the grounds of their arguments; Those on one side considering the States as districts of people composing one political Society; those on the other considering them as so many political societies.” James Wilson of Pennsylvania expressed the national majority theory of Union: “Can we forget for whom we are forming a Government? Is it for men, or for the imaginary beings called States? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that the one third [of the country’s population in seven states] compose the greater number of States [thereby controlling the two-thirds of the population in six states]?” Wilson objected to the principle of state equality of representation. Carried to its logical extreme in the doctrine of state sovereignty under the compact theory of the Union, this was the ground of the secession movement. The Constitutional Convention and the Formation of the Union, ed. Winton U. Solberg, 2d ed. (Urbana: University of Illinois Press, 1990), 193.
He asserted that the constitutional position of the states in relation to the Union was analogous to that of a county in relation to a state. He reasoned: “If a State, in one instance, and a county in another, should be equal in extent of territory, and equal in the number of people, wherein is that State any better than the county? Can a change of name change the right?” Provocatively, Lincoln asked: “By what principle of original right is it that one-fiftieth or one-ninetieth of a great nation, by calling themselves a State, have the right to break up and ruin that nation as a matter of original principle?” With rhetorical modesty, Lincoln said he was giving the people something to reflect on, not trying to decide anything. With statesmanlike candor, however, in simple and direct language, he spelled out the practical meaning of secession in relation to the doctrine of national majority-rule orthodoxy: “Where is the mysterious, original right, from principle, for a certain district of country with inhabitants, by merely being called a State, to play tyrant over all its own citizens, and deny the authority of everything greater than itself?”

Prepared in Springfield and delivered the day of his departure for Washington, Lincoln’s speech was intended to indicate the tenor of administration policy. Equally deliberate, we can assume, was the note of biting sarcasm in the speech directed at the South. Speaking in colloquial language and resorting to the humor for which he was well known, Lincoln reinforced the appeal to the integrity of the Union. Referring to the secessionists, he asked: “Do the lovers of the Union contend that they will resist coercion or invasion of a State [as defined by Lincoln], understanding that any or all of these would be coercing or invading a State?” If so, “then it occurs to me that the means of preservation of the Union they so greatly love, in their own estimation, is of a very thin and airy character . . . In their view, the Union, as a family relation, would not be anything like a regular marriage at all, but only as a sort of free-love arrangement—[laughter] to be maintained on what the sect calls passionate attraction [continued laughter].”

Northern Democrats viewed the Indianapolis speech as “a decided coercion pronunciamento.” Southerners were offended by the tone and substance of Lincoln’s remarks, ridiculing his analogy between states and counties as subordinate units of larger political communi-

32. Burlingame, “‘I Am Now Going To Be Master’: From the Farewell Address to the Inaugural Address, February–March, 1861” (2004), 7–10. Manuscript in author’s possession.
ties. Albert Taylor Bledsoe, a leading expositor of secession doctrine, wrote that before Lincoln endorsed the notion of the people of the United States as one political community with absolute control over the parts, intelligent people did not believe any individual in the United States was capable of taking such a view of the Constitution. In Bledsoe’s opinion, the idea that the people of the country in the aggregate constituted a sovereign nation had no foundation in fact. It had “grown out of the popular use of language and the passions of politicians,” with the assistance of political preachers and parsons.\(^{35}\)

In more than twenty speeches and remarks delivered en route to Washington, Lincoln affirmed with unmistakable clarity the essential principle of national majority-rule orthodoxy: The people of the United States, acting through constitutional forms and institutions, were the proper tribunal to decide the question of the existence and perpetuation of American nationality and Union. The election of 1860 recorded the people’s authoritative judgment on this question, and it was Lincoln’s duty as president-elect to carry out the popular will. Showing the practical unity of the executive power, notwithstanding its formal ambivalence, Lincoln at the same time disclosed his purpose to construe the executive office according to his prudential judgment of what was required to maintain the constitutional order.\(^{36}\)

Uniquely as president-elect and with increasing urgency as his inauguration drew near, Lincoln engaged the critical intellectual and philosophical problem facing the constitutional statesman: determination of the right relationship between constitutional form and political reality. A constitution is made with a view toward the effect it will have in securing the ends, objects, goods, and values of the political community. Constitutional forms are properly to be distinguished

35. Albert Taylor Bledsoe, *Is Davis a Traitor; or Was Secession a Constitutional Right Previous to the War of 1861?* (Richmond, Va.: Hermitage Press, 1907 [orig. pub.1865], 104–06. Bledsoe claimed that Lincoln got the idea of states as being the equivalent of counties from the Presbyterian minister Charles Hodge, in an essay published in the *Princeton Review*, January 1861.

36. Lincoln’s prudential constructivism in upholding constitutional forms appears in his discussion of secessionist obstruction to the installation of a Republican administration. Rather than a plot to seize the capital, Lincoln feared interference with the functioning of the electoral college. He wrote to Seward, on January 3, 1861: “Our adversaries have us more clearly at disadvantage, on the second Wednesday of February, when the votes shall be officially counted. If the two Houses refuse to meet at all, or meet without a quorum of each, where shall we be?” Concerned with substance more than form, Lincoln wrote: “I do not think that this counting is constitutionally essential to the election; but how are we to proceed in the absence of it?” He believed it best not to appear in Washington until “the result of that ceremony is known.” *Collected Works*, 4:170.
from political reality, without being divorced from it. When an unbridgeable gap exists between the constitution and political life, the result is weak government leading to the subversion of the political ends of the community. Reduced to mere formality, constitutional forms invite acts of informal and unlawful political power.37

The first axiom of construction of the executive power, required by formal oath, was perpetuation of the Constitution and the Union. President Buchanan was subject to criticism on this ground. While firmly denouncing secession as lawless rebellion, he declared the federal government to be constitutionally incapable of preventing secession. Buchanan’s self-refuting construction was grounded in his conception of the Union as an affective association. His annual message propounded this view: “The fact is that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it cannot live in the affections of the people, it must one day perish.” Buchanan warned that even if the government possessed the power of coercion and used it to preserve the Union, “War would not only present the most effectual means of destroying it, but would vanish all hope of its peaceable reconstruction.”38

Although Lincoln took affective sentiment into account, his construction of the nature of the Union rested primarily on principles of moral and political integrity.39 Lincoln recognized that political and moral right existed in a philosophical realist dimension, in virtue of constitutional authority and power practically exercised for national ends. Lincoln summarized his position in a speech to the New Jersey General Assembly: “I shall endeavor to take the ground I deem most just to the North, the East, the West, the South, and the whole country. . . . I shall do all that may be in my power to promote a peaceful settlement of all our difficulties. . . . But it may be necessary to put the foot down firmly.”40

38. Messages and Papers of the Presidents, 5:636.
39. Lincoln observed in November 1860: “This Government possesses both the authority and the power to maintain its own integrity. That, however, is not the ugly point of this matter. The ugly point is the necessity of keeping the Government together by force, as ours should be a government of fraternity.” He stated publicly: “Yet in all our rejoicings let us neither express nor cherish any harsh feelings towards any citizen who by his vote has differed with us. Let us at all times remember that all American citizens are brothers of a common country, and should dwell together in the bonds of fraternal feeling.” Burlingame, “I Will Suffer Death,” 34–36.
With statesmanlike integrity, Lincoln affirmed the doctrine of national majority-rule orthodoxy in the First Inaugural. Seven states had seceded and formed a confederacy, federal forts and arsenals had been seized, and military conflict appeared imminent. Lincoln’s task was to explain why secession was wrong, and national union right and worth defending. Recurrence to history and political science, although relevant, was not sufficient. Lincoln’s paramount concern was to establish, as a matter of constitutional construction, that the wisdom of federal republican union was the practical alternative to anarchical minority rule.

The fundamental issue was the nature of the Union as a political community. Lincoln observed that on all questions of constitutional construction, unanimity of opinion was impossible. Necessarily, the country divided into majority and minority factions. As a practical matter, one side must acquiesce to the other or else the government would cease to exist. The question was whether the power of decision should rest with the majority or the minority. Decision by the majority was the principle and practice recognized as constitutionally legitimate in the United States. The rule of a minority, Lincoln declared, “as a permanent arrangement, is wholly inadmissible.” Although secession purported to be a means of creating a new confederacy, Lincoln viewed it in reality as yet another attempt on the part of states’ rights politicians to institute minority rule over the country based on absolute state sovereignty. Far from a valid constitutional construction, secession produced the absurd result of destroying government and nation alike.

41. As in the House Divided speech, where he predicted that the country would cease to be divided by becoming all proslavery or all antislavery, so in the First Inaugural Lincoln assumed that geopolitical and historical factors ordained the existence of some kind of political organization among Americans. He observed: “Physically speaking, we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them. A husband and a wife may be divorced, and go out of the presence, and beyond the reach of each other; but the different parts of our country cannot do this. They cannot but remain face to face; and intercourse, either amicable or hostile, must continue between them.” Ibid., 4:269. On the question of political divorce between the sections, Lincoln is often said to have overestimated, to the point of serious misjudgment, the extent of southern Unionism. The creation of the Confederate States of America, on the other hand, is treated uncritically as the expression of southerners’ desire to affirm their integrity as a sovereign people. Since a Confederate nation was not established, it has seemed unnecessary to question the assumption of national integrity attributed to the secession project. One may doubt, however, that southerners simply wanted—or would have been satisfied—to be left alone in splendid isolation had they achieved independence.
With precision and economy, Lincoln enunciated the doctrine of national majority-rule orthodoxy: “Plainly, the central idea of secession, is the essence of anarchy. A majority, held in restraint by constitutional checks and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it, does, of necessity, fly to anarchy or to despotism.”

Lincoln’s construction of the nature of the Union was achieved through the instrument of prudent and forceful exercise of the executive power in time of war. There is truth in the reflection of White House secretary William O. Stoddard after the attack on Fort Sumter: “The Civil War really began long ago, but it has not yet been wise for the President to say as much, nor to ask for troops to carry it on with.”

Southerners claimed a right of peaceable secession. Facilitated in significant part by Buchanan’s construction of executive duty, they were able to sustain the right for upwards of four months. Northerners, pointing to the seizure of federal property and military installations that began in January 1861, warned that peaceable secession was a contradiction in terms and a practical impossibility.

In circumstances of deep uncertainty, Lincoln made clear his constitutional construction of secession as unjustified rebellion. Mindful of the resourcefulness inherent in the executive power, he acted to meet it with patience and circumspection. As noted, Lincoln said it was impossible to destroy the Union except by action not provided for in the Constitution. Although the existence of the Union was in obvious jeopardy because of the secessionist insurgency, the time for forceful and decisive executive action had not arrived. With extraordinary restraint, and against the advice of senior military officers, Lincoln refused either to withdraw or reinforce outnumbered federal troops in Charleston harbor. In an act of questionable military prudence, he

42. Ibid., 4:268.
45. When federal forts were seized in January, a visitor reported that Lincoln’s “Kentucky blood is up, he means fight.” Told that Buchanan might surrender Fort Moultrie in Charleston harbor, Lincoln exclaimed: “If that is true, they ought to hang him.” Burlingame, “Cabinet Making in Springfield” (2004), 71. Manuscript in author’s possession.
sent a commercial ship with provisions to Fort Sumter with orders not to return fire if attacked.

Lincoln understood the strategic and moral necessity of inducing the South to fire the first shots in a civil war that in effect had already begun.46 Obligingly, the Southern high command proved peaceable secession to be the utopian dream Unionists always said it was by ordering the attack on Fort Sumter. Military assault was an act of war that disclosed the nature of secession as violent rebellion aimed at overthrowing the government of the United States.47

The South’s decision to exercise the right of secession by military means altered the political and legal situation. It gave Lincoln warrant to exercise the executive power with the energy, force, and discretionary judgment required to meet the necessities of the situation. Lincoln laid his construction of the Constitution before Congress in his special message of July 4, 1861. Reviewing the course of events, he said the point was reached where “no choice was left but to call out the war power of the Government; and so to resist force, employed for its destruction, by force, for its preservation.”48 As an interpretation of the constitutional text, Lincoln’s appeal to the “war power” drew upon the tradition of emergency government in continental political science and the prerogative in English constitutional history.

Prerogative is an essential element of the executive power. It is defined as “the power to do the public good without a legal standard or even contrary to it in a public emergency or where the laws otherwise fail.” According to John Locke, the most influential English writer on the subject, in emergencies and contingencies prerogative gives discretion to act “without the prescription of law, and sometimes even against it.” Reliance on prerogative recalls, and is analogous to, the use of force in the founding of political society. According to political scientist Sean Mattie, when used in this way, “prerogative serves the fundamental purpose of government and in a certain sense presents a claim to be government.”49

In the American regime, prerogative is brought under the fundamental law of the land and constitutionalized in the executive power. The framers of the Constitution anticipated the existence of war, rebellion, and “those mortal feuds which . . . spread a conflagration through a whole nation . . . [and] commonly amount to revolutions and dismemberments of empire.”50 As Harvey C. Mansfield Jr. observes, “By dealing with such necessities, the executive actually represents them in the Constitution.”51 In the deepest sense, this means that exercise of the executive power is subject to political judgment by coordinate constitutional institutions in the legislative department and in the form of popular elections.

Lincoln’s construction of the executive power conformed to the design and intent of the Constitution. In the secession crisis Lincoln relied on the prerogative element in the executive power to prevent the destruction of the government. His decisive action marked the first steps pointing to the reinauguration of the national authority and reconstruction of the Union in order to augment and perfect the principles of the founding.

Perpetuation of the Union as a sovereign political community was the first object of Lincoln’s exercise of executive government. Inseparably related to it was the nature and condition of republican government, the second fundamental concern of Lincoln’s executive intelligence. Article IV, section 4 of the Constitution, providing that “the United States shall guarantee to every State in the Union a Republican Form of Government,” established the republican principle as a national political standard.52 As a concept in political philosophy, republicanism implicated the meaning of liberty, equality, and consent as principles of self-government that defined American political identity. Convinced that republican government must be preserved, Lincoln believed that the integrity of the Union depended on and required a right understanding of these principles.

Restoration of moral virtue and integrity in republican government was the reason for being of the Republican party and its opposition to the spread of slavery in national territories. Because secession made existence of the Union the paramount issue, Lincoln said little about slavery in the First Inaugural. He acknowledged that the South believed that slavery was right and ought to be extended, and the North believed it wrong and ought not to be extended. This was “the only

51. Mansfield, Taming the Prince, 256.
52. U.S. Constitution, art. IV, sect. 4.
substantial dispute” in the national crisis.53 A key part of this dispute concerned the fugitive slave question, a subject expressly dealt with in the Constitution. Scrupulous in his fidelity to the written Constitution, Lincoln affirmed his intent to enforce the fugitive slave law. He combined this promise, however, with a civil rights proposal that looked to the improvement of republican government.

To reassure the South, Lincoln recommended a statute expressing in concrete legal form the unanimity with which members of Congress swore “support to the whole Constitution,” including the fugitive slave provision. Lincoln dismissed as insubstantial the question of federal versus state authority over the rendition of fugitives. He argued that it made no difference to slaves, or to others, which government returned a fugitive from labor. The important thing was to reassure public opinion by framing and passing, “with nearly equal unanimity,” a law “by means of which to keep good that unanimous [constitutional] oath.”54

This was a proposal for a strictly nominal statute that would leave construction of fugitive slave laws in the executive and judicial branches. Lincoln’s recommendation of it represented the subordinate or ministerial aspect of the executive power aimed at carrying out the will of the legislature.55 In striking contrast was a further recommendation, reflecting executive energy and initiative, which pointed to a substantive revision of national law concerning African American liberty.

Lincoln posed the question whether, in legislating on the fugitive slave question, “ought not all the safeguards of liberty known in civilized and humane jurisprudence to be introduced, so that a free man be not, in any case, surrendered as a slave?” He added: “And might it not be well, at the same time, to provide by law for the enforcement of that clause in the Constitution which guarantees that ‘The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States?’”56

Lincoln’s rhetorical inquiry represented a significant move. A month before the inauguration, assessing strategic priorities, he wrote pri-
vately: “As to fugitive slaves, District of Columbia, slave trade among
the slave states, and whatever springs of necessity from the fact that the
institution is amongst us, I care but little, so that what is done be comely,
and not altogether outrageous.” 57 Now, in presenting the policy of the
administration, he advanced a civil rights proposal that was deeply
offensive to southern and border state opinion. 58 In his classic study of
the secession movement, Dwight L. Dumond noted: “The suggestion
that the citizens of each state should be guaranteed the privileges of
citizens in the other states by congressional legislation was especially
repulsive to states-rights men of the slave states.” In addition to setting
a dangerous precedent, Lincoln’s proposal would strike at the inequality
of the races, the fundamental principle on which slavery rested. 59

Inspired by a variety of motives, Americans in the deepest sense
got to war in 1861 to resolve constitutional controversy over the
nature of the Union and the status of slavery in republican society.
In both a practical and a moral sense, Lincoln’s construction of the
executive power in the secession crisis succeeded in placing these
reciprocally related issues in the course of ultimate resolution. The
status and rights of black Americans directly involved the meaning
of republican self-government and the identity of the people of the
United States. This question was intrinsically related to the nature
of the Union under the doctrine of national majority-rule orthodoxy.
Lincoln affirmed the unity of these nation-perpetuating constructions
in the Proclamation Calling Militia and Convening Congress, April
15, 1861, his first official act following the attack on Fort Sumter.

Lincoln issued that proclamation under the Militia Act of 1795. 60
The proclamation announced the purpose of executing the laws of the

57. Ibid., 4:183.
58. The “safeguards of liberty” paragraph was included in the first draft of the In-
augural Address; the “privileges and immunities” passage was added to the revised
version.
Taney asserted that if a Negro person were recognized as a state citizen within the mean-
ing of the Constitution, then “whenever he goes into another State, the Constitution
clothes him, as to the rights of person, with all the privileges and immunities which
belong to citizens of the State.” Henry Steele Commager, ed., Documents of American
60. The fact that Lincoln’s response to the South’s act of war took the form of en-
forcement of a legislative act illustrates the way in which prerogative power was brought
within the design of the Constitution. The calling out of the “war power of the Gov-
ernment,” referred to in the July 4 message to Congress, depended, in this respect, on
Lincoln’s construction of the Militia Act of 1795. “Congress had conferred upon the
President, under its power to provide for calling the militia of the ‘States’ into the service
of the Union, the authority to issue the call himself at his own discretion.” Burgess, The
Civil War and the Constitution, 1:173.
United States and securing the integrity of republican government. In accordance with the terms of the Militia Act, Lincoln stated that combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law, obstructed enforcement of the laws in the seven seceded states. In virtue of power vested in the executive by the Constitution and the laws, he called forth 75,000 state militia to suppress the unlawful combinations, commanding the persons who composed them to disperse and retire peaceably within twenty days. Lincoln further issued a statement of war aims addressed to the country as a whole. He declared: “I appeal to all loyal citizens to favor, facilitate and aid this effort to maintain the honor, the integrity, and the existence of our National Union, and the perpetuity of popular government; and to redress wrongs already long enough endured.”

The Proclamation Calling Militia presents the essence of Lincoln’s construction of the executive power in the secession crisis. National union and popular government are theoretically and practically related. What threatens the existence of the Union also places republican government in jeopardy. The integrity of the Union cannot be reduced to the exercise of sovereign authority over national territory, but is inextricably bound up with the integrity of republican government.

It was neither appropriate nor necessary in the proclamation to enumerate the wrongs to be redressed in the course of suppressing the rebellion. Since the Kansas-Nebraska Act of 1854, Lincoln’s principal aim was to heighten public awareness of the injustice and corruption of republican principle necessitated by the existence of slavery. The moral wrong lay not simply in slavery’s denial of the natural right of human liberty to black persons: Slavery vitiated republican equality and consent by commanding, through the operation of the three-fifths ratio in the system of representation under the Constitution, a privileged position for owners of slave property and citizens of slave states.

The three-fifths clause provoked northern resentment and identified a point of southern political and moral vulnerability since the beginning of the government. It was a prominent feature of Lincoln’s posi-

61. Collected Works, 4:331–32.

62. The draft of the proclamation, in Lincoln’s hand, shows insertion of the words the perpetuity of popular government following the words National Union; deletion of the word its after National Union; and deletion of the word injuries and insertion of the word wrongs in its place. The effect of the emendation is to broaden the connotation of the phrase redress wrongs so that it refers to wrongs done to the Union and popular government alike.
tion in the debate over territorial slavery. When the South, strengthened beyond its rightful level of popular support by the operation of the three-fifths rule, decided on armed rebellion as a means of exercising the right of secession, the North accepted the opportunity it presented to reconstruct the Union on a more truly republican basis.

Much has been written about the conservative aims of the Lincoln administration at the start of the Civil War. According to a recent social history interpretation, the political necessity of keeping the border slave states in the Union served as the publicly defensible outward manifestation of an inner desire on the part of the Lincoln administration to preserve slavery and the racial status quo. Republican approval of the Crittenden-Johnson resolutions in July 1861, disavowing “any purpose of conquest or subjugation” in waging the war, is seen as signifying acquiescence to the goal of restoring the Union with slavery intact. The conclusion follows that Union war aims were fundamentally revised when slave emancipation was adopted as a means of suppressing secessionist rebellion.

This interpretation fails to consider the moral and practical meaning of the perpetuation of liberty and Union in Lincoln’s construction of the executive power. The integrity of the Union was vitiated both by the southern defense of slavery as a positive good and by northern indifference to the corrupting effect of slavery on republican society. Neither materialistic nor mystical, Lincoln’s Unionism appealed to moral principle, constitutional order, rule of law, political realism including the use of force, and republican deliberation and choice. The bond of Union consisted in recognition of mutual political rights and duties, pursuit of enlightened self-interest, and dedication to liberty, equality, and consent as foundational goods in a pluralistic society.

President Buchanan, placed in an untenable position by southern Democrats, allowed the executive government to fall into a state of constitutional delinquency. From the moment of his elevation as president-elect under the Constitution, Lincoln’s construction of the

65. Many scholars have taken too seriously the description of Lincoln offered by Alexander H. Stephens, that “the Union with him in sentiment rose to the sublimity of a religious mysticism.” Edmund Wilson, Patriotic Gore: Studies in the Literature of the American Civil War (New York: Oxford University Press, 1962), 97. Stephens, vice president of the Confederacy, is a dubious authority on the political thought of Lincoln.
executive power confirmed the doctrine of national majority-rule orthodoxy and defended the honor of republican government. Through his prudential and energetic conduct of executive duty, he showed that Democratic Unionism, reduced in the end to “the naked desire” of secession, was a repudiation of American nationality. Reversing the course of national disintegration, Lincoln’s principled and just use of force in the secession crisis marked the reinauguration of constitutional authority to the end of perpetuating American liberty and Union.

67. Lincoln privately observed that, whereas in the nullification movement the South made a complaint against the tariff laws, the secessionists had no new law or new interpretation of an old law “to complain of—no specialty whatever, nothing but the naked desire to go out of the Union.” Burlingame, “I Will Suffer Death,” 24.