

## Book Reviews

### LINCOLN THE LAWYER<sup>1</sup>

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*Grease does not favor one cog over another; it is a third set of values, favoring smooth operation of the whole machine, both big and little parts. . . . The enemy is friction.*<sup>3</sup>

Before Abraham Lincoln became known as “the railsplitting frontiersman,” “the savior of the union,” or “the Great Emancipator,” he was “grease”—an “ordinary attorney” in New Salem, Illinois for twenty-five years.<sup>4</sup> Despite the myriad books written about Lincoln and the well known fact that he was an attorney before he became President, there is little discussion about his legal practice. Due to a lack of primary sources, many historians “gloss[ed] over” Lincoln’s lawyer days.<sup>5</sup> At most, they dedicated a chapter or two focusing on the same “four or five cases out of thousands that he handled.”<sup>6</sup> However, the completion of the Lincoln Legal Papers in 2000<sup>7</sup> enabled Lincoln historians to take a deeper look at his legal career.<sup>8</sup> Brian Dirck combs through the Lincoln Legal Papers to provide a unique perspective concentrating primarily on Lincoln’s legal practice and its impact on him.

Sifting through thousands of “unearthed” cases, Dirck ponders how the law impacted Lincoln both personally and professionally.<sup>9</sup> Dirck examines not only countless cases from Lincoln’s practice, but also the social, political, and economic changes in the United States from the 1830s into his presidency.<sup>10</sup> Viewed in the context of these changes, Dirck concludes Lincoln’s legal practice taught him to be the “grease.”<sup>11</sup> Lincoln became the goey substance that facilitates change by being the lubricant that permits competing positions to coexist and ultimately transform together.

Dirck demystifies Lincoln. He pulls him out of the world of legends that history built and presents him as an ordinary man who practiced law. Lincoln spent 40% of his life as a practicing attorney, bringing him “into contact with a greater variety of people and circumstances than any other role he assumed.”<sup>12</sup> Dirck reveals the cases and the man who handled them—a man “cramming paperwork into his hat as he heads out the front door in the morning.”<sup>13</sup> But he also brings forth from Lincoln the skills that made him legendary and presents them to the Judge Advocate (JA) as practicable.

Dirck begins his study of Lincoln by speculating why Lincoln chose the legal profession given that he had no formal education, family ties, future employment, or backup alternatives should he fail.<sup>14</sup> Despite providing an excellent

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<sup>1</sup> BRIAN DIRCK, *LINCOLN THE LAWYER* (2007).

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<sup>3</sup> DIRCK, *supra* note 1, at 160.

<sup>4</sup> *Id.* at xi, 142, 155.

<sup>5</sup> *Id.* at ix–xi (noting Lincoln scholar Mark Neely’s comment in 1993 that based on the “lack of primary source material” that it would “not be safe to hazard many conclusions about Lincoln’s life as a lawyer”) (quoting MARK E. NEELY, JR., *THE LAST BEST HOPE OF EARTH* 34 (1993)).

<sup>6</sup> *Id.* at ix–xi; MARK E. STEINER, *AN HONEST CALLING: THE LAW PRACTICE OF ABRAHAM LINCOLN* 5–6, 19 (2006).

<sup>7</sup> See *The Lincoln Legal Papers*, <http://adh.sc.edu/mepinfo/Lincoln/linbase.htm> (last visited Apr. 8, 2008) (describing the Lincoln Legal Papers and providing a link to a “sample document image”).

<sup>8</sup> DIRCK, *supra* note 1, at ix–xi (commenting that the project consisted of forty staff members who over a fourteen year period scoured over eighty courthouses, compiled sixty-one manuscript collections, and contacted nearly 14,000 libraries for primary source materials related to Lincoln’s legal practice); STEINER, *supra* note 6.

<sup>9</sup> DIRCK, *supra* note 1, at x–xi.

<sup>10</sup> DIRCK, *supra* note 1. Dirck does a comparative analysis of Lincoln with other practicing attorneys in Lincoln’s region and other states. Though interesting, the conclusions Dirck draws from the comparisons are speculative and at times distracting.

<sup>11</sup> *Id.* at 154–75.

<sup>12</sup> *Id.* at xi.

<sup>13</sup> *Id.* at 150.

<sup>14</sup> *Id.* at 13–15.

background on why and how most people came to be lawyers, Dirck assumes the reader has a strong knowledge of Lincoln's life or just discounts it as being unimportant in his analysis. He omits the background details concerning Lincoln's family, education, and childhood and expects you to believe his conclusion that it just kind of happened.<sup>15</sup> A discussion of Lincoln's law partners, cases, and circuit riding forms the core of the book.<sup>16</sup> Dirck meticulously reviews many of the run of the mill cases Lincoln encountered on a daily basis from divorce, slander, and creditor or debtor (which accounted for the majority of Lincoln's cases) to rape and murder.<sup>17</sup> With few exceptions, the presentation of the cases is mundane, redundant, and lacking significant legal perspective,<sup>18</sup> making these portions of the book somewhat tedious. Unless you are an avid Lincoln follower, this portion of the book could be skimmed and understood by reading only the introduction, the last two chapters, and the conclusion.<sup>19</sup> These segments of the book contain the crux of Dirck's theory applied to the relevant facts he distills from the cases. However, an examination of Lincoln's role in the cases leads to several significant observations.

The cases support Dirck's contention that people from all walks of life and all sides of the story entered Lincoln's office doors. Many of the cases were simple and routine matters that settled out of court. Not even Lincoln's political career "gave him quite the same panorama of humanity, in all its glory."<sup>20</sup>

The cases and Lincoln's lifestyle on the circuit also support Dirck's theory that Lincoln professionally distanced himself from people, to include his clients and partners. From Dirck's perspective, Lincoln never revealed himself to anyone nor interested himself in the secret corners of the human heart.<sup>21</sup> For Lincoln, the heart of the matter was the resolution of any given conflict at hand.<sup>22</sup> This meant bringing two competing interests to an acceptable compromise that still allowed the small town to function.<sup>23</sup> To achieve this resolution, Lincoln had to professionally distance himself from his clients and partners. Dirck goes so far as to attribute even Lincoln's renowned "magnanimity" "to his lawyerly sense of distance from other people's motives, and his appreciation—honed by decades of witnessing every imaginable form of strife in the Illinois' courtrooms—of reducing friction as much as possible."<sup>24</sup> Distance gave Lincoln the ability to transcend conflict and be the "grease" in cases that he handled and ultimately in America.<sup>25</sup>

Lincoln's practice of remaining detached or distant also extended to his personal life. Lincoln did not take things personally. Prior to becoming a lawyer, Lincoln was insolvent to the tune of about \$1200.00 and as a result was sued on multiple occasions. It was not until 1847 or 1848 that he finally freed himself of his debts.<sup>26</sup> Through it all, Lincoln never took "the actions of his creditors personally."<sup>27</sup> His creditors were simply protecting their interests under the umbrella of impersonal law. Lincoln could have easily left the state or "pled inability to pay."<sup>28</sup> Instead, he maintained his integrity by remaining subject to the law's jurisdiction. Because of Lincoln's integrity, a former creditor asked Lincoln to represent him; Lincoln accepted, not having taken things personally.<sup>29</sup>

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<sup>15</sup> *Id.* at 15. *But see* FREDERICK TREVOR HILL, LINCOLN THE LAWYER (spec. ed., Legal Classics Library 1996) (discussing Lincoln's early years and concluding that Lincoln's personality and ambitions drove him to be a lawyer); BENJAMIN P. THOMAS, "LINCOLN'S HUMOR" AND OTHER ESSAYS (Michael Burlingame ed., 2002) (providing contrasting perspectives on Lincoln's legal calling).

<sup>16</sup> DIRCK, *supra* note 1, at 9–137.

<sup>17</sup> *Id.* Of Lincoln's 4000 cases, 2500 involved "some form of debt litigation." *Id.* at 59–60.

<sup>18</sup> In Dirck's defense, he states that "the point [of the book] is Abraham Lincoln, and what the law did both to and for him." *Id.* at x. "The book's center of gravity is not the law." *Id.* Rather, the law and legal history are "secondary concern[s]." *Id.*

<sup>19</sup> *Id.* at ix–8, 138–75. Dirck likely dedicates a significant portion of his work to the routine nature of the cases as a means of highlighting the humdrum legal life led by Lincoln. However, the presentation of the cases does little to invigorate the cases' subject matter. Therefore, for less than avid Lincoln followers, one could read select portions of the book without losing the substance of Dirck's theory on Lincoln, just the countless details.

<sup>20</sup> *Id.* at xi.

<sup>21</sup> *Id.* at 7, 31, 48–49, 52.

<sup>22</sup> *Id.* at 154–72 (describing Lincoln's role as "grease" in society).

<sup>23</sup> *Id.* at 154–66.

<sup>24</sup> *Id.* at 169.

<sup>25</sup> *Id.* at 7, 31, 48–49, 52, 154–66.

<sup>26</sup> *Id.* at 54–58.

<sup>27</sup> *Id.* at 56.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 54–56.

In discussing Lincoln's personal finances and using America's changing economic realities as a backdrop,<sup>30</sup> Dirck provides the reader a better understanding of why debt collection cases dominated Lincoln's law practice.<sup>31</sup> It is within the realm of debt collection cases that Dirck highlights Lincoln's emerging role as "grease." Lincoln represented both creditors and debtors. He honed his skills of negotiation and compromise settling most of his cases out of court.<sup>32</sup> By being able to transcend the strong feelings on both sides of any given debtor case, regardless of which side he represented, Lincoln learned the necessity of compromise for the community's long term well-being.<sup>33</sup>

In discussing Lincoln the President, Dirck ties together the many strands of Lincoln's legal practice to firmly root his argument that Lincoln's values and ultimately his success were born of his interactions with the common person forged during his law practice.<sup>34</sup> Whether reviewing the Second Confiscation Act,<sup>35</sup> courts-martial,<sup>36</sup> or even writing the Emancipation Proclamation,<sup>37</sup> his analysis brought a certain "[l]awyerly dryness."<sup>38</sup> Lincoln had a "lawyerlike concern for the rules and forms of policy making, even when those rules and forms prevented a more robust pursuit of grandiose ideals like racial equality, justice, or retribution toward the South's rebels."<sup>39</sup> He was "grease"—the grease between debtors and creditors, the grease between business partners who have gone separate ways, and the grease between warring factions.<sup>40</sup>

"As a lawyer, Lincoln was part of both [sides to a conflict] and neither at the same time."<sup>41</sup> "Although there were cases that aroused [Lincoln's] ire or compassion, far more often no one could tell what he thought about the plaintiff or defendant's character."<sup>42</sup> Lincoln's ability to remain "emotionally separated" from the legal controversies he daily encountered enabled him "to focus on the negotiations, the settlements, or other solutions that keep the machinery of the community intact and functioning smoothly."<sup>43</sup> It is at this point that we begin to see how Lincoln's legal practice affirmatively impacted him to become the "Great Emancipator," "savior of the union, "Honest Abe," and yet remain the "railsplitting frontiersman."<sup>44</sup> Only when the "grease" proved inadequate to effect compromise did Lincoln "transcend 'grease'" and bring his personal moral values to bear on the outcome.<sup>45</sup> Lincoln therefore "chose to embrace the machinery of emancipation and its attendant frictions, come what may."<sup>46</sup>

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<sup>30</sup> *Id.* at 54–75. The following chapter carries forward how economic expansion created debtor-creditor conflicts. As the economy expanded and men moved west, investors took more and more risks thus precipitating the need for someone to clean up their building blocks when they tumbled to the ground. *Id.* at 76–98. When their "pursuit of wealth" went too far and contracts and partnerships fell apart, and promissory notes piled to the sky, Lincoln settled the accounts. *Id.* at 78. Despite the messy nature of partnership dissolutions, Lincoln was able to "pick his way around all sorts of relationships while trying to successfully disentangle the partners in question." *Id.* at 79.

<sup>31</sup> *Id.* at 54–75.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 54–75, 154–72.

<sup>34</sup> *Id.* at 154–72 (generally describing how Lincoln's law practice and interactions with a variety of persons and businesses enabled him to become "grease" or "lubricant" as President).

<sup>35</sup> *Id.* at 152, 166–67.

<sup>36</sup> *Id.* at 166–67; *see also* THOMAS P. LOWERY, DON'T SHOOT THAT BOY! ABRAHAM LINCOLN AND MILITARY JUSTICE, at i, 3 (1999) (reviewing thousands of courts-marital records and finding that Lincoln "reviewed individual cases in a judicious manner, tempering the wrath of irate officers with wisdom acquired as a prairie lawyer").

<sup>37</sup> DIRCK, *supra* note 1, at 152, 169.

<sup>38</sup> *Id.* at 152. While Dirck attributes this position to other commentators on Lincoln, the following chapter makes apparent that Dirck himself subscribes to this position as a necessary component of Lincoln's role as "grease." *See id.* at 154–72.

<sup>39</sup> *Id.* at 152.

<sup>40</sup> *Id.* at 153–65.

<sup>41</sup> *Id.* at 160.

<sup>42</sup> *Id.* at 161.

<sup>43</sup> *Id.* at 163.

<sup>44</sup> *But see* STEINER, *supra* note 6, at 3 (arguing that Lincoln's strong sense of compromise or "grease" originates from his Whig politics and not his legal practice); THOMAS, *supra* note 15, at 77 (arguing that Lincoln's success was based on his ability to understand the common man based on the many roles he himself played in the community, from debtor, blacksmith, cobbler, postmaster, to lawyer).

<sup>45</sup> DIRCK, *supra* note 1, at 170–71.

<sup>46</sup> *Id.* at 170.

Regardless of how much we try to demystify Abraham Lincoln there will always be a part of us that refuses to see him as an “ordinary attorney.”<sup>47</sup> We do not want to think of him as having an “overstuffed envelope” on his desk with the following written in his hand—“when you can’t find it anywhere else look in this.”<sup>48</sup> But the truth is that he was just a man, a man who his law partner described in the following manner: “the whole man, body and mind, worked slowly, as if it needed oiling.”<sup>49</sup>

*Lincoln the Lawyer* serves as a primer for the JA. As lawyers, we hold a unique position, trusted individually by those who do not trust our larger profession. We serve as “guardians of the community[’s] values.”<sup>50</sup> Whether advising commanders on the legality of particular operations or the necessity of depriving a Soldier of his liberty through a trial by courts-martial, it is the JA’s duty to be not only a legal tactician, but a counselor. The JA is the honest broker who guards our deepest values. So what lessons does *Lincoln the Lawyer* contain to make us better guardians?

First, the JA must always be honest. The legend of “Honest Abe” developed while Lincoln was a lawyer and followed him into the presidency.<sup>51</sup> Lincoln urged his fellow comrades to be honest and diligent.<sup>52</sup> As lawyers, JAs are talented story tellers, but the facts are the facts and the law is the law. There is a left and right legal limit to nearly every matter a JA handles. Communicate these limits to your clients, and if they are unacceptable, be creative in finding an honest alternative solution. Regardless of the personal cost to you, be “‘honest’ in the sense of being frank, unapologetic, and practical.”<sup>53</sup> Of all the accusations made against Lincoln “by his political enemies over the years—people who accused him of everything from thievery to adultery—no one seems to have ever accused him of being an unethical attorney.”<sup>54</sup>

Second, JAs must see the wood in front of them. Regardless of the position a JA may find themselves in, the “details” of the law must not be neglected. A JA’s ethical duties of diligence and competence must be carefully guarded. Success in law is in the attention to details and not the sheer eloquence of stage production or shooting from the hip.<sup>55</sup>

Third, JAs should strive to maintain a professional distance from their immediate clients, especially in a transformed Army. Our client is ultimately the Army. At the brigade combat team level, however, we closely bond with our immediate clients, the brigade commander and staff. While this bonding is necessary and desirable, JAs must be able to maintain their professional independence. Regardless of a commander’s reaction to the legal advice provided, JAs must stay focused on the mission. “Lincoln always seemed able to maintain a high degree of emotional distance from his enemies, to readily overlook slights and insults, and to keep his mind focused on the task of victory without an excessive focus on his own pride and its possible wounding at the hands of others. . . .”<sup>56</sup> Loyalty to your commander is best measured by your insistence that your commander’s actions comply with the law.

Lastly, a JA must be the “grease.” The mission comes first. Lincoln masterfully handled the rift between his personal views, the abolitionists, and southern slave owners—he knew that he had to be flexible and work with all the parties within the confines of the Constitution to ultimately reach his end goal.<sup>57</sup> No where is the calling to be the “grease” more apparent than for our brigade JAs. Brigade JAs must learn to balance the desires of all parties involved to include those of the commander and the technical chain in today’s transformed Army.

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<sup>47</sup> See STEINER, *supra* note 6, at 5, 7–8 (discussing how people are uncomfortable viewing Lincoln as an “ordinary attorney”).

<sup>48</sup> DIRCK, *supra* note 1, at 38.

<sup>49</sup> *Id.* at 102.

<sup>50</sup> STEINER, *supra* note 6, at 3.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.* at 2, 4, 164.

<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.* at 146.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* at 168.

<sup>57</sup> *Id.* at 166.

In the end, Dirck's work represents yet another theory of the making of a man who became one of our greatest presidents.<sup>58</sup> The book's strength is its conception of Lincoln as the "grease" that enabled compromise between otherwise conflicting interests, whether as an attorney or as the President. Unfortunately, Dirck narrowly focuses on Lincoln's experiences as a lawyer as the source of Lincoln's compromise approach to life to the exclusion of other possible sources, such as Lincoln's Whig politics. But by no means is this a fatal flaw in the book. Overall, *Lincoln the Lawyer* is worthwhile reading, especially for Lincoln buffs.

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<sup>58</sup> In this sense, it represents a varied retelling of a familiar tale of a man who "grew beyond his beginnings, but not far away from them." THOMAS, *supra* note 15, at 32.