

America's Dialogue: Three Debates that Inform the Original Understanding of America¹
Elizabeth C'de Baca Eastman

Introduction

The United States has three distinguishable political communities: colonial America under the auspices of the British, a confederation of states, and a nation governed by the current United States Constitution. The governments within these political communities had different origins, purposes, and governing principles. Discovering the original understanding of America begins by studying the founding documents and learning from key events where stark alternatives were present. Three documents from the American Founding period—the Declaration of Independence, the Constitution, and the Bill of Rights—set a new era in motion, laid the foundation for a constitutional republic, and articulated and reaffirmed the rights of citizens. The documents lend themselves to individual study, but discovering their dialogue informs our understanding of America more broadly.

This paper is part of a larger project, which has the working title “America’s Governing Dialogue.” It has its origin in three of my lectures on the American Founding documents and a fourth lecture in progress entitled “America’s Founding Dialogue.”² Its focus is the dialogue that is present within the three founding documents, between them, and with the American people.

This paper is also informed by another entitled “The Assault on American Political Thought,” which I wrote for the now infamous APSA conference when the Claremont Institute panels were canceled. I argued that the American foundational principles that inform the study of American Political Thought are being called into question and criticized to the point that it can no longer be assumed that there will be a standard curriculum. The criticisms can be likened to assaults. I identified three: first, the rejection of the intellectual foundations of the study of politics; second, the rejection of dialogue, commonly called “cancel culture”; and third, sowing seeds of confusion around America’s point of origin and the founding. If we allow this shutting down of dialogue and speech to continue, we will lose an American practice that makes us a better people, bolsters good governance, and helps us to advance toward the ideals announced in America’s founding documents. We must rebuff and repudiate the efforts of those who aim to destroy the American political tradition.

I am taking the opportunity of this conference to focus on America’s dialogue in the form of debate. This essay, entitled “America’s Dialogue: Three Debates that Inform the Original Understanding of America,” combines the efforts of my lectures on the three founding documents and the assault on American Political Thought. Debate is another form of dialogue, which has a more confrontational nature because opposing arguments initiate the exchange. Three significant episodes that relate to the founding documents and can be recast as debates include whether to declare independence from Britain, the Federalist-Antifederalist arguments for and against the Constitution, and the Lincoln-Douglas debates between two Senatorial candidates in the lead up to one of the greatest crises of the nation, the Civil War. These events took place within a span of one hundred years and while there are differences between them, they are unified by the broader theme of establishing and applying the principles of American

governance. Studying the debates leads to a better understanding of the emergence of America and its founding principles, and portrays the nation tested in ways where another outcome in any of the three situations would have resulted in a different country.

The significance of studying these debates goes beyond their content. Alexis de Tocqueville, in the chapter “Causes Tending to Maintain a Democratic Republic” in *Democracy in America*, speaks of habits of the heart and habits of the mind. The ways, the customs, and the beliefs of the people are instilled over time and provide a continuity that is not found in laws. He stresses the importance of mores, which consists of the customs, habits, and beliefs of a people; he recognizes them as among the principal causes of maintaining a democratic republic in America.³ Americans longstanding habit of debate and dialogue is a habit that reaches back to the colonial era and since then has served the country and its inhabitants well. One avenue to push back against those who aim to crush debate in our country is to return to exchanges that contrasted deeply held beliefs by men and women who defended their positions through argument, debate, and dialogue. There were winners and losers in the debates, but the efforts of those who participated in them, which took the form of spoken and written words, serve as models for us to emulate. The specific content of the three debates that I highlight also informs our understanding of America.

The First Debate: Colony to Nation, Subject versus Citizen

Settlement in America was spurred by European nations that were intent on establishing a presence in new lands for economic and defensive purposes and by colonists who were seeking religious freedom and economic opportunities. As early as 1584, at the request of Sir Walter Raleigh, Richard Hakluyt’s “Discourse of Western Planting” described the advantages of spreading religion, increasing trade, supplying England’s needs, increasing the country’s revenue, improving its defensive posture and its navy, and providing employment.⁴ Within one hundred years, the British Empire was asserting its political and institutional hold over the colonies.

The New England, Middle, and Southern colonies were settled independently of each other. Their different origins and foundation included commercial corporations, proprietary charters, and royal colonies.⁵ The separation by an ocean from Great Britain required the colonists to engage in local governance, but generally they remained subject to the political and judicial rule of the British government. This governance took place within the colonies but also in the form of Acts to regulate and control their commercial interests.⁶ The enforcement of these laws was either lax or strict depending on the changes in monarchical and parliamentary rule as well as the needs of the Empire.

The end of the French and Indian War in 1763 was a turning point as colonial cooperation to prosecute the war was no longer needed and the British solidified their presence in America. This new era in British and colonial relations saw the intention to increase British troops in the colonies, a decision to tax the colonists to pay for them, the 1763 Proclamation preventing colonial expansion westward, and more stringent enforcement of Acts previously passed. The colonies were part of the British empire, and they were treated as such. Increasingly, there was a turning point in the American colonists’ reactions and responses to British actions.

James Otis was among the first to call for representation and consent to parliamentary taxation in his 1764 pamphlet, "The Rights of the British Colonies Asserted and Proved." His opening lays a foundation of God-given rights, which recurred throughout the colonial era.

... I affirm that government is founded on the necessity of our natures; and that an original supreme sovereign, absolute, and uncontrollable *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people. I say supreme absolute power is *originally* and *ultimately* in the people; and they never did in fact *freely*, nor can they *rightfully* make an absolute, unlimited renunciation of this divine right.

He continues,

But let the *origin* of government be placed where it may, the *end* of it is manifestly the good of *the whole*. *Salus populi supreme lex esto*,⁷ is of the law of nature, and part of that grand charter given the human race (although too many of them are afraid to assert it), by the only monarch in the universe, who has a clear and indisputable right to *absolute* power; because he is the *only* One who is *omniscient* as well as *omnipotent*.

Others made finer distinctions in their arguments regarding the actions of the British and the Acts they passed in their oversight of the colonies, but Otis begins with the origin of rights.⁸ This theme will recur throughout the years leading up to declaring independence.

The colonists' efforts to engage in a debate with the British Parliament and Ministries about their governance of the colonies had limited success and bordered on failure as Parliament passed several more Acts. Increasingly, with each new Act passed by the British, colonists penned their opposition in the form of pamphlets and letters, and petitions to the British government. Towns set up committees of correspondence to state the rights of colonists, and the legislatures of the thirteen colonies also set up committees of correspondence with appointed participants to provide colonial leadership to aid intercolonial cooperation.

The British response to these efforts to engage in a debate to resolve these increasingly different perceptions about the British and colonial relationship was that there was no debate to be had with the colonists. The British posture was both protector and beneficiary against the backdrop of their monarchical and parliamentary government; in their view, the colonists were subservient to those institutions.

One of the most decisive turns in the colonists' response to the British effort to reassert and maintain the colonial relationship that had existed since the founding of the colonies began with their efforts to act in concert. The 1765 Stamp Act Congress in New York had twenty-seven representatives from nine of the thirteen colonies attend. They issued a Declaration of Rights and Grievances, but the King rejected the petition because it was deemed an unconstitutional assembly. Continued conflict regarding colonial revenue, representation, and governance saw the convening of the first Continental Congress in 1774 and the Second Continental Congress in 1775 to respond to British actions in the colonies. The colonists' inability to get the British

government to engage in a debate had the unintended consequence of igniting a debate among the colonists themselves about their colonial status under the British and their future.

We must pose the question, “Were the actions of the British government significant enough to warrant a radical break?” There was also a prudential component of the debate: “What were the prospects of success?” The British were already advancing on a military front with the Battles of Lexington and Concord in April 1775, followed by the Siege of Boston and the Battle of Bunker Hill in June 1775. The colonists chose to defend themselves rather than capitulate to the British. On August 23, 1775, King George III declared the colonies to be in open rebellion.

Exchanges in writings, speeches, sermons, pamphlets, and committees of correspondence among the colonists, between the colonies, and within the Congress fostered thoughts of independence. Among the most famous was Thomas Paine’s 1776 pamphlet, “Common Sense.” “In the following pages I offer nothing more than simple facts, plain arguments, and common sense . . . nothing but independence, i. e. a continental form of government, can keep the peace of the continent and preserve it inviolate from civil war . . . a government of our own is our natural right.”⁹ The 50-page pamphlet sold more than 500,000 copies within a few months, a testament to the widespread colonial interest.¹⁰

While colonial sentiments in favor of independence were strong, the sentiment was not unanimous. The debate continued among those who were loyal British adherents, others who hoped for reconciliation, and still others who had concerns about the prudence of taking such a step.¹¹ The Continental Congress recommended to the assemblies and the conventions of the colonies to form governments and prepared a plan of Confederation.¹² On July 2, 1776 Richard Henry Lee’s June 7 Resolves for Independence received twelve affirmative votes in the Continental Congress. New York delegates had instructions not to vote.

The colonists’ experiences of years of infringements on their liberties, denial of their basic rights, and British intransigence moved them to act on the arguments that they had been making about their rights instead of submitting to British rule. The list of twenty-seven grievances in the Declaration laid out their reasons for choosing the radical break and taking a principled step: declaring independence.

On July 3, 1776, John Adams wrote to his wife Abigail about the events in the Continental Congress. “Yesterday, the greatest question was decided, which ever was debated in America, and a greater, perhaps, never was nor will be decided among men.” Adams continued with a description of how those who were not in favor of declaring independence were persuaded. “Time has been given for the whole people maturely to consider the great question of independence, and to ripen their judgment, dissipate their fears, and allure their hopes, by discussing it in newspapers and pamphlets, by debating it in assemblies, conventions, committees of safety and inspection, in town and county meetings, as well as in private conversations, so that the whole people, in every colony of the thirteen, have now adopted it as their own act.”¹³ Adams’s remarks highlight the broader debate that took place around the country and that led to a majority embracing independence. This passage is also an example of the customs and habits that maintain the American democratic republic, as explained by Tocqueville in his discussion of the mores of the people, noted above.

The Declaration's opening lines capture the particular circumstances, the break with Britain, and the universal appeal, the laws of nature and nature's God: "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."¹⁴ The colonists' efforts to maintain political ties with the British were thwarted by the King and Parliament's denial of their natural and God-given rights: "Our repeated Petitions have been answered only by repeated injury." The penultimate paragraph recounts their unsuccessful efforts. They concluded that their only choice was to absolve their Allegiance to the British Crown and dissolve their political connections. This declaration of independence would not have been possible without the years of debate among the colonists to recognize, discern, and persuade others to embrace the stance of a free and independent nation.

Upon declaring independence, the first political community of colonial America under the auspices of the British ended. The now-citizens of the United States of America were not just severing ties with their British colonial past, nor were they simply forming a new government. The foundation laid by the Declaration of Independence articulated truths that had never been used as the foundation of government, including natural rights, consent of the governed, and the principle of equality. John Quincy Adams, son of John and Abigail Adams, saw the Declaration as announcing "in practical form to the world the transcendent truth of the unalienable sovereignty of the people. It proved that the social compact was no figment of the imagination; but a real, solid, and sacred bond of the social union."¹⁵ Years of debate serve as a chronicle of this transformation from colony to nation.

The Second Debate: Confederation of States to Constitutional Republic, Federalist versus Antifederalist

In the month prior to declaring independence from the British, the Continental Congress called upon the thirteen colonial assemblies to craft constitutions, which built on their colonial past of being independent of one another. At the same time, it reflected their transition to a new foundation of being part of a nation as they declared independence from the mother country. The request included the charge to "adopt such a government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of the constituents in particular, and America in general."¹⁶

The former colonies became states in the newly independent America, but the whole of the new United States required a government. This was imperative as the nation was simultaneously fighting the British to maintain its independence and finding its footing as an independent nation. Representatives of the Continental Congress, renamed the Confederation Congress, drafted Articles of Confederation that outlined the governing structure of the states and nation. The Congress adopted the Articles on November 15, 1777 and circulated it to the states for ratification. The last state, Maryland, signed on March 1, 1781.¹⁷ The Confederation Congress acted as a governing body for the nation until ratification of the Articles of Confederation. The confederation of states defined the second political community in the United States that unified the nation and provided a new governing structure.

The Confederation relied upon the preexisting offices in the states, counties, and townships and gave a minimal grant of authority to the Congress to regulate affairs for the nation. Each state retained its “sovereignty, freedom and independence” (Article II) and the relationship between the states was characterized as “a firm league of friendship” (Article III). The Articles did not have an executive power and had limited judicial functions, but gave the Confederation Congress the power to regulate trade and settle disputes between the states, and to engage in foreign policy. The goal of the Confederation was to unify the nation but having just gained independence from the all-powerful authority—the British Monarchy and Empire—the citizens and the states were reluctant to give too much power to a central government. Thus, the Confederation government had limited authority. Arguably, the confederation of states that was instituted in America after 1776 was the best regime that the circumstances allowed.

George Washington’s Circular Letter to the States (June 8, 1783) captured the tenor of the nation while he prepared to resign his military commission at the successful conclusion of the revolutionary war. The Treaty of Paris was to be signed on September 3, 1783. Washington expressed his hopes, but also his concerns in light of his experiences with the inability of the Confederation Congress to fund the war and provide troops and his concern about meeting current and future obligations.

At this Auspicious period the United States came into existence as a Nation, and if their Citizens should not be completely free & happy, the fault will be entirely their own.

Such is our situation, and such are our prospects: but notwithstanding the Cup of blessing is thus reached out to us, notwithstanding happiness is ours if we have a disposition to seize the occasion and make it our own, yet it appears to me there is an option still left to the United States of America; that it is in their choice and depends upon their conduct, whether they will be respectable and prosperous or contemptible and Miserable as a Nation. This is the time of their political probation: this is the moment when the eyes of the whole World are turned upon them—This is the moment to establish or ruin their National Character for ever—This is the favorable moment to give such a tone to our federal Government, as will enable it to answer the ends of its institution—or this may be the ill-fated moment for relaxing the powers of the Union, annihilating the cement of the Confederation ...¹⁸

The “political probation” was prolonged as the nation faced mounting political and economic challenges and an inadequate confederated government.

By the mid 1780’s, James Madison and others initiated efforts to assemble representatives from the states to address the deficiencies. The first formal discussion was at the Annapolis convention in 1786, which recommended a convention of all the states. Madison’s essay, “Vices of the Political System of the United States” (April 1787), served as a comprehensive statement with a list of eleven defects of the Articles, thus further advancing the effort to seek remedies.¹⁹

The Confederation Congress joined several states in calling for a convention to revise the Articles of Confederation, though some states issued a broader call to render the Federal

Constitution adequate to the exigencies of the Union.²⁰ The Convention convened on May 25, 1787, and initiated a debate that was as consequential as the debate that resulted in proclaiming independence from Britain. The “opponents” came to be distinguished by the names of Federalists and Antifederalists when the debate entered the public sphere during the state ratification proceedings of the newly drafted Constitution. It is more accurate to say that the debate began in earnest in the lead up to and during the convention that proceeded behind closed doors for nearly four months. Records of the proceedings shed light on the debate, as do the published writings of many who assumed pseudonyms such as Brutus, Agrippa, and Federal Farmer, and others, such as Richard Henry Lee and George Mason, who wrote under their own names.

The larger debate began with the question of whether to amend the Articles or restructure the union. The issues that framed the debate included bicameral versus unicameral legislatures, a strong national government divided into three branches (the Virginia Plan) versus equal representation for each state, increased Congressional powers over interstate commerce and taxation, and essentially retaining the Articles of Confederation (the New Jersey Plan). The compromise was a bicameral legislative structure with House members chosen by popular vote and Senators chosen by the states, a unitary executive, and an independent judiciary. This led to restructuring of the union. Other prominent features that set the Constitution apart from the Articles of Confederation included a guaranty of a republican form of government, separation of powers, federalism, an executive power vested in a President, and an unprecedented authority given to the national government. As Antifederalist Brutus wrote a month after the convention ended, “This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section eight, article one it is declared ‘that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department of office thereof.’”²¹ This power and the lack of a Bill of Rights were two of the most contentious points. While the Antifederalists waged a vigorous debate before and during the convention, thirty-nine convention delegates signed the Constitution on September 17, 1787 and sent it to the states for ratification. The Constitution’s structure would end the confederation of states, which served as a decisive break with the prior two political communities.

After drafting a new Constitution, the Federalists had to persuade the citizens and those in the conventions to ratify it, while the Antifederalists aimed to stop its ratification or at least modify it to curb its powers. The Federalists accomplished this through, among other things, the efforts of Alexander Hamilton, James Madison, and John Jay who, under the pseudonym Publius, published eighty-five essays that defended and explained the Constitution.

The most successful of the Antifederalist efforts was the addition of a bill of rights. Publius defended its omission by arguing that the Constitution recognized particular privileges and rights of the people, that bills of rights were in their origin between king and subjects, and declaring that things shall not be done when there is no power or authority in the Constitution to do them would raise the implication that broader powers had in fact been given.²² George Mason objected to this. “There is no declaration of rights; and, the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights in the

separate states are no security.”²³ Thomas Jefferson, commenting on the proposed Constitution, wrote to James Madison in 1787 that he did not like the omission and added “a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse or rest on inference.”²⁴ Cast in light of their prior experience of a British government that did not recognize the rights of the colonists, the Antifederalists were concerned that reducing the thirteen states (as constituted under the Articles of Confederation) into one government (as proposed under the newly drafted Constitution, they believed) would prove destructive to the liberties of the people.²⁵ They saw a bill of rights as one of the means to remedy this defect in the Constitution.

The debate about the Constitution and how best to send it to the ratifying conventions continued in the Confederation Congress. There were some, like Richard Henry Lee of Virginia, who continued to argue for changes to the document, but the Congress chose to send it without approval or rejection. After nine of the thirteen states ratified it, it became effective pursuant to the terms of Article VII. Several states ratified it with the understanding that a bill of rights would be considered. Madison took the lead in the first Congress and composed a list of amendments from the more than two hundred recommended by several states during their ratifying conventions. After debates in the House and Senate, President Washington submitted twelve amendments to the states for ratification. On December 15, 1791, Virginia became the tenth of fourteen states to ratify ten of the amendments, thus meeting the constitutional requirement of three-fourths of the states and securing a victory for the Antifederalists.²⁶ The third political community in the United States, a constitutional republic, began, in large part due to the Federalist-Antifederalist debates.

The Third Debate: The Founding Principles and Slavery, Lincoln versus Douglas

The Antifederalist Cato, in his October 25, 1787 letter during the Federalist-Antifederalist debates, pointed to the unlikely prospect of achieving the aspirations announced in the Constitution’s Preamble and what he called the unkindred legislature, “composed of interests opposite and dissimilar in their nature, [which] will in its exercise, emphatically be, like a house divided against itself.” Cato referenced differences in the climates, productions, commerce, and population in the United States, but he also pointed to “the dissimilitude of interest, morals, and policies.”²⁷ Slavery was one of the differences that fit this latter description and was the subject of the most contentious debates during the constitutional convention. Slavery in America dated to the British, Dutch, and other European powers bringing it to colonial settlements. The Articles of Confederation recognized the sovereignty of the states to regulate their internal affairs within their borders, so it was the purview of state legislatures to determine whether a state permitted slavery or not. Under the Confederation Congress, the Northwest Ordinances divided the territory into self-governing territories, gave guidelines for statehood eligibility contingent upon population growth, established governing bodies, guaranteed civil and religious liberty and most importantly outlawed slavery from the lands of the Northwest Territory, but the same prohibition was not contained in the ordinance that provided for the government of territories in the South.²⁸

There is no mention of slavery in the Constitution, but three clauses speak implicitly about it. Article I, section 2 apportions representatives and taxes among the several states by adding the whole number of free persons and 3/5 of all other persons. This provision ensured that

those slave states that denied fundamental rights to some could not benefit through representation from their numbers. The ban on importation of persons after 1808 was done with the belief that it would lead to the end of the institution. Article IV, section 2 provides that a person “held to Service or Labour in one State” who escapes into another must be returned to the person to whom the service or labor was due. These three clauses were clear compromises with slavery, but they must be counterbalanced both by the implication in the non-importation clause that the Congress could (and in fact did) ban the importation of slaves after 1808. They must also be counterbalanced by the Republican Guarantee in Article IV, section 4. The clause required the United States to guarantee to each state a republican form of government, which is to say, one grounded in the consent of the governed, an idea articulated in the Declaration of Independence that was wholly incompatible with slavery.²⁹ These examples demonstrate that the drafters of the Constitution did what they could at the time to check slavery and the forces that supported it in order to achieve a Union.

The period after the ratification of the Constitution saw dramatic change in America as it grew westward and developed economically. The unresolved issue of slavery was becoming increasingly contentious and threatened the growth, unity, and prosperity of the nation. The Treaty of Guadalupe Hidalgo that ended the Mexican-American War ceded a vast amount of territory to the United States. The failure to pass the Wilmot Proviso in the US House and Senate, which would have banned slavery in the newly acquired territory, contributed to the existing sectional differences. Efforts in Congress aimed to maintain a balance by simultaneously admitting free and slave states as well as forging compromises. The 1820 Missouri Compromise declared that Maine was a free state and Missouri was a slave state; it did not allow any new slave states north of Missouri’s southern border. The 1850 Compromise allowed California to be a free state in exchange for a much stricter Fugitive Slave Act. Although there was no mention of slavery in the Acts organizing the territories of the Utah and New Mexico, those Acts suggested that the people of the territories would ultimately decide for themselves whether their territories would enter the Union as free or slave states. Illinois Senator Stephen Douglas relied on this “popular sovereignty” idea when he introduced the Kansas-Nebraska Act in 1854, thus ignoring the Missouri Compromise and allowing slavery north of Missouri’s southern border.

This dramatic change prompted Abraham Lincoln, who had returned to his law practice after serving terms in the Illinois state legislature and the US Congress, to return to politics. He wrote in an 1860 autobiographical account: “In 1854, his profession had almost superseded the thought of politics in his mind, when the repeal of the Missouri Compromise aroused him as he had never been before.”³⁰ He, like the Founders, thought that slavery would eventually die away, but confining it to the South and preventing its spread made its end more likely. Ignoring the Missouri Compromise meant that slavery could become more widespread, and the practice would continue.

Douglas’s efforts to garner support for the Kansas-Nebraska Act included giving speeches in Illinois. After his three-hour speech at Peoria on October 16, 1854, Lincoln followed with a speech of his own on the same topic. To prevent democrats from leaving, he told the crowd that Douglas would return to reply to him: “I felt confident you would stay for the fun of hearing him skin me.”³¹ Many of the themes addressed by both men in their speeches returned in their famous debates from August 21 through October 15, 1858. The difference, however, was

the four years of acrimony throughout the nation that brought a greater intensity to the slavery debate.

Lincoln was selected by the newly formed Republican Party to be its candidate for US Senate (at the time, to be chosen by the State Legislature). At the close of the Republican State convention on June 16, he gave what came to be known as the House Divided speech.

“A house divided against itself cannot stand.”

I believe this government cannot endure, permanently half *slave* and half *free*.

I do not expect the Union to be *dissolved*—I do not expect the house to *fall*—but I *do* expect it will cease to be divided.

It will become *all* one thing, or *all* the other.³²

Lincoln’s opponent was Douglas, who was up for re-election in 1858. He gave a speech within a month of Lincoln’s and characterized “all one thing or all the other” as a uniformity that would be destructive of state rights, state sovereignty, of personal liberty and personal freedom. Their respective speeches captured where the United States stood on the eve of the 1858 election; there were no more compromises to be had. Antifederalist Cato’s mention of dissimilitude of interest, morals, and policies noted above still rang true and would become apparent in the debates.

The Lincoln-Douglas Debates are among the most significant in American history because America’s founding principles are at the heart of their content. The debates in each of the seven Illinois Congressional districts in which the candidates had not yet made major addresses raised questions such as whether slavery would spread throughout the nation, whether the people or the Congress would make decisions about the presence of slavery in the territories and states, and whether the Declaration of Independence or the Constitution informed the debate. Themes included the Kansas-Nebraska Act and popular sovereignty, the doctrine of uniformity that Douglas attributed to Lincoln, the impact of the Dred Scott decision on the slavery debate, the interpretation of the principle of equality and the natural rights in the Declaration of Independence, and whether slavery was a moral question involving right or wrong or a political question that was decided by majority rule. Each of these spoke to slavery and the future of the nation in different ways. The debate format allotted one hour to the first speaker, an hour and a half to the second, and thirty minutes for rebuttal to the first speaker. Thousands attended them. They were also printed in the state’s party newspapers, the *Press and Tribune* (for the Republicans) and the *Times* (for the Democrats), both published in Chicago and subsequently published as a book in 1860.³³

The principle of popular sovereignty, present in the Kansas-Nebraska Act, was explained by Douglas as guaranteeing to each State and Territory the right to do as it pleases on all things local and domestic with no Congressional interference. Lincoln questioned whether the people would be able to exclude slavery. He cited Ohio Senator Chase’s Amendment to the Nebraska Bill expressly authorizing the people to exclude slavery, which was voted down by Douglas and others when Chase refused to modify the amendment to prohibit or introduce slavery. Lincoln cited the Dred Scott decision: “‘under the Constitution’ the people cannot exclude slavery.” Lincoln also questioned why Douglas added “state” when the issue raised in the Kansas-Nebraska Act was regarding territories and whether Congress had the right to prohibit slavery *in*

the territories. Lincoln pointed to the holding in the Dred Scott decision that the people cannot exclude slavery from a Territory. His concern was that if another Dred Scott decision shall come with a holding that they cannot exclude it from a State, then it will be apparent that Douglas's insertion of State "was in view of something which was to come in due time."³⁴

Exercising popular sovereignty was not limited to voting on whether slavery was permitted in a Territory or State, but it extended to regulating internal affairs. While Lincoln argued that the negro should be entitled to the natural rights of life, liberty, and the pursuit of happiness announced in the Declaration of Independence, Douglas believed the negro belonged to an inferior race, and must always occupy an inferior position though this did not mean he ought to be a slave. Instead, he explained, "humanity and christianity both require that the negro shall have and enjoy every right, every privilege, and every immunity consistent with the safety of the society in which he lives." He added that they should also be consistent with the public good, and that each State and Territory would decide which rights, privileges, and immunities are extended. The doctrine of popular sovereignty was thus much broader in scope and had the potential of perpetually denying basic human rights to classes of citizens. These practices with respect to the negro are also contrary to the principles of the Declaration of Independence which require consent of the governed. As far as Douglas invoking safety, the Declaration includes safety and happiness as did the instructions from the Continental Congress to the thirteen colonial assemblies to craft constitutions, as noted above.³⁵

Lincoln rejected Douglas's claim that his Springfield speech that included the line "a house divided against itself cannot stand" meant that he sought uniformity throughout the nation. He agreed with Douglas that variety in the domestic institutions of the states is necessary and binds the union, but he did not see a parallel with slavery. Slavery has shaken every facet of life, Lincoln explained, and he asked, "Is it not a false statesmanship that undertakes to build up a system of policy upon the basis of caring nothing about *the very thing that every body does care the most about?*" The real issue in this controversy, Lincoln explained, is "one class looks upon the institution of slavery *as a wrong*, and of another class that *does not* look upon it as a wrong." It is not a mere political issue, but a moral one, or what he called the eternal struggle between right and wrong. He reminded his listeners that at Quincy Judge Douglas looked to no end of the institution of slavery. Douglas concluded the seventh debate asking what right have we to interfere with slavery. He attributed the discord to agitators and saw standing by the Constitution as the remedy.³⁶

These examples are representative of the wide-ranging discussions between the two candidates, but more importantly the wide gulf that separated them and the nation. Douglas won the Senate race, but the widely publicized debates made Lincoln a national figure. He accepted invitations to speak in other states, including at New York's Cooper Institute. He spoke on a variety of topics including the new Republican party. He subsequently won the Republican presidential nomination and the presidential race against three others on the ballot. Despite Lincoln's repeated statements, including in his First Inaugural Address as President, that he had neither purpose, nor lawful right, nor inclination to interfere with the institution of slavery, southern states seceded from the Union. The debates with Douglas, a northerner broadened citizens' understanding of the issues and principles related to slavery, but the debate did not extend to the South or to the slaves. Reminiscent of Britain's failure to debate the colonists, the

southerners' failure to debate and instead rebel and secede from the nation resulted in a war and a break that, after much loss of life and destruction, brought a new foundation to the country as reflected in the Civil War Amendments.

Conclusion

The participants in these three debates could not have been more diverse with respect to their circumstances. They lived at different times and in different places, they had varying levels of education and contrasting religious beliefs and practiced various professions. What united them was their belief in establishing good government and in recognizing that rights were a central feature of governance. The three debates provoked national debates that encompassed the whole of the American people. The participants were not uniform in their thoughts and beliefs but had a willingness to engage in debates to articulate their positions. They also had courage. The British Monarch and Parliament condemned the colonists' actions. When the American colonists' efforts to engage the British were unsuccessful, they began a dialogue amongst themselves to determine future governance and severed ties when there were no other avenues to pursue. The Declaration of Independence was the result of their debates. Reforming a government under which all the states had lived for ten years provoked exchanges among some of the most prominent American political figures with different governing principles. The Constitution was the result of their debates. A Senate candidate's proposal to the incumbent to have a series of debates in front of thousands that raised highly controversial issues regrettably had a different outcome that initially was not as favorable as the prior two. Eventually, though, the nation saw the end of slavery and embraced principles consistent with the ideals of the Declaration of Independence and were realized in the 13th, 14th, and 15th Amendments.

Dialogue and debate are examples of Tocqueville's habits of the heart and the mind, which contribute to maintaining America's democratic republic. A republican form of government has a greater need for such practices because there must be dialogue between and among representatives and citizens and debate when there are differences. Both encourage deliberation, which may prevent violence and lead to well-informed outcomes and resolutions. Such practices must also be encouraged and taught to younger generations to ensure that they continue. Other forms of government have no dialogue and debate, such as a tyranny, or an aristocracy, which has limited exchanges, or an oligarchy where exchanges are dominated by a few.

I made the assertion at the outset that the specific content of the three debates informs our understanding of America. The three debates were among the most significant in American history because liberty, equality, natural rights, and the rights in the Bill of Rights were the central themes that either initiated the debates or resulted from them. They encompass all the topics discussed above: the principles of the Declaration of Independence that recognizes that all men are created equal, the purpose of government in the Constitution to secure liberty, the Bill of Rights that further articulates the rights of the citizens and serves as a check on tyranny, and the subsequent Civil War Amendments that corrects injustices.

The debates centered on the natural right of the people to alter their form of government that was central to the colonists declaring independence from the British and that saw the end of

the Confederation and the start of the Constitutional Republic. In the words of the Declaration: “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.” If the purpose of government is to secure liberty, the prolongation of slavery put at risk that cornerstone. Lincoln goes back to the Declaration of Independence as the foundation for his arguments. Those who have come from other countries, Lincoln remarks in the “Electric Cord” speech,

when they look through that old Declaration of Independence they find that those old men say that ‘We hold these truths to be self-evident, that all men are created equal,’ and then they feel that that moral sentiment taught in that day evidences their relation to those men, that it is the father of all moral principle in them, and that they have a right to claim it as though they were blood of the blood, and flesh of the flesh of the men who wrote that Declaration, and so they are. That is the electric cord in that Declaration that links the hearts of patriotic and liberty-loving men together, that will link those patriotic hearts as long as the love of freedom exists in the minds of men throughout the world.”³⁷

The Lincoln Douglas debates closed the loop on the first two debates that began this discussion and informs our understanding of America.

Publius, in Federalist #1, asked whether we can establish good government from reflection and choice or are destined to depend on accident and force.³⁸ Dialogue and debate are among the best ways to engage in reflection and choice. One of the assaults on American Political Thought and by extension America, mentioned above, is led by those who aim to crush debate. Americans must meet them head on and preserve and practice one of the greatest American traditions: spirited debate that leads to a full exposé of any difficulty, dilemma, or impasse and resolve them in ways that are consistent with America’s founding principles.

¹ Prepared for delivery at the Intercollegiate Studies Institute: American Politics and Government Faculty Summit, Fort Lauderdale, February 23-24, 2023.

² Elizabeth Eastman, “Does the Declaration of Independence Still Speak to Us Today?” (lecture, St. John’s College Graduate Institute, Santa Fe, NM, July 4, 2018); “What Kind of Political Community does the US Constitution Form?” (lecture, St. John’s College Graduate Institute, Santa Fe, NM, July 23, 2019); and “Reflections on the Bill of Rights” (lecture, St. John’s College Graduate Institute, Santa Fe, NM, June 30, 2020).

³ Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), I.2.9; 267, 275.

⁴ Richard Hakluyt, “Discourse of Western Planting,” American Studies at the University of Virginia, <http://xroads.virginia.edu/~Hyper/HNS/Garden/hakluyt.html>.

⁵ Jack P. Greene and J. R. Pole, eds., *Colonial British America, Essays in the New History of the Early Modern Era* (Baltimore: Johns Hopkins University Press, 1984), chapter 14, “Political Development.” The Massachusetts Bay Company is an early example of an English chartered commercial corporation, having a charter empowering the company to trade and set up a colony. In Virginia, corporate governance served as colonial governance. The Treasurer was the head of the corporation and there were two councils to govern: one resident in England and the other in the colony. There were also proprietary charters issued to individuals (e. g. Lord Baltimore, William Penn, and the Duke of York) who assumed governing powers. The King controlled the Royal colonies, granting authority to colonial commissions and colonial Assemblies.

⁶ Examples include the Navigation Acts (1651, 1660, 1663) that regulated transport, English shipbuilding, and shipment of goods to and from the colonies; the Molasses Act (1733) that restricted trade to the British West Indies;

the Sugar Act (1764) that imposed duties that would be ruinous to the colonists; and others. Additional Acts that exacerbated tensions included the Stamp, Currency, and Quartering Acts (1765), the Declaratory Act (1766), the Townshend Revenue Act (1767), and the Tea Act (1773).

⁷ Translation: Let the highest law be the people's well-being.

⁸ Jack P., Greene, ed., *Colonies to Nation 1763 – 1789: A Documentary History of the American Revolution* (New York: W. W. Norton, 1975), 49. The New York General Assembly to the House of Commons sent a petition arguing against Parliament's right to tax the colonies for revenue (October 1764). Greene, 33-39. Colonist Daniel Dulany denied the right of the British to impose an internal tax on the colonies for the single purpose of revenue but admitted their right to regulate trade without consent, Greene, 51- 59. An example of a British counterargument is Thomas Whately, British M.P. for Ludgershall, who defended the Sugar Act as a regulatory measure and argued that the colonists were virtually represented in Parliament. "All *British* Subjects are really in the same; none are actually, all are virtually represented in Parliament; for every Member of Parliament sits in the House, not as Representative of his own Constituents, but as one of that august Assembly by which all the Commons of *Great Britain* are represented." Greene, 49.

⁹ Greene, 275, 281, 282.

¹⁰ Britannica, "Thomas Paine," <https://www.britannica.com/biography/Thomas-Paine>.

¹¹ Greene, 285-296, William Smith, Jr., "Thoughts as a Rule for my own Conduct" (June 9, 1776); Landon Carter, *Diary* (May 1, 29, 1776); John Dickinson, "Arguments Against the Independence of the Colonies ..." (July 1, 1776).

¹² Greene, 283-285, "The Resolves and Recommendations of Congress" (May 10, 15, 1776), Richard Henry Lee, *Resolves for Independence* (June 7, 1776).

¹³ Greene, 297.

¹⁴ Declaration of Independence, National Archives, America's Founding Documents, <https://www.archives.gov/founding-docs/declaration-transcript>.

¹⁵ John Quincy Adams, "An address, delivered at the request of the committee of arrangements for celebrating the anniversary of Independence, at the City of Washington on the Fourth of July 1821 upon the occasion of reading The Declaration of Independence," <http://teachingamericanhistory.org/library/document/speech-on-independence-day/>.

¹⁶ Greene, 283. "The Resolves and Recommendations of Congress" (May 10, 15, 1776). See also William B. Allen and Gordon Lloyd, eds., *The Essential Antifederalist*, 2nd ed. (Lanham, MD: Rowman and Littlefield Publishers, 2002), 1 "The language of safety and happiness also appears in the Declaration of Independence." See also Encyclopedia.com, "Constitutionalism: American Colonies," <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/constitutionalism-american-colonies>.

¹⁷ Articles of Confederation, National Archives, Milestone Documents, <https://www.archives.gov/milestone-documents/articles-of-confederation>. See also "Ratification of the Articles of Confederation," Center for the Study of the American Constitution, University of Wisconsin, Madison, <https://archive.csac.history.wisc.edu/706.htm>.

¹⁸ Greene, 439. George Washington, "Circular Letter to the States" (June 8, 1783). Washington also speaks of necessary measures to improve governance under the Confederation, such as forgetting their local prejudices and policies, but his words were not heeded.

¹⁹ Greene, 514-519.

²⁰ "The Confederation Congress Calls a Constitutional Convention" (February 21, 1787) Center for the Study of the American Constitution, <https://csac.history.wisc.edu/2021/02/24/the-confederation-congress-calls-a-constitutional-convention-21-february-1787/>. See also *Convention of States Action*, p. 2, <https://conventionofstates.com/news/conventional-disinformation>.

²¹ Allen, 107. Brutus, "Essay I" (October 18, 1787).

²² "The Federalist Papers," The Avalon Project: Documents in Law, History, and Diplomacy, http://avalon.law.yale.edu/18th_century/fed01.asp, #84.

²³ Allen, 16. George Mason "Objections" (October 1787).

²⁴ Thomas Jefferson to James Madison, December 20, 1787, <https://founders.archives.gov/documents/Madison/01-10-02-0210>.

²⁵ Brutus, "Essay II" (November 1, 1787), Teaching American History, <https://teachingamericanhistory.org/library/document/brutus-ii/>.

²⁶ "Ratification of the U.S. Constitution: An Overview of the Process," Center for the Study of the American Constitution, <https://csac.history.wisc.edu/2021/03/31/ratification-of-the-u-s-constitution-an-overview-of-the-process>. See also From George Washington to the President of Congress, 17 September 1787 <https://founders.archives.gov/documents/Washington/04-05-02-0306#GEWN-04-05-02-0306-fn-0001>. See also

James Madison to Richard Peters August 19, 1789, <https://founders.archives.gov/documents/Madison/01-12-02-0230>.

²⁷ Allen, 27. Cato, "Letter III" (October 25, 1787).

²⁸ Northwest Ordinance, National Archives, Milestone Documents, <https://www.archives.gov/milestone-documents/northwest-ordinance>.

²⁹ John C. Eastman, "The Declaration of Independence as Viewed from the States" in *The Declaration of Independence: Origins and Impact*, ed. Scott Gerber (Washington, D.C.: CQ Press, 2002), 96-117.

³⁰ From "Autobiography written for John L. Scripps" (1860) in Lincoln, *The Collected Works of Abraham Lincoln*, Vol 4, ed. by Roy P. Basler et al. (New Jersey: Rutgers University Press, 1953), 67.

³¹ From "Speech at Peoria, Illinois," (1854) in Lincoln, *Collected Works*, Vol. 2, 248.

³² From "A House Divided": Speech at Springfield, Illinois (1858) in Lincoln, *Collected Works*, Vol. 2, 461.

³³ William E. Gienapp, *Abraham Lincoln and Civil War America: A Biography* (New York: Oxford University Press, 2002). 62. See also Robert W. Johannsen, ed., *Lincoln-Douglas Debates* (New York: Oxford University Press, 1965) 3-13.

³⁴ Discussion and quotations in this paragraph from "First Debate with Stephen A. Douglas at Ottawa, Illinois (1858) in Lincoln, *Collected Works*, Vol. 3, 1-37.

³⁵ Discussion and quotations in this paragraph from "First Debate with Stephen A. Douglas at Ottawa, Illinois (1858) in Lincoln, *Collected Works*, Vol. 3, 1-37.

³⁶ Discussion and quotations in this paragraph from "Seventh Debate and Last Debate with Stephen A. Douglas at Alton, Illinois (1858) in Lincoln, *Collected Works*, Vol. 3, 283-325.

³⁷ From "Electric Cord" Speech (1858), in Lincoln, *Collected Works*, Vol. 2, 499-500.

³⁸ *Federalist Papers*, #1.

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