

Fighting Over Independence

On February 22, 1861, Abraham Lincoln stepped foot into Philadelphia's Independence Hall. In the two months since he had been elected President, seven states had seceded, and the specter of civil war loomed on the horizon.

February 22 is George Washington's birthday, one of the two civil occasions to be celebrated widely throughout the United States at that time. (The other was July 4.) Now it would have been customary for Lincoln to speak of George Washington on that day; but with the weight of American democracy resting on his shoulders, Lincoln appealed instead to the Declaration of Independence. He argued that "the great principle" of the document was "not the mere matter of the separation of the Colonies from the motherland." Rather, it was the idea of liberty itself, "the sentiment embodied in that Declaration of Independence." It was Lincoln's fervent hope that the principle of liberty, of freedom, of independence itself would hold the union together. "But," he said, "if this country cannot be saved without giving up that principle—I was about to say I would rather be assassinated on this spot than to surrender it."

In these brief comments, Lincoln exposes a fundamental debate at the heart of American democracy. On the one hand, as legal scholar Akhil Amar teaches, "The Declaration of Independence can be read in a 'state sovereignty' way: the states are free and independent states, even of each other."¹ But for Lincoln, "The Declaration is the foundation of the Constitution," a beacon of freedom that includes all people. Professor Amar concludes, "There's this debate between the states' rights interpretation of the Declaration and 'all men are created equal' – meaning whites *and* blacks."

Indeed, on that very same day, February 22, 1861, America's first Jewish Senator,² Judah Benjamin, was also celebrating Washington's birthday. Having resigned from the Senate when his home state of Louisiana had seceded, Benjamin marked the holiday in New Orleans by presenting a flag to the Washington Artillery and "usher[ing] the city into the War Between the States."³ The same Judah Benjamin often appealed to the Declaration of Independence as a justification and source of authority for secession. "Sir, look at your Declaration of Independence," he said in a Senate in 1856. "Upon what grounds was it that its immortal author placed the right of the people of this country to assert their independence? ... It is, sir, the equality of the free and independent States which that instrument links together in a common bond of union –

¹<https://constitutioncenter.org/news-debate/americas-town-hall-programs/the-story-of-the-us-constitution-past-and-present>. This and the Amar's subsequent quotes come from this public talk.

² While David Levy Yulee of Florida was also of Jewish ancestry, he had converted to Christianity before becoming the first person of Jewish ancestry elected to the Senate.

³"Judah P. Benjamin - The Dark Prince of the Confederacy," by Carol R. Glayre and Elizabeth B. Bashinsky. In "Military Stars and Bars," https://main.mosbihq.org/officers_call/OfficerCall201601.pdf.

entire, absolute, complete, unqualified equality – equality as sovereigns, equality in their rights, equality in their duties.”⁴

For Benjamin, the “Independence” declared in 1776 was political and state-based; and in states that practice slavery, those laws must be respected. Lincoln, of course, saw independence very differently: The spirit of freedom knows no national boundaries; indeed, the principles of liberty and equality are far more important than those of sovereignty and statehood. Lincoln and Benjamin both argue that the Declaration of Independence holds priority over the Constitution. For Judah Benjamin, that priority limits the power of the federal government and authorizes individual states to secede from it. For Lincoln, it establishes a bedrock value of individual freedom for all and, ultimately, justifies going to war to preserve it.

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Jewish tradition is no stranger to this dynamic. Our sacred texts, like America’s founding documents, have been subject to wide debate. In fact, in January 1861, just a month before Lincoln’s speech in Philadelphia, two rabbis conducted a public dispute over the biblical view of slavery. They turned not to the Declaration of Independence but rather to the slightly more famous Ten Commandments.

President James Buchanan had announced a nationwide “day of humiliation, fasting, and prayer” to try to preserve the Union, and on this occasion Rabbi Morris Raphall delivered a stirring speech called “The Bible View of Slavery.” Speaking in New York, Raphall argued that the Ten Commandments are proof positive that the Bible condones slavery. After all, he points out, the fourth and tenth commandments both refer unapologetically to the Hebrews’ slaves. “And if you answer me,” he said, “‘Oh, in their time slaveholding was lawful, but now it has become a sin,’ I in my turn ask you, ‘When and by what authority you draw the line? Tell us the precise time when slaveholding ceased to be permitted, and became sinful?’”⁵ Raphall privileges the text over any human sentiment, confessing: “I stand here as a teacher in Israel; not to place before you my own feelings and opinions, but to propound to you the word of God, the Bible view of slavery.”

The New Yorker was met by a scathing reply from Baltimore’s Rabbi David Einhorn – who was, incidentally, the father-in-law of Chicago Sinai’s Rabbi Emil Hirsch. In a point-by-point takedown, Rabbi Einhorn refutes Raphall completely, accusing him of “gross ignorance as well as an unbiblical conception.”⁶ Also appealing to the Revelation at Sinai, Einhorn argues: “The ten commandments, the first of which is: ‘I am

⁴ Quoted in a master’s thesis by Geoffrey David Cunningham, “‘You can never convert the free sons of the soil into vassals’: Judah P. Benjamin and the threat of union, 1852-1861,” which in turn cites John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1988), 340. Available: https://repository.lsu.edu/cgi/viewcontent.cgi?article=1120&context=gradschool_theses.

⁵ Morris Raphall, *The Bible View of Slavery* (New York City, 1861) as accessed online at <https://www.jewish-history.com/civilwar/raphall.html>.

⁶ David Einhorn, *Response to The Biblical View of Slavery*, translated from the German by his daughter, Johanna Einhorn Kohler in *Sinai*, Vol. 6, p. 2-22, as accessed online at <http://www.jewish-history.com/civilwar/einhorn.html>.

the Lord, thy God, who brought thee out of the land of Egypt,—out of the house of bondage' can by no means want to place slavery of any human-being under divine sanction." Einhorn insists that it would make a mockery of Jewish tradition to think the God of Israel condones slavery. Though he may read against some of the Torah's specific words, Einhorn claims to know the deeper meaning and significance underlying the document as a whole.

When Lincoln reads the Declaration of Independence and when Rabbi Einhorn reads the Ten Commandments, both see the moral spirit of the law, which supports absolute freedom for people of all kinds. Both texts, though in different ways, are sacred; and their adherents show their devotion by fighting over their meaning instead of ignoring them completely.

We, too, take our part in sacred religious and civil tradition by participating in this age-old debate. As for me and our synagogue and the Reform movement as a whole, we're with Lincoln and Einhorn – morality supersedes text. Even as we respect those who see our founding documents differently, we must remain prepared to advocate for our positions and to promote them in the public square. This is what Independence Day means to me – a reminder of the challenge and exhortation to engage in the project of liberation embodied by our nation and our faith.

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For centuries, the Declaration of Independence has stood as a symbol of freedom for which, in every age, we imperfectly strive. Among countless other examples, Frederick Douglass used its language and themes in his powerful speech, "What to the Slave is the Fourth of July?" and Susan B. Anthony released on the Declaration's 100th anniversary her "Declaration of Rights of the Women of the United States." And still today, our founding story compels us to recommit ourselves to the principles of liberty that recognize and affirm the basic dignity of every human being, created in the image of God.

Kakatuv, as it is written:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That 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. ...

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States. ... And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Let us keep these words in our minds and on our hearts as we dedicate this Independence Day to the ever-widening circle of freedom.