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A Publication of the Claremont Institute

PRICE: \$9.95

IN CANADA: \$14.95

Book Review by Glenn Ellmers

READING LINCOLN

A Nation So Conceived: Abraham Lincoln and the Paradox of Democratic Sovereignty, by Michael Zuckert.
University Press of Kansas, 416 pages, \$34.95



THIS WAS A HARD BOOK TO READ, AND a harder one to review. Michael Zuckert's topic in *A Nation So Conceived* remains compelling, notwithstanding the rivers of ink poured into analyzing Abraham Lincoln and the Civil War. The problem of democratic sovereignty mentioned in the subtitle seems to turn on the question Lincoln put to Congress in his July 4, 1861, address: whether "all republics" suffer from an "inherent and fatal weakness." "Must a government, of necessity," he asked, "be too strong for the liberties of its own people, or too weak to maintain its own existence?" A government too strong neglects the right and duty of free citizens to rule themselves, extinguishing the consent that is the source of its "just powers." A government too weak loses the deliberate sense of the community, unable to distill the people's reason from their passions. Secession is not the only threat to republicanism; despotism and anarchy (or some mixture of both) are constant, protean dangers.

An eminent professor of political philosophy emeritus at Notre Dame and the author

of books on John Locke, natural rights, and Leo Strauss, Zuckert emphasizes Lincoln's speeches, proceeding chronologically from the 1838 Lyceum Address to the 1865 Second Inaugural. Although he clearly wants to say something new and interesting about Lincoln and popular government, *what* he wants to say is, finally, not as clear. This is not to suggest the book is uninteresting. His defense of Lincoln's views on Union is particularly impressive for the way it relies on James Madison's argument that, because the Constitution was ratified by the people of the states, but *not* through the state governments, neither nullification (explicitly) nor secession (implicitly) finds support in it.

THE NATURE OF POPULAR SOVEREIGNTY—as the source of authority for *both* state and federal governments—is central to Zuckert's argument, and also a key aspect of the Civil War that is often misunderstood. Contrary to "the Southern secession theory," he explains, there "is one sovereign people of the United States...who ratified as

a sovereign people the Constitution." Madison took pains to insist on "specially convened and constituted conventions" to reflect this direct relationship. Yet the people "remain separately sovereign with regard to their own state." "In the complex new Union, there were thus, for each state, two sets of sovereign bodies, the one consisting of sovereigns of the individual state, the other the 'people of the United States.'" The upshot, as Zuckert makes clear, is that "no individual state could amend the U.S. Constitution, nor could any individual state change its relation to the U.S. government."

In addition to this essential point, the book's analyses of Lincoln's 1852 eulogy of Henry Clay as well as his "Discovery and Inventions" speech (delivered in various forms during 1858-59) are valuable and insightful. Also instructive are Zuckert's surveys of the fluid political landscape before and during the Civil War, and the practical and rhetorical challenges Lincoln faced in light of these shifting circumstances. And his defense of Lincoln's arguments and actions in exercis-



ing emergency powers justified by rebellion (prefiguring, as Zuckert reminds us, Carl Schmitt’s “state of exception”) is arresting.

YET INTERSPERSED WITH THESE TRIUMPHS are oddities that will leave the ordinary reader disconcerted if not confounded. “Democratic sovereignty,” as Zuckert well knows, raises the problem of law more essentially than any other regime, since popular reason can only be embodied in general legislation, whereas a monarch, for example, can govern case by case. But his treatment of this subject, which threads its way through the course of the book, is often disjointed and mysterious.

Zuckert notes in his acknowledgments that *A Nation So Conceived* was 20 years in the making, and the book does suffer from redundancies that suggest chapters written separately at different times and still in need of a final edit to bring them together into a unified whole. Similar points recur, at times in almost identical language, and supporting quotations are repeated several times.

At other times what Zuckert writes is not so much repetitive as confusing. In his chapter contrasting the South’s claim of a constitutional right of secession with the natural right of revolution, he describes a convoluted

framework of positive and negative natural rights, something he calls “liberty rights,” and rights with and without correlative duties. Zuckert’s attempt at novelty makes it hard to understand what he is saying. He argues that for Lincoln, and perhaps even for Locke, there can be a natural right to revolution and a simultaneous “right” by the government to resist that revolution.

If this moral stalemate strikes the reader as odd, it may be because Zuckert never mentions tyranny, alluding only to a subjective determination about whether government is not “supplying the protection of rights.” But would Locke or Lincoln—or Thomas Jefferson—ever suggest that there can be a legitimate right to revolt *and at the same time* a legitimate “right” by the government to suppress that revolt? Can both rights be right? (I think Herman Belz was more accurate in his 2013 essay, “Lincoln, Secession, and Revolution: The Civil War Challenge to the Founding,” when he wrote: “In Lockean theory, the exercise of the right of revolution is not an assertion of mere will, but rests on considerations of reason and justice.”)

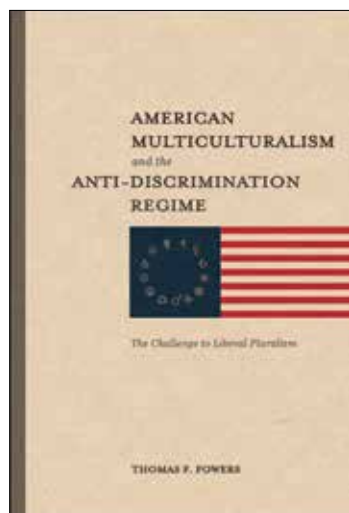
The most striking omission, however, in this discussion of natural rights and revolution, is slavery! Zuckert is, of course, perfectly free to disagree with the late Harry V. Jaffa and others who argued that the South

was forced into its contrived argument about constitutional secession in large part because claiming a natural right to revolution would have exposed the obvious potential for their slaves to invoke the same right. Still, it is very strange—especially since the injustice of the peculiar institution is in the foreground of nearly every other chapter—that in his entire discussion of the subject Zuckert does not even mention this point.

SOME OF ZUCKERT’S ATTEMPTS TO BREAK new ground are simply unconvincing. In one chapter he announces what appears to be a fresh insight regarding Stephen Douglas’s intellectual or moral development. In contrast to Douglas’s earlier understanding of popular sovereignty, his Chicago speech of 1858 represents what Zuckert sees as a decisive shift. There, Douglas embraces “full human sovereignty,” which is a “much more dangerous version” of the principle amounting to “moral nihilism.”

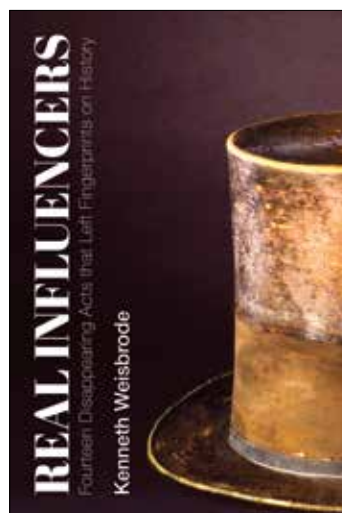
By the time he came to the 1858 debates Douglas must have realized the problems with his doctrine, because he begins to articulate a much more radical version of it that, I believe, is intended to avoid the self-contradictory character of

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the doctrine that Lincoln had exposed. “The great principle,” says Douglas at Chicago “is *the right of every community to judge and decide for itself, whether a thing is right or wrong, whether it would be good or evil for them to adopt it...*” [Emphasis added.]

In his earlier formulations of the doctrine Douglas had never gone quite so far as to affirm that it is up to the community to decide whether a thing is right or wrong.... Douglas is now saying there is no antecedent principle of moral or political right....

The voice of the people becomes literally the voice of God, or perhaps more accurately, replaces the voice of God: whatever the people will is right.

By attributing to Douglas this striking change in views, Zuckert is making an original claim I have not seen elsewhere in the scholarly literature. Yet he says almost nothing to defend this argument. At the point at which the reader might at last *want* some repetition—a close comparison of Douglas’s “popular sovereignty” rhetoric versus the more radical and nihilistic “human sovereignty”—the book simply deposits this new interpretation and moves on.

Because he is a Straussian writer, I wondered if perhaps Zuckert expects the reader to figure things out for himself. So I went back and looked at how he had described Douglas’s previous views. Five chapters earlier there is an analysis of the Peoria speech of 1854—Lincoln’s response to Douglas’s first iterations of popular sovereignty made in defense of the Kansas-Nebraska Act. The 1854 remarks by Douglas, four years before the speech in Chicago, must be the “earlier formulations of the doctrine” Zuckert is referring to. At least I am not aware of any earlier statements by Douglas that Zuckert might have in mind, or indeed anything prior said by Douglas on this theme. Yet here is how Zuckert himself describes this “early” version of Douglas’s position (again, in the context of the Peoria speech):

Douglas’s version of popular sovereignty is also a deeper-going manifestation of the idea of the people as the source of legitimate authority. Under Douglas’s doctrine, the people not only act directly but also are the source of the very norms embedded in laws. Douglas’s doctrine more or less embodied the old adage *vox populi vox Dei*. The people, exercising their right of self-governance,

determine for their communities what is just and unjust, right and wrong, for their community.

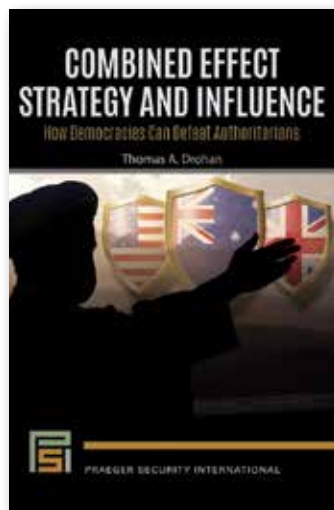
NOT ONLY IS DOUGLAS’S POSITION the same in each case, but Zuckert even uses nearly identical language to describe both the “earlier” and “later” versions. One has to wonder whether he believes in his own interpretation when he admits a few pages later that Douglas only dipped an ethical toe, so to speak, in the pool of nihilism. The following year, in the famous *Harper’s* magazine essay in which he lays out his views of territorial government, Douglas retreats, according to Zuckert, “from the radical doctrine of ‘human sovereignty’ that [he] had begun to develop in the earlier phase of his debates with Lincoln.” This “earlier phase” is, apparently, subordinate to the larger “later phase” distinguishing the pre- and post-radical views. (There seem to be phases within phases.) Douglas, Zuckert decides, “may himself have been frightened by the implicit moral nihilism of his earlier statements.”

This dithering becomes almost comical when Zuckert returns to the theme at the end of his book, in the chapter on Lincoln’s Second Inaugural, when the specter of Douglas’s

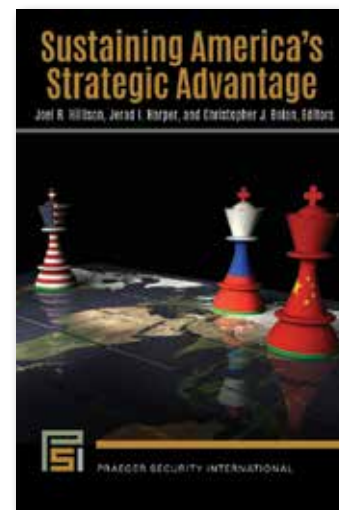
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alleged nihilism makes an unexpected return, unphased, so to speak, by its previous banishment. The usual meaning of *vox populi vox Dei*, Zuckert writes, is that “God’s will makes itself known through the voice of the people.” But in “the Douglas version,”

it comes to mean something quite different: the voice of the people is the voice of God, or the people replace God or any other superhuman source of right. Popular sovereignty is readily corrupted into human sovereignty, the view that there is no source of right other than human will, a view sometimes called conventionalism.

Is this supposed to be Douglas’s early, later, or consistent position? I cannot tell.

THERE ARE OTHER INSTANCES OF Zuckert running an idea up the flagpole and deciding that even he doesn’t want to salute it. At one point, he tantalizes the reader by promising to show that the decision in *Dred Scott v. Sandford* (1857) was far more nuanced, and Lincoln’s critique of it less compelling, than is commonly thought. He spends several pages discussing the “loopy” work of a single scholar, Mark Graber, who defends the jurisprudence of Roger Taney’s ruling as truer to our “bisectional meta-constitution.” (The word “loopy” comes from Zuckert’s review of Graber’s *Dred Scott and the Problem of Constitutional Evil* in CRB’s Winter 2007/08 issue.) Zuckert offers his own peculiar attempt to defend Taney, but decides in the end that the Chief Justice merely “set about reinterpreting all the parts of the Constitution that were incompatible” with his “new principle of inequality.” After several pages of heavy weather the controversy clears and we find that Lincoln was right all along.

Similarly, in discussing the protections for slavery in the Constitution, Zuckert offers a somewhat labored attempt to show that both “neo-Lincolnians” and “neo-Garrisonians” (i.e., abolitionists) were wrong about the meaning of these provisions. But he never substantiates a single concrete objection to the Lincolnian view. It feels like another ginned-up argument that doesn’t go anywhere.

There is, however, one argument that Zuckert makes with such force and conviction that it can’t be dismissed. His contention is hardly original, but it is revisionist in its own way, and rather unexpected. Lincoln, in Zuckert’s estimation, sees slavery as “an all-or-nothing crisis, where everything is at stake for both parties.” Stephen Douglas is correct in seeing the House Divided speech as “the provocation

that Lincoln intended it to be.” Preservation of the Union means “the patient must reach and survive a crisis.” The war was necessary, and the greatness of Lincoln’s statesmanship was consummated in instigating it. Thus, secession was brought on

by the clash of principles that Lincoln has been expending all his energies and rhetorical powers to bring about by insisting that Republicans and the free part of the nation persevere in the conviction of the wrongness of slavery and in the policies expressive of that conviction. Lincoln’s oft-repeated assurance that keeping to Republican principle would set the public mind to rest about slavery was just a lullaby argument. Rather, he correctly foresaw and, so far as in him lay, worked to bring about that crisis.... [B]y calling the Republicans and the North to do their duty as Lincoln laid that out, he helped provoke the crisis that, if survived as he seems to have expected, could rid the nation of slavery and ultimately save the Union.

According to what Zuckert calls the “standard view,” Lincoln was working to avert secession right up until 1861. But his Lincoln is “more prescient” by “welcoming the flow of events” that led to the South breaking away. In Zuckert’s “alternative view,”

Lincoln expected secession and even in a sense welcomed it as the crisis that he predicted in the “House Divided” speech would have to come and pass before the nation could become healthy and set on a path to being “all free.” Under this reading, Lincoln’s silence is a policy not of retaining the status quo but of not interfering with the dynamic already in motion.

Lincoln worked hard to appear moderate, and “publicly presented his policy one way,” while simultaneously “pursuing a quite different policy” of “covert activity.” (Zuckert avers that he is “impressed” by this esotericism, if we may call it that.)

This argument strikes me as bolder than anything published by the famously polemical and hardly bashful Harry Jaffa, whose *Crisis of the House Divided* (1959) made the case that Lincoln defeated Stephen Douglas rhetorically, in much the same way and on essentially the same grounds as Socrates defeated Thrasymachus in Plato’s *Republic*. Yet that rhetorical victory could not persuade those who would not listen, and thus, in Jaffa’s presentation, Lincoln failed politically to avert the war. Zuckert,

however, thinks Lincoln’s rhetoric *succeeded* politically by *precipitating* the war. Whereas Jaffa claimed he learned from Strauss how to see Lincoln as a philosophic prophet—a modern-day Maimonides or Alfarabi—one can read Zuckert’s references to Carl Schmitt as transforming Lincoln into an almost Machiavellian warrior-statesman, or a Thucydides who sees the effective truth of politics in “that violent teacher War” with its “unsought compulsions,” as Strauss wrote in *The City and Man* (1964).

A NATION SO CONCEIVED GENERALLY avoids commentary on our current political situation, confining itself to a few references to Donald Trump’s demagoguery and to vaccine mandates. Yet it is hard to imagine that any author publishing a book on the paradox of democratic sovereignty in 2023 could be wholly indifferent to our contemporary political antagonisms, which generate near-constant commentary left, right, and center.

To take just two recent and moderate examples, Brad Littlejohn in the Winter 2023 issue of *National Affairs* referred to America’s “lion’s den of moral confusion” arising from a “crisis of authority [that] runs much deeper than most realize.” More than “institutional rot in Congress” or the D.C. swamp “that needs to be drained...our problem is that we no longer know how to recognize an authentic claim to authority.” But without “recognition of authority, there can be no legitimacy.” Today, “even formerly respected and seemingly apolitical agencies like the CDC and the FBI draw profound suspicion.” Similarly, Michael Lind writing in *Tablet* in January 2023 observed: “As the progressive juggernaut crashes through the institutional landscape of American society, it is creating ever-growing numbers of angry or frightened refugees.” This includes “not merely conservatives and libertarians and populists, but also former progressives who simply will not pretend that men can get pregnant, along with pro-industry socialists who reject the pastoralism of the wind-and-solar Green fanatics.”

As with most other commentators, neither of these essayists offers any simple answers to our crisis. Perhaps Michael Zuckert’s most unsettling suggestion is not only how enduring such existential divisions may be, but how difficult it is to resolve peacefully “a conflict arising from the very identity of the nation.” “Perpetuation, or endurance,” he writes, “is an issue facing Lincoln’s generation; perhaps it is an issue facing every generation.”

Glenn Ellmers is the Claremont Institute’s *Salvatori Research Fellow in the American Founding*.

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