Review Essay

Usher the Influence?

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It is Abraham Lincoln’s most enigmatic case as an attorney. In mid-October 1847, the future Great Emancipator represented a Kentucky slaveholder against five of his slaves who were asserting their freedom because their owner brought them into Illinois. Why did the lifelong opponent of slavery side with slavery against freedom? Perhaps not at the time but from the late-nineteenth century to the present, it is a question that has baffled and troubled students of Lincoln’s life. How could he do it? In fewer than 120 pages, Charles R. McKirdy, an accomplished attorney with a doctorate in history, offers a psycho-analytical explanation.

The case of In re Bryant et al. came before the Coles County Circuit Court in the fall of 1847 when Jane Bryant and four of her children escaped the Illinois farm owned by Robert Matson. They sought the help of local abolitionists Gideon M. Ashmore, a hotel keeper, and Hiram Rutherford, a physician. Matson had the slaves arrested as runaways and incarcerated in the local jail. Ashmore hired attorney Orlando Ficklin and filed a writ of habeas corpus to obtain the release of Bryant and her children. Chief Justice of the Illinois Supreme Court William Wilson presided over the courts of the Fourth Judicial Circuit, of which Coles County was a part. Understanding the importance of the case, Wilson asked fellow justice Samuel H. Treat, presiding over the courts of the neighboring Eighth Judicial Circuit, to sit with him in hearing the case.

On Saturday, October 16, 1847, Orlando Ficklin and Charles Constable represented Ashmore in his request for a writ of habeas corpus, while Usher Linder and Abraham Lincoln represented Robert Matson in opposition to the writ. The stakes at issue were the freedom of Jane Bryant and her four children. After the one-day trial, Wilson and Treat approved the writ and declared Bryant and her children to be free.
because Robert Matson had brought them into the free state of Illinois and “domiciled” them there.

McKirdy rightly paints antebellum Illinois as an intensely racist society, though his characterization of widespread mob violence and lawlessness is less certain. Mob violence certainly occurred in the state at various times and places, but whether these incidents created “an ever-present specter of unbridled mob violence” is an assertion in search of more evidence (19).

McKirdy does a fine job of explaining the circumstances leading to the trial and offers excellent portraits of the lawyers involved on both sides. He excels at the description of the legal context surrounding the case. From the Fugitive Slave Act of 1793 through both English and American precedents, McKirdy carefully and clearly explains the statutes and legal decisions that had a bearing on the case before the court.

In his final chapter, “The Coils of Friendship,” McKirdy returns to the question of Lincoln’s motivation. He rightly discredits the idea that Lincoln “threw” the trial by turning in a poor performance and demonstrates persuasively that Lincoln made the best argument he could given the facts of the case. He also rejects a theory, supported by the scholarship of Mark E. Steiner and Richard Carwardine, that Lincoln’s Whig values allowed him to represent Matson because of his intense belief in law and order and his faith in the legal system. “This theory,” McKirdy rightly muses, “may explain why Lincoln was ‘able’ to represent Matson, but it fails to explain why he chose to represent the slaveholder” (91, emphasis in the original).

McKirdy also rejects the explanation offered by Allen Guelzo and Philip S. Paludan that Lincoln hated slavery but did not care that much about the plight of slaves. “That Lincoln represented Matson because he was indifferent to the plight of slaves,” concludes McKirdy, “fails to sufficiently credit the insights of a very insightful man” (92). Here again is assertion rather than proof.

After rejecting the explanations of other historians and the motivations of money and ego, McKirdy offers his own explanation: Someone


must have convinced Lincoln to set aside his personal antipathy to slavery and represent Matson. McKirdy concludes that it was Usher Linder who convinced Lincoln to represent Matson. After acknowledging that Lincoln and Linder had “an unusual relationship,” McKirdy asserts that “there was some kind of friendship there” (97). McKirdy admits that “Lincoln was a man with many friends but few intimates” (98), then launches into a highly speculative psychological analysis of Lincoln’s relationship with Linder. For McKirdy, Linder functioned as a sort of “reverse image” of Lincoln, demonstrating what Lincoln himself could become if he abandoned “self-control” (102).

Leaving behind the evidence so carefully assembled in the preceding chapters, McKirdy leaps from assumption to assumption in connecting the dots between Lincoln’s friendship for Linder and his choice to represent Matson: “In helping his friend, Lincoln reaffirmed his personal victory over emotion and his own self-doubts. But there was a quid pro quo. Dealing with Linder often required Lincoln to suspend his critical judgment and to put aside his personal values and standards. That is what he did with regard to the Matson case. Linder was confronted with a difficult situation, and asked his friend Lincoln for help” (102).

McKirdy insists that historians do not like the word “inexplicable” because their profession is based on attempting to explain the past. Fair enough. Honest historians, however, admit that there are some aspects of the past, especially in the area of human motivation, that cannot be explained with the sources available.

While McKirdy offers an explanation of Lincoln’s involvement that perhaps satisfies himself, he glides quickly over the key issue of why Lincoln was in Charleston. The reason? The sources are fragmentary and contradictory. Some say that Matson went to Springfield to secure Lincoln’s services. Others say that one of the local lawyers in Coles County contacted Lincoln in Springfield and asked him to participate in the case. Still others believe that Lincoln was still attending to cases in the courts of the Eighth Judicial Circuit when he came to Charleston. McKirdy asserts that “it appears more likely that Lincoln had been retained prior to his arrival in Charleston in October 1847” (29). The real answer: Historians do not know.

When and where Lincoln first learned of the case speaks directly to the issue of motivation and the importance of this case to Lincoln. If Lincoln were in Springfield, one hundred miles away from Charleston, and barely a week from leaving for Washington, D.C., to take his seat in Congress, it would require a much greater and more purposeful
commitment for Lincoln to participate in this case on either side. On the other hand, if Lincoln continued traveling the Eighth Judicial Circuit in late September and early October, he would have been in Paris, the county seat of neighboring Edgar County, on Monday, October 11. On that date, Judge Samuel Treat opened the fall session of the Edgar County Circuit Court. Judge William Wilson, hearing cases in the courts of the Fourth Judicial Circuit, just to the south of the Eighth Judicial Circuit, asked Judge Treat to hear this case with him in Coles County at the end of the week. Treat would have traveled through Charleston anyway on his way to his next court in Shelbyville, and he agreed to hear the case with Wilson. If Lincoln were still attending the courts of the Eighth Judicial Circuit, he would have traveled the thirty miles from Paris to Charleston with Judge Treat to handle a few more cases before returning to Springfield to prepare for his departure to Washington. Continuing on the normal circuit would have placed Lincoln in Charleston without any extra effort or commitment. While there, Matson or one of his attorneys talked to Lincoln about the case, Hiram Rutherford asked Lincoln to represent the Bryants, Lincoln obtained a release from representing Matson, Rutherford rebuffed Lincoln, and Lincoln joined Usher Linder in representing Matson. Lincoln obtained thousands of cases in this manner, and representing Matson would have required far less effort and commitment than traveling one hundred miles from Springfield to become involved.

The problem: Lincoln’s whereabouts between September 25 and October 14, 1847, remains unclear. There is compelling evidence from court records that Lincoln attended the De Witt County Circuit Court in Clinton during the week of September 20–24. Over the next three weeks, Judge Treat held court in Piatt, Champaign, Vermilion, and Edgar counties. No surviving documents place Lincoln in those courts. So, was Lincoln in Springfield during these three weeks? The surviving evidence is inconclusive. The reference work Lincoln Day by Day uses two pieces of evidence to place Lincoln in Springfield during those three weeks.4 First, it cites the journal and ledger of John Irwin & Co., a local store, for a purchase on September 30 and a deposit on October 2. However, others made purchases and perhaps deposits on Lincoln’s account when he was out of town. Second, it cites a promissory note written and signed by Lincoln to Converse and Priest to allow painter E. G. Johns to have up to $10 in paint. The note promised repayment

in three months from the date on the note, which is October 1, 1847. However, the note was not necessarily written on that date. Perhaps Lincoln gave the note to Johns before he left town to travel the circuit.

McKirdy offers a third piece of evidence to posit that someone contacted Lincoln before he arrived in Charleston, based on a bond for costs dated September 27. Again, however, the evidence is inconclusive. V.S. Eastin signed the original bond dated September 27 ensuring that Matson’s costs would be paid. However, Eastin’s name is crossed out, and J. A. Love and Joseph Dean became the new sureties. Lincoln changed the bond from a singular to plural sureties, wrote Joseph Dean’s name where Dean could make “his mark,” and signed the bond to attest that the signatures were genuine. Lincoln could have made all of these changes after he arrived in Charleston in mid-October without changing the initial date on the bond. McKirdy concludes that “On that date [September 27], Lincoln was not in Coles County. He was probably in Springfield” (29). His source? Lincoln Day by Day.

Knowing when and where Lincoln first learned of the case of In re Bryant et al. is a critical piece of information in assessing how the future Great Emancipator came to represent a slaveholder suing to retain five human beings in bondage. Even with a clearer picture of his first involvement, a mystery remains as to Lincoln’s motivation. If he were still on the circuit along with Judge Treat, it took less effort for him to represent Matson than if he had to travel from Springfield, but he did not have to represent a slaveholder. John J. Duff, in his study of Lincoln’s law practice, found Lincoln’s representation of Matson “mystifying” and concluded, “Perhaps no man is ever really consistent.” A half-century later, George M. Frederickson reached back nearly a century to agree with W. E. B. DuBois, who in 1922 found Lincoln, on issues of slavery and race, to be “big enough to be inconsistent.”5 For this reviewer, who has studied Lincoln’s life and legal career for a decade and a half, Lincoln’s participation on the side of bondage in In re Bryant et al. remains “inexplicable.”