

The Declaration and the Promise of a Democratic Culture

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The Declaration and the Promise of a Democratic Culture

by J.M. Balkin⁽¹⁾

What is the point of constitutional government in the United States of America? It is the eventual redemption in history of the principles of our founding document. I do not mean the written Constitution of 1787. I mean the Declaration of Independence of 1776. American constitutionalism is and must be a commitment to the promises the Declaration makes about our future as a people. Our country sprang forth from a revolution in political and social structure. The Declaration explains the point of that revolution, and hence the point of our constitutional enterprise.

Abraham Lincoln understood this well. At Gettysburg he told his audience "[f]our score and seven years ago, our fathers brought forth on this continent, a new nation."⁽²⁾ Eighty seven years before 1863 is not 1775, the date of Concord and Lexington, but 1776, the date of the Declaration of Independence. The new nation, Lincoln explained, was "conceived in Liberty."⁽³⁾ But it was "dedicated to [a] proposition."⁽⁴⁾ That proposition was the Declaration's declaration "that all men are created equal."⁽⁵⁾ This, Lincoln said, was the most profound meaning of the Revolution and of the new nation it brought forth.⁽⁶⁾

Shortly before Lincoln took the oath of office in 1861, he addressed an audience at Independence Hall in Philadelphia, where the Declaration was debated and signed. When Lincoln spoke several southern states had already seceded; more would soon follow.⁽⁷⁾ Arguing for the preservation of the Union, Lincoln asked what principles the country stood for as a whole. "I have often inquired of myself," Lincoln mused, "what great principle or idea it was that kept this Confederacy so long together."⁽⁸⁾ The Union, he said, was not kept together by "the mere

matter of the separation of the colonies from the mother land."⁽⁹⁾ It was kept together by the ideas in the Declaration, ideas that did not simply give liberty to Americans, "but hope to the world for all future time."⁽¹⁰⁾ The Declaration, Lincoln argued, "gave promise that in due time the weights should be lifted from the shoulders of all men, and that *all* should have an equal chance."⁽¹¹⁾

For many, the Civil War began as a fight over Union; northerners claimed that the point of the war was to preserve the Union. Even Lincoln himself once said that if he could preserve the Union with slavery he would do it.⁽¹²⁾ Standing at Gettysburg he no longer said this: Lincoln argued that the Civil War was not about the preservation of the Union for its own sake. The Civil War, he claimed, was a test of the national soul, a test of the spirit of the American Revolution, a test to see "whether ... any nation so conceived and dedicated"⁽¹³⁾ to the proposition contained in the Declaration "can long endure."⁽¹⁴⁾

The Declaration is our constitution. It is our constitution because it constitutes us, constitutes us as a people "conceived in liberty, and dedicated to a proposition." Long before the United States had a written Constitution it was already constituted, already dedicated, as an ongoing social and political project. It was constituted and dedicated by We the People, constituted and dedicated by a promise we made to ourselves in our Declaration. Courts today do not hold the Declaration to be part of the Constitution; they do not read the text of the Declaration as if its clauses had the force of law, in the way they read the First Amendment or the Equal Protection Clause. Yet there is no text that is more a part of our Constitution -- or our constitution as a people -- than the Declaration. Without its ideals our written Constitution would be an empty shell; without its ideals we would not be a nation "conceived in liberty and dedicated to the proposition that all men are created equal."⁽¹⁵⁾

The Declaration is our constitution, the constitution that our Constitution exists to serve. Lincoln once said that the Declaration is an "apple of gold"⁽¹⁶⁾ framed in a "picture of silver,"⁽¹⁷⁾ which is our written Constitution.⁽¹⁸⁾ His metaphor comes from the Book of Proverbs, which tells us that "[a] word fitly spoken is like apples of gold in pictures of silver."⁽¹⁹⁾ The Declaration, with its promise of equal liberty for all "was the word, 'fitly spoken,' which has proved an 'apple of gold' to us. The Union and the Constitution are the picture of silver subsequently framed around it."⁽²⁰⁾ This is their right relation. "The picture was made not to conceal or destroy the apple, but to adorn and preserve it. The picture was made for the apple, not the apple for the picture."⁽²¹⁾

In these few words Lincoln explained the point of our Constitution. The Constitution exists to fulfil the promises made by the Declaration;

it provides a legal and political framework through which those promises can be redeemed in history. Thus, if we want to understand the meaning of the Constitution, we must understand the meaning of those promises. The Constitution creates a structure of government; but the Declaration tells us why governments are instituted. Our Constitution is a living document; but the Declaration explains the reason that it lives. The Constitution is a body of law; but the promises contained in the Declaration are its soul.

The Declaration makes promises, promises that have yet to be fulfilled. It tells us that things are true-- and self-evidently true-- that are not yet true at all. It declares that all people are created equal; yet many people still live under the yoke of inequality. It says that all people are endowed by their Creator with inalienable rights to life, liberty, and the pursuit of happiness; yet these rights are alienated every day by the rich and powerful. It says that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed; yet people still live under unjust governments, unjust laws, and unjust social conditions to which they have never consented.

What was the point of saying things, which were not true in 1776 and are still not true even today? What is the point of *declaring* them to be true? To declare these things are true is to make a promise and a prophecy. It makes a promise to ourselves and to future generations that someday what we declare to be true will be true. It makes a prophecy that someday the promises we make will be redeemed; if not by us, then by those who come after us. The Declaration is a prophecy of redemption, that someday "every valley shall be exalted, and every mountain and hill laid low, the crooked straight and the rough places plain."⁽²²⁾ It even tells us how its prophecies will be fulfilled. Listen to the words of the Declaration: "[W]henver any Form of Government becomes destructive of these ends, it is the Right of the People to alter or 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."⁽²³⁾ We rebelled against Great Britain to create a new government. That new government was imperfect, as all governments are. We the People retain the right to alter or abolish it, and to institute new Government, government that better realizes the promises we made in the Declaration. So we have done before. So we shall do again.

The Declaration declares, calls out to us: Remember what they did there. Remember what *we* did there. And let us do this thing again, until the prophecy is fulfilled, the promises redeemed.

To understand the meaning of the Constitution, we must understand the promises that we made to ourselves in our Declaration. And to understand those promises, we must understand who we are and where we came from. We must understand a central fact about ourselves: We are the children of a revolution. That revolution continues, in ever new

forms and guises, to this very day.

The American Revolution was not merely a political revolution. It was also a social revolution. When we threw off the government of Great Britain, we threw off a form of society as well.⁽²⁴⁾ The American revolution was a revolution against monarchy, but monarchy was both a form of governance and a structure of social relations. For the revolutionary generation, monarchy meant more than simply the existence of a King. The King sat at the top of an elaborate system of social hierarchy with intricate gradations of social rank that established and maintained social betters and social inferiors. Monarchy was a status hierarchy-- it featured and fostered elaborate social meanings of superiority and inferiority that helped foster a structure of social power and that made this hierarchy of status seem normal, natural and just.⁽²⁵⁾ Monarchy was less a form of government than a technology of social power. It was a system of social rank, and rank had its privileges, both material and social.

The high-handedness of the King of England is the object of much of the Declaration's complaints, but behind these complaints lies a still greater objection: an indictment of an entire social system and a social structure that gave special esteem and social power to those judged noble and denied status and power to the rest. Monarchy was a world of corruption and cronyism, in which the favored few were given privileges because of their social connections to the King and their place in the social hierarchy. In place of this system the revolutionaries hoped to establish a new realm of republican citizens, who recognized no King or nobility, but who were equal in political and social rank.

This rejection of a system of social hierarchy is the point of the Declaration's famous statement: "We hold these truths to be self-evident, that all men are created equal."⁽²⁶⁾ This truth was hardly self-evident in 1776; many people believed that human beings were by nature born unequal, and that the nobility were a special kind of people, superior in skills, intelligence, and temperament to the common rabble.⁽²⁷⁾ The natural inequality of human beings and the special nature of those judged noble is an old idea in human history, reflected in the very term "gentleman," from the Latin "gens" or "kind," suggesting a man of a special kind, different from ordinary folk.⁽²⁸⁾ More than once people have taken the world as they find it as proof and justification for the inequality of human beings. The Declaration denied this: it asked us to look beyond the social structures we live in and to understand how the norms of a society can disguise injustice and oppression, make the false seem true and the true seem false.

The revolutionary ethos sought to disestablish unjust social hierarchy that disguised itself as natural and normal and justified the found inequality of human beings as the natural order of the world. The nobility were granted special privileges both by law and by custom;

their superior merits were apparent on the face of things, in their style, their dress, their education, their manners, and their culture. Their superiority in all things went without saying; they even prided themselves on their condescension to the lower orders. Condescension was a social virtue, the beneficent attitude of social superiors towards people who knew their place.⁽²⁹⁾

The revolutionary generation sought to rid America of this social hierarchy, a social structure complete with an elaborate set of social meanings of superiority and inferiority, complete with its own vision of human merit and its own conception of "the best and the brightest." The desire to smash this social hierarchy, alter its social meanings, and disestablish its unjust social structure was the true radicalism of the American Revolution, a radicalism so successful that we no longer remember monarchy's ubiquitous forms and force in everyday life.⁽³⁰⁾ Hoping to stem the growth of monarchical privileges in the new nation, the framers of the 1787 Constitution forbade the states and the federal government from granting titles of nobility.⁽³¹⁾ Yet so effective was the social transformation brought on by the American Revolution that these clauses soon became superfluous, a distant echo of a world and a form of social inequality entirely strange to us. To understand the meaning of the Declaration today, we must remember that forgotten world. We must look back to the Titles of Nobility Clauses and to the excoriation of monarchy in the Declaration to remind ourselves that the revolutionaries who fought for liberty and equality sought to change not only the forms of government, but also the structure of society.

The revolutionaries' demand for social equality was an ideal. It was not completely achieved in the years after the Revolution, nor did the revolutionary generation understand how great a social transformation true social equality would require. Few thought the idea of social equality should apply to women, or to slaves, and many did not even think it should apply to white men who lacked property. Even after the Revolution, prosperous families in both the North and South tended to think of themselves as a natural ruling elite, failing to see that their aristocracy of "natural" merit disguised yet another form of social hierarchy.⁽³²⁾ Ironically, they too would be resented by a later generation of ordinary Americans who regarded them with the same degree of distrust as they had regarded the King and the English nobility.⁽³³⁾

But the limitations of the revolutionary generation are beside the point. What is important about their ideal of social equality is precisely that it was an ideal: It was something that future generations could look to, something that they could employ to critique the social inequalities of their own time, something that they could invoke against previous generations who had realized it only partially and incompletely.

The struggle against the social structure of monarchy is the deepest

meaning of the American revolution -- a fight for political equality that was also a fight for social equality, a revolution in social as well as political structure, a transformation in mores and manners as well as in the organs of representative government. But the call for social equality did not cease with the Revolution. It continues even in our own time. The revolutionary generation set loose a set of social forces that would prove more lasting and more powerful than any of them could have dreamed.

The world of monarchs and nobles has long since dissolved. Yet the revolutionary opposition to unjust social hierarchy has not subsided. That original call for social equality has reverberated again and again throughout American history. It underlies many of the most important social movements in American history; from the original revolutionaries to the Jacksonians, the Free Labor movement, the abolitionists, the Grange movement, the women's movement in its various incarnations, the Labor movement, the Populists, the New Dealers, the Civil Rights movement, and the Gay Rights movement of our own time. Each of these social movements has carried on, in its own way, the cause of the American Revolution -- the demand for the disestablishment of forms of unjust social status and social hierarchy, the demand for full recognition that all of us are equal and equal citizens.

The Declaration and Democratic Culture

The ultimate goal of our constitutional order is not merely to produce democratic procedures but a *democratic culture*: a culture in which all citizens can participate and feel they have a stake, a culture in which unjust social privileges and status hierarchies have been disestablished. Democracy is more than a matter of fair legal process. It is a feature of social organization, of social structure. Democracy inheres not only in procedural mechanisms like universal suffrage but in cultural modes like dress, language, manners and behavior. Political egalitarianism must be nourished by cultural egalitarianism. A culture of democracy must include both legal rights and institutions as well as cultural predicates for the exercise of those rights and institutions. For example, freedom of speech is formally guaranteed by legal doctrines, but it is even more important to democracy that we have a culture that respects and tolerates freedom of speech. We must have not only legal tolerance by governments but social tolerance by private citizens who respect the rights of people with whom they disagree.⁽³⁴⁾

General guarantees of formal equality and liberty are not sufficient to produce a truly democratic culture. Rather, social structure itself must be altered. This is the lesson we should take from the American Revolution. To ensure a democratic culture, we must examine the historical forms and methods of social stratification existing in our own time. We must ask how law can be used to dismantle them, or, at the

very least, how we can keep law from reinforcing and reproducing them.

Redeeming the promises of the Declaration requires that we understand democracy sociologically and historically as well as procedurally. Human beings must be freed not only from the power of the state, but from the customs and institutions of social hierarchy, and from the overweening ambitions of private power. People must have a genuine chance to participate in all of the institutions of society that affect their lives; these institutions include not only governments but the market and the larger culture as well. The social movements that followed the American Revolution have always had this dual character-- they have sought not only change in forms of state governance, but also changes in the structure of society. They understood the important connections between political freedom, social status and economic independence. When the Jacksonians protested special economic privileges for the wealthy, they identified this with "class legislation" that created a new class of economic nobility.⁽³⁵⁾ The populists of the 1890's were deeply concerned with the concentration of economic power in private hands that occurred in the second half of the 19th century. The labor movement and the New Dealers understood that legal rules that preserved economic impoverishment and dependence were necessarily linked with lack of political and social status.⁽³⁶⁾ The women's movement has always been concerned not only with equal legal rights for women, but with the economic status and social position of women in the workplace and in the family.⁽³⁷⁾ The civil rights movement sought not only equal opportunity for blacks but also a dismantling of a system of social meanings that granted special racial privileges to whiteness.

In short, if we are to realize the promise of the Declaration in our own time, we must try to understand the forms of unjust social hierarchy that exist in our world and how law and society together conspire to maintain these status relationships. We must challenge all of the forms of status enforcing state action, not merely those that overtly preserve status hierarchy through direct classification. And we must resist all attempts by law to reproduce unjust status hierarchies.

The goal of a democratic culture is a continuous process rather than an achievable endstate, for democracies always exist and have existed in societies shaped by existing social hierarchies and previous injustices. Democracies always live in social conditions partially hostile to the attainment of democratic ideals. As Lincoln pointed out, the Declaration's Framers well understood that the promises of liberty and equality they declared could not fully exist in the world they inhabited. They put those promises in that document so that future generations could strive to redeem them.⁽³⁸⁾ The vindication of the principles of the Declaration can come only through a transformation of society into a truly democratic culture, the kind of society that can produce in reality what the Declaration only promised in theory. That is the point of

constitutional government: the eventual redemption of American democracy, the creation of a government, in Lincoln's words, of the people, by the people, and for the people.⁽³⁹⁾

Narrative Constitution and Narrative Justification

The constitutional theory I have offered here is self-consciously organized around a national narrative of redemption. According to this story our system of government has a point, a trajectory: It works towards the realization in history of the promises made in the Declaration of Independence. The narrative of redemption gives meaning to the declarations found in our Declaration, and the Declaration, in turn, gives meaning to the redemptive narrative. Through this story we understand many important social movements in American history as working out the meaning of the Declaration, engaging in popular uprisings that help to redeem its promises. And through this story we understand that we must interpret the Constitution in order to further the eventual realization of a democratic culture. The story asserts faith in eventual progress for our country, even though there have been and will be many detours, retreats, and regressions along the way.

This argument is distinctive in three respects: First, it is a narrative argument; second, it is an narrative about redemption; and third, it is an argument about the redemption of a people. Let me address each of these in turn.

First, the argument and the form of justification are *narrative*. Narrative justifications help us understand what is happening and what we should do by calling upon an existing stock of shared stories about ourselves, our past, and our relationship to others. We understand ourselves in terms of stories about who we are and how we came to be. These stories help us understand the situation we are currently facing and the ways we should respond to it. They give us roles to fill and obligations to fulfill. Narrative justifications are persuasive when they draw upon and make sense in terms of our narratively constituted identities. The stories we tell about ourselves are full of normative lessons: They explain who we are, where we came from, what we have done, what we have yet to do, what we stand for, what promises we made to ourselves, what we hope for, what we fear, what we said we must never let happen again, and what we said we must make happen again.

We Americans have a narrative that explains the meaning of our Constitution: We are the people who broke from Great Britain, fought against monarchy, and rebelled against an unjust social hierarchy in order to found a democratic culture of equal liberty and social equality.

This story about ourselves explains our obligations toward ourselves and toward our future. It explains the direction in which we should continue our national project; it explains how we should interpret our Constitution.

Second, the argument draws on a story of *redemption*, a story about the eventual fulfillment of promises made long ago. Invoking the past might look at first like an appeal to original intention or original understanding. However, narratives of redemption use the past in a different way than most originalists do. Redemptive stories argue that we progress from our origins, which are fallen and unjust, but hold the promise of reformation. Over time we free ourselves from the sins and inadequacies of the past, and hold ourselves ever more true to those best parts that have always been within us. We free ourselves from ourselves, and through this freeing we become the selves we deserve to be.

A narrative of redemption worships neither the past nor the present. To the contrary: it assumes that we exist, and always have existed, in a fallen condition. We live in compromises with the evils of the past, and we are compromised by them. The need for redemption means that many elements of the past, many features of social structure inherited from the past, and many original understandings that reflect that social structure, must not be honored but reformed or discarded. The founding generation begins the journey, but it has no privileged insight into the future. It does not possess the institutional and social imagination to grasp what a fully democratic culture would look like. The founding generation knows only its own culture. It wrestles with its own compromises with history; it can extrapolate only partially from them to imagine what the future would be like.

The revolutionary project of imagining a democratic culture and realizing it in history is the work of many generations, not a single privileged one. The mistake of originalism as conventionally understood is that it takes too seriously the concrete understandings of a past generation. It mistakes past compromises with injustice for the meaning of justice. It mistakes our fallen condition for our rightful condition.

One might assume then that the argument is simply one of natural law or best consequences. But that too is not quite correct. A narrative justification does not argue that the Constitution means something because this interpretation is the best from the standpoint of liberal political theory or economic efficiency. Rather, the Constitution means what it means because We the People made a promise in the past to ourselves that we strive to fulfill. The promise and the story constitutes the people who strive to fulfil the promise and the story. A different people with a different history and a set of commitments might have made a different promise; the results, although similar in some respects, might be very different in others.

For example, Gary Jacobsohn has pointed out that major differences in the constitutional traditions of the United States and the State of Israel are reflected in differences between the American Declaration and the Declaration of Independence of the State of Israel.⁽⁴⁰⁾ The Israeli Declaration affirms that Israel is to be a democratic and a Jewish State. The Israeli Declaration arises out of a long history of Jewish persecution and a long-held religious narrative of eventual return to a Jewish homeland. The Israeli Declaration also involves a redemption narrative, but the nature of this redemption is very different from the American version. Clearly the trajectory taken by a country with such a founding story and such a set of narrative commitments may be very different from our own. That is why constitutional government is not simply a matter of liberal political theory. Quite the contrary: liberty and equality are always realized through the particular history of a people; as each is constituted differently, so each will have its own constitution.⁽⁴¹⁾

The story of redemption is also a story of contingency. The founding generation has no privileged authority because the constitutional tradition develops in ways that cannot be determined in advance. The story of our country is not a Hegelian story in which the oak is already contained in the acorn. Contingent events -- wars, waves of immigration and settlement, new religions and technologies, economic booms and depressions -- all play an enormous role. The future is something that we make, with our narrative self understanding as our goad and guide. In every generation it is given to us to redeem the promises of the Declaration in ever new ways. The revolutionaries who signed the Declaration could not have known about the women's movement, the Civil War, the populists, the New Deal, or the civil rights movement. Yet all of these "alterings and abolishings" of government have been folded into the story of the redemption of the American Constitution, a redemption whose full contours could not be known in advance. One might say that the meaning of the Constitution is revealed to us as we take upon ourselves the burden of redemption. But it is more correct to say that we reveal it to ourselves through our actions. Its meaning is not foreordained, but is created as we commit ourselves to the project of redemption, meeting new and unexpected circumstances as they arise.

The story is contingent in another way as well. A narrative justification does not claim that the eventual redemption is assured. It claims only that we should strive to achieve it. It does not deny that we have often strayed from the path of redemption. Indeed, it repeatedly calls attention to this fact. It claims only that we should recognize the path and return to it. The narrative is prophecy, not fortune telling. It does not say that redemption will occur without any effort on our part; it says that we must make the story true. As Lincoln explained, the Declaration was meant "to set up a standard maxim for free society, which could be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained,

constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere."⁽⁴²⁾ The Declaration tells a story that we can take into our hearts and live by, and by living it, we can hasten the day when the story will become true.

I have argued that we should interpret the Constitution in order to fulfill the promises that we Americans made in our Declaration, promises that are to be redeemed in history, and that we should understand many of our most important social movements as a continuation of the original social revolution against unjust hierarchy that began with the American revolutionaries. I have argued that we, the generations before us, and the generations after us, have a role to play in the furtherance of this great project of constitutional redemption.

But, one might object, this story is just that -- a story. It takes certain features of the history of our country as morally salient and weaves them together into a coherent narrative of redemption. But if it is just a story, why does it have any moral force? Why is the promise made in the Declaration of Independence our promise, and why is the burden of redemption our burden?

This brings me to my third and final point. The narrative argument is a claim about Americans as a *people*. Narrative arguments are appeals to collective memory -- a stock of stories that bind people together and make them a people. Nations, peoples, and collectivities of all kinds see themselves as existing over time and across generations because they understand themselves in terms of stories about who they are and how they came to be. For example, every year at the Passover Seder Jews tell the story of how they left Egypt. This story unites the Jews who live today with those who lived thousands of years ago. We Americans tell each other stories about how we rebelled from Great Britain and established a new republic based on principles of liberty and equality. The stories that people tell themselves about who they are and how they came to be connect the past with the present, older generations with newer ones. These stories are *constitutional stories* -- constitutive narratives around which and through which people can imagine themselves as a people, with shared hopes, memories, goals, aspirations and ambitions.

Constitutional stories construct collective subjects with collective destinies who engage in collective activities. Constitutional stories bind together human beings existing in different times and places as one people. They allow people to see the actions and the ambitions, the hopes and the achievements of people who lived long ago as their actions and ambitions, as their hopes and achievements. So Jews living today tell themselves that *they* were slaves in Egypt, that God brought *them* forth from the house of bondage with a strong hand and an outstretched arm, with signs and wonders. In the same way, Americans

identify with the achievements of the revolutionaries and of the founding generation who wrote and ratified the Constitution. The story of constitutional redemption allows Americans to say that *we* ended slavery, that *we* expanded political and civil rights, that *we* struggled to make this country a promise of hope to the entire world. The people who live today did not literally do these things; indeed, some of their ancestors probably opposed many of these reforms. But that is beside the point. Our narrative understanding of ourselves as part of a greater whole, collectively working towards the fulfillment of the principles of the Declaration, allows us to identify with those who fought for redemption in the past. We can see their struggle as our struggle. This vision of ourselves as part of them and them as part of us gives the story its moral force. Our collective identity creates hopes and dreams, obligations and responsibilities, desires and promises to fulfill in time. We are motivated and moved by the story because we accept the collective identity that accompanies the story. We identify with the story because the story identifies us. In short, the story is binding on us because it is *our* story.

When I speak of the promises we made to ourselves in the Declaration of Independence, I am referring to nothing other than the collective memory that binds us together as a people. The story of our rebellion against monarchy is our constitutional story. It is constitutional in two senses of the word: It constitutes us as We the People of the United States, and it explains the point of our constitutional system of government.

Constitutional stories constitute us as a people with a purpose and a trajectory: They remind us what we have done in the past and therefore what we should be doing today. They explain to us where we have been and therefore where we should be going. As we did before, so shall we do again. As we fought for liberty and equality before, so shall we fight again. Constitutional stories give meaning to our existence as a people; they offer us models for action, goals for fulfillment, heroic acts to imitate, ambitions to aspire to, promises to redeem.

A story like this is not "just a story." You live in it, and it lives in you. It is true for you because it is part of you, because you see yourself as part of it. If you are committed to a narrative in this way, it is not just a story, but a just story, an appropriate story. And if you are committed to it in this way, it becomes more than a story. It becomes a way of life. It becomes a destiny. It becomes a world.

1. Knight Professor of Constitutional Law and the First Amendment, Yale Law School. My thanks to Bruce Ackerman and Akhil Amar for comments on a previous draft.

2. Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863), *reprinted in* The Portable Abraham Lincoln 295 (Andrew Delbanco

ed., 1992).

3. *Id.*

4. *Id.*

5. *Id.*

6. Gary Wills' excellent book on the Gettysburg Address argues that Lincoln's interpretation of the Declaration was an intellectual slight of hand that established equality as a core value in our Constitution. Garry Wills, *Lincoln at Gettysburg: The Words That Remade America* 243 (1992); cf. William Michael Treanor, *Learning From Lincoln*, 65 *Fordham L. Rev.* 1781 (1997) (noting the transformative role of the Gettysburg Address). In my view, the question of transformation is beside the point. Lincoln understood himself as fulfilling the promise already contained in the Declaration when he emphasized our equal citizenship. Redeeming the promise of the Declaration inevitably requires improvisation on its themes and the point of the enterprise is a transformation of our society. In any case, I do not believe that so central a constitutional value could have been added to our Constitution or to our national consciousness by a slight of hand.

7. South Carolina seceded in December 1861; Mississippi, Florida, Alabama and Georgia in January 1862; and Texas and Louisiana in February 1862.

8. Abraham Lincoln, Speech in Independence Hall, Philadelphia, Pennsylvania (Feb. 22, 1861), *reprinted in* 4 *The Collected Works of Abraham Lincoln* 240 (Roy P. Basler ed., 1953).

9. *Id.*

10. *Id.*

11. *Id.* (emphasis in original).

12. Letter from Abraham Lincoln to Horace Greeley (Aug. 22, 1862) *reprinted in* *The Portable Abraham Lincoln* 234 (Andrew Delbanco ed., 1992).

13. Lincoln, Gettysburg Address, *supra* note 1, at 295.

14. *Id.*

15. *Id.*

16. Abraham Lincoln, Fragment on the Constitution and the Union, *in* 4 *The Collected Works of Abraham Lincoln* 169 (Roy P. Basler ed., 1953).

17. *Id.*

18. This famous phrase, and its accompanying theory, forms the basis of Gary Jeffrey Jacobsohn's comparative study, *Apple of Gold: Constitutionalism in Israel and the United States* (1993).

19. Proverbs 25:11.

20. Lincoln, Fragment on the Constitution and the Union, *supra* note 14, at 169 (emphasis omitted).

21. *Id.*

22. Isaiah 40:4; *cf.* Martin Luther King, "I Have a Dream, in *A Testament of Hope: The Essential Writings of Martin Luther King, Jr.* 219 (James M. Washington ed., 1986) (invoking this biblical passage as part of his account of "the American dream").

23. The Declaration of Independence para. 2 (U.S. 1776).

24. *See* Gordon Wood, *The Radicalism of the American Revolution* 240-43, 276 (1991).

25. *Id.* at 11-24, 27.

26. The Declaration of Independence para. 2 (U.S. 1776).

27. Wood, *supra* note 23, at 27, 235; J.M. Balkin, *The Constitution of Status*, 106 *Yale L.J.* 2313, 2350 (1997).

28. Wood, *supra* note 23, at 25-37.

29. Wood, *supra* note 23, at 41-42; Balkin, *supra* note 26, at 2333.

30. Balkin, *supra* note 26, at 2350-51.

31. *See* U.S. Const. art. I, §9, cl. 8 (prohibiting federal grant of titles of nobility); *id.* §10, cl. 1 (prohibiting state grant of titles of nobility).

32. *See* Wood, *supra* note 23, at 253-55, 299-300; Balkin, *supra* note 26, at 2345-51.

33. *See* Wood, *supra* note 23, at 298-300.

34. *See* Lee C. Bollinger, *The Tolerant Society: Freedom of Speech and Extremist Speech in America* 80-81 (1986).

35. *See* J.M. Balkin, *supra* note 26, at 2347-49; William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine*

71-80 (1988); Melissa L. Saunders, *Equal Protection, Class Legislation, and Colorblindness*, 96 Mich. L. Rev. 245 (1997); Mark C. Yudof, *Equal Protection, Class Legislation, and Sex Discrimination: One Small Cheer for Mr. Herbert Spencer's Social Statics*, 88 Mich. L. Rev. 1366, 1366-68 (1990).

36. Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 Cornell L. Rev. 523, 536-37 (1997); William E. Forbath, *Why Is This Rights Talk Different from All Other Rights Talk? Demoting the Court and Reimagining the Constitution*, 46 Stan. L. Rev. 1771, 1797-99 (1994) (reviewing Cass R. Sunstein, *The Partial Constitution* (1993)); William E. Forbath, *The Ambiguities of Free Labor: Labor and Law in the Gilded Age*, 1985 Wis. L. Rev. 767, 800-14.

37. See Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor: 1850-1880*, 103 Yale L.J. 1073, 1179-89 (1994); Amy Dru Stanley, *Conjugal Bonds and Wage Labor:*

Rights of Contract in the Age of Emancipation, 75 J. Am. Hist. 471, 481-500 (1988).

38. Abraham Lincoln, *The Dred Scott Decision*, (June 26, 1857), in *Abraham Lincoln: His Speeches and Writings 1832-1858* 361 (Roy P. Basler ed., 1946).

39. Lincoln, *The Gettysburg Address*, *supra* note 1, at 295.

40. Jacobsohn, *supra* note 17, at 5-17.

41. Indeed, liberalism itself is the reflection of a particular historical narrative: the story of Enlightenment, in which humanity frees itself from the superstitions and conflicts of the past -- many of which are identified with religious wars and religious persecutions -- and seeks to install principles of human reason in human governance.

42. Lincoln, *supra* note 37, at 361.

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