

Abraham Lincoln and Equal Justice Under the Law

by Greg Hobbs

The fundamental proposition of equal justice under law, expressed in the Declaration of Independence, did not find its way into the U.S. Constitution until the adoption of the Civil War amendments. Equal justice under the law achieved a fuller realization when the U.S. Supreme Court began in the 20th century to apply the Bill of Rights to the states. It took a Kentucky-born Illinois lawyer and a most terrible conflict for this to happen.

Putting the Declaration of Independence to Test in the Constitution

Many “self-evident truths” have proven to be neither evident nor true to Americans, except perhaps as a guide to the correction of daily injustices practiced for millennia. When the Constitution was adopted, black people were slaves, women could not vote, Native Americans occupied land immigrants wanted, and wilderness was to be conquered. Testing the proposition of the Declaration of Independence—that “all men are created equal . . . endowed with unalienable rights . . . life, liberty and the pursuit of happiness”—required redefinition of property rights to exclude human beings from being enslaved.

Dred Scott was denied his freedom—even though he had lived in a “free” state and territory—because he was not a citizen, but was the “property” of a white man. Relying on the Declaration of Independence, not the letter of the then-existing Constitution, Lincoln condemned that pre-Civil War 1856 U.S. Supreme Court decision as “blowing out the moral lights around us.”¹ In this year of the bicentennial of Lincoln’s birth, we the people continue the pursuit of forming the “more perfect union,” to which the Founding Fathers aspired in the preamble to the Constitution but could not wholly accomplish.

The Centennial State

The Colorado Territory came to be when Kansas became a state at the onset of the Civil War in 1861.² Because of the 1854 Kansas–Nebraska Act, which opened up the new western territories to slavery if approved by vote of the settlers, Kansas had become a battleground, testing whether the western expanse of Manifest Destiny would be slave or free.³ When Colorado was granted

statehood in 1876, the “Centennial State” memorialized 100 years of the Constitution’s existence. This occurred soon after the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments—respectively abolishing slavery, guaranteeing due process and equal protection, and providing the right of citizens to vote regardless of race, color, or previous condition of servitude.

Lincoln had criticized the Mexican–American War.⁴ Before the Treaty of Guadalupe Hidalgo of 1848 ended that war, Colorado—south of the Arkansas River and west of the Great Divide—belonged to the northern frontier of Mexico. In that frontier, kidnapping and servitude took Native American women and children into New Mexican households.⁵ Tribes committed similar practices among themselves across the plains. In the expanding United States, Southerners and Northerners struggled for and against the expansion of slavery into the newly annexed territories.

A New Birth of Freedom

When Lincoln ran for U.S. President in 1860, the Republican platform contained planks for the Homestead Act and the Railroad Act,⁶ both enacted by the Union Congress in 1862, and did not include the abolition of slavery. However, with the vast public domain open for settlement, Lincoln’s platform in November 1863 at Gettysburg became “this nation, under God, shall have a new birth of freedom.”⁷

This new birth continues today in the daily labors of the three branches of government and, more significant, in the dialogue of community that is guaranteed by the First Amendment. In this generation, our professional careers have seen the restoration of rights to Native Americans and the desegregation of the public schools. No longer do articulate women like Emily Dickinson confine their eloquence to their father’s house.

Colorado has had its moments of great shame. For example, the state’s history includes the Sand Creek Massacre by the Colorado Militia of a peaceful encampment of Native Americans in 1864, riots against Chinese in downtown Denver in the 1880s, the Ludlow Massacre of striking coal miners in 1914, Ku Klux Klan marches in the 1920s, and *de jure* discrimination against African Americans in the Denver public schools as recent as the 1960s.⁸



About the Author

Justice Greg Hobbs has served on the Colorado Supreme Court since 1996.

In contrast, the hospitality that Governor Ralph Carr showed to the Japanese people interned here during World War II;⁹ the Colorado federal district court orders in the late 1960s and early 1970s requiring desegregation of the public schools; and election of Latino, African American, and Japanese American men and women in our communities and to statewide leadership positions demonstrate a state that is working for equal justice under the law.

In this bicentennial year of the birth of Abraham Lincoln, we celebrate a multitude of voices spanning many antecedents. To them I dedicate this poem.

I Am First Amendment

I am freedom of religion, freedom of speech, freedom of press, freedom to assemble, freedom to petition the government for redress of grievances.

I am Moses, Jesus, Gandhi, Martin Luther. I am Joan of Arc, the Salem witches, the Hollywood writers summoned to appear before Senator McCarthy.

I am the man in Tiananmen Square staring down the gun barrel of a tank.

I am the Cathars burned at the stake, their mountain hideaways torn stone by stone by the French duke on orders from the Pope.

I am the Pope traveling to Communist Poland to be with his countrymen and women.

I am every man and woman who has said aloud, “This just isn’t right!”

I am Jefferson yearning to have others see what is beyond the next mountain.

I am Lincoln full of strength for freeing others.

I am Roosevelt on the radio parting the drowning waters of fear.

I am Martin Luther King, Jr. praising the Lord and crying out for freedom in Selma, Alabama.

You can’t plug me in or dial me up or shut me down.

You can’t play me, display me, wrap me up in bubble wrap.

Every device that’s ever been invented, every item that’s ever been sold, every play or song or painting that’s ever been born is my face and tongue and hand making, talking, inspiring, loving.

I am costly.

I am a young man gone down on land or sea or in the air to give the gift of living days so that others may.

I am Emily Dickinson shut up in her room because it wasn’t seemly for women to be articulate publicly.

I am cheap, locked up, despised.

I am the bum in your street, the immigrant, the one they don’t want in the Boy Scout Troop.

I am on your front porch wrapped in a rubber band, on the screen in the corner of your playroom, on your living room shelf.

I am what your children say to you and you to them.

I am what you don’t like that others say and write.

I am you—whenever you may or may not want me, too.

Greg Hobbs¹⁰

Notes

1. Wills, *Lincoln at Gettysburg: The Words That Remade America* 119–20 (Simon & Schuster, 1992); *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

2. Smith, *The Birth of Colorado: A Civil War Perspective* 7 (Univ. of Oklahoma Press, 1989).

3. Schulten, *Barack Obama, Abraham Lincoln, and John Dewey*, 86 *Denver Univ. L.Rev.* 1, 2 (2000), available at law.du.edu/documents/denver-university-law-review/schulten.pdf.

4. Morison, *The Oxford History of the American People* 560 (Oxford Univ. Press, 1965).

5. Denetdale, *Reclaiming Dine History: The Legacies of Navajo Chief Manuelito and Juanita* 73 (Univ. of Arizona Press, 2007); Bailey, *Bosque Redondo: The Navajo Internment at Fort Sumner, New Mexico, 1863–68* 22 (Westernlore Publications, 1998).

6. Ambrose, *Nothing Like It in the World: The Men Who Built the Transcontinental Railroad 1863–1869* 40, 72 (Simon & Schuster, 2000).

7. Text of Gettysburg Address, reprinted in Morison, *supra* note 3 at 681.

8. Abbott *et al.*, *Colorado: A History of the Centennial State* 153, 283–87, 322 (3d ed., Univ. Press of Colorado, 1994); Arps, *Denver in Slices* 23 (Sage Books, 1959).

9. Abbott, *supra* note 8.

10. Hobbs, “I Am First Amendment,” *In Praise of Fair Colorado: The Practice of Poetry, History, and Judging* 367 (Bradford Publishing Co., 2004). Reprinted by permission. ■