

The FORUM

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My dear Miss Tarbell:

I am sending you today a proof of "Lincoln as a Lawyer", an article by Lord Shaw of Dunfermline, which is to appear in the February FORUM.

I am very eager to hear your reaction to this article. Won't you write a few lines telling us your opinion of Lord Shaw's Lincoln, and your own ideas on Lincoln as a lawyer?

Very sincerely yours,

Henry G. Seach
EDITOR

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LINCOLN AS A LAWYER

LORD SHAW OF DUNFERMLINE

FORTUNATE indeed was America to have at her service, in time of great national need, a citizen so gifted, so wide in knowledge, so deep in feeling, so varied in the movement of the nation and the human heart. But would the sterling qualities possessed by Abraham Lincoln have proved available had his wisdom not been ripened by legal experience? In this paper, probably for the first time our Martyred President is shown to have been, not a politician with a bunch, but a lawyer developed by gruelling training.

THE idea of Abraham Lincoln as a lawyer is still unfamiliar to the public mind. People think of him as an orator, a humorist, a rail splitter, a storekeeper, a statesman, a Congressman, a President; but they do not associate him with the law. Yet he practised law for four and twenty years, went through its apprenticeship, the rough and tumble of primitive Circuit Courts, rose in it from stage to stage both of success and of knowledge, and ranked with leaders of the highest standing in the law and in the State, — all this before, finally, public service claimed him exclusively for its own. His sterling qualities, his downright integrity, his dauntless courage, his practical reach of mind, his vision of the range and right of the equality of man, — public service claimed them all, needed them all. But they would not have been, I verily believe, available, had Lincoln's faculties not been trained by the law.

The law was his schoolmaster. It brought him with an accomplished mind on to the stage in those greatest scenes of American drama in which humanity's rise or fall was in issue. In these he won the enfranchisement of man and he secured the union of his people. Though he perished by the hand of the assassin, his martyrdom was a crown. The law had helped and had done much to mold and shape and equip this man for his high achievement. Let us think of the story of it, — even yet, as I say, an unfamiliar story.

He came, to tell the truth, of a shifting and a shiftless stock, — born in a little township in Kentucky in 1809, at four years of age moving to another, and at nine over the Ohio river to Indiana. So went the family, the father partly farmer, partly jobbing carpenter and laborer. Hardly were they in Gentryville in Indiana before the mother died; and in a year's time a stepmother

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came on the scene. She had a heavy handful. Among other cases, an unprosperous husband of wandering habits and a son of great bodily strength and quick growth with no schooling but patches of a few months (less in all than one year), and yet a son of a very lovable and helpful turn and with a heart of gold. So with odd jobs here and there and sheer poverty ever nudging him by the arm, the boy grew to the height of six feet four inches by the age of seventeen.

Against these huge balances in the scale of fortune only three items appeared on the other side, namely, a good stepmother, a few books such as all of us with a decent upbringing should have, a Bible, Aesop, the *Pilgrim's Progress*, a life of the national hero, a history of the nation, and, — what every decent upbringing does not bring, — a love for more books with Shakespeare and Burns early on the file. Of these, — speaking with some knowledge of what he read and what he said, and what he wrote and what he lived, — I should place the Bible and Bunyan's immortal allegory as woven into the very texture of his private and his public life. In no public utterance, however resounding, however grave, did this sincere, good man ever make the highest appeal without deep answering deep in the reverence of his nature. Lastly, he did not drink. I place in his case this negative advantage very high. For with his love of fun and adventure, his physical powers, his surroundings of squalor and penury, I declare that if the drinking habit had been added to these his fall would have been as swift and pitiful as his rise was slow, his struggle very noble, and his success heroic.

This was the man of twenty-one, again uprooted, — this time from Indiana with his father and family to Illinois, — and now flung out, or flinging himself out, on the rough waters of life, to sink or to swim. Whether the one or the other, who cared? A kind of loose end, on whose future no dreamer would have dreamed, and no gambler would have bet a cent. Out of this unpromising stuff how was something really great and sterling to be made? Well, no one answer can be declared certain and conclusive: so much and so various are the elements which make a man. But of all the means toward that noble end, turning Lincoln from unmethodical to disciplined habits, gathering up his meandering energies into one living powerful stream, — of all those means the greatest in my opinion was the law.

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Gradually one can discern Lincoln's sense of discomfort and discontent with a business life, — a partner drinking, stocks declining, debts increasing, and all the future no better than that unless he could serve men in some better way. It was at this crisis of his mind that an event occurred which changed history. An immigrant came to Abraham Lincoln's store, — say when he was twenty-three years of age, — and offered to sell him an old barrel with its contents unknown. Lincoln bought it for fifty cents, turned it over on the floor and there rolled out among the heap a book, to wit, Blackstone's *Commentaries on the Laws of England*. I am only imagining this, and yet fairly sure I am that when Abraham Lincoln, Storekeeper, began to read the book, he saw a new life dawn for him, a new career open, and at last a chance of more than a livelihood, a chance to make life worth living.

Lincoln was shrewd enough to see that the law held the champion key to the door of public service. For him it was none the worse, but all the better for that. He made his great resolve. It was in 1836, when he was twenty-seven years of age, that he was admitted to the Bar of Illinois by the Circuit Court of Sangamon County, his friend Judge Logan signing the certificate. Two years before, his gifts as a public speaker and debater, together with his ability and "likeability", had won him a seat in the Illinois State Legislature.

I incline to the opinion that it was in these formative years, alternately so depressing and so exhilarating, that Lincoln reasoned long and seriously over the ethical foundations of public and professional life. The first, the vulgar and familiar problem, was of course, — could a lawyer be honest? The student of Blackstone thought not only that he could, but that he unquestionably must. "Let no young man, choosing the law for a calling, yield to that popular belief. Resolve to be honest at all events. If in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do in advance consent to be a knave."

With this ground of honesty under his feet, Lincoln would stoop to no man and would be patronized by no man, and from no man would he suffer the scorn of condescension. If patronage

tried to shoulder him out of position, he could square his elbows. This both in public and professional life.

Think of this, even in what I call his formative period. He was standing as a candidate for his country; and another, Forquer, held the ground. Forquer had had a history: had changed his politics and received a Government billet worth \$3000 a year, built himself a house with lightning rod and modern improvements, and Forquer patronizingly referred to his young rival as one who could and would do well to wait. Upon the instant Lincoln replied: —

“Mr. Forquer commenced his speech by announcing that the young man would have to be taken down. It is for you, fellow citizens, not for me, to say whether or not I am up or down; but he forgets that I am older in years than I am in the tricks and trades of politicians. I desire to live and I desire place and distinction, but I would rather die now than, like the gentleman, live to see the day that I would change my politics for an office worth \$300 a year, and then feel compelled to erect a lightning rod to protect a guilty conscience from an offended God.”

As to the law itself, he retained to the end of his days no great reverence for decided cases, but upon one point, — namely a knowledge of principles, — he came to see after a year or two that there was stuff to reverence in them, indispensable, guiding, helpful stuff, and that he could not supply that stuff by the light of nature. A partner of his, for instance, studied him by the greatest precision of method. There were various partnerships; but the one with Logan was a mark of quick and well founded confidence; and when in after years before the Courts they met on opposite sides, Logan must have been proud of the man he had trained to things so great. Lincoln's love for Logan cast out fear. With his uproarious humor he could tease him indeed. In the confusion of Circuit on a very hot morning, Logan's precision had failed him in dressing and the front of his shirt was to the back. Lincoln could only get on good terms with the jury by diverting its members. This he did, observing, “Judge Logan (no tie) I know is an effective lawyer. I have met him too often to doubt that: but shrewd and careful though he is, he is sometimes wrong. Since this trial began I have discovered that with all his caution he hasn't knowledge enough to put his shirt on right.”

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It seems to me that as he neared the maturity of his powers he was confronted in truth with the double claims of his own personality. Within Abraham Lincoln, the law, — his livelihood, — claimed him; and in that region the powerful leader, self-schooled, became self-secure. Within Abraham Lincoln also great public causes, with great issues of right and wrong against which he must be prepared to find all his popularity time after time dashed to pieces, these also rose up to claim him. What was he to do? Consciously or not, I verily believe he came to see that these two claimants were not in conflict for him. They each made a common appeal. It was to justice, that sure and noble solvent and reconciler of all rivalries for his homage. After all, what was law, his livelihood, but the mechanism, the form, and manner, and application of justice? And if law was his livelihood, were not those great public issues, with their reach, as wide as the Union and as deep as human liberty, were they not his life? Let law help his public service infusing it with knowledge, clarifying its issues, giving alike his policy and his appeals an impregnable cogency. After all in such a service what was popular applause compared to a great clean life? Self-scanned, let him be self-honored. This was the revelation and the endowment that were being prepared in these industrious and thoughtful years for the greatest lawyer-statesman of the world.

In his fortieth year, Lincoln was in Congress, having behind him a good record. He had emerged from severe early struggles: he had already achieved a commanding leadership at the Illinois bar; and he had been four times a member of the Illinois legislature. The chaos of his habits we have seen. It had largely disappeared. In particular his legal studies had become concentrated. His country was soon to know that this phenomenon of a man was to infuse into its public life, very varied, remarkable, and accomplished powers. It was this ingathering of all he was, and had been, and had learned, that made him widely notable.

He had not a spark of affectation. Wealth? It was no part of his ambition. "Wealth", said he, "is a superfluity of things we don't need." He carried his whole life forward with him, citing his past with relish far rather than with disrelish. He concealed nothing of his humble stock or his early disappointments. Nay, he found in those experiences, a rich soil of illustrations which

yielded a crop of illumination, of conviction and of sympathetic response, — and all this in much wider circles than Illinois or the law.

But the law was his sharp sword. He chose his ground; and where the fight was keen he wielded his weapon not against small men, but against great, — even against the President himself, and not on any peddling point, but on the greatest issue of the day.

The Texas annexation was mixed up with slavery, and with all the political leverage implied in getting more slave states within the Union, while there was of course also the ambition of the Union itself to extend at once to the Rio Grande. Lincoln was unquestionably uneasy about all this. Some kind of wrong was getting on top, and a public which should have known better was applauding the transaction and cheering on the invasion. And it was a popular movement.

For this last Lincoln cared not a rush. But it exhilarated President Polk, who fanned away at that ambition for territory which does not stick at trifles. He more than once spoke of the invasion as the Mexican invasion of our territory and of the spot where “the blood of our fellow citizens was shed on our own soil”, thus converting the American attack into a defensive operation. Lincoln would have none of this. It appeared to pervert history and assume the justice of the whole affair. So he struck straight at the President. He tabled in Congress eight queries, shearing his way straight to the mark by those at once famous Spot resolutions. “The Spot” where citizens’ blood was shed! — where was that spot, historically, geographically? And so on and so on, till President Polk must have wished that spot wiped off the face of the earth.

At the back of each question was seen a formidable array, in formidable hands, of formidable facts. And as to “our citizens” whose blood had been shed, did that mean the peaceful population or the invading American soldiers? This, with a string of tests of citizenship so neat as this: “Whether the people of that settlement . . . have ever submitted themselves to the Government or Laws of Texas or of the United States by consent or by compulsion, either by accepting office or voting at election, by paying tax or serving on juries or having process served upon them or in any other way?”

The queries were damning, and the President and his Government were dumb. Of course it was of no avail. Why should a man be asking questions when a great people was taking land? But though his pleas were swung aside they did as much to clarify the higher and better mind of America then as did the prefaces of Lowell to the Biglow papers. More and more he renewed his thinking about slavery and all that it meant, and the drift of his mind was seen in a bill for abolition with compensation in Columbia. In 1849 his term expired, and he passed back to the Illinois bar with his honor untarnished and his reputation enhanced. He stood pledged to the world as a friend of peace and fair dealing in the international sphere.

One might have thought that the lawyer in him would now have done with statesmanship. It was not so. Lincoln loved his profession. I like to think of that engrossing time in his public life when he was closing up in conflict with Senator Douglas, — a capable and formidable antagonist, — on that dark and frowning issue: — What of the slave? Then it was that at the call of old and tender memories he made an extraordinary and memorable diversion. He laid everything aside for a space, and went out of his beat, spontaneously offering his legal aid to defend a man charged with murder.

When Abraham Lincoln was young, — a failure in business, out at elbows, and not sure of his next meal, — he had been befriended by a Mr. and Mrs. Armstrong who had a humble dwelling at New Salem. They manifestly loved and trusted him. The mother would mend his clothes, Abe would do odd jobs, would rock the cradle. Their kindness saved him from despair. Then years passed, the old man died, and the widowed mother's sorrow grew apace, as her boy took to evil courses and was charged with murdering a companion after drink. Lincoln heard the dreadful news and volunteered his aid. He came to the rescue and acted with swift precision, getting the venue changed away from a locality in which popular frenzy was almost at the lynching stage, and a fair trial was impossible. Then he made enquiries and prepared very calmly for the exciting day.

He set the widow and her son beside him, himself plainly under waves of emotion. The legal forces against him were strong, prejudice also strong. Among the witnesses *one man saw the*

murder. Then, as the story goes, he cross-examined all the unimportant witnesses reminiscently recalling their earliest experiences, eliminating all spite, and bringing sympathy into the crowded air. When the fatal witness took the stand, he swore positively to having seen the delivery of the crushing mortal blow. Then came Lincoln's turn. Let the details be given again. Did he see it all? Yes. What was the hour? Eleven o'clock at night. How far was he away from the scene? One hundred and fifty feet. How then could he see? By moonlight. A full moon? Yes, a full moon as clear as day. Said Lincoln, quietly drawing an almanac from his pocket and pointing to it, "Look at that and tell the jury what it says about the moon." Then came the damning disclosures that the moon was not full; she was in her first quarter and had set before eleven. No cleverness could set such testimony on its legs again, but the prosecution fought on.

The day was hot when the great advocate rose to address the jury. He took off his coat and vest putting them over the back of a chair. And then, still reminiscent, he told them of his early days and of the family that had befriended him when friends were few and prospect there was none. This old dear widow lady whose shoulder he was touching, she was his friend then, could he ever forget it? And the cradle with the child: he had rocked that cradle, and the child had grown up to be a man and he was the prisoner whose innocence of murder they were surely going to declare. As the day wore on, and the jury retired, he guided the mother to the open, whispering to her, "Before the sun goes down Duff will be free." With the news of the jury's return she came back to the rude courthouse, but Lincoln met her at the door. The tears were streaming down his face, and he bade her look towards the west, "See", he said "the sun has not gone down, and your boy is free."

Fortunate indeed was America to have at her service a citizen so gifted, so wide in knowledge, so deep in feeling, so varied in the movements of the nation and the human heart.

Again the temptation is strong to diverge into general history. And again we must abide by our theme. With an insistent reverberation rang the question, — "What of the slave?" The famous Dred Scott case was almost over again the very case of James Somersett which Mansfield had tried. Scott was a Missouri slave.

But he in company with his master had passed through several free states, — Illinois, Wisconsin, and New York. There were at least two law suits. His plea, — once in a free state then free, — was turned down. The Supreme Court was divided in opinion. Some no doubt thought that if the air of England was too pure to be breathed by a slave, what was good enough for England was good enough at least for free America.

And Lincoln went from point to point saying startling things such as "this Union cannot exist half slave, half free". To all intents and purposes he now relinquished his profession and transferred to the American nation his entire outfit in law and experience and his immense intellectual equipment for the work of a man of affairs. In former years he had challenged a President, now he was challenging the Supreme Court itself. Its law was new-fangled, its decision was wrong, wrong for the body and soul of the nation.

Then came along of course the Fugitive Slave Law. Could Senator Douglas with all his powers defend that? A law under cover of which households and establishments of slaves might be transferred to States which were free? A law which made pursuit and seizure of slaves legal among human beings? Douglas feebly replied that this was the law, but if the free states, — thus invaded or used as human hunting grounds, — objected, then they could make restrictive and practically preventive police regulations! And Lincoln, now himself thoroughly roused, roused the land, while he chased Douglas in and out of this fastness. Douglas won his election; Lincoln won the country, and the eyes of men were opened to this moral portent and to the idea of Lincoln as President.

So when the Presidency came to him, he undeviatingly continued his course. Skilful men in high places surrounded him. But "let no man despise thee;" he firmly, humorously, kept them in their places and took command. Elected to the great office almost at the outbreak of the Civil War, the gravity of his task would have appalled the stoutest heart.

Some instances are memorable, as when the Confederate leaders Mason and Slidell on a mission to Europe, passengers on an English vessel, were seized in violation of the laws of neutrality. England protested, America was furious, and Seward, as furious

as the rest, wrote a dispatch which might have precipitated war with the old country. But one man kept his head. The United States was wrong, the men seized must be handed over. Seward's dispatch was submitted to Lincoln. He revised it with his own hand, — revised it, let America and the world remember, as only an accomplished lawyer could; and he revised it out of all knowing. Justice was done. America was big enough to resume the path of rectitude. Peace was preserved.

If justice and peace were to dwell together, so were justice and freedom. His attempt to begin emancipation by compensation again failed. Then slavery as an institution became the rallying cry for Secession, and with the Union in danger, he struck and struck deliberately for Union and Freedom. The depths of his nature were stirred by the horror of the war. But men must persevere, the twin cause was sacred. This great lawyer, transfigured into the man of his age, rallied under that banner his enlightened countrymen and won the homage at last of every captious nation of the world.

For Gettysburg declaration was for Lincoln no rhapsodical inspiration. It represented the ripened wisdom of legal and political and human experience, those things which he had consecrated in his own spirit, — his homage to justice.

In July of the year 1863 the bloody victory of Gettysburg was won over the forces of Lee; and in the following November the battlefield was dedicated by the nation as a cemetery for the fallen soldiers, in a speech by Lincoln the text of which the world has acclaimed, but the lesson and spirit of which the world has, alas, too little learned and absorbed. In it you can see that liberty and equality are ever the twin keys of his own homage and of his nation's history.

"Four score and seven years ago," he exclaimed, "our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal In a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here have consecrated it far above our power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather to be dedicated to the unfinished work

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which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us, — that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion, — that we here highly resolve that the dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that Government of the people, by the people, for the people, shall not perish from the earth."

If ever a citation was hackneyed, surely this is one. But it can never be hackneyed. It is an utterance of enduring splendor, the classic association for ever of the name of Lincoln with Freedom.