

Abraham Lincoln and the Rule of Law

Theme: Values, Beliefs, Political Ideas, and Institutions

Habits of Mind: Recognize the importance of individuals who have made a difference in history

Focus: According to the rule of law, which is a fundamental part of the Anglo-American concept of constitutional government, both the government and the governed are subject to the law. Under the principle of the rule of law, no government official, no single private citizen, no single group of people can claim privilege above the law. Rather, rules are set forth in advance, are widely known, and are applied impartially to rulers and ruled alike. The rule of law is essential to limited government, for in a limited government everyone, including all people in positions of authority, must obey the laws. The rule of law, however, means more than having laws or passing legislation; neither is it merely the use of laws to rule a civil society. The “rule of law” opposes arbitrary and capricious “rule of men.” Thus, the rule of law is essential to ordered liberty and prevents individuals from deciding for themselves what the law is and how and when the law is to be enforced. This fundamental value and belief in the rule of law organizes the content of this lesson.

As a practicing attorney, Abraham Lincoln believed in the rule of law. The government and all people, he believed, were obligated to make decisions and take actions based on established law rather than personal whim and desires. This lesson helps students understand the rule of law as an important principle of constitutional government (also called limited government), and it helps students appreciate how the rule of law guided Lincoln’s legal career and his advice as counsel.

When students read the documents from the Lincoln Legal Papers in this lesson, they should think of how an individual can influence the beliefs and actions of others. Throughout Abraham Lincoln’s legal career, new and experienced attorneys alike sought his advice regarding the principles and beliefs that should guide a lawyer’s practice. Lincoln’s belief in the “rule of law” sustained the advice he offered attorneys.

Objectives: Students will be able to:

1. Explain the difference between the rule of law and the rule of men.
2. Explain why the rule of law means more than simply having laws.
3. Explain the relationship between the rule of law and Abraham Lincoln’s advice to lawyers.

Illinois Learning Standards

14.F.3a Analyze historical influences on the development of political ideas and practices as enumerated in the Declaration of Independence, the United States Constitution, the Bill of Rights and the Illinois Constitution.

16.B.2d (US) Identify major political events and leaders within the United States since the adoption of the Constitution, including Abraham Lincoln.

Procedures

1. **Opening Arguments.** Ask students to read John Locke's statement and explain how the rule of law protects individual rights.
"Wherever Law ends, Tyranny begins." — John Locke (1690)
2. **Rebuttal.** Ask students to compare John Locke's statement to Alexander Hamilton's statement:
"If individuals enter into a state of society the laws of that society must be the supreme regulator of their conduct." — Alexander Hamilton (1788)
3. **Any Further Questions, Mr. Lincoln?** Ask students these follow-up questions:
 - A. What is meant by "rule of law?"
 - B. What are the consequences if there is an absence of a rule of law?
 - C. What are the alternatives to the rule of law?
 - D. What different varieties of law exist?
 - E. How does the rule of law limit both those who govern and the governed?
 - F. How does the rule of law protect individual rights? the common good?
4. **Abraham Lincoln's Advice to Law Students.** (Notes for a Law Lecture).
 - A. New and experienced attorneys often consulted Abraham Lincoln for advice on practicing the law. Lincoln's gift was oral argument rather than legal research.
 - B. Lawyers often argued the law and let the judge decide. Lincoln used the law and argued the facts of a case.
 - C. He contributed to the law by revolutionizing jury participation in case decision-making. Lincoln emphasized jury nullification, based on how a jury perceived evidence. He believed that circumstance rather than the letter of the law should dictate the judgment of a case.
 - D. He suggested to attorneys no less than four sources to prepare for the bar and practice. He recommended Blackstone's *Commentaries* and knowledge of "black letter" law, that is, a basic recitation of the law prior to being applied to a fact situation. Lincoln also suggested Chitty's *Pleadings*, which assisted lawyers to know the proper approach in addressing the court, and Greenleaf's *Evidence*, which advised the proper method to present evidence to the court. Finally, Story's *Equity* had importance to Lincoln because of its emphasis on fairness.
 - E. Ask students what they think is meant by the phrase "black letter" law? Why is etiquette important in a court of law? Why is proper procedure essential in a court of law? Why would Lincoln think fairness is an important principle in law and an important characteristic of a successful lawyer?

5. **Discovering Abraham Lincoln through Legal Documents.** Three documents provide insight into Lincoln's legal practice and the rule of law. Have students read each document related to his law practice and complete the guide to primary source analysis, *Analyzing a Lincoln Legal Document: Private Correspondence* (attached). As students read each document ask them to infer how Lincoln's recommendations to lawyers emphasized the principle of the rule of law.
- A. Read Document 1-A: Letter, Abraham Lincoln to J. M. Brockman, 25 September 1860. Then discuss these questions:
- 1) Summarize the main idea of this document.
 - 2) What does this document tell us about the way Lincoln prepared to practice law?
 - 3) How did Lincoln's suggested readings contribute to the practice of law?
 - 4) How does this document illustrate that Lincoln believed in the rule of law?
- B. Read Document 1-B: Abraham Lincoln, Notes for a Law Lecture (undated, 1850s). Then discuss these questions:
- 1) Summarize the main idea of this document.
 - 2) What does this document tell us about the best practices of a lawyer?
 - 3) How does this document illustrate that Lincoln believed in the rule of law?
- C. Read Document 1-C: Letter, Abraham Lincoln to C. Hoyt, 16 January 1856. Then discuss these questions:
- 1) Summarize the main idea of this document.
 - 2) What does this document tell us about the way Lincoln prepared to practice law?
 - 3) How does this document illustrate that Lincoln believed in the rule of law?
6. **You be the Judge:** Instructions to the Jury. Lincoln had an extensive legal practice that made him a noteworthy attorney not only in Illinois, but also around the country. While many of his cases were typical of an attorney's daily practice in the 1840s and 1850s, he did make contributions to the practice of the law through *jury nullification*. Most attorneys argued the letter of the law and judges instructed juries in the letter of the law. Jury nullification, however, occurs when an attorney pleads with a jury to consider the extenuating circumstances that may have affected the behavior of a plaintiff or defendant in a particular case. Discuss the merits of both of these positions: strict following of the letter of the law or admitting the extenuating circumstances as a defense.
7. **Conclusion and Assessment:** Write to Learn. Think of a situation in which you broke a very important school rule. Imagine Abraham Lincoln was acting as your "attorney" to present your defense at a trial before your peers. Write an expository paragraph describing how Lincoln's defense strategy in the courtroom would help to clear charges made against you? What would he argue so that a jury of your peers would suspend the strict following of the rules? Or, select a passage from one of Lincoln's letters to aspiring attorneys. Summarize in your own words the key points of Lincoln's advice.

Note to Teacher: A rubric for assessing students' performance in knowledge, reasoning, and communication is included in the Introduction to this *Lincoln Legal Papers Curriculum*. For a description of performance assessment with History's Vital Themes and Narratives and its Habits of Mind at the center of students' knowledge, reasoning, and communication, see Frederick D. Drake and Lawrence W. McBride, "Reinvigorating the Teaching of History through Alternative Assessment," *The History Teacher* 30 (February 1997): 145-73.

Additional Activities

Illinois History Day Project. Students may develop an historical re-enactment, wherein some students will portray several new lawyers discussing the legal profession in Illinois with Abraham Lincoln, who will be depicted by another student. The student-actors can draw upon the information presented in the introduction to this curriculum, to outside readings about Lincoln's life, but especially to the primary source documents included in this lesson.

A Handbill for Lawyer's Best Practices. Create a handbill to inform nineteenth-century attorneys of Abraham Lincoln's recommendations for a lawyer's best practices. The handbill should describe how Lincoln's advice adhered to the rule of law. The assessment of student work on the handbill and their description of Lincoln's advice will be based on their knowledge and reasoning of the primary source documents, and their ability to communicate clearly.

Sources and Materials

Analyzing a Lincoln Legal Document: Private Correspondence

Document 1-A: Letter, Abraham Lincoln to J. M. Brockman, 25 September 1860

Document 1-B: Abraham Lincoln, Notes for a Law Lecture (Undated)

Document 1-C: Letter, Abraham Lincoln to C. Hoyt, 16 January 1856

Glossary of Terms

Analyzing a Lincoln Legal Document: Private Correspondence

A. Identify the Document

Author(s) _____

Title _____

Date _____

Type of Document _____

B. Put the Document in Historical Context

What important events were occurring at this time?

Illinois _____

United States _____

World _____

To whom was the document written? _____

What was the purpose of this document? _____

C. Analyze the Document

What are the main ideas or themes of this document? _____

What was the author's motive for writing this document? _____

Write one question you would like to ask the author. _____

What insight into the period did you gain from this document? _____

D. Identify Vital Themes and Narratives

Which Vital Theme and Narrative do you think is best represented?

- 1) *Civilization, cultural diffusion, and innovation*
- 2) *Human interaction with the environment*
- 3) *Values, beliefs, political ideas, and institutions*
- 4) *Conflict and cooperation*
- 5) *Comparative history of major developments*
- 6) *Patterns of social and political interaction*

What evidence in the document can you cite that will support your choice? _____

E. Habits of Mind

Which Habit of Mind helps you reflect upon Lincoln's career and the ideas that shaped him as a lawyer, politician, and statesman?

- | | |
|--|--|
| • understand the significance of the past to your life | • grasp the complexity of historical causation |
| • distinguish between important and inconsequential | • appreciate the often tentative nature of judgments about the past |
| • perceive past events and issues as experienced by people at the time | • recognize the importance of individuals who have made a difference |
| • acquire a comprehension of diverse cultures and shared humanity | • appreciate the force of the nonrational, irrational, and accidental in human affairs |
| • understand how things happen and change | • understand the relationship between geography and history |
| • comprehend the interplay of change and continuity | • recognize the difference between fact and conjecture |
| • prepare to live with uncertainties | |

How does this Habit help us understand the past?

F. Talk to Mr. Lincoln

Use these lines to answer any question you or your teacher may have about this document and Lincoln's law practice. _____

G. For Further Discussion

Use this space to answer any question you or your teacher may have about this document and Lincoln's law practice.

Document 1-A (transcription)

Springfield, Ills. Sep. 25. 1860

J. M. Brockman, Esq

Dear Sir

Yours of the 24th asking “the best mode of obtaining a thorough knowledge of the law” is received. The mode is very simple, though laborious, and tedious. It is only to get the books, and read, and study them carefully. Begin with Blackstone’s Commentaries, and after reading it carefully through, say twice, take up Chitty’s Pleadings, Greenleaf’s Evidence, & Story’s Equity &c. in succession. Work, work, work, is the main thing.

Yours very truly

A. Lincoln

Document 1-B (transcription)

Notes for a Law Lecture

I am not an accomplished lawyer. I find quite as much material for a lecture, in those points wherein I have failed, as in those wherein I have been moderately successful.

The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for to-morrow, which can be done to-day. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it, which can then be done. When you bring a common-law suit, if you have the facts for doing so, write the declaration at once. If a law point be involved, examine the books, and note the authority you rely on, upon the declaration itself, where you are sure to find it when wanted. The same of defences and pleas. In business not likely to be litigated—ordinary collection cases, foreclosures, partitions, and the like,—make all examinations of titles ^{and note them,} and even draft orders and decrees in advance. This course has a tripple advantage; it avoids omissions and neglect, saves you labor when once done; performs the labor out of court when you have leisure, rather than in court, when you have not. Extemporaneous speaking should be practiced and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business, if he can not make a speech. And yet there is not a more fatal error to young lawyers, than relying too much on speech-making. If any one, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance

~~Never encourage~~ ^{Discourage} litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time. As a peace-maker, the lawyer has a superior opportunity of being a good man. There will still be business enough.

Never ~~seek~~ stir up litigation. A worse man can scarcely be ^{found} ~~conceived of~~ than one who does this. Who can be more nearly a fiend than he who habitually overhauls the Register of deeds, in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession, which should drive such men out of it.

The matter of fees is important far beyond the mere question of bread and butter involved. Properly attended to fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule, never take your whole fee in advance, nor any more than a small retainer. When fully paid before hand, you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you, as well as for your client. And when you lack interest in the case, the job will very likely lack skill and diligence in the performance. Settle the amount of fee, and take a note in advance. Then you will feel that you are working for something, and you ^{are} sure to do your work faithfully, and well. Never sell a fee-note, at least, not before the consideration service is performed. It leads to negligence and dishonesty—negligence, by losing interest in the case, and dishonesty in refusing to refund, when you have allowed the consideration to fail.

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence, and honors are reposed in, and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty, is very distinct and vivid. Yet the

expression, is common, almost universal. Let no young man, choosing the law for a calling, for a moment yield to this popular belief. Resolve to be honest at all events; and if, in your own judgment, you can not 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.

Document 1-C (Transcription)

Springfield, Jany 16. 1856

C. Hoyt, Esq

My dear Sir:

Our case is decided against us. The decision was announced this morning. Very sorry; but there is no help. The history of the case, since it came here, is this. On friday morning last, M^r Joy filed his papers, and entered his motion for a mandamus, and urged me to take up the motion as soon as possible. I already had the points and authorities sent me by you, and by M^r Goodrich, but had not studied them. I began preparing as fast as possible. The evening of the same day I was again urged to take up the case. I refused, on the ground that I was not ready; and on which plea I also got off over saturday. But on monday (the 14th) I had to go into it. We occupied the whole day, I using the larger part. I made every point, and used every authority sent me by yourself & by M^r Goodrich; and, in addition, all the points I could think of, and all the authorities I could find myself. I had 6. Barr. 70. and made all out of it that I could. When I closed the argument on my part, a large package was handed me, which proved to be the Plat you sent me. The court received it of me; but it was not different from the Plat already in the record.

I do not think I could ever have argued the case better than I did. I did nothing else, but prepare to argue, and argue this case, from friday morning till monday evening.

Very sorry for the result; but I do not think it could have been prevented.

Your friend as ever

A. Lincoln

Glossary Of Terms

attorney: a person, especially a lawyer, appointed to act on behalf of another person. The attorney legally represents a plaintiff or defendant in court.

civil society: voluntary associations, economic groups, religious organizations, and other social relationships that in a free society are not under government control.

common law: a division of the law that includes cases involving private injuries; the common law had specific methods for resolving disputes.

compromise: a settlement of differences between two or more persons in which each side gives up some of its claims and agrees to some of the demands of the other side.

constitutional government: a form of limited government whose exercise of political power is restrained according to law.

declaration: a written statement by a plaintiff in a common law action that sets forth the facts and the legal basis for his or her case.

defendant: the person against whom someone brings a legal action. In criminal cases, the defendant is the person accused of a crime. In civil cases, the defendant is the person being sued. In some civil cases, the defendant is called the respondent.

foreclosure: a legal action to recover land or buildings held under a mortgage.

handbill: a small printed sheet to be distributed by hand for advertising.

jury nullification: the acquittal of a defendant by a jury in disregard of the judge's instructions and contrary to the jury's findings of fact. Jury nullification is most likely to occur when a jury is sympathetic toward a defendant or regards the law under which the defendant is charged with disfavor.

limited government: a government whose exercise of political power is restrained by law or other institutions.

litigation: the process of carrying on a lawsuit; a case or lawsuit.

nominal: in name only; small or insignificant.

nullification: to reduce to nothing.

oral argument: a statement made by a lawyer before a court to advocate a client's position or to answer the judge's questions.

partition: a legal action in which the plaintiff asks the court to divide specific real property among the co-owners.

plaintiff: the person who initiates a lawsuit. In some civil cases, the plaintiff is called the petitioner.

rule of law: the principle that the actions of both government and citizens are subject to the law.