Reconciling race in the Declaration and the Constitution

Last month, two stories appeared in the news on the same day. The front page of The New York Times on March 4 featured a Justice Department report accusing the Ferguson, Mo., police of a long-standing policy of discrimination through disproportionately ticketing and arresting black drivers. The Arts section that same day featured an interview with John Ridley, the black creator of a new television series, “American Crime.” Ridley noted that this police show would be different because of its tight focus on race and American criminal law. Ridley described the first shows as dealing with bigotry, stereotypes and racial profiling.

The relationship between race and the American criminal legal system is not a new story. But today, I want to step back from the trees to provide a view of a very tangled forest. New books about two 19th century American presidents provide a sobering panorama of how issues of race and slavery have divided America from the very beginning.

According to Edel, Adams believed that the Constitution must be interpreted as “operating within the Declaration’s philosophical and legal framework.” The Declaration trumped the Constitution. Thus, Adams believed that America must eventually abolish slavery.

In 1841, he argued the Amistad case in the U.S. Supreme Court, contending that rebellious African slaves who commandeered a Spanish ship and sailed into American waters had to be declared free. He both began and ended his argument by relying on the Declaration. The court granted the Africans their freedom.

How Abraham Lincoln approached the contradiction between the values of the Declaration and the Constitution is the subject of Richard Brookhiser’s new book, “Founders’ Son.”

Lincoln walked a middle ground, accepting the Constitution as law that must be obeyed but accepting the principles of the Declaration to argue that slavery must be abolished. In Brookhiser’s view, Lincoln saw the Constitution adopted, establishing that “all men are created equal.” Yet at the end of the address, he speaks of the necessity of “a new birth of freedom.”

This second birth is necessary because the Founders’ values were not fulfilled through a Constitution that accepted slavery. The war necessitated a rebirth in which the cancer of slavery would be removed.

Lincoln elaborated on this in his second inaugural speech in 1865, which Brookhiser contends is Lincoln’s greatest.

The Gettysburg Address dates America as beginning with the Declaration in 1776; it does not use the words “slave” or “slavery.” But the second inaugural speech is more far-reaching.

It frankly notes that at the start of the war, “One-eighth of the whole population were colored slaves.” It also refers to American slavery as constituting 250 years of “unrequited toil.” Lincoln thus takes us back to Jamestown, long before the American Revolution. Lincoln uses this quarter-millennium of slavery’s evils to suggest that the horror of the Civil War might be God’s punishment on the entire country for its sin.

How much suffering would be required? In a little over four weeks, Lincoln would be dead. It is unfortunate that Lincoln did not live to see the ratification of the 13th Amendment, for this was the “new birth of freedom” he exhorted at Gettysburg. And for once the Constitution did not use euphemisms to describe “the peculiar institution.”

Lincoln’s original Constitution policy—refused to permit people “bound to service for a term of years” or people “held to service or labor in one state.” Refreshingly, the 13th Amendment directly bars “slavery.”

The only time the word “slavery” is used in the Constitution is to forbid it. For Adams and Lincoln, this would have been the long-sought victory of the values of the Declaration of Independence.

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