

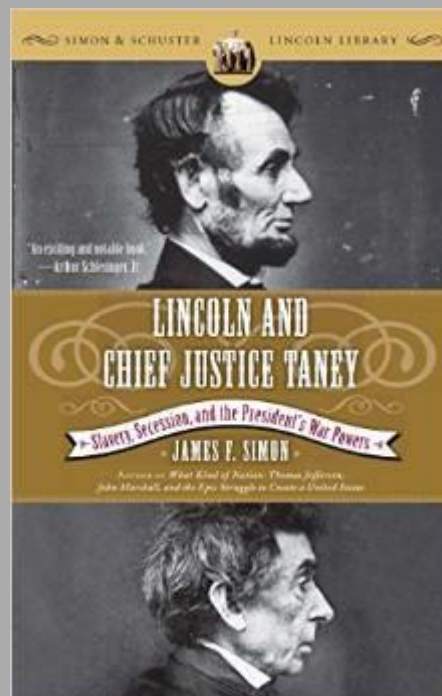
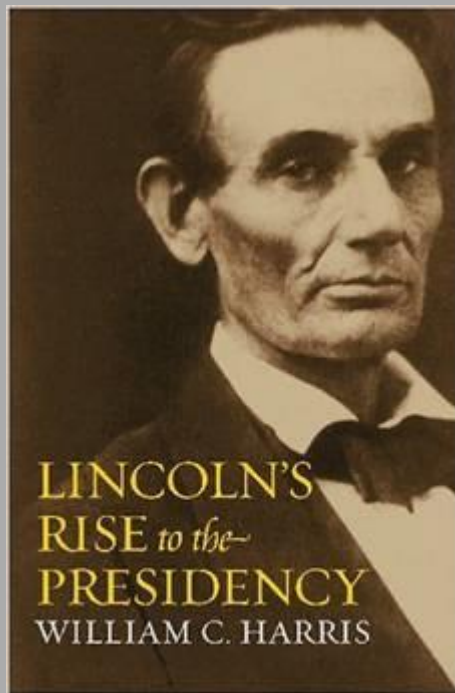
Book Reviews

Lincoln's Rise to the Presidency

By William C. Harris
University Press of Kansas (2007)

*Lincoln and Chief Justice Taney:
Slavery, Secession, and the President's War Powers*

By James F. Simon
Simon & Schuster (2006)



It has been said that more books have been written about Abraham Lincoln than any other individual, except for Jesus Christ. Given this fact, it becomes a challenge for any Lincoln biographer to find fresh, yet useful materials and/or approaches to the basic story that most of us have heard numerous times, starting as early as middle school. Yet Professors Harris

and Simon have provided new perspectives to Lincoln's part in the political issues that preceded and contributed to the causes of the Civil War.

William C. Harris is Professor Emeritus of history at North Carolina State University and is a recipient of the Lincoln Diploma of Honor, having written nine other books about the Civil War and its aftermath. John F. Simon, author of six previous books on American history, is the Martin Professor and Dean Emeritus at New York Law School.

While each of these books easily stands alone, each also significantly complements the other, especially when read one shortly after the other. Each book tends to stick to its central themes, as adequately described in their respective titles, and avoids collateral, immaterial, and often salacious, stories about sleeping arrangements while Lincoln was riding the circuit, or his reaction to the early death of Ann Rutledge, or for that matter many details about his marriage with Mary Todd Lincoln. As Joe Friday used to say, "Just the facts, Ma'am."

When related to Lincoln, the books overlap somewhat although Harris' book about Lincoln's ascendancy to the Presidency is the longer, more narrowly focused, and often more detailed of the two books. Harris quickly takes the reader from Lincoln's beginnings in a log cabin to his move as an attorney in Springfield, the capital of Illinois, in 1837. In 1834, after previously failing to win election to the state House of Representatives, but still in his mid-twenties, ran again for the state House, this time successfully as a Whig, then forming as a new party under the leadership of Senator Henry Clay, one of Lincoln's political heroes. After his election, Lincoln – who had only one year of formal education – began to read borrowed law books in order to become an attorney. After his reelection in 1836, Lincoln, at the age of 27 years of age, became the Whig's minority floor leader. During this session, Lincoln sponsored an antislavery resolution declaring: "the institution of slavery is founded on both injustice and bad policy;" this resolution was resoundingly defeated in the legislature.

Through various partnerships, Lincoln quickly developed a reputation as a skillful advocate whose services were sought by a variety of clients, including some of the more powerful corporations in Illinois. However his practice was seldom as lucrative as might have been otherwise expected, if only because Lincoln was always drawn to politics as certain as a moth to a flame. He constantly campaigned for Whig candidates, including those who were running for President. In 1846 he was elected to a term of Congress where he served with diligence but without any particular distinction.

By the mid 1850s, the Whig party was disappearing from the national political scene; in its place several anti-slavery elements from various parties began to emerge. In 1855 Lincoln began a campaign to be appointed by a new anti-slave majority in the Illinois legislature to the U.S. Senate; even though he led the first ballot, Lincoln realizing he could not secure a majority of votes, threw his support behind Lyman Trumbull, an anti-slavery Democrat, to prevent the election of a pro-slavery governor.

By 1856 most of the anti-slavery elements, including the Whigs, had coalesced into the new Republican Party, with Lincoln as one of its leaders. For its first presidential campaign, the Republicans nominated the famed western “Pathfinder,” John C. Fremont; Lincoln received some limited attention as a possible vice-presidential candidate but obviously was not nominated. Although Lincoln originally supported another candidate for the Republican nomination, he vigorously campaigned for Fremont, delivering more than 50 speeches upon Fremont’s behalf.

During this period a lawsuit was working its way through the courts, largely unnoticed at first but eventually to become one of the most notorious cases in American judicature. In 1846, attorneys for a slave, Dred Scott, initiated a case in Missouri state courts seeking freedom for their client; their case was based upon the fact that Scott’s master had previously taken Scott and his family to Illinois and later to Fort Snelling, located in territory (near the present city of St. Paul, Minnesota) designated as free, or anti-slave, under the terms of the Missouri Compromise. After two trials, Scott succeeded, but in 1852 his victory was reversed by the Missouri Supreme Court even though there had been ample legal precedent supporting Scott.

Scott’s case was then filed anew in the Federal courts, alleging diversity of citizenship in order to invoke Federal jurisdiction. After losing at the trial level, Scott’s attorneys filed their appeal in the United States Supreme Court where Chief Justice Roger B. Taney had presided since 1836, succeeding John Marshall. The *Dred Scott* case provides a major intersection of subject matter between the two books, with Simon’s book thoroughly reviewing the life, times and career of Chief Justice Taney.

Taney, a Maryland native who was almost 79 years old when Scott’s appeal was set for oral argument in February 1856, had enjoyed a long and distinguished career in law and political office, and had earned admiration as Chief Justice even from those who did not share his legal viewpoints. Simon makes a point to tell us that Taney was known as temperate and fair to his

fellow justices as well as to advocates before the court; Taney had once been a slaveholder but as a young man had freed his own slaves.

However, in private he had become increasingly agitated by Northern attitudes toward to South, especially as they related to the issue of slavery. Furthermore, Taney had recently become distraught, perhaps to the point of emotional instability, by the sudden recent deaths of his wife and a daughter.

In the late 1850s, the U.S. Supreme Court had a majority of justices from slaveholding states; one of those Associate Justices, Peter Daniel of Virginia, was an avid proponent of states' rights in general and of the South's slave driven agrarian economy in particular. Daniel, who had been appointed in 1841, had become increasingly vitriolic about Northern positions and often led the Southern bloc of Associate Justices.

After James Buchanan won the 1856 Presidential election, President Franklin Pierce, apparently to accommodate the South, caused further controversy by claiming that Congress had no right to enact the Missouri Compromise, a position then repeated by Buchanan. Meanwhile the *Dred Scott* case was beginning to draw much attention, both sides now being represented by high profile, nationally known lawyers. Rather than deciding the case after the first set of oral arguments, the Court ordered more briefings and oral arguments, this time upon the previously ignored issue of jurisdiction of the Federal courts; in other words was there diversity of citizenship among the litigants. Oral arguments were heard in December 1856 after Buchanan's election.

Due to Taney's ill health, as well Daniel's devastation over the tragic death of his wife, the Court did not meet to discuss the case in conference until February 15, 1857. Initially the Court was prepared to dismiss Scott's appeal upon narrow, technical grounds of lack of jurisdiction with one of the more moderate Southern Justices to write the opinion. However, the case was re-assigned to Taney, who wrote probably the worst opinion of his otherwise long, distinguished career.

It was a long opinion but essentially, and most controversially, Taney, -- relying upon personal passions and political positions -- for a 7-2 majority, held that there could be no diversity of citizenship because no member of the Negro race, whether free or enslaved, could ever hold citizenship, at least for Federal purposes. Even though this part of the decision would alone have been dispositive of Scott's appeal, Taney also held that, among other things, Congress never had Constitutional authority to prohibit slavery in the territories, thereby negating the claim of the Scotts that they had become free

while their master had taken them to Fort Snelling. While this dictum may have been meaningless to the Scotts, it was a real slap in the face to those who desired to strangle slavery by prohibiting its expansion into new territories; this part of Taney's opinion -- only the second time that an act of Congress had been declared to be unconstitutional -- was all the more remarkable in light of Article I of the Constitution that says in part that Congress has authority to make all "needful rules and regulations respecting the territory and other property belonging to the United States."

The public's reaction, as reflected by newspaper accounts and editorials, was split along sectional lines. A few Northern papers were also receiving inside information from one of the dissenting Justices, Benjamin Curtis, who was preparing his scathing dissenting opinion for publication. When Taney learned of Curtis' written dissent, Taney held back on the publication of his majority opinion until 16 pages were added to what originally had been read from the bench.

The *Dred Scott* majority had hoped the authority of the Court would settle the slavery controversy once and for all. However just the opposite occurred as the sections of the country became even more polarized and less tolerant of the other's position. Lincoln, in particular, started becoming more vocal in his criticism of the Court and of those supporting the expansion of slavery into the territories. One of Lincoln's specific, and available, targets was Stephen Douglas, the "Little Giant," Senator from Illinois who espoused the notion of popular sovereignty as a means of deciding whether territories should allow slavery.

To Republicans, and especially Lincoln, slavery was such a moral wrong that its expansion into the territories simply could not be condoned, or otherwise legitimized, by popular sovereignty; in addition to moral authority, Lincoln based much of his arguments against slavery upon the Declaration of Independence, especially that part that read "All Men Are Created Equal." (Lincoln also consistently recognized that the Constitution gave slaveholding states the right to continue that practice.) Throughout the remainder of 1857 Lincoln would appear at Douglas' functions to challenge Douglas on his views. Almost always Douglas would refuse to respond to Lincoln's taunts whereupon Lincoln would announce that he would be appearing the next day at the same location to make his own views known.

Reaction to Lincoln's speeches was so positive, and his own ambition was so great, that he decided to challenge Douglas for election to the U.S. Senate. Having no serious opposition for the Republican nomination, he delivered his acceptance speech known as "House Divided," destined to

become one of the most famous orations in American history. However, at the time, and for a couple years thereafter, it was interpreted by Lincoln's political adversaries and rivals, and even some of his allies, as Lincoln's determination to compel the continuation of the Union by force if necessary.

Lincoln also introduced his assertion that there had been a conspiracy among Douglas, Pierce, Buchanan, and Taney to nationalize slavery, including throughout the territories. Honest Abe continued making this assertion throughout the ensuing campaign even in the absence of any known evidence, or even realistic basis, of such a conspiracy.

Harris tells us in great detail how this hard fought campaign was highlighted by the Douglas-Lincoln debates, a series of six events highly orchestrated by the respective campaign committees. In contrast to today's American Idol style formats featuring either hold-up-your-hand or give-one-minute responses, these debates lasted three hours with ample opportunity for give and take between the campaigners. By his own admission, Lincoln did not fare especially well in the first debate, not being adequately prepared for Douglas' aggressive barrage of cross-examination type questions.

But Lincoln was much better prepared in the second debate, held in Freeport in staunch Republican region near the Wisconsin border. This time Lincoln posited several questions to Douglas; the second of these questions cleverly included a "poison pen" designed to force Douglas either to wrap his hands whole heartedly around the *Dred Scott* decision or to continue to promote his popular sovereignty doctrine, two inconsistent, if not contradictory, approaches. Lincoln also relentlessly kept accusing Douglas of being part of the "conspiracy" along with Pierce, Buchanan, and Taney to nationalize slavery, an assertion that Douglas never was able to defuse, at least to the satisfaction of Lincoln's supporters.

Lincoln's Republican Party won the Illinois popular vote of 1858 but because of earlier gerrymandering, even before there was a Republican Party, Douglas won more legislative seats, thus assuring his reelection to the Senate. However, the 1858 debates, including the extensive and intensive arguments about the *Dred Scott* case, had ramifications well beyond the Senatorial race. Republicans continued to be galvanized, contending that a slaveholding minority was exercising disproportionate control of the nation's destiny, with Lincoln beginning to receive recognition as one of the leading anti-slavery spokesmen. As a minor deficiency, Harris seems to give short shrift to the importance of Lincoln's Cooper Hall address in New York City in December 1859, and the short tour through New England that followed. This address and the subsequent tour gave Lincoln important

exposure to a new and influential audience, and is more thoroughly covered in Doris Kearns Goodwin's excellent book *Team of Rivals – The Political Genius of Abraham Lincoln* (Simon & Shuster, 2005)

The Democrats, then the national majority party, became split as the Southern faction, largely because of his response to the Freeport question, refused to support Douglas' nomination as their Presidential candidate in 1860; as a result, there were two Democratic candidates for President, Douglas for the Northern faction and John Breckenridge for the Southern faction, thereby for all intents and purposes preordaining Lincoln's Electoral College election even though he garnered less than 40% of the popular vote. In reaction to Lincoln's election, seven slaveholding states, led by hot heads among slave owning South Carolina aristocrats, ostensibly because they feared Lincoln would attempt to abolish slavery throughout all the states, began to secede from the Union.

Professor Simon tells us that throughout Chief Justice Taney became increasingly agitated toward Lincoln, being fully aware from newspaper accounts of Lincoln's constant criticism of Taney's *Dred Scott* decision as well as of Abe's relentless conspiracy assertions that included Taney.

These books describe that after being nominated, and for fear that anything he said might be used against him, Lincoln did not make any speeches or any other public utterances. He did have a steady stream of private meetings, and closely monitored political activities in the Northern tier of states. He was his own Karl Rove, making strategy and assuring his surrogates and other friends kept a moderate line on slavery, the only issue seriously at play during the campaign. Lincoln did have a campaign committee that prepared a pamphlet that created much of the Lincoln lure of him being a back woodsman who split rails almost up to the time of accidentally being nominated by the Republicans, mythology that unfortunately found its way into too many history and text books. In fact, Lincoln had been a political activist ever since his early adulthood, and for more than twenty years had a highly respected law practice in the state's capital. He was even amused by the rail splitting image of his campaign.

Lincoln's inauguration may have been the only time when Lincoln and Taney ever met face to face. However it was not to be their last encounter; in April 1861 Federal troops in Maryland arrested and incarcerated John Merryman, who was accused of burning railroad bridges and destroying telegraph lines in northern Maryland. Merryman, a wealthy landowner, had attorneys who immediately filed a writ of habeas corpus in the Federal Circuit Court, which was under the direct supervision of Taney

who immediately issued an order directing that Merryman be tried in the civil, as opposed to military, courts. Concluding that Lincoln, acting through his military commanders, had acted illegally in suspending habeas corpus, Taney directed that a copy of his order be delivered to the White House where Lincoln took no immediate public notice of Taney's order except eventually to have the Congress enact legislation that suspended habeas corpus.

To his credit, Taney resumed his moderate and even handed decorum while discharging his official duties after *Dred Scott*. On the other hand, he wrote at least two unofficial memoranda highly critical, even scathing, of some of the Administration's actions; presumably he was prepared to convert either of these memoranda to official opinions should either issue ever have reached his Court; fortunately for the sake of the nation's unity, as well as for his legacy, at least, these issues never reached to Court during Taney's lifetime.

In October 1864 Taney, following a lingering illness, died at the age of 87 years, having served for more than 28 years as Chief Justice. Lincoln made no public statement acknowledging Taney's death but did sit with Taney's family and friends at a brief service. To replace Taney, Lincoln appointed Salmon P. Chase, former governor and Senator from Ohio, former rival of Lincoln for the Republican nomination for President, Lincoln's former Secretary of Treasury, and namesake of the present bank.

To fully appreciate the significance of the Civil War, it is essential to understand its beginnings and causes beyond Fort Sumter. Either of these thoroughly researched, well written books lends greater understanding and insights to the principles and competing passions that fed these causes. From these books, readers have the opportunity to learn considerably more about the personalities and character of some of the men, not only just Lincoln, but also Taney, Douglas and even Scott, who helped to shape and drive the great debate. Without doubt Lincoln was, for better or worse, the dominant personality driving the forces that created the tensions preceding the Civil War, and perhaps no other single figure in American history changed American society as much as did Lincoln. Certainly no study of the Civil War is remotely possible without attempting to understand Lincoln's attitudes, his motivations, and his actions going back to his early adulthood. These authors, by these books, significantly help us understand our 16th President, as well as some of those who played important roles in helping to shape Lincoln's political and legal positions, especially those relating to the causes and beginnings of Civil War.