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“VALUE CONSENSUS” IN DEMOCRACY: THE ISSUE IN THE LINCOLN-DOUGLAS DEBATES*

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The topic set for this panel is “value consensus” in democracy. I put the expression in inverted commas, not because I am here concerned with the validity of the fact-value distinction but because, even granting the distinction, I find it difficult to see why, in this context, “value” should be added to “consensus.” Democracy is the name we give to a certain form of political community, and every community, by definition, is constituted by the fact that its members hold certain things in common. A political community, I take it, is always constituted by the fact that its members hold certain political things in common. And a democratic political community would, by equal reason, be constituted by the fact that the political things its members hold in common are democratic. The problem of discovering what constitutes a democratic consensus, as it seems to me, is the problem of what things fellow-citizens in a democracy *must* hold in common, what they *may* hold in common, and what they *may not* hold in common, if they are to constitute a democratic political community. I think it would be confusing, at the outset, to speak of “values,” because, even assuming that we know what values are, we cannot assume that values are the principal things to be shared, or that non-values are not equally or more important than values. I believe, for example, that there is a school of thought that holds that democracy does not imply an agreement on values, but rather an agreement to disagree; and that this agreement would not itself be a “value” in the same sense that the disagreed-upon values were values. I will therefore, proceed without further ado about this troublesome word.

I

No episode in American history raised, in a more fundamental way, the question of what it is that Americans must agree upon, and what they may not disagree upon, than the Lincoln-Douglas debates. These debates constituted a dialectical preview of the Civil War. Lincoln’s campaign in 1860—in which he did not participate personally—was fought mainly on the arguments he developed in the 1858 struggle with Douglas, arguments which he further perfected in a series of speeches in 1859 and early 1860. It may seem unjust to identify Douglas with the cause of the South, since no one rallied more firmly to the Union when the guns fired at Sumter. Yet Lincoln maintained—correctly, I believe—that the acceptance of Douglas’s position would have led to the consequences which the South insisted upon during the Secession crisis of ’60–61, as the price of remaining in the Union. Douglas was as willing as Lincoln

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to fight to preserve the Union. But the Union that would have been preserved, had his position been victorious, would have been a Union in which the interests of slavery received the pledges of security they were demanding.

It is true that the South, foolishly (in Lincoln's eyes) rejected Douglas in 1860, almost as completely as it rejected Lincoln. This, however, was largely a consequence of Lincoln's success in exploiting the famous Freeport question—to which Douglas had replied that the people of a territory might exclude slavery during the territorial period by "unfriendly legislation." According to Lincoln, this reply was only an attempt to straddle an issue that was logically and morally impossible to straddle. It meant, Lincoln said, in one of those flashing aphorisms wherein he summarized volumes of disputation, that a thing may be lawfully driven from a place where it has a lawful right to go. Douglas's repeal of the Missouri Compromise had repudiated the policy of Congressional exclusion of slavery from the territories; and the *Dred Scott* decision had confirmed his judgment with a vengeance, by declaring that Congressional exclusion was unconstitutional. If then slavery followed the flag, the South had as much of a right to Congressional legislation securing slave property in the territories, as they had a right to a fugitive slave law securing their human property in the states. Douglas had no logical or moral right to uphold the *Dred Scott* decision—a decision that was only possible because of his own repeal of the Missouri Compromise—and then to deny to the South its slave code for the territories.

Douglas found, in 1858, that he could not continue as leader of the northern Democracy, if he supported the full consequences of the position whose foundations he had done so much to lay. By 1860 he found that he could not continue as the leader of the southern wing of the party, on the basis of an equivocation. Lincoln persistently identified Douglas, in 1858, with the full logic of his position—which was Jefferson Davis's logic—and not merely with the portion of that logic Douglas was willing to acknowledge. Lincoln was certain that the full consequences of Douglas's position meant the lawfulness of slavery "in all the States, old as well as new, North as well as South." It meant, moreover, an aggressive foreign policy, which would have added Mexico, the islands of the Caribbean, and probably much more to the south; in all of which lands slavery, and other caste systems, *e.g.*, peonage, which was already functioning in New Mexico under the protection of the American Constitution, would have added vast new realms of inequality to the American polity, with what further complications of our politics one shudders to contemplate.

Lincoln fought the campaign of 1858 as if nothing less than the full claims of slavery and of freedom were in the balance. And he compelled Douglas to acknowledge the legitimacy of the claims of slavery *in principle*, even if he could not bring him to acknowledge them in detail. For Douglas stoutly maintained the theory of racial inequality, by which American slavery was defended; and Lincoln then turned the discussion upon the question of whether the Declaration of Independence was, or was not, a statement of universal political right;

and whether any government could continue free, if it did not stand upon the ground of such a universal conception of right.

II

Historians in the last two generations have taken an increasingly negative view of the merits of the Lincoln-Douglas debates. This negative view has reflected an increased conviction that the Civil War was, as the subtitle of a famous work indicates, an “unnecessary war.” According to James G. Randall, there was a long list of things that were more important than slavery in the territories, which Lincoln and Douglas might have discussed, but which they completely passed over. The one thing they talked about was the one thing that further inflamed an already dividing nation, and served to make a question that was difficult to compromise, impossible to compromise. Underlying this recent view of the advent of the Civil War, there is clearly discernible a theory of democracy. It is given characteristic expression in an essay by Avery Craven—author of the well known book, *The Coming of the Civil War*—in an address to the Abraham Lincoln Association in 1947, entitled “The Civil War and the Democratic Process.” It is Craven’s thesis that

The significant thing about the American Civil War is that it represents a complete breakdown of the democratic process in the handling of national problems. Men ceased to reason together. Discussion of issues turned to incrimination; compromise or delay in action became impossible. Men firm in the conviction that the totality of right and justice was on their side faced each other with a willingness and a determination to use violence for the achievement of their ends. In the end, opponents were beaten into submission in bloody combat in complete contradiction of the basic assumption on which the American political structure had been erected, namely, that men are endowed with reason enough to rule themselves and that they have consciences which impel them to deal justly with their fellows; that rational discussion of issues, compromise of differences, and delay in action where adjustment is not reached, constitute a procedure by which groups that vary as much as the colony of Massachusetts and the colony of South Carolina had varied could live and work in unity forever.

I would like to examine some of the assumptions and consequences of this thesis; but I think that most of them may be conveniently summarized by Professor Craven’s later observation, that

What stands out in this story is the simple fact that issues dealing with right and wrong . . . do not lend themselves to the democratic process. Discussion proves efficient, as Carl Becker says, only “when there is nothing of profound importance to discuss and when there is plenty of time to discuss it.”

I believe it is no exaggeration to say that, if discussion is central to the democratic process, and discussion is efficient only when there is nothing important to discuss, then democracy as a form of government is neither possible nor desirable. However, allowing for the exaggerated morbidity of Craven’s disillusionment, the antecedent of his view can be clearly perceived in the position advocated by Douglas in 1858. For Douglas’s famous “popular sovereignty” doctrine, with which we must correlate his famous and oft-quoted dictum, that

he “don’t care whether slavery is voted up or down,” was above all an “agreement to disagree” on the slavery question; it was, presumably, a formula for removing the question of whether slavery was right or wrong from the arena of national politics, confining it to the legislatures of the territories, as it had been confined (substantially) to the legislatures of the states before the territorial issue arose.

Lincoln, however, did not believe that the question of the morality of slavery should be so confined—even if it could be. Nor did Lincoln ever come to regard the Civil War as a breakdown in the democratic process. According to Lincoln, the Civil War, far from being a breakdown of the democratic process, was a test, a “fiery trial,” the end result of which was, not failure but a “new birth of freedom.”

Lincoln was able to make such a different judgment because he believed that the basic assumption of American democracy was not what Craven has described it to be. Lincoln assuredly accepted the assumption described by Craven, but he would have denied that it is basic. The *basic* assumption was the proposition “that all men are created equal.” It was *because* men are by nature equal; *because*, that is, no man is by nature the ruler of another, that government derives its just powers from consent, *i.e.*, from the opinion of the governed. But government based upon the consent of all, must operate upon the only practicable approach to unanimity, namely, the rule of the majority (however defined); and majorities can take shape or form only in and through the process of discussion. It is for this reason that discussion is indispensable to the democratic process; but the principle of discussion can never be separated from the principle of majority rule; *nor can the principle of majority rule be separated from the principle of the natural equality of political right of all men.*

Craven’s interpretation of the Civil War is that it brought to a head a latent, and an uncompromisable, difference inherent in American history. This difference is presumed to consist in a contradiction inherent in the Declaration of Independence, upon the one hand, and the Constitution upon the other. The Declaration was framed to *justify* revolution; the Declaration affirmed, according to Craven, that “there was a right and wrong in social things; that there was a good society and a bad society; that the laws and institutions of man should approximate the moral law and the moral order.” The Constitution, however, was supposed to protect, not abstract, but “fixed” rights. However, he asks, rhetorically,

What if the law of the land as embodied in the Constitution should not remain in accord with some men’s reason and conscience, and they should appeal to the Declaration of Independence and the higher law it justified?

Then, he notes, the one side would burn the Constitution, while the other would dismiss the phrases of the Declaration as mere “glittering generalities,” as doctrines, both “false and foolish.” In that situation, “discussion would be utterly useless and compromise impossible.”

In the foregoing characterization of the crisis of 1861 there is, however, some-

thing profoundly mistaken. In the first place, Craven has compared the abolitionist position, which was rejected by Lincoln and the overwhelming majority of rank-and-file Republicans, with the view of the vast majority of the South. In 1860 most Southerners rejected the Declaration of Independence. However, in 1860 few, if any, Republicans rejected any of the traditional (*i.e.*, pre-*Dred Scott*) constitutional guaranties to slavery, such as an equitable fugitive slave law—*i.e.*, one designed simply to return fugitives and not to enslave free Negroes. It was the South, rejecting the lawful consequences of majority rule, and not the North, where “the law of the land as embodied in the Constitution” did not remain in accord with men’s consciences. It was Lincoln’s party that maintained a traditional view of federal power. For the very first Congress that sat under the Constitution, in 1789, had passed a law re-enacting the Northwest Ordinance, excluding slavery from the territory that became the states of Ohio, Indiana, Illinois, Michigan and Wisconsin. That law was passed by a voice vote and signed by George Washington. And in 1820 Congress had excluded slavery from all the remaining Louisiana Territory north of 36 degrees 30 minutes. And all of Monroe’s cabinet, including John C. Calhoun and John Quincy Adams, had given it as their opinion that the exclusion was constitutional. But now a Congress dominated by the interests of slave owners had declared that it would not continue the 1820 exclusion if it could; and a Supreme Court dominated by slave state members had declared that it could not if it would.

The Constitution was framed by men who, whether Southerners or Northerners, were committed, by and large, to the principles of the Declaration of Independence. Washington, Madison, Jefferson, Hamilton, whatever their differences, all expressed their belief in the principles of the Declaration. And all conceived of the Constitution as the frame of a government instituted to secure the rights announced in the Declaration. Not one of them would have recognized any more fundamental difference between the Declaration and the Constitution than, broadly speaking, the difference between a statement of ends and a statement of means. What had happened by 1860 was that the South, by and large, no longer agreed with the North—or with their own celebrated ancestors, Washington and Jefferson and Madison—upon the revolutionary creed of 1776. In this sense, it was the Republican party which, at this historical moment, stood forth as the party *both* of the Constitution and of the Declaration. Certainly Lincoln’s Cooper Union speech—his most eminently conservative speech—was a thorough historical demonstration that the constitutional power which the Republicans then held it to be both the right and duty of Congress to exercise, was one which had been repeatedly exercised by men who had sat in the Philadelphia convention of 1787, men who had made the Constitution.

Craven not only reproduces the inaccuracy of Douglas’s position, in assigning the revolutionary role to the Republicans and not to their opponents, in 1858 and 1860; but he also contradicts himself in maintaining that the South at once regarded the Declaration as “false and foolish” and yet recognized

slavery as an evil which would not long be tolerated. He quotes from a letter from Alexander Stephens to Lincoln, written in December 1860, in which Stephens—who had opposed Georgia's secession, and who was an old friend of Lincoln—said that the South did not “directly and immediately” fear Republican interference with slavery in the slave states. But, according to Stephens, the South could not trust a party organized upon the antislavery principle to abide by constitutional restraints, once it became the master of the federal government. There was, he said, “no telling where . . . impulses or passions may drive.” “He knew,” writes Craven, “that honest men would not long accept evil, even though that evil be legal . . .” Yet if Stephens, who was a thoroughly honest man, knew what Craven says he knew, it is passing strange that he should, in the same letter, candidly avow to Lincoln that “We at the South do think African Slavery, as it exists with us, both morally and politically right. This opinion is founded upon the inferiority of the Black race.” If the Constitution was established to secure the rights proclaimed in the Declaration, it was inevitable that a change in opinion which culminated in proclaiming the Declaration a self-evident lie, would of necessity lead to an equally great change in the conception of the meaning of the Constitution. When Taney, in the *Dred Scott* decision, said that, according to the Founding Fathers, the Negro had no rights which the white man was bound to respect, he was asserting an opinion that was common among the political leaders of the future confederacy, but was as uncommon among the political leaders of the Revolution. But the Constitution, in practice, is bound to have such concrete meaning as the judges say it has. Was it then not the right and duty of all men who, in 1858 and 1860, still believed in the Revolutionary faith of Jefferson, to organize a party which would elect a President who would appoint judges, who would in turn interpret the Constitution in a manner consistent with that faith?

Craven is mistaken also in his conception of democracy, as a system in which action is always delayed until a compromise adjustment of differences is attained. Democracy, like any form of government, always terminates discussion with action; and the nature of governmental action is such that *indefinite* delay is impossible. In Lincoln's view, the combination of the Kansas-Nebraska Act and the *Dred Scott* decision presented the possibility of an indefinite extension of slavery, and a decision had to be taken, and taken soon, whether to permit this possibility to become an actuality, or to make it an impossibility. And Lincoln believed that no free government could long endure which, in the face of such a crisis did not take the decision to treat slavery as being, at best, a necessary evil. There was no question, in Lincoln's mind, of making counsels of perfection the immediate basis of political action. But equally, there was no question of treating the counsels of evil as if they were of equal worth with the counsels of good. The nation need not—as it could not without war—abolish slavery. But it must not tolerate its extension; or anything else tending to its perpetuation.

Craven notes that the South had millions of dollars invested in slave property. In fact, the figure has been estimated at more than two billions. But it

was the virtual *doubling* of the prices and market value of slaves in the decade before the Civil War that made this investment such a source of trouble. This, of course, was due to the profit made, and in prospect, from the Negro's labor. And it was because the opening of new slave lands was believed to be indispensable for the protection and continued enhancement of this value that the South was willing to fight, rather than consent to the closing of the territories.¹ Of course, the race question vastly complicated the difficulty, and racial feelings contributed to make freedom for the slaves unthinkable to most Southerners. Yet it was Lincoln's conviction in 1858, that the race question appeared more insoluble than it was, so long as it could be exploited as a shield behind which the South might continue to justify the brute economic exploitation of the Negro. If a *cordon sanitaire* of free states were to surround the slave states, if the slave states were to be a steadily declining fraction of a growing Union, if slavery were to decline in *profitability*, then the racial difference might not be insoluble. If, in short, slave-owners had the same economic interest in finding ways to end slavery, as they had now (in 1858) to continue and strengthen it, ways and means now unthinkable might yet be looked upon with favor.

III

According to Lincoln, free government, government by discussion and by majority rule, was possible only among men who accepted the proposition of the original equality of human rights affirmed in the Declaration. The Declaration was, as Craven himself notes, used to justify armed rebellion. Its signers could not, if they possessed any wits at all, have believed in any unqualified sense that “men are endowed with reason enough to rule themselves and that they have consciences which impel them to deal justly with their fellows. . . .” For does not the Declaration contain a long catalogue of unjust acts which the Signers presumed themselves to have suffered at the hands of their fellows? And were they not, at that moment, themselves appealing to the God of battles? Men's reason is all too frequently mistaken, and never more so than when it is led astray by selfish interests. The argument for free government is, that by making government responsible to the governed, it places a great restraint upon the abuses to which the reason and consciences of men are prone. But the great engine of reason and conscience, in a free society, is the awareness that the freedom of each man, and his security from the abuses of power, consists precisely in the recognition that every other man is entitled to the same freedom, and the same security. If, as in the theory of Douglas, a local majority simply because it is a majority, may enslave one minority, why may it not then

¹ The historiography of which Craven is a leading exponent has long held that slavery was economically moribund, and must have died a “natural” death, if only politicians had not exploited it for their own reasons. The classic statement of this thesis is Charles W. Ramsdell's essay, “The Natural Limits of Slavery Expansion,” *Mississippi Valley Historical Review*, Vol. 16 (October, 1929), p. 71. It has been subject to a detailed critique, and definitive refutation, by Alfred H. Conrad and John R. Meyer, in “The Economics of Slavery in the Ante Bellum South,” *Journal of Political Economy*, Vol. 66 (April 1958), p. 95.

enslave another? The inner logic of the pro-slavery argument—whether Douglas's "don't care" version, or Calhoun's positive good version—was such that it endangered the rights of any and every man who advanced it or accepted it. This Lincoln demonstrated as follows:

If A. can prove, however conclusively, that he may, of right, enslave B.—why may not B. snatch the same argument, and prove equally, that he may enslave A?

You say A. is white, and B. is black. It is *color*, then; the lighter having the right to rule the darker? Take care. By this rule, you are to be slave to the first man you meet, with a fairer skin than your own.

You do not mean *color* exactly? You mean the whites are *intellectually* the superiors of the blacks; and therefore have the right to enslave them? Take care again. By this rule, you are to be slave to the first man you meet, with an intellect superior to your own.

But, say you, it is a question of *interest*; and, if you can make it your *interest*, you have the right to enslave another. Very well. And if he can make it his interest, he has the right to enslave you.

Douglas attempted to reconcile his position with the Declaration of Independence, by denying that the phrase "all men" included the Negro. In this he followed the Chief Justice in the *Dred Scott* decision. But apart from the historical nonsense of this interpretation—according to which, in Douglas's own words, "all men are created equal" meant that "British subjects on this continent [were] equal to British subjects born and residing in Great Britain"—Douglas transformed a statement of the principles of natural right, principles inherently universal, into a statement of positive right. According to Douglas's interpretation, the rights to life, liberty, and the pursuit of happiness were rights, not of men as such, but of British subjects. It was self-contradictory, however, to call these "unalienable." For a right enjoyed in virtue only of the British constitution may be taken away by that same constitution. And rights which inhere independently of the British constitution are not inherently British, nor may they properly be called such. It is because *all* men, so Lincoln argued, have certain rights, that any government derives its just powers from the consent of the governed. For it is the rights that men have antecedently, and independently of, any civil society, that determine the just order of any civil society. If there were no rights independent of civil society, *i.e.*, natural rights, then all rights would be creations of civil society, and subject to alteration by their creator. It is because the Creator of man's unalienable rights is a higher authority than society, because man enters society already endowed with rights, that just civil society must be restrained by the consent of the governed. Lincoln's classic confrontation of Douglas's unrestrained majoritarianism, with the idea of the restrained majoritarianism derived from the Declaration of Independence, is the following:

The doctrine of self-government is right—absolutely and eternally right—but it has no just application, as here attempted. Or perhaps I should say that whether it has application depends upon whether a negro is *not* or *is* a man. If he is *not* a man, why in that case, he who *is* a man, may, as a matter of self-government, do just as he pleases with him. But if the negro *is* a man is it not to that extent a total destruction of self-government, to say that he too shall not govern *himself*? When the white man governs himself that is

self-government; but when he governs himself, and also governs another man, that is more than self-government—that is despotism. If the negro is a *man*, why then my ancient faith teaches me that "all men are created equal:" and that there can be no moral right in connection with one man's making a slave of another.

Judge Douglas frequently, with bitter irony and sarcasm, paraphrases our argument by saying: "The white people of Nebraska are good enough to govern themselves, *but they are not good enough to govern a few miserable negroes!*"

Well, I doubt not that the people of Nebraska are, and will continue to be as good as the average of people elsewhere. I do not say the contrary. What I do say is, that no man is good enough to govern another man, without that other's consent. I say this is the leading principle—the sheet anchor of American republicanism.

Lincoln's political accomplishment in 1858 was to deprive Douglas of the possibility of becoming President. It should be known that, when the campaign of 1858 began, Douglas was considered presidential timber, not only by a majority of Democrats in the country, but by leading Republicans in the east. For Douglas had, in the first session of the Thirty-Fifth Congress, led the Republicans to victory over the Buchanan democrats in Congress, who had attempted to fasten the fraudulent Lecompton slave-state constitution upon Kansas. Yet it was intolerable to Lincoln to think of a man who had perverted the very basis of the faith upon which free government was erected, as the leader of the political public opinion of the nation. In a free society, Lincoln said, he who molds opinion goes deeper than he who enacts laws and pronounces decisions. The first task of statesmanship is not legislation, but the molding of that opinion from which all legislation flows. The central idea upon which this nation was founded was the equality of all men. The value of the nation was the value of this central idea. Constitution and Union were means to an end. But "all men are created equal," partially as an aspiration, and partially as a reality, was the end. To be dedicated to this proposition, whether by the preservation of equal rights already achieved, or by the preservation of the hope of an equality yet to be achieved, was the "value" which was the absolutely necessary condition of the democratic political process. That men may be called upon to fight for such a conviction cannot be called a failure of democracy. It would only be a failure if they refused to fight for it.