

But having said this, let us repeat that the authors of the Virginia Declaration did *not* understand themselves as less Christian than the authors of the Body of Liberties. It is *not* that the authors of the Virginia Declaration, seemingly taking issue with the authors of the Body of Liberties, understand the commonwealth to be other than a Christian commonwealth. But they do understand a Christian commonwealth to be a different sort of thing from what it was in Massachusetts; in the very act of symbolically disestablishing the Christian religion, by separating it from American government, they establish it as the religion, the public truth, of American society; a status which (we believe) it continues to enjoy. We must not, then, suppose ourselves to be entering the intellectual and spiritual world of some of our Supreme Court justices, the more so as we find the Declaration going on to say: "All men are equally entitled to the free exercise of religion, according to the dictates of conscience." Only by wrenching these words out of context could we get out of them a "right" claimed by atheists and agnostics—a "right," that is, to the free exercise of irreligion. The very words we have quoted above follow the declaration that religion is a duty that every man owes to his Creator and, to boot, they are preceded by the word "therefore." The "right" to free exercise of religion emerges, in short, as a correlative of the duty to worship God. In the context of the Virginia Declaration, it can have no other meaning. Nor do we think—and this will seem heretical to some—that the framers of our First Amendment entertained a different view.

CHAPTER V

The Declaration of Independence: A Derailment?

We now take up the most difficult and undoubtedly the most controversial of our tasks: the symbolism and so the meaning of the Declaration of Independence in the context of the American tradition.¹ Before we discuss its place in the tradition, a few preliminary comments are in order. One obvious matter—so obvious, in fact, it hardly seems to merit our attention or emphasis—is that the Declaration of Independence should be read for what it purports to be. We begin at this point because the official literature tends to overlook the obvious: The document's primary purpose is to announce publicly the severing of those "bands" that had, until July 4, 1776, tied us morally and legally to Great Britain. *That* is the purpose of the document and *that*, we submit, should be foremost in the minds of those who read and interpret it.

The Declaration begins with these words: "*The unanimous Declaration of the thirteen united States of America.*" The words are in themselves important because we see at once that, contrary to what we may have been taught in our institutions of higher learning, there is no pretense as of this moment that we are, legally speaking or otherwise, one people or nation. Why, indeed, would this phraseology be used if the participants felt the colonies should be regarded as one? The thirteen

¹ We use as our text the Declaration as reproduced in Poore, I, 1-6.

states are "united" for the purpose of declaring their independence, and so far as we can see no other purpose is even so much as mentioned in the remainder of the document. The word "unanimous" in this connection is also revealing. It clearly suggests that the Declaration could have been something other than unanimous; but, beyond any question, the document takes on added force simply because of this unanimity.

Immediately following this very brief opening statement, we find the following, which more clearly tells us what the "unanimous Declaration" is about. The well-known words (though hardly as well known as those of the paragraph immediately following) are these: "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." This passage taken in isolation could be interpreted to mean that we already regard ourselves as one people or nation; or, short of this, by this Declaration we are announcing to the world our "oneness." But this phraseology, let us remember, is to be read in light of the preceding sentence which clearly permits the form of expression used without any ambiguity. If there be any doubts on this point, the last paragraph ought to dispel them. We will quote it and then point out what we think to be two of its more significant points.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by the Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are

Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as *Free and Independent States*, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of the Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.²

First: We cannot help but note the invocation of the supreme symbols of our tradition. The signers appeal to the "Supreme Judge . . . for the rectitude of" their "intentions" and make it quite clear that they do so "in the Name, and by the Authority of the good People of these Colonies." Such language, though a bit different, is not foreign to our ears. The paragraph also contains other phrases that would place it very much in the mainstream of the tradition: The signers "solemnly publish and declare" their independence; they do place a "firm reliance on the Protection of Divine Providence" for the justness of their case and their course of action; and above all, they realize the very seriousness of their undertaking for they pledge their "Lives," "Fortunes," and—what may be most important—their "sacred Honor."

Second: We see from the text that we are not a united people. The text speaks of "Free and Independent States" and so far as we can tell they are endowed with all those powers we normally attribute to sovereign states. Still, apart from the fact that the states or colonies are united in their Declaration of Independence from Britain, there is another sense in which they can be said to be united, for such a Declaration would only be possible if there were an existing forum for the formulation and issuance of the Declaration, as indeed there was. This fact itself indicates that the colonists were of

² Emphasis added.

kindred hearts (or, at least, thought themselves to be) on some issues and problems confronting them. But beyond this, and far more important in terms of our subsequent history, lurks another matter still very latent but potentially highly explosive: When, on what issues, and in what sense are we to consider ourselves as independent states in the sense that the Declaration declares? To be sure, we can only partially perceive this problem on the basis of the text itself, but we know enough to see that it will subsequently become an issue of major proportions. Let us leave aside this point, for we will return to it in the next chapter.

Other major segments of the Declaration fit very well into the tradition as we have described it to this point in history.

(a) We find that most of the document is devoted to an enumeration of a bill of particulars directed (and this is not an uninteresting point) against the king of Great Britain.³ These particulars, or the reasons for separation, constitute the long middle section of the document (often overlooked, particularly by those who like to dwell *ad nauseam* on the second paragraph), stretching from the third paragraph to the third from the last paragraph. And what do we glean from this bill of particulars? For starters, the document tells us so much: "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States." The words "tyrant" and "tyranny" are frequently used to describe the action of the king, and the language of the third paragraph from the end is somewhat remarkable, in light of relativist claims that tyranny is, after all, a subjective

³ We suspect, Carl Becker (another of the official "custodians") notwithstanding, that the colonists had a pretty healthy respect for legislatures and processes of representation embodied therein. Therefore, they were reluctant to single out Parliament for blame. Only in the second to the last paragraph does Parliament come under attack. And, then, compared with the treatment accorded the king, it is very mild.

condition. We quote: "A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People." Yes, the language is a bit equivocal only to the extent that they accuse him of *acting* like a tyrant, but there is no getting around the text; they did believe they were in the midst of tyranny, and throughout they make this quite emphatic.

(b) What precisely has the king done that is tyrannical? The Declaration is abundantly clear on this point, and we can only presume that further specifications could be provided if called for. Upon examination a number of them are precisely what we would expect on the basis of our previous analysis of the tradition. At least eleven involve violations (seven of which are the first mentioned) of our supreme symbol as a people: namely, *self-government* through *deliberative* processes. For example: "He has refused his Assent to Laws, the most wholesome and necessary for the public good." Or, "He has dissolved Representative Houses repeatedly, for opposing with many firmness his invasions of the rights of the people."

Or again, "He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only." Particulars of this nature abound; but what is most significant is that we find that repeated and continued violation of our basic commitment as a people comes to be a matter of being tyrannical which, at the very least, gives us some appreciation of the depth of our traditional commitment.

Still another category of grievances has to do with certain transgressions involving some of our basic symbolizations that over time, as we have shown, were well along in the process of differentiation—at least to a point where violations of their strictures could be easily identified. Here we speak of separation of powers, at least as it was understood by the colonists.

"He has obstructed the Administration of justice, by refusing his Assent to Laws for establishing Judiciary Powers." And what would seem to be worse, given our subsequent differentiation of this symbol at the national level, "He has made judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." In a somewhat related vein—and this issue is still very much with us even today—"He has affected to render the Military independent of and superior to the Civil Power." Again we could go on. We note here only that we find nothing that does not square with that tradition of the colonists as we have presented it. Quite the contrary: We should expect them to speak in this very fashion and to cite examples of the nature and kind they do.

A third category of particulars involves our most fundamental commitment of all: The king has acted in a totally barbarous manner, but, what is worse, he has committed acts that outrage the sensibilities and morals of a virtuous people. To wit: "He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people." And the following passage, as hard as it is to believe, is even stronger: "He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy of the Head of a civilized nation." Scarcely any language could be stronger, and we have every reason to believe that such a forceful statement, employing the terms it does, without any qualification, equivocation, or modification, could not possibly have been forthcoming unless the signers were deeply imbedded in a tradition.⁴ Moreover, the signers speak

⁴ We believe it was a tradition, moreover, embedded in Western political thinking to the extent that tyranny was a meaningful term. All of this is in sharp contrast to our modern-day positivists and relativists (e.g., Dahl and T. D.

in terms of a "civilized nation" in a manner to suggest that they have a pretty fixed notion—very much again unlike so many contemporary intellectuals—of what does constitute the behavior of a "civilized" state, as well as what constitutes the behavior of a state something less than civilized.

A few more comments about the Declaration and then we will tackle what seems to be the more important problems it presents for the understanding of our American tradition. The Declaration has been characterized by some as a "conservative" document, in large part for reasons we have already specified: It does pay due homage to the opinions of mankind, does indicate that this is a very serious undertaking, does specify the reasons and justifications for the undertaking, and so forth. But, for all of this, it is misleading to characterize the document as conservative. What we have is a document that reaffirms the central truths of our tradition as they were perceived at this point in our history.⁵ The second paragraph would seem to make this clear. After setting forth the doctrine that there are "unalienable rights" ("Life, Liberty, and the pursuit of Happiness"), the Declaration continues: "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute a 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." This passage merits our close attention. In the first place, the signers are speaking about a system which has been "destructive" of these ends; that has, and we do not strain the

Waldon), who tell us that tyranny amounts to nothing more than a significant group of the population being highly displeased with the course of events.

⁵ See on this point Kendall and Carey, "Towards a Definition of Conservatism," *Journal of Politics* (May, 1964). Off of our analysis we would have to call the drafters reactionary, rather than conservative.

text, not merely shown poor judgment about how to advance these and like ends, but has positively sought to violate them. For this reason, among others, the signers are capable of speaking in the emphatic and unambiguous terms they do in describing the king and the system. More importantly, one of the "Rights of the People" (and note well it is a *right of the people*) which is perhaps paramount in the context of the Declaration is that of altering or abolishing a government which acts so callously or outrageously. And, as the text indicates, an important ingredient of this right is that of instituting a "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."⁶ With this expression alone we are reminded of the words of the Mayflower Compact wherein the signers speak of a "better ordering" and a pledge to make "just and equal laws" which shall be "thought" most "meet and convenient" for the "general Good of the community." The signers of the Declaration seem to be merely reaffirming that which is central to our tradition. The promise held out is all that the signers can hold out: They do not claim that any new government which might result from the Declaration *will* provide for the "Safety and Happiness" of the constituents but it will be one that "shall seem" to the people "*most likely* to effect their Safety and Happiness."⁷

But what principles and organization of governmental power are most likely to bring about the desired conditions? Surely, off of what we have said in the previous chapters, we could make some pretty shrewd guesses. However, the Declaration does not deal with this matter nor should we, in light of what we have said, expect it to. Its purpose, we say once again, was

⁶ Emphasis added. We now find ourselves with this expression in the midst of our basic and traditional symbols as a people.

⁷ Emphasis added.

"to dissolve the political bands" which heretofore connected the colonists with Great Britain. What is important in this connection is that (a) we can anticipate at some future date the states and even the nation, if and when the people see fit, will engage in some sort of deliberative process to establish that form of government which is conducive to the ends cited,⁸ and (b) the Declaration itself gives us no guidance on how or in what ways such governments ought to be built. Put otherwise, in no sense can the Declaration be considered a manual for the construction of new governments, and those who prefer to read it as such had better go back to the text. The only morality of the Declaration on this score is that the people retain the right to institute a new government on such principles and in such a way as to them seems most conducive to the goals of safety and happiness. In this regard, it is only slightly different from the Virginia Bill of Rights which declared: "That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community; . . . and that, when any government shall be found inadequate or contrary to these purposes, a majority or the *community* have an *indubitable* right to reform, alter, or abolish, in such a manner as shall be judged most conducive to the public weal."⁹

Clearly, as our comments and analysis indicate, we do not, as so many are wont to do, have to recur to the John Lockes or the *philosophes* of the so-called age of enlightenment to explain the purposes, symbolization, and language of the document. In fact, to do so, we maintain, cannot but help to lead to endless confusion and a basic misunderstanding of the basic symbols of the American political tradition. To illustrate our

⁸ This is precisely what our Constitution was intended and designed to do. Much of the discussion which immediately follows is based on Willmoore Kendall's "Equality: Commitment or Ideal?" *Phalans* (Fall, 1967).

⁹ Emphasis added.

point, let us consider the first part of the second paragraph—that part of the document best known to both school boys and the custodians of our lore—which reads: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights." It is precisely here that we find the source of the major controversy surrounding the Declaration and its meaning in our tradition. More specifically, it is the "all men are created equal" clause that has over the years been interpreted in such a way as to cause a derailment in our tradition.¹⁰

To show this we need only jump ahead four score and seven years from the signing of the Declaration to Lincoln's famed Gettysburg address.¹¹ Its opening words are: "Four score and seven years ago, our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal." All the words here are key words, and we can deduce from them at least four fundamental propositions: first, that the United States, as a nation was born in 1776; second, the United States was conceived in liberty; third, the United States in the very act of being born dedicated itself to the overriding proposition that "all men are created equal," which we may also take to be our basic commitment as a people; and fourth, our basic commitment has not been modified or repudiated in the eighty-seven years between the time of the Declaration and the Gettysburg address.

In this and the next chapter, we will take up these proposi-

¹⁰ The derailment has been caused by intellectuals and men in public life who have seen in this phrase a "mandate" for action which involves, *inter alia*, a restructuring of American society so as to produce a condition of equality. This belief in a mandate is so dominant in our intellectual and political circles that we could not possibly cite all those who have at one time or another publicly professed it. We can say that, in one fashion or another, every major presidential candidate in recent times has subscribed to it.

¹¹ We have taken our text from Richard N. Current (ed.), *The Political Thought of Abraham Lincoln* (Indianapolis: Bobbs-Merrill, 1967), 284-85.

tions, though not in the order we have presented them. However, a few words seem appropriate concerning what we can term the theoretical presumptions which clearly seem to underlie this and other parts of Lincoln's address. He speaks not merely of a commitment but also of a commitment that is *binding*, a commitment that *ought* to be honored and fulfilled. Beyond this, the commitment is binding on the nation or, we might say, all of the people. Shortly we will endeavor to set forth the logic or the reasoning behind any such contentions. For our present purpose it is sufficient to note that he *does* speak in these terms. We have good reason to believe that Lincoln probably would not quibble with the proposition that nations do have commitments in the form of basic symbols that do spell out the over-riding purposes and obligations of a nation. For our part, we find nothing to fault in any such presumption—our point throughout has been that a people comes to understand itself through an understanding of its supreme symbols and basic commitments. Lacking an understanding and perception of its commitments, a people are rudderless, so much so that when faced with crises which demand resolution, they speak with so many tongues that any answer to the pressing question, "What shall we do?", is virtually impossible to come by. And, in turn, to answer this question means, perforce, that they must answer the prior questions, "Who and what are we as people?". Surely, all of this must have troubled Lincoln and does help account for the language and approach he does use. We repeat: Lincoln's language off of the opening paragraph certainly seems to suggest that he entertained such a view and we have no quarrel with him on this matter.

Still another presumption is this: Our commitment as a people to an overriding purpose of supreme symbol (for this is what it comes down to in Lincoln's address) is a hereditary one that presumably we, as a people or nation, could repudi-

ate. However, until such time—through, we must assume, the very same processes by which we made our original commitment—we are bound to act in fulfillment of the commitment made by our forefathers. Now any such presumption involves us with a problem well known to students of political theory. We may appropriately call it the problem of political obligation which arises as a very special problem for political philosophers whose theories are based on the doctrine of consent. The matter can be stated in the following terms: Suppose that one generation establishes a political society or, more importantly, enunciates the supreme symbols for a political society (the two, as we know, can go hand in hand). Let us further assume that there is genuine consensus in this undertaking. What happens then, when and if at some later date, some of the participants come forth and say: "We want out of our commitment. We now find that living up to our commitment is proving more costly than we imagined."? Or, and this may well be the case: "You (that is, the society) have interpreted the commitments in such a way that you are now asking me to acquiesce in policies that, in my judgment, contravene the principles upon which we did agree." A consent theorist such as Rousseau, for example, would respond in roughly the following fashion: "But you promised—in the very act of giving your consent you promised—and we now call upon you to keep your promise, that is, not begrudge the sacrifice that our kind of society, with this form of government and this purpose or set of purposes, now demands of you." Such reasoning seems to bind individuals and, simultaneously, places all the blame for punishment on the shoulder of those who fail to live up to the commitments as defined by society. The situation is, understandably, more complicated as a people moves through history. What do we answer those (*e.g.*, the great-great-grand-children of those who presumably did set forth our basic commitments) who argue: "This commit-

ment or those commitments are not of my doing. I am not responsible for having made them. How can anyone say that I am obligated? Am I to be governed by the Dead Hand of the Past?" Answers to this are provided by the consent theorists and implicitly by those who drafted the Philadelphia Constitution. They run as follows: "You have indeed consented by remaining within our recognized territorial limits, by affording yourself the protection of our government, by exercising those privileges and rights which our system legally confers upon you and the very benefits you derive from the compliance of others in the exercise of these rights. To be sure, you have only tacitly agreed to these commitments but, nonetheless, this amounts to your consent, tacit though it be." The obvious rejoinders to this line of argument are usually something as follows: "The tacit consent to which you refer is certainly not a matter of deliberate choice. Your contention, off at the end, is based upon my mere physical presence in the United States and there was no effective choice but to obey." To this we can respond, consistent with the consent theory: "But you *do* have a choice. You can leave the territorial limits of the country (as, indeed, some have done) and find a more congenial society whose basic commitments are either more to your liking or less offensive to you. Nor will it do you much good to say that you can't find a more congenial society; that is, one whose values correspond with yours. All this would show is that our society is better than others and that our system is, if nothing else, better than any other—a fact which should be proof enough that we are not as unreasonable as you contend." But more can and should be said on this point in the context of the American tradition. In our tradition we can, at least, say: "You have still another alternative far less bleak than that we have presented. One of our basic commitments is spelled out in Article V of the Constitution which specifies the means by which you can change our basic com-

ment. What you have to do in order to bring the world around to your image is simply amend the Constitution through procedures and processes that are not any more stringent than those by which the Constitution was itself adopted in the first place. And, if you are able to overturn our basic constitutional commitments through these prescribed processes, the new commitments must be honored. Those who disagree with the changes must face the very arguments we have set forth for honoring our present commitments."

We are in a position now to return to Lincoln's speech and to certain of the basic *propositions* contained in the first paragraph of the Gettysburg Address. Lincoln's propositions, we submit, are compelling not because they stand on their merits (something we can and will show) but rather because of the presumptions that underlie them and even allow him to speak in such terms. The presumptions *are* very much a part of our tradition. Because they are, we should not allow him—not at least without some probing inquiry—to "steal" the game, that is, to accept his interpretation of the Declaration, its place in our history, and its meaning as "true," "correct," and "binding." Put otherwise, Lincoln's words are revered because they seem to stand as a succinct and, in their own way, eloquent statement of the American tradition. They take on their essential meaning largely because they are couched in a language that only makes sense to those reared and nurtured in a tradition accustomed to tacitly accepting those premises which undergird it. In the vernacular, "He talks like one of us." For this reason, we suspect, American scholarship has overlooked what we must label the Lincolnian heresies.

(a) In Lincoln's view the Declaration enjoys what we can best term a *constitutional status*. He so much as informs us that the "new nation" of the United States of America was established with the signing of the Declaration and that it is to this document we must look if we are to understand our

origins and thus the meaning of our political experience as a people, organized for action in history and capable of defining its appointed role in history. Lincoln does not say, nor could he, that the Declaration tells everything that we would want to know about our tradition and commitments as a people. Nevertheless, it is to this document that he refers for the identification of our supreme commitment. And the very notion that we are honor-bound to preserve and advance that commitment surely means that the document does enjoy *constitutional status*—for this, above all else, is precisely the *raison d'être* for documents of this nature.

Yet the facts in more ways than one do not bear out Lincoln's view of the Declaration. The "four score and seven years" of Lincoln's speech does put us back to the Declaration. But why should we take Lincoln's word about our beginning? He might more appropriately have said "three score and fourteen years ago" which would have put us back to 1789, a point in our history that has a far stronger claim to marking the beginnings of our nation. Conceivably, he could have selected any number of dates prior to the Declaration—he might, for example, have selected the year of the Mayflower Compact; though to do so would certainly have blunted the point he seemed intent upon making. For whatever reason, Lincoln is guilty of committing a very serious error, for he fixes our beginning as a people, any way you look at it, either at a point after our beginning or before it. In other words, a claim could be made that the adoption of our Constitution essentially marks our beginning, for at this juncture we did through deliberative processes—far more deliberative, candid, and sober than those surrounding the adoption of the Declaration—set forth our supreme symbols. What is more, the fifty-five at Philadelphia knew precisely what their task or mission was, namely, that of fashioning a new government for the separate thirteen colonies on such foundations and with such processes that

would allow for union. Put still otherwise, to speak as Lincoln does about binding commitments off of the Declaration, on the face of it, is not at all convincing for one who wants to argue, as we presume Lincoln would, about obligation in the same sense as the consent theorists. Those who would want to renege on the alleged promises would have more than one reason to say: "We know nothing about the binding commitment you suggest. The document in which you presumably find that commitment does not bind us. It is merely a declaration which states our reasons for separation from Great Britain. It was not intended to be, nor is it, a document which binds us to commitments as a nation and people."

(b) The Declaration of Independence did not, as Lincoln proclaims, establish our independence *as a nation*. Rather, what it did was to establish a baker's dozen of new sovereignties. The record indicates that the states or colonies (whatever one prefers to call them) understood this. Those who think otherwise had best go back to the records. On May 15, 1776, the Continental Congress so much as warns the colonies to prepare for the worst. As the Georgia Assembly put it: "It has been recommended by the said Congress, on the fifteenth of May last, to the respective assemblies and conventions of the United States, where no government, sufficient to the exigencies of their affairs, hath been hitherto established, to adopt such government as may, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and American in general."¹² The Congress of New Hampshire, responding to the very first recommendation of the Continental Congress, took it upon itself to "use such means and pursue such measures as we should judge best for the public good,"¹³ and proposed a new constitution which was adopted on January 5, 1776. In

¹² Poore, I, 378.

¹³ *Ibid.*, II, 1279.

sum, eleven of the thirteen colonies either at the urgings of the Continental Congress or shortly after the Declaration did establish independent governments (that is, independent of Great Britain). The Constitution of the State of New York, adopted in 1777, even quotes the entire Declaration of Independence as justification for the establishment of its new government.

(c) Let us assume for the moment that the Declaration, as Lincoln would seem to have it, does enjoy a constitutional status so that we can draw from it binding commitments—at least in the sense that we have talked about binding commitments above. Even if this were so, he is still not entitled off of the text of the document to wrench from it a single proposition and make that our supreme commitment. We have only to look at the actual words of the Declaration to see that the only way you can read any such commitment out of it is by first reading it into it. "We," the document reads, "hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The proposition "that all men are created equal" is but one of at least four propositions. Moreover, the propositions are distinct and in part contradictory; they do not keep house with each other very well. Think only of the endless controversies about how to reconcile the values of liberty and equality.

Nor can we read these propositions either singly or wholly as a statement of goals, purposes, or commitments. When we read the entire text of the Declaration and recall its stated purpose, the best we can say is that governments ought to—and hopefully, all future governments of our making will—

- (1) honor and secure the inalienable rights of man; and hence
- (2) derive their powers from the consent of the governed.

(d) We can go one step further. Let us grant once again that

the Declaration does enjoy constitutional status. Let us also grant that, when all is said and done, the "all men are created equal" clause does represent our most basic commitment as a people. We must then pause to ask, "What does this commitment entail? What does it demand of us?" We could, beyond any doubt, look and ponder over the words at considerable length. Do the drafters really mean "all men"? That is, do they mean it literally in the sense of "every man"? We might say so given the fact that women were seemingly excluded from the most reasonable injunction of any such terminology. However, the assembly that approved the Declaration would not subscribe to the denunciation of slavery that Jefferson sought to include, so that we might be led to believe that the signers were talking of equality of men in a sense far short of that which modern egalitarians hold. Perhaps we can suggest equality before the law. Or could it mean "all men" or even "all men who count" are equal in the eyes of God? Perhaps, even, the value to which we are presumably "dedicated" is meaningless. [See appendix for further discussion of this point.]

We can say this much off the record: The phrase certainly was interpreted in a fashion quite different than our contemporaries interpret it. The Constitution of the State of South Carolina of 1778, in which due acknowledgement of the Declaration is made, declares:

The qualification of electors shall be that every free white man, and no other person, who acknowledges the being of a God, and believes in a future state of rewards and punishments, and who has attained to the age of one and twenty years, and hath been a resident and inhabitant in this State for the space of one whole year before the day appointed for the election he offers to give his vote at, and hath a freehold at least of fifty acres of land, or a town lot, and hath been legally seized and possessed of the same at least six months previous to such election, or hath paid a tax the pre-

ceding year, or was taxable the present year, at least six months previous to the said election, in a sum equal to the tax of fifty acres of land, to the support of this government, shall be deemed a person qualified to vote.¹⁴

The restrictions in many other states were not as severe, but most of them did impose some sort of "property test" which, we may take it, was designed to insure that the electorate did have a "permanent attachment" to the community. And the exclusion of women and slaves in state constitutions written at the time of the Declaration should serve to raise some questions about what the signers of the Declaration did mean by the phrase "all men are created equal."¹⁵ While it is anybody's guess what the signers did mean, we have every reason to believe they certainly did not view it as a new overriding commitment.

And (*e*) these state constitutions written shortly before and after the Declaration can only be read in the light of our tradition and the commitments we have already noted. Most states, in one fashion or another, subscribe to the New Hampshire dictum, namely, to "use such means and pursue such measures" as to be deemed "best for the public good."¹⁶ The representatives of the state of New York use similar language in their constitution. They feel themselves empowered "to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this State."¹⁷ Significantly, Connecticut makes very few changes at all. Its constitution, very short, begins with these words: "The People of this State, being by the Providence of God, free and independent, have the sole and exclu-

¹⁴ We here speak of the 1778 Constitution. *Ibid.*, II, 1623.

¹⁵ These are questions which we have conspicuously ignored, given our current intellectual and political climate which all but forbids raising them.

¹⁶ On this point, one need only read Poore.

¹⁷ *Ibid.*, II, 1332.

sive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitution of Government whereby the Legislature depends on the free and annual Election of the People, they have the best Security for the Preservation of their civil and religious Rights and Liberties." 18 In sum, with only the addition of a few common-law rights, the citizens of Connecticut are content to stick with the Fundamental Orders. Surely, if any revolution in the American tradition had occurred—revolution in the sense of new commitments and symbols—the people of Connecticut were apparently unaware of it.

To fix upon the Declaration and to extract from it our basic commitment in the manner that Lincoln has done cannot help but create a distorted picture of our tradition. This alone is a very serious matter. But what is more, we are now in the process of seeing how it is that a tradition is derailed. Those who seize upon and stress the "all men are created equal" clause, quite in keeping with the Lincolnian view of the tradition, have slowly, and understandably enough, fixed upon the symbol of "equality" as supreme. To be sure, the notions about what equality means do vary in scope. For some, it is nothing more than "equality of opportunity." To others, it comes down to political equality in the sense of one man, one vote. For still others, however (and this includes many of our contemporary intellectuals and political leaders), the commitment to equality means that government should assume the role of advancing equality by pursuing policies designed to make "all men equal" socially, economically, and politically. As we shall see in due course, we have come to have two traditions: one which holds to a rather extreme view of equality; the other, an older one, which holds that our supreme symbol is to rule the deliberate sense of the community. This

¹⁸ *Ibid.*, I, 257.

accounts for the fact that we are somewhat schizophrenic today about our tradition. Beyond this is a graver matter; the two traditions are not compatible with one another, and the manifestations of this are quite apparent in our contemporary world.