

WILLIAM F. KUNTZ 11
KEYNOTE SPEECH - THURSDAY, FEBRUARY 24, 2011
OCA PROGRAM TO COMMEMERATE BLACK HISTORY MONTH

THE REAL DEBATE BETWEEN LINCOLN AND DOUGLASS

CHIEF JUDGE LIPPMAN, CHIEF JUDGE PFAU, JUDGES OF THE COURTS OF NEW YORK, LADIES AND GENTLEMEN: GOOD EVENING, AND THANK YOU SO VERY MUCH FOR THOSE KIND WORDS OF INTRODUCTION. MY NAME IS BILL KUNTZ, AND LIKE ANY WORK-A-DAY LAWYER FROM BROOKLYN, WHEN ASKED TO SPEAK TO A DISTINGUISHED AUDIENCE IN MANHATTAN, I TRY MY LEVEL BEST.

NOW FOR STARTERS, I TYPICALLY RELY ON THE FACT I HAVE A REASONABLY GOOD BARITONE, AND OF COURSE, NEVER HAVE TO COMPETE AGAINST THE ULTIMATE BARITONE OF OUR GENERATION, JAMES EARL JONES. I MEAN, WHAT ARE THE ODDS YOU WOULD HAVE HONORED HIM? UNFORTUNATELY FOR ME, HOWEVER, DUE DILIGENCE REVEALS THAT, INDEED, YOU HAVE IN FACT HONORED MR. JONES. FOR ME, STRIKE ONE. OH WELL, I FIGURED, NO PROBLEM: I WOULD SIMPLY TURN TO MY HISTORY GRADUATE SCHOOL BACKGROUND, AND IMPRESS YOU WITH LITTLE KNOWN FACTS ABOUT THE ORIGINS OF THE PENITENTIARY SYSTEM IN NEW YORK. AFTER ALL, IT'S NOT LIKE I WOULD BE COMPETING WITH THE LIKES OF BRILLIANT HISTORIAN ANETTE GORDON-REED, WHOSE AMAZING WORK ON SALLY HEMINGS AND THOMAS JEFFERSON YIELDED THE MOST IMPORTANT LEGAL HISTORICAL WRITING OVER THE PAST FIFTY (50) YEARS. ALAS, I THEN REALIZED THAT OF COURSE YOU HAD IN FACT HONORED HER. STRIKE TWO.

WELL THEN I FIGURED, NOT TO WORRY, I COULD REVEAL SECRETS OF PRACTICE ON WALL STREET, THE TENACITY IT REQUIRES TO SUCCEED IN MAJOR DEMANDING LAW FIRMS AND THE EFFORT IT TAKES TO MOVE UP THROUGH THE RANKS OF BAR ASSOCIATIONS. BUT THEN I SAW THAT YOU HAD NOT ONLY HONORED MY MALE MENTOR AND GODFATHER AT THE BAR, CONRAD HARPER, THE MAN WHO TOGETHER WITH THE HONORABLE AMALYA KEARSE FIRST GREETED NEW BLACK PARTNERS BY INTRODUCING US TO EACH OTHER DURING THE LAST THIRTY YEARS, BUT THAT YOU HAD ALSO HONORED MY FEMALE MENTOR AND GODMOTHER AT THE BAR, THE ELEGANT KAY MURRAY WHO ENCOURAGED ME AS A LOWLY FIRST YEAR ASSOCIATE, TO SPEND TIME AND ENERGY WITH BAR ASSOCIATIONS, TO DEVOTE SERVICE TO THE COMMUNITY. AND AS IF THAT WERE NOT CHALLENGE ENOUGH, YOU HAD THE TEMERITY TO HONOR THE BEST LAWYER IN BROOKLYN, MY GODSISTER AT THE BAR AND STELLAR ROLE MODEL THE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF NEW YORK, LORETTA LYNCH. YOU GOT IT: FOR ME, STRIKE THREE.

IN SHORT, BY THE TIME I FINISHED REVIEWING THE LIST OF YOUR PAST HONOREES, I REALIZED THAT YOU HAD NOT ONLY EXPERIENCED EVERYTHING THAT I MIGHT CONCEIVABLY OFFER BY WAY OF INSIGHT, BUT EXPERIENCED THOSE INSIGHTS FROM A SPEAKER WITH A BETTER BARITONE, AN HISTORIAN WITH GREATER KNOWLEDGE, BAR LEADERS OF GREATER DISTINCTION AND PRACTITIONERS WHO WERE THE TRUE PIONEERS ON WALL STREET. IN SHORT, I WAS IN DEEP, DEEP TROU-

BLE. BUT THEN, IRONICALLY, A QUESTIONED POSED BY THE BRILLIANT AUTHOR AND SCHOLAR GEORGE F. WILL IN HIS WASHINGTON POST COLUMN OF MARCH 28, 2010 CAUGHT MY ATTENTION. YOU SEE, MR. WILL DISCUSSED A LITTLE KNOWN BUT IMPORTANT LAW REVIEW ARTICLE. THE A. DALTON CROSS PROFESSOR OF LAW AT THE UNIVERSITY OF TEXAS LAW SCHOOL, A MAN NAMED LINO A. GRAGLIA, PUBLISHED THAT ARTICLE IN THE TEXAS REVIEW OF LAW AND POLITICS [14 TEXAS LAW REVIEW OF LAW AND POLITICS, AT PAGES 1-14]. IN HIS ARTICLE PROFESSOR GRAGLIA REVIEWED THE EXTENSIVE HISTORICAL RECORD IN THE YEARS BETWEEN THE 1788 CREATION OF OUR CONSTITUTION AND THE END OF THE CIVIL WAR, AND RAISED AN IMPORTANT QUESTION: WHY DID THE 14TH AMENDMENT TO THE CONSTITUTION, WRITTEN IN 1866 AND RATIFIED IN 1868 PROVIDE BIRTHRIGHT CITIZENSHIP. AS HE PUT IT, QUOTE, "HOW, THEN, SHOULD THE JURISDICTION REQUIREMENT OF THE CITIZENSHIP CLAUSE BE INTERPRETED IN REGARD TO THAT QUESTION? LIKE ANY WRITING, OR AT LEAST ANY LAW, IT SHOULD BE INTERPRETED TO MEAN WHAT IT WAS INTENDED OR UNDERSTOOD TO MEAN BY THOSE WHO ADOPTED IT – THE RATIFIERS OF THE FOURTEENTH AMENDMENT. THEY COULD NOT HAVE CONSIDERED THE QUESTION OF GRANTING BIRTHRIGHT CITIZENSHIP TO THE CHILDREN OF ILLEGAL ALIENS BECAUSE, FOR ONE THING, THERE WERE NO ILLEGAL ALIENS IN 1868, WHEN THE AMENDMENT WAS RATIFIED, BECAUSE THERE WERE NO RESTRICTIONS ON IMMIGRATION." GEORGE WILL AGREED AND WROTE, "THERE WERE AND HAD NEVER BEEN ANY ILLEGAL IMMIGRANTS [UP TO THAT TIME] BECAUSE NO LAW EVER HAD RESTRICTED IMMIGRATION." [IBID, PP. 5-6].

I FOUND THAT HARD TO BELIEVE. AND SO I PERSONALLY REVIEWED THE HISTORICAL RECORD, AND INDEED, AT FIRST CONCLUDED THAT THEY WERE, IN FACT, CORRECT: NO STATUTES ENACTED PRIOR TO 1868 RESTRICTED IMMIGRATION TO OUR COUNTRY. IT STRUCK ME AS ODD, HOWEVER, THAT A LAW WOULD BE PASSED, AND NOT JUST ANY LAW BUT AN AMENDMENT TO THE UNITED STATES CONSTITUTION, TO ADDRESS WHAT HAD NOT BEEN THE SUBJECT OF LEGISLATION. WHY DID THE CIVIL WAR AMENDMENTS ADDRESS THIS ISSUE? AFTER ALL, CONSTITUTIONAL AMENDMENTS WERE FEW AND FAR BETWEEN. AFTER THE 1791 ENACTMENT OF THE FIRST TEN AMENDMENTS TO THE CONSTITUTION, THE AMENDMENTS WE COLLECTIVELY REFER TO AS THE BILL OF RIGHTS, THE UNITED STATES CONSTITUTION HAD ONLY BEEN AMENDED TWICE: THE 11TH AMENDMENT RATIFIED IN 1798 TO PROVIDE THAT THE JUDICIAL POWER OF THE UNITED STATES SHALL NOT BE CONSTRUED TO EXTEND TO ANY SUIT IN LAW OR EQUITY, COMMENCED OR PROSECUTED AGAINST ONE OF THE UNITED STATES BY CITIZENS OF ANOTHER STATE OR BY CITIZENS OR SUBJECTS OF ANY FOREIGN STATE, AND THE 12TH AMENDMENT RATIFIED IN 1804 REDEFINING THE MANNER IN WHICH PRESIDENTIAL ELECTORS WOULD MEET TO CAST THEIR VOTES TO CORRECT THE PROBLEMS THAT HAD ARISEN FROM THE 73 TO 73 TIE VOTE IN THE ELECTORAL COLLEGE BE-

TWEEN THOMAS JEFFERSON AND AARON BURR ARISING FROM THE ELECTION OF 1800 – AND THAT WORKED FLAWLESSLY FOR 200 YEARS, OR UNTIL THE ELECTION OF 2000 WHICH I WILL LEAVE FOR OTHER MORE COURAGEOUS SPEAKERS TO ADDRESS AT SOME FUTURE TIME.

MY EFFORTS TO SOLVE THIS MYSTERY, TO UNDERSTAND WHY THE 14TH AMENDMENT CONTAINS THAT BIRTHRIGHT LANGUAGE LED TO ME TO THE HEART OF MY REMARKS THIS EVENING: TO WHAT I REFER TO AS THE REAL LINCOLN-DOUGLASS DEBATES: NOT THE ONES BETWEEN THE LITTLE JUDGE NAMED STEPHEN A. DOUGLASS AND THE TALL, LACONIC LAWYER FROM ILLINOIS NAMED ABRAHAM LINCOLN, AS THEY BATTLED FIRST FOR THE SENATE AND THEN AGAIN FOR THE PRESIDENCY. NO I WANT TO DISCUSS THE INFINITELY MORE SUBTLE BUT ULTIMATELY VASTLY MORE IMPORTANT DEBATE BETWEEN FREDERICK DOUGLASS AND PRESIDENT LINCOLN ON THE QUESTION OF THE UNITY OF FREEDOM. AND IN OUR ANALYSIS OF THAT DEBATE COMES THE ANSWER TO THE QUESTION POSED BY THE PROFESSOR AND MR. WILL: WHY THE 14TH AMENDMENT PROVIDES UNQUALIFIED CITIZENSHIP TO ALL BORN HERE WHEN ILLEGAL IMMIGRATION HAD NOT BEEN THE SUBJECT OF A SINGLE STATUTE BETWEEN 1776 AND END OF THE CIVIL WAR.

MY FIRST CLUE CAME NOT FROM A HISTORY BOOK, BUT FROM POPULAR CULTURE. AND NOT JUST ANY OLD PLACE IN POP CULTURE, BUT FROM THE KING OF POP CULTURE: WALT DISNEY. IN 2004, DISNEY RELEASED A FILM STARING NICHOLAS CAGE, JON VOIGHT AND HARVEY KEITEL. TOGETHER WITH CHRISTOPHER PLUMMER, THAT FILM, TOOK THE AUDIENCE ON A NATIONAL TREASURE HUNT. YOU REMEMBER THE PLOT: NICHOLAS CAGE, A NOTED CRYPTOLOGIST, WENT SEARCHING FOR A LOST TREASURE, A TREASURE ONCE PROTECTED BY THE KNIGHTS TEMPLAR AND HIDDEN BY THE FREEMASONS DURING THE EARLIEST YEARS OF THE UNITED STATES. HE DISCOVERED A CODED MAP ON THE BACK OF THE DECLARATION OF INDEPENDENCE WHICH POINTED TO THE LOCATION OF THAT NATIONAL TREASURE, JUST THREE BLOCKS FROM HERE.

FOLLOWING THE LEAD OF THE CHARACTER PLAYED BY MR. CAGE, I TOO EXAMINED THE DECLARATION TO SEE WHERE IT POINTED. NOT THE ORIGINAL BUT A COPY, AND NOT ITS BACK, BUT, ITS FACE. AND LO AND BEHOLD, I TOO FOUND A TREASURE -- NOT BURIED GOLD BUT ACCESSIBLE TEXT: THE DECLARATION POINTED ME TO THE UNITED STATES CONSTITUTION, AND, MOREOVER, I FOUND IN THE CONSTITUTION PARTICULAR CLAUSES, CLAUSES NOT OFTEN THOUGHT OF AS ENHANCING FREEDOM BUT LIMITING IT, CLAUSES THAT PROVIDE THE ANSWER TO THE QUESTION RAISED BY MR. WILL AND THE PROFESSOR.

OUR STARTING POINT TURNED OUT TO BE ARTICLE I, SECTION 2 OF THE CONSTITUTION WHICH PROVIDES THAT "REPRESENTATIVES AND DIRECT TAXES SHALL BE APPORTIONED AMONG THE SEVERAL STATES WHICH MAY BE INCLUDED WITHIN THIS UNION, AC-

CORDING TO THEIR RESPECTIVE NUMBERS, WHICH SHALL BE DETERMINED BY ADDING TO THE WHOLE NUMBER OF FREE PERSONS, INCLUDING THOSE BOUND TO SERVICE FOR A TERM OF YEARS, AND EXCLUDING INDIANS NOT TAXED, THREE FIFTHS OF ALL OTHER PERSONS."

CONSIDER THAT STARTLING, SOMEWHAT STRAINED AND STRANGE LANGUAGE: OTHER PERSONS. A GENDER NEUTRAL REFERENCE TO MALE AND FEMALE OTHER PERSONS. NOT SLAVES, NOR AFRICANS, NOR AFRICAN AMERICANS, BUT RATHER TO "OTHER PERSONS." WHAT DROVE THE DECISION TO USE THAT CIRCUMLOCUTION? ANOTHER MYSTERY. WHY A RESTRAINT HERE THAT DID NOT APPLY TO NATIVE AMERICANS? WHY IS IT THAT THE SAME MEN WHO SEEMED ABLE ONLY TO WRITE "ALL MEN ARE CREATED EQUAL" WERE QUITE ABLE TO USE THE MODERN SOUNDING PHRASE PERSONS? AND, PERHAPS, ABOVE ALL, WHY ON EARTH NOT MENTION SLAVERY BY NAME? THE MYSTERY DEEPENED.

I NEXT CONSIDERED ARTICLE 1, SECTION 9 OF THE CONSTITUTION: THE PROVISION THAT PROVIDES, QUOTE, "THE MIGRATION OR IMPORTATION OF SUCH PERSONS AS ANY OF THE STATES NOW EXISTING SHALL THINK PROPER TO ADMIT, SHALL NOT BE PROHIBITED BY THE CONGRESS PRIOR TO THE YEAR ONE THOUSAND EIGHT HUNDRED AND EIGHT, BUT A TAX OR DUTY MAY BE IMPOSED ON SUCH IMPORTATION, NOT EXCEEDING TEN DOLLARS FOR EACH SUCH PERSON."

WHAT IS THE STRANGE REFERENCE, AGAIN TO OTHER PERSONS? WHY DOES THIS CLAUSE LIMIT ITS REACH TO THE MIGRATION OR IMPORTATION OF SUCH OTHER PERSONS, BUT ONLY TO THE STATES AS ARE QUOTE "NOW EXISTING?" WHY A DUTY OF TEN DOLLARS AND WHY END THAT LIMITATION TO A DUTY OR TAX OF TEN DOLLARS FOR EACH SUCH -- AGAIN GENDER NEUTRAL LANGUAGE -- TO 1808? WHAT THE HECK IS GOING ON HERE?

WHAT LED TO SUCH EXTRAORDINARY PROVISIONS? WELL, THE HISTORICAL RECORD REVEALS THAT THE FOUNDERS, DESPITE THEIR PERSONAL FLAWS AND WELL DOCUMENTED LIMITATIONS KNEW THAT ALL PEOPLE WERE CREATED EQUAL, THAT MEN AND WOMEN WERE IN FACT CREATED EQUAL, AND THAT AS SUCH THEY WERE ALL TO BE COVERED BY AND OVER TIME PROTECTED UNDER OUR CONSTITUTION. THEY KNEW FROM THEIR EXPERIENCES WITH THE BRITISH IMPERIAL CROWN, THAT THE POWER TO TAX WAS THE POWER TO DESTROY. FOR THEM, LIMITING THE POWER OF THE SOUTH BY LIMITING THE REPRESENTATIONAL COUNT OF THOSE OTHER PERSONS, THE PORTION OF THE NATION THAT DID NOT FULLY EMPOWER HUMAN BEINGS WITH FULL RIGHTS RESULTED IN THAT ODIOUS 3/5THS PROVISION. AND YET THEY ACCOMPLISHED THIS POLITICAL DEED WITHOUT MENTION OF RACE, SLAVERY OR AFRICANS. WHY NOT? CERTAINLY NOT TO AVOID ANY NON-POLITICALLY CORRECT OR INSENSITIVE LANGUAGE: JUST TAKE A LOOK AT REFERENCES TO AMERICAN INDIANS IN OUR DECLARATION OF INDEPENDENCE IF YOU DOUBT ME : OF THE

THEN PRESENT KING OF ENGLAND JEFFERSON WROTE, AND I QUOTE: "HE [THE KING] HAS EXCITED DOMESTIC INSURRECTIONS AMONGST US, AND HAS ENDEAVORED TO BRING ON THE INHABITANTS OF OUR FRONTIERS, THE MERCILESS INDIAN SAVAGES, WHOSE KNOWN RULE OF WARFARE, IS AN UNDISTINGUISHED DESTRUCTION, OF ALL AGES, SEXES AND CONDITIONS." THOSE HARSH WORDS STILL EXISTS IN OUR DECLARATION OF INDEPENDENCE TO THIS VERY DAY, BY THE WAY. YET NOT A WORD CONCERNING AFRICANS, AFRICAN-AMERICANS OR SLAVES. -- POLITICAL CORRECTNESS? NO, THE FOUNDERS DID IT BECAUSE THE IMPETUS, THE POWER OF THE AMERICAN CALL TO FREEDOM COULD NOT AND WOULD NOT COUNTENANCE AN EXPRESS PROTECTION OF SLAVERY. IN FACT THE CONSTITUTION PROVIDED THE EXPRESS MECHANISM FOR ITS EXTINCTION, FOR FUTURE GENERATIONS TO KILL IT BY TAXATION AFTER 1808 AND BY NOT EXTENDING IT TO NEWLY ADMITTED STATES IN FUTURE GENERATIONS.

AND SO WE COME TO OUR HEROES: FREDERICK DOUGLASS AND ABRAHAM LINCOLN. BOTH MEN OF ENORMOUS PHYSICAL COURAGE, TOWERING INTELLECT AND POTENTIAL FOR GROWTH. DOUGLASS LITERALLY FOUGHT HIS WAY CLEAR OF SLAVERY BY MIGHTILY DEFEATING IN NEARLY MORTAL HAND TO HAND COMBAT A MAN KNOWN AND GLORIFIED BY SOME WHILE VILIFIED BY OTHERS AS A BREAKER OF SLAVES -- IN MIND AND IN BODY. LINCOLN, A MAN WHO FOUGHT ON THE FRONTIER WHILE GROWING AS A LAWYER OF FORCE AND INTELLECT -- BOTH IN PRIVATE LAW PRACTICE AND PUBLIC SERVICE. YES, AS WE ALL LEARNED AS SCHOOL CHILDREN LINCOLN DEBATED JUDGE STEPHEN DOUGLASS ON THE QUESTION OF UNION AND SLAVERY AND FORCED JUDGE DOUGLASS INTO POSITIONS THAT WHILE TENABLE FOR A DOUGLASS VICTORY IN THE ILLINOIS SENATE BATTLE WOULD COMPEL LINCOLN TO THE PRESIDENCY. YET LINCOLN HESITATED IN HIS FINAL CHALLENGE: TO REALIZE NOT SIMPLY THAT THE NATION COULD NOT ENDURE HALF SLAVE AND HALF FREE, BUT THAT THE NATION COULD NOT ENDURE WITH WOMEN OF ANY RACE TREATED AS SECOND CLASS CITIZENS.

FREDERICK DOUGLASS DISTINGUISHED HIMSELF ON THAT LATTER SCORE AS WELL. AT A TIME WHEN MANY ABOLITIONISTS WERE HOSTILE TO THE RIGHTS OF WOMEN, DOUGLASS WAS AN UNYIELDING, UNAPOLOGETIC AND UNWAVERING ADVOCATE FOR EQUAL RIGHTS FOR WOMEN. HE NOT ONLY SAW NO TENSION BETWEEN THE END OF SLAVERY AND DISCRIMINATION AGAINST AFRICAN AMERICANS AND THE END OF OPPRESSION OF WOMEN, HE SAW COMPLETE UNITY IN THE CAUSE OF WOMEN WITH THAT OF THE ABOLITIONIST MOVEMENT. AT A TIME WHEN LINCOLN WAS STILL OF THE VIEW THAT PERHAPS HE COULD REUNITE THE UNION WITH SOME ROLE FOR SLAVERY, DOUGLASS MOVED HIM TO EMBRACE THE POSSIBILITY THAT THE FOUNDERS HAD SO SUBTLETY, BUT CLEARLY LAID OUT IN THE CONSTITUTION: THAT THE TIME HAD COME TO PULL THE TRIGGER POLITICALLY, MILITARILY,

AND MORALLY THAT THE FOUNDERS HAD PLACED AT THE DISPOSAL OF THE PRESIDENT AND THE CONGRESS. THE COMPROMISE THAT THE FOUNDERS HAD EXPECTED TO END BY 1808 HAD LASTED FAR TOO LONG -- 60 YEARS TOO LONG -- AND DOUGLASS AND LINCOLN WERE THE MEN TO BRING IT TO AN END. THEIR COMBINED FORCES FOR FREEDOM FOR ALL PERSONS, ALL STATIONS OF LIFE, FOR ALL TIME. TWO MEN WHO CAME TO PERSONIFY THE POTENTIAL THE FOUNDERS HID IN PLAIN SIGHT IN THE ORIGINAL DOCUMENT: THEIR TRUE AND TRULY ACCESSIBLE ORIGINAL INTENT.

AND SO THE CLASH OF ARMS CAME, FREEDOM RESULTED, AND OVER THE DECADES AND THE NEXT CENTURY, GREW EVER MORE PREVALENT. I WOULD BE REMISS, HOWEVER, IF I DID NOT END ON A SOMEWHAT CAUTIONARY NOTE OR TWO. FIRST, THE PRICE OF FREEDOM IS ETERNAL VIGILANCE. THE FREEDOMS CAME AS A RESULT OF STRUGGLES AND EFFORTS OF THE GIANTS WHO HAVE PRECEDED US, GOING BACK TO THE FOUNDERS. THE SECOND CAUTIONARY NOTE HAS TO DO WITH THE ROLE OF THE JUDICIARY. THE FOUNDERS HIDDEN KEYS WERE DIFFICULT TO DISCERN, BUT CLEARLY EXISTED TO KEEP THE REPUBLIC TOGETHER: AND TO DO SO WITHOUT JUDICIAL INTERVENTION.

UNTIL, THAT IS, UNTIL A CHIEF JUSTICE NAMED ROGER TANEY DECIDED THERE WAS NO NEED TO FOLLOW THAT CONSTITUTION. NOW ANY LAW STUDENT KNOWS THAT JURISDICTION IN FEDERAL COURT WHEN NOT INVOLVING A CASE BASED UPON THE RESOLUTION OF A FEDERAL QUESTION MUST DEPEND ON DIVERSITY OF CITIZENSHIP. NATURALLY, WHEN LITIGANTS ATTEMPTED TO RAISE THE ULTIMATE QUESTION OF THOSE OTHER PERSONS UNDER THE CONSTITUTION, THE FOUNDERS KNEW THE FEDERAL COURTS WOULD STAY OUT OF IT: AFTER ALL, TO DETERMINE THE POLITICAL AND SOCIAL QUESTION IN FAVOR OF THOSE QUOTE "OTHER PERSONS" CLOSE QUOTE BEING OR NOT BEING CITIZENS WOULD BE TO DETERMINE THE QUESTION THE FOUNDERS HAD CAREFULLY SET UP FOR THE NEXT GENERATION OF POLITICAL LEADERS TO DETERMINE. THUS THEY KNEW THAT JUDGES -- POPULATING WHAT MADISON CALLED THE LEAST DANGEROUS BRANCH IN THE FEDERALIST PAPERS -- WOULD SURELY DEFER TO THE POLITICAL BRANCHES ON THE THIRD RAIL OF AMERICAN POLITICAL HISTORY.

BUT ALAS, THAT WAS NOT TO BE. CHIEF JUSTICE TANEY DECIDED THAT THERE WAS NO NEED TO DEFER ANY LONGER TO THOSE WHO HAD FOUNDED THE REPUBLIC. CHIEF TANEY AND HIS COURT WOULD DECIDE THE ISSUE. FIRST, THEY DECIDED THAT THE OTHER LITIGANT BEFORE IT -- SLAVE DRED SCOTT -- WAS NOT A CITIZEN. STRIKE ONE. THEN, THEY DECIDED NOT TO DISMISS THE CASE, EVEN THOUGH AT THAT POINT UNDER THEIR ANALYSIS THE COURT LACKED FEDERAL JURISDICTION SINCE NO FEDERAL QUESTION HAD BEEN PRESENTED AND SINCE THEY HAD DETERMINED THAT SCOTT WAS NOT A CITIZEN THERE WAS NO

DIVERSITY JURISDICTION -- STRIKE TWO. THEN THEY DECIDED THAT BLACKS HAD, AND I QUOTE: "NO RIGHTS WHICH THE WHITE MAN WAS BOUND TO RESPECT." STRIKE THREE!

WELL FREDERICK DOUGLASS WOULD HAVE NONE OF IT. IN HIS GREAT SPEECH ON THE DRED SCOTT DECISION GIVEN IN MAY OF 1857, MR. DOUGLASS SAID AS FOLLOWS:

"WASHINGTON AND JEFFERSON, AND ADAMS, AND JAY AND FRANKLIN, AND RUSH, AND HAMILTON, AND A HOST OF OTHERS HELD NO SUCH DEGRADING VIEWS ON THE SUBJECT OF SLAVERY AS ARE IMPUTED BY JUDGE TANEY TO THE FATHERS OF THE REPUBLIC. ALL, AT THAT TIME, LOOKED FOR THE GRADUAL BUT CERTAIN ABOLITION OF SLAVERY, AND SHAPED THE CONSTITUTION WITH A VIEW TO THIS GRAND RESULT. GEORGE WASHINGTON CAN NEVER BE CLAIMED AS A FANATIC, OR AS THE REPRESENTATIVE OF FANATICS. THE SLAVEHOLDERS IMPUDENTLY USE HIS NAME FOR THE BASE PURPOSE OF GIVING RESPECTABILITY TO SLAVERY. YET, IN A LETTER TO ROBERT MORRIS, WASHINGTON USES THIS LANGUAGE -- LANGUAGE WHICH, AT THIS DAY, WOULD MAKE HIM A TERROR OF THE SLAVEHOLDERS, AND THE NATURAL REPRESENTATIVE OF THE REPUBLICAN PARTY. 'THERE IS NOT A MAN LIVING, WHO WISHES MORE SINCERELY THAN I DO, TO SEE SOME PLAN ADOPTED FOR THE ABOLITION OF SLAVERY ; BUT THERE IS ONLY ONE PROPER AND EFFECTUAL MODE BY WHICH IT CAN BE ACCOMPLISHED, AND THAT IS BY LEGISLATIVE AUTHORITY; AND THIS, AS FAR AS MY SUFFRAGE WILL GO, SHALL NOT BE WANTING."

"WASHINGTON ONLY SPOKE THE SENTIMENT OF HIS TIMES. THERE WERE, AT THAT TIME, ABOLITION SOCIETIES IN THE SLAVE STATES, - ABOLITION SOCIETIES IN VIRGINIA, IN NORTH CAROLINA, IN MARYLAND, IN PENN- SYLVANIA, AND IN GEORGIA -- ALL SLAVEHOLDING STATES. SLAVERY WAS SO WEAK, AND LIBERTY SO STRONG, THAT FREE SPEECH COULD ATTACK THE MONSTER TO ITS TEETH. MEN WERE NOT MOBBED AND DRIVEN OUT OF THE PRESENCE OF SLAVERY, MERELY BECAUSE THEY CONDEMNED THE SLAVE SYSTEM. THE SYSTEM WAS THEN ON ITS KNEES IMPLORING TO BE SPARED, UNTIL IT COULD GET ITSELF DECENTLY OUT OF THE WORLD. IN THE LIGHT OF THESE FACTS, THE CONSTITUTION WAS FRAMED, AND FRAMED IN CONFORMITY TO IT.

"IT MAY, HOWEVER, BE ASKED, IF THE CONSTITUTION WERE SO FRAMED THAT THE RIGHTS OF ALL THE PEOPLE WERE NATURALLY [PROTECTED BY IT, HOW HAPPENS IT THAT A LARGE PART OF THE PEOPLE HAVE BEEN HELD IN SLAVERY EVER SINCE ITS ADOPTION? HAVE THE PEOPLE MISTAKEN THE REQUIREMENTS OF THEIR OWN CONSTITUTION?

"THE ANSWER IS READY. THE CONSTITUTION IS ONE THING, ITS ADMINISTRATION IS ANOTHER, AND, IN THIS INSTANCE, A VERY DIFFERENT AND OPPOSITION THING. I AM HERE TO VINDICATE THE LAW, NOT THE ADMINISTRATION OF THE LAW. IT IS THE WRITTEN CONSTITUTION, NOT THE UNWRITTEN CONSTITUTION, THAT IS NOW BEFORE US. IF, IN THE WHOLE

RANGE OF THE CONSTITUTION, YOU CAN FIND NO WARRANT FOR SLAVERY, THEN WE MAY PROPERLY CLAIM IT FOR LIBERTY.

"IT MAY BE SAID THAT IT IS QUITE TRUE THAT THE CONSTITUTION WAS DESIGNED TO SECURE THE BLESSINGS OF LIBERTY AND JUSTICE TO THE PEOPLE WHO MADE IT AND TO THE POSTERITY OF THE PEOPLE WHO MADE IT, BUT WAS NEVER DESIGNED TO DO ANY SUCH THING FOR THE COLORED PEOPLE OF AFRICAN DESCENT.

"THIS IS JUDGE TANEY'S ARGUMENT, AND IT IS MR. GARRISON'S ARGUMENT, BUT IT IS NOT THE ARGUMENT OF THE CONSTITUTION. THE CONSTITUTION IMPOSES NO SUCH MEAN AND SATANIC LIMITATIONS UPON ITS OWN BENEFICENT OPERATION. AND, IF THE CONSTITUTION MAKES NONE, I BEG TO KNOW WHAT RIGHT HAS ANYBODY OUTSIDE OF THE CONSTITUTION, FOR THE SPECIAL ACCOMMODATION OF SLAVEHOLDING VILLAINY, TO IMPOSE SUCH A CONSTRUCTION? THE CONSTITUTION KNOWS ALL THE HUMAN INHABITANTS OF THIS COUNTRY AS "THE PEOPLE." IT MAKES AS I HAVE SAID BEFORE, NO DISCRIMINATION IN FAVOR OF OR AGAINST ANY CLASS OF THE PEOPLE, BUT IS FITTED TO PROTECT AND PRESERVE THE RIGHTS OF ALL, WITHOUT REFERENCE TO COLOR, SIZE OR ANY PHYSICAL PECULIARITIES. BESIDES, IT HAS BEEN SHOWN BY WILLIAM GOODELL AND OTHERS, THAT IN ELEVEN OF THE OLD THIRTEEN STATES, COLORED MEN WERE LEGAL VOTERS AT THE TIME OF THE ADOPTION OF THE CONSTITUTION.

"IN CONCLUSION LET ME SAY, ALL I ASK OF THE AMERICAN PEOPLE IS THAT THEY LIVE UP TO THE CONSTITUTION, ADOPT ITS PRINCIPLES, IMBIBE ITS SPIRIT AND ENFORCE ITS PROVISIONS.

"WHEN THIS IS DONE, THE WOUNDS OF MY BLEEDING PEOPLE WILL BE HEALED, THE CHAIN WILL NO LONGER RUST ON THEIR ANKLES, THEIR BACKS WILL NO LONGER BE TORN BY THE BLOODY LASH, AND LIBERTY, THE GLORIOUS BIRTHRIGHT OF OUR COMMON HUMANITY, WILL BECOME THE INHERITANCE OF ALL THE INHABITANTS OF THIS HIGHLY FAVORED COUNTRY." WOW. OPPOSE FREDERICK DOUGLASS? OPPOSE ABRAHAM LINCOLN? OPPOSE THE CONSTITUTION? AS WE SAY IN BROOKLYN, FORGET ABOUT IT.

HISTORY LEADS US, INDEED COMPELS US, TO FOLLOW THEIR CLUES TO THE AMERICAN TREASURE, THE TREASURE OF FREEDOM. FREEDOM FOR EVERY AMERICAN. HOW IRONIC THAT THE VERY FIRST TIME THE CONSTITUTION USES THE WORD SLAVERY, IT IS FOR THE EXPRESS PURPOSE OF DRIVING A STAKE THROUGH ITS MISBEGOTTEN HEART. THE THIRTEENTH AMENDMENT PROVIDES CLEARLY AND UNAMBIGUOUSLY THAT:

"NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE, EXCEPT AS A PUNISHMENT FOR CRIME WHERE OF THE PARTY SHALL HAVE BEEN DULY CONVICTED, SHALL EXIST WITHIN THE UNITED STATES, OR ANY PLACE SUBJECT TO THEIR JURISDICTION."

I SUSPECT THE FOUNDERS WOULD HAVE SMILED: SLAVERY? NO CONSTITUTIONAL MENTION OF IT WHILE IT LIVED, AND A STAKE THROUGH ITS HEART AT ITS DEMISE. THAT WAS TRULY THEIR ORIGINAL INTENT.

BUT HOW DOES THIS ADDRESS THE MYSTERY THE PROFESSOR AND MR WILL RAISED? WHY, ONLY THREE YEARS AFTER THE THIRTEENTH AMENDMENT NAMED SLAVERY BY NAME FOR THE SOLE PURPOSE OF KILLING IT, DOES THE 14TH AMENDMENT MANDATE THAT "ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, ARE SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE."

THE ANSWER IS REVEALED BY LOOKING AT THE MAGICAL YEAR OF 1808. YOU SEE MR. WILL AND THE TEXAS LAW PROFESSOR WERE LOOKING FOR LAW IN ALL THE WRONG PLACES. NO STATUTE BANNED ILLEGAL IMMIGRATION. THE UNITED STATES CONSTITUTION DID WHEN IT OUTLAWED THE SLAVE TRADE IN 1808. YOU SEE, JUST THREE YEARS AFTER THE CIVIL WAR , AMERICA WOULD NOT TOLERATE ATTEMPTS TO DEPRIVE AFRICAN AMERICANS OF OUR CIVIL RIGHTS OR WORSE, REMOVE US FROM AMERICAN SOIL UNDER THE PRETEXT OF OUR INDIVIDUAL INABILITY PROVE WE WERE HERE LAWFULLY. IMAGINE HAVING TO EXAMINE THE PEDIGREE OF EACH AND EVERY AFRICAN AMERICAN, TO DETERMINE IF HIS OR HER ANCESTORS WERE MIGRANTS BROUGHT HERE LEGALLY BEFORE 1808 OR ILLEGALLY AFTER 1808. IMAGINE DENYING CIVIL LIBERTIES, OR EVEN WORSE, TO DEPORT ALL AFRICAN AMERICANS WHO COULD NOT PROVE A LAWFUL IMMIGRATION PEDIGREE. IMAGINE THE NEWLY FREED AFRICAN AMERICAN FACED WITH THE SITUATION WHERE HIS GRANDFATHER WAS IMPORTED LEGALLY IN 1805 BUT HIS MOTHER WAS IMPORTED ILLEGALLY IN 1810. WHAT ABOUT THE PARENTS OF THAT PERSON, WHOSE MOTHER WAS THE DESCENDANT OF THAT COUPLE BUT WHO MARRIED A FULL BLOODED CHEROKEE NATIVE AMERICAN? WHAT OF HIS SON AND DAUGHTER, THE PRODUCT OF HIS MARRIAGE TO A RECENT IMMIGRANT FROM ITALY, GERMANY, IRELAND, RUSSIA, OR EASTERN EUROPE? AND BY THE WAY, ONCE YOU SORT OUT THE QUESTION OF WHERE THESE EXCLUDABLE OFFSPRING OF ILLEGALLY IMPORTED IMMIGRANTS WERE TO BE SENT -- CAPE COAST? THE NATIVE AMERICAN INDIAN RESERVATION? THE EUROPEAN NATION OF THEIR PARTICULAR PARENT -- WHO EXACTLY WAS GOING TO PICK UP THE TAB FOR THIS CORRECTIVE EXERCISE? AND REMEMBER YOU ARE NOW CONSIDERING THREE OR FOUR GENERATIONS OF AFRICAN-AMERICANS BORN AFTER 1808. WERE THEY TO BE DEPRIVED OF THEIR HARD FOUGHT FOR CIVIL LIBERTIES BY THE IRONIC USE OF THE 1808 PROVISION WHOSE ORIGINAL INTENT WAS TO END THE SLAVE TRADE NOW BEING USED, DISINGENUOUSLY AND WITH INCREDIBLE CYNICISM, BY THOSE WHO WOULD DENY THE FREEDMEN AND WOMEN THEIR RIGHTS? AND BY THE WAY, WHY LIMIT THE ENQUIRY SOLELY TO AFRICAN AMERICANS?

NO. THE CIVIL WAR WAS FOUGHT TO SECURE FREEDOM FOR EACH OF US BORN HERE. NO MATTER HOW, NO MATTER WHY, NO MATTER WHEN OUR ANCESTORS ARRIVED.

AND SO ONCE AGAIN, OLIVER WENDELL HOLMES, WHO HIMSELF FOUGHT FOR THE UNION IN THE CIVIL WAR, PROVES VINDICATED: THE LIFE OF THE LAW IS NOT LOGIC BUT EXPERIENCE. THE FOURTEENTH AMENDMENT WAS ENACTED TO ENABLE THE REPUBLIC TO SECURE THE INCHOATE, ALMOST SECRET PROMISE OF 1808 AND TO MAKE IT A REALITY IN 1868. ITS CREATION HAD NOTHING TO DO WITH THE KIND OF IMMIGRATION CHALLENGES AND OPPORTUNITIES OUR NATION FACES TODAY. IT HAD EVERYTHING TO DO, HOWEVER, WITH NOT RE-FIGHTING THE CIVIL WAR BY REQUIRING EVERY AFRICAN AMERICAN TO PROVE HIS OR HER 1808 CREDENTIALS. WHATEVER IMMIGRATION CHALLENGES AND OPPORTUNITIES WE FACE AS A NATION TODAY, I SUSPECT THE FOUNDERS OF THE NATION AND THE CIVIL WAR GENERATION WOULD TELL US TO DO WHAT THEY DID: TO SOLVE OUR NATIONAL PROBLEMS, AS ONE NATION UNDER LAW, USING THE NATIONAL TREASURES THEY HAVE GIVEN US.

SO WE HAVE SOLVED THE MYSTERY OF WHY IN 1868 THE CONSTITUTION WAS AMENDED TO PROVIDE BIRTH CITIZENSHIP. THE FOUNDERS DID WHAT THEY HAD TO DO TO UNITE A NEW NATION, DEFEAT THE BRITISH EMPIRE, AND KEEP THE UNION TOGETHER. MR. FREDERICK DOUGLASS PERSUADED PRESIDENT ABRAHAM LINCOLN TO DO WHAT HE HAD TO DO SECURE THOSE FIRST STEPS ON THE ROAD TO FREEDOM FOR ALL. AND THOSE WHO FOLLOWED THE 1865 ASSASSINATION OF LINCOLN IN 1868 BY ENACTING THE 14TH AMENDMENT DID WHAT THEY HAD TO DO TO PREVENT A PERVERSION OF WHAT THE FOUNDERS INTENDED TO ACHIEVE BY DESIGNATING THE YEAR 1808 AS THE BEGINNING OF THE END FOR THE PECULIAR INSTITUTION. SO THE NEXT TIME SOMEONE TELLS YOU TO FOLLOW THE ORIGINAL INTENT OF THE FOUNDERS, MY HUMBLE SUGGESTION IS THAT YOU EMBRACE THAT SUGGESTION, MINDFUL OF THE REALITY THAT THE CONSTITUTION AS ORIGINALLY DRAFTED REMAINS A TREASURE, THAT THE AMENDMENTS AS RATIFIED ARE JEWELS, AND THAT LIKE FREDERICK DOUGLASS WE ARE THE BENEFICIARIES OF THOSE WISE MEN AND WOMEN WHO HAVE GONE BEFORE US. WE HAVE NO REASON, NO EXCUSE, TO FAIL THEIR LEGACY. I AM NO JAMES EARL JONES, BUT MY FINAL PRAYER FOR RELIEF IS SIMPLE: MAY THE FORCE OF THE CONSTITUTION BE WITH YOU, MAY GOD BLESS YOU AND YOUR FAMILIES, AND MAY GOD CONTINUE TO BLESS THESE NOW TRULY UNITED STATES OF AMERICA. THANK YOU SO VERY MUCH.

**WILLIAM F. KUNTZ, II,
60 CENTRE STREET, NEW YORK CITY, FEBRUARY 24, 2011.**